INTRODUCTION

Why does Australia need Competition Policy?

A competitive, flexible economy allows more rapid and less costly adjustment to changes in the domestic and international environment, such as the recent Asian slowdown. It also allows the freeing up of resources as productivity improves. Additional investment, resulting from a responsive, globally-focussed environment, will create employment opportunities.

Competition policy is a critical component of the broader structural reform agenda. It also offers a further means to reduce market transaction costs — principally through a comprehensive program of regulatory reform — and increase the information available to consumers to make informed choices. This improves market responsiveness to consumer preferences and re-enforces other government measures intended to enhance consumer sovereignty.

Effective competition in markets for goods and services provides the main impetus for firms to seek productivity improvements, and ensures that a greater proportion of these gains are distributed in the form of lower product prices rather than retained within firms. This reduces operating costs and prices to business and consumers.

The long term well being of Australians depends significantly on the productivity performance of the economy. Increasing national productivity can boost growth, employment opportunities, export competitiveness and real household incomes. This, in turn, will influence our capacity as a society to provide essential services to the community.

To enable the economy to increase the level of productivity growth, an ongoing commitment to reducing structural rigidities and developing and maintaining a competitive market environment is required. This involves continuing efforts to reduce barriers to market entry and exit, reform anti-competitive regulations and expose government owned businesses to competitive market forces in a competitively neutral manner.

In seeking productivity gains, competition provides a spur to innovation in product design, production processes and management practices. It also encourages a wider range and improved quality of goods and services.

In summary, competition policy encourages the efficient use of Australia's limited resources to the benefit of the community as a whole.

National Competition Policy Framework

To achieve the anticipated productivity gains, it was recognised that competition reform should be undertaken in a timely and comprehensive manner across all levels of government. As a result, in April 1995, the Commonwealth, States and Territories entered into three Inter-Governmental Agreements. These agreements are the *Conduct Code Agreement*; the *Competition Principles Agreement*; and the *Agreement to Implement the National Competition Policy and Related Reforms*.

The commitments embodied in these agreements effectively underpin the National Competition Policy (NCP) in Australia[1]. The NCP reforms perform a mutually reinforcing role with other competition policy initiatives, such as the limitations on anti-competitive conduct established by the *Trade Practices Act 1974* and *Prices Surveillance Act 1983*.

[1] The 1995 Agreements also resulted in the establishment of the National Competition Council (NCC), an inter-jurisdictional body funded by the Commonwealth. The NCC has statutory responsibilities under the Commonwealth *Trade Practices Act 1974* and *Prices Surveillance Act 1983*, as well as specified roles under the Agreements aimed at ensuring the effective introduction of the NCP.

Box 1: Is Competition Policy New?

While the 1995 Intergovernmental Agreements were the first comprehensive inter-jurisdictional attempt to implement competition policy, measures to control anti-competitive behaviour have existed in Australia for some time.

The *Trade Practices Act* (TPA), which was passed in 1974, replaced earlier legislation aimed at protecting the community from the costs of non-competitive conduct. The TPA remains a key element of competition policy. The *Prices Surveillance Act 1983* has similarly been in place for some time.

Many industry specific structural reforms and reforms to the governance arrangements and operating requirements of Commonwealth business enterprises, particularly corporatisation, also preceded these Agreements.

The NCP framework targets particular opportunities for governments to encourage competitive outcomes. These include:

- The review and, if necessary, reform of any legislation which is anti-competitive, with the requirement that anti-competitive legislation to be retained or introduced must be demonstrably in the community interest (**Chapter 1**).

- The implementation of competitive neutrality for all government business activities operating in a contestable market, which requires that such businesses not benefit commercially simply by virtue of their public ownership. For example, they should be liable for the same taxes and charges, rate of return and dividend requirements and regulations as their private sector competitors (**Chapter 2**).

- The structural reform of public monopolies, where their markets are to be opened to competition or they are to be privatised, to ensure they have no residual advantages over potential competitors. For example, as the result of residual regulatory powers (**Chapter 3**).

- The provision of access arrangements to services provided by significant infrastructure facilities (such as electricity grids, airports, and communications networks) that would be uneconomic to duplicate, to encourage competition in

upstream and downstream markets and reduced prices for related products (**Chapter 4**).

- Independent oversight by State and Territory governments of the pricing policies of government business enterprises, to ensure that price rises are not excessive. (The Commonwealth already has prices oversight provisions) (**Chapter 5**).

- The application of the Competition Laws across all jurisdictions, (including the scope for exceptions in certain circumstances), centrally administered by the Australian Competition and Consumer Commission (**Chapter 6**).

- Ensuring commitment to related reforms in the key infrastructure areas of electricity, gas, water and road transport with a view to improving efficiency, implementing nationwide markets and standards, and protecting the environment (**Chapter 7**).

Governments have made significant progress in implementing reform in the three years since NCP commencement. The benefits to the community from this process are now becoming evident, particularly in terms of lower prices to consumers. Some examples are detailed in **Box 2**.

However, it is important to recognise that this is a long term process. Ongoing commitment by all levels of government to effective reform will be necessary to realise significant returns.

Box 2: Some Benefits to Competition Reform

- Under a key competition policy reform commitment, the full National Electricity Market (NEM) commenced in December 1998. The NEM allows electricity to be freely traded between New South Wales, Victoria, South Australia and the Australian Capital Territory. Queensland is also soon to join, following the construction of an interconnector with New South Wales

- As a result of competition, Australian residential electricity prices have fallen by 7 per cent in real terms on average since 1993. This equates to a real reduction of around $45 per year on an average household electricity bill. For those jurisdictions participating in the National Electricity Market, the price savings have been greater, in the order of $60 a year per household.

- Since the advent of open competition on 1 July 1997, the Australian telecommunications market has grown to 28 carriers. This new competitive structure has led to real reductions in prices for consumers. For example, the price of a phone call to the United Kingdom on the Optus network has fallen from 84 cents per minute in June 1997 to 45 cents per minute in June 1999 (based on the least expensive time to call).

- According to a study by the Bureau of Industry Economics, Australia's domestic airfares and freight rates are amongst the cheapest in the world — and these lower airfares are the result of competition reforms and not lower service standards. Real domestic airfares have fallen by 18.4 per cent in the period from September 1990 to June 1998.

The Need for Safeguards

Competition policy is not about the pursuit of competition for its own sake, but creating the environment for effective competition in the interest of efficient resource use and maximum community benefit – with a major factor being lower prices and better choice and quality for consumers.

However, situations may arise where competition does not achieve this outcome (due to market failures) or conflicts with other social objectives. In many instances, reforms will be complemented by a regulatory framework that provides a safety net

against market structures failing to deliver adequate competitive outcomes, where markets are in transition towards competitive structures or to enable the delivery of community service obligations.

Furthermore, there will often be short-term adjustment costs to the reforms — potentially concentrated on specific sectors or geographical regions. While greater than the costs, the benefits usually accrue over the longer term and are more widely spread across the community.

Taken as a whole, the program of reform will ensure a wide distribution of the costs and benefits across the community, with the benefits of one reform often helping to offset the costs of another.

Ultimately, productivity improvements are only realised once the resources have been reallocated to more efficient uses. Any targeted assistance, which may be designed to assist this process, should smooth the path for the adoption and integration of the reforms rather than hinder or distort the desired outcome.

Box : What is the National Competition Policy?

The National Competition Policy (NCP) is part of a broader structural reform program aimed at increasing living standards, productivity, and employment. It involves reducing business costs (including red tape), providing lower prices and greater choice for consumers and more efficient delivery of public services.

The NCP framework enables competition reforms to be undertaken in a structured, transparent and comprehensive manner – seeking to ensure **all the costs and benefits** to the community and the distributional impacts of a particular course of action are identified and made available to decision makers for consideration.

While seeking to encourage more efficient use of resources, particularly in the public sector, the NCP does not:

- mandate the privatisation of government business;
- force contracting out of government services;
- require the end of cooperative marketing by farmers;
- ignore social, regional or environmental considerations; or
- prohibit consideration of transitional adjustment assistance programs.

The Commonwealth's Reporting Requirement

Under the *Competition Principles Agreement*, the Commonwealth is required to publish an annual report outlining its progress toward:

- achieving the review and, where appropriate, reform of all existing legislation that restricts competition by the year 2000 (as outlined in the Commonwealth Legislation Review Schedule); and
- implementing competitive neutrality principles (including allegations of non-compliance).

However, to fully recognise the range of Commonwealth commitments established by the NCP Agreements, all areas of Commonwealth involvement have been reported.[2]

This report formally covers the period 1 July 1997 to 30 June 1998, although more recent information is provided where available.

Commonwealth Inquiries into Competition Matters – 1997-98

The Commonwealth has initiated or participated in a range of processes during 1997-98 intended to clarify the objectives and impacts of the competition policy reforms.

Review of the National Competition Council Annual Report 1996-97

The House of Representatives Standing Committee on Financial Institutions and Public Administration prepared a report entitled *Review of the National Competition Council Annual Report 1996-97*. This report was tabled in Parliament on 29 June 1998.

The sole recommendation arising from the Committee's report was the need to raise community awareness of competition policy issues. In particular, the Committee recommended that Commonwealth, State and Territory Governments and agencies involved in the implementation of the national competition policy devote resources to ensure community understanding and debate about the contents of the policy and its outcomes.

Senate Select Committee inquiry into the Socio-Economic Consequences of National Competition Policy

A Senate Select Committee was established to inquire into the socio-economic consequences of National Competition Policy. The Committee is to report by 30 June 1999.

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[2] The commitments contained within the NCP Agreements apply to both Commonwealth and State and Territory Governments. This report discusses these commitments from the Commonwealth perspective.

The submissions by the Commonwealth Treasury and the National Competition Council to this inquiry are publicly available.

Productivity Commission inquiry into the Impact of Competition Policy Reforms on Rural and Regional Australia

The Productivity Commission has been provided with a reference by the Commonwealth Government to inquire into the impact of the competition policy reforms on rural and regional Australia.

This process will involve extensive public consultation, through written submissions and a public roundtable process. A draft report is to be released in April 1999, triggering a further round of submissions and public consultations.

The final report is to be provided by 30 August 1999.

National Competition Policy Payments

Under the *Agreement to Implement the National Competition Policy and Related Reforms*, the Commonwealth agreed to make NCP payments to those States and Territories assessed as making satisfactory progress toward implementation of specified competition and related reforms.

These payments represent the States and Territories share of the additional revenue raised by the Commonwealth as a result of effective competition reform, and are worth approximately $16b (up to the year 2005-6).

They comprise three tranches of Competition Payments and the real per capita component of the annual Financial Assistance Grants.

- The first tranche of the Competition Payments commenced in 1997-98, and involved a maximum annual payment of $200 million (in 1994-95 prices).

- The second tranche of the Competition Payments commences in 1999-00, and involves a maximum annual payment of $400 million (in 1994-95 prices).

- The third tranche of the Competition Payments commences in 2001-02, and involves a maximum annual payment of $600 million (in 1994-95 prices).

The *Implementation Agreement* specifies those commitments the States and Territories must meet in order to receive the maximum NCP payment.

The National Competition Council (NCC) is required to assess State and Territory performance in implementing the required reforms prior to the commencement of the three Competition Payments tranche periods — 1 July 1997, 1 July 1999 and 1 July 2001. This assessment forms the basis for determining State and Territory eligibility for payment.

In response to the NCC first tranche assessment, provided on 30 June 1997, the Commonwealth made NCP payments to the States and Territories for the period 1997-98 amounting to $396.2 million.

Payments for 1998-99, the final year of the first tranche period, are subject to a supplementary assessment to be provided to the Commonwealth Treasurer by 1 July 1998. This assessment determines whether the States and Territories have addressed first tranche NCP commitments identified as outstanding in the NCC's initial assessment.

Treasury Internet Site

Various Commonwealth publications relating to NCP matters are available from the Commonwealth Treasury website — http://www.treasury.gov.au

Other relevant sites include the NCC (www.ncc.gov.au), the Productivity Commission (www.pc.gov.au) and the Australian Competition and Consumer Commission (www.accc.gov.au).

1. LEGISLATION REVIEW

1.1 Why is Legislation Review Necessary?

Restrictions imposed on markets by government regulation, for example, through the creation of legislated monopolies or the imposition of particular pricing practices, can be a major impediment to competitive outcomes. Compliance with these regulations can also impose significant costs on business.

In recognition of this, the *Competition Principles Agreement* (CPA) states that legislation (including Acts, enactments, ordinances or regulations) should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and

- the objectives of the legislation can only be achieved by restricting competition.

The CPA further states that all existing anti-competitive legislation (enacted prior to 1996) should be reviewed against these criteria and modified or repealed where there is no net community benefit to its retention.

This requirement to demonstrate net community benefit also applies to the introduction of new or amended legislation that restricts competition. This has resulted in the emergence of the Commonwealth's regulation impact assessment process (*see* **Section 1.4**).

Importantly, this process provides that legislation that restricts competition may be retained or introduced where it is demonstrably in the public interest. However, recognising the continually changing economic environment and social objectives, such legislation must be reviewed at least every ten years after its initial review or introduction. This requirement also applies to anti-competitive legislation excepted from the review process (*see* **Chapter 6**).

Box 4: When is legislation anti-competitive?

While almost no regulatory activity is completely neutral in its implications for competition, legislation may be regarded as affecting competition where it directly or indirectly[3]:

- governs the entry and exit of firms or individuals into or out of markets;
- controls price or production levels;
- restricts the quality, level or location of goods and services available;
- restricts advertising and promotional activities;
- restricts price or type of inputs used in the production process;
- confers significant costs on business; or
- provides advantages to some firms over others by, for example, sheltering some activities from the pressures of competition.

The objective of the CPA legislation reform program is to remove restrictions on competition that are demonstrated not to be in the interest of the community as a whole. However, following the Prime Minister's policy statement *More Time for Business* (1997), the Commonwealth legislation review requirement was expanded to include the assessment of legislation that imposes costs or confers benefits on business. The aim is to reduce compliance costs and paperwork burden for business.

A critical component of legislative reform is the validity of the review process. To ensure all relevant costs and benefits are recognised, the CPA sets out a range of issues that should be considered in determining the public benefit of any particular piece of legislation. These issues are set out in **Box 5**, and include social, regional and environmental factors.

In many cases, it may be difficult to quantify all the costs and/or benefits of a piece of legislation to the community as a whole. The requirement to identify non-quantifiable

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[3] Hilmer, F., Rayner, M., and G. Taperell (The Independent Committee of Inquiry into a National Competition Policy) (1993), National Competition Policy, Australian Government Publishing Services, Canberra, p191.

effects to a particular course of action means that these can be explicitly considered in the decision making process, rather than excluded due to the lack of an agreed 'dollar value'.

A clear identification of the costs, benefits and distributional impacts resulting from the removal of a regulation on wider public interest grounds will also assist governments to introduce targeted adjustment mechanisms. Such assistance may be considered necessary to mitigate the impact of transitional costs reform may impose on particular sectors of the community.

Box 5: Assessing the Public Benefit

Without limiting the matters to be taken into account, in assessing the costs and benefits, the following matters should be taken into account:

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- government legislation and policies relating to matters such as occupational health and safety, industrial relations, access and equity;
- economic and regional development, including employment and investment growth;
- the interests of consumers generally or of a class of consumers;
- the competitiveness of Australian businesses; and
- the efficient allocation of resources.

Source: ***Competition Principles Agreement*** (1995), sub-clause 1(3)

Commonwealth compliance with its legislative review requirements in 1997-98 is independently assessed by the Productivity Commission[4] in *Regulation and its Review 1997-98* and the National Competition Council (NCC).

A detailed examination of Commonwealth progress during 1997-98 in the review and reform of anti-competitive legislation in effect when the competition policy

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[4] This function is undertaken by the Office of Regulation Review, an independent office located within the Productivity Commission.

commitments were introduced is contained in **sections 1.2** and **1.3**, while **section 1.4** examines legislation introduced or amended after 1995 for compliance with regulation impact assessment requirements.

Where Commonwealth legislation is complemented or matched by State or Territory regulation, a co-ordinated 'national review' may be undertaken. Commonwealth participation in national reviews for the period 1997-98 is examined in **section 1.3**.

1.2 Commonwealth Legislation Review Schedule

The Commonwealth Legislation Review Schedule (CLRS) details the Commonwealth's timetable for the review and, where appropriate, reform of all existing legislation that restricts competition by the year 2000.[5]

The original Schedule, prepared in June 1996, listed a total of 98 separate legislative reviews. However, since then, changing circumstances have resulted in some reviews being added, rescheduled or deleted.[6]

A review may be deleted from the Schedule if it is not considered cost effective to undertake — that is, where the competition effects are small relative to the cost of implementing new arrangements. Legislation may also be repealed as a consequence of changes to Government policy.

Any change to the Schedule requires the approval of the Prime Minister, Treasurer and the responsible Portfolio Minister(s). With the reallocation of responsibility for National Competition Policy matters within the Treasury portfolio, the Treasurer's role is now performed by the Minister for Financial Services and Regulation.

The CLRS as at 30 June 1998 is at **Appendix A**.

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5 A summary of the legislation review programs of all Commonwealth, State and Territory jurisdictions to the year 2000 can be found in the National Competition Council's latest Legislation Review Compendium, published in December 1998.

6 This includes extension of the CLRS to incorporate reviews scheduled on the basis of direct or singificant indirect impacts on business.

Reporting Requirements for Legislation Reviews

The following sections provide information on Commonwealth progress during 1997-98 in meeting its legislation review schedule commitments. Information has been provided largely by the Commonwealth portfolio or agency responsible for the administration of the legislation.

The reviews have been separated to reflect both the scheduled commencement date, and the degree of progress made to date. For each individual review, information is provided on the following:

Complexity of the review and details of the review panel

The priority and importance of the legislation being reviewed varies. Accordingly, the method of review for the legislation takes into account its significance and the extent of expected benefits to reform. More significant pieces of legislation are reviewed by an independent committee of inquiry, the Productivity Commission or the NCC. Where such review costs are not considered warranted, reviews are generally undertaken by a committee of officials.

The ministerial portfolio with current responsibility for the legislation[7], and the commencement date of the review, is also identified.

Terms of reference

The scope and structure of each review is outlined in its terms of reference. Without limiting the terms of reference for each review, the CPA establishes that scheduled reviews should:

- clarify the objectives of the legislation;
- identify the nature of the restriction on competition;
- analyse the likely effect of the restriction on competition and on the economy in general;
- assess and balance the costs and benefits of the restriction; and
- consider alternative means of achieving the same result including non-legislative approaches.

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[7] In some cases, ministerial responsibility for particular legislation may have changed during the reporting period. Similarly, Department titles referred to in connection with various reviews may differ over time.

The Office of Regulation Review (ORR)[8] is required to approve the terms of reference developed for any scheduled Commonwealth review. To assist this process and to ensure a consistent approach and focus to reviews, the ORR has developed a template terms of reference to be tailored to suit each piece of legislation to be reviewed.[9]

In recognition of the importance of the terms of reference in defining the scope of each review, a copy of each review's terms of reference is included in the progress report on each piece of legislation reviewed.

Extent of public consultation

Public consultation is a required part of all Commonwealth legislation reviews. This obligation was stipulated by the Commonwealth in the release of the CLRS. The NCC has recommended that, to meet this obligation, all reviews should be conducted in an independent, open and transparent way, against clear terms of reference, and in a manner that allows interested parties to participate.

The review terms of reference will set out the minimum public consultation to be undertaken. In the interest of transparent decision making and ensuring the broadest range of views on the matter under consideration are received, this generally involves advertising the review and seeking written submissions on a national basis. There may also be more targeted consultations with specific stakeholders.

In *Regulation and its Review 1997-98* the ORR indicated that, in relation to Commonwealth reviews undertaken to date, consultations had generally been of a high standard.

Review Progress or recommendations and Government response

Further information will be reported depending on the extent of progress in the review. Where the review has been completed, if possible, a summary of the main review recommendations is provided.

The final report of each review is to be made publicly available, although for particularly sensitive reviews this may not occur immediately.

As applicable, a summary of the Government's response to the review recommendations is included.

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8 *See* footnote 6 and section 1.4 for further information on the responsibilities of the ORR.

9 Productivity Commission (1998), *Regulation and its Review 1997-98*, AusInfo, Canberra, p6.

Table 1 (below) details the progress of those reviews scheduled for commencement in the period to 30 June 1998, and which were not completed prior to 1 July 1997.

Table 1: Progress in Commonwealth Legislation Review and Reform

Reviews Scheduled for 1997-98

Review Complete and Outcomes Announced	Review Complete and Recommendations Being Considered	Review Commenced but Not Complete	Review Not Commenced or Timing Changed
Affirmative Action (Equal Employment Opportunity for Women) Act 1986 National Health Act 1953 (Part 6 & Schedule 1) and Health Insurance Act 1973 (Part 3) Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations Mutual Recognition Act 1992 (national review)	Higher Education Funding Act 1988, Vocational Education and Training Funding Act 1992 and related Acts International Air Services Agreements, International Air Services Commission Act 1992 Australia New Zealand Food Authority Act 1991 (brought forward from 1998-99)	Bankruptcy Act 1986 and Bankruptcy Rules – Trustee Registration Provisions Customs Act 1901, Sections 154-161L (Customs Valuation Legislation) Defense Housing Authority Act 1987 Imported Food Control Act 1992 and Regulations Motor Vehicle Standards Act 1989 National Residue Survey Administration Act 1992 and Related Acts Pig Industry Act 1986 and Related Acts Primary Industries Levies Acts and Related Collection Acts Proceeds of Crime Act 1987 and Regulations (brought forward from 1998-99) Torres Strait Fisheries Act 1984	Anti-dumping Authority Act 1988, Customs Act 1901 Part XVB and Customs Tariff (Anti-dumping) Act 1975 (rescheduled to 1998-99) Broadcasting Services Act 1992, Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992, Radio Licence Fees Act 1964 and Television Licence Fees Act 1964 (rescheduled to 1998-99) Insurance (Agents & Brokers) Act 1984 (rescheduled to 1998-99) Environmental Protection (Nuclear Codes) Act 1978 Export Control Act 1982 – Export Control (unprocessed Wood) Regulations (rescheduled to 1998-99) Occupational Superannuation Standards Regulations Applications Act 1992, Superannuation Entities (Taxation) Act 1987, Superannuation (Financial Assistance Funding) Levy Act 1993, Superannuation Industry (Supervision) Act 1993, Superannuation (Resolution of

Table 1: Progress in Commonwealth Legislation Review and Reform

Reviews Scheduled for 1997-98

		and Related Acts Trade Practices Act 1974 Sub-sections 51(2) and 51(3) (Exception Provisions) Agricultural and Veterinary Chemicals Act 1984 (brought forward from 1998-99) (national review)	Complaints) Act 1993 and the Superannuation Supervisory Levy Act 1991 (rescheduled to 1998-99) Petroleum Retail Marketing Franchise Act 1980 Petroleum Retail Marketing Sites Act 1980 Spectrum Management Agency (SMA) – review of SMA's market based reforms and activities

Reviews Scheduled for 1996, 1996-97

Review Complete and Outcomes Announced	Review Complete and Recommendations Being Considered	Review Commenced but Not Complete	Review Not Commenced or Timing Changed
Aboriginal and Torres Strait Islander Heritage Protection Act 1984 Australian Postal Corporation Act 1989 Customs Tariff Act 1995 – Textiles, Clothing and Footwear Arrangements Duty Drawback (Customs Regulations 129-136B) and TEXCO (Tariff Export Concession Scheme) – Customs Tariff Act 1995, Schedule 4, Item 21, Treatment Code 421 Migration Act 1958 – Sub-classes 120 and 121 (Business Visas) Migration Act 1958 – Sub-classes	International Arbitration Act 1974 Pooled Development Funds Act 1992 Tradesmen's Rights Regulation Act 1946	Aboriginal Land Rights (Northern Territory) act 1976 and Associated Regulation Bills of Exchange Act 1909 Commerce (Imports) Regulations and Customs (Prohibited Imports) Regulations Foreign Investment Policy, Including Associated Regulation Radiocommunications Act 1992 and Related Acts	Migration Act 1958 – Sub-Classes 676 and 686 (Tourist Visas)

560, 562 and 563 (Student Visas) Migration Act 1958 (Part 3 – Migration Agents and Immigration Assistance, and Related Regulations), Migration Agents Registration (Application) Levy Act 1992, Migration Agents Registration (Renewal) Levy Act 1992 Quarantine Act 1908 (in relation to Human Quarantine) Shipping Registration Act 1981 Trade practices (Consumer Product Information Standards) (Care for Clothing and Other Textile Products Labelling) Regulations			

1.2.1 Legislation Scheduled for Review in 1997-98

This section outlines progress in those legislative reviews scheduled to commence in 1997-98. The reviews are grouped according to the extent of progress made.[10]

1.2.1.1 Review Completed and Reform Outcomes Announced.

AFFIRMATIVE ACTION (EQUAL EMPLOYMENT OPPORTUNITY FOR WOMEN) ACT 1986 (Department of Employment, Workplace Relations and Small Business)

REVIEW PANEL

The review of the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* commenced in December 1997.

It was conducted by a five member independent committee of inquiry, chaired by Ms Deanne Bevan, Director of Employee Relations for McDonalds Australia. Other members were Ms Heather Carmody (World Competitive Practices), Mr Brendan McCarthy (Chamber of Commerce and Industry, Western Australia), Ms Norah Breekveldt (Toyota Australia) and Ms Barbara Holmes (Managing Work and Family, Australia).

TERMS OF REFERENCE

In accordance with the Government's decision to review all legislation to determine whether it restricts competition and what net costs it imposes on Australian business, the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*, and the associated regulations, are referred to the independent committee for evaluation and report to commence its activity in 1997-98.

The Committee is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

(a) legislation/regulation should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can not be achieved more efficiently through other means, including non-legislative approaches;

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[10] Information on progress has been provided by the responsible portfolio department or agency.

(b) in assessing the matters in (a), regard should be had, where relevant, to effects on the welfare and equity, economic and regional development, consumer interests, the competitiveness of business and efficient resource allocation; and

(c) compliance costs and the paperwork burden should be minimised where feasible, particularly for small business.

In undertaking the review, the Committee is to:

- examine those parts of the legislation, and its administration, which have the potential to restrict competition or which impose costs or confer benefits on business;
- advertise nationally and consult with key interest groups and affected parties;
- report on appropriate arrangements for achieving the objectives of the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*; and
- have regard to the analytical requirements for regulation assessment set out in the Competition Principles Agreement and the Government's regulation impact guidelines.

The report of the Committee, which will be publicly available, should:

- identify the nature and magnitude of the problem that the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* seeks to address;
- clarify the objectives of the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*;
- identify whether, and to what extent, the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* restricts competition;
- identify relevant alternatives to the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* including non-legislative approaches such as promoting "best practice";
- analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*, including an examination of the efficacy of the administrative

policy of "contract compliance" in achieving the objectives of the Act, and the alternatives identified;

- identify the different groups likely to be affected by the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* and alternatives;

- examine mechanisms for increasing the efficiency and effectiveness of the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* and arrangements for its administration;

- list the individuals and groups consulted during the review and outline their views; and

- determine any preferred approach option for regulation, if any, in this area in the light of the objectives in (a), (b) and (c).

The Government intends to announce the action which is to be taken within six months of receiving the Committee's report.

PUBLIC CONSULTATION

In formulating the report's findings and recommendations, the Committee consulted widely. Nation-wide press advertisements called for written submissions, of which 180 were received. Public consultations were held in each capital city. Further, peak employer, business, community groups and trade unions were directly contacted, as were state government agencies concerned with labour, women's and/or anti-discrimination issues. Several federal government agencies, representing a broad spectrum of responsibilities, responded to a direct invitation to tender a submission.

REVIEW RECOMMENDATIONS

The review report *Unfinished Business: Equity for Women in Australian Workplaces* was presented to the Minister for Workplace Relations and Small Business on 2 July 1998.

Taking into account information received from submissions, public consultations, surveys, and commissioned and other available research, the Committee found there are still equity issues for women in the workforce that needed to be addressed. Further, it considered that the benefits of the legislation, at both a macro and a business level, outweighed the costs; and that a regulatory model similar to the present legislation was the preferred approach to addressing the issues identified. However,

the Committee also found that the net benefits could be significantly improved by changes to the Act and its administration. It made 19 recommendations to this end.

The more important recommendations in terms of competition policy (particularly with regard to costs to business) were:

- all Australian employers should strive to provide equal employment opportunity for women, and that large employers take actions to eliminate discrimination (employers of less than 100 employees would not be required to take any specific actions) (Recommendation 2);

- a Board be set up, comprising representatives of stakeholder groups, which among other things, would determine whether a company meets criteria for waiving, naming or being made subject to contract compliance sanctions (Recommendation 4);

- educative material, in particular voluntary guidelines, be developed that will provide information on the provisions of the Act. The *Sex Discrimination Act 1984* should be amended to state that compliance with guidelines developed under this Act should be admissible as evidence in cases brought before the Human Rights and Equal Opportunities Commission (Recommendation 5);

- organisations should report on their actions to achieve workplace equity for women, with a minimum mandatory reporting period of two years for compliant organisations, although reporting can be waived for a specified period if it is demonstrated that the employer is undertaking all reasonably practicable actions to eliminate discrimination and promote equity in employment matters (Recommendations 7, 9 and 11);

- organisations should be assessed as either complying or non-complying, rather than using the existing rating system (Recommendation 10); and

- self-identification by
(Recommendation14).

GOVERNMENT RESPONSE

The Government announced its response to the review on 16 December 1998, endorsing its main recommendations. Key changes to be implemented include the establishment of an Advisory Board and the introduction of a simpler reporting system

to reduce the paperwork burden on business. Of those recommendations that were rejected, none were considered to be pro-competitive.

NATIONAL HEALTH ACT 1953 (PART 6 & SCHEDULE 1) AND HEALTH INSURANCE ACT 1973 (PART 3) (Department of Health and Aged Care)

The scheduled review of the *National Health Act 1953* (Part 6 and Schedule 1) and the *Health Insurance Act 1973* (Part 3) was included as part of the (then) Industry Commission inquiry into private health insurance. The final report was published in February 1997.

This review was previously discussed in Commonwealth's *1996-97 Commonwealth Legislation Review Annual Report*.

GOVERNMENT RESPONSE

A number of the critical issues that arose from the Industry Commission inquiry were addressed in the *Health Legislation Amendment Act (No.2) 1998*, which received Royal Assent on 24 April 1998.

The reforms contained in the Act:

engender a positive and competitive environment in the private sector;

reduce some of the cost pressures on health insurance premiums;

make contracting more attractive between the various parties; and

assist consumers by reducing the problems of often large and unexpected out-of-pocket expenses and multiple medical bills.

TRADE PRACTICES (CONSUMER PRODUCTS INFORMATION STANDARDS) (COSMETICS) REGULATIONS (Department of the Treasury)

REVIEW PANEL

The review of the Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations commenced in November 1997.

It was undertaken by a committee of officials, comprising representatives of the Department of Industry, Science and Tourism, the Australian Competition and Consumer Commission and the Department of Health and Family Services.

TERMS OF REFERENCE

1. The Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations are referred to the Consumer Affairs Division of the Department of Industry, Science and Tourism for evaluation and report by 30 June 1998. In line with the Competition Principles Agreement, a Committee of Officials (consisting of the Consumer Affairs (Chair) and Industry Policy Divisions of the Department of Industry, Science and Tourism, the Australian Competition and Consumer Commission and the Department of Health and Family Services), hereafter called the Committee, will undertake the review and focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The Committee is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

a) the Regulation should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation cannot be achieved more efficiently through other means, including non legislative approaches;

b) in assessing matters in (a), regard should be had where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation;

c) the need, if any, to promote efficient regulatory administration and consistency between regulatory regimes in Australia, New Zealand and internationally, for example, through improved co-ordination to eliminate unnecessary duplication; and

d) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to matters in (2), the Committee is to have regard to the analytical requirements for regulation assessment by the

Commonwealth, including those set out in the Competition Principles Agreement. The report of the Committee should:

a) identify the nature and magnitude of the social, environmental or other economic problem(s) that the Cosmetics Regulations seek to address;

b) clarify the objectives of the Cosmetics Regulations;

c) identify whether, and to what extent, the Cosmetics Regulations restrict competition;

d) identify relevant alternatives to the Cosmetics Regulations, including non-legislative approaches;

e) analyse, and, as far as reasonably practical, quantify the benefits, costs and overall effects of the Cosmetics Regulations and alternatives identified in (d);

f) identify the different groups likely to be affected by the Cosmetics Regulations and alternatives;

g) list the individuals and groups consulted during the review and outline their views;

h) determine a preferred option for regulation, if any, in light of the objectives set out in (2); and

i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the Cosmetics Regulations and, where it differs, the preferred option.

4. In undertaking the review, the Committee is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

5. The Committee will submit its recommendations to the Minister for Customs and Consumer Affairs.

6. Within 6 months of receiving the Committee's report, the Government intends to announce what action needs to be taken, after taking advice from the Minister for Customs and Consumer Affairs.

PUBLIC CONSULTATION

The review involved wide consultation with industry, consumer and key stakeholders. The review process included preparation of a discussion paper addressing the terms of reference for public consultation and advertisements in the national press calling for public submissions.

REVIEW RECOMMENDATIONS

The review was completed in June 1998.

Following consideration of public comments, a report was made to the relevant Ministers. The report concluded that the regulation should remain, albeit in less prescriptive terms to reduce the regulatory burden on business. The report was publicly released on 23 July 1998.

GOVERNMENT RESPONSE

The Minister for Customs and Consumer Affairs approved the Committee's recommendation to retain the current regulations with only minor amendment to facilitate international harmonisation of mandatory requirements.

The *Trade Practices (Consumer Product Information Standards) Amendment Regulations* came into effect on 17 December 1998. These require a list of ingredients to be provided on all cosmetic products. The amendments also update the mandatory standard by adopting an international system of nomenclature for cosmetic ingredients developed in the United States and European Union.

This is expected to enhance trade opportunities, boost competition and lower compliance costs as products will not have to be relabelled for the Australian market.

Review Completed, Recommendations under Consideration

HIGHER EDUCATION FUNDING ACT 1988, VOCATIONAL EDUCATION & TRAINING FUNDING ACT 1992 AND ANY OTHER REGULATION WITH SIMILAR EFFECT TO THE HIGHER EDUCATION FUNDING ACT 1988 (Department of Education, Training and Youth Affairs)

REVIEW PANEL

The scheduled review of higher and vocational education funding legislation was subsumed into the Review of Higher Education Financing and Policy (West Review) announced in January 1996.

The review committee comprised Mr Roderick West (Chair), Mr Gary Banks, Prof. Peter Baume AO, Prof. Lachlan Chipman, Dr Doreen Clark, Mr Clem Doherty and Prof. Kwong Lee Dow AM.

TERMS OF REFERENCE

1. The committee will undertake a broad ranging review of the state of Australia's higher education sector, the effectiveness of the sector in meeting Australia's social, economic, scientific and cultural needs, and the developments which are likely to shape the provision of higher education in the next two years.

2. The review committee will develop a comprehensive policy framework for higher education that will allow universities to respond creatively and flexibly to change, and will ensure that the sector meets the needs of students, industry and society in general as these are likely to develop over the next two decades.

3. Within this framework, the review committee will identify options for the financing of higher education teaching and research, and for providing Commonwealth funding to higher education institutions for these purposes.

4. The Government does not wish to limit the scope of the review committee's work in any way, though it expects that the review committee will examine long term developments in the following areas, and the implications of these developments for higher education teaching and research:

- the internationalisation of higher education;
- sources of finance for higher education;
- historical trends and likely future directions in the level and nature of demand for higher education;
- the equality of opportunity to participate in higher education;
- the level and nature of industry demand for higher education graduates and higher education research, and the contribution that graduates and research conducted within higher education institutions makes to the competitiveness of Australian industry;

- the role of research conducted in higher education institutions in the national research and innovation system, and the increasing importance of international links for research conducted in higher education institutions in Australia;

- teaching practice and course content in the context of changing undergraduate and postgraduate students' needs and developments in the knowledge base of disciplines;

- the use of advanced communications technologies in teaching, and in libraries and other teaching and research infrastructure;

- pressures on higher education quality assurance and accreditation processes arising from the development of more diverse higher education sector;

- policy and practice in public sector financing and management, including the increased emphasis on competition, contestability and competitive neutrality principles; and

- the review committee will take account of the requirements of the Commonwealth's legislation review program.

In developing its recommendations, the Government expects that the review committee will pay particular attention to the need to ensure that:

- public funds for higher education teaching and research are used efficiently and effectively, and appropriate accountability arrangements are in place;

- government funding mechanisms and processes encourage diversity between higher education institutions and excellence in teaching and research;

- program and advisory structures for research and development in the higher education sector:

    - maximise the development of higher level skills;

    - maximise the contribution of higher education research to the broader research and innovation system;

    - strengthen Australia's research base and its contribution to Australia's long term sustainable industry competitiveness; and

- facilitate the communication of research results to end users in industry and the community;

- Government funding mechanisms support a national system of higher education, in which it is recognised that universities play a vital role in regional economies;

- there is an appropriate balance between private and public funding for higher education;

- financial, social and geographic factors do not act as a barrier to higher education for appropriately qualified students within Australia;

- higher education institutions are committed to achieving high quality outcomes and to continuous quality improvement;

- the structure and range of higher education courses meets the needs of students and industry;

- the interfaces between the higher education sector and the vocational education and schools sectors operate efficiently and effectively; and

- commercial activities comply with the principles of competitive neutrality.

The review committee will provide a final report to the Minister by December 1997.

PUBLIC CONSULTATION

Submissions from the public were a key input to the review committee's deliberations. In February 1997, an open invitation was extended to interested individuals and organisations to make written submissions to the review. A total of 391 submissions were received by mid October 1997, provided by private individuals as well as a range of organisations representing interest groups and peak bodies. The review committee also undertook to visit and consult with key stakeholders.

A public discussion paper was released, with interested persons given until 5 December 1997 to make further written comments.

REVIEW RECOMMENDATIONS

The deadline for the provision of the final report was extended to March 1998, with the review committee actually reporting to the Minister for Employment, Education, Training and Youth Affairs on 17 April 1998.

The West Review report recommendations did not explicitly address competition principles. However, the following issues of relevance were identified:

- the Government, working with State and Territory Governments, should ensure that consistent criteria and processes exist for recognising university level qualifications offered by providers of higher education, such as 'bachelor degree', and for using the titles 'university' and 'higher education institution' (Recommendation 6);

- the Government, working with State and Territory Governments, should ensure that accreditation arrangements enable private providers of higher education to become self-accrediting bodies with the same powers in this respect as universities which operate under their own acts of parliament (Recommendation 7);

- the capital assets of universities should be liable to the same taxes and charges that apply to private higher education providers, once ownership and control issues are rationalised; and

- as detailed in *stage 4: A lifelong entitlement to post secondary education and training*, students should be allowed use of an 'entitlement to funding' to meet the costs of approved studies or services leading to a post secondary award at an approved private or public post secondary education provider in either the vocational education and training or higher education sectors.

INTERNATIONAL AIR SERVICES AGREEMENTS, INTERNATIONAL AIR SERVICES COMMISSION ACT 1992 (Department of Transport and Regional Services)

REVIEW PANEL

Australia's International Air Services Agreements (ASAs) and the *International Air Services Commission Act 1992* were separately scheduled for review, with the ASAs review to be conducted in 1996-97. The two reviews were subsequently combined and referred to the (then) Industry Commission for inquiry in December 1997.

Australia's international air services are currently conducted within a framework of bilateral air services agreements and arrangements between pairs of countries. There are currently over 3000 such arrangements worldwide, 51 involving Australia. An ASA specifies the terms and conditions under which airlines of the two countries involved can fly to, from, between and beyond each country.

The International Air Services Commission is a statutory body responsible for allocating capacity negotiated under Australia's ASAs, to existing and potential Australian international carriers.

TERMS OF REFERENCE

In undertaking the review the Industry Commission should:

a) identify the current regulatory/legislative framework in which international air services operate, including multilateral as well as bilateral structures and the objectives of the framework:

i) in this context, identify the nature and characteristics of the commercial rights being traded, including reference to airport access as an essential prerequisite to trade in aviation services;

ii) identify the effect on competition in the global market of the bilateral international air services agreement framework;

iii) identify the effect on competition in Australia's existing and potential international aviation markets of Australian policy in relation to bilateral air services agreements;

iv) assess whether the International Air Services Commission (IASC) allocation process provides net benefits to Australia, including reference to the value of provisions designed to favour new entrants;

v) analyse and assess the benefits, costs and overall effects of the international aviation regulatory framework and Australia's approach to negotiating bilateral air services agreements for tourism, consumers, air freight and the aviation industry; and

vi) in doing so, determine whether the approach currently adopted maximises the benefits to Australia possible within the bilateral framework;

b) assess the options for greater liberalisation;

   i) within the context of the bilateral system (including the role that bilateral partners may play in restricting entry); and

   ii) alternatives to the bilateral system; and

c) identify the scope and consequences (costs and benefits and overall effects) for Australia of these options.

The Government will consider the Commission's recommendations and its decisions will be announced as soon as possible after the receipt of the Commission's report.

PUBLIC CONSULTATION

The Industry Commission commenced the consultation process with informal discussions and a request for input from concerned stakeholders. This was followed up with an initial set of hearings in March 1998. In June, the Productivity Commission (formerly the Industry Commission) released a draft report embodying a series of draft recommendations for comment. A round of public hearings into this draft report was held in July 1998.

REVIEW RECOMMENDATIONS

The Productivity Commission submitted its final report to the Treasurer in September 1998. The report recommendations were under embargo at the time of reporting.

Review Commenced but not Completed

BANKRUPTCY ACT 1966 AND BANKRUPTCY RULES – TRUSTEE REGISTRATION PROVISIONS (Attorney-General's Department)

REVIEW PANEL

The review of the provisions of the *Bankruptcy Act 1966*, the Bankruptcy Regulations and the *Bankruptcy (Registration Charges) Act 1997* relating to the registration of private sector bankruptcy trustees commenced in June 1998.

It is being conducted by John Hawkless Consultants Pty Ltd, a consultant appointed by the Insolvency and Trustee Service Australia (a Division of the Commonwealth Attorney-General's Department).

TERMS OF REFERENCE

Division 1 of Part VIII of the *Bankruptcy Act 1966*, which Division provides a scheme for the registration of private sector bankruptcy trustees, Divisions 1, 1A and 2 of Part 8 and Division 15 of the Bankruptcy Regulations, and the *Bankruptcy (Registration Charges) Act 1997* are referred for a report on the following:

- the objectives of the specified legislation and related regulation;
- identify any restrictions on competition, and any costs to and benefits for business;
- analyse the likely effect of the restrictions on competition and the economy generally;
- assess whether the objectives of the legislation/regulation can only be achieved by restricting competition;
- consider the impacts, costs and benefits of alternative means for achieving the same result, including non-legislative approaches;
- determine a preferred option for regulation, if any, in light of the analysis undertaken for this review; and
- examine mechanisms to increase the efficiency of any referred regulation, including minimising the cost of compliance and paper burden on small business.

This review should note that the restriction on competition should be retained only if the benefits to the community as a whole outweigh the costs, and if the objectives of the legislation can only be achieved by restricting competition.

In undertaking the review, the reviewer is to consult widely with key interest groups and interested or affected parties, and publish a report.

The review and report is to have regard to the requirements for regulation assessment as outlined in the Government endorsed publication “A Guide to Regulation”.

The consultant is to complete the review and report within 5 months of being appointed.

PUBLIC CONSULTATION

The review process principally involves consultation with key stakeholders such as registered trustees and credit providers and, through peak bodies, other insolvency practitioners and financial counsellors. This process is well advanced. Submissions from the public have been invited.

CUSTOMS ACT 1901, SECTIONS 154-161L (CUSTOMS VALUATION LEGISLATION) (Attorney-General's Department)

REVIEW PANEL

The review of sections 154 to 161L of the *Customs Act 1901* formally commenced in June 1998. It is being conducted by a taskforce of officials.

These sections were enacted to satisfy two principal objectives:

- to establish legally binding rules providing the basis for determining the customs value of all goods imported into Australia; and

- to provide the mechanism for Australian implementation of the provisions of the Agreement on *Implementation of Article VII of the General Agreement on Tariffs and Trade* (the Customs Valuation Agreement).

All importers are required to comply with the valuation legislation and, therefore, incur some cost in doing so. These costs may affect the competitiveness of importers relative to domestic producers, and the competitiveness of firms using imported inputs relative to those using domestic inputs. The compliance cost burden may also differ between large and small importers. To the extent that the costs of compliance are greater than they need to be, the competitiveness of these firms may be affected unduly with flow on efficiency costs for the economy as a whole.

TERMS OF REFERENCE

1. The Customs Valuation legislation (section 154 to section 161L of the Customs Act 1901 – "the legislation") is referred to a Taskforce of Officials for evaluation and report by 20 February 1999. The Taskforce is to focus on those parts of the legislation which affect competition, or which impose costs or confer benefits on business.

2. The Taskforce of Officials is to take into account the following objectives:

a) the legislation should be retained in its present form only if the benefits to the community as a whole outweigh the costs and if the objectives of the legislation cannot be achieved more efficiently through other means, including non-legislative approaches;

b) in assessing the legislation, regard should be had, where relevant, to the effects of the legislation on welfare and equity, consumer interests, the competitiveness of business including small business, and efficient resource allocation;

c) the need to promote consistency between regulatory regimes and efficient regulatory administration, through improved coordination to eliminate unnecessary duplication;

d) compliance costs and paper work burden on business, and in particular on small business, should be reduced where feasible; and

e) Australian compliance with the World Trade Organisation Agreement on Customs Valuation.

3. In making assessments in relation to matters in (2), the Taskforce of Officials should have regard to the requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The report of the Taskforce should:

a) identify the nature and extent of the matters that the legislation seeks to address, and clarify the objectives of the legislation;

b) identify whether, and to what extent, the legislation impacts on competition;

c) examine the effects of the legislation on business, taking into account the needs and legitimate expectations of businesses in regard to government regulation;

d) examine the relationship between the elements of Australia's customs regulatory regime and the relationship between the customs valuation regime and other regulation affecting importers;

e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the legislation and any identified alternative means

of compliance with the WTO Agreement on Customs Valuation, taking into account relevant developments in world trade;

f) identify groups likely to be affected by the legislation and any proposed alternative means of regulation;

g) list the individuals and groups consulted during the review and outline their views; and

h) recommend a preferred course of action.

4. In undertaking the review, the Taskforce of Officials is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

Within four months of receiving the Taskforce of Officials' report, the Government intends to announce what action is to be taken, after obtaining advice from the Ministers for Industry, Science and Tourism and Customs and Consumer Affairs and, where appropriate, after consideration by Cabinet.

DEFENCE HOUSING AUTHORITY ACT 1987 (Department of Defence)

REVIEW PANEL

The review of the *Defence Housing Authority Act 1987* formally commenced in June 1998. It is being conducted by officials from within the Department of Defence.

TERMS OF REFERENCE

2. The *Defence Housing Authority Act* is referred to the Department of Defence for evaluation and report by 30 September 1998. The Department of Defence is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

3. The Department of Defence is to report on the appropriate future arrangements for this legislation taking into account the following objectives:

a) Legislation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation can only be achieved by restricting competition.

b) In assessing the matters in (a), regard should be had, where relevant to effects on welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation.

c) Compliance costs, paperwork and the work burden on small business should be reduced where feasible.

4. In making assessments in relation to matters in (2), the Department of Defence is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The Department's report should:

a) identify the nature of the social, environmental or other economic problem the Defence Housing Authority seeks to address;

b) clarify the objectives of the *Defence Housing Authority Act* and identify whether, and to what extent, the *Defence Housing Authority Act* restricts competition;

c) identify relevant alternatives to the *Defence Housing Authority Act*, including non-legislative approaches;

d) analyse, and as far as reasonably practical, quantify the benefits, costs and overall effects of the *Defence Housing Authority Act* and the alternatives identified in (c);

e) identify the different groups likely to be affected by the *Defence Housing Authority Act* and other alternatives;

f) list the individuals and groups consulted during the review and outline their views, or the reasons why consultation was inappropriate;

g) determine a preferred option for regulation, if any, in light of the objectives set out in (2); and

h) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the *Defence Housing Authority Act* and, where it differs, the preferred option.

5. In undertaking the review, the Department of Defence is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

6. Within six months of receiving the Department of Defence report, the Commonwealth intends to announce what action is to be taken, after obtaining advice from the Minister, and where appropriate, after consideration by Cabinet.

IMPORTED FOOD CONTROL ACT 1992 AND REGULATIONS (Department of Agriculture, Fisheries and Forestry)

REVIEW PANEL

The review of the *Imported Food Control Act 1992* and associated regulations commenced in March 1998.

It is being conducted by an review committee, chaired by Dr C Tanner, Associate Dean, Department of Agriculture, University of Sydney. Other committee members are Ms E Flynn (Acting General Manager, Australian and New Zealand Food Authority), Mr A Beaver (Secretary, Food and Beverage Importers Association) and Dr A Carroll (Acting National Manager, Animal and Plant Programs, Australian Quarantine and Inspection Service).

This Act sets up the Imported Food Inspection Program, which aims to ensure that imported food is safe for consumption.

TERMS OF REFERENCE

1. The *Imported Food Control Act* 1992 (the Act), and associated regulations, are referred to the Review Committee (the Committee) for evaluation and report by 31 August 1998. The Committee is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The Committee is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

a) Legislation/regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can only be achieved by restricting competition. Alternative approaches which may not restrict competition include co-regulation, quasi-regulation and self regulation.

b) In assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation.

c) The need to promote consistency between regulatory regimes and efficient regulatory administration, through improved coordination to eliminate unnecessary duplication.

d) Compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the Committee is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The report of the Committee of Officials should:

a) identify the nature and magnitude of the social, environmental or other economic problem(s) that the Act seeks to address;

b) clarify the objectives of the Act;

c) identify whether, and to what extent, the Act restricts competition;

d) identify relevant alternatives to the Act, including non-legislative approaches;

e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the Act and alternatives identified in (d);

f) identify the different groups likely to be affected by the Act and alternatives;

g) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate;

h) determine a preferred option for regulation, if any, in light of objectives set out in (2); and

i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the Act and, where it differs, the preferred option.

4 In undertaking the review, the Committee is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

5. Within 6 months of receiving the Committee's report, the Government intends to announce what action is to be taken, after obtaining advice from the Minister and where appropriate, after consideration by Cabinet.

PUBLIC CONSULTATION

A call for submissions was advertised nationally on 1 May 1998, with a closing date of 5 June 1998. Thirty submissions were received. There has also been extensive consultation with stakeholders (individual firms, industry peak bodies, consumers, experts and government agencies), comprising individual and group meetings and site visits.

REVIEW PROGRESS

A draft report is being completed for release to stakeholders for comment.

MOTOR VEHICLE STANDARDS ACT 1989 (Department of Transport and Regional Services)

REVIEW PANEL

The review of the *Motor Vehicle Standards Act 1989* commenced in December 1997.

It is being undertaken by a taskforce of officials, headed by the Federal Office of Road Safety with representatives from the Department of Industry, Science and Resources, the Australian Customs Service, the National Road Transport Commission and Environment Australia.

An independent reference committee is assisting the review process by ensuring the taskforce's work is independent, strategic and effective by reflecting as broadly as possible the views of stakeholders. The reference committee comprises Mr Roger Mauldon (former Industry Commissioner), Mr Don Dunoon (former Chief Engineer

of Nissan Australia Ltd) and Mr Lachlan McIntosh (Chief Executive of the Australian Automobile Association).

This Act provides the mechanism for setting national safety, emissions and anti-theft standards for road vehicles supplied to the Australian market.

TERMS OF REFERENCE

The *Motor Vehicle Standards Act 1989*, with its associated regulations, determinations and administrative arrangements (the Legislation), except for the technical aspects of the Australian Design Rules which are subject to a separate review, is referred to the Task Force of inter-governmental Officials (the Task Force).

The Task Force, under the guidance of an Independent Reference Committee, is to review and report on the appropriateness of the legislation and its effectiveness and efficiency in improving vehicle safety, emissions and anti-theft standards and recommend to Government any changes that should occur.

The Task Force is to ensure, to the extent possible, that any matters arising from the Review of the Australian Design Rules are taken into account in the review of the legislation.

A. The Task Force is to assess the appropriateness, effectiveness and efficiency of the Legislation and, in particular, is to assess and report on:

- the objectives of the Legislation and the extent to which those objectives remain appropriate, including the nature and magnitude of the problem which the Legislation seeks to address;
- the costs and benefits to the community and industry of the Legislation in achieving its objectives;
- any restrictions on competition that the Legislation imposes, including the costs and benefits of those restrictions on the economy generally;
- the impact the Legislation has on safety, the environment, equity, health, regional development, consumer interests or business competitiveness;
- the degree to which the Legislation, operating in conjunction with the *National Road Transport Commission Act 1991* and other

Commonwealth, State and Territory legislation, has been effective in preventing non-compliant or unsafe road vehicles entering the market;

- the effectiveness and efficiency of the Low Volume Manufacture Scheme, in terms of ensuring vehicle safety, emissions compliance and reducing compliance costs for imports of enthusiasts' or specialist vehicles supplied to the Australian market in small numbers;

- the current administrative arrangements, including the effectiveness and efficiency of these arrangements in relation to vehicle standards and client service;

- the level of compliance costs for industry and regulatory costs for governments, the impact on small business and ways to reduce the compliance and paperwork burden; and

- the current cost recovery arrangements and the extent, if any, of cross subsidy between and within industry sectors and the relevance of charging practices to the services carried out for each sector.

B. The report of the Task Force is to cover the matters referred to in paragraph A and in addition is to identify, assess and report on:

- the costs and benefits to the community and industry of alternative arrangements, including non-regulatory arrangements, for establishing and ensuring compliance with appropriate vehicle standards;

- the costs and benefits to the community and industry, including impacts on trade, of harmonising Australian vehicle standards with international vehicle regulation and of maintaining some unique Australian vehicle standards; and

- the preferred approach for meeting future vehicle standards requirements.

C. In assessing future options and preferred arrangements, the review is to have regard to the National Competition Principles Agreement and a range of relevant matters, including:

- measures to improve the effectiveness of current arrangements, taking account of the proposed Road Vehicle Certification System, alternatives to that scheme and client service charters;

- the role of the Low Volume Manufacture Scheme within the overall vehicle certification and compliance scheme;

- the intention that arrangements minimise regulatory requirements, having regard to costs and benefits to the community as a whole; and

- current and likely future developments in:

  – international safety regulation, including approaches in place and under consideration in the United Nations — Economic Commission for Europe, Japan and other Asian markets, Europe, North America and New Zealand;

  – emissions control and environment protection, both overseas and in Australian jurisdictions;

  – anti-theft standards and measures being proposed by manufacturers, law enforcement agencies and consumer groups in Australia and overseas; and

  – other future requirements.

D. The review is to consider:

- changes in Government policies impinging on the industry;

- current and emerging industry trends and practices, including standardisation of safety features and components;

- the relationship between Commonwealth controls imposed on road vehicles first provided to the market and in-service vehicle standards principally controlled by the States;

- the improving levels of vehicle safety, vehicle emissions and anti-theft controls in vehicles manufactured in Australia and overseas;

- the findings of Australian and international reviews and expert reports on motor vehicle safety standards, emission controls and anti-theft devices; and

- current and potential arrangements for cost recovery.

E. In undertaking the review the Task Force is to:

- advertise nationally for submissions;

- consult with key stakeholders, interest groups and affected parties;

- list individuals and groups consulted during the review and outline their views; and

- publish a report of its findings at the time of the Government's decision on its recommendations or earlier.

PUBLIC CONSULTATION

As a result of advertisements in the national press following the announcement of the review in December 1997 by the Minister for Transport and Regional Development and the circulation of a discussion paper to 3000 stakeholders, 57 submissions were made to the review. The taskforce also met with a number of key stakeholders representing a broad range of interests.

REVIEW PROGRESS

The taskforce is currently preparing a draft report, which it aims to finalise with the reference committee and forward to the Minister in early 1999.

NATIONAL RESIDUE SURVEY ADMINISTRATION ACT 1992 AND RELATED ACTS (Department of Agriculture, Fisheries and Forestry)

REVIEW PANEL

The review of *the National Residue Survey Administration Act 1992* and related Acts commenced in June 1998.

It is being conducted by a committee of officials, composed of representatives of the Department of Industry, Science and Resources, the Attorney-General's Department and the National Registration Authority.

The National Residue Survey manages monitoring programs for chemical residues in many Australian agricultural food commodities. The legislation puts in place statutory arrangements under which the National Residue Survey Trust Account can operate on a full cost recovery basis.

TERMS OF REFERENCE

1. The *National Residue Survey Administration Act* 1992 (NRS Administration Act), and associated legislation, will be referred to a Committee of Officials for evaluation and report by 30 November 1998. The Committee of Officials is to focus on the objectives of the legislation and on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The Committee of Officials is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

a) legislation/regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can only be achieved by restricting competition. Alternative approaches which may not restrict competition include co-regulation, quasi-regulation and self regulation;

b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation;

c) the need to promote consistency between regulatory regimes and efficient regulatory administration, through improved coordination to eliminate unnecessary duplication; and

d) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the Committee of Officials is to have regard to the analytical requirements for regulation assessment by

the Commonwealth, including those set out in the Competition Principles Agreement. The report of the Committee of Officials should:

a) identify the nature and magnitude of the social, environmental or other economic problem(s) that the NRS Administration Act and associated legislation seeks to address;

b) clarify the objectives of the NRS Administration Act and associated legislation;

c) identify whether, and to what extent, the NRS Administration Act and associated legislation restricts competition;

d) identify relevant alternatives to the NRS Administration Act and associated legislation, including non-legislative approaches;

e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of NRS Administration Act and associated legislation and alternatives identified in (d);

f) identify the different groups likely to be affected by the NRS Administration Act and associated legislation and alternatives;

g) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate;

h) determine a preferred option for regulation, if any, in light of objectives set out in (2); and

i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the NRS Administration Act and associated legislation and, where it differs, the preferred option.

4 In undertaking the review, the Committee of Officials is to consult with key interest groups and affected parties, and publish a report.

5. Within 3 months of receiving the Committee of Officials report, the Bureau of Resource Sciences intends to announce what action is to be taken, after obtaining advice from the Minister.

PUBLIC CONSULTATION

The National Residue Survey (NRS) Secretariat has sent letters to peak industry bodies that have an NRS Program and to other interested groups. Notification of the review appeared in the national press on 8 August 1998.

PIG INDUSTRY ACT 1986 AND RELATED ACTS (Department of Agriculture, Fisheries and Forestry)

REVIEW PANEL

The review of the *Pig Industry Act 1986 and Pig Industry (Transitional Provisions) Act 1986* commenced in June 1998.

It is being conducted by a committee of officials, composed of representatives of the Department of Agriculture, Fisheries and Forestry, the Australian Bureau of Agricultural and Resources Economics and the Department of Industry, Science and Resources.

This legislation establishes the Australian Pork Corporation, whose functions include improving the production, consumption, promotion and marketing of pigs and pork both in Australia and overseas.

TERMS OF REFERENCE

1. The *Pig Industry Act 1986* and *Pig Industry (Transitional Provisions) Act 1986* are referred to the Committee of Officials for evaluation and report by 31 January 1999. The Committee of Officials is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The Committee of Officials is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

   a) legislation/regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can only be achieved by restricting competition. Alternative approaches which may not restrict competition include co-regulation, quasi-regulation and self regulation;

   b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and

safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation;

c) the need to promote consistency between regulatory regimes and efficient regulatory administration, through improved co-ordination to eliminate unnecessary duplication; and

d) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the Committee of Officials is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The report of the Committee of Officials should:

a) identify the nature and magnitude of the social, environmental or other economic problem(s) the *Pig Industry Act 1986* and *Pig Industry (Transitional Provisions) Act 1986* seek to address;

b) clarify the objectives of *the Pig Industry Act 1986* and *Pig Industry (Transitional Provisions) Act 1986*;

c) identify whether, and to what extent, the *Pig Industry Act 1986* and *Pig Industry (Transitional Provisions) Act 1986* restrict competition;

d) identify relevant alternative to the *Pig Industry Act 1986* and *Pig Industry (Transitional Provisions) Act 1986* including non-legislative approaches;

e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the *Pig Industry Act 1986* and *Pig Industry (Transitional Provisions) Act 1986* and alternatives;

f) identify the different groups likely to be affected by the *Pig Industry Act 1986* and *Pig Industry (Transitional Provisions) Act 1986* and alternatives;

g) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate;

h) determine a preferred option for regulation, if any, in light of objectives set out in (2); and

i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the *Pig Industry Act 1986* and *Pig Industry (Transitional Provisions) Act 1986* and, where it differs, the preferred option.

4. In undertaking the review, the Committee of Officials is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

5. Within 6 months of receiving the Committee of Officials report, the Government intends to announce what action is to be taken, after obtaining advice from the Minister and, where appropriate, after consideration by Cabinet.

PUBLIC CONSULTATION

A call for submissions was advertised nationally on 22 August 1998, with a closing date of 9 October 1998. Three submissions were received (all from industry organisations or associations).

PRIMARY INDUSTRIES LEVIES ACTS AND RELATED COLLECTION ACTS

(Department of Agriculture, Fisheries and Forestry)

REVIEW PANEL

The review of the Primary Industries Levies Acts and related collection Acts commenced in June 1998.

It is being conducted by a committee of officials, composed of representatives of the Department of Agriculture, Fisheries and Forestry and the Department.

This legislation authorises the collection of statutory levies imposed on primary industries under separate legislation for specified purposes (for example, research and development, promotion, statutory marketing authorities, National Residue Survey, capital raising) and provides administrative arrangements for levy collection.

The review is operating closely and cooperatively with the review of legislation relating to the National Residue Survey Administration (see page 47).

TERMS OF REFERENCE

1. The Primary Industries Levies Acts and related Collection Acts, and associated regulations, are referred to the Committee of Officials for evaluation and report by 31 December 1998. The Committee of Officials is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The Committee of Officials is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

a) legislation/regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can only be achieved by restricting competition. Alternative approaches which may not restrict competition include co-regulation, quasi-regulation and self regulation;

b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation;

c) the need to promote consistency between regulatory regimes and efficient regulatory administration, through improved coordination to eliminate unnecessary duplication; and

d) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the Committee of Officials is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The report of the Committee of Officials should:

a) identify the nature and magnitude of the social, environmental or other economic problem(s) that the Primary Industries Levies Acts and related Collection Acts seeks to address;

b) clarify the objectives of the Primary Industries Levies Acts and related Collection Acts;

c) identify whether, and to what extent, the Primary Industries Levies Acts and related Collection Acts restricts competition;

d) identify relevant alternatives to the Primary Industries Levies Acts and related Collection Acts, including non-legislative approaches;

e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the Primary Industries Levies Acts and related Collection Acts and alternatives identified in (d);

f) identify the different groups likely to be affected by the Primary Industries Levies Acts and related Collection Acts and alternatives;

g) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate;

h) determine a preferred option for regulation, if any, in light of objectives set out in (2); and

i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the Primary Industries Levies Acts and related Collection Acts and, where it differs, the preferred option.

4. In undertaking the review, the Committee of Officials is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

5. Within 6 months of receiving the Committee of Officials report, the Department of Primary Industries and Energy intends to announce what action is to be taken, after obtaining advice from the Minister, and where appropriate, after consideration by Cabinet.

PUBLIC CONSULTATION

The Committee has identified key stakeholders who will be asked to provide input into the review. The review was advertised nationally on 31 October 1998. The initial closing date of 30 November has been extended.

TORRES STRAIT FISHERIES ACT 1984 AND RELATED ACTS (Department of Agriculture, Fisheries and Forestry)

The review of the *Torres Strait Fisheries Act 1984* and related acts commenced in February 1998.

It is being conducted by a committee of officials, composed of representatives of the Island Coordinating Council, the Torres Strait Regional Authority and Torres Strait Fisheries.

This legislation regulates all fishing within the Australian jurisdiction of the Torres Strait Protected Zone established by the Torres Strait Treaty between Australian and Papua New Guinea. It provides the powers for the Commonwealth to undertake fisheries management in the Torres Strait Protected Zone, the mechanism for the recovery of the Commonwealth's costs and the imposition and collection of a research and development levy.

TERMS OF REFERENCE

1. The *Torres Strait Fisheries Act 1984* and related Acts, and associated regulations, are referred to the Committee of Officials for evaluation and report by 31 July 1998. The Committee of Officials is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The Committee of Officials is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

a) legislation/regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can only be achieved by restricting competition. Alternative approaches which may not restrict competition include co-regulation, quasi-regulation and self regulation;

b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation;

c) the need to promote consistency between regulatory regimes and efficient regulatory administration, through improved co-ordination to eliminate unnecessary duplication; and

d) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the Committee of Officials is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the *Competition Principles Agreement*. The report of the Committee of Officials should:

a) identify the nature and magnitude of the social, environmental or other economic problem(s) the *Torres Strait Fisheries Act 1984* and related Acts seeks to address;

b) clarify the objectives of the *Torres Strait Fisheries Act 1984* and related Acts;

c) identify whether, and to what extent, the *Torres Strait Fisheries Act 1984* and related Acts restricts competition;

d) identify relevant alternative to the *Torres Strait Fisheries Act 1984* and related Acts, including non-legislative approaches;

e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the *Torres Strait Fisheries Act 1984* and related Acts and alternatives;

f) identify the different groups likely to be affected by the *Torres Strait Fisheries Act 1984* and related Acts and alternatives;

g) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate;

h) determine a preferred option for regulation, if any, in light of objectives set out in (2); and

i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the *Torres Strait Fisheries Act 1984* and related Acts and, where it differs, the preferred option.

4. In undertaking the review, the Committee of Officials is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

5. Within 6 months of receiving the Committee of Officials report, the Government intends to announce what action is to be taken, after obtaining advice from the Minister and where appropriate, after consideration with Cabinet.

REVIEW PROGRESS

The draft of the final report is currently being considered by committee members.

TRADE PRACTICES ACT 1974 – SUB-SECTIONS 51(2) AND 51(3) EXCEPTION PROVISIONS (Department of the Treasury)

REVIEW PANEL

The review of sub-sections 51(2) and 51(3) of the *Trade Practices Act 1974* commenced in June 1998.

It is being conducted by the National Competition Council.

Sub-sections 51(2) and 51(3) of the *Trade Practices Act 1974* (TPA) provide for exemptions for a variety of activities concerning intellectual property rights, employment regulations, export arrangements and approved standards from many of the competition laws contained within Part IV of the TPA.

This part prohibits a number of anti-competitive trade practices including: anti-competitive agreements and exclusionary provisions; secondary boycotts; misuse of market power; exclusive dealing; resale price maintenance; anti-competitive price discrimination; and, mergers that would have the effect or likely effect of substantially lessening competition in a substantial market.

Under the *Conduct Code Agreement*, if the Commonwealth wishes to modify sections 51(2) and 51(3) of the TPA it will be necessary to have held prior consultations with the States and Territories, and to obtain a majority of votes of the governments in support of the amendment.

TERMS OF REFERENCE

I, PETER COSTELLO, hereby in accordance with the Commonwealth Government's Legislation Review Schedule, refer to the National Competition Council subsections 51(2) and 51(3) (exemption provisions) of the *Trade Practices Act 1974 (TPA)* for inquiry and report within nine months of receipt of this reference.

2. To meet the requirements of the Competition Principles Agreement (CPA) legislation/regulation which restricts competition should only be retained if the benefits to the community as a whole outweigh the costs, and if the objectives of the legislation/regulation cannot be achieved more efficiently through other means, including non-legislative approaches.

3. In undertaking this inquiry the Council should have regard to:

(a) relevant Federal and State industrial relations legislation and international agreements relating to labour that recognise collective bargaining;

(b) the common law doctrine of restraint in relation to restrictive covenants pertaining to employment, partnerships, and the protection of goodwill in the sale of a business;

(c) standards made by the Standards Association of Australia;

(d) the Government's obligations under intellectual property treaties and conventions arising from Australia being a signatory to various International Intellectual Property Agreements and Conventions, including the World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights;

(e) Australian intellectual property legislation including the *Copyright Act 1968*, the *Designs Act 1906*, the *Patents Act 1990*, the *Trade Marks Act 1995*, the *Circuit Layouts Act 1989* and the *Plant Breeder's Rights Act 1994*;

(f) other nations' experience with provisions similar to s51(2) and s51(3) of the TPA (i.e. provisions that provide/allow for specific exemptions from the application of general competition laws);

(g) consequential effects that the exemption provisions have through the Competition Code in each State and Territory; and

(h) any other matters the Council considers relevant to this inquiry.

4. The Council is to have regard to the analytical requirements for regulation assessment by all Australian governments set out in the CPA. Without limiting the scope of the reference, the final report from the Council should:

(a) identify the nature and, as far as reasonably practical, the magnitude of the social and economic problems that subsections 51(2) and 51(3) (exemption provisions) of the TPA seek to address;

(b) clarify the objectives of the exemption provisions and determine whether these objectives continue to be relevant;

(c) identify whether, and to what extent, the exemption provisions allow certain individuals/corporations to engage in specific anti conduct that may otherwise be prohibited by the general prohibitions in Part IV of the TPA;

(d) identify relevant alternatives to the exemption provisions, including non-legislative approaches;

(e) analyse, and, as far as reasonably practical, quantify the benefits, costs and overall effects of the exemption provisions and alternatives identified in (d) on the Australian economy;

(f) list the individuals and groups that provided written submissions and/or were consulted during the review and take into account their views;

(g) determine a preferred option for regulation — i.e. whether the exemption provisions should be abolished, modified or maintained; and

(h) advise on possible mechanisms for monitoring and reviewing any changes to the exemption provisions after the Government's announced response.

5. In undertaking the review, the Council is to advertise nationally, take written submissions, consult with key interest groups and affected parties, and release a draft report or options paper for comment prior to a final report.

6. Upon receipt of the Council's final report, the Government will consider the recommendations made and announce what action is to be taken as soon as possible.

PUBLIC CONSULTATION

In undertaking the review, interested parties have had two opportunities to put forward their views. First, in response to the issues paper released in June 1998 and, secondly, to the draft report and recommendations released on 11 November 1998.

-competitive

Review not Commenced

ENVIRONMENTAL PROTECTION (NUCLEAR CODES) ACT 1978 (Department of Health and Aged Care)

In August 1997, the Government agreed to establish of a new agency, the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), to regulate Commonwealth places and undertakings in relation to radiation protection and nuclear safety.[11] In this context, it also agreed that the *Environmental Protection (Nuclear Codes) Act 1978* and associated codes should be reviewed by an inter committee.

This committee recommended that the *Environmental Protection (Nuclear Codes) Act 1978* should be abolished as the codes will, in the future, be overseen by ARPANSA.

The Department of Health and Family Services wrote to the Office of Regulation Review on 8 August 1998, advising that it should liaise with the new agency, once established, concerning the need, if any, to proceed with a review of the Act.

PETROLEUM RETAIL MARKETING SITES ACT 1980 AND PETROLEUM RETAIL MARKETING FRANCHISE ACT 1980 (Department of Industry, Science and Resources)

Following a 1994 review by the (then) Industry Commission, and a 1996 review by the ACCC, on 20 July 1998, the Government announced its intention the repeal the *Petroleum Retail Marketing Sites Act 1980* and the *Petroleum Marketing Franchise Act 1980*.

A joint statement by the Treasurer and the (then) Minister for Industry, Science and Tourism in December 1996, following receipt of the ACCC report, indicated that the Government would be disposed towards the removal of these Acts once oil companies, distributors and retailers reach agreement on a new Oilcode and appropriate Code of Conduct. These matters are currently being negotiated.

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[11] Legislation formally establishing ARPANSA came into force on 5 February 1999.

SPECTRUM MANAGEMENT AGENCY (SMA) – REVIEW OF SMA'S MARKET-BASED REFORMS AND ACTIVITIES (Department of Communications, Information Technology and the Arts)

Development of terms of reference for the review of the Spectrum Management Agency's (now Australian Communications Authority) market based reforms and activities has been delayed pending the outcome of the review of the *Radiocommunications Act 1992* currently being conducted.

Legislation Brought Forward for Review in 1997-98

This section details progress in legislation reviews originally scheduled for later review but subsequently brought forward for review in 1997-98.

AUSTRALIA NEW ZEALAND FOOD AUTHORITY ACT 1991 (Department of Health and Aged Care)

REVIEW PANEL

The review was originally scheduled for 1998-99 but was brought forward to coincide with the broader Food Regulation Review, undertaken by the Food Regulation Review Committee (*see* page 133).

TERMS OF REFERENCE

1. The *Australia New Zealand Food Authority Act 1991* (the Act) is referred to the Food Regulation Review Committee for evaluation and report by 30 June 1998. The Food Regulation Review Committee is to focus on those parts of the Act which restrict competition, or which impose costs or confer benefits on business. (The Food Standards Code is being reviewed over a five year period ending in December 1999 and this review will be expanded (with separate terms of reference) to address the national competition principles.)

2. The Food Regulation Review Committee is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

   a) legislation/regulation should be retained only if the benefits to the community as a whole outweigh the costs, and if the objectives of the legislation/regulation can not be achieved more efficiently through other means, including non-regulatory approaches;

b) in assessing the matters in (a), regard should be had, where relevant, to effects on public health and safety, the environment, welfare and equity, occupational health and safety, economic development, consumer interests, the competitiveness of business including small business, efficient resource allocation and international obligations; and

c) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the Food Regulation Review Committee shall apply the legislation review principles incorporated in the *Competition Principles Agreement* and shall have regard to the analytical requirements for regulation assessment applied by the Commonwealth. The report of the Food Regulation Review Committee should:

a) identify the nature and magnitude of the social, environmental or other economic problem(s) that the Act seeks to address;

b) clarify the objectives of the Act;

c) identify whether, and to what extent, the Act restricts competition;

d) identify relevant alternatives to the Act, including non-legislative approaches;

e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of Act and alternatives identified in (d);

f) identify the different groups likely to be affected by the Act and its alternatives;

g) list the individuals and groups consulted during the review and outline their views;

h) determine a preferred option(s) for regulation, if any, in light of objectives set out in (2); and

i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the Act and, where it differs, the preferred option.

4. In undertaking the review, the Food Regulation Review Committee is to advertise in Australia and New Zealand, consult with key interest groups and affected parties, and publish a report.

5. Within 6 months of receiving the Food Regulation Review Committee report, the Parliamentary Secretary to the Minister for Health and Family Services will announce what action is to be taken.

PUBLIC CONSULTATION

See page 133.

REVIEW RECOMMENDATIONS

The final report of the Food Regulation Review Committee, *Food: A Growth Industry*, was provided to Government in August 1998, and is publicly available.

The review report recommends a number of amendments to the legislation to remove potentially anti-competitive provisions and improve the efficiency of the food standards setting processes. In particular, the report recommends:

- the inclusion of an objective into the Act; amendment to the current section 10 objectives used for developing standards and updating of ANZFA's legislated functions; and

- the inclusion of a new section that provides that in carrying out is regulatory functions, the Authority must consider whether the benefits to the community as a whole will outweigh the costs and whether there are no alternatives which are more cost-effective in achieving such benefits.

These recommendations have been provided to the responsible Ministers and the Australia New Zealand Food Standards Council.

PROCEEDS OF CRIME ACT 1987 AND REGULATIONS (Attorney-General's Department)

REVIEW PANEL

The scheduled review of the *Proceeds of Crimes Act 1987* and associated regulations was brought forward from 1998-99 and incorporated into a general review of proceeds

of crime legislation being conducted by the Australian Law Reform Commission (ALRC).

TERMS OF REFERENCE

Additional terms of reference were issued to the ALRC by the Attorney-General on 14 April 1998, as approved by the Office of Regulation Review, requiring that:

- the Commission is also to inquire into and report on the additional matter of the impact of the *Proceeds of Crime Act 1987* on business; and
- in performing its functions in relation to that additional matter, the Commission is to have regard to:
  - the requirements for legislation reviews set out in the *Competition Principles Agreement*; and
  - the requirements for regulation assessment as outlined in the statement by the Prime Minister, the Hon John Howard MP, "More Time for Business" (24 March 1997) and the document "A Guide to Regulation" (October 1997).

The ALRC is required to report no later than 31 December 1998.

1.2.2 Legislation Scheduled for Review in 1996-97 – Reform Not Finalised by 30 June 1997

The *1996-97 Commonwealth Legislation Review Annual Report* outlined the progress of those legislation reviews scheduled to commence within that year (or earlier). Many of the reviews had not reached the reform implementation stage by the end of the reporting period.

This section updates the progress of these reviews and any reforms that have consequently been implemented.

1.2.2.1 Review Completed and Reform Outcomes Announced

ABORIGINAL AND TORRES STRAIT ISLANDER HERITAGE PROTECTION ACT 1984 (Department of Environment and Heritage)

REVIEW PANEL

In October 1995, the Government commissioned a review of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* by retired judge Elizabeth Evatt. This review was already underway at the time of publication of the CLRS in June 1996.

~~TERMS OF REFERENCE~~ ~~Terms of reference for the review of the operation of the Act~~

~~The *Aboriginal and Torres Strait Islander Heritage Protection Act* was passed in 1984~~ under the power given to the Commonwealth parliament by the 1967 referendum to enact legislation in relation to indigenous affairs. The review will examine and report on the operation of the Act in the 11 years since its passage. In particular the review will consider:

(i) the effectiveness of the provisions of the Act in providing protection for areas and objects of significance to Aboriginal and Torres Strait Islander people;

(ii) ~~the efficacy of the reporting process under section~~ 10(4) of the Act and

(iii) the effectiveness of interaction between Commonwealth and State and Territory indigenous heritage protection legislation;

(iv) protection under the Act;

(v) the minimum requirements for information which must be included in the applications;

(vi) how secret/sacred information should be dealt with under the Act;

(vii) alternative processes and/or structures which could be established to provide advice to the Minister;

(viii) including the Minister's role in making declarations;

(ix) the efficacy of the time limits currently included in the Act and the desirability of placing additional time limits on processes under the Act;

(x) whether the Act makes appropriate provisions for the protection of areas and objects while mediation or reporting processes are underway;

(xi) successfully resolved through mediation;

(xii) whether the Act gives the Minister appropriate discretion to decide not to deal with or to defer consideration of applications;

(xiii) the development of administrative guidelines under the Act;

(xiv) required to administer the Act; and

(xv) any other matters relevant to the operation of the Act.

The review will be required to report six months after it commences.

GOVERNMENT RESPONSE

The Evatt Report was received by the Minister for Aboriginal and Torres Strait Islander Affairs in August 1996. The recommendations of this report were taken into consideration when formulating the *Aboriginal and Torres Strait Islander Heritage Protection Bill 1998*. The Bill was re-introduced into the House of Representatives on 12 November 1998.

AUSTRALIAN POSTAL CORPORATION ACT 1989 (Department of Communications, Information Technology and the Arts)

REVIEW PANEL

The review of the *Australian Postal Corporation Act 1989* commenced in May 1997.

It was conducted by the National Competition Council.

TERMS OF REFERENCE

I, PETER HOWARD COSTELLO, hereby:

1. In accordance with the Commonwealth Government's Legislation Review Schedule, refer to the National Competition Council the *Australian Postal Corporation*

the establishment of an authority, tribunal or commission and the resources

whether there is adequate scope for under the Act for applications to be

Act 1989 (and associated regulatory and institutional arrangements) for inquiry and report within nine months of the date of receipt of this reference.

2. Request that the Council advise on practical courses of action to improve competition, efficiency and consumer welfare in the postal services sector. In so doing, the Council should have regard to the objective that the legislation/regulation should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation cannot be achieved more efficiently through other means, including non-legislative approaches.

3. Request that the Council, in so doing, have regard to:

(a) the Government's commitments to maintain Australia Post in full public ownership and provide a standard letter service to all Australians at a uniform price;

(b) the Government's commitment to accelerate and strengthen the micro-economic reform process, including through improving the competitiveness of markets, particularly those which provide infrastructure services, in order to improve Australia's economic performance and living standards;

(c) the Government's obligations under the Competition Principles Agreement executed in April 1995 which embodies commitments in relation to competitive neutrality, structural reform of public monopolies, access to services provided by means of significant infrastructure facilities, price oversight and legislation review;

(d) the current obligations on Australia Post specified in s26, s27 and s28 of the *Australian Postal Corporation Act 1989* to: perform its functions in a manner consistent with sound commercial practice; provide a letter service at a single uniform rate of potage for carriage within Australia, by ordinary post, of letters that are standard postal articles; and meet any performance standards set for it;

(e) Australia Post's current and prospective level of financial and service performance and the flow of benefits to the community from that performance improvement;

(f) the findings and reforms arising from the 1992 report by the Industry Commission on mail, courier and parcel services; and

(g) experience with postal regulatory reforms undertaken overseas.

4. Without limiting the scope of the reference, request that the Council examine:

(a) the need for a statutory reservation to Australia Post of the exclusive right to carry letters and the implications of a reduction or removal of the reservation;

(b) the specification, scope and extent of:

(i) the current letter service reservation and whether it is consistent with the Government's commitment to provision of a universal letter service; and

(ii) the current community service obligations provided under s27 of the *Australian Postal Corporation Act 1989* and whether current arrangements satisfactorily meet the Government's commitment to community access to services;

(c) the scope, extent and organisational structure of commercial activities undertaken by Australia Post other than the reserved letter service. The competitive neutrality issues that may arise including the associated benefits and costs from these activities, should be identified and addressed as necessary;

(d) the operation of the current letter mail interconnection arrangements and the possible application of the general interconnection arrangements under the *Trade Practices Act 1974*; and

(e) the consequences for small business and other users of further reform of the *Australian Postal Corporation Act 1989*.

5. Request the Council in undertaking the review advertise nationally, consult with key interest groups and affected parties, and release an interim and a final report. The Government will respond to the final report produced by the Council.

PUBLIC CONSULTATION

The National Competition Council (NCC) consulted widely during the review, receiving 138 submissions from a wide range of stakeholders in response to advertisements in national and state newspapers. It also held approximately 130

meetings with interest groups a number of workshops to discuss key issues. An interim report in the form of an options paper was released in September 1997, with a period of two months provided for people interested in the review to respond to the issues raised.

REVIEW RECOMMENDATIONS

The NCC's final report was released in March 1998. The key report recommendations were:

- the retention of the letter delivery Universal Service Obligation on the grounds the community service obligation (CSO) costs incurred are fully justified by the social benefits, and there is no effective alternative means of providing the social benefits;

- that the uniform rate of postage apply to individuals and households posting standard size letters. Australia Post should be allowed to offer discounts to business customers, but no business should be charged more than the uniform rate for posting a standard size letter. The Government should review the possibility of introducing a maximum affordable charge for household letter services in 2005;

- funding of CSOs by direct budgetary payments (or an industry levy as the next best alternative method);

- that the Government negotiates CSO funding in advance for five year periods;

- business mail should be opened to competition. The minimum competitors can charge for those letters which remain in the monopoly (household mail) should be two times the standard letter rate; and

- inward international mail should be opened to competition.

Further recommendations included:

- a compulsory undertaking, to be approved by the Australian Competition and Consumer Commission (ACCC), be developed by Australia Post for CSO and post office box services; and if Australia Post does not submit an acceptable undertaking the ACCC should determine the terms and conditions of access;

- only the direct cost of providing access to CSO and post office box services should be taken into account in determining access prices. These costs would include consideration of Australia Post's return on assets;

- Australia Post's exemption from Part IIIA of the *Trade Practices Act 1974* (TPA), which sets out the conditions under which one business has a right to use infrastructure owned and operated by another business, should be repealed;

- a new section of the TPA dealing specifically with anti-competitive conduct in the market for postal services. The need for this provision should be reviewed in 2005;

- the right of Australia Post to erect posting boxes should be maintained for ordinary red posting boxes suitable for posting standard letters. Otherwise, Australia Post should be subject to the same requirements as other postal service providers; and

- a requirement for detailed auditing and accounting information on Australia Post's activities, to provide for transparency of the financial relationships between different elements of the business (e.g. retail operations, reserved services and CSO funded services).

Recommendations relating specifically to competitive neutrality issues are identified on page 151.

GOVERNMENT RESPONSE

The Government responded to the final report on 16 July 1998.

It did not accept the NCC's recommendation that business mail be opened to competition — indicating that the postal reform package it had announced delivered a range of benefits to all sectors of the community by balancing the needs of industry with a commitment to service standards for all users of the postal network.

However, the announced postal reform package does involve:

- reducing the weight threshold to competition for Australia Post's reserved letter service from 250 grams to 50 grams;

- reducing the price threshold to competition for Australia Post's reserved letter service from four times the standard postal rate to one times the standard rate;

- exposing the delivery of incoming international mail to full competition from 1 July 2000; and

- permitting the carriage of reserved letters for the purposes of aggregation to meet the minimum requirements for bulk lodgments.

It is intended that the reforms will be effective from 1 July 2000.

Arrangements will also be put in place to provide access by competitors to Australia Post's network on a similar basis, and on terms and conditions not less favourable than Australia Post offers its own customers.

The standard letter rate will be maintained at 45 cents until at least 1 January 2003 and Australia Post's CSOs will continue to be funded by internal cross subsidy.

The Act will be reviewed again in 2002-03 to assess the effect of the above arrangements and to recommend on the need for further change.

CUSTOMS TARIFF ACT 1995 – TEXTILES, CLOTHING AND FOOTWEAR ARRANGEMENTS (Department of Industry, Science and Resources)

REVIEW PANEL

The *Customs Tariff Act 1995 – Textiles, Clothing and Footwear Arrangements* were reviewed as part of the 1997 Industry Commission inquiry into textiles, clothing and footwear (TCF) industries.

TERMS OF REFERENCE

I, PETER COSTELLO, Treasurer, under Part 2 of the *Industry Commission Act 1989*, hereby:

1. refer Australia's textile, clothing and footwear (TCF) industries for inquiry and report within nine months of receiving this reference. The inquiry will include early stage processing of raw materials, top-making and tanning and higher value-added manufacturing, including spinning, knitting, weaving, fabric and leather dying and finishing;

2. specify that, in making its recommendation on assistance arrangements for these industries post 2000, the Commission aims to improve the overall economic performance of the Australian economy;

3. request that the Commission have regard to the Government's desire to encourage the development of sustainable, prosperous and internationally competitive TCF manufacturing activities in Australia; to improve the overall economic performance of the Australian TCF industries; and to provide good quality, competitively priced TCF products to the Australian consumer; and its commitment to abide by Australia's international obligations and commitments;

4. request that the review and report have regard to the Legislative Review provisions of the Competition Principles Agreement;

5. specify that: the report include options, including a preferred option, and implementation strategy and the Commission consider how the Australian TCF industries will evolve within a world trading environment through the next decade; and the Commission consider APEC developments in market liberalisation, and the timing and extent of cost reductions from other microeconomic reforms;

6. request that the Commission report, so far as practicable:

   a) emerging national and international market factors affecting the industries, including their current structure, rationalisation, competitiveness and support mechanisms by other countries, and barriers facing Australian exports, drawing international comparisons where appropriate;

   b) the advantages and disadvantages of Australia as an investment location for all phases of TCF industries, from research and development, training through to manufacturing, marketing, import substitution and export;

   c) the potential for further development of the TCF industries, including the scope for improving productivity and workplace practices;

   d) the impact of the current development arrangements, as well as regulatory and standards arrangements, on the structure, performance and competitiveness of the industries (with specific assessment given to the impact on small and medium sized firms), and on Australian consumers, resource allocation and growth prospects generally;

   e) any measures which could be undertaken to remove impediments or otherwise contribute to the efficiency and development of the industries, including ways of reducing the regulatory burden on small and medium-sized firms;

f) the identification of groups who would benefit, or would be disadvantaged by, any measures flowing from 5 and 6(e) above;

g) the effectiveness of the Australian research and educational infrastructure in providing design, engineering, production management and other skill capabilities; and

h) the impact of its proposals on relative assistance between the textile, clothing and footwear sectors;

7. specify that the Commission take account of any recent substantive studies, and have regard to the economic, social and environmental and regional development objectives of the Government; and

8. note the intention that the Commission's recommendations will be considered by the Government and its decisions will be announced as soon as possible.

PUBLIC CONSULTATION

The Industry Commission placed advertisements in the national daily papers inviting public participation in the inquiry and released an issues paper, which was circulated widely to interested parties and upon request. The Commission received an initial 163 submissions, and an additional 111 submissions following the release of a draft report on 30 June 1997.

Informal discussions were also held with key stakeholders to gain background information and an understanding of the main issues. Public hearings were held in Sydney and Melbourne during February. Following the release of the draft report, additional hearings were held in Sydney, Melbourne and Brisbane. A transcript of the hearings was made publicly available.

A workshop was held in August 1997 to discuss modelling results. Participation was by invitation only but included industry, government and academic participants.

REVIEW RECOMMENDATIONS

The Industry Commission presented its final report on 7 September 1997. Its major recommendations and implementation strategy included:

- that this should be the last sectoral program to apply to these industries. The program for changes to assistance should be legislated and tariff reductions inscribed in Australia's APEC Individual Action Plan;

- a program of phased tariff reductions to 5 per cent by 1 July 2008 should be implemented without pause from 1 July 2001;

- policy by-laws should be terminated as of 1 July 2008;

- the Overseas Assembly Provisions Scheme should be extended and simplified; and

- a program of adjustment assistance should be implemented to accompany the tariff reduction program.

GOVERNMENT RESPONSE

The Government decided to continue with the current schedule for TCF tariff phase down until 1 July 2000, at which point tariff levels would be maintained until 1 January 2005. Following this date, tariffs would be reduced to a maximum of 17.5%.

This position was based on a commitment to promoting job security within this industry, involving the adoption of a range of practical transition arrangements, by encouraging additional investment and promoting the development of an internationally competitive TCF sector in the lead up to the free trade environment beyond 2010.

TCF tariffs are to be further reviewed in 2005, with consideration to be given to APEC free trade commitments and progress on market access.

DUTY DRAWBACK (CUSTOMS REGULATIONS 129-136B) AND TEXCO (TARIFF EXPORT CONCESSION SCHEME) – CUSTOMS TARIFF ACT 191995, SCHEDULE 4, ITEM 21, TREATMENT CODE 421 (Attorney-General's Department)

REVIEW PANEL

A review of the tariff export concessions scheme (TEXCO), duty drawback and temporary importation provisions commenced in June 1997.

It was undertaken by a taskforce of officials, composed of representatives from the Department of Industry, Science and Tourism (DIST), Treasury, the Department of Foreign Affairs and Trade, the Australian Customs Service ACS) and the Australian Taxation Office.

TERMS OF REFERENCE

1. The duty drawback (Section 168 of the *Customs Act 1901,* Customs Regulations 129 to 136B), TEXCO (Tariff Export Concession Scheme) — *Customs Tariff Act 1995,* Schedule 4 Item 21, and temporary importation provisions (Sections 162 and 162A of the *Customs Act 1901,* Customs Regulations 124 to 125B) are referred to a Taskforce of Officials for evaluation and report by end September 1997.

2. The Taskforce of Officials is to take into account the following objectives:

a) legislation/regulation should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can not be achieved more efficiently through other means, including non-legislative approaches;

b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation; and

c) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the Taskforce of Officials is to have regard to the analytical requirements for regulation assessment by the Commonwealth including those set out in the Competition Principles Agreement. The report of the Taskforce should:

a) identify the nature and the magnitude of the social, environmental and other economic problems that the provisions specified in (1) seek to address;

b) clarify the objectives of these provisions;

c) identify whether, and to what extent, the provisions restrict competition;

d) identify relevant alternatives to the provisions, including non-legislative approaches;

e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the provisions and any alternatives identified in (d);

f) identify the different groups likely to be affected by the provisions and any alternatives identified in (d);

g) list the individuals and groups consulted during the review and outline their views;

h) determine a preferred option for regulation, if any, in light of objectives set out in (2); and

i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the current provisions and, where it differs, the preferred option.

4. In undertaking the review, the Taskforce of Officials is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

5. Within 3 months of receiving the report from the Taskforce of Officials, the Government is to announce what action is to be taken after obtaining advice from the Minister for Industry, Science and Tourism and where appropriate, after consideration by Cabinet.

PUBLIC CONSULTATION

The review involved the preparation of a discussion paper, public consultations (35 submissions were received, with 16 leading to follow up consultations) and the release of a draft report.

REVIEW RECOMMENDATIONS

The review was completed in mid-September 1997. The main recommendations were:

1. the main elements of the duty drawback, TEXCO and temporary importation provisions be retained;

2. the objective of the provisions should be to provide relief from customs duties, sales tax and excise duty on imported goods which are not consumed or used in the domestic market and which are subsequently re-exported;

3. before making any significant changes to the duty free regime a thorough cost/benefit analysis and consultation with key stakeholders be undertaken;

4. to improve program efficiency, the current duty drawback and TEXCO arrangements should be changed to include:

- a greater emphasis on exemptions rather than drawbacks;
- greater adoption, in practice, of a risk management approach more in line with the small scale of these programs and in with greater reliance on self assessment and targeted audits; and
- a formal agreement between DIST and the ACS outlining program performance criteria and desired outcomes and which includes an agreed annual reporting mechanism.

5. existing drawback, TEXCO and temporary importation provisions be brought together under one program to be called TRADEX;

6. TRADEX be based primarily on exemption. It would apply to goods which at the time of importation are intended for export in the same condition, after processing or treatment or after being incorporated in other goods, or eligible for temporary importation provisions. The up-front exemption of duty under TRADEX will not be available for duty free shopping.

TRADEX would also contain:

- a drawback facility for imported goods where final destination is unknown at time of importation, the exporter is not the importer, or the goods qualify for drawback on exportation;
- a liability provision where the conditions of an exemption as set out in the Customs regulations are not met (i.e. goods are diverted into the home market), or the goods imported under the up-front exemption provisions have not been exported after 12 months (subject to Customs discretion); and
- drawback/liability for excisable goods which are exported;

7. TRADEX users be required to register with the ACS. All existing drawback and TEXCO users be automatically registered while new applicants be required to satisfy the ACS as to the adequacy and integrity of their internal accounting systems;

8. TRADEX should be extensively marketed. The campaign to be coordinated by DIST in conjunction with the ACS and AUSTRADE. Other agencies to be involved in the campaign as considered appropriate;

9. the current practice of excluding re-landed goods from drawback eligibility should be eliminated;

10. the ACS examine the appropriateness of:

- the current 30% standard value for imputation, and
- allowing individual companies the opportunity to present their own company specific percentage, and this to be adopted if adequate documentary evidence is provided;

11. the current requirement of pre-notification in relation to drawback claims be dropped; and

12. the ACS explore the possibility of:

- simplifying the drawback procedures for exported goods on which an Import Credit instrument has been used at time of importation; and
- establishing an arrangement with New Zealand Customs whereby the customs value for duty on Australian imports is the invoice price less the drawback amount even though a claim may be unpaid at time of trans-Tasman importation.

GOVERNMENT RESPONSE

The Government included its response to this report in the Prime Minister's 8 December 1997 industry statement "*Investing for Growth*".

It announced that the existing Duty Drawback and TEXCO arrangements would be integrated into a single, simplified and more accessible scheme called TRADEX. The scheme would provide relief from customs and excise duty and sales tax on imported goods intended for re-export or used as inputs to exports.

MIGRATION ACT 1958 – SUB-CLASSES 120 AND 121 (BUSINESS VISAS)

(Department of Immigration and Multicultural Affairs)

REVIEW PANEL

The review of sub-classes 120 and 121 of the *Migration Act* commenced in February 1997.

It was undertaken by a review committee, chaired by Dr Ian Lin, Managing Director, Allinton Pty Ltd and including Mr Roger Shipton (Director, Roger Shipton Associates), Mr Alan Matheson (Australian Council of Trade Unions), Ms Joan Kennedy (Department of Employment, Education Training and Youth Affairs and Mr Eric Brookbanks (Department of Immigration and Multicultural Affairs).

These provisions are considered to have the potential to affect the ability of Australian businesses to obtain suitably qualified staff from abroad.

TERMS OF REFERENCE

A Committee of Review shall report to the Minister for Immigration and Multicultural Affairs on the operation and the effectiveness of policies and procedures governing the permanent entry into and permanent stay in Australian of employer people under the Employer Nomination Scheme (ENS) and Labour Agreements.

1. The Committee will have regard to the rapidly changing nature of the business environment and the identification of present and future skills requirements of Australian companies in meeting global competition.

2. The Committee will also have regard to:

   a) the role of these two forms of entry in meeting identified skill shortages in the labour market;

   b) the overall operation of existing criteria, definitions and procedures in relation to the ENS and Labour Agreements, including the roles of DIMA, DEETYA and DIR in the assessment process;

   c) the need to have procedures which enable employers to recruit and transfer key personnel smoothly and quickly;

d) the growing importance of temporary rather than permanent movements to the internationalisation of the Australian economy, and the need to develop linkages between the two forms of entry, including the possibilities for change of status from temporary to permanent resident once in Australia;

e) the obligations in regard to the training of Australian employees to be satisfied by employers filling a position with a permanent resident under the ENS or a Labour Agreement;

f) the Government's commitment to ensuring that English proficiency and, in light of the Australian Government's strong international orientation, bilingual and multilingual skills, are given high priority for permanent skilled migrants; and

g) the options for ensuring that people entering under the ENS and Labour Agreement categories are guaranteed financial support from their employer in the initial years after arrival.

3. The Committee in formulating its views will consult with interested representative community bodies, including a range of employers, employer organisations, unions and other interested groups and persons.

NOTE: In June 1996, the Government announced its review schedule for all portfolios as part of its obligations under the Competition Principles Agreement (CPA). Included in the schedule for 1996-97 was the conduct of a review of the Employer Nomination Scheme and Labour Agreements *(Migration Act 1958* – subclasses 120 and 121 and related visas).

In accordance with the requirements for all reviews on that schedule, the Committee notes that:

- its Review and Report have had regard to the legislative review provisions of the CPA;

- the report will be published prior to the Government announcing what actions will be taken on the recommendations to the review; and

- it has consulted with a wide range of organisations including interested groups and persons beyond those listed in the Terms of Reference.

PUBLIC CONSULTATION

Comment and responses to a discussion paper were received from a wide cross-section of the community, including Commonwealth Government departments, migration agents, Department of Immigration and Multicultural Affairs' overseas posts and regional offices, peak employment bodies, employers, unions and other parties.

REVIEW RECOMMENDATIONS

The review of the Employer Nominated Scheme and Labour Agreements was completed in March 1997.

It was a substantial review with over 47 recommendations. The committee concluded that no major overhaul was required. Its recommendations were aimed at strengthening the integrity and streamlining the operation of both skilled entry programs.

Key integrity recommendations included the introduction of the vocational English requirement, the 45 years of age requirement, the requirement to enter into a three year contract and the need to satisfy Australian licensing and registration requirements.

Key streamlining recommendations included lodgement of the nomination and visa application at the same time, removal of the Pre-Qualified Business Sponsors (PQBS) bar for sub-class 457 applicants applying onshore and a more flexible labour market testing regime.

GOVERNMENT RESPONSE

The Government accepted the key review recommendations on 29 July 1997. The necessary amendments to the Migration Regulations commenced on 1 November 1997.

MIGRATION ACT 1958 – SUB-CLASSES 560, 562 AND 563 (STUDENT VISAS) (Department of Immigration and Multicultural Affairs)

REVIEW PANEL

The review of sub-classes 560, 562 and 563 of the *Migration Act 1958* commenced in November 1996.

It was undertaken by a taskforce of officials from within the Department of Immigration and Multicultural Affairs, supported by an independent reference group chaired by Professor Judith Sloan, (former Director of the National Institute of Labour Studies) and including Professor Michael Osborne (Vice-Chancellor, La University), Mr Rod Gilbert (Manager, Queensland Education Overseas Unit), Dr John Nieuwenhuysen
Christine Bundeson (Director ICTE, University of Queensland).

These provisions are considered to have the potential to affect the institutions and businesses which service foreign students studying in Australia.

TERMS OF REFERENCE

The purpose of the Review is:

1. to evaluate the Overseas Student Visa Program and its enabling legislation and regulations; and

2. to report on the appropriate arrangements for regulation, if any, for the entry into Australia of overseas students, taking into account:

    2.1 the objectives of regulation;

    2.2 the need to maintain the integrity of Australia's immigration program;

    2.3 the costs and benefits of regulation to the integrity of Australia's immigration program, the community, the education and training industry, and consumers;

    2.4 the effects of regulation on the competitiveness of businesses seeking to provide education and training to overseas students; and

    2.5 the findings of the Joint Standing Committee on Australia's Visa System for Visitors.

3. The Review will research and report on:

    3.1 the nature, intent and impact of current legislation and regulations on the international education and training industry, consumers and the community;

ICHO. Committee for Economic Development) and Ms

3.2 the conduct of overseas students in Australia, including the nature, extent and costs of non-compliance;

3.3 options for regulation;

3.4 the costs and benefits of each option for regulation on the international education and training industry, consumers and the community; and

3.5 proposed legislative changes, including a timetable for implementation and transitional arrangements.

4. The Review of the Program will be undertaken by the Department of Immigration and Multicultural Affairs, guided by a Reference Group with an independent Chairperson and comprised of industry and consumer representatives, which will report to the Minister.

5. The following consultation will be undertaken:

5.1 the Office of Regulation Review;

5.2 representatives from "peak" bodies within the overseas education and training industry; and

5.3 any other interested person or group.

6. The Report will be published prior to the Government announcing what action will be taken on the recommendations of the Review, including any necessary legislative response.

PUBLIC CONSULTATION

Comments and submissions in response to a discussion paper were received from a wide variety of stakeholders from Australia's export education industry, including Commonwealth and State agencies, education providers, overseas students and members of the public. A substantial amount of direct consultation was also undertaken.

REVIEW RECOMMENDATIONS

The review of the Student Visa Program was completed in July 1998.

A number of measures were recommended to allow controlled and sustainable growth in student numbers, particularly from the newly emerging markets of China, India, Pakistan and Vietnam, without the migration program as a whole being compromised.

The package intended to:

- further deregulate the student visa program for students from gazetted countries;
- review the gazetted country regime and the special entry requirements for students from the People's Republic of China annually;
- pilot the concept of the Pre-Qualified Institution (PQI), designed to manage growth in student numbers from non-gazetted countries;
- ensure that only genuine students access work rights in Australia; and
- increase compliance and other measures to ensure students abide by the conditions of their visa.

GOVERNMENT RESPONSE

The Government endorsed the review recommendations in July 1998. Legislative changes have been made, with associated policy and procedural changes to be in place for the 1999 academic year.

Officials from the Department of Immigration and Multicultural Affairs of have undertaken consultations with industry representatives to determine which education providers will participate in the PQI pilot in 1999.

MIGRATION ACT 1953 (PART 3 – MIGRATION AGENTS AND IMMIGRATION ASSISTANCE, AND RELATED REGULATIONS), MIGRATION AGENTS REGISTRATION (APPLICATION) LEVY ACT 1992 AND MIGRATION AGENTS REGISTRATION (RENEWAL) LEVY ACT 1992

(Department of Immigration and Multicultural Affairs)

REVIEW PANEL

The review of Part 3 of the *Migration Act 1958* and related legislation commenced in August 1996.

It was conducted by a taskforce of officials from within the Department of Immigration and Multicultural Affairs and guided by a reference group of independent experts headed by Mr Ian Spicer (former Chief Executive of the Australian Chamber of Commerce and Industry). The members of the reference group were selected as individuals rather than as representatives of particular interest groups.

The Migration Agents Registration Scheme (MARS) regulates those persons providing immigration assistance.

TERMS OF REFERENCE

The purpose of the Review is:

1. to evaluate the Migration Agents Registration Scheme (the Scheme) and its enabling legislation and regulations;

2. to report on the appropriate arrangements for any regulation of the migration advice industry, including the prospects for enhanced self-regulation, taking into account:

    2.1 the goals of regulation;

    2.2 the costs and benefits of the Scheme to the community, industry and consumers;

    2.3 the effects of the Scheme on consumer interests, the competitiveness of businesses seeking to provide migration advice and efficient resource allocation;

    2.4 the feasibility of reducing compliance costs to the migration advice industry, including small business; and

    2.5 the findings of the Joint Standing Committee on Migration review of the Scheme.

3. The Review will research and report on:

    3.1 the nature, intent and impact of the legislation and regulations on the migration advice industry, consumers and the community;

    3.2 the conduct of migration agents, including the nature, extent and costs of non-compliance;

3.3 options for any regulation, including self-regulation;

3.4 any arrangements that may need to be established, in the absence of industry-specific regulation, to develop alternative sources of redress for consumers with complaints about the activities of migration agents; and

3.5 proposed legislative changes, including a timetable for implementation and transitional arrangements.

4. The Review of the Scheme will be undertaken by the Department of Immigration and Multicultural Affairs, guided by a Reference Group with an independent Chairperson and comprised of industry and consumer representatives, which will report to the Minister. The review of the Levy Acts will be undertaken by a Committee of officials and will also report to the Minister.

5. The following consultations will be undertaken:

5.1 Office of Regulation Review;

5.2 representatives of comparable self-regulating industries;

5.3 representatives of current migration industry "peak" bodies and the MAR Board; and

5.4 any other interested person or group.

6. The Minister will present a preferred option to Cabinet, including any necessary legislative response.

PUBLIC CONSULTATION

The taskforce prepared an exposure draft report for comment in January 1997, which was circulated to 37 stakeholders. Twenty submissions were received. In addition, bilateral discussions were held with major stakeholders, the Migration Institute of Australia and the Law Council of Australia.

REVIEW RECOMMENDATIONS

The review was completed in March 1997, and the report publicly released in July 1997. The key findings were:

- in the absence of regulation, the market for migration advice had tended to operate imperfectly with consumers bearing an unacceptable cost in terms of exploitation and inappropriate practice by a sector of the industry;

- the MARS had provided a measure of consumer protection and its credibility as a consumer protection mechanism had strengthened somewhat in the time the Joint Standing Committee on Migration conducted its review of the scheme;

- the scheme had not adversely affected competition on the migration advice market; and

- there is a need to improve competency standards in a way that will not adversely affect the level of competition in the industry.

The review made nine recommendations that included:

- because of the state of the industry, including consumer protection concerns, voluntary self-regulation is not immediately achievable and self needs to be underpinned by statute at this stage (Recommendation 8); and

- a transitional arrangement needs to be in place to enable the industry to prepare for self regulation (Recommendation 9).

GOVERNMENT RESPONSE

Legislation to implement statutory self regulation for the MARS commenced on 21 March 1998. Changes were also made to the *Migration Agents Regulations*, commencing on 1 April 1998.

QUARANTINE ACT 1908 (IN RELATION TO HUMAN QUARANTINE)

(Department of Health and Aged Care)

REVIEW PANEL

The review of the human quarantine provisions of the *Quarantine Act 1908* commenced in September 1997.

It was conducted by a committee of officials comprising representatives of the Department of Defence, the Australian Customs Services, the Australian Quarantine and Inspection Service, the Department of Immigration and Multicultural Affairs, the Chief Quarantine Officer and the Department of Health and Family Services.

TERMS OF REFERENCE

1. Human quarantine provisions of the *Quarantine Act 1908*, and associated regulation and proclamations, are referred to the Human Quarantine Review Steering Committee for evaluation and report by March 1998. The Human Quarantine Review Steering Committee (HQRSC) is to focus on those parts of the legislation relating to human quarantine (HUMAN QUARANTINE PROVISIONS OF THE ACT) which restrict competition, or which impose costs or confer benefits on business.

2. The HQRSC is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

a) legislation/regulation should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation cannot be achieved more efficiently through other means, including non-legislative approaches;

b) in assessing the matters in (a), regard should be had, where relevant, to effects on the health of the community, environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation; and

c) compliance costs and the paper work burden on small business and government should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the HQRSC is to have regard to the analytical requirements for regulation assessment by the Commonwealth set out in the Competition Policy Agreement and the Government Regulatory Impact Statement Guidelines. The report of the HQRSC should:

a) identify the nature and magnitude of the health, social, environmental or other economic problems that human quarantine provisions of *the Quarantine Act 1908* seek to address;

b) clarify the objectives of human quarantine provisions of *the Quarantine Act 1908*;

c) identify whether and to what extent human quarantine provisions of the *Quarantine Act 1908*, restrict competition;

d) identify relevant alternatives to human quarantine provisions of the *Quarantine Act 1908*, including non-legislative approaches;

e) analyse, and as far as is reasonably practical, quantify the benefits, costs and overall effects of human quarantine provisions of the *Quarantine Act 1908* and alternatives contained in (d);

f) list the individuals and groups consulted during the review and outline their views;

g) determine a preferred option for regulation, if any, in light of objectives set out in 2, and including consideration of animal and plant and international quarantine regulatory issues and process; and

h) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the human quarantine provisions of the *Quarantine Act 1908* and, where it differs, the preferred option.

4. In undertaking the review, the HQRSC is to consult nationally with key interest groups and affected parties, and publish a report.

5. The HQRSC is to report to the Minister for Health by June 30 1998.

PUBLIC CONSULTATION

A discussion paper was developed, and an advertisement placed in the national press on 11 April 1998 advising of its availability and calling for submission from any interested parties.

The steering committee also actively sought submissions from groups potentially affected by the human quarantine provisions. This stakeholder list covered approximately 150 bodies.

The public consultation process closed on 15 May 1998. Responses from the targeted consultation process and national advertising campaign numbered 30.

REVIEW RECOMMENDATIONS

The review determined that the human quarantine provisions of the *Quarantine Act 1908* have minimal impact on competition and business.

Where an impact was identified, the review was satisfied that the costs to the government and industry were minor, and were outweighed and justified by the benefits to public health from the prevention of disease outbreaks.

However, the review found that the current human quarantine provisions, though adequate, would benefit from possible updating to ensure they provide the best legislative framework to undertake human quarantine activity in the year 2000 and beyond.

GOVERNMENT RESPONSE

On 2 July 1998, the Minister for Health and Family Services approved the report and endorsed the proposal for a second phase review of the human quarantine provisions. The objective of this review is to examine, with a view to updating and improving, these provisions to ensure they provide the best possible legislative framework for future human quarantine activity.

A project plan and terms of reference are being developed and are expected to be cleared by the HQRSC (continued from the initial review) and the Minister. It is expected that, once the terms of reference are endorsed, the second phase review will be undertaken over a 12 month timeframe.

TRADE PRACTICES (CONSUMER PRODUCT INFORMATION STANDARDS) (CARE FOR CLOTHING AND OTHER TEXTILE PRODUCTS LABELLING) REGULATIONS (Department of the Treasury)

REVIEW PANEL

The review of the *Trade Practices (Consumer Product Information Standards) (Care Labelling for Clothing and other Textile Products) Regulations* commenced in February 1997.

It was undertaken by a committee of officials, comprising representatives of the Department of Industry, Science and Tourism and the Australian Competition and Consumer Commission.

TERMS OF REFERENCE

1. The Trade Practices (Consumer Product Information Standards) (Care for clothing and other textile products labelling) Regulations (Care Labelling Regulations)

are referred to the Federal Bureau of Consumer Affairs for evaluation and report by 30 June 1997. In line with the Competition Principles Agreement, a Committee of Officials (consisting of the Federal Bureau of Consumer Affairs — Chair, the Australian Competition and Consumer Commission and the Department of Industry, Science and Tourism), hereafter called the Committee, will undertake the review and focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The Committee is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

a) the Regulation should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation cannot be achieved more efficiently through other means, including non-legislative approaches;

b) in assessing matters in (a), regard should be had where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation; and

c) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the Committee is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The report of the Committee should:

a) identify the nature and magnitude of the social, environmental or other economic problem(s) that the Care Labelling Regulations seek to address;

b) clarify the objectives of the Care Labelling Regulations;

c) identify whether, and to what extent, the Care Labelling Regulations restrict competition;

d) identify relevant alternatives to the Care Labelling Regulations, including non-legislative approaches;

e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of Care Labelling Regulations and alternatives identified in (d);

f) identify the different groups likely to be affected by the Care Labelling Regulations and alternatives;

g) list the individuals and groups consulted during the review and outline their views;

h) determine a preferred option for regulation, if any, in light of the objectives set out in (2); and

i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the Care Labelling Regulations and, where it differs, the preferred option.

4. In undertaking the review, the Committee is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

5. The Committee will submit its recommendations to the Minister for Small Business and Consumer Affairs.

6. Within 6 months of receiving the Committee's report, the Government intends to announce what action is to be taken, after taking advice from the Minister for Small Business and Consumer Affairs.

PUBLIC CONSULTATION

The review involved wide consultation with industry, consumer and key stakeholders. The review process included preparation of a discussion paper addressing the terms of reference for public consultation and advertisements in the national press calling for public submissions.

REVIEW RECOMMENDATIONS

The review was completed in June 1997.

Following consideration of public comments, a report to was made to the relevant Ministers. It concluded that the regulation should remain, albeit in less prescriptive terms, to reduce regulatory burdens on business. The report of the review was publicly released on 8 October 1997.

GOVERNMENT RESPONSE

The Government accepted the committee's recommendation that the regulations be updated and made less prescriptive.

A period of further consultation, involving the issue of a further discussion paper to industry, consumer groups and key stakeholders outlining the form of the proposed new regulations was undertaken. Following consideration of comments received, a new mandatory consumer product information standard under the TPA was declared by the Minister for Customs and Consumer Affairs on 15 July 1998.

Review Completed, Recommendations under Consideration 1997. The

INTERNATIONAL ARBITRATION ACT 1974 (Attorney General's Department)

REVIEW PANEL

The review of the *International Arbitration Act 1974* (Attorney General's Department) is to focus primarily on those parts of the legislation December 1996.

It was conducted by officers from within the Attorney-General's Department.

The Act implements international conventions that provide a voluntary framework for the settlement of international commercial disputes.

TERMS OF REFERENCE

1. The International Arbitration Act 1974 (Cth) ("the Act") is referred to the Attorney
Attorney
which restrict competition, or which impose costs or confer benefits on business.

The Act gives effect in Australia to three international instruments which facilitate international commercial dispute resolution. The 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) provides a mechanism for recognition and enforcement of foreign arbitral awards in Australian courts. The Convention on the Settlement of Investment Disputes between the States and Nationals of Other States (ICSID) provides access to the International Centre for the Settlement of Investment Disputes for the purposes of resolving investment

disputes between States and nationals of other States. The Act also implements the UNCITRAL Model Law on the International Commercial Arbitration (the Model Law) which provides procedural rules for the conduct of international commercial arbitrations in Australia.

2. The
arrangements for regulation, if any, of the matters covered by the Act, taking into account the following objectives:

(a) legislation should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation cannot be achieved more efficiently through other means, including non-legislative approaches. In developing any options, the Department will seek to ensure certainty in the market place, contract dealings and other commercial transactions, minimise the regulatory burden on business and government, and keep litigation and costs to a minimum;

(b) in assessing the matters in (a), regard should be had to the effects on economic development, consumer interests, the competitiveness of business including small business, and efficient resource allocation; and

(c) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to matters in (2) the Attorney-General's Department is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement signed by the Commonwealth and all State and Territory Governments in April 1995. The report of the Attorney-General's Department should:

(a) identify the nature and magnitude of the problems(s) that the Act seeks to address in facilitating international commercial dispute resolution;

(b) clarify the objectives of the Act;

(c) identify whether, and to what extent, the Act restricts competition;

(d) identify relevant alternatives to the Act and make recommendations on strategies to address and/or minimise the effects of those parts of the Act that restrict competition, or impose costs or confer benefits on business or government, taking into account, but not limited to:

Attorney-General's Department is to report on the appropriate

- the potential application of alternatives to legislation and court-based remedies, and mechanisms to support these measures;

- the effect upon any sector of business and, in the case of the ICSID Convention, a State or Commonwealth government, which is involved in international commercial arbitration proceedings whether held in Australia or overseas; and

- international repercussions;

(e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the Act and alternatives identified in (d);

(f) identify the different groups likely to be affected by the Act and alternatives identified in (d);

(g) list the individuals and groups consulted during the review and outline their views;

(h) determine a preferred option, if any, for regulation, in light of the objectives set out in (2); and

(i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the Act and, where it differs, the preferred option, if any.

4. In undertaking the review, the Attorney-General's Department is to advertise nationally, consult with key interest groups and affected parties, both international and domestic, and publish a report.

Written submissions from interested individuals and organisations should be forwarded to the Attorney-General's Department by [date to be notified].

Submissions and enquiries should be directed to:

Ms Josephine Brook
International Trade Law Section
Attorney-General's Department
Robert Garran Offices
National Circuit
BARTON ACT 2600

Telephone: (06) 250 6583
Facsimile: (06) 250 5929

5. Within 6 months of receiving the Attorney-General 's Department's report, the Government intends to announce what action is to be taken, after obtaining advice from the Minister and where appropriate, after consultation by Cabinet.

PUBLIC CONSULTATION

Consultations were made with interested parties such as the Law Council of Australia, and the International Legal Services Advisory Council.

REVIEW RECOMMENDATIONS

The review was completed in August 1997.

It concluded that the legislation is an important part of Australia's legal and economic infrastructure. It further noted that it is not regulatory legislation, and thus imposes no compliance costs or paperwork burden.

The report suggested that far from having a restrictive effect on business competition, the legislation has great potential as a means of promoting exports in the legal services sector, thus contributing to economic growth. See the Department's Internet page: Window on the Law,

The only alternative to the legislative implementation of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the International Convention for the Settlement of Investment Disputes, or the UNCITRAL Model Law on International Commercial Arbitration, would be for Australian businesses that engaged in international trade and commerce to rely on costly and uncertain litigation in the courts in relation to any dispute arising out of those trade and commercial dealings.

The review, therefore, recommended that the Act be retained and that it not be subject to further review under the CPA. The report of the review is available on the Attorney
http://law.gov.au.

POOLED DEVELOPMENT FUNDS ACT 1992 (Department of Industry, Science and Resources)

REVIEW PANEL

The review of the *Pooled Development Funds Act 1992* commenced in March 1997.

It was conducted by a taskforce of officials, comprising representatives of the Department of Industry, Science and Resources, Treasury, and the Australian Taxation Office.

The Pooled Development Fund program is part of a suite of initiatives aimed at improving the financing of small and medium sized enterprises. It operates through a tax concession.

TERMS OF REFERENCE

1. The Pooled Development Funds (PDF) Program is referred to a Taskforce of seconded officials for evaluation. The Taskforce is to consider and report on:

a) the Program's appropriateness, that is whether government intervention of this nature is warranted on market failure or other grounds and if so, whether the economic benefits of intervention outweigh its economic costs; and

b) the program's effectiveness and efficiency, that is, whether the program is achieving its objectives in a least cost manner.

2. Without limiting the ambit of the task force's investigation of the PDF program's appropriateness, effectiveness and efficiency, the task force is explicitly directed to:

a) clarify and assess the appropriateness of the PDF program's objectives;

b) identify, analyse and assess the economic costs and benefits flowing from the program, with particular reference to identifying any restrictions on competition, and to the effect of those restrictions on competition and the economy more generally;

c) assess whether there are alternative means, including non-legislative means, for achieving PDF objectives more effectively;

d) consider and report on any matters that might bear on the program including: the competitiveness of Australian businesses; economic and regional development (including employment and investment growth); interests of consumers or a class of consumers; ecologically

sustainable development; social welfare or equity; government policies relating to matters such as occupational health and safety, industrial relations and access and equity; and

e) assess the impact of the PDF program on small business, and if appropriate, also report on amendments to administration of the program to reduce any compliance and paperwork burden on small business associated with the program.

3. In undertaking the evaluation the taskforce is to consult with the PDF Board, key interest groups and affected parties.

4. On the basis of the above, the Taskforce is to report, and make recommendations, as to whether the PDF program should continue in its present or modified form, to the (then) Minister for Industry, Science and Tourism by 30 June 1997. Subject to the Minister's agreement, the report, including the basis of its findings and recommendations, will subsequently be made publicly available.

5. The Government will announce its intention in relation to the PDF program in the context of the 1998/99 Budget.

PUBLIC CONSULTATION

Public consultation was conducted through advertising for submissions in national newspapers on 11 and 14 March 1997 and by direct approach to pooled development funds and potential stakeholders (i.e. banks etc.).

REVIEW RECOMMENDATIONS

The review was completed in June 1998. Government is expected to announce its response to the review recommendations in the first half of 1999. The review report will be made publicly available at that time.

TRADESMEN'S RIGHTS REGULATION ACT 1946 (Department of Employment, Workplace Relations and Small Business)

REVIEW PANEL

The review of the *Tradesmen's Rights Regulation Act 1946* commenced in December 1997.

It was undertaken by a committee of officials, comprising representatives of Department of Employment, Workplace Relations and Small Business, Department of Immigration and Multicultural Affairs, Department of Finance and Administration, National Office of Overseas Skills Recognition in the Department of Education, Training and Youth Affairs, and three independent members from the community.

TERMS OF REFERENCE

The review will be undertaken by a committee of senior officers from:

. Department of Workplace Relations and Small Business (Chair),
. Department of Immigration and Multicultural Affairs,
. National Office of Overseas Skill Recognition, and
. Department of Finance and Administration.

The committee will also include appropriate independent persons from the community.

The Office of Regulation Review will provide advice to the committee on the legislation review process as required.

The committee will:

1. clarify the objectives and describe the operations of the *Tradesmen's Rights Regulation Act 1946* (TRR Act) and the role of Trades Recognition Australia (TRA), including in the administration of the migration program;

2. assess the appropriate role, if any, for the Federal Government in the recognition of trades skills by business and the wider community. In considering this issue the committee should be guided by recognised principles for government involvement, such as the existence of market failure and welfare or equity considerations;

3. take into account any matters that bear on the efficiency, effectiveness and equity of TRA and the TRR Act including, where appropriate, social welfare and equity considerations; government legislation and policies relating to vocational training, occupational health and safety, workplace relations and access and equity; economic development, including employment and investment growth; and the competitiveness of Australian businesses;

4. examine the impact of the TRR Act and TRA on individuals, business and the community in general and determine:

- whether there are any costs for business or any restrictions on competition (particularly in the labour market);
- whether there are any economic benefits; and
- the balance of costs (including compliance costs of users as well as the full administrative costs of TRA and the TRR Act) and benefits;

5. have regard to any other relevant reviews and legislation which affects skills recognition and/or occupational registration;

6. assess the impact of the TRR Act and TRA on small business and report on ways to reduce any compliance and paper work burden;

7. examine the efficiency of the administration of the TRR Act and of TRA's operations, including interaction with state/territory recognition mechanisms;

8. consider alternative means for achieving the same objectives; including non-legislative, state/territory government and private sector-based approaches. This will include consideration of the ability of the private market to provide the necessary services and relevant equity, efficiency and qualitative issues; and

9. consider, as appropriate, any legislative amendments to the TRR Act, its repeal or its replacement with a new Act.

The committee will consult with relevant interested parties, including:

- TRA users;
- employer and employee bodies currently party to the operations under the TRR Act;
- the Department of Defence;
- representatives of the ethnic community; and
- State and Territory training authorities.

The consultation process will include the invitation of formal submissions through national press advertisement.

The committee will finalise the review and report to the Minister for Workplace Relations and Small Business by July 1998. The report will address the committee's

findings and its basis for them, and will include recommendations. The report will be publicly available.

PUBLIC CONSULTATION

The consultative process for the review comprised formally inviting submissions from key stakeholders, advertising for submissions from any other interested parties, meeting with key stakeholders within the metal and electrical industries, presentations to other stakeholders and circulating an interim report to key stakeholders for comment.

Key stakeholders included members of the Central Trades Committees (CTCs) established under the TRR Act, employer and employee organisations represented on the CTCs, the Australian Chamber of Commerce and Industry, the Australian National Training Authority, state and territory training authorities, the Federation of Ethnic Communities' Councils of Australia, the Migration Institute of Australia and representatives of the Department of Employment, Workplace Relations and Small Business.

REVIEW RECOMMENDATIONS

The review was completed on 18 November 1998, with a report provided to the Minister for Employment, Workplace Relations and Small Business on 9 December 1998. The main recommendations were:

- the TRR Act should be repealed and the Commonwealth Government should vacate the domestic skills recognition field, and all domestic skills recognition should be undertaken on a free competition basis directly by Registered Training Organisations (RTOs) established under the Australian Recognition Framework (ARF);

- detailed consideration should be given to the implementation arrangements and lead time for winding up activities under the TRR Act, having regard to the implementation of the ARF and the establishment of an adequate network of RTOs; and

- the Commonwealth Government should ultimately vacate the migration skills assessment field and assessments should be undertaken on a free competition basis directly by RTOs established under the ARF, subject only to the requirements for RTOs to be designated as relevant Australian authorities under the regulations to the Migration Act.

The Minister endorsed the report on 15 December 1998, writing to the Prime Minister and relevant Ministers to seek their agreement to the proposed response.

Review Commenced but not Completed

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) ACT 1976 AND ASSOCIATED REGULATION (Department of Prime Minister and Cabinet)

REVIEW PANEL

The *Aboriginal Land Rights (Northern Territory) Act 1976* provides for the granting of traditional aboriginal land in the Northern Territory.

A review of Part IV (mining provisions) of the *Aboriginal Land Rights (Northern Territory) Act 1976* was originally scheduled for 1996-97. Terms of reference were developed and approved. The Government decided, however, to proceed with a comprehensive review of the costs and benefits of all the provisions of this Act.

The Minister for Aboriginal and Torres Strait Islander Affairs postponed the scheduled competition policy review on the basis that it should be conducted separately, following completion of this review. A detailed review report was received in August 1998, prepared by Mr John Reeves QC.

The scheduled competition policy review of Part IV of the Act is to be conducted by a committee of officials drawn from key agencies.

TERMS OF REFERENCE

The *Aboriginal Land Rights (Northern Territory) Act 1976* (the Act) was included in the Commonwealth Government's Legislation Review Schedule examining legislation that restricts competition.

1. Part IV of the Act is referred to the Review Body for evaluation and report within three months of the commencement of the review. The Review Body is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The Review Body is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

a) legislation/regulation should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation cannot be achieved more efficiently through other means, including non-legislative approaches;

b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business (including small business), and efficient resource allocation; and

c) compliance costs and paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to matters in (2), the Review Body is to have regard to the analytical requirements for regulation assessment set out in the Competition Principles Agreement and the Government's regulation impact statement guidelines. The report should:

a) identify the nature and magnitude of the social, environmental or other economic problem(s) that Part IV of the Act seeks to address;

b) clarify the objectives of Part IV of the Act;

c) identify whether, and to what extent, Part IV of the Act restricts competition;

d) identify relevant alternatives to part IV of the Act, including non-legislative approaches that improve free competition;

e) identify the different groups likely to be affected by Part IV of the Act and alternatives;

f) analyse and, as far as practical, quantify the benefits, costs and overall effects of Part IV of the Act and alternatives identified in (d);

g) list the individuals and groups consulted during the review and outline their views and what stakeholding they enjoy;

h) determine a preferred option for regulation, if any, in this area in light of the objectives set out in (2); and

i) examine mechanisms for increasing overall efficiency, including minimising the compliance costs and paper burden on small business, of Part IV of the Act, and where it differs, the preferred option.

In undertaking the review, the Review Body is to advertise the review in National newspapers and the NT News, consult with key interest groups and affected parties, taking into account relevant outcomes of the Reeves review, and publish a report.

BILLS OF EXCHANGE ACT 1909 (Department of the Treasury)

REVIEW PANEL

The review of the *Bills of Exchange Act 1909* commenced in April 1997.

It is being undertaken by a taskforce of officials, comprising representatives of the Commonwealth Treasury, the Reserve Bank of Australia and the Attorney General's Department.

A key aim of the review is to examine the effectiveness, including the cost effectiveness, of the *Bills of Exchange Act* in the context of the impact of electronic commerce on the trading of money market securities, including negotiable instruments, covered by the Act.

TERMS OF REFERENCE

1. The *Bills of Exchange Act* is referred to an Inter-Departmental Working Group (the Working Group) for evaluation and report by December 1997. The Working Group, which is comprised of officers from the Treasury, the Reserve Bank of Australia and the Attorney-General's Department, is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business. However, the Working Group may give consideration to a possible broadening of the scope of the Act to encompass financial rights and obligations, whether in the form of a physical instrument or otherwise, which are negotiable in nature, but which are not currently encompassed by the Act.

2. The Act encompasses three types of negotiable instruments, namely, bills of exchange, promissory notes and also cheques drawn before 1 July 1987. The legislation prescribes the form of the instruments, determines many of the rights and obligations of the parties to the instruments and establishes procedures for their drawing up and resale. The Act does not apply to other money market instruments,

some of which have come to be regarded as negotiable instruments, such as certificates of deposit, floating rate notes, Commonwealth Government securities, including Treasury Notes and Treasury Bonds.

3. The Working Group is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

(a) legislation should be retained only if the benefits to the community as a whole outweigh the costs, and if the objectives of the legislation can not be achieved more efficiently through other means, including non-legislative approaches. In developing any options, the Working Group will seek to ensure efficiency in the money market in relation to the trading of the instruments to which the Act applies; and

(b) compliance costs and the paper work burden on business should be reduced where feasible.

In assessing these matters, regard should be had, where relevant, to effects on economic development, investor rights, consumer interests, the competitiveness of business including small business, and efficient resource allocation, taking into account rapid technological developments in electronic commerce and trade.

4. In making assessments in relation to the matters in (3), the Working Group is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the *Competition Principles Agreement*. The report of the Working Group should:

(a) clarify and review the objectives of the *Bills of Exchange Act* in the light of continuing technological developments in electronic trading, clearing and settlement of money market securities;

(b) identify the nature and impact of impediments in the *Bills of Exchange Act* on the development of electronic techniques for the issue of, trading in and transfer of ownership of, negotiable instruments, including bills of exchange and promissory notes, and determine in the light of technological advances permitting the transfer of money market instruments by electronic means in screen-based or book depository systems, whether the Act should be extended to cover negotiable instruments other than bills of exchange and promissory

notes; in addition, determine whether *the Bills of Exchange Act* should recognise mechanisms for the creation, recording and transfer by electronic means of payment obligations with equivalent characteristics to negotiable instruments;

(c) identify whether, and to what extent, the *Bills of Exchange Act* restricts competition;

(d) identify relevant alternatives to the *Bills of Exchange Act* (including non-legislative approaches) and determine a preferred option for regulation, if any, in light of objectives set out in (3);

(e) determine the need to identify Saturdays as non business days of the purposes of the Act;

(f) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the *Bills of Exchange Act* and alternatives identified in (d);

(g) identify the different groups likely to be affected by *the Bills of Exchange Act* and alternatives identified in (d);

(h) list the individuals and groups consulted during the review and outline their views; and

(i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on business including small business, of the *Bills of Exchange Act* and, where it differs, the preferred option.

5. In undertaking the review, the Working Group is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

6. Within 6 months of receiving the Working Group's report, the Government intends to announce what action is to be taken, after obtaining advice from the Treasurer and where appropriate, after consideration by Cabinet.

PUBLIC CONSULTATION

Submissions addressing the terms of reference continued to be received during 1998, and there have been ongoing consultations with interested parties. A discussion paper

is being prepared for consideration by the working party, and is to be circulated for public comment in April 1999.

REVIEW PROGRESS

Completion of the review has been delayed to enable consideration of related proposals being developed to address the impact of electronic commerce on paper-based money market transactions.

COMMERCE (IMPORTS) REGULATIONS AND CUSTOMS (PROHIBITED IMPORTS) REGULATIONS (Department of Industry, Science and Resources)

A working group to review the regulations made under the *Customs Act 1901* and the *Commerce (Trade Descriptions) Act 1905* was endorsed by the Government in 1996. This recognised that many of the regulations made under these Acts had become redundant, obsolete or been duplicated in other legislative instruments.

This review preceded the publication of the CLRS, and so did not necessarily follow the guidelines later established for the conduct of competition policy reviews.

Nevertheless, the review process resulted in the repeal of a large number of unnecessary regulatory requirements, producing simpler control and compliance procedures for goods moving into and out of Australia. It also highlighted the need for active, ongoing management of these control barriers.

Since finalising the review of the *Customs (Prohibited Imports) Regulations*, made under the *Customs Act 1901*, there have been subsequent additions and amendments to ensure maximum regulatory efficiency.

The review of the *Commerce (Imports) Regulations*, made under the *Commerce (Trade Descriptions) Act 1905*, has been delayed pending finalisation of new domestic country of origin labelling requirements.

With the commencement in August 1998 of amendments to the *Trade Practices Act 1974* to enact a voluntary compliance regime for businesses making country of origin representations, a formal legislation review process to examine the outstanding requirements contained in the *Commerce (Imports) Regulations* will be undertaken.

FOREIGN INVESTMENT POLICY, INCLUDING ASSOCIATED REGULATION (Department of the Treasury)

REVIEW PANEL

The review of foreign investment policy (including associated regulation) is being conducted by the Commonwealth Treasury, with input from the Foreign Investment Review Board (FIRB). A report will be made to the Treasurer.

TERMS OF REFERENCE

There are no established terms of reference.

PUBLIC CONSULTATION

A formal public consultation process has not been undertaken.

REVIEW PROGRESS

In announcing the review, the Government confirmed that the basic receptive approach to foreign investment will continue. In addition, the current identified restricted areas are expected to continue to apply.

In the context of the review the Government has made it clear that the general preclusion of foreign interests buying developed residential real estate is expected to continue and any approval for foreign interest to acquire vacant land for development will be on the condition that continuous construction commences within a 12 month approval period.

During 1997-98, the Treasury and the FIRB continued to consider issues and to provide advice to the Treasurer on matters relevant to the review.

RADIOCOMMUNICATIONS ACT 1992 AND RELATED ACTS (Department of Communications, Information Technology and the Arts)

REVIEW PANEL

The review of the *Radiocommunications Act 1992* and related legislation commenced in June 1997.

It is being undertaken by a taskforce of officials, drawn from the Department of Communications, Information Technology and the Arts, the Department of Transport and Regional Services and the Department of Defence, in conjunction with an independent reference group of experts.

The reference group provides expertise in the areas of administrative law, economics and radio spectrum management. It is composed of Mr Tom Sherwin AO (former Australian Government Solicitor, former chair of the National Crime Authority), Professor Max Neutze AO (Australian National University), Professor Henry (Auckland University), Professor Reg Coutts (Adelaide University) and Mr John Burton (KPMG).

TERMS OF REFERENCE

1. The *Radiocommunications Act 1992* (the Act) and related Acts and subordinate legislation, are referred to the Taskforce of Officials (the Taskforce) for review by 30 June 1998. The review is to evaluate the appropriateness, effectiveness and efficiency of spectrum management provided for in the Act and related legislation.

2. In undertaking the review, the Taskforce is to advertise nationally for submissions, consult with key interest groups and affected parties, and publish a report.

3. The Taskforce is to inquire into the most appropriate arrangements for achieving the objectives of the Act, taking into account the costs and benefits to the community and radiocommunications users, and having particular regard to:

a) the efficient use of spectrum in an environment where access to spectrum has an increasing economic value and uses of spectrum are changing;

b) Australia's international obligations in relation to spectrum management;

c) the most appropriate arrangements for licensing the use of radiofrequency spectrum, and, in that context:

i) the rights and obligations that should attached to a licence of any type;

ii) the most appropriate methods for calculating fees and taxes relating to licensing, spectrum use and spectrum management in

general, based on the principle that fees should be efficient, transparent and equitable;

iii) the appropriate periods for a licence of any type, including whether it should be finite with renewal rights; and

iv) the most appropriate methods for regulating the use of spectrum for satellite services;

d) the most appropriate arrangements for providing for new uses, or users, of spectrum whether occupied or unoccupied, with particular regard to:

i) the criteria for decisions and process to be followed to allow or facilitate new uses or users;

ii) the treatment of incumbent licensees and other users of the relevant spectrum;

iii) the costs of changes in spectrum usage, and who should bear them; and

iv) the respective roles of the parties involved in spectrum usage changes, namely any incumbent users/licensees, the prospective new user/licensee, and the radiocommunications regulatory body;

e) the most appropriate arrangements for providing the public authority and community service uses of spectrum, and the payment for such use;

f) whether, and what, special provision should be made for:

i) any radiofrequency requirements relating to the fulfillment of universal service obligations under telecommunications legislation for the provision of services;

ii) spectrum relating to defence, national security and intelligence; and

iii) the interface between the radiocommunications and broadcasting regimes;

g) the effectiveness of the technical regulation regime for spectrum;

h) the need for the
industry self-regulation by various means, including the delegation of powers to other bodies;

i) whether there is scope to reduce the costs of regulation, particularly the compliance costs and paper work burden on small business, including through such measures as promoting the use of electronic commerce; and

j) the most appropriate enforcement mechanisms for the Act.

4. The report of the Taskforce should:

a) cover the matters referred to in paragraph 3 and make recommendations relating to those matters;

b) identify the benefits and costs to the community and industry (including business, manufacturers and licensees) of options for regulatory arrangements for spectrum management;

c) include an assessment of the effect of current spectrum regulation on competition in the delivery of communications services, and on Australian business generally;

d) include an assessment of the impact of the legislation being examined on small business and report on ways to reduce the compliance and paperwork burden associated with the legislation;

e) include an assessment of the Australian approach to spectrum management in terms of international benchmarking;

f) list the individuals and groups consulted during the review, and outline their views; and

g) be published at the time of the Government's decisions on its recommendations, or earlier.

PUBLIC CONSULTATION

radiocommunications regulatory body to promote

The taskforce advertised nationally for submissions in July 1997, and has conducted a range of discussions with interested persons and bodies. Forty seven responses were received.

It is intended that a discussion paper be released, followed by a number of workshops/seminars, as a means of engaging interested parties in detailed consultations on the issues raised in the review.

REVIEW PROGRESS

The review was to be completed by June 1998, but this date was extended to 31 October 1998 to avoid adversely affecting the outcome of the Commonwealth spectrum licence auctions. A further extension is likely to be sought to provide time for additional consultations with interested parties.

1.2.2.4 Review not Commenced.

MIGRATION ACT 1958 – SUB-CLASSES 676 AND 686 (TOURIST VISAS)
(Department of Immigration and Multicultural Affairs)

On 17 June 1998, the Minister for Immigration and Multicultural Affairs sought permission from the Prime Minister and the Treasurer to remove the review of sub-classes 676 and 686 of the *Migration Act 1958* (tourist visas) from the CLRS on the basis that:

- the Joint Standing Committee on Migration will report by June 1999 on entry arrangements for the Olympic Games. The terms of reference will address the issue of existing temporary arrangements; and

- in the 1998 Budget, the Government introduced a $50 visitor visa charge to take effect from 1 July 1998. The full impact of the charge is not expected to be felt until at least 1999-2000, making a review inappropriate at this time.

This matter has not yet been resolved.

1.2.3. Legislation Scheduled for Review in 1997-98 — Deferred

This section identifies those Acts originally scheduled for review in 1997-98, for which the review process has been deferred.

ANTI-DUMPING AUTHORITY ACT 1988, CUSTOMS ACT 1901 PART XVB AND CUSTOMS TARIFF (ANTI-DUMPING) ACT 1975 (Attorney-General's Department)

The review of the *Anti* , *Customs Act 1901* Part XVB and the *Customs Tariff (Anti-dumping) Act 1975* has been rescheduled to commence in the first half of 1999, to allow implementation of the Government's commitments to reduce the time taken for individual inquiries into possible dumping of imports.

The details as to the timing and terms of reference for the inquiry are yet to be finalised.

BROADCASTING SERVICES ACT 1992, BROADCASTING SERVICES (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) ACT 1992, RADIO LICENCE FEES ACT 1964, TELEVISION LICENCE FEES ACT 1964. (Department of Communications, Information Technology and the Arts)

The review has been rescheduled to commence in 1998-99, due to changes in the work program of the Productivity Commission (which is to conduct the review).

Terms of reference, specific timing and details concerning the conduct of the review are currently being developed.

EXPORT CONTROL (UNPROCESSED WOOD) REGULATIONS UNDER THE EXPORT CONTROL ACT 1982 (Department of Agriculture, Fisheries and Forestry)

The review of the Export Control (Unprocessed Wood) Regulations under the *Export Control Act 1982* has been deferred until 1998–99, as a consequence of amendments to these regulations that, in conjunction with the making of new regulations (the Export Control Regulations and Regional Forest Agreements), implement a process to

progressively remove export controls on unprocessed wood from Australian plantations and native forests.

INSURANCE (AGENTS & BROKERS) ACT 1984 (Department of the Treasury)

In recognition of the changes taking place to implement the recommendations of the Financial System (Wallis) Inquiry, the review of the *Insurance (Agents and Brokers) Act 1984* has been deferred until 1998-99

The arrangements covered by this Act are currently being examined in the context of a general review of financial intermediary licensing underway as part of the Corporate Law Economic Reform Program (CLERP).

CLERP paper No. 6 entitled *Financial Markets and Investment Products*, released in December 1997, proposed harmonised licensing arrangements for all financial intermediaries. This would involve replacing the current arrangements for insurance agents and brokers with a direct licensing scheme. Under existing arrangements agents are not licensed and brokers are registered.

It would be premature to commence the scheduled review of the Act until the CLERP review is complete. It is expected that draft legislation arising from the CLERP review will be released for public exposure in mid 1999.

SUPERANNUATION (RESOLUTION OF COMPLAINTS) ACT 1993 (Department of the Treasury)

As a consequence of the changes taking place to implement the recommendations of the Financial System (Wallis) Inquiry, an extension of one year was granted for the conduct of the review of superannuation legislation, including the *Superannuation (Resolution of Complaints) Act 1993*.

Recent findings of the Federal Court have resulted in a broader consideration of alternative policy approaches to meeting the objectives of this Act, with High Court consideration of these findings expected to determine whether or not operative parts of the Act are constitutionally valid. A decision is not anticipated until early 1999.

In the interim, options to provide a fair, low-cost and accessible alternative dispute resolution mechanism for complaints in the area of superannuation are being examined. In this context, legislation was enacted in late 1998 to provide the

Superannuation Complaints Tribunal (SCT) with powers to arbitrate complaints with the consent of parties.

In addition, possible mechanisms for achieving a permanent solution to the current inoperability of the SCT are being examined. These include:

- restoring, as far as possible, the SCT's powers through legislative amendments to the *Superannuation (Resolution of Complaints) Act*;

- replacing the SCT with one or more approved industry based schemes. This includes options arising from the overall review of financial intermediary licensing currently underway as part of the Corporate Law Economic Reform Program.

Industry and consumer groups will be consulted in the process of developing these options.

In light of these circumstances it is considered premature to proceed with the scheduled review until the High Court has handed down its decision and the alternative arrangements have been examined further.

OCCUPATIONAL SUPERANNUATION STANDARDS REGULATIONS APPLICATIONS ACT 1992, SUPERANNUATION ENTITIES (TAXATION) ACT 1987, SUPERANNUATION (FINANCIAL ASSISTANCE FUNDING) LEVY ACT 1993, SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993 AND THE SUPERANNUATION SUPERVISORY LEVY ACT 1991 (Department of the Treasury)

The scheduled review of the above legislation relating to superannuation and insurance has been deferred until 1998-99, on the grounds that there was little merit in conducting a review at a time when major changes to the regulatory environment are being implemented in response to the Financial System Inquiry (FSI).

The *Superannuation Entities (Taxation) Act 1987* has been renamed the *Superannuation (Excluded Funds) Taxation Act 1987*, as this Act has been amended to collect levies only from excluded superannuation funds.

The *Superannuation Supervisory Levy Act 1991* has been renamed the *Superannuation (Excluded Funds) Levy Imposition Act 1991*, as this Act has been amended to impose levies only on excluded superannuation funds**.**

1.2.4. Legislation Added to the CLRS in 1997-98

This section identifies legislation included on the CLRS within the period 1997-98, although not necessarily scheduled for review within this period.

HEALTH INSURANCE ACT 1973 PART IIA (Department of Health and Aged Care)

The Pathology Licensed Collection Centre Scheme, which forms a part of the three year Pathology Agreement negotiated between the Commonwealth and the profession following the 1996-97 Budget, and the relevant sections of Part IIA of the *Health Insurance Act 1973*. Is to be reviewed in 1998-99. Competition policy issues will be addressed in the terms of reference.

NAVIGATION ACT 1912 (Department of Transport and Regional Services)

The *Navigation Act 1912* is to be reviewed in 1998-99. The review is to be conducted by an independent chair, supported by a steering committee.

1.2.5 Legislation Deleted from the CLRS in 1997-98

This section identifies legislation deleted from the CLRS during the period 1997-98.

GENERAL INSURANCE SUPERVISORY LEVY ACT 1989 (Department of the Treasury)

The *General Insurance Supervisory Levy Act 1989*, scheduled for review in 1997-98, was repealed as part of the response to the Wallis Inquiry. As a result, it has been removed from the CLRS.

This Act has been replaced by the *General Insurance Supervisory Levy Imposition Act 1998*. As a satisfactory Regulation Impact Statement was prepared covering the 1998 Act, it does not need to be added to the CLRS.

LIFE INSURANCE SUPERVISORY LEVY ACT 1989 (Department of the Treasury)

The *Life Insurance Supervisory Levy Act 1989*, scheduled for review in 1997-98, was repealed as part of the response to the Wallis Inquiry. As a result, it has been removed from the CLRS.

This Act has been replaced by the *Life Insurance Supervisory Levy Imposition Act 1998*. As a satisfactory Regulation Impact Statement was prepared covering the 1998 Act, it does not need to be added to the CLRS.

WOOL INTERNATIONAL ACT 1993 (Department of Agriculture, Fisheries and Forestry)

The *Wool International Act 1993* has been deleted from the CLRS, conditional on the wool stockpile being sold off and the Act repealed by the end of year 2000.

1.2.6 Clarification regarding specific scheduled reviews

EMPLOYMENT SERVICES ACT 1994 (Department of Employment, Workplace Relations and Small Business)

The 1996-97 Commonwealth Legislative Review Annual Report noted that the review of the *Employment Services Act 1994* was deleted from the CLRS because of reforms to the delivery of employment services announced in the 1996-97 Budget. Specifically, this involved the replacement of the case management provisions of this Act by the *Reform of Employment Services Bill 1996*. The Bill, and the associated consequential amendment legislation, was introduced in the Senate on 12 December 1996 and then referred to the Senate Community Affairs Legislation Committee, which reported on 18 March 1997. The Senate subsequently amended the Bill.

These amendments were unacceptable to the Government, and so both Bills were discharged on 2 March 1998. The Government introduced its reforms by administrative means through the through the new Job Network, which commenced operations on 1 May 1998. Since then the Government has not relied on the *Employment Services Act 1994* to implement its employment programs.

QUARANTINE ACT 1908 (DEPARTMENT OF AGRICULTURE, FISHERIES AND FORESTRY)

The review of the *Quarantine Act 1908* (Nairn Review) was underway prior to its listing on the CLRS. To ensure the legislation review requirements have been fully met, the Department of Agriculture, Fisheries and Forestry will conduct a further review of those elements of the Act (if any) that were unchanged following the Nairn Review and that restrict competition. The review will commence in 1999.

1.3 Legislation subject to National Review

The CPA provides that where a review raises issues with a national dimension or effect on competition (or both), the party responsible for the review will consider whether the review should be undertaken on a national (inter-jurisdictional) basis. Where this is considered appropriate, other interested parties must be consulted prior to determining the terms of reference and the appropriate body to conduct the review. National reviews do not require the involvement of all jurisdictions.

The scheduled reviews of the following Commonwealth legislation have been incorporated into national reviews commencing in 1997-98.

AGRICULTURAL AND VETERINARY CHEMICALS ACT 1994 (Department of Agriculture, Fisheries and Forestry)

REVIEW PANEL

The *Agricultural and Veterinary Chemicals Act 1994* was originally scheduled for review in 1998-99. However, on 24 March 1997, the Prime Minister, with the agreement of all jurisdictions, brought forward the review to 1997-98, as part of the Commonwealth Government's response to the report by the Small Business Deregulation Taskforce.

The aim of the Small Business Deregulation Taskforce was to produce a report recommending ways of reducing the compliance costs and paper work burden on Australian businesses, in particular small business.

The review covers legislation that created the National Registration Scheme for Agricultural and Veterinary Chemicals and legislation controlling the use of agricultural and veterinary chemicals in Victoria, Queensland, Western Australia and Tasmania.

The jurisdictions of New South Wales, South Australia and the Northern Territory have decided to conduct separate National Competition Policy reviews of their control of use legislation.

The national review of Commonwealth, State and Territory Agricultural and Veterinary Chemicals Legislation was commissioned by the Victorian Minister for Agriculture and Resources, on behalf of Commonwealth, State and Territory Ministers for Agriculture/Primary Industries.

The key features of the agreed process for the conduct of the review are:

- It will include the Commonwealth's legislation to establish the National Registration Authority for Agricultural and Veterinary Chemicals (NRA) and the complementary adoptive State and Territory legislation. The review will also cover control of use legislation for AgVet chemicals in Western Australia, Queensland, Victoria and Tasmania; and

- it will be independent, with a consultant being selected by a multi-jurisdictional project team with responsibility for overall project management of the review.

A public tender process conducted during June/July 1998 resulted in the selection of PriceWaterhouseCoopers and Francis Abourizk Lightowlers to jointly undertake the review, in accordance with Victoria's competition policy guidelines. Victoria is providing the secretariat for the review.

The consultants are conducting the review under the guidance of a project team, comprising representatives of the Victorian Department of Natural Resources and Environment, the Commonwealth Department of Agriculture, Fisheries and Forestry and the Western Australian Department of Agriculture.

The project team is responsible for the overall management of the review, under the guidance of a steering committee (the membership of which is specified in the terms of reference).

The terms of reference for the review were agreed to on 4 June 1998, with the consultants required to report on the review findings to the Commonwealth, State and Territory Ministers for agriculture/primary industries by November 1998.

TERMS OF REFERENCE

The review will examine the case for reform of any legislative restrictions on competition contained in Agricultural and Veterinary Chemicals Legislation, including subordinate legislation, as listed in Appendix 2, in accordance with the Victorian Government's Guidelines for the Review of Legislative Restrictions on Competition, including those provisions relating to national reviews. With the concurrence of CoAG, New South Wales, South Australia and the Northern Territory will be undertaking separate reviews of their respective control of use legislation.

In particular, the review will:

- clarify the objectives of the legislation;
- identify the nature of the restrictions on competition;
- identify and consult with the groups likely to be affected by the legislation listed at Appendix 2;
- analyse the likely effect of the restriction on competition and on the economy in general;
- examine the need to promote greater integration of the different regulatory restrictions;
- assess the net public benefit of each restriction;
- identify relevant alternatives to the legislation, including non-legislative approaches; and
- assess the net public benefit of the alternatives.

Reform Options

Without limiting the scope of the review, the review should specifically consider whether particular provisions of the legislation listed in Appendix 2 restrict competition including:

- the requirement for AgVet products to be registered (permitted/exempted) before sale or distribution;
- the requirement for chemical producers to pay fees for registration assessment, charges for annual renewal of registration, and annual levies based on value of registered products sold and the basis for setting these fees, charges and levies;
- the requirement for manufacturers of veterinary chemicals to be licensed in order to manufacture such products; and

- the requirement for AgVet chemicals to be subject to State/Territory control of use regulation and the nature and extent of such regulation.

Legislation under Review (Appendix 2)

Agricultural and Veterinary Chemicals Act 1994 and Determination (under section 23)
Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994
Agricultural and Veterinary Chemical Products Levy Imposition (Customs) Act 1994 and Regulations
Agricultural and Veterinary Chemical Products Levy Imposition (Excise) Act 1994
Agricultural and Veterinary Chemical Products Levy Imposition (General) Act 1994
Agricultural and Veterinary Chemicals (Administration) Act 1992 and Regulations
Agricultural and Veterinary Chemicals Code Act 1994 and Regulations and Order
Agricultural and Veterinary Chemicals (Victoria) Act 1994 and Regulations (Vic)
Agricultural and Veterinary Chemicals (Western Australia) Act 1995 and Regulations (WA)
Agricultural and Veterinary Chemicals (Tasmania) Act 1994 and Regulations (Tas)
Agricultural and Veterinary Chemicals (NSW) Act 1994 and Regulations (NSW)
Agricultural and Veterinary Chemicals (South Australia) Act 1994 and Regulations (SA)
Agricultural and Veterinary Chemicals (Queensland) Act 1994 and Regulations (Qld)
Agricultural and Veterinary Chemicals (Northern Territory) Act 1994 and Regulations (NT)

State Control of Use Legislation

Victoria

Agricultural and Veterinary Chemicals (Control of Use) Act 1992; Regulations 1996 and Hormonal Growth Promotants Regulations 1993

Queensland

Agricultural Chemicals Distribution Control Act 1966
Agricultural Chemicals Distribution Control Regulations 1998
Chemical Usage (Agricultural and Veterinary) Control Act 1988
Chemical Usage (Agricultural and Veterinary) Control Regulations 1989

Western Australia

Agriculture Bill drafting instructions – sections dealing with resource protection
Veterinary Preparations and Animal Feeding Stuffs Act 1976 and Regulations
Agricultural Produce (Chemical Residues) Act 1983 and Regulations
Aerial Spraying Control Act 1966 and Regulations

Health (Pesticides) Regulations 1956
Agriculture and Related Resources Protection (Spraying Restrictions) Regulations 1979

Tasmania

Agricultural and Veterinary Chemicals (Control of Use) Act 1995
Agricultural and Veterinary Chemicals (Control of Use) Regulations 1996 and Orders

PUBLIC CONSULTATION

An issues paper was released for public comment on 31 August 1998, with comments to be provided to the consultants by 30 September 1998.

MUTUAL RECOGNITION ACT 1992 (Department of Education, Training and Youth Affairs and Department of Industry, Science and Resources)

REVIEW PANEL

The review of the *Mutual Recognition Act 1992* was conducted by a working group of the Council of Australian Governments (CoAG) Committee on Regulatory Reform (CRR), comprising representatives from the Commonwealth New South Wales, Queensland and Western Australia. Queensland was the lead jurisdiction for the review.

TERMS OF REFERENCE

The Review Group reviewing the legislation regarding the Mutual Recognition Agreement (the Agreement) shall be required to conduct the review in accordance with the terms for legislation reviews set out in the Competition Principles Agreement. The guiding principle of the review is that legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and

- the objectives of the legislation can only be achieved by restricting competition.

Without limiting the scope of the review of the legislation regarding the Agreement, the Review Group shall:

- clarify the objectives of the legislation;

- identify the nature of the restrictive effects on competition;

- analyse the likely effect of any identified restriction on competition on the economy generally;

- assess and balance the costs and benefits of the restrictions identified;

- consider Mutual Recognition Arrangements (MRA) made or sought, including non-legislative approaches;

- consider whether the scope of the legislation should be extended to other areas of regulation. This term of reference does not include revisiting the issue of partially registered occupations;

- examine options for improving the interaction between the mutual recognition and other microeconomic and regulatory reforms; for example, the Trans Tasman Mutual Recognition Arrangement (TTMRA) makes direct reference to standards being developed in accordance with the CoAG principles and guidelines, maybe a similar link in the Agreement would be useful;

- identify appropriate mechanisms for monitoring the ongoing operation of mutual recognition. There may be some mechanisms that could be established to better monitor the operation of the goods side of mutual recognition, or registration bodies could be required to provide mutual recognition data to CRR annually to assist with ongoing monitoring and provide information for future reviews; and

- in undertaking its work, have regard to the independent review of the scheme by the Commonwealth Office of Regulation Review entitled *Impact of Mutual Recognition in Australia: A Preliminary Assessment*, January 1997.

In the course of the review the Review Group should:

- identify any issues of market failure which need to be, or are being addressed by the legislation; and

- consider whether the effects of the legislation contravene the competitive conduct rules in Part IV of the Trade Practices Act 1974 (Commonwealth) and the Competition Codes of each jurisdiction.

The team shall consult with and take submissions from consumers, producers and other interested parties.

The Review Group shall present its report to CoAG Senior Officials by 1 March 1998.

PUBLIC CONSULTATION

The working group advertised for public submissions in the national press, receiving over 100 submissions.

REVIEW PROGRESS

The review was conducted between October 1997 and July 1998. On 14 November 1998, the Prime Minister wrote to Premiers and Chief Ministers as well as the Minister for Education, Training and Youth Affairs and the Minister for Industry, Science and Resources, seeking their endorsement of the recommendations arising from the review.

A detailed CoAG response indicating action taken to implement each of the recommendations is to be prepared by CRR for public release.

1.3.1`Other National Reviews with Commonwealth Involvement

The Commonwealth is also participating in various national reviews that do not involve Commonwealth legislation currently scheduled for review or for which there is no applicable Commonwealth legislation. These reviews are detailed below.

DRUGS, POISONS AND CONTROLLED SUBSTANCES LEGISLATION

The State, Territory and Commonwealth Governments have commissioned a review to examine legislation and regulation pertaining to drugs, poisons and controlled substances.

This legislation forms part of a broader public health framework that seeks to promote:

- the public health and safety from dangerous substances; and

- good health through appropriate use of drugs, poisons and controlled substances.

It relates to State and Territory responsibility for drugs for human and veterinary use, agricultural chemicals and household chemicals.

The CoAG Committee on Regulatory Reform (CRR) has agreed the terms of reference for the review. The Prime Minister has written to the State Premiers and Territory Chief Ministers seeking their agreement.

TERMS OF REFERENCE

In April 1995 State, Territory and Commonwealth Governments agreed to a wide ranging program of micro-economic reform under National Competition Policy. The aim of National Competition Policy is to increase economic growth and the wellbeing of the community as a whole through increased competition across the Australian economy. The scope for increased competition will vary from sector to sector depending on the extent to which other policy objectives of government can be achieved in conjunction with increased competition.

In accordance with obligations under National Competition Policy and the Competition Principles Agreement, a review has been commissioned by State, Territory and Commonwealth Governments to examine legislation and regulation pertaining to drugs, poisons and controlled substances.

The review will identify and assess restrictions contained in legislation against criteria outlined in clause 5(1) of the Competition Principles Agreement. When assessing restrictions on competition against clause 5(1) the review may also have regard to a range of other policy considerations outlined in clause 1(3) of the Agreement. After receiving the review report, Governments will develop a response.

Legislation to be Reviewed

The review will examine the case for reform of legislative restrictions on competition contained in the legislation and regulation governing drugs, poisons and controlled substances. The Acts and Regulations to be reviewed are listed at Appendix A.

The review will have regard to the relevant sections of the Competition Principles Agreement, the CoAG Guidelines and principles for Standard Setting and Regulatory Action and make use of material contained in the guidelines published by Government on regulatory impact statements and on conducting National Competition policy

legislation reviews. The review should have regard to the Mutual Recognition Agreements, particularly when considering issues relating to packaging and labelling. The review should also have regard to public health considerations and the need for consumers to make an informed choice from a safe range of products.

There has already been significant work done in the areas of drugs, poisons and controlled substances and the review should have regard to previous reviews including but not limited to:

- the 1996 report of the Industry Commission into the Pharmaceutical Industry;
- "Review of the Poisons Scheduling Process in Australia" (Brian Wall 1996);
- Review of the Brand Advertising of Schedule 3 (Pharmacists Only) Medicines, Brian Wall October 1997;
- The Review of the Mutual Recognition Act (CoAG Committee for Regulatory Reform).

The review will not address the issues of:

a) the legalisation of illicit drugs;

b) the interface of drugs, poisons and controlled substances regulation with harm minimisation strategies (e.g. needle exchange programs);

c) who has professional prescribing (including possession, administration and supply) rights and the extent of those rights;

d) pharmacy ownership and the circumstances under which a pharmacist may practice; and

e) criteria for listing in schedules.

The Chair will report on the appropriate arrangements for regulation, if any, and in particular will:

- clarify the objectives of the legislation;
- identify whether and to what extent the drugs, poisons and controlled substances legislation and regulation restrict competition;

- identify the nature and magnitude of the health problems that the drugs, poisons and controlled substances legislation seeks to address;

- analyse the effect of variation of legislation and regulation across jurisdictions;

- analyse the drugs and poisons interface with other legislative regimes;

- identify relevant alternatives to drugs, poisons and controlled substances legislation and regulation, including non-legislative and less restrictive approaches;

- analyse the likely effect of the restrictions on competition and on the economy in general;

- examine mechanisms for increasing the overall efficiency, including minimising the compliance costs of drugs, poisons and controlled substances legislation and regulation;

- assess and balance the costs and benefits and overall effects of drugs, poisons and controlled substances legislation and regulation and alternative less restrictive approaches;

- consider, where uniformity exists or is achieved as a result of this review, a framework for maintaining uniformity in the future; and

- list the individuals and groups consulted during the review and outline their views.

Review Issues

Having regard to the above, the Review should specifically address the following main issues:

1. Relationship between the processes and arrangements for decisions on drugs and poisons scheduling and drugs and poisons regulation.

There is currently a national process for the scheduling of drugs and poisons but there is not a national process for the development of regulations and legislation that applies to those schedules. Consideration should be given to the development of a coherent process/connection between scheduling and regulation. For example, consideration

could be given to whether the scheduling committee should make recommendations to another body which considers issues of legislation policy.

2. National uniformity of regulation and administration of that legislation.

Inconsistencies in regulation that could be addressed by the review include:

- Licensing of manufacturers, wholesalers and retail suppliers of drugs and poisons;

  For example, licensing currently occurs in some areas at both Commonwealth and State levels for the same establishments. Options could include rationalising current licensing arrangements and analysing the effectiveness of current codes of practice. An assessment could be made of the potential for further development of codes of practice and other appropriate regulatory options.

- Packaging and labelling standards;

  In the case of most goods, the costs imposed on business of different labelling standards between states have been significantly reduced by the Mutual Recognition Agreement (MRA). An exception to the mutual recognition principle applies to requirements relating to the "manner of sale". Because of the link between packaging and labelling and availability under drugs and poisons packaging and labelling requirements form the scope of the MRA. Without limiting its consideration of packaging and labelling standards the review should consider options for reducing costs imposed on businesses through greater uniformity of packaging and labelling requirements between jurisdictions. Alternatively, the review might consider the impact of applying the MRA to drugs and poisons packaging and labelling as a means of addressing non-uniformity issues or to underpin any proposals for uniform arrangements.

- Advertising restrictions;

- Storage and handling requirements;

  Some jurisdictions require medicines, labelled "to be kept out of reach of children" when displayed for sale, be kept above a certain height. Other jurisdictions have no particular requirements for retailers on this issue.

- Additional requirements such as recording of sale;

It is known that there are variations in the requirements for the lists of substances in Schedule 3 (Pharmacists Only). While substances included in Schedule 3 are identical each State and Territory makes its own decisions about how this schedule is to be applied. Similarly substances may be put into a more restrictive schedule to address specific public health concerns related to misuse or abuse within a particular jurisdiction.

3. The number and range of schedules having regard to public access to substances, cost, simplicity of compliance by industry and professions and the optimisation of public health.

4. Interfaces with related legislation to maximise efficiency in the administration of legislation regulating this area.

For example, an analysis of the potential effects of the lifting of the exemptions applying to therapeutic products currently under the Mutual Recognition Act and the Trans-Tasman Mutual Recognition Agreement.

Advertising restrictions may be imposed by both the Therapeutic Goods Act and Drugs, Poisons and Controlled Substances legislation. The increasing importance of the drug-food interface needs to be addressed through an analysis of the relationship between the Australian and New Zealand Food Authority Act 1991 and the State and Territory Drugs, Poisons and Controlled Substances legislation.

5. Manner of supply by professionals of drugs, poisons and controlled substances.

Whilst the issue of prescribing rights is to be excluded from the review, the manner of supply including the way prescriptions are written, handled and processed should be considered having regard to consistency across professions and across jurisdictions.

For example, regardless of profession, when a medicine is supplied, labelling detailing safe use may be required.

Review Arrangements

The review will be conducted by an independent chair who will be supported by a Secretariat. The Chair will be advised by a Steering Committee specifically established for that purpose.

The Chair will be appointed by the Heads of Government at the time the terms of reference are approved. The Chair will be selected from a nominee/nominees provided by the Chair of the National Public Health Partnership ("NPHP") in consultation with the Chair of the CoAG Committee on Regulatory Reform.

The NPHP will nominate membership of the Steering Committee and ensure that each jurisdiction in represented. Jurisdictions which are not members of the NPHP will provide a representative on the Committee. The Committee should aim for consensus decisions but where a vote is required, each member of the Committee shall have one vote. In addition, there will be other officers nominated by the CoAG Committee on Regulatory Reform. There should also be expertise in health risk analysis and public health law available to the Chair. The Chair may co-opt people as deemed necessary. The Chair will consult with jurisdictions regarding the obtaining of wider expertise to ensure others affected by the legislation are consulted. For example, those responsible for the administration of agricultural and veterinary chemicals, and industrial chemicals. The Steering Committee will meet as often as is deemed necessary by the Chair.

Work may be done from time to time by consultants as identified as necessary by the Chair in consultation with the Steering Committee.

The Chair is to be supported by a Secretariat which will be based at the Therapeutic Goods Administration in Canberra and which will be responsible for all administrative matters relating to the review. The cost of the review, including secretariat, the Chair's fees and recurrent costs, will be shared proportionately according the population of each State and Territory. The Commonwealth will fund half the cost of the review. Where considered appropriate by the Chair, a jurisdiction may second an officer to the review secretariat, as part or all of its contribution to the cost of the review. Each jurisdiction will cover the steering committee participation costs.

The Chair will report their findings to the Australian Health Ministers Conference. Upon consideration of the report and comments from jurisdictions the report and recommendations will be made to CoAG.

Review Process

The Chair will establish a process for national consultation with key interest groups and affected parties and publish a report. The review will use the structure of the National Public Health Partnership for establishing links with all jurisdictions and for ease of administration.

Key Dates

The review will commence on the date on which the Steering Committee is established. The review will report within 12 months of the establishment of the Steering Committee.

Secretariat

The Secretariat will be based at the Therapeutic Goods Administration in Canberra. The Secretariat will report to the Chair and work as directed by the Chair. The Secretariat will consist of officers with expertise in the review of legislation under National Competition Policy, an understanding of the structure and workings of the National Public health partnership and an understanding of public health law, drugs, and poisons administration and micro economics.

The Secretariat will take responsibility for all administrative arrangements relating to the review and work as directed by the Chair.

APPENDIX A – LEGISLATION TO BE REVIEWED

New South Wales

Poisons and Therapeutic Goods Act 1966
Poisons and Therapeutic Goods Regulations 1994
Drugs Misuse and Trafficking Act 1985

Queensland

Health Act 1937
Health (Drugs and Poisons Regulations) 1996

South Australia

Controlled Substances Act 1984
Controlled Substances (Declared Drugs of Dependence) Regulations 1993
Drugs of Dependence (General) Regulations 1985
Controlled Substances Act (Exemptions) Regulation 1989
Controlled Substances (Poisons) Regulations 1996
Controlled Substances (Volatile Solvents) Regulations 1996

Tasmania

Poisons Act 1971
Poisons Regulations 1975
Alcohol and Drug Dependency Act 1968
Pharmacy Act 1908
Criminal Code Act 1924

Victoria

Drugs, Poisons and Controlled Substances Act 1981
Drugs, Poisons and Controlled Substances Regulation 1995

Western Australia

Poisons Act 1964
Poisons Regulations 1965
Division 5 (Drugs), Division 6 (Medicines and disinfectants) and Division 7 (Manufacture of therapeutic substances) of Part VIIA of the Health Act 1911
Health (Drugs and Allied Substances) Regulations

Australian Capital Territory

Drugs of Dependence Act 1989
Drugs of Dependence Regulations 14/1993
Drugs of Dependence Regulations 26/1995
Drugs of Dependence Regulations 29/1995
Poisons Act 1933
Poisons Regulations 1933
Poisons and Drugs Act 1978
Poisons and Drugs Regulations 1993
Public Health (Sale of Food and Drugs) Regulations

Northern Territory

Poisons and Dangerous Drugs Act
Poisons and Dangerous Drugs Regulations
Therapeutic Goods and Cosmetics Act
Pharmacy Act

FOOD ACTS

The Australia New Zealand Food Authority (ANZFA) is co-ordinating the development of nationally uniform Food Acts through the review of the Model Food Act, each State and Territory Food Act and the New Zealand Food Act. There is no Commonwealth food legislation.

The Food Regulation Review Committee was chaired by Dr Blair, and comprised representatives of industry, consumers and government.

The timely adoption of nationally uniform Food Acts is important to the development and implementation of several food reforms being developed by ANZFA in collaboration with the States and Territories and New Zealand, namely:

- implementation and uniform interpretation and enforcement of the Australia New Zealand Food Standards Code by 1 January 2000;
- implementation of food hygiene reforms;
- the development of a national surveillance system; and
- the requirement to have all anti-competitive legislation reviewed and reforms implemented by 2000.

This project is linked with the Australian National Public Health Partnership legislation reform process.

Written submissions were sought from the public. Public hearings and focus groups and workshops were also organised. A draft report was released in May 1998 for public comment.

The final report of the Food Regulation Review Committee, *Food: A Growth Industry*, was provided to Government in August 1998, and is publicly available. The report recommends major legislative, procedural and structural reforms intended to produce a more efficient and effective food regulatory system, covering primary production, processing, retailing and catering, with improved consumer safety and a reduced regulatory burden on industry.

An exposure draft of the Food Bill will be released for public comment. A recommended Food Act, regulatory impact assessment and competition policy analysis together with an inter-governmental agreement in relation to uniform

implementation of the Food Act will be presented to the Australia New Zealand Food Standards Council and then to CoAG in 1999.

PHARMACY REGULATION

A national review to examine State and Territory legislation relating to pharmacy ownership and registration of pharmacists, together with Commonwealth legislation relating to regulation of the location of premises for pharmacists approved to supply pharmaceutical benefits, was formally agreed to by all governments on 1 May 1998.

The review is to commence in the first half of 1999.

The Commonwealth legislation referred to involves a Ministerial Determination under subsection 99L(1) of the *National Health Act 1953*, relating to the approval of the location of premises from which pharmacists may supply pharmaceutical benefits. The review will also require examination of aspects of the existing Commonwealth/Pharmacy Guild of Australia Agreement.

Terms of reference and administrative details for the review are currently being finalised.

1.4. New and Amended Regulation (enacted since April 1995)

The CPA requires all new and amended legislation that restricts competition to be accompanied by evidence that the benefits of the restriction to the community as a whole outweigh the costs, and that the objectives of the legislation can only be achieved by restricting competition.

The Prime Minister's *More Time for Business* policy statement (March 1997), prepared in response to the recommendations of the Small Business Deregulation Taskforce, expanded this requirement to apply to all Commonwealth regulation that imposes costs or confers benefits on business.

1.4.1 Regulation Impact Statements

In order to make transparent the possible impact of proposed legislation on competition, a Regulation Impact Statement (RIS) must be prepared for all proposed

new and amended Commonwealth regulation with the potential to restrict competition, or impose costs or confer benefits on business. This Statement must assess the costs and benefits of alternative means of fulfilling the relevant policy objective.

The ORR is responsible for providing guidance and training to Commonwealth Departments and agencies in preparing a RIS, and for assessing its technical adequacy. RIS requirements are detailed in the ORR handbook *A Guide to Regulation*. A second edition of this publication was released in December 1998, and is available from the ORR.

Box 6: What is the purpose of the RIS process?

The RIS process is intended to ensure that a comprehensive assessment of all policy options, and the associated costs and benefits, is undertaken. This information is then used to inform the decision making process. In this regard, it provides a comprehensive checklist that outlines public policy decision making best practice.

This process is to be used to develop the appropriate policy solution, not to construct a justification after the event.

Where a regulatory solution is intended, a formal RIS is to accompany the proposed legislation on introduction to Parliament. This provides a public statement of the decision making process.

The Commonwealth's overall performance against the RIS requirements, incorporating compliance for new or amended primary legislation, subordinate legislation, quasi-regulation and treaties, is assessed in detail in the Productivity Commission report *Regulation and its Review 1997-98*.

This report notes that, for the period 1997-98, 104 bills were introduced into Parliament for which a RIS was required. A RIS was prepared in 97% of cases. However, in only 38% of cases was a RIS included in the documentation provided to the final decision-makers. For subordinate legislation, of the 338 relevant instruments, a RIS was prepared in less than 50% of cases.[12]

[12] Productivity Commission (1998), *Regulation and its Review 1997-98,* AusInfo, Canberra, p.xvii.

1.4.1.1. Commonwealth Compliance

While the CPA requires new legislation that restricts competition be accompanied by evidence that it satisfies the public benefit test, the formal RIS requirement was not promulgated until 1997 following the *More Time for Business* statement and the initial release of the ORR's *A Guide to Regulation* in October 1997.

A significant amount of legislation that is potentially anti-competitive or imposes costs or confers benefits of business introduced after April 1995 and prior to mid 1997, was not supported by a comprehensive RIS.

The Commonwealth is now seeking to ensure that this legislation, or more recent regulation for which a RIS was not prepared, meets the net community benefit requirement. Where the circumstances appear to warrant it, legislation may be considered for inclusion on the CLRS.

As a result, Commonwealth portfolios have assessed relevant legislation to determine those efforts necessary to meet any residual obligations in this area.

In some cases, the legislation may be deemed not cost effective to review or of a mechanical nature and so not require a RIS[13].

The *Road Transport Reform (Dangerous Goods) Amendment Act 1997* provides heads of power in the principal Act for regulation making. It was, therefore, regarded as a machinery measure not warranting a RIS. Similarly, the *Dairy Produce Amendment Act 1996*, administered by the Department of Agriculture, Fisheries and Forestry, made minor but necessary amendments to the *Dairy Produce Act 1986* to ensure consistency between industry milk payment practises and the domestic market support legislation introduced on 1 July 1995. A RIS statement was not prepared due to the minor nature of the amendments.

In other cases, the principal Act to which amending legislation relates is to be reviewed under the existing CLRS process or other review requirements of a satisfactory nature that have been established.

For example, in relation to the *Bankruptcy (Registration Charges) Act* 1997 administered by the Attorney-General's Department, those provisions relevant to

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[13] Productivity Commission (1998), *Regulation and its Review 1997-98* outlines those circumstances in which a RIS is not required.

registration of private sector bankruptcy trustees are being reviewed as part of the CLRS process (*see* page 35).

The provisions of the *Ozone Protection (Licence Fees – Manufacture) Act 1995* and the *Hazardous Waste (Regulation of Exports and Imports) Amendment Act 1996*, administered by the Department of the Environment and Heritage, will be considered in relevant reviews scheduled under the CLRS for 1999-00 and 1998-99 respectively.

The *Dairy Produce Amendment Act 1995*, administered by the Department of Agriculture Fisheries and Forestry, amended the *Dairy Produce Act 1986* to implement replacement domestic market support arrangements for the Australian dairy industry. These changes were regarded as a direct and unavoidable consequence of the Uruguay Round of trade negotiations, while also fulfilling the Government's commitment to the Australian dairy industry. While a RIS was not prepared for this Act, the *Dairy Produce Act 1986* is scheduled for review by the Productivity Commission under the CLRS to commence in 1998–99.

A RIS was also not prepared for the following pieces of legislation administered by the Department of Education, Training and Youth Affairs:

- *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Act (No. 1) 1996*, which extended the sunset clause in the principal Act by two years until 1 January 1999;

- *Education Services for Overseas Students (Registration Charges) Act 1997*, which provided for Australia's international education and training providers to contribute to the cost of regulating the industry; and

- *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Act (No. 1) 1997*, which made consequential amendments to the principal Act to reflect the introduction of registration charges (*see* above).

However, a 1996 review of the principal Act (prior to the amendments) involved extensive national consultation and found universal support for a continuation of the existing industry regulation arrangements. The ORR advised that, although a RIS had not been prepared, this review had adopted the essential elements of a RIS.

Furthermore, a Bill to extend the force of the principal Act by a further three years (until 1 January 2002) was introduced into Parliament on 24 June 1998. A full RIS cleared by the ORR was included in the Explanatory Memorandum. Following a

public hearing, the Senate Employment, Education and Training Legislation Committee reported on 13 August 1998 recommending the Senate pass the Bill without amendment.

The *Australian Meat and Livestock (Quotas) Act 1995* amended then existing arrangements that enabled the (now abolished) Australian Meat and Live-stock Corporation (AMLC) to impose a system of quotas to protect the orderly export of goods. As part of industry reforms implemented from 1 July 1998, responsibility for quota administration was transferred from AMLC to the Department of Agriculture, Fisheries and Forestry. The Department intends to review the administration of quota arrangements and, if any changes are proposed as a result of this review, prepare a RIS.

The *Human Services and Health Legislation Amendment Act (No.2) 1995,* which restricts temporary resident doctors from participating in Medicare arrangements, and the *Health Insurance Amendment Act (No.2) 1996*, which imposes a requirement for medical graduates to complete post-graduate education in order to gain access to Medicare provider numbers, are in a similar position.

These measures were introduced in the context of the General Practice Strategy established in the 1991-92 Budget, to, among other things, restrain the increasing costs to Medicare of general practice services by addressing the increasing (and over-) supply of general practitioners.

The Strategy was reviewed in conjunction with the medical profession, "General Practice: Changing the Future Through Partnerships" March 1998, with continuation of the workforce initiatives receiving general support.

While the RIS process was not utilised, there are review mechanisms already provided for in the legislation. For example, the *Health Insurance Amendment Act (No.2) 1996* inserted a sunset clause as part of the new section 19AA of the *Health Insurance Act 1973* to the effect that this section will cease to operate on 1 January 2002. More importantly, it also established section 3GC as a review mechanism to provide ongoing annual review of the operation of the legislation. Section 3GC of the *Health Insurance Act 1973* establishes a Medical Training and Review Panel that assists with the dissemination of information relating to employment opportunities for medical practitioners. Reports submitted by the Panel to the Minister are laid before Parliament and as such provide a significant measure of public accountability in the administration of the legislation.

In other circumstances, changes in government policy see the repeal of legislation and so the removal of the requirement to demonstrate RIS compliance. For example, the *Health Legislation Amendment (Private Health Insurance Incentives) Act 1997*, introduced to provide financial incentives to low and middle income earners to purchase or retain private health insurance, was repealed and replaced with the Government's private health insurance 30% rebate scheme.

There is also scope to re-present a RIS, or part of a RIS, where the original statement has been deemed inadequate by the ORR.

For example, the *Child Care Payments Act 1997* establishes a system to allow Centrelink to calculate Childcare Assistance payments for parents based on attendance information provided to Centrelink by parents. The RIS prepared for this Act was assessed by the ORR as not meeting the adequacy test, through not containing an adequate level of analysis of the costs and benefits of all the options.

In January 1998, the Government decided not to proceed with these changes and deferred the implementation of the *Child Care Payments Act 1997*. It then passed the *Child Care Legislation Amendment Act 1998* in order to implement the 1997 Budget changes to childcare.

Some of the amendments required changes to the Child Care Guidelines. The ORR found that in relation to one of the guidelines relating to the ability to provide long day care (i.e. eight hours continuous care), although a RIS had been prepared the RIS requirements were not fully met as it failed to provide an adequate assessment of all feasible options. In particular, it did not discuss in any depth the effect of the proposal on those centres that did not provide long day care and were in receipt of child care assistance.

The ORR and the responsible department, the Department of Health and Aged Care, have now reached a negotiated position whereby a revised version of the RIS for this guideline will be prepared and provided to the ORR for further assessment.

The *Interstate Road Transport Amendment Act 1995*, administered by the Department of Transport and Regional Services, is to be subject to a comprehensive review accordance with National Competition Policy principles to commence in January 1999, with an anticipated completion date in mid 1999.

1.4.2. Legislation enacted since 1 January 1997 that may restrict competition

Those Commonwealth Acts introduced in the period 1 January 1997 to 30 June 1998 identified by the ORR as having the potential to restrict competition are identified in **Table 2**. The potential impact of these Acts varies from relatively minor to significant. The actual impact will depend on how the various legislative provisions are utilised.

Table 2: Potentially Anti-Competitive Commonwealth Legislation Enacted Between 1 January 1997 and 30 June 1998

Commonwealth Acts

Australian Meat and Live-Stock Industry Act 1997

Bankruptcy (Registration Charges) Act 1997

Broadcasting Services Amendment Act (NO.2) 1997

Broadcasting Services Legislation Amendment Act 1997

Child Care Payments Act 1997

Communications Legislation Amendment Act (NO.1) 1997

Customs Depot Licensing Charges Act 1997

Education Services for Overseas Students (Registration Charges) Act 1997

Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Act 1997

Health Legislation Amendment (Private Health Insurance Incentives) Act 1997

Industrial Chemicals (Registration Charge-Customs) Act 1997

Industrial Chemicals (Registration Charge-Excise) Act 1997

Industrial Chemicals (Registration Charge-General) Act 1997

Migration Legislation Amendment (Migration Agents) Act 1997

Private Health Insurance Incentives Act 1997

Radiocommunications Amendment Act 1997

Radiocommunications Legislation Amendment Act 1997

Radiocommunications (Receiver Licence Tax) Amendment Act 1997

Radiocommunications (Spectrum Licence Tax) Act 1997

Radio Licence Fees Amendment Act 1997

Retirement Savings Accounts Act 1997

Road Transport Reform (Dangerous Goods) Amendment Act 1997

Road Transport Reform (Heavy Vehicles Registration) Act 1997

Sydney Airport Demand Management Act 1997

Telecommunications Act 1997

Telecommunications (Carrier Licence Charges) Act 1997

Telecommunications (Numbering Fees) Amendment Act 1997

Telecommunications (Universal Service Levy) Act 1997

Television Licence Fees Amendment Act 1997

Child Care Legislation Amendment Act 1998

2. COMPETITIVE NEUTRALITY

2.1 Why implement Competitive Neutrality?

The *Competition Principles Agreement* (CPA) establishes a policy of competitive neutrality (CN). This requires that government businesses operating in a market in which there are actual or potential competitors should not enjoy any net competitive advantages simply as a consequence of their public ownership.

The objective of this policy is to eliminate potential resource allocation distortions arising from the public ownership of significant business activities operating in a contestable environment, and to encourage fair and effective competition in the supply of those goods and services.

The ability of government owned business activities to compete 'unfairly' can have significant economic efficiency and equity implications. This is because pricing decisions taken by government businesses may not fully reflect actual production costs or other business costs borne by their private sector competitors. This may result from a lack of market pressure and discipline, such as that applied through the requirement for private sector firms to earn a commercial rate of return and make dividend payments to shareholders, or special exemptions from the payment of taxes and charges or compliance with planning regulations. These advantages may be sufficient to enable the government business to undercut private sector competitors, as well as provide an effective barrier to the entry of potential competitors.

If consumers choose to purchase from the lower priced government provider, the production and investment decisions of both that business and actual and potential competitors will be influenced. If the government business is not otherwise the least cost producer, the allocation of resources toward production by this business is inefficient.

As a result, removing those advantages enabling under pricing should encourage more economically efficient outcomes, and ensure resources are allocated to their best uses.

It also means that where public funds continue to be used to provide significant business activities, increased competitive pressures and performance monitoring should result in more efficient operations. Consumers will benefit from more competitive pricing practices and improved quality of government services.

Furthermore, where public funds are removed from the provision of goods and services considered best left to the private sector, and those remaining activities are provided more efficiently, a greater proportion of total public funds can be directed toward the provision of social policy priorities such as health, education and welfare.

This improved government business competitiveness does not come at the expense of satisfying legitimate community service obligations. However, as discussed in **section 2.1.3**, CN does encourage greater transparency and efficiency in their provision.

2.1.1 Which government activities are subject to CN?

The *Commonwealth Competitive Neutrality Policy Statement* (June 1996) (CNPS) deems all Government Business Enterprises, Commonwealth share limited companies and Commonwealth Business Units to be 'significant business activities' and, consequently, required to apply CN.

- Designated Government Business Enterprises are legally separate from the Commonwealth Government, being either a statutory authority established under enabling legislation or a Commonwealth *Corporations Law* company. Their principal function is to sell goods and services for the purpose of earning a commercial rate of return and paying dividends to the Budget.

- Commonwealth share-limited companies are established under *Corporations Law*. Where not designated as a Government Business Enterprise, these companies need not earn a commercial rate of return and are generally financed through subsidies from the Budget and/or receipts from levies or industry taxes. In certain circumstances, they may borrow from commercial markets.

- Business Units are separate commercial activities within a Commonwealth Department. They are distinct in an accounting, but not a legal sense, and have access to the Commercial Activities Fund of the Commonwealth Public Account.

Other commercial activities undertaken by Commonwealth authorities and Departments that do not fall within these categories but which meet the established

definition of a 'business' and have commercial receipts exceeding $10 million per annum, are assessed on a case by case basis for the requirement to apply CN.

These include bids by Commonwealth Government in-house units for activities subject to the *Competitive Tendering and Contracting* guidelines issued by the Commonwealth Department of Finance and Administration.

To be considered a business activity the following criteria must be met:

- there must be user charging for goods and services;
- there must be an actual or potential competitor either in the private or public sector i.e. users are not restricted by law or policy from choosing alternative sources of supply; and
- managers of the activity must have a degree of independence in relation to the production or supply of the good or service and the price at which it is provided.

Activities that meet these criteria and have a turnover in excess of $10m per annum are also considered significant business activities.

Non-significant commercial business activities (those with a turnover under $10m per annum) may be deemed subject to CN following a complaint to the Commonwealth Competitive Neutrality Complaints Office (*see* **section 2.3**). Such activities may choose to implement CN principles on a notional basis to pre-empt a complaint on the grounds of an unfair competitive advantage.

CN is required to be implemented only where the benefits of this course of action exceed the costs, and it is cost effective to do so. This requires consideration of the same matters identified in relation to the public interest test for legislation review, including social welfare and equity issues such as community service obligations.

Commonwealth statutory authorities and *Corporations Law* companies are subject to the governance and financial accountability arrangements established under the *Commonwealth Authorities and Companies Act 1997*. All other government bodies are subject to the provisions of the *Financial Management and Accountability Act 1997*.

2.1.2. What does the application of CN require?

The *Commonwealth Competitive Neutrality Guidelines for Managers* provides assistance with the practical application of the CN principles, as identified in the CNPS, to the wide range of Commonwealth significant business activities.

In general terms, CN implementation involves:

- adoption of a
  Enterprises;

- payment of all relevant Commonwealth and State direct and indirect taxes or tax equivalents;

- payment of debt neutrality charges or commercial interest rates, directed towards offsetting competitive advantages provided by explicit or implicit government guarantees on commercial or public loans;

- attainment of a pre-tax commercial rate of return on assets (to ensure, among other things, payment of CN components is not simply accommodated through a reduction in profit margin);

- compliance with those regulations to which private sector competitors are normally subject, for example, planning and approvals processes; and

- pricing of goods and services provided in contestable markets to take account of all direct costs attributable to the activity and the applicable CN components.

The actual application of CN varies significantly, depending on the nature of the business activity to which it is being applied and the specific operating conditions being assessed. Examples of this flexibility are detailed below.

EXAMPLE 1

Government businesses may compete predominantly against private or other government organisations that are recipients of special arrangements in relation to the payment of taxes. In these circumstances, the Government business is only required to pay the same taxes as paid by the majority of its major competitors. A practical example of this is evident in the CN arrangements applying to the Commonwealth Scientific and Industrial Research Organisation (*see* page 170).

EXAMPLE 2

Where commercial activities are undertaken within a non-Government Business Enterprise statutory authority, CN policy requires as a first best solution the structural (legal) separation of those activities from the parent body. However, if this is not cost effective, strict accounting separation between contestable and non-contestable services will be accepted. Where neither of these options are implemented in a satisfactory manner, CN is to be applied across the board. This ensures that entities do not cross subsidise competitive services from their non-contestable or reserved business activities.

EXAMPLE 3

Commonwealth businesses in the process of being corporatised or restructured along commercial lines may have a lower pre-tax rate of return target set to accommodate identified public sector employment cost disadvantages for a transitional period of up to three years.

Box 7 clarifies some common misconceptions with regard to CN.

Box 7: Competitive Neutrality — Some Misconceptions

- ❖ CN does not apply to non-business, non-profit activities of publicly owned entities. It also does not prevent activities being conducted as community service obligations.
- ❖ CN does not have to be applied to Commonwealth business activities where the costs of implementation would outweigh the expected benefits, only privatisation would overcome the disadvantages.
- ❖ CN is neutral with respect to the nature and form of ownership of business enterprises. It does not require corporatisation. Where the Government decides to privatise a former public monopoly, the requirements of clause 4 of the CPA must be met (*see* **Chapter 3**).
- ❖ CN does not require outsourcing of Commonwealth activities – but when public bids are made under competitive tendering and contracting (CTC) arrangements, they must be CN compliant. As a result, in-house units should not have any unfair advantage over other public or private sector bidders.

❖ Regulatory neutrality does not require the removal of legislation that applies only to the Government business enterprise or agency (and not to its private sector competitors) where the regulation is considered to be appropriate. However, anti-competitive legislation may be reviewed under the Commonwealth Legislation Review program (*see* **Chapter 1**).

2.1.3. Community Service Obligations

A Community Service Obligation (CSO) arises when the Government specifically requires a business to carry out an activity or process that:

- the organisation would not elect to do on a commercial basis, or that it would only do commercially at higher prices; and
- the Government does not, or would not, require other organisations in the public or private sectors to undertake or fund.

CSOs are often established to meet government social policy objectives. A well known example is the requirement that Australia Post provide a standard letter delivery service throughout Australia for a uniform postage rate (currently 45 cents).

CN does not prevent the provision of CSOs, but it does establish certain requirements in terms of their costing, funding and interaction with other CN obligations. The intention is to encourage more effective and transparent provision of such services, with minimal impact on the efficient provision of other commercial services.

Where an organisation wishes to have an activity recognised as a CSO, it must be directed explicitly to carry out that activity on a non-commercial basis by legislation, Government decision or publicly available directions from shareholder Ministers (for example, identified in the annual report of the relevant Commonwealth Department or authority annual report).

CSOs should be funded from the purchasing portfolio's budget, with costs determined as part of a commercially negotiated agreement. CSO agreements should include similar CN requirements as applied to other activities, that is, these activities should be able to pay taxes and earn a commercial rate of return (as if contracted out).

Where direct funding of CSOs entails unreasonably large transaction costs, portfolio Ministers may choose to purchase CSOs by notionally adding to the provider organisation's revenue result, for the purpose of calculating the achieved rate of

return. CSOs should be costed as if directly funded. The notional adjustment should be transparently recorded in an auditable manner.

Under CN arrangements, no adjustment should be made to the commercial rate of return target applied to the service provider to accommodate CSOs.

2.2 COMMONWEALTH ENTITIES AND ACTIVITIES SUBJECT TO COMPETITIVE NEUTRALITY

Portfolio Ministers are responsible for ensuring that all significant business activities within their portfolio comply with the established CN requirements.

CN arrangements were required to be implemented by 1 July 1998. Commonwealth progress toward ensuring their adoption by all significant business activities is summarised at **Appendix B**.

Detailed information concerning the application of CN to specific organisations or activities is provided below.

2.2.1 Government Business Enterprises

Government Business Enterprises (GBEs) are required to have their CN arrangements approved by the Minister for Finance and Administration and the responsible portfolio Minister. The CN guidelines require that GBEs:

- pay all Commonwealth direct and indirect taxes, and State indirect taxes or tax equivalents (to have commenced by 1 July 1997);
- earn a commercial rate of return on assets as determined by their shareholder Minister(s);
- where borrowing from private financial markets, have a debt neutrality charge set by their shareholder Minister(s) based on stand alone credit rating advice; and
- where borrowing from the Budget, pay a commercial interest rate determined by the Department of Finance and Administration based on stand alone credit rating advice.

AUSTRALIAN DEFENCE INDUSTRIES LIMITED

Australian Defence Industries Limited (ADI Ltd) is in the process of being sold, with a short list of bidders invited to proceed to the binding offer stage.

Prior to being offered for sale ADI Limited complied with all CN principles.

It does have an advance from the Department of Defence to fund regeneration of ADI land polluted by the Commonwealth. This loan is not, subject to interest payments other than indexation amounts. However, its private sector borrowings are short-term local borrowings, with interest charged at commercial rates. Furthermore, while ADI Ltd does have a Commonwealth loan, the established interest rate includes a margin based on the former Commonwealth Borrowing Levy.

Given the advanced stage of the sale process, no further action with regard to CN compliance has been undertaken.

AUSTRALIAN INDUSTRY DEVELOPMENT CORPORATION

The Australian Investment Development Corporation Limited (AIDC Ltd), a commercial subsidiary of the Australian Industry Development Corporation, was sold to a private consortium on 3 February 1998. AIDC Ltd was a specialised investment banking business, providing project and structured finance services, principally to infrastructure and resource companies. The company's principal liability was its debt to the Australian Industry Development Corporation, arising from its borrowings under the Corporation's Commonwealth Government Guarantee.

The sale achieved the repayment of AIDC Ltd's $3.2 billion debt to the Corporation (which then repaid $600 million of its Commonwealth guaranteed borrowings) and delivered proceeds to the Commonwealth of around $100 million from the sale of its assets.

The Corporation has no residual CN obligations.

AUSTRALIAN NATIONAL LINE LIMITED

Australian National Line Limited (ANL) is a wholly owned Commonwealth share-limited company. It operates as a commercial entity, but is the beneficiary of an explicit Government guarantee put in place on 21 December 1995 to permit its restructuring prior to sale.

Legislation was introduced into Parliament on 26 November 1997 to facilitate the sale process, the commencement of which was formally announced on 18 December 1997. On 26 August 1998, the Government announced that contracts had been signed for the sale of ANL's liner shipping and bulk shipping businesses and that negotiations were continuing on the sale of ANL's land-based businesses.

In this context, CN principles were not applied during 1997-98.

AUSTRALIAN NATIONAL RAILWAYS COMMISSION

The sale and transfer of Australian National Railways Commission (AN) undertakings to other businesses was completed in 1997-98, with the rail access business and assets transferring to the Australian Rail Track Corporation from 1 July 1998. AN has no remaining business undertakings and will be wound up in 1998-99.

In this context, CN principles were not applied during 1997-98.

AUSTRALIAN POSTAL CORPORATION

Australia Post pays all Commonwealth and State taxes and charges. An independent review of its credit rating is currently being undertaken by a credit ratings agency, and will provide the basis for determining any debt neutrality margin to apply to Australia Post borrowings in respect of 1998-99.

The review is to take into account a number of developments, including the outcome of the Government's response to the National Competition Council (NCC) review of the *Australian Postal Corporation Act 1989* (*see* page 66) The relevant review recommendations are reproduced below.

1998 NCC REVIEW OF THE *AUSTRALIAN POSTAL CORPORATION ACT 1989* – RECOMMENDATIONS RELATING TO COMPETITIVE NEUTRALITY

To ensure that Australia Post's business is competitively neutral, the NCC recommends that:

- if there are any taxes, rates and charges remaining to which Australia Post is not currently subject, these should be imposed on Australia Post without delay in accordance with the CPA;

- the *Customs Act* be amended promptly to ensure that all postal operators are subject to a threshold to the same value;

- any provisions which grant Australia Post employees and contractors an exclusive right to operate motorcycles on footpaths be amended to ensure other postal deliverers can obtain similar exemptions when required;

- the following sections of the *Australian Postal Corporation Act 1989* should be removed:

    - section 32, which gives Australia Post the right to impose its own terms and conditions upon which its service can be supplied;

    - section 34, which exempts Australia Post from liability for any loss or damage suffered due to an act or omission by Australia Post;

    - section 46, which gives the Minister the power to influence whether Australia Post undertakes significant business activities;

    - section 90B, which prohibits any State or Territory law from discriminating against Australia Post; and

    - section 90D, which restricts the application of State and Territory building and construction laws to Australia Post prior to 1 January 1991;

- the following be amended as specified:

    - section 48, which requires Australia Post to comply with general policies of the Commonwealth Government if notified to do so by the Minister, be amended to ensure that the Minister must first table the applicable general policies in Parliament; and

- the following sections be extended to cover all postal operators:

    - section 90V, so that all participants are required to place a notification on an article that has been opened for any purpose or reason;

    - Division 2, Part 7B, so that all participants are required to comply with general privacy requirements; and

- section 101, so that all participants are granted title to all postal articles for the purpose of any legal proceeding and that the property rights of customers be clarified.

The NCC also recommended:

- the right of Australia Post to erect posting boxes should be maintained for ordinary red posting boxes suitable for posting standard letters. Otherwise, Australia Post should be subject to the same requirements as other postal service providers; and

- detailed auditing and accounting information on Australia Post's activities, to provide for transparency of the financial relationships between different elements of the business (e.g. retail operations, reserved services and CSO funded services).

AUSTRALIAN RAIL TRACK CORPORATION

The Australian Rail Track Corporation (ARTC) was established as a commercial entity in February 1998. Its primary purpose is to attract private operators to rail operations on the interstate network by providing a single point of access for this network.

ARTC will be required to meet commercially driven shareholder requirements, raise capital in the commercial finance sector, meet Government set commercial rate of return targets and achieve reasonable returns by way of dividend. As a commercial entity, it will be subject to all Commonwealth and State taxes.

AUSTRALIAN TECHNOLOGY GROUP LIMITED

The Australian Technology Group Limited (ATG) was formed in 1994, by the Commonwealth and three private shareholders, in response to a recommendation of the Task Force on Commercialisation of Research in its report *Bringing the Market to Bear on Research*. This report found that Australia's technology transfer bodies (e.g. commercial arms of universities) and venture capital firms did not have the resources, expertise or charter to source, supply or negotiate early stage commercialisation of technology in an adequate manner.

ATG is a technology commercialisation corporation set up to provide early stage venture capital and management expertise, with its staff working with investee personnel to develop a viable business plan and to bring new technology to market. It was established to operate entirely in the private sector of the early stage capital venture market and is governed by a Board of Directors formed by the shareholders.

A review of ATG is currently being carried out by Office of Asset Sales & Information Technology Outsourcing (OASITO), as part of the Government's ongoing broader review of equity holdings in all GBEs. The review is being coordinated by a working group representing OASITO, the Department of Finance and Administration and the Department of Industry, Science and Resources, who have retained the services of Deloitte Corporate Finance and Corrs Chambers Westgarth to conduct a scoping study.

The study will examine the various options for divestment and/or continued management of involvement of the Commonwealth's interest in ATG. The final report is expected in March 1999.

DEFENCE HOUSING AUTHORITY

The Minister for Defence Industry, Science and Personnel and the Minister for Finance and Administration have announced that the Defence Housing Authority would be retained in Commonwealth ownership. A number of structural and corporate governance arrangements are still being considered. This includes development of a CN implementation plan.

ESSENDON AIRPORT LIMITED

Essendon Airport Limited (EAL) is a Commonwealth owned *Corporations Law* company established to operate Essendon Airport, under lease from the Commonwealth.

EAL is subject to the same regulatory regime as privatised airports. Full CN principles apply, with the company subject to the same taxes as other airports. An appropriate rate of return target is being negotiated.

A single shareholder arrangement has been introduced to separate the Government's role as shareholder and regulator. The Minister for Finance and Administration is

responsible for shareholder issues, and the Minister for Transport and Regional Services for regulatory issues.

EXPORT FINANCE AND INSURANCE CORPORATION

The Export Finance and Insurance Corporation (EFIC) undertakes activities to ensure that Australian exporters have access to competitive export finance, insurance and guarantee services.

There have been a number of reviews into the ownership, role and structure of EFIC, with the most recent being undertaken in 1997-98. This latest review took into account the recommendations of the National Commission of Audit, the GBE governance arrangements resulting from the Humphry review[14] and the pre-existing requirement to apply CN to EFIC. Government considered the review findings in December 1997.

The Government decided to retain ownership of EFIC, but as a non-GBE statutory authority. Implementation arrangements for applying CN to EFIC are currently being finalised.

FEDERAL AIRPORTS CORPORATION

The Federal Airports Corporation (FAC) was a government authority established in 1988 to own and operate Federal airports (major city airports) around Australia. The Government privatised three of the FAC's twenty-two airports in 1996-97, and a further fourteen in 1997-98.

Prior to this process, the FAC was largely self-regulating. As part of privatisation, a regulatory regime was established to separate airport regulation and ownership. Regulatory responsibilities brought back to the Commonwealth included regulation of ownership and control, environmental and planning issues, economic regulation and some other regulations pertaining to airport operations.

While Government policy is to transfer regulation of on-airport commercial activities such as liquor licensing and trading to the relevant State or Territory, in some instances, it has been necessary for the Commonwealth to regulate as well.

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[14] Humphry, R. (1997), *Review of GBE Governance Arrangements*, Commonwealth of Australia, March

Those airports remaining in Commonwealth hands (the Sydney Basin and Essendon Airports) were transferred to new Commonwealth owned *Corporations Law* GBEs on 30 June and 1 July 1998. Corporatisation placed these companies under the same regulatory regime as applies to the privatised airports. As at July 1998, the FAC no longer owned or operated any airports. The FAC ceased operating on 24 September 1998.

As a result of these changes, it was not considered necessary to put in place CN arrangements for the FAC during its final year of operation.

HEALTH SERVICES AUSTRALIA LIMITED

Health Services Australia (HSA) was established on 1 July 1997 as a wholly Commonwealth owned share limited *Corporations Law* company. It was formerly the Australian Government Health Service, a branch within the Commonwealth Department of Health and Family Services.

Its principal function is to provide accessible, expert and independent health and medical services in the corporate, occupational and related sectors.

During 1997-98, HSA was subject to an operating structure consistent with its competitors. It pays all Commonwealth taxes and tax equivalents of State and Territory taxes. Rate of return targets have been set by shareholder Ministers.

HOUSING LOANS INSURANCE CORPORATION

The Housing Loans Insurance Corporation was sold on 15 December 1997.

MEDIBANK PRIVATE LIMITED

From 1 March 1998, responsibility for the operation of Medibank Private was transferred to a new company, Medibank Private Limited, under the *Health Insurance Commission (Reform and Separation of Functions) Act 1997*. On 1 May 1998, ownership of Medibank Private Limited was transferred from the Health Insurance Commission to the Commonwealth.

The principal function of Medibank Private Limited is to provide high quality health financing to the Australian public.

The main objective for separating Medibank Private from the Health Insurance Commission was to ensure compliance with CN requirements. During 1997-98, Medibank Private was subject to the same Commonwealth, State and Territory tax regime as its competitors. This included its registration under the *National Health Act 1953* as a not-for-profit organisation.

NATIONAL RAIL CORPORATION

The formal establishment period for the National Rail Corporation (NRC), during which shareholders provided agreed payments to compensate the company for the high initial costs of inefficient functions transferred from shareholder rail authorities, ended on 31 January 1998.

The company now operates on a fully commercial basis, with no CN compliance issues arising during the year 1997-98.

NRC is subject to a sale process, which is expected to be completed in 1999.

SNOWY MOUNTAINS HYDRO-ELECTRIC AUTHORITY

Legislation to corporatise the Snowy Mountains Hydro-electric Authority (SMHEA) was passed by the Commonwealth, New South Wales and Victoria in the second half of 1997.

Once corporatised, Snowy Hydro Limited (the name of the corporatised body) will be subject to all State and Commonwealth taxes and the debt currently carried by SMHEA will be re-financed on commercial terms.

Implementation agreements are currently being negotiated between the three Governments and will be finalised following completion of the Snowy Water Inquiry.

SYDNEY AIRPORTS CORPORATION LIMITED

The Sydney Airports Corporation Limited (SACL) is a Commonwealth owned *Corporations Law* company established to operate the Sydney Basin Airports (Sydney (Kingsford Smith) Airport, Bankstown Airport, Camden Airport and Hoxton Park Airport), under lease from the Commonwealth.

It is subject to the same regulatory regime as privatised airports. Full CN principles apply, with the company subject to the same taxes as other airports. An appropriate rate of return target is being negotiated.

A single shareholder arrangement has been introduced to separate the Government's role as shareholder and regulator. The Minister for Finance and Administration is responsible for shareholder issues, and the Minister for Transport and Regional Services for regulatory issues.

TELSTRA CORPORATION LIMITED

Telstra has been partially privatised, with consideration being given to further privatisation. It pays all Commonwealth, State and Territory taxes and charges. An independent credit ratings agency has recently indicated that its credit rating of Telstra is determined on a "stand alone" basis, which suggests a zero debt neutrality margin for CN purposes.

2.2.2. Non GBE Commonwealth Share-Limited Companies

Non-GBE Commonwealth share-limited *Corporations Law* companies should have their CN arrangements approved by the responsible portfolio Minister. The CN guidelines require that these companies:

- pay all Commonwealth direct and indirect taxes, as well as State indirect taxes or tax equivalents;
- where borrowing from private financial markets, have a debt neutrality charge set by their shareholder Ministers based on stand-alone credit rating advice; and
- where borrowing from the Budget, have a commercial interest rate determined by the Department of Finance and Administration based on stand alone credit rating advice.

EMPLOYMENT NATIONAL LIMITED & SUBSIDIARY

Employment National Limited and its subsidiary company, Employment National (Administration) Limited were established in May 1998.

A transitional rate of return is to be applied in the formative stages of Employment National's operation due to the uncertainties associated with the relatively untested employment services market.

In consultation with the Department of Finance and Administration, a commercial rate of return target applicable from 1999-2000 has been determined as part of the (inaugural) 1998 corporate plan negotiation process. Employment National was advised of this target on 5 June 1998 by shareholder Ministers. A dividend ratio was also agreed.

In relation to its bids for Job Network contracts, Employment National is treated in the same manner as other tenderers. The operations of Employment National Limited and the competitive tendering process for the Job Network contracts both comply with CN principles.

2.2.3 Commonwealth Business Units

CN arrangements applied to Commonwealth Business Units are to be approved by the responsible portfolio Minister. The CN guidelines require Business Units:

- pay Fringe Benefits Tax (FBT) and Wholesale Sales Tax (WST), unless an exemption is available for reasons other than their public ownership;
- make tax equivalent payments for remaining Commonwealth and State taxes;
- meet the required commercial rate of return on assets target set by the relevant Department, in consultation with the Department of Finance and Administration; and
- where borrowing from the Budget, pay a commercial interest rate determined by the relevant portfolio Minister in consultation with the Department of Finance and Administration, based on stand alone credit rating advice.

ARTBANK

Artbank has no significant CN issues (there has been no change to its activities from the previous reporting period).

payout

ASSET SERVICES

Asset Services was sold on 30 September 1997.

AUSCRIPT

Auscript was sold on 26 June 1998.

AUSTRALIAN GOVERNMENT ANALYTICAL LABORATORY

In March 1997, a Memorandum of Understanding (MOU) was agreed between the (then) Minister for Finance and the (then) Minister for Administrative Services for the purpose of establishing a framework for the operations of the Australian Government Analytical Laboratory (AGAL).

The MOU requires AGAL to operate under an individual Group 2 Trust Account (now FMA Commercial Activities Fund) and to comply fully with the CPA. AGAL is required to meet the principles established in the Commonwealth's CNPS.

In 1997-98, AGAL made payments to the Australian Taxation Office in respect of FBT, and paid into consolidated revenue a tax equivalent amount in lieu of indirect taxes consisting of payroll tax, WST and state government stamp duties.

A rate of return requirement has been set, however, no payments were made in 1997-98 against a trading loss of $1.9 million (subject to audit).

Members of supplier panels set up to deliver outputs for AGAL's CSO funded Public Interest Program have been required to declare they operate under an appropriate CN regime.

AUSTRALIAN GOVERNMENT HEALTH SERVICE

On 1 July 1997, the Australian Government Health Service, a branch of the Department of Health and Family Services was corporatised as a wholly Commonwealth owned share limited company established under the *Corporations Law*, Health Services Australia (*see* page 156).

AUSTRALIAN GOVERNMENT PUBLISHING SERVICE

Market testing during the period 1997-98 resulted in the divestment of a range of commercial activities and the subsequent sale of the Australian Government Publishing Service (AGPS).

- The Tuggeranong (ACT) Instant Print and Copy Centre was transferred to the Department of Social Security. Surplus equipment was offered for sale under the tender for sale of the printing operations. The transfer of the copy centre was finalised during June 1997, and the assets in October 1998.

- The Canberra (ACT) and Melbourne (Queen St, Vic) Instant Print and Copy Centres were closed during July 1997, with no commercial interest in their sale. Assets from these two sites were made available for sale in subsequent tender processes.

- Security Printing (Kingston, ACT), which produced the Australian Passport, was sold on 18 July 1997 to the American Banknote Company.

- The Hobart (Tas) Instant Print and Copy Centre was sold to Snap Franchising Limited on 25 July 1997.

- The Brisbane (Qld) Instant Print and Copy Centre was sold to Moffat Printing Pty Limited on 25 July 1997.

- The Government Printing Office, which included the Kingston (ACT) Instant Print and Copy Centre, was sold to CanPrint Communications Pty Limited on 8 October 1997.

- The Information Solutions Group (ISG) ceased all new work in October 1997, and all outstanding projects and accounts were finalised by February 1998. Project managing printing and publishing is now the responsibility of each individual department or agency.

- The Belconnen (ACT) Instant Print and Copy Centre was sold to Shoreban Pty on 17 October 1997.

- The Melbourne (Nauru House, Vic) Instant Print and Copy Centre was sold to Pink Panther Printing on 17 October 1997.

Through the sale processes it was determined that there was no commercial interest the network of Government Info Shops, Publications Warehouse and TeleInfo Services. To finalise the market testing process, these services were put out to tender to find a facilities management solution. CanPrint Communications Pty Limited (ACT) won this tender. The negotiated handover date was 31 July 1998.

With the finalisation of the market testing of the former AGPS, the Commonwealth completed the handover of the Wentworth Avenue, Kingston facility to the ACT Government.

AUSTRALIAN GOVERNMENT SOLICITOR

Australian Government Solicitor (AGS) replaces the former Legal Service.

In 1997, the Government introduced a Bill into Parliament to amend the *Judiciary Act 1903* to establish AGS as a separate statutory authority. This Bill was passed by the House of Representatives in November 1997, but lapsed when the Parliament was prorogued in August 1998.

CN principles are not currently applied.

AUSTRALIAN OPERATIONAL SUPPORT SERVICES

Australian Operational Support Services was sold on 15 August 1997.

AUSTRALIAN PROPERTY GROUP

The Australian Property Group was sold on 1 October 1997.

AUSTRALIAN PROTECTIVE SERVICE

The Australian Protective Service has incorporated CN arrangements into its pricing since 1 July 1998.

AUSTRALIAN SURVEYING AND LAND INFORMATION GROUP

The Australian Surveying and Land Information Group (AUSLIG) market tested the sale of its commercial activities and the outsourcing of its CSO activities during 1997-98. As a result:

- AUSLIG's commercial activities were sold to a private sector firm;
- four external organisations were appointed to a panel of service providers for map and data production associated with AUSLIG's national mapping program;
- contracts were awarded:
  - for the provision of mapping under a facilities management arrangement using AUSLIG's equipment and procedures;
  - to construct, operate and maintain a laser ranging observatory to replace AUSLIG's obsolete observatory; and
  - to maintain AUSLIG's archive of aerial photography and manage distribution;
- map and data distribution functions were retained in-house after a market testing process revealed no advantage in outsourcing; and
- an existing contract for the operation of AUSLIG's remote sensing operations was continued.

AUSTRALIAN VALUATION OFFICE

The Australian Valuation Office implemented CN during 1997-98.

DAS CENTRE FOR ENVIRONMENTAL MANAGEMENT

DAS Centre for Environmental Management was sold on 23 October 1997.

DAS DISTRIBUTION

DAS Distribution was sold on 1 September 1997.

DAS INTERIORS AUSTRALIA

DAS Interiors Australia was sold on 12 September 1997.

DASFLEET

DASFLEET was sold on 1 September 1997.

NATIONAL TRANSMISSION AGENCY

The National Transmission Network (NTN) is a network of broadcasting transmission facilities used primarily to broadcast television and radio programs of the ABC and SBS. The NTN also accommodates commercial and community broadcasters, and telecommunications and radiocommunications service providers.

Since 1992, the NTN has been operated by the National Transmission Agency (NTA), a separate cost centre within the Commonwealth Department of Communications, Information Technology and the Arts. The Government announced its intention to sell the NTN on 10 July 1997.

The NTA is a Government business activity with a commercial turnover of more than $10 million per annum. However, CN principles have not been applied to the NTA as it has been Government policy to sell the NTN.

The *National Transmission Network Sale Bill 1997* and the *National Transmission Network Sale (Consequential Amendments) Bill 1997* lapsed when the Parliament was prorogued in August 1998.

REMOVALS AUSTRALIA

Removals Australia (the Commonwealth's relocation brokerage business) operates on a cost recovery basis, and is progressively being subject to commercial management practices (including achieving a commercial rate of return on assets).

ROYAL AUSTRALIAN MINT

CN arrangements were applied to the Royal Australian Mint from 1 July 1998. These arrangements include establishment of a commercial rate of return based upon its

weighted average cost of capital, payment of wholesale sales tax, implementation of a tax equivalent regime for other taxes, formal ministerial agreement for its coin museum CSO and repayment of budget borrowings at commercial rates.

WORKS AUSTRALIA

Works Australia was sold on 14 September 1997.

2.2.4 Commercial Business Activities (over $10m p.a.)

CN arrangements applying to significant commercial business activities provided by non-GBE statutory authorities or Commonwealth Departments are to be approved by the relevant portfolio Minister. The CN guidelines require significant commercial activities to:

- pay FBT and WST (unless exemptions are available to them for reasons other than their public ownership);
- make tax equivalent payments for remaining Commonwealth and State taxes;
- meet the required commercial rate of return on assets target set by the relevant Department, in consultation with the Department of Finance and Administration;
- where borrowing from private financial markets, have any debt neutrality charge set by the relevant portfolio Minister based on stand alone credit rating advice; and
- where borrowing from the Budget, pay a commercial rate of interest determined by the relevant portfolio Minister in consultation with the Department of Finance and Administration, based on stand alone credit rating advice.

AIRSERVICES AUSTRALIA

Airservices Australia is a monopoly provider of air navigation, rescue and fire fighting services in the aviation industry. In 1997, the Government initiated a review of the scope for introducing contestability and reducing the residual regulatory functions of what is by-and-large a commercial entity, albeit with a primary responsibility for

safety. The review, led by a New Zealand industry expert, reported in early 1998. The report has been considered by Government, but not published.

CN in the provision of services to airport operators by air traffic control providers – both Airservices Australia and other parties – has been addressed in the review. The Government has determined, and the Minister for Transport and Regional Services has stated publicly, that the Civil Aviation Safety Authority, will set entry standards for air traffic controllers and air traffic control processes, to ensure that Airservices Australia will not continue to manage entry to the industry at the time competition emerges.

Experienced overseas providers of air traffic control services have a presence in Australia, and some Australian firms are also capable of providing these services.

A similar situation applies with respect to rescue and fire-fighting services.

En-route services are now and will remain an Airservices Australia monopoly, for technical reasons.

ALBURY WODONGA DEVELOPMENT CORPORATION

At the 1995 Albury-Wodonga Ministerial Council meeting, it was agreed that the Albury Wodonga Development Corporation (AWDC) would be wound up over a five year period. Under the terms of this decision, the role of the AWDC is limited to the sale of its assets.

At the 1997 Ministerial Council meeting, the timeframe for the wind up of the Corporation was extended to eight years. It was also agreed that both NSW and Victoria would withdraw from the Albury-Wodonga Growth Centre Project subject to the repeal or amendment of the relevant State and Commonwealth legislation.

The necessary amendments to the *Albury-Wodonga Development Act 1973* have not yet been enacted. It is expected, therefore, that the withdrawal of NSW and Victoria may take some time.

ARMY AND AIR FORCE CANTEEN SERVICE

There are no major CN issues in relation to the retailing services of the Army and Air Force Canteen Service (the situation is unchanged from the previous reporting period).

AUSTRALIAN BROADCASTING CORPORATION

The Australian Broadcasting Corporation (ABC) has two business areas subject to CN. These are ABC Enterprises (consumer goods) and its facilities hire activities.

Discussions are continuing in relation to agreeing an appropriate CN model for these activities, including the payment of an appropriate taxation equivalent.

In November 1997, the ABC Chairman wrote to the Minister for Communications, the Information Economy and the Arts indicating a preference for applying accounting separation to ABC Enterprises rather than legal separation on the grounds of cost effectiveness. The Chairman also indicated that the ABC's business activity guidelines would be revised to ensure that ABC business activities operate in an environment of greater transparency and accountability.

In relation to ABC Enterprises, the ABC has subsequently advised that it has substantially implemented an accounting separation model and that arrangements to provide a greater level of transparency will be completed during 1998-99.

AUSTRALIAN NATIONAL UNIVERSITY

The Ministerial Council for Employment, Education, Training and Youth Affairs (MCEETYA) and the Council of Australian Governments (CoAG) Secretariat endorsed a CN implementation strategy for all universities (identified below).

The Australian National University is expected to conduct its commercial activities in accordance with this strategy. Efforts are currently being made to ensure that universities have a clear understanding of how to fully cost their activities. This includes the development of national pricing guidelines for universities.

MCEETYA AND COAG SECRETARIAT: COMPETITIVE NEUTRALITY IMPLEMENTATION STRATEGY FOR UNIVERSITIES

RECOMMENDATION

That Ministers note that a common approach to the implementation of competitive neutrality to universities should reflect the key principles of the Competition Principles Agreement that competitive neutrality should be applied to significant business activities and the benefits of implementation should outweigh the costs.

As a common approach Ministers agree that:

- the issues of competitive neutrality in respect of undergraduate and postgraduate education, enabling courses and libraries be considered further after the Commonwealth Review of Higher Education Financing and Policy has reported. The Commonwealth, States and Territories will then consider the recommendations made by the Review Committee on these issues;

- those activities of universities, which are undertaken on a fee for service basis but are also intrinsic to achieving the social, cultural and economic objectives of the higher education program, be subject to minimalist pricing principles to achieve transparency. Such activities would include research and development, consultancies, continuing education and residential colleges:

  - while the pricing principles would include all commercial costs, such as notional infrastructure costs and tax, their use would not preclude cross
    activities and non-commercial activities;

- activities which compete in a wider market place to a significant degree but are instrumental in achieving the objectives of the higher education program (such as residential accommodation, catering, bookshops) should be structurally separate and subject to minimalist pricing principles to achieve transparency. While these activities should not be required to make a fully commercial return on resources, any concessions that a university allows must be directed to those services directed within the university. Services provided in the wider market place should be on a fully competitively neutral basis, including a return on resources and notional taxes. Significance will need to be judged in the context of the specific market;

- where activities are significant and purely commercial in an external market (such as property development and manufacturing for retail and wholesale sale) a fully commercial regime should apply. Significance will need to be judged in the context of the specific market; and

- the Chair of MCEETYA send the recommendations to the Council of Australian Governments with a view to that Council adopting the recommendations for the higher education sector.

That Ministers agree to further work by the Taskforce as follows:

- the development of practical pricing guidelines for commercial activity undertaken by universities and report on progress to Ministers at the next MCEETYA meeting. Pricing principles would have to pay attention to the cost of adopting particular accounting regimes; and

- addressing any unresolved issues, including tax issues and the definition of structural separation.

AUSTRALIAN WHEAT BOARD

From 1 June 1998, the Australian Wheat Board (AWB), a statutory authority, has conducted its marketing, pooling and financing functions through subsidiary companies operating under *Corporations Law*-pooling subsidiary will be subject to income tax and

The wholly owned parent subsidiary (AWB Ltd) operates through two wholly owned subsidiaries: AWB (International) Ltd, which is responsible for pool marketing and grower payments; and, AWB (Australia) Ltd, which undertakes domestic grain trading and other commercial operations. AWB Ltd itself provides financing and other services to the subsidiaries.

These arrangements are the first stage in the conversion of the AWB Group to grower ownership from 1 July 1999. At this time, the levy on wheat sales to build up the Wheat Industry Fund (WIF) will cease and the WIF will be converted to B-class shares in AWB Ltd (the grower owned parent company) to become its capital base.

Under CN principles the non
State and Territory taxes during the transitional period. It was considered unnecessary to implement borrowing levy or commercial rate of return provisions, given the expected limited impact of these measures and the impending privatisation of the AWB.

The imposition of taxation regimes on the commercial activities of AWB Ltd during the transitional period will revoke the AWB's previous taxation advantage. This should improve competition in the domestic market for grains, with flow–on benefits to growers and end–users.

These transitional changes allow the AWB Group to adapt to a commercial environment, even though still being owned and controlled by the Government through the AWB. From 1 July 1999, CN will cease to be an issue as the companies

will be privatised and, therefore, subject to same taxes and charges as other private companies.

The only role for the Commonwealth government with respect to wheat marketing after 1 July 1999 will be to provide the wheat export monopoly under legislation through the new Wheat Export Authority.

COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH ORGANISATION

On 24 September 1997, the (then) Minister for Industry, Science and Tourism advised the Commonwealth Scientific and Industrial Research Organisation (CSIRO) of the Government's decision regarding the application of CN. Specifically, CSIRO is required to:

- include commercial pre-tax rate of return (RoR) and taxation equivalent regime (TER) components in the charges for any consulting and technical service activities undertaken; and

- use full cost pricing in the costing of research project bids, unless there are national interest considerations, and include allowances for tax and RoR targets if these are known to be incurred by competing bidders.

The Minister approved the framework for implementing CN in CSIRO on 11 May 1998, with CSIRO's policy on CN being released on 1 July 1998. The changes to CSIRO's costing and pricing policies apply to all new contracts entered into from 1 July 1998. All of CSIRO's commercial activities are now subject to CN principles and the CN complaints mechanism.

It is CSIRO policy that:

1. all projects/activities should be costed to identify their full costs (including divisional and corporate overheads) to CSIRO;

2. the pricing of commercial activities must be based on the perceived value to the client and estimate of their full costs;

3. for technical and consulting services, the price must cover the estimated full costs and include commercial pre-tax RoR and TER components (a CN on-cost factor);

4. for research projects, the price must cover the estimated full costs, unless there are national interest considerations, and include commercial pre-tax RoR and TER components (a CN on-cost factor), if tax and RoR requirements are known to be incurred by competing bidders; and

5. all pricing decisions, including the estimate of costs, must be fully documented and retained for audit purposes as part of the risk assessment in the contract approval process.

To ensure transparency of funding arrangements, commercial activities are required to be structured on a project/activity basis to facilitate accounting separation and attribute all costs (including divisional overheads) on a project/activity basis.

The Government has agreed that CN does not apply to services provided by the National Research facilities administered by CSIRO, as there is no actual or potential competitor. These facilities are the Australia Telescope, the Australian Animal Health Laboratory, the Oceanographic Research Vessel *Franklin* and the National Measurement Laboratory.

HEALTH INSURANCE COMMISSION

CN obligations were satisfied with the transfer of ownership of Medibank Private Limited to the Commonwealth on 1 May 1998 (*see* page 156).

RESERVE BANK OF AUSTRALIA

The following Reserve Bank of Australia (RBA) businesses have been subject to the application of CN: Note Printing Australia; Reserve Bank Information Transfer System (RITS); transaction banking; specialised cash distribution; and registry.

Note Printing Australia was corporatised on 1 July 1998, with the RBA exiting the specialised cash distribution business. The remaining businesses are being conducted with separate accounts based on full cost allocation and other CN principles. Performance data for those businesses will be provided in the RBA Annual Report.

With regard to the RBA's registry operations performed on behalf of the Commonwealth Treasury, Treasury examined the option of putting the Registry business out to tender. For a number of reasons, including the small scale of the

operation, possible financial risks and undertakings provided by the RBA, it was decided not to proceed with this option.

SPECIAL BROADCASTING SERVICES

During 1997-98, the Minister for Communications, the Information Economy and the Arts wrote to the Chairman of the Special Broadcasting Services (SBS) to clarify the application of CN arrangements. The Minister indicated that the SBS' current arrangements for raising advertising and sponsorship revenue (its major commercial activity) are appropriate for meeting CN arrangements. The SBS is required to notify the Minister if these arrangements change or its competitive position improves.

The SBS Chairman has provided an assurance to the Minister that whenever SBS operates in a commercial market it will do so on a neutral basis and it will not gain a net competitive advantage simply as a result of its public ownership.

UNIVERSITY OF CANBERRA

On 1 December 1997, responsibility for the *University of Canberra Act 1988* was transferred from the Commonwealth to the Australian Capital Territory (ACT) by Schedule 1 of the *Education Legislation Amendment Act 1997*.

The application of CN principles to commercial activities undertaken by the University of Canberra will now be a matter for the ACT Government.

WOOL INTERNATIONAL

Wool International (WI) sells stockpile wool to Australia-based exporters and early stage processors. It does not act as a trader in fresh wool, and so is not in competition with wool traders. Rather, WI's wool sales activities are confined to supplying stockpile wool into the wool pipeline, in competition with sales of fresh wool by growers.

WI is required to sell the stockpiled wool on behalf of woolgrowers in a manner that is designed to enhance its value and, in turn, the value of wool production. The continuing existence of the wool stockpile remains a competitive force in the marketplace for woolgrowers, regardless of its ownership.

As the competitive impacts of WI's wool sales activities are confined to woolgrowers (whom they are designed to advantage), a Competitive Neutrality Working Group considered that CN policy is not applicable to the sale of wool from the stockpile.

2.2.5 Other Commonwealth Activities

There are a number of non-significant Commonwealth business activities for which the application of CN principles is being considered or undertaken. They may also be required to implement CN as a result of a complaint to the Commonwealth Competitive Neutrality Complaints Office (*see* **section 2.3**).

These non-significant business activities have to earn a commercial rate of return (set by their parent agency), pay WST and FBT (unless exemptions are available for reasons other than government ownership) and make tax equivalent payments for remaining Commonwealth indirect taxes.

Other CN costs may be incurred on an (auditable) notional basis, for example, payments of remaining Commonwealth direct taxes, State indirect taxes and debt neutrality charges.

EXAMPLES

While the **Bureau of Meteorology's** commercial activities are not significant, the Government is considering the application of CN to commercial meteorological services as part of its response to the report *"Capturing Opportunities in the Provision of Meteorological Services*".

The **Australian Geological Survey Organisation, the Australian Bureau of Agricultural and Resource Economics (ABARE) and the Bureau of Resource Sciences** have modified their costing models to include a tax equivalence regime and a proxy for a rate of return when costing for competitive bids.

A review of the operations of **Aboriginal Hostels Limited** is expected to commence in early 1999. The terms of reference include the requirement for the review to address the operations of the company in relation to CN principles and its CSOs.

2.2.6 Competitive Tendering & Contracting

Competitive tendering and contracting is a process of selecting a preferred supplier from a range of potential contractors by seeking offers and evaluating those offers on the basis of one or more selection criteria. This may involve a choice between an in-house supplier and external contractors (from either the private or public sector).

CN arrangements should be applied to all bids by Commonwealth Government 'in-house' units for activities subject to the Competitive Tendering and Contracting (CTC) Guidelines issued by the Department of Finance and Administration. This ensures that in-house units compete on a comparable basis to private (and other public) sector competitors.

In practice this means:

- in undertaking market testing to determine whether or not to competitively tender for the supply of a particular good or service, CN requirements are to be incorporated in costing in-house supply;

- where it is determined to competitively tender for the supply of the good or service, that activity is to be regarded as a commercial activity. Any significant in-house bid needs to reflect the full cost of providing the good or service:

    - this includes an attribution for any shared and joint costs, payment of FBT and WST (on direct purchases), tax equivalent payments for remaining Commonwealth and State taxes, debt neutrality charges, a notional amount equivalent to any public liability insurance premiums a private sector contractor may be required to pay; and

    - incorporate a commercial pre-tax rate of return on assets. Where plant and facilities are to be made available to all bidders as Government furnished, in house bids do not need to include a rate of return on such capital; and

- the Commonwealth purchaser of the good or service is entitled to require that all tender bids submitted by government owned or funded activities certify compliance with Commonwealth CN requirements:

- non-compliance could result in a complaint being made to the Commonwealth Competitive Neutrality Complaints Office (*see* **section 2.3**).

CTC units with turnover (bid) under $10 million per annum still have to earn a commercial rate of return (set by their parent agency), pay FBT and WST (unless exemptions are available for reasons other than government ownership) and tax equivalent payments for remaining Commonwealth indirect taxes. However, other CN costs may be incurred on an (auditable) notional basis e.g. payments of remaining Commonwealth direct taxes, States indirect taxes and debt neutrality charges.

EXAMPLES

AUSLIG market tested the sale of its commercial activities and the outsourcing of its CSO. Requests for Tender (RFT) were released for AUSLIG's mapping, satellite laser ranging and product distribution services. Where publicly owned or funded organisations responded to the RFT, they were required to demonstrate CN compliance, with the Commonwealth reserving the right to undertake an independent assessment on CN claims.

A major CTC process was undertaken to outsource a large proportion of the **Department of Finance and Administration** Corporate Group's operational activities. This process, although large, used standard methodology for tendering practices. No in-house bids were submitted, although various costing studies were progressed to determine real comparable costs. An in-house bid was made for the communication infrastructure rollout component. All tenderers were treated equally and the in-house bid was unsuccessful.

The **Productivity Commission** conducted market testing for the provision of information technology (IT) infrastructure and services, using external consultants to provide experience and objectivity in comparing bids. The Commission followed government procurement guidelines, and consulted the Victorian Government's *Guide to Implementing Competitively Neutral Pricing Principles* when preparing the statement of internal costs. Full cost attribution included human resources costs, accommodation costs, consumables and other costs directly incurred by the IT area, service costs, capital costs and a rate of return.

Box 8: Is the Bid really CN Compliant?

In the case of a 1997 mapping tender, AUSLIG engaged Ernst & Young to ensure that tenders by the government owned/funded NSW Land Information Centre and New Zealand Terralink met CN principles.

Terralink complied but the NSW Land Information Centre did not, although it was regarded as making progress toward full CN compliance. As a consequence, the NSW Land Information Centre was offered a position on a panel contract with the provision that no work would be issued until full CN compliance was demonstrated.

As a general rule, a statement by the publicly owned or funded tender to the effect that its bid price is CN compliant is sufficient. In some circumstances, it may not prove cost effective to pursue the matter further.

Where other bidders (including in-house bidders) are concerned that CN compliance has not been achieved, the matter can and should be referred to the relevant CN Complaints Office (State, Territory or Commonwealth).

2.3 Alleged Non Compliance with CN Principles

The Commonwealth Competitive Neutrality Complaints Office (CCNCO) is an autonomous unit within the Productivity Commission. It was established under the *Productivity Commission Act 1998* to receive complaints, undertake complaint investigation and advise the Treasurer on the application of CN to Commonwealth Government activities.

Any individual, organisation or government body may lodge a formal written complaint with the CCNCO on the grounds that:

- a Commonwealth business activity has not been exposed to CN arrangements (including a commercial activity below the $10m per annum turnover threshold[15]);
- a Commonwealth business activity is not complying with CN arrangements that apply to it; or
- current CN arrangements are not effective in removing a Commonwealth business activity's net competitive advantage, which arises due to government ownership.

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15 This includes Commonwealth owned *Corporations Law* companies limited by guarantee, which are not otherwise subject to competitive neutrality requirements.

Where the CCNCO considers that CN arrangements are not being followed, it may directly advise government business entities as to the identified inadequacies and actions to improve compliance. If a suitable resolution to a complaint cannot be achieved in this manner, the CCNCO may recommend appropriate remedial action or that the Treasurer undertakes a formal public inquiry into the matter.

Any person contemplating a complaint should discuss their concerns with the government business involved and/or the CCNCO prior to initiating a formal complaint investigation process.

Commonwealth Competitive Neutrality Complaints Office
Locked Bag 3353
BELCONNEN ACT 2617

Telephone:	**(02) 6240 3377**
Facsimile:	**(02) 6253 0049**
Website:	**http://www.ccnco.gov.au**

2.3.1 Complaints Received in 1997-98

No formal CN complaints were received in 1997-98. Consequently, no remedial action by Commonwealth Departments or agencies in response to CCNCO recommendations was necessary.

2.4 Commonwealth Actions to Assist CN Implementation

2.4.1 Policy Measures

The Borrowing Levy under the *Commonwealth Borrowing Levy Act 1987* was set to zero on 16 December 1997, facilitating the introduction of debt neutrality charges. Debt neutrality charges, unlike the Borrowing Levy, can be uniquely determined for each specific business or activity.

It is also general Government policy not to issue a Commonwealth Government Guarantee on new borrowings. Where these are to be provided, the approval of the portfolio Minister, the Treasurer and the Prime Minister is required.

2.4.2 Publications

A handbook entitled *Commonwealth Competitive Neutrality Guidelines for Managers* was released in early 1998, to assist in the application of CN principles to the wide range of Commonwealth significant business activities. Copies of this handbook are available from the Commonwealth Department of the Treasury or the Treasury website.

The CCNCO released its research paper *Cost Allocation and Pricing* in October 1998. The paper examines these issues in the context of significant business activities operating within non-GBE Commonwealth authorities or Departments meeting their CN obligations. A second paper, *Rate of Return Issues*, was released in December 1998. This paper provides general advice on establishing a commercial rate of return on assets target, particularly for small government business activities, and those factors the CCNCO will take into account when rate of return issues arise in a complaint. These publications are available from the CCNCO.

In March 1998, the Commonwealth Department of Finance and Administration released its handbook *Competitive Tendering and Contracting Guidance for Managers*, which explains the requirement for CN compliance. This publication is available from that Department.

3. STRUCTURAL REFORM OF PUBLIC MONOPOLIES

3.1 Commonwealth Management of the Structural Reform Process

The *Competition Principles Agreement* (CPA) does not prescribe an agenda for the reform of public monopolies. Clause 4 of the CPA does, however, require that before the Commonwealth introduces competition into a sector traditionally supplied by a public monopoly, it must remove from the public monopoly any responsibilities for industry regulation. The relocation of these functions will prevent the former monopolist from establishing a regulatory advantage over its existing and potential competitors.

Furthermore, prior to introducing competition into a market traditionally supplied by a public monopoly and/or privatising a public monopoly, the Commonwealth must also undertake a review into:

- the appropriate commercial objectives for the public monopoly;
- the merits of separating any natural monopoly elements from potentially competitive elements of the public monopoly;
- the merits of separating potentially competitive elements of the public monopoly;
- the most effective means of separating regulatory functions from commercial functions of the public monopoly;
- the most effective means of implementing the competitive neutrality principles set out in the CPA;
- the merits of any community service obligations undertaken by the public monopoly and the best means of funding and delivering any mandated community service obligations;

- the price and service regulations to be applied to the industry; and
- the appropriate financial relationships between the owner of the public monopoly and the public monopoly, including rate of return targets, dividends and capital structure.

The requirement for review acknowledges that the removal of regulatory restrictions on entry to a marketplace may not be sufficient to foster effective competition in sectors currently dominated by public monopolies. Effective competition requires both a competitive market structures.

The public monopoly must be restructured on a competitively neutral basis to remove any unfair competitive advantages resulting from its government ownership. However, the new organisation must also be sufficiently flexible to respond in a changed environment, particularly if it is to be privatised. This may result in the organisation being separated into different entities.

Structural reform of public monopolies is often linked with the provision of access rights to essential infrastructure services previously under their sole control (*see* **Chapter 4**).

During the reporting period, the Commonwealth considered Clause 4 matters in relation to telecommunications, aviation services and wheat marketing arrangements.

3.1.1 Telecommunications Industry Sector

The telecommunications sector has been open to full competition since 1 July 1997. It is regulated by legislation, predominantly the *Telecommunications Act 1991* and Parts XIB and XIC of the *Trade Practices Act 1974* (TPA).

The Australian Communications Authority, an independent statutory authority, is generally responsible for ensuring industry compliance with legislative requirements. The Australian Competition and Consumer Commission (ACCC) is responsible for administering the telecommunications competition regime in Parts XIB and XIC of the TPA.

Telstra Corporation Limited, the previous monopoly supplier of telecommunications services, has no regulatory functions.

The Commonwealth's review obligations under clause 4 were broadly satisfied through a series of related reviews prior to the partial privatisation of Telstra in 1997. However, the National Competition Council has expressed concern that the Commonwealth has a residual obligation to examine the treatment of remaining monopoly elements.

The Australian Competition and Consumer Commission (ACCC) has established a telecommunications working group to review Telstra's accounting and cost allocation arrangements, to assist the development of an enhanced accounting separation model for Telstra businesses.

Amendments contained within the *Telecommunications Legislation Amendment Bill 1998* aim, among other things, to enhance the ACCC's powers to apply such a model. This model will assist the ACCC to ensure Telstra does not cross subsidise contestable activities being performed by its business units from the returns to its monopoly services.

The responsible Minister is required to initiate a review of Part XIB of the TPA by 1 July 2000. This review will provide an opportunity to consider the effectiveness of the accounting separation arrangements and other aspects of the regime.

3.1.2 Federal Airports Corporation

The Federal Airports Corporation (FAC) owned and operated most of Australia's major airports from 1988 until 1997, when privatisation of the airports through the sale of long term leases commenced.

Long-term leases for the first 3 of the 22 airports were signed in 1997, with the sale of leases for a further 14 airports completed by mid 1998. The remaining five airports (the Sydney Basin and Essendon Airports) were leased to newly created Commonwealth owned companies in mid 1998. The FAC ceased operating in September 1998.

Some aspects of airport operations exhibit monopoly characteristics. In approaching privatisation, the Commonwealth put considerable effort into creating a regulatory framework that would maximise competition and protect consumer interests following privatisation.

3.1.2.1 Airport Industry Regulation

The FAC was self regulating in a large number of areas, including land use and environmental planning and control, commercial and retail trading and liquor licensing. As part of the sale process, the Parliament passed the *Airports Act 1996* that removed these responsibilities from airport lessees.

Provisions were also put in place relating to land use planning and the environment that require airport lessees to develop long term plans for the development and protection of the environment at the airport.

Commonwealth-appointed statutory office holders assess day to day compliance with Building Control and Environmental Protection Regulations at the airports. These requirements apply to all the leased airports (including Commonwealth owned airports), with the exception of the Mount Isa and Tennant Creek airports. These airports are subject to the relevant State and Territory planning laws.

In relation to control of on-airport activities, including commercial and retail trading and liquor licensing, the approach has been to subject airport lessees to State or Territory regulations. The aim is to place on-airport businesses in a competitively neutral regulatory position with respect to businesses operating off-airport. In some cases, it was necessary for the Commonwealth to make regulations on these matters in order to ease the transition to the new arrangements under privatisation. However, the Commonwealth is continuing to work with relevant State and Territory agencies so that airport specific regulations can be removed over time.

3.1.2.2 Introducing Competition to Airports

The framework established by the Government creates incentives for airport lessees to operate in a commercial manner, while still ensuring the public interest is protected. For example, responsibility for development of the airports rests entirely with lessees. The Master Planning provisions of the *Airports Act*, however, require lessees to publicly document their plans for future development of the airport – this ensures lessees are undertaking such planning and allows stakeholders and the community to provide input to these planning processes.

Through legislative and sales processes, the Government has put in place arrangements that will encourage competition between airports to the greatest extent possible. The *Airports Act* requires airlines not own more than 5% of an airport operator company, and there are cross ownership restrictions of 15% between the

Sydney airports (Kingsford Smith and Sydney West) and Melbourne, Brisbane and Perth airports.

The *Airports Act* contains special provisions to ensure that businesses are able to obtain access to airport infrastructure to provide civil aviation services in line with Part IIIA of the *Trade Practices Act 1974*. These provisions are designed to promote competition between businesses on the airport.

An economic regulatory regime has also been established, administered by the ACCC, to protect users against potential abuse of monopoly power by airport lessees. The prices oversight regime provides for a CPI-X price cap on a defined set of aeronautical services at core regulated (major) airports for five years. The 'X' factor reflects expected productivity improvements at each airport. The ACCC is responsible for determining the X values, which range from 1.0 to 5.5.

A second element is price monitoring of aeronautical-related services. Aeronautical-related services are services outside the price cap where operators could exert significant market power at individual airports. The ACCC's role is to monitor the prices of these services and take action where appropriate.

A potential effect of the price cap is that a business operator could lower prices in line with the cap but also reduce costs by allowing the infrastructure to deteriorate. Complementary to the prices oversight regime is a "quality of service" monitoring regime. Quality of service monitoring is designed as a check against such an outcome. It is not designed to compare airports but to monitor individual airport performance over time.

3.1.3 Australian Wheat Board

From 1 July 1999, the statutory Australian Wheat Board (AWB) will cease to operate, and the wholly owned subsidiary companies, through which its marketing and financing operations have been conducted since June 1998, will become grower owned and controlled.

At this time the levy on wheat sales used to build up the Wheat Industry Fund (WIF) will cease, and the WIF will be converted to B-class shares in AWB Ltd (the grower owned parent company) to form its capital base. A–class shares in AWB Ltd will also be issued, but only to wheat growers, to provide for grower control of the company.

The AWB's current export control powers will transfer to a new statutory Wheat Export Authority (WEA).

Establishing a separate export control body, with an independent board without majority grower membership provides for the separation of regulatory and commercial functions in accordance with NCP principles. The only role for the Commonwealth government with respect to wheat marketing after 1 July 1999 will be to provide the wheat export monopoly under legislation.

The WEA will be required to monitor and report on the use of the monopoly by the pooling subsidiary AWB (International) Ltd, which will be given an automatic right to export bulk wheat through the legislation. It is also required to review AWB (International) Ltd's performance in using the monopoly before the end of 2004.

The *Wheat Marketing Act 1989*, as amended, is scheduled for review under the Commonwealth Legislative Review Schedule in 1999-2000.

4. ACCESS TO ESSENTIAL INFRASTRUCTURE

4.1 The Importance of Access to Infrastructure

Fair and reasonable access by third parties to essential infrastructure facilities such as electricity grids, gas pipelines, rail tracks, airports and communications networks, is important for effective competition.

Many infrastructure facilities exhibit natural monopoly characteristics that inhibit competition in related industries. For example, restrictions on access to rail track will prevent competition between different companies seeking to provide rail freight services. Where a gas producer cannot make use of an existing gas distribution network to reach potential clients, it is difficult to compete in or even enter the wholesale and retail gas supply markets.

It is generally not economically feasible to duplicate such infrastructure, and given the historic likelihood of vertically integrated owners, it can be difficult for actual and potential competitors in downstream and upstream industries to gain access to these often vital infrastructure services. Even if access is technically available, there is likely to be an imbalance in bargaining power between the infrastructure owner and potential third party users, influencing the terms and cost of access and potentially making entry prohibitive for competitors.

The outputs of these industries are significant inputs to a wide range of economic activities. Where restricted access arrangements result in higher prices or lower service quality, through reduced competition and/or limited supply, the impacts are incurred by both businesses and consumers.

As a result, governments have given increasing attention to establishing a right of access to these facilities, under established terms and conditions, where privately negotiated action is not expected to be a viable option.

4.2 Part IIIA of the Trade Practices Act 1974

Clause 6 of the *Competition Principles Agreement* (CPA) requires the Commonwealth to establish a legislative regime for third party access to services provided by means of significant infrastructure facilities where:

(a) it would not be economically feasible to duplicate the facility;

(b) access to the service is necessary in order to permit effective competition in a downstream or upstream market;

(c) the facility is of national significance having regard to the size of the facility, its importance to constitutional trade or commerce or its importance to the national economy; and

(d) the safe use of the facility by the person seeking access can be ensured at an economically feasible cost and, if there is a safety requirement, appropriate regulatory arrangements exist.

Further, this regime is not to cover a service provided by means of a facility located in a State or Territory that has established an access regime that both covers the facility and conforms with the principles set out Clause 6, unless the National Competition Council (NCC) determines that regime to be ineffective in relation to the interjurisdictional impact or nature of the facility.

To give effect to this commitment, Part IIIA was inserted into the *Trade Practices Act 1974* (TPA). This part is referred to as the national access regime, and is intended to provide for minimum intervention by the Commonwealth in determining actual terms and conditions of access.

The national access regime establishes three means by which third parties may seek access to nationally significant infrastructure services. These are:

- declaration of the infrastructure facility;

A person can apply through the NCC to have a service provided by a significant infrastructure facility 'declared' by decision of the relevant Minister. Where a service is declared, access to the service is able to be negotiated on a commercial basis between the service provider and an access seeker.

If agreement cannot be reached, the terms and conditions of access can be determined by the ACCC through a legally binding arbitration process. In making an access determination, the ACCC must take into account a range of factors, including the legitimate business interests of the service provider, the provider's investment in the facility and the public interest.

A decision on an application for declaration can be appealed to the Australian Competition Tribunal (ACT) within 21 days.

- through an undertaking to the ACCC; and

The operator of an infrastructure service can give a voluntary undertaking to the ACCC, setting out the terms and conditions on which access to that service will be provided. If an undertaking is accepted, this provides a legally binding means by which third parties can obtain access to the infrastructure service. A service that is subject to an undertaking cannot be declared as described above.

- certification of a State or Territory access regime as an 'effective regime'.

State or Territory governments may apply through the NCC to have an access regime certified as effective in relation to a particular service. The NCC then makes a recommendation to the relevant Commonwealth Minister on whether or not to certify the regime. In making this decision, the Minister must consider the NCC's recommendation and apply the relevant principles set out in the CPA.

Where an effective State or Territory access regime is in place the relevant infrastructure service cannot be declared.

A decision on an application for certification can be appealed to the ACT within 21 days.

Specific access regimes have also been established for particular infrastructure facilities, including those applying to telecommunications carriers, airport services provided at core regulated Commonwealth airports and for natural gas transmission and distribution pipelines. These regimes may or may not interact with the national access regime.

4.3 Commonwealth Activity under Part IIIA

This section identifies those actions under Part IIIA of the TPA involving infrastructure facilities under Commonwealth jurisdiction or requiring a decision by a Commonwealth Minister within the reporting period.

4.3.1 Airport Services

Section 192 of the *Airports Act 1996* contains an access regime applying to airport services at core regulated (major) Commonwealth airports.

Airport service means a service provided at core regulated airports, where the service:

(a) is necessary for the purposes of operating and/or maintaining civil aviation services at the airport; and

(b) is provided by means of significant facilities at the airport, being facilities that cannot be economically duplicated.

Where an airport lessee does not have an access undertaking for airport services approved by the ACCC within 12 months of privatisation, the Commonwealth Minister of Transport and Regional Services is required to make a determination that each airport service not covered by an access undertaking is a declared service for the purposes of Part IIIA of the TPA.

None of the three Phase 1 airports (Brisbane, Melbourne and Perth) were successful in having an access undertaking approved by the ACCC. Consequently, the (then) Minister for Transport and Regional Development made a determination in relation to these three airports in July 1998.

4.3.2 Application for Access Declaration at Sydney and Melbourne Airports by Australian Cargo Terminal Operators.

On 30 June 1997, the Commonwealth Treasurer declared certain freight handling services provided by the Federal Airports Commission (FAC) at the Sydney International Airport. This was in response to an application made through the NCC by the Australian Cargo Terminal Operators Pty Ltd.

On 21 July 1997, the FAC applied for a review of this declaration. The matter is currently under consideration by the Australian Competition Tribunal.

4.3.3 South Australian Access Regime for Gas Pipeline Services

In November 1997, the Council of Australian Governments (CoAG) endorsed a national regulatory regime for natural gas transmission and distribution pipelines. The national regime establishes a framework for third parties, such as gas retailers and end-users, to negotiate access to transmission and distribution gas pipelines on fair and reasonable terms and conditions. By removing supply bottlenecks in the industry, it aims to increase competition in the supply and sale of natural gas.

As part of the agreement, States and Territories agreed to submit a regime consistent with the national regime, as it is applied in their jurisdiction, through the NCC for certification under Part IIIA of the TPA.

On June 22 1998, the NCC received an application from the South Australian Government for certification of the South Australian regime. The NCC provided the Treasurer with its recommendation on 23 September 1998, supporting the application.

Having considered the recommendation, the Minister for Financial Services and Regulation certified the *South Australian Third Party Access Regime for Natural Gas Pipelines* as an effective access regime for a period of 15 years commencing on 8 December 1998.

5. PRICES OVERSIGHT OF GOVERNMENT BUSINESS ENTERPRISES

5.1 The Purpose of Prices Oversight

Prices oversight activities serve to identify and discourage unacceptable price increases occurring where firms have excessive market power, such as from a legislated or natural monopoly, or where the necessary conditions for effective competition are not otherwise met.

The Commonwealth has had its current prices oversight arrangements for public and private sector business activities under Commonwealth jurisdiction in place since 1983. However, there has been no comprehensive prices oversight of other jurisdictions' government enterprises. National competition policy aims to fill this void by encouraging the establishment of independent State and Territory prices oversight bodies.

Prices oversight of Government Business Enterprises (GBEs) is raised in Clause 2 of the *Competition Principles Agreement* (CPA). This requires that each State and Territory consider the establishment of an independent source of prices oversight where this does not exist already. All States and Territories, with the exception of Western Australia and the Northern Territory, have now established such a body.

An independent source of prices oversight must have the following characteristics:

- it should be independent from the GBE whose prices are being assessed;
- its prime objective should be one of efficient resource allocation but with regard to any explicitly identified and defined community service obligations imposed on a business enterprise by the Government or legislature of the jurisdiction that owns the enterprise;

- it should apply to all significant GBEs that are monopoly or near monopoly suppliers of good or services (or both);
- it should permit submissions by interested persons; and
- its pricing recommendations, and the reasons for them, should be published.

5.2 Commonwealth Prices Oversight

The Commonwealth has a range of existing prices surveillance and monitoring arrangements. Their objective is to promote competitive pricing, and restrain price rises in those markets where competition is less than effective. They apply across both the private and public sector, subject to Constitutional limitations.

The Australian Competition and Consumer Commission (ACCC), an independent Commonwealth authority, is responsible for administering the *Prices Surveillance Act 1993*.

The *Prices Surveillance Act* enables the ACCC to undertake price surveillance, price inquiries or price monitoring of selected goods and services in the Australian economy. These powers can be applied to business activities of the Commonwealth, State and Territory authorities, as well as trading, financial and foreign corporations and people or firms within the Australian Capital Territory and across State and Territory boundaries.

Once the responsible Commonwealth Minister formally declares an organisation, good or service subject to prices surveillance, the price of a declared product is not permitted to increase above its endorsed price or its highest price in the previous 12 months without notification to the ACCC.

Prices surveillance is currently applied to aeronautical services at Sydney Airport, charges made by Airservices Australia for terminal navigation, en-route navigation and rescue and firefighting services and various Australia Post charges.

Price inquiries involve studies of limited duration into pricing practices and related matters concerning the supply of particular goods and services, following direction from the responsible Commonwealth Minister. During the period of the inquiry, the price under examination may not be increased beyond its peak price in the previous 12 months without the approval of the ACCC. The findings of the inquiry are then reported to the Minister.

The responsible Commonwealth Minister may also request ongoing monitoring of prices, costs and profits in any industry or business. For example, the ACCC is currently required to undertake prices monitoring of all aeronautically related charges and price, cost and profit data for ACI Operations Pty Ltd. The findings of the exercise are then reported back to the Minister.

The ACCC also has special pricing powers in relation to specific infrastructure facilities, for example, aeronautical services at privatised core regulated airports (*see* page 182).

5.2.1Matters Referred to the ACCC

While recognising prices oversight of state and territory GBEs is primarily the responsibility of the State or Territory that owns the enterprise, clause 2 does provide that a State or Territory may generally or on a case by case basis, and with the approval of the Commonwealth, subject its GBEs to a prices oversight mechanism administered by the ACCC.

However, in the absence of the consent of the relevant State or Territory, a GBE may only be subject to prices oversight by the ACCC if:

(a) it is not already subject to a source of independent prices oversight advice;

(b) a jurisdiction which considers it is adversely affected by the lack of prices oversight has consulted the State or Territory that owns the GBE, and the matter has not been resolved to its satisfaction;

(c) the affected jurisdiction has then brought the matter to the attention of the National Competition Council (NCC), and the NCC has decided that the condition in point (a) exists and that the pricing of the GBE has a significant direct or indirect impact on constitutional trade or commerce;

(d) the NCC then has recommended that the responsible Commonwealth Minister declare the GBE for prices surveillance by the ACCC; and

(e) the responsible Commonwealth Minister has consulted the State or Territory that owns the enterprise.

No matters were referred to the ACCC under these arrangements for the period 1997-98.

6. CONDUCT CODE AGREEMENT

6.1 The Competitive Conduct Rules

The *Conduct Code Agreement* (CCA) committed the States and Territories to passing application legislation extending the competitive conduct rules of Part IV of the *Trade Practices Act 1974* (TPA) to bodies within their Constitutional competence, and provided for its administration across Australia by the Australian Competition and Consumer Commission (ACCC).

It also defines a process for excepting (by legislation) conduct from Part IV of the TPA, modifying the competitive conduct rules and making appointments to the ACCC.

Part IV of the TPA prohibits a range of anti-competitive conduct, as well as providing for exceptions from the requirement to comply with all or part of the restrictive trade practices provisions. In particular, it prohibits:

- anti-competitive arrangements, primary boycotts and price agreements;
- secondary boycotts;
- misuse of market power by a business where the purpose is to damage or prevent a competitor from competing;
- third line forcing as well as exclusive dealing conduct that is anti-competitive;
- resale price maintenance; and
- anti-competitive acquisitions and mergers.

The ACCC has the power to authorise arrangements that technically breach these provisions, provided these arrangements satisfy the public benefit test under Part VII of the TPA. Authorisation, which must be sought in advance by a party, operates to immunise arrangements from Court action (except for section 46 conduct relating to misuse of market power). ACCC adjudication decisions (authorisations and

revocation of exclusive dealings notifications) are subject to review by the Australian Competition Tribunal.

Subsection 51(1) provides general exceptions from Part IV of the TPA for:

- things done or authorised or approved by federal or Territorial legislation other than legislation relating to patents, trademarks, designs or copyrights; and
- things done in any State or Territory specified in and specifically authorised by State or Territory legislation, as long as the State or Territory is a party to the CCA and the *Competition Principles Agreement*.

Subsections 51(2) and 51(3) exception provisions are currently under legislative review (**see** page 57).

6.2 Commonwealth exceptions under S.51(1) of the *Trade Practices Act 1974*

Any Commonwealth legislation reliant on a section 51(1) exception needs to be approved by the Treasurer.

6.2.1 Existing Legislation Reliant on s.51(1) after 20 July 1998

The CCA required the Commonwealth to notify the ACCC by 20 July 1998 of all Commonwealth legislation existing at 11 April 1995, enacted or made in reliance on section 51(I) of the TPA, that would continue to except conduct pursuant to subsection 51(1) after 20 July 1998.

A report was provided to the ACCC on 15 July 1998, advising that there was no Commonwealth legislation falling into the above category. However, it was noted that the *Competition Policy Reform Act 1995* inserted a subsection 33A(6A) into the *Australian Postal Corporation Act 1989*, which introduced a section 51(1) exception.

6.2.2 New Legislation: Exceptions made in 1997-98

The CCA also requires that written notification be provided to the ACCC of all legislation enacted since 11 April 1995 similarly reliant on section 51(1). This must occur within 30 days of the legislation being enacted. Exceptions made in 1997-98 are detailed below.

Proposed legislation that embodies restrictions on competition must satisfy the requirements of the CPA in relation to net community benefit and include a Regulation Impact Statement. This includes legislation incorporating an exception reliant on subsection 51(1) of the TPA.

6.2.2.1 Australian Wheat Board

Pursuant to subclause 2(1) of the CCA, the ACCC was advised on 11 August 1998 that the *Wheat Marketing Legislation Amendment Act 1998*, which received Royal Assent on 30 July 1998, contains a provision that relies upon Section 51 of the Competition Laws (as defined in the CCA).

This Act provides for the transfer of responsibility, from 1 July 1999, for wheat marketing from the statutory Australian Wheat Board (AWB) to a company owned and controlled by wheat growers, AWB Limited. From that time, the AWB and associated government underwriting arrangements will cease. The Government's residual role will be to provide the export monopoly to the grower company through the Wheat Export Authority (WEA).

Under the amendments, a wholly owned subsidiary (AWB (International Ltd) of AWB Ltd will be given the right to export wheat without the consent of the WEA. It is also given a veto right over the issue of export consents by the WEA for bulk wheat i.e. for exports other than in bags and containers.

As a result, AWB (international) Ltd will have a considerable degree of market power. There has been concern that the conduct of the company in respect of these statutory export monopoly arrangements could contravene section 46 of the TPA. The risk was considered sufficient to include in the *Wheat Marketing Act 1989* an exception provision to ensure that it could engage in activities consistent with its functions and objects without incurring any potential liability under Part IV of the TPA.

This provision inserts a new subsection 57(6) into the *Wheat Marketing Act*, with the effect of taking certain actions of AWB (international) Ltd outside the scope of Part IV of the TPA. These actions include the specific activities of the company in

exporting wheat under the monopoly arrangements, and the actions of the company in connection with the granting of export consents by the WEA under section 57 of the *Wheat Marketing Act*. It does not extend to actions the company may undertake in connection with, or related to, exporting wheat e.g. storage and handling of export wheat.

6.2.2.2 Country of Origin Representations

Pursuant to subclause 2(1) of the CCA, the ACCC was advised on 7 August 1998 that the *Trade Practices Amendment (Country of Origin Representations) Act 1998*, which received Royal Assent on 30 July 1998, contains a provision that relies upon Section 51 of the Competition Laws (as defined in the CCA).

This provision inserts a new section 173 into the *Trade Practices Act 1974* (TPA), which excepts the vesting of ownership of primary products by legislation from the application of section 50 of the TPA. This is intended to remove any uncertainty regarding the application of section 50 to statutory vesting of primary products, particularly in relation to the vesting of raw sugar under the Queensland *Sugar Industry Act 1991*.

7. COAG RELATED REFORMS (ELECTRICITY, GAS, WATER, ROAD TRANSPORT)

The requirements for reform of the major infrastructure areas of electricity, gas, water and road transport are set out in separate Inter-Governmental Agreements endorsed by the Council of Australian Governments (CoAG). Satisfactory progress in achieving these reforms was included in the *Agreement to Implement the National Competition Policy and Related Reforms*, as one of the conditions for receipt of National Competition Policy (NCP) payments.

These commitments are largely the responsibility of the States and Territories, although the Commonwealth does have some specific responsibilities (particularly in the area of gas reform). It also has a responsibility to assist the States and Territories in meeting their obligations.

The following sections set out the background to reform and progress achieved in each of the targeted areas, with emphasis on the role of the Commonwealth.

7.1 Electricity

In July 1991, CoAG agreed to develop a competitive electricity market in southern and eastern Australia. The Commonwealth has since taken a leadership role in this area to ensure implementation of electricity reforms on a national basis.

In 1997-98, the first stage of the National Electricity Market (NEM), which harmonised market arrangements between New South Wales, Victoria and the Australian Capital Territory, was consolidated and the ground laid for the introduction of the next stage in December 1998. The Commonwealth has continued to participate in working groups developing the policy and operational environment for the NEM. Legislation underpinning the NEM was passed in all participating jurisdictions. In January 1998, Queensland implemented NEM systems effectively providing a pilot for the national market.

The National Electricity Market Management Company (NEMMCO), which manages the operations of the wholesale electricity market and security of the power system, and the National Electricity Code Administrator (NECA), which administers the national electricity code, including compliance, enforcement and dispute resolution processes, also became operational.

The Commonwealth made a submission to the NECA review of network pricing arrangements in the National Electricity Code in April 1998. The submission highlighted the importance of a transparent methodology that allocates costs between generation and loads in as cost reflective and competitive manner as possible and minimises distortions to network usage and investment.

The Australian Competition and Consumer Commission (ACCC) granted authorisation to the National Electricity Code in December 1997 under the *Trade Practices Act 1974* (TPA), giving market participants protection from action by parties for possible breaches of the TPA (*see* **Chapter 6**).

7.2 Gas

The Australian natural gas market has traditionally comprised State based market structures, in which monopolies operated at the production, distribution and retailing stages. The supply chain was highly integrated, with legislative and regulatory barriers restricting interstate trade. These characteristics, in the absence of links between the States' pipeline systems, served to perpetuate low levels of competitive behaviour in the marketplace.

In February 1994, CoAG agreed to facilitate developments aimed at stimulating competition, thereby achieving "free and fair trade" in the natural gas sector. These commitments were integrated into the NCP reforms.

Governments and industry are required to:

- remove policy and regulatory impediments to retail competition in the natural gas sector;
- remove a number of restrictions on interstate trade; and
- develop a nationally integrated competitive natural gas market by:
    - establishing a national regulatory framework for third party access to natural gas pipelines; and

- facilitating the inter-connection of pipeline systems.

To date, governments and industry, through the Gas Reform Implementation Group and its predecessor the Gas Reform Task Force, have focused primarily on developing and implementing national arrangements for third party access to natural gas pipelines.

In November 1997, the Commonwealth, States and Territories agreed to enact legislation to apply a uniform national framework for third party access to all gas pipelines.

To realise the benefits of third party access in the natural gas retail market, a degree of separation between the monopoly pipeline transportation business and other potentially contestable businesses is required. The access regime includes 'ring fencing' provisions that require the monopoly transportation business to be separated from the retail business of the company, including separate accounts, staff and customer information.

7.2.1 Implementation of the Gas Access Code

The *Gas Pipelines Access (Commonwealth) Act 1998* was passed by Parliament on 9 July 1998. This Act gives effect to the Commonwealth's role in implementing the national third party access regime for natural gas pipelines (the national access regime) in fulfillment of the CoAG commitment to "free and fair" trade in natural gas. It also accords with the Commonwealth's obligations under the *Natural Gas Pipelines Access Agreement*, signed by Heads of Government at the CoAG meeting of 7 November 1997, to enact legislation to facilitate the national character of the scheme.

The Act makes operational the legislation enacted by each State and Territory to implement the National Gas Access Code. It ensures that the national competition bodies can exercise powers and carry out functions conferred on them by the States and Territories under this scheme, and provides that:

- the ACCC is the Regulator for transmission pipelines, and individual jurisdictions may confer on the ACCC the regulatory role for distribution pipelines;

- under Part IIIA of the TPA, the National Competition Council (NCC) has a role in assessing the effectiveness of State and Territory access legislation submitted to it, and an additional role of advisory body on coverage of pipelines; and

- the Australian Competition Tribunal to hear administrative appeals from decisions of the relevant Minister (on whether a pipeline is to be covered) and the ACCC and some state and territory based regulators on specified access matters.

The Act also completes the national coverage of the Code by ensuring its application to offshore waters, to relevant external territories and adjacent areas, the Jervis Bay Territory, and to the Moomba-Sydney pipeline.

In the case of the Moomba-Sydney pipeline, the Commonwealth legislation provides for the repeal of the Commonwealth's specific access legislation contained in Part 6 of the *Moomba* , allowing the relevant State or Territory scheme participants' Gas Pipelines Access Law to apply. The repeal of Part 6 of the *Moomba* took effect with the commencement of the South Australian *Gas Pipelines Access (South Australia) Act 1997* and corresponding legislation in New South Wales.

Amendments to the *Petroleum (Submerged Lands) Act 1967* (PSLA) to apply the national access regime to areas of Commonwealth jurisdiction beyond States and Territories territorial waters and in external territories were also enacted.

The common carriage provisions in the PSLA will be displaced where a pipeline is covered by the national access regime. For instance, when an access scheme is enacted by the States or Northern Territory, the State or Territory access legislation will be applied by the *Gas Pipelines Access (Commonwealth) Act 1998* to those pipelines in offshore areas adjacent to their territorial seas and in external territories within their jurisdiction. If the relevant jurisdiction does not have gas access legislation, the national access regime is called-up directly by the Commonwealth legislation and applied in the adjacent Commonwealth area.

The power to direct common carriage is also removed in respect of a pipeline for which a declaration is in force or for which an access undertaking has been accepted by the ACCC, under Part IIIA of the TPA (*see* **Chapter 4**).

7.3 Water

In February 1994, CoAG agreed to a strategic water reform framework to achieve an economically efficient and ecologically sustainable water industry. Major elements of the proposed reforms included pricing based on the principle of full cost recovery,

determination of water allocations and entitlements and trading of those entitlements, institutional reform and water for the environment.

The water industry reforms were drawn more closely into the micro-economic reform process in April 1995, when CoAG linked State implementation of the water reforms to the National Competition Policy (NCP) and associated second and third tranche competition payments.

In 1997-98, the Standing Committee on Agriculture and Resource Management (SCARM) continued to encourage and facilitate jurisdictions' implementation of the water industry reforms in line with the timeframe outlined by the CoAG Water Reform Framework and the NCP. A major achievement of SCARM in this period was the development of a set of guidelines to assist jurisdictions implement full cost recovery principles. These guidelines were forwarded to CoAG for endorsement and use in the National Competition Council implementation assessment.

The Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ) 1997 annual report to CoAG, and a SCARM review of a number of jurisdictions, indicated that good progress is being made on implementation of the reforms. However, there were a number of areas that needed further attention prior to the 2001 completion date for implementation. ARMCANZ is undertaking a number of projects to facilitate implementation of the water reforms, including in relation to water trading, industry performance monitoring, full cost recovery and cross subsidies.

7.4 Road Transport

In 1991, Heads of Government signed the Heavy Vehicles Agreement (HVA), directed at vehicles over 4.5 tonnes gross vehicle mass and intended to improve road safety and transport efficiency and reduce compliance and administration costs. It involved introducing uniform national arrangements for vehicle roadworthiness and driver licensing, and vehicle charges that reflect the full cost of providing road transport services.

The Commonwealth *National Road Transport Commission Act 1991* gave effect to the HVA and created the National Road Transport Commission (NRTC) to oversee development and implementation of the reform program. The Act also established the inter-jurisdictional Ministerial Council of Road Transport (MCRT) to manage implementation of the specific reforms developed by the NRTC.

In May 1992, the Light Vehicles Agreement (LVA) was signed. This extended the objective of national uniformity in road regulation to all other road users. The Commonwealth amended the NRTC Act to give effect to this agreement.

The NRTC was to implement the reforms progressively through six separate modules:

- uniform heavy vehicle charges;
- uniform arrangements for transportation by road of dangerous goods;
- vehicle operation reforms covering national vehicle standards, roadworthiness, mass and loading laws, oversize and overmass vehicles, and road rules;
- a national heavy vehicle registration scheme;
- a national driver licensing scheme; and
- a consistent and equitable approach to compliance and enforcement with road transport laws.

It was initially determined that governments would phase in the six reform modules using 'template' legislation. This involved the Commonwealth enacting legislation to apply the agreed reforms in the ACT; with the other states and territories applying the Commonwealth template 'by reference' in their own jurisdictions. However, in February 1997, MCRT agreed that, in certain circumstances, jurisdictions could implement approved reforms without waiting for the Commonwealth template. This was intended to improve the timeliness and reduce the resource burden of reform implementation.

In early 1997, the Commonwealth enacted the *Road Transport Reform (Dangerous Goods) Amendment Act 1997* and the *Road Transport Reform (Heavy Vehicles Registration) Act 1997*. A revised Australian Dangerous Goods Code (sixth edition) was subsequently published.

Following interjurisdiction consultation, on 25 June 1998, the Commonwealth passed the *National Road Transport Commission Amendment Act 1998*. This Act provides for the:

- insertion of the *First Heavy Vehicles Amending Agreement*, agreed to by all jurisdictions;

- the Australian Transport Council (ATC) to exercise the powers and functions previously held by the MRCT, and for the appointment of an ATC member to represent New Zealand; and

- the development of a road vehicle cooperation program between Australia and New Zealand, including the development of trans-Tasman Mutual Recognition Arrangement road vehicle standards that will facilitate free trade in vehicles between the two countries.

In April 1995, the road transport reforms were integrated into the NCP process — in recognition that full implementation of the HVA and LVA would boost national welfare and reduce the cost of road transport services. This involved all governments committing to the effective observance of road transport reforms by 1999, and to have fully implemented and continued observance of the reforms by no later than 2001.

Following a request from the CoAG Committee on Regulatory Reform, a Standing Committee on Transport working group reviewed the road transport reform program commitments, reporting subsequently to Ministers and CoAG. The road transport reform commitments and implementation timetable have now been agreed by all governments, and will form the basis for NCC assessment of State and Territory progress in this area.

APPENDIX A

Commonwealth Legislative Review Schedule (as at 30 June 1998) – by scheduled commencement date

NAME OF LEGISLATION	RESPONSIBLE DEPARTMENT
UNDERWAY IN 1996 *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*	Environment and Heritage
Bounty (Books) Act 1986	Industry, Science and Resources
Bounty (Fuel Ethanol) Act 1994	Industry, Science and Resources
Bounty (Machine Tools & Robots) Act 1985	Industry, Science and Resources
Census & Statistics Act 1905	Treasury
Commerce (Imports) Regulations and Customs Prohibited Imports Regulations	Industry, Science and Resources
Corporations Act 1989	Treasury
Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991	Education, Training and Youth Affairs
Financial system — comprehensive review of the regulatory framework	Treasury
Industrial Relations Act 1988	Employment, Workplace Relations and Small Business
Patents Act 1990, sections 198-202 (Patent Attorney registration *)*	Industry, Science and Resources
Protection of Movable Cultural Heritage Act 1986	Communications, Information Technology

NAME OF LEGISLATION	RESPONSIBLE DEPARTMENT
	and the Arts
Quarantine Act 1908	Agriculture, Fisheries and Forestry
1996-97	
Aboriginal Land Rights (Northern Territory) Act 1976	Prime Minister and Cabinet
Australian Maritime Safety Authority Act 1990	Transport and Regional Services
Australian Postal Corporation Act 1989	Communications, Information Technology and the Arts
Bills of Exchange Act 1909	Treasury
Customs Tariff Act 1995 – Automotive Industry Arrangements	Attorney-General's
Customs Tariff Act 1995 – Textiles Clothing and Footwear Arrangements	Attorney-General's
Duty Drawback (Customs Regulations 129 to 136B) and TEXCO (Tariff Export Concession Scheme) — *Customs Tariff Act 1995*, Schedule 4, Item 21, Treatment Code 421	Attorney-General's
Employment Services Act 1994 (case management issues)	Employment, Workplace Relations and Small Business
Foreign Investment Policy, including associated regulation	Treasury
Income Equalisation Deposits (Interest Adjustment) Act 1984 and *Loan (Income Equalisation Deposits) Act 1976*	Agriculture, Fisheries and Forestry
International Air Service Agreements	Transport and Regional Services
International Arbitration Act 1974	Attorney-General's
Migration Act 1958 — sub-classes 120 and 121 (business visas *)*	Immigration and Multicultural Affairs
Migration Act 1958 — sub-classes 560, 562 and 563 (student visas)	Immigration and Multicultural Affairs
Migration Act 1958 — sub-classes 676 and 686 (tourist visas)	Immigration and Multicultural Affairs

NAME OF LEGISLATION	RESPONSIBLE DEPARTMENT
Migration Act 1958, Part 3 (Migration Agents and Immigration Assistance) and related regulations	Immigration and Multicultural Affairs
Migration Agents Registration (Application) Levy Act 1992 and *Migration Agents Registration (Renewal) Levy Act 1992*	Immigration and Multicultural Affairs
National Road Transport Commission Act 1991 and related Acts	Transport and Regional Services
Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993 and regulations	Foreign Affairs and Trade
Pooled Development Funds Act 1992	Industry, Science and Resources
Quarantine Act 1908, in relation to human quarantine	Health and Aged Care
Radiocommunications Act 1992 and related Acts	Communications, Information Technology and the Arts
Rural Adjustment Act 1992 and States and Northern Territory Grants (Rural Adjustment) Acts	Agriculture, Fisheries and Forestry
Shipping Registration Act 1981	Transport and Regional Services
Trade Practices (Consumer Product Information Standards) (Care for clothing and other textile products labelling) Regulations	Treasury
Tradesmen's Rights Regulation Act 1946	Employment, Workplace Relations and Small Business
1997-98	
Affirmative Action (Equal Employment Opportunity for Women) Act 1986	Employment, Workplace Relations and Small Business
Agricultural and Veterinary Chemicals Act 1994	Agriculture, Fisheries and Forestry
Bankruptcy Act 1966 and Bankruptcy Rules — trustee registration provisions	Attorney General's

NAME OF LEGISLATION	RESPONSIBLE DEPARTMENT
Customs Act 1901 Sections 154-161L	Attorney-General's
Defence Housing Authority Act 1987	Defence
Environmental Protection (Nuclear Codes) Act 1978	Health and Aged Care
Higher Education Funding Act 1988 plus include*: Vocational Education & Training Funding Act 1992* and any other regulation with similar effects to the *Higher Education Funding Act 1988*	Education, Training and Youth Affairs
Imported Food Control Act 1992 and regulations	Agriculture, Fisheries and Forestry
International Air Services Commission Act 1992	Transport and Regional Services
Motor Vehicle Standards Act 1989	Transport and Regional Services
Mutual Recognition Act 1992	Education, Training and Youth Affairs and Industry, Science and Resources
National Health Act 1953 (Part 6 & Schedule 1) and *Health Insurance Act 1973* (Part 3)	Health and Aged Care
National Residue Survey Administration Act 1992 and related Acts	Agriculture, Fisheries and Forestry
Petroleum Retail Marketing Franchise Act 1980	Industry, Science and Resources
Petroleum Retail Marketing Sites Act 1980	Industry, Science and Resources
Pig Industry Act 1986 and related Acts	Agriculture, Fisheries and Forestry
Primary Industries Levies Acts and related Collection Acts	Agriculture, Fisheries and Forestry
Proceeds of Crime Act 1987 and regulations	Attorney General's
Torres Strait Fisheries Act 1984 and related Acts	Agriculture, Fisheries and Forestry

NAME OF LEGISLATION	RESPONSIBLE DEPARTMENT
Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations	Treasury
Trade Practices Act 1974 (s 51(2) and s 51(3) exemption provisions)	Treasury
Dumping *Authority Act 1988, Customs Act 1901 Pt XVB*	
Anti and *Customs Tariff (Anti-dumping) Act 1975*	Attorney General's
Australia New Zealand Food Authority Act 1991 Food Standards Code	Health and Aged Care
Broadcasting Services Act 1992, Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992, Radio Licence Fees Act 1964 and *Television Licence Fees Act 1964*	Communications, Information Technology and the Arts
Customs Act 1901 (Prohibited Exports — Nuclear Materials) — export controls under regulation 11	Attorney-General's
Dairy Industry Legislation	Agriculture, Fisheries and Forestry
Defence Force (Home Loans Assistance) Act 1990	Defence
Dried Vine Fruits Legislation	Agriculture, Fisheries and Forestry
Export Control Act 1982 — Export Control (Unprocessed Wood) Regulations	Agriculture, Fisheries and Forestry
Export Control Act 1982 (fish, grains, dairy, processed foods etc)	Agriculture, Fisheries and Forestry
Export Finance & Insurance Corporation Act 1991 and *Export Finance & Insurance Corporation (Transitional Provisions and Consequential Amendments) Act 1991*	Foreign Affairs and Trade
Financial Corporations Act 1974	Treasury
Financial Transactions Reports Act 1988 and regulations	Attorney General's
Fisheries Legislation	Agriculture, Fisheries and Forestry

NAME OF LEGISLATION	RESPONSIBLE DEPARTMENT
Hazardous Waste (Regulation of Exports and Imports) Act 1989, Hazardous Waste (Regulation of Exports and Imports) Amendment Bill 1995 and related regulations	Environment and Heritage
Health Insurance Act 1973 — Part IIA	Health and Aged Care
Insurance (Agents & Brokers) Act 1984	Treasury
Intellectual property protection legislation *(Designs Act 1906, Patents Act 1990, Trade Marks Act 1995, Copyright Act 1968* and possibly the *Circuit Layouts Act 1989)*	Attorney General's and Industry, Science and Resources
Land Acquisition Acts: a) *Land Acquisition Act 1989* and regulations*;* b) *Land Acquisitions (Defence) Act 1968;* c) *Land Acquisition (Northern Territory Pastoral Leases) Act 1981*	Finance and Administration
Navigation Act 1912	Transport and Regional Services
Prawn Boat Levy Act 1995	Agriculture, Fisheries and Forestry
Prices Surveillance Act 1983	Treasury
Review of market -based reforms and activities currently undertaken by the Spectrum Management Agency (now Australian Communications Authority).	Communications, Information Technology and the Arts
Superannuation Acts including: *Occupational Superannuation Standards Regulations Application Act 1992, Superannuation (Financial Assistance Funding) Levy Act 1993, Superannuation Entities (Taxation) Act 1987, Superannuation Industry (Supervision) Act 1993, Superannuation (Resolution of Complaints) Act 1993* and the *Superannuation Supervisory Levy Act 1991*	Treasury
Trade Practices Act 1974 — Part X (shipping lines)	Transport and Regional Services
Veterans' Entitlement Act 1986 — Treatment Principles (section 90) and Repatriation Private Patient Principles (section 90A)	Veterans' Affairs
World Heritage Properties Conservation Act 1983	Environment and Heritage
1999-00	

NAME OF LEGISLATION	RESPONSIBLE DEPARTMENT
Defence Act 1903 (Army and Airforce Canteen Services Regulations)	Defence
Home & Community Care Act 1985	Health and Aged Care
Moomba-Sydney Pipeline System Sale Act 1994 — Part 6 (access provisions)	Industry, Science and Resources
Native Title Act 1993 and regulations	Prime Minister and Cabinet
Ozone Protection Act 1989 and *Ozone Protection (Amendment) Act 1995*	Environment and Heritage
Petroleum (Submerged Lands) Act 1967	Industry, Science and Resources
Trade Practices Act 1974 (including exemptions) — Part IIIA (access regime)	Treasury
Trade Practices Act 1974 — 2D exemptions (local government activities)	Treasury
Trade Practices Act 1974 — fees charged	Treasury
Wheat Marketing Act 1989	Agriculture, Fisheries and Forestry

APPENDIX B

Commonwealth Business Activities Subject To CN as at 30 June 1998 – Progress Implementing Competitive Neutrality

Table B1: Government Business Enterprises

NAME	PROGRESS
Australian Defence Industries Limited	Sale in progress.
Australian Industry Development Corporation	Limited, a commercial subsidiary of AIDC, was sold on 3 February 1998. There are no residual CN requirements.
Australian National Line Limited	Sale in progress.
Australian National Railways Commission	1997-98, Commission to be wound up in1998 -99. CN not applied in 1997 -98.
Australian Postal Corporation	CN recommendations to be considered in further review.
Australian Rail Track Corporation	CN compliant.
Australian Technology Group Limited	Partially privatised, Commonwealth equity holding under review.

Defence Housing Authority	CN implementation under consideration.
Essendon Airport Limited	CN compliant.
Export Finance and Insurance Corporation	CN implementation arrangements being finalised following recent review.
Federal Airports Corporation	Assets divested during1996-97 and 1997-98.
Health Services Australia Limited	CN compliant.
Housing Loans Insurance Corporation	Sold 15 December 1997.
Medibank Private Limited	compliant.
National Rail Corporation	CN compliant, sale pending
Snowy Mountains Hydro-electric Authority	agreements under negotiation.
Sydney Airports Corporation Limited	CN compliant.
Telstra Corporation Limited	Partially privatised, CN compliant.
Employment National Limited, Employment National (Administration) Limited [16]	CN compliant, currently subject to a transitional rate of return target.

[16] Employment National and its subsidiary are non-Government Business Enterprise *Corporations Law* companies.

Table B2: Commonwealth Business Units

NAME	PROGRESS
Artbank	No major CN issues.
Asset Services	Sold 30 September1997.
Auscript	Sold 26 June 1998.
Australian Government Analytical Laboratory	CN compliant.
Australian Government Health Service	Corporatised 1 July1997.
Australian Government Publishing Service	1997 and 1998.
Australian Government Solicitor	CN under implementation.
Australian Operational Support Services	Sold 15 August 1997.
Australian Property Group	Sold 1 October 1997.
Australian Protective Service	CN under implementation.
Australian Surveying and Land Information Group	CN compliant.
Australian Valuation Office	CN compliant.
DAS Centre for Environmental Management	Sold 23 October 1997.
DAS Distribution	Sold 1 September 1997.
DAS Interiors	Sold 12 September 1997.
DASFLEET	Sold 1 September 1997.
National Transmission Agency	CN not implemented, sale in progress.
Removals Australia	CN under implementation.

Royal Australian Mint	CN compliant.
Works Australia	Sold 14 September1997

Table B3: Commercial Business Activities

NAME	PROGRESS
Airservices Australia	No major CN issues.
Albury Wodonga Development Corporation (commercial services)	CN not implemented, Corporation being wound down
Army and Air Force Canteen Service (retailing services)	No major CN issues.
Australian Broadcasting Corporation (consumer goods, studio rentals)	CN under implementation.
Australian National University (some teaching and consulting services)	CN under implementation.
Australian Wheat Board (domestic sales)	CN not implemented, Board will be divesting its commercial activities to growers on 1 July 1999.
Commonwealth Scientific and Industrial Research Organisation (research and consulting services)	CN compliant
Health Insurance Commission	CN compliant with Medibank Private's transfer to Commonwealth, May 1998.
Reserve Bank of Australia (financial services)	CN compliant
Special Broadcasting Service (consumer goods)	CN compliant
University of Canberra	Transferred to ACT government.
Wool International (wool sales)	No major CN issues

Contents

1 Introduction

1.1 This Report is the NSW Government's third annual report to the National Competition Council on the Government's progress with the implementation of the National Competition Policy. The Report deals with the implementation of National Competition Policy over the 12 months to 31 December 1998.

1.2 In April 1995, the Council of Australian Governments (COAG) ratified the National Competition Policy. The Policy is aimed at increasing consumer and business choice, improving efficiencies and creating an overall business environment in which to improve Australia's international competitiveness. Three Intergovernmental Agreements constitute the National Competition Policy. These Agreements are the:

- *Conduct Code Agreement*;
- *Competition Principles Agreement*;
- *Agreement to Implement National Competition Policy and Related Reforms*.

1.3 The specific components of the National Competition Policy are the:

- extension of the competition provisions of the *Trade Practices Act (Cth) 1974* to persons in each jurisdiction in the manner specified in the *Conduct Code Agreement*;
- implementation of principles to facilitate the creation of competitive markets for public sector goods and services in the *Competition Principles Agreement*; and
- implementation of reforms in the electricity, gas, water and road transport sectors identified in the *Agreement to Implement National Competition Policy and Related Reforms*.

1.4 Competition policy is of course only one part of the NSW Government's policy aims and its application is intended to sit alongside the Government's other economic, social and environment policy objectives. When applied, competition policy should be able to promote these other policy aims by creating a policy environment in which the costs and benefits of government regulation and service provision are subject to transparent assessment. Exposing public policy to this kind of transparency is essential for the efficient and effective allocation of resources for the benefit of the communities that governments serve.

1.5 Importantly, National Competition Policy provides an opportunity for governments to ensure that the principles of competition:

- promote increased consumer choice;
- promote increased business choice and innovation;
- facilitate the efficient allocation of resources in the economy; and

- increase the opportunities for Australian business to effectively compete for international market share.

1.6 The NSW Government is committed to achieving these goals whilst ensuring that:

- competition policy is not implemented as an end in itself;
- all customers continue to have access to goods and services;
- goods and services are equitably distributed; and
- consumers are protected in the choices they make.

1.7 NSW is leading the way in implementing many of the reforms needed to make Australia more competitive. Achievements in this area must be seen in terms of the overall effect for the NSW and Australian economy.

2 Independent Pricing Oversight of Government Business Enterprises

Requirements of the Agreement

2.1 The Agreement calls on governments to consider establishing independent sources of price oversight advice, for monopolies that remain after pursuing structural reform, and proposes that this source should:

- be independent from the Government Business Enterprise (GBE) which is having its prices assessed;
- have efficient resource allocation as its prime objective, but have regard to any explicitly identified and defined community service obligations imposed on the GBE;
- apply to all significant GBEs that are monopoly, or near monopoly, suppliers of goods and services (or both);
- permit submissions from interested persons; and
- publish its pricing recommendations and the reasons for them.

Application in NSW

2.2 The NSW Government Pricing Tribunal was established in July 1992 to provide independent pricing oversight of the State's GBEs. In January 1996, the Tribunal's role was expanded and it was renamed the Independent Pricing and Regulatory Tribunal (IPART). For declared government monopoly services, the Tribunal is empowered to determine maximum prices (Sections 11(1a) and 12(1a) of the *Independent Pricing and Regulatory Tribunal Act 1992*) and/or carry out a periodic review of pricing policies (Sections 11(1b) and 12(1b) of the IPART Act). In July 1996, the Tribunal took over gas pricing regulation from the NSW Gas Council following commencement of the *Gas Supply Act 1996*.

2.3 There are two main ways in which the Tribunal's investigations can be initiated: (a) standing references; or (b) references by the Premier. Schedule 1 of the Act lists a number of government agencies for which the Tribunal has a standing reference. Under Section 11 of the IPART Act the Tribunal may initiate investigations of declared services supplied by standing reference agencies without reference to the relevant Portfolio Minister.

2.4 Alternatively, under Section 12 the Premier may require the Tribunal to determine the maximum price or carry out a review of a declared service, including those supplied by standing reference agencies.

2.5 As at 31 December, 1998, declarations of government monopoly services under Section 4 of the IPART Act applied to the following areas:

- Urban water (Sydney Water Corporation, Hunter Water Corporation, Gosford City Council and Wyong Municipal Council)

- Passenger transport (Bus and ferry services of the State Transit Authority and railway passenger services supplied under the name 'CityRail' by the State Rail Authority)
- Valuer–General
- Local water (water, sewerage and drainage services provided by councils)
- Waste disposal (disposal of putrescible waste as landfill that is provided by the Waste Recycling and Processing Service of NSW)
- Water supply schemes
- Bulk water (services provided by the Water Administration Ministerial Corporation)
- Electricity (TransGrid and the six NSW electricity distributors) - from July 1999, TransGrid will be regulated by the ACCC under the National Electricity Code. Arrangements provide for distributors to be regulated under the National Electricity Code from January 2001.

2.6 The Tribunal regulates gas tariffs and third party access to gas networks in NSW. As at 31 December 1998, the Tribunal was considering gas pricing orders for gas distributed by the Government–owned Great Southern Energy Gas Networks in Wagga Wagga and Albury Gas Company, in Albury and surrounding areas. The Tribunal was also considering the third party access arrangement proposed by Great Southern Energy Gas Networks. The review of the AGL gas pricing order was delayed pending review of the revised third party access arrangement proposed by AGL.

2.7 The IPART Act contains a number of provisions to ensure that the Tribunal's activities are carried out through a public process. The main requirement is that the Tribunal must hold at least one public hearing for each investigation. The general assumption of the legislation (Section 22A) is that the public will have access to information provided to the Tribunal for its investigations. Whilst most Tribunal activities are public, the Tribunal may direct that evidence be considered in private and may restrict access to confidential documents.

2.8 Under Section 15 of the IPART Act the Tribunal is required to have regard to a range of issues when making determinations and recommendations. These factors are consumer protection (e.g., social impact of decisions), economic efficiency (e.g., the need to promote competition), financial stability (e.g., an appropriate rate of return on public sector assets) and environmental and other standards (e.g., demand management initiatives). Similar issues are to be considered when the Tribunal determines a methodology for fixing prices under Section 14A. The Premier may also require the Tribunal to consider specific matters in its investigations (Section 13(a)).

2.9 The Tribunal may fix maximum prices in either of two ways: (a) determining maximum prices; or (b) establishing a methodology for determining maximum prices. If the Tribunal considers that it is impractical to make a determination of maximum prices as in (a) it may determine under Section 14A of the IPART Act a methodology to be used by the agency for fixing the maximum price. This provision was added during

1994–95. The agencies concerned are required to fix prices so that they do not exceed the maximum price determined by the Tribunal (Section 18(1A)). The Treasurer's approval is required if any agency wishes to charge a price below the maximum price (Section 18(2)).

2.10 In their annual reports, all agencies subject to the Tribunal's determinations must report (Section 18(4) of the IPART Act) on how they have implemented the maximum prices. Information must also be provided on whether Tribunal recommendations made in pricing policy reviews have been implemented and reasons must be given for any non–implementation.

2.11 The Tribunal submits its reports to the Premier. Any determination must be published in the NSW Government *Gazette* as soon as possible (Section 17 of the IPART Act). All reports must be made available for public inspection and sale, tabled in Parliament and placed in the Parliamentary Library (Section 19).

2.12 The Government believes that arrangements now in place adequately meet the principles in the Agreement concerning independent pricing oversight of the State's government–owned monopoly businesses.

3 Application of Competitive Neutrality

3.1 Application of Competitive Neutrality to Significant Government Business Enterprises

Requirements of the Agreement

3.1.1 The principle of competitive neutrality requires that GBEs operate without net competitive advantage in relation to other businesses as a result of their public ownership.

3.1.2 The Agreement (in Clauses 3(4) and 3(5)) indicates the measures that governments are required to implement, where the benefits to be realised from implementation outweigh the costs. In a few cases the cost of implementation will far outweigh the benefits.

3.1.3 Overall it is generally believed that there are net economic and social benefits of implementing competitive neutrality principles. The onus is on the GBE to demonstrate that this is not the case for it to be eligible for exemption from the requirements of the Agreement.

3.1.4 Governments were required to prepare a policy statement on the application of competitive neutrality in their respective jurisdictions by June 1996 and to publish an annual report thereafter.

3.1.5 With respect to significant GBEs, classified as Public Trading Enterprises and Public Financial Enterprises by the Australian Bureau of Statistics, the Agreement (Clause 3(4)) requires governments, where appropriate, to:

- adopt a corporatisation model; and
- impose on GBEs full Commonwealth, State and Territory taxes or tax equivalent systems, debt guarantee fees directed towards offsetting the competitive advantages provided by government guarantees, and those regulations to which private sector businesses are normally subject on an equivalent basis to GBEs' private sector competitors.

Application in New South Wales

3.1.6 The NSW Government published its *Policy Statement on the Application of Competitive Neutrality* in June 1996. The Statement made it clear that in New South Wales the onus is on a GBE to implement competitive neutrality principles unless it can show that the economic and social costs of implementation outweigh the economic and social benefits. Accordingly, a benefit–cost analysis, showing a net cost to the community, needs to be completed by GBEs that consider it inappropriate to implement these principles.

3.1.7 The requirements of clause 3(4) are being achieved through the corporatisation of a large number of non–budget sector agencies in New

South Wales. Corporatisation reforms are based on a comprehensive corporatisation model, the State Owned Corporation (SOC) model, with such organisations deemed to be in the Financial Policy Framework.

State Owned Corporations

3.1.8 The *State Owned Corporations Act (NSW) 1989* and the *State Owned Corporations Amendment Act (NSW) 1995* provide a comprehensive framework for the corporatisation of GBEs as proxy public companies called State Owned Corporations (SOCs). Those GBEs that have been and are intended to be subject to corporatisation are listed in **Table 3.1.**

3.1.9 There are two classes of SOC: the company SOC, and the statutory SOC. Both classes of SOC have a board of directors, share capital and a memorandum and articles of association like a public company limited by shares. Unlike a public company, however, the shareholders consist of the Treasurer and one other Minister (or potentially two or more Ministers for a company SOC).

3.1.10 Both statutory SOCs and company SOCs are subject to certain Commonwealth statutes. For example, Part IV of the *Trade Practices Act (Cth) 1994* applies to both entities. Company SOCs are subject to the *Corporations Law*, however, statutory SOCs are only subject to the provisions relating to officers' duties and liabilities.

The principal (and equal) objectives of every SOC, regardless of class, are to operate:

- efficiently;
- in a way that maximises the net worth of the State's investment;
- in a socially responsible manner;
- in accordance with the principles of ecologically sustainable development; and
- with consideration of regional development.

Financial Policy Framework

3.1.11 The Financial Policy Framework has been guided by the corporatisation principles specified in 1988 by the NSW Steering Committee on Government Trading Enterprises in *A Policy Framework for Improving Performance of GTEs*. These principles, which mimic those faced by a private sector firm in a competitive market, are:

- the establishment of clear and non–conflicting objectives;
- the granting of managerial responsibility, authority and autonomy in pursuit of such objectives;
- performance evaluation and accountability;
- provision of rewards and sanctions commensurate with performance; and
- the establishment of competition and competitive neutrality.

3.1.12 The Framework encompasses the following elements that are discussed below:

- the application of commercially based targets of rates of return, dividends and capital structures;
- regular performance monitoring;
- the payment of State taxes and Commonwealth tax equivalents;
- the payment of risk related borrowing fees;
- explicitly funded "Social Programs" or Community Service Obligations (CSOs); and
- equivalent regulation.

3.1.13 All significant NSW GBEs that are monitored on a quarterly or half–yearly basis by NSW Treasury are considered to be in the Financial Policy Framework. Those GBEs listed in **Table 3.1** as Category 1 or 2 are within the Financial Policy Framework.

3.1.14 **Table 3.1** lists:

- all those GBEs that have been or are intended to be corporatised under the SOC Act;
- those GBEs that have not been corporatised or privatised, but are subject to the principles of competitive neutrality within the Financial Policy Framework; and
- those GBEs that, on the basis of risk and materiality, have not been corporatised or made part of the Financial Policy Framework.

Table 3.1: *NSW GBEs subject to corporatisation under the SOC Act or privatisation, as at 1 March 1999*

No.	Industry	Government Business Enterprise	ABS PTE[1]	Treasury Monitor[2]	Cat.[3]	Already Priv'n	Already Corp'n	Date Priv'n/Corp'n	Comments
1	**Electricity**	Advance Energy	x	x	1		x	1/3/96	
2		Australian Inland Energy	x	x	1		x	1/3/96	
3		Delta Electricity	x	x	1		x	1/3/96	
4		Energy Australia	x	x	1		x	1/3/96	
5		Great Southern Energy	x	x	1		x	1/3/96	
6		Integral Energy	x	x	1		x	1/3/96	
7		Macquarie Generation	x	x	1		x	1/3/96	
8		NorthPower	x	x	1		x	1/3/96	
9		Pacific Power	x	x	1				
		Eraring Holdings Pty Ltd							Subsidiary of Pacific Power
		Power Coal Pty Ltd	x						Subsidiary of Pacific Power
10		Snowy Mountains Hydro Electricity Authority			3				Corp'n on 1/12/99. Jointly owned with
11		TransGrid	x	x	1		x		Victoria.
12	**Finance**	Axiom Funds Management Corporation			3	x		16/5/97	
13		Government Insurance Office (GIO)		x	4	x		16/7/92	
14		NSW Treasury Corporation (TCorp)	PFE	x	1				
15		State Bank of NSW		x	4	x		31/12/94	
16	**Gaming &**	Eastern Creek Raceway		x	1				Site leased on 29/11/96.
17	**Recreation**	Newcastle International Sports Centre Trust	x		3				
18		Newcastle Showground & Exhibition Centre Trust	x		3				
19		NSW Lotteries	x	x	1		x	1/1/97	
20		Parramatta Stadium Trust	x		3				
21		State Sports Centre Trust	x	x	3				
22		Sydney Cricket & Sports Ground Trust		x					Quarterly monitoring to commence 99/00.
23		Sydney Opera House Trust	x		1	x		6/98	
24		Totalisator Agency Board of NSW (TAB)	x	x	4				
25		Wollongong Sportsground Trust	x	x	1				
26		Zoological Parks Board of NSW	x	x	3				
27	**Housing**	Aboriginal Housing Office		x	1				
28		City West Housing Pty Ltd	x	x	1				
29		Department of Housing	x	x	1				Reform options under investigation
30		Home Purchase Assistance Authority		x	1				
31		Office of Community Housing		x	1				
32		Teacher Housing Authority of NSW			3				

No.	*Industry*	*Government Business Enterprise*	ABS PTE[1]	Treasury Monitor[2]	Cat.[3]	Already Priv'n	Already Corp'n	Date Priv'n/Corp'n	Comments
33	**Ports &**	Darling Harbour Authority	x	x	1				
34	**Waterways**	Marine Ministerial Holding Corporation		x	1				
35		Newcastle Port Corporation	x	x	1		x	1/7/95	
36		Port Kembla Port Corporation	x	x	1		x	1/7/95	
37		Sydney Ports Corporation	x	x	1		x	1/7/95	
38	**Transport**	Freight Rail Corporation	x	x	1		x	1/7/96	
39		Rail Access Corporation	x	x	1		x	1/7/96	
40		Rail Services Australia	x	x	1		x	1/7/98	
41		State Rail Authority of NSW (SRA)	x	x	1				
42		State Transit Authority (STA)	x	x	1				
43	**Water**	Broken Hill Water Board	x		3				
44		Cobar Water Board	x		3				
45		Coleambally Irrigation	x	x	1		x	1/7/97	
46		Fish River Water Supply Authority	x		3				
47		Hunter Water Corporation	x	x	1		x	1/1/92	
48		Murrumbidgee Irrigation	x	x	1	x		12/2/99	
49		Sydney Water Corporation	x	x	1		x	1/1/95	
50	**Misc**	Chipping Norton Lake Authority			3				
51				x	1				
52		Department of Public Works and Services		x	1				
53		First Australian National Mortgage Acceptance Corporation (FANMAC)		x	5				
54		Fish Marketing Authority			3				Business of Sydney Fish Market Pty Ltd sold & site leased on 31/10/94.
55		Honeysuckle Development Corporation		x	1				
56		Jenolan Caves Reserve Trust	x		3				
57		LANDCOM	x	x	1				Commercial Advisory Board has been est'd.
58		Land Titles Office		x	1				
59		Lord Howe Island Board		x	3				
60		Public Trustee		x	1				
61		Registry of Births, Deaths and Marriages		x	1				
62		State Forests of NSW		x	1				Feasibility of corp'n under investigation.
63		Sydney Harbour Foreshore Authority		x	1				
64		Superannuation Administration Authority		x	1				Corporatisation legislation proposed for 1999. Corp'n deferred.
65		Waste Service NSW	x	x	1				

- **The Key to Table 3.1 is as follows:**

[1] Public Trading Enterprises (PTEs) and Public Financial Enterprises (PFEs) as defined by the Australian Bureau of Statistics (ABS) in *Government Finance Statistics Australia: Concepts, Sources and Methods.*

[2] GBEs monitored by Treasury on a quarterly or half–yearly basis are within the Financial Policy Framework (FPF).

[3] On the basis of a risk and materiality assessment, Treasury has identified five financial monitoring programs. These are categorised as follows:

(1) Quarterly reporting and monitoring for:
- ◊ all State Owned Corporations (SOCs);
- ◊ all dividend paying GBEs;
- ◊ those GBEs which are assessed as having the potential in the medium term to become dividend paying; and
- ◊ high risk/materiality GBEs.

(2) Half–yearly monitoring for GBEs in the medium risk/materiality category.

(3) Portfolio monitoring exclusively by the relevant Minister, with relatively low risk exhibited.

(4) Post–privatisation monitoring for GBEs which are no longer owned by the Government but in respect of which the Government may bear ongoing financial risks which require identification and management. Frequency of monitoring will vary depending upon circumstances of sale and the right of the Government to access information. Major privatised GBEs are to be reviewed at least on a quarterly basis.

(5) Businesses where the State has a minority interest as a shareholder are monitored quarterly, assuming that the shareholding is material and/or the business is exposed to particular trading/operating risks.

Performance Targets

3.1.15 GBE boards and management have clear performance targets, against which performance is assessed. This is set out in an annual contractual agreement between the Government and the GBE called a Statement of Financial Performance (SFP). An equivalent agreement, called a Statement of Corporate Intent (SCI), applies for those GBEs that are SOCs.

3.1.16 The performance targets focus on commercially based capital structures, return on capital and dividends as well as the economic and business assumptions that underlie the financial projections and targets. The first such agreements were concluded in 1993.

(a) Capital Structures

3.1.17 The Government has sought to ensure that GBEs' balance sheets are commercially sound and consistent with competitive neutrality requirements. They feature targeted capital structures based on clearly articulated criteria to achieve appropriate mixes of debt and equity.

3.1.18 The Government's Capital Structure Policy, which was introduced in 1994, establishes target capital structures on a case by case basis according to a debt level which:

- supports a good investment grade credit rating (i.e. 'A' or above) over the long term (generally five years);
- enables the financing of an approved capital expenditure program having regard to the current phase of the GBE's investment cycle;
- is capable of being repaid within a reasonable period; and
- provides flexibility for relevant contingencies.

3.1.19 The methodology for establishing target capital structures involves a number of steps:

- development of a business profile;
- review of business plans and forecasts;
- analysis of business risks;
- construction of a model to analyse cash flows;
- sensitivity analysis of the impact of key variables on the cash flows; and
- determination of a notional credit rating applicable to the GBE as a stand alone entity, based on credit rating criteria.

3.1.20 The methodology for determining capital structures enables GBE managers to conduct their businesses with a greater degree of confidence. It also provides a comprehensive framework within which financial targets are set. A target capital structure enables a unique cost of capital to be determined for each GBE to ensure that investment decisions are made with regard to the opportunity cost of capital given the risk of the particular class of asset involved. It thus provides more certainty to GBE management by limiting

the Government's ability to seek excessive dividends which could result in commercially imprudent debt levels.

(b) Return on Capital – Shareholder Value Added

3.1.21 Once the capital structure is set at an appropriate level, then the focus of management is on attaining a commercial return on that capital.

3.1.22 Treasury uses shareholder value added (SVA) analysis to set financial targets for the major GBEs and it is investigating the use of total factor productivity (TFP) to assist in separating the financial performance of GBEs into productivity, price and volume components. TFP measures relate a weighted index of outputs (weighted by revenue shares) to an aggregate measure of inputs (weighted by cost shares).

3.1.23 Shareholder value added (SVA) is an estimate of an entity's true economic profit from employing capital. SVA is calculated as net operating profit after taxes (NOPAT) less a capital charge. The latter is evaluated by multiplying the cost of capital by the total value of capital employed (K). The cost of capital is the minimum rate of return on capital invested required to compensate debt and equity investors for bearing risk. It is calculated using the weighted average cost of capital (WACC) methodology, which takes into account the mix and cost of debt and equity used to fund the entity.

3.1.24 SVA is calculated as follows: SVA = NOPAT – WACC x K. The net present value (NPV) of future SVAs is equal to Market Value Added (MVA). MVA in turn is that amount of an entity's market value (or NPV of future cash flows) which is above the capital invested. Thus, shareholder value is:

- created where the overall cash flow or NOPAT of the business exceeds the cost of capital invested; and
- destroyed where the opposite is true.

3.1.25 SVA directly accounts for the cost of capital to a GBE and objectively measures the creation of value to its shareholder, who is ultimately the NSW taxpayer. Not only does SVA offer a superior means of measuring the overall financial performance of a GBE, but it can similarly be used within a GBE so that all employees can better assess their contribution to the value of their organisation as well as offering an incentive to increase its value.

3.1.26 A growing number of GBEs now provide SVA targets in their SCIs (or SFPs). The date of SVA implementation is shown in Table 3.2.

3.1.27 Because the capital charge is a function of asset values an appropriate asset valuation methodology to measure these values is being developed.

3.1.28 A committee involving NSW Treasury, IPART and the major SOCs, have investigated a uniform asset valuation approach for NSW GBEs for pricing and performance purposes.

3.1.29 A Working Paper, *Valuation of Infrastructure Assets for Pricing Purposes*, has been prepared by NSW Treasury. It is to be released as part of a set of documents on asset valuation. The other documents in this set deal with

asset valuation for accounting purposes. The report addresses the following issues:

- issues that govern a regulatory framework for pricing;
- deprival value as a basis for asset valuation (problems and possible solutions);
- economic base and 'line in the sand' approaches;
- implementation issues; and
- the effect of alternative asset valuation techniques on the way that regulated prices are determined when using price-cap and rate of return measures.

Table 3.2: *GBEs using shareholder value added analysis to set financial targets*

Starting 1997-98:	
Advance Energy	Rail Access Corporation
Australian Inland Energy	State Transit Authority
EnergyAustralia	Hunter Water
Great Southern Energy	Sydney Water
Integral Energy	Port Kembla Ports
NorthPower	Newcastle Ports
Macquarie Generation	Sydney Ports
Delta Electricity	Landcom
Transgrid	State Forests of NSW
Pacific Power	Waste Service
Freight Rail Corporation	
Starting 1998-99:	
Darling Harbour Authority	NSW Lotteries
Department of Housing	Rail Services Australia
Department of Public Works and Services	Registry Births Deaths & Marriages
	Land Titles Office
Marine Ministerial Holding Corporation	Taronga Park Zoo
Starting 1999-2000:	
Parramatta Sports Ground Trust	Fish River Water Supply
Wollongong Sports Ground Trust	Sydney Harbour Foreshore Authority
	Public Trustee
Sydney Cricket & Sports Ground Trust	

(c) Financial Distributions (Dividends)

3.1.30 If the structure and the return on capital are appropriate, then the focus, according to the Financial Distribution Policy, is on dividends that should broadly reflect private sector practice.

3.1.31 A target dividend payment is negotiated as part of the process of developing a SFP (or SCI) before the commencement of the financial year. Based on the actual audited results, the board of the GBE makes a recommendation on the dividend to be paid to the Consolidated Fund in the following year. The final decision on this is influenced by a range of factors, such as: liquidity, capital expenditure requirements, pricing policy and capital structure. The overriding consideration is that the payment of the dividend should not put the GBE at financial risk. It should be appreciated, however, that dividend raising capability is a function of the prices that are set.

3.1.32 As indicated above, maximum prices for designated monopoly government services in New South Wales have been determined by IPART since 1992.

Performance Monitoring

3.1.33 As part of the microeconomic reform process, more rigorous measures of performance, and performance monitoring processes, have been established for NSW GBEs. Performance monitoring is informing the microeconomic reform process, as well as being an important tool for the successful implementation of reforms. Performance measures provide:

- information to promote yardstick competition for GBEs that face little direct competition in input or output markets;
- a means of monitoring public sector managerial performance;
- a powerful internal management tool that can provide information on efficiency, explain reasons for poor performance and identify appropriate role models; and
- information that facilitates accountability to Parliament and the community.

3.1.34 NSW Treasury has been undertaking, since the start of the 1990s, regular financial monitoring of significant GBEs from a shareholder perspective. This acts as a surrogate for the performance assessment usually done by the debt and equity markets. It requires GBEs to provide Treasury with quarterly reports of performance against the targets established in their SCI/SFP and supported by information such as business plans, operating budgets, cash flow statements, income and expenditure statements, balance sheets and management accounting data.

3.1.35 GBEs also report, on an exception basis, any risks which arise throughout the financial year. This acts as an early warning of problems which might arise, so that appropriate action may be taken where necessary.

Payment of Taxes and Tax Equivalents

(a) State Taxes

3.1.36 Since 1 July 1994, all major NSW GBEs have been progressively required to make direct payments of State taxes, principally payroll tax, stamp duty and land tax. These State taxes were applied to most GBEs from 1 July 1995, although there will be a transition period for others. Such a requirement puts them on a competitively neutral footing with private sector businesses.

3.1.37 As required by the Financial Policy Framework, in 1997–98 all GBEs have been directly paying State taxes.

(b) Commonwealth Tax Equivalents

3.1.38 At the March 1994 Premier's Conference it was agreed in principle that States and Territories would impose uniform tax equivalent regimes (TERs) on all GBEs by 1997, while the Commonwealth would amend its income and sales tax legislation to unambiguously exempt State enterprises from Commonwealth tax liabilities.

3.1.39 All major NSW GBEs, since 1 July 1994, have been progressively required to make tax equivalent payments to the Consolidated Fund. Tax equivalent regimes were introduced, where applicable, for the balance of GBEs during 1996–97.

Debt Guarantee Fees

3.1.40 GBEs benefit from the Government's Triple–A credit rating by virtue of their Government ownership and are able to obtain borrowings through Treasury Corporation (TCorp) more cheaply than comparable private sector firms.

3.1.41 Since 1990, however, GBEs with Government guaranteed borrowings have paid a credit–rating–based fee to the Consolidated Fund. The scheme is intended to:

- make up the difference between the interest paid by GBEs and what they would have paid had they been in the private sector;
- ensure competitive neutrality with private sector businesses of similar risk, which lack Government backing and face correspondingly higher borrowing costs;
- correct any distortions in GBE investment and pricing decisions;
- encourage better debt management practices by GBEs by making them aware of the full cost of borrowing; and
- compensate the Government for the financial risk of guaranteeing debt repayment by GBEs.

3.1.42 The guarantee fee applies to all commercial Government agencies with guaranteed borrowings exceeding $1M. They reflect the difference between

the Government's borrowing rate and the assessed 'stand alone' credit rating of the particular GBE. They vary according to each organisation's 'stand alone' credit rating. The lower the GBE's stand–alone credit rating, the higher the fee.

Equivalent Regulation

3.1.43 Many GBEs gain exemptions from certain State legislation and regulations as a result of their status as an entity of the Crown or statutory authority. When a GBE is corporatised as a SOC, it automatically loses this status and therefore its exemption(s). In effect, this means that SOCs will have to comply with the same regulation imposed on the private sector.

3.1.44 SOCs are also subject to certain provisions of the Commonwealth *Corporations Law* dealing with duties and liabilities and *Part IV* of the *Trade Practices(Cth) Act 1974* dealing with restrictive trade practices.

3.1.45 The SOC Act does not intrinsically alter GBEs' exposure to other legislation and regulations. Rather, it simply establishes the structural, legal and accountability framework to be applied to nominated GBEs. Those Acts that are directly related to these regulatory issues are reviewed under the Government's legislation review framework at the time of corporatisation.

3.1.46 Other Acts and regulations that may have an indirect impact on the activities of corporatised entities, whilst not being intrinsic to the operation of the regulatory framework governing corporatisation, are reviewed in accordance with the Government's overall policy agenda. The Government's legislation review timetable released in June 1996 is comprehensive in its identification of statutes with potential anti–competitive effects.

Financial Appraisal Guidelines

3.1.47 In July 1997, the NSW Treasury issued the Financial Appraisal Guidelines to assist in the financial appraisal of the following projects:

- capital projects of Government Trading Enterprises (GTEs) and State Owned Corporations (SOCs); and
- all projects of Budget sector departments and other Non–Budget sector agencies which involve a financing decision. This may involve partial or full private sector provision.

3.1.48 The Guidelines outline the steps in preparing a financial appraisal, including:

- defining the objectives and the scope of the project;
- identifying alternative options which meet the objectives of the project;
- identifying and measuring cashflows and their sensitivity for each of the options;

- selecting an appropriate discount rate;
- calculating summary measures of commercial merit for each option; and
- seeking independent review of the appraisal.

The Guidelines will help improve the decision making process for significant projects undertaken by Government and affiliates. In particular, it will improve the transparency, objectivity and rigour of financial analysis in this regard.

3.2 Application of Competitive Neutrality to Significant Business Activities of General Government Agencies

Requirements of the Agreement

3.2.1 Clause 3(5) of the Agreement applies to agencies that are not significant GBEs within the meaning of Clause. 3(4), but undertake significant business functions as part of a broader range of functions. Clause 3(5) indicates that with respect to these business activities, the parties will:

- where appropriate, implement the principles outlined in clause 3(4); or
- ensure that the prices charged for goods and services will take account, where appropriate, of full Commonwealth or State taxes or tax equivalent regimes, debt guarantee fees and equivalent regulation, and reflect full cost attribution for these activities.

Application in New South Wales

3.2.2 The NSW Treasury has developed costing and pricing principles for GBEs that compete or potentially compete with private sector entities. A working paper, Pricing Principles for User Charges, was released in October 1997 and was distributed to all relevant government agencies to which the principles have applied since 1 July 1998.

3.2.3 NSW Treasury held three workshops during May 1998 to inform all relevant agencies of their responsibilities to implement the pricing principles for user charges. Treasury is currently preparing final guidelines on pricing principles for user charges based in part on the feedback received from agencies participating in the workshops. The finalised guidelines will be released in the first half of 1999.

3.2.4 The user charges principles apply to:

- discretionary transactions where government policy does not specify subsidies to be provided; and
- substantial activities.

3.2.5 Specifically, the principles apply to commercial activities of General Government Sector agencies, Public Trading Enterprises yet to adopt the Financial Policy Framework and those not subject to independent prices oversight.

3.2.6 An agency meeting the above criteria may be exempt from applying the principles where it can demonstrate that the cost of applying the principles exceeds the benefits of competitively neutral pricing.

3.2.7 Broadly the aim is for agencies to recover full costs. However, in the short term prices need only cover marginal costs. Pricing below marginal costs will be deemed as predatory and potentially anti–competitive according to Part IV of the *Trade Practices Act (Cth) 1974*.

3.2.8 In determining a competitively neutral cost base all input costs and benefits accruing from government ownership are to be included. Costs will include, among other things, employee costs, materials, maintenance, depreciation, taxes, a return on capital and allocation of joint costs such as administrative support costs.

3.2.9 Pricing guidelines have been released in other jurisdictions including the Commonwealth by way of the Productivity Commission. The pricing principles are not consistent in all respects across jurisdictions and in the case of interjurisdictional competition between GBEs there is a possibility that problems may arise.

3.2.10 New South Wales supports the development of nationally uniform costing and pricing guidelines.

3.2.11 A listing of the NSW General Government Enterprises required to implement the pricing principles is provided below in Table 3.3. The agencies supply goods or services subject to 'user charges' as defined by the Australian Bureau of Statistics.

Table 3.3. *List of NSW General Government Enterprises*

No.	Government Purpose (ABS)[1]	Government Agency/Activity	GGE (ABS)[2]	Treasury Monitor[3]	User[4] Charges	Sig[5]	Min[6]
1	**(01) General Public Services**	State Records Authority	x	x	x		x
2		Audit Office of NSW	x	x	x	x	
3		Cabinet Office	x	x			
4		Government Actuary	x				
5		Independent Commission Against Corruption	x	x	x		x
6		Internal Audit Bureau	x				
7		Legislature	x	x	x		x
8		Local Government, Dept of	x	x	x		x
9		Ombudsman's Office	x	x	x		x
10		Parliamentary Counsel's Office	x	x			
11		Premier's Department	x	x	x		x
12		State Electoral Office	x	x	x		x
13		Statutory & Industrial Ballots – and Local Government Elections	x	x			
14		Superannuation Administration Authority	x		x	x	
15		Treasury	x	x	x		x
16	**(03) Public Order & Safety**	Attorney General's Dept	x	x	x	x	
17		Rural Fire Service	x	x	x		x
18		Corrective Services, Dept of	x	x	x	x	
19		Crime Commission, NSW	x	x	x		x
20		Director of Public Prosecutions, Office of	x	x	x		x
21		Fire Brigades, NSW	x	x	x		x
22		Judicial Commission of NSW	x	x	x		x
23		Juvenile Justice, Dept of	x	x	x		x
24		Law Reporting, Council of	x				
25		Legal Aid Commission	x	x	x	x	
26		Legal Practitioners Admission Board	x				
27		Police Service, NSW	x	x	x	x	
28		State Emergency Service	x	x	x		x

No.	Government Purpose (ABS)[1]	Government Agency/Activity	GGE (ABS)[2]	Treasury Monitor[3]	User[4] Charges	Sig[5]	Min[6]
29	**(04) Education**	Adult Migrant English Service	x	x	x	x	
30		Board of Studies, Office of the	x	x	x	x	
31		Department of Education and Training (merger of Department of School Education and NSW TAFE Commission).	x	x	x	x	
32	**(05) Health**	Health Care Complaints Commission	x	x	x		x
33		Health, Dept of	x	x	x	x	
34		Cancer Council of NSW	x	x	x	x	
35		Dental Board	x				
36		Health Professionals Registration Board	x				
37		Medical Board	x	x	x	x	
38	**(06) Social Security & Welfare**	Aboriginal Affairs, Dept of	x	x			
39		Ageing and Disability Department	x	x			
40		Community Services Commission	x	x	x		x
41		Community Services, Dept of	x	x	x	x	
42		Ethnic Affairs Commission	x	x	x	x	
43		Home Care Service of NSW	x	x	x	x	
44		Women, Dept for	x	x	x	x	
45	**(07) Housing & Community**	Coastal Council of NSW	x				
46	**Amenities**	Crown Land Homesites					
47		Environmental Trusts	x	x			
48		Environment Protection Authority	x	x	x		x
49		Honeysuckle Development Corporation					
50		Lake Illawarra Authority	x				
51		Ministerial Development Corporation	x				
53		Sydney Region Development Fund	x	x			
54		Upper Parramatta River Catchment Trust	x				
55		Urban Affairs and Planning, Dept of	x	x	x		x
56	**(08) Recreation & Culture**	Anzac Memorial Building, Trustees of	x				
57		Art Gallery of NSW	x	x	x	x	
58		Arts, Ministry for the	x	x	x		x
59		Sydney Entertainment Centre	x		x		x
60		Australian Museum	x	x	x	x	
61		Bicentennial Park Trust	x	x	x		x
62		Casino Control Authority	x	x	x		x
63		Centennial Park and Moore Park Trust	x	x	x	x	
64		Film and Television Office, NSW	x	x	x		x
65		Gaming and Racing, Dept of	x	x	x		x
66		Greyhound Racing Control Board	x	x			
67		Harness Racing Authority of NSW	x	x			
68		Heritage Office	x	x			
69		Historic Houses Trust of NSW	x	x	x		x
70		Museum of Applied Arts and Sciences	x	x	x		x
71		National Parks and Wildlife Service	x	x	x	x	
72		Olympic Co–ordination Authority	x	x	x		x
73		Opera House Trust	x	x	x	x	
74		Royal Botanic Gardens and Domain Trust	x	x	x		x
75		SOCOG	x	x	x	x	
76		Somersby Park Pty Ltd	x				
77		Sport and Recreation, Dept of	x	x	x	x	
78		State Library of NSW	x	x	x	x	
79		State Sports Centre Trust	x	x	x	x	
80	**(09) Fuel & Energy**	Coal Compensation Board	x	x			
81		Ministry of Energy & Utilities	x	x	x		x
82		Mineral Resources, Dept of	x	x	x	x	
83		Mines Rescue Board	x	x	x	x	
84		Mines Subsidence Board	x	x			
85		Sustainable Energy Development Authority	x	x			

No.	Government Purpose (ABS)[1]	Government Agency/Activity	GGE (ABS)[2]	Treasury Monitor[3]	User[4] Charges	Sig[5]	Min[6]
86	(10) Agriculture, Forestry,	Agriculture, Dept of	x	x	x	x	
87	Fishing & Hunting	Agricultural Scientific Collections Trust	x				
88		Banana Industry Committee	x				
89		Dairy Corporation, NSW	x	x	x	x	
90		Dairy Industry Conference, NSW	x				
91		Dumaresq–Barwon Border Rivers Commission	x				
92		Fisheries, NSW	x	x	x		x
93		Hunter Catchment Management Trust	x				
94		Land and Water Conservation, Dept of	x	x	x	x	
95		Luna Park Reserve Trust	x	x	x		x
96		Soil Business	x				
97		Surveyors Board	x				
98		State Valuation Office	x	x	x	x	
99		Marketing Boards:					
100		NSW Grains	x				
101		MIA Citrus Fruit	x				
102		Rice	x				
103		Wine Grapes	x				
104		Meat Industry Authority NSW	x	x	x		
105		Rural Assistance Authority	x	x	x		x
106		Safe Food NSW	x	x	x	x	
107		Info. Tech. and Management, Dept of					
		(Surveyor General)	x	x	x	x	
		(Valuer General)	x		x	x	
108		Tick Control, Board of	x				
109		Veterinary Surgeons Board NSW	x				
110		Wild Dog Destruction Board	x				
111	(11) Mining, Mineral	Architects of NSW, Board of	x				
112	Resources, Manufacturing & Construction	Building & Construction Industry - Long Service Payments Corporation	x	x			
113		Public Works and Services, Department of	x	x	x	x	
114	(12) Transport &	Air Transport Council	x				
115	Communications	Marine Ministerial Holding Corporation	x	x	x	x	
116		Motor Accidents Authority	x	x	x	x	
117		Olympic Roads and Transport Authority	x	x	x		x
118		Roads and Traffic Authority	x	x	x	x	
119		Tow Truck Industry Council of NSW	x				
120		Transport, Dept of	x	x	x		x
		Transport, Dept of (Marine Administration)	x	x	x	x	
121		Waterways Authority	x	x	x	x	
122	(13) Other Economic Affairs	Fair Trading, Dept of	x	x	x	x	
123		Registry of Encumbered Vehicles	x	x	x	x	
124		Financial Counselling Trust Fund	x				
125		Financial Institutions Commission, NSW	x				
126		Honeysuckle Development Corporation					
127		Independent Pricing & Regulatory Tribunal	x	x	x		x
128		Industrial Relations, Dept of	x	x	x		x
129		Insurance Ministerial Corporation	x	x	x		x
130		Insurers Contribution Fund	x				
131		Insurers Guarantee Fund	x				
132		Premiums Adjustment Fund	x				
133		Protective Commissioner	x				
134		State and Regional Development, Dept of	x	x	x		x
135		Sydney Harbour Foreshore Authority					
136		Tourism NSW	x	x	x	x	
137		Education and Training, Dept of	x	x	x		x
138		Vocational Education & Training Accreditation Board	x				
139		WorkCover Authority	x	x	x	x	
140		Worker's Compensation (Dust Diseases) Board	x				
141		Workmen's Compensation (Broken Hill) Act – Joint Committee	x				
142	(14) Other Purposes	Crown Transactions	x	x			

The Key to **Table 3.3** is as follows:

1 Categories as per the Australian Bureau of Statistics (ABS) in Government Finance Statistics Australia: Concepts, Sources and Methods.
2 General Government Enterprises (GGEs) as defined by the ABS in GFS Australia: Concepts, Sources and Methods.
3 These agencies/activities are monitored by Treasury on the basis of a risk and materiality assessment.
4 A user charge is a voluntary payment to a PTE or a general government entity. It is of a commercial rather than a regulatory nature and provides an identifiable benefit to the payer. (ABS: GFS Australia: Concepts, Sources and Methods). The existence of user charges is a broad indicator of a business activity.
5 Significant > $2 000 000 user charges revenue pa. as based on 1997–98 Budget estimates.
6 Minor < $2 000 000 user charges revenue pa. as based on 1997–98 Budget estimates.

3.3 Complaints and Non–compliance

Requirements of the Agreement

3.3.1 Clause 3(8) of the Agreement requires governments to include a complaints mechanism in their Policy Statements on Competitive Neutrality and publish allegations of non–compliance in their annual reports.

Application in New South Wales

3.3.2 This section deals with the Government's complaints systems and details of complaints received except in relation to Local Government. Local Government complaints and complaint handling arrangements are addressed in section 7.

3.3.3 An actual or potential competitor of a GBE may wish to make a complaint if it perceives it is being adversely affected or being denied a market opportunity because of a GBEs' net competitive advantage resulting solely from its public ownership.

The arrangements outlined in the *Policy Statement on the Application of Competitive Neutrality* consisted of two stages:

- firstly, the party lodging a complaint is to approach the relevant government agency to clarify and attempt to resolve the matter (this first step also acts as a sieve to eliminate trivial complaints or misunderstandings); and

- secondly, and only if necessary, to refer the matter for independent assessment by a third party complaints mechanism wherever the complainant is not satisfied with the response of the agency involved.

3.3.4 The independent third party complaints mechanisms are the IPART, for generic complaints, and the State Contracts Control Board (SCCB), for complaints relating to tendering. Updated pricing and costing guidelines on the application of competitive neutrality in NSW are currently being prepared for distribution to agencies and members of the public. The Government is also updating its competitive neutrality policy statement.

Complaints

3.3.5 During 1998 The Cabinet Office received two complaints regarding an alleged breach of competitive neutrality principles by Government businesses. A summary of these complaints is provided below. Each complaint has been investigated by the relevant agency in the first instance. To date complainants have not sought to have these matters subsequently referred to the IPART or the SCCB for investigation.

Sydney Hospital

3.3.6 This complaint was brought to the attention of The Cabinet Office in January 1998 and was noted in the New South Wales Government's June 1998 report to the Council. The complainant alleged that Sydney Hospital has an unfair competitive advantage in inspection, monitoring and consulting on hazardous materials in the workplace. The complainant contended that the services provided by the hospital are subsidised in many ways. The matter was referred to NSW Health for consideration. The Department has responded direct to the complainant noting that Sydney Hospital has not contravened competitive neutrality principles.

Tenders for tree trimming services to Energy Australia

3.3.7 The complainant alleged that three Government corporations (Rail Services Authority (RSA), NorthPower and Integral Energy) were competing for tree lopping tenders on a non-commercial basis. In line with NSW complaints handling arrangements, The Cabinet Office referred the complaint to the relevant agencies for consideration and response to the complainant and provided advice to the complainant on the application of competitive neutrality in NSW. Agencies have now responded direct to the complainant noting that their operations have been conducted in line with competitive neutrality principles.

3.3.8 In addition to the above complaints, the following matters also received consideration.

The University of Newcastle Sports and Aquatic Centre

3.3.9 The complainant alleged that the University's Sports and Aquatic Centre offered discount memberships that were unfairly subsidised by Government grants to the University. NSW notes that approaches to the application of competitive neutrality to the higher education sector are still subject to consideration. At present, it appears that universities do not fit neatly within the general category of a State Government business. However, to enable the complaint to be handled in a manner consistent with competitive neutrality principles, The Cabinet Office referred the matter to the University of Newcastle for consideration and response to the complainant. The complainant was also provided with advice on the application of competitive neutrality in NSW. The University responded directly to the complainant noting that competitive neutrality guidelines had not been contravened.

Using Government purchasing power in retail trading

3.3.10 This matter was reported in the New South Wales Government's June 1998 report to the Council. The complaint related to the use of government purchasing power, authorised for exempt clients e.g. schools and hospitals, to run a retail operation. The complainant held that the Government was able to purchase goods at 10% lower than the wholesale price. The complainant requested that it be demonstrated that the discount was attributable to volume and questioned whether adequate charges for return

on capital, tax and labour costs were being incorporated into retail prices by the Government outlet. The matter was directed to the relevant Minister for consideration. Following a directive from the Minister the retail outlet, which was the subject of the complaint, ceased operation.

The manufacture and sale of artificial eyes by Sydney Eye Hospital

3.3.11 This complaint was reported in the New South Wales Government's March 1997 report to the Council. The complainant alleged that Sydney Eye Hospital Artificial Eye Maker (a business acquired in 1989 by the former East Sydney Area Health Service) had an unfair advantage in competing against other artificial eye makers due to its connection with Sydney Eye Hospital. The 1997 Report indicated that the Government was considering the application of tax and tax equivalent regimes and debt guarantee fees to the Hospital's artificial eyes business. NSW Health has investigated the complaint and responded to the complainant. The relevant business has sought to comply with NSW pricing principles. Where compliance has not been met, accounting practices are to be reviewed and costs allocated to the business. Full compliance is expected to be achieved by 31 May 1999.

4 Structural Reform of Public Monopolies

Requirements of the Agreement

4.1 Clause 4(2) of the Agreement indicates that, before competition is introduced to a sector traditionally supplied by a public monopoly, the non–contestable regulatory or other functions of the monopoly need to be separated from those commercial activities that can be subject to competition. This eliminates any conflict of interest with commercial functions and facilitates competitively neutral regulation of public and private businesses.

4.2 Clause 4(3) also specifies that when introducing competition to a market traditionally supplied by a public monopoly, and before a public monopoly is privatised, governments are required to undertake a review into the following matters:

- the appropriate commercial objectives for the public monopoly;
- the merits of separating any natural monopoly elements from potentially competitive elements of the public monopoly;
- the merits of separating potentially competitive elements of the public monopoly;
- the most effective means of separating regulatory functions from commercial functions of the public monopoly;
- the most effective means of implementing the competitive neutrality principles set out in the Agreement;
- the merits of any community service obligations undertaken by the public monopoly and the best means of funding and delivering any mandated community service obligations;
- the price and service obligations to be applied to the industry; and
- the appropriate financial relationships between the owner of the public monopoly and the public monopoly, including the rate of return targets, dividends and capital structure.

Application in New South Wales

4.3 The NSW Government has been systematically applying the principles of structural reform to its public monopolies.

4.4 New South Wales has restructured the regulatory and operating sectors of the State's publicly-owned electricity industry, with the operating sector further divided into its natural monopoly (transmission and distribution) and competitive components (generation and retail). The passage through the NSW Parliament of the *Electricity Supply (NSW) Act 1995*:

- established a unified framework for the industry;

- provided for regulated monopoly transmission and distribution networks;
- fostered competitive retail electricity supply;
- regulated the wholesale electricity market.

New South Wales regulatory arrangements for network operations has developed in line with the national market timetable, with regulation of transmission due to shift to the Australian Competition and Consumer Commission in accordance with the National Electricity Code in July 1999 and distribution to remain with IPART (until January 2001, when arrangements provide for distributors to be regulated under the National Electricity Code).

On 13 December 1998, New South Wales moved from a State wholesale market operating under the *Electricity Supply Act 1995* to the National Electricity Market operating under the National Electricity Code.

4.5 On the public transport side, New South Wales through the Transport Administration Amendment (*Rail Corporatisation and Restructuring) Act 1996*, has separated the operation of rail services from the ownership, provision of access and the maintenance components of the State Rail Authority. Four transport entities now exist:

- State Rail Authority – focused on providing customer services;
- Rail Services Authority – responsible for track maintenance;
- Rail Access Corporation – responsible for managing the rail network and administering access by public and private operators; and
- FreightCorp – responsible for non–passenger freight services.

4.6 The NSW TAB was privatised on 22 June 1998 by way of a public float on the Sydney Stock Exchange, where it was registered as TAB Limited. Approximately 750,000 shareholders invested in TAB limited and in the process allowed the Government to retire $1 billion of debt. Prior to privatisation the TAB was corporatised on 1 March 1998.

4.7 The privatisation has vested exclusive licences with TAB Limited to undertake the following activities:

- provision of off course totalisator wagering in New South Wales;
- operation of a State-wide linked jackpot system on certain gaming machines in registered clubs; and
- provision of a centralised monitoring system for gaming machines in registered clubs and hotels.

4.8 In late 1997, the NSW Parliament passed the Totalizator Legislation Amendment Bill, which amended a range of statutes necessary to enable the proposed privatisation. These amendments included exemptions from the TPA for the exclusive licence arrangements outlined above. As part of the process of notifying the ACCC of the exemptions, an advance copy of the net public benefit report was forwarded to both the ACCC and the NCC in accordance with Clause 2 of the Conduct Code Agreement.

4.9 The Murrumbidgee and Colleambally irrigation schemes were corporatised on 1 July 1997. On 12 February 1999, the Government shifted ownership of the Murrumbidgee scheme to local water users. The Government is pursuing a similar model for the Colleambally scheme.

4.10 Since 1 January 1997 NSW Lotteries Corporation has operated as a state owned corporation subject to the provisions of the State Owned Corporations Act 1989 and the New South Wales Lotteries Corporation Act 1996. The Minister for Gaming and Racing remains responsible for the regulatory functions associated with licensing and control arrangements in the lotteries market.

4.11 The Sydney Market Authority was dissolved under an Act of Parliament from midnight on 31 October 1997. The business of the market is now carried out by Sydney Markets Limited (SML), a private company, owned by the stallholders of the former Authority. SML rents the Flemington site from the Crown under a longer term lease.

4.12 The State Valuation Office commenced operations on 1 May 1997 following the separation of the regulatory and operational functions that were previously undertaken by the then Valuer-General's Office. The Valuer General (now within the Department of Information Technology and Management) is responsible for all regulatory functions whilst the State Valuation Office undertakes the operational role. The State Valuation Office has been established as a business unit of the Department of Public Works and Services. The role of the Office is to provide State and Local Government with a property consultancy service to assist in the proper management and utilisation of State and Local Government property.

4.13 The Snowy Mountains Hydro Electric Authority is a Commonwealth Statutory Authority. New South Wales is entitled to 58 per cent of its capacity whilst Victoria and the Commonwealth are entitled to 29 per cent and 13 per cent respectively. It is proposed to be incorporated on 1 December 1999 as a public company owned by New South Wales, Victoria and the Commonwealth in shares of 58 per cent, 29 per cent and 13 per cent respectively.

4.14 In addition to these initiatives, the State is committed to meeting the requirements of the *Agreement to Implement National Competition Policy and Related Reforms*. This entails structural reform of the State's water, gas and road transport sectors and establishment of an interstate electricity

market. Detail on the application of these reforms is provided in Chapter 8 *Application of the Agreement to Implement Related Reforms.*

5 Review of Legislation

Requirements of the Agreement

5.1 Clause 5 of the Agreement requires jurisdictions to review legislation "that restricts competition" between 1996 and 2000. The Agreement indicates that legislation should not restrict competition unless it can be demonstrated that the benefits to the community as a whole outweigh the costs and that the objectives of the legislation can only be achieved by restricting competition. The determination of whether particular legislation "restricts competition" and requires review is for each jurisdiction to determine. Each jurisdiction was required to have published a Legislation Review Timetable by June 1996.

Application in NSW

5.2 An outline of the NSW approach was provided in the March 1997 Report. Legislation scheduled for review is listed in the *NSW Government Policy Statement on Legislation Review*, published in June 1996. During 1998, two changes were made to the NSW schedule. Following a query from the NCC, the *Lord Howe Island Act 1953* was added to the NSW schedule. The Act establishes a statutory marketing board for the export and sale of Kentia palm seeds, seedlings and trees and control over the sale of liquor on the Island. The review will commence during 1999. As foreshadowed in the 1998 report to the NCC, with the concurrence of the NCC, the *Biological Control Act 1985* has been removed from the NSW schedule.

5.3 Annexure 2 sets out the outcomes or status of all NSW legislation reviews.

5.4 In September 1997, the National Competition Council (NCC) wrote to all jurisdictions outlining the Council's views on appropriate review processes. NSW practice accords with its suggestions in most respects. Where it differs, there are good reasons based on review experience to date. Some basic elements of NSW practice are set out below

Composition of review panels

5.5 Ministers have primary responsibility for reviews within their portfolios, and review panels are generally chaired by a senior officer of the relevant department. NSW believes that Ministerial and Departmental "ownership" of reviews contributes to the effectiveness of the review process, including implementation of recommended reforms. Review panels for all major reviews include central agency representatives (The Cabinet Office and usually The Treasury), or consult closely with central agencies in the preparation of public issues papers and review reports.

5.6 Where a review relates to a statutory authority and its role (e.g. the reviews of the *Dairy Industry Act 1979* and the *Meat Industry Act 1978*), the authority

generally participates in the panel. NSW believes that the benefits of inclusion (expertise, knowledge, cooperation by the authority in review and reform implementation) outweigh the disadvantages of actual or perceived lack of objectivity. Experience has shown that the integrity and independence of the review process can be satisfactorily safeguarded by the involvement of central agency representatives on the review panel.

5.7 Review panels may also include representatives of major stakeholder groups. The benefits which may flow from inclusion, and the safeguards of review integrity, are similar to those outlined in the previous paragraph. Where there are a large number of stakeholder groups and/or their interests diverge widely, alternative mechanisms, such as formal or informal stakeholder reference groups, may be used.

Terms of reference and explanatory material

5.8 Formal terms of reference are developed for each review using the template terms of reference at Annexure 1 as a guide. The template is based on CPA Clause 5(9). The terms of reference are publicly available. Reviews are usually advertised with an outline of the process to be followed. A public issues paper which explains the anti-competitive elements under review, and elicits comment on relevant competition and public interest issues, is prepared for most reviews expected to have a widespread and/or significant impact.

Consultative processes

5.9 In 1997, NSW published consultation guidelines entitled '*Consulting on Reform: A Consultation Framework for Review of Anti-Competitive Legislation'*. The publication sets out a number of aspects of review procedure, and comprehensively covers consultation arrangements. These guidelines ensure that reviews are conducted in an open and transparent manner, and that public participation is facilitated. Final reports are made publicly available following Cabinet consideration of the recommendations.

National reviews and national coordination

5.10 National reviews of similar legislation may be proposed by any jurisdiction and may proceed where some or all jurisdictions agree on terms of reference and a process for the review. The COAG Committee on Regulatory Reform (CRR) facilitates the identification of possible national reviews and agreement by jurisdictions on review arrangements.

5.11 Most reviews are State-based, without any formal mechanism for national coordination. However, NSW ensures that all reviews take account of relevant regulatory regimes in other jurisdictions, and recent reforms or

reform proposals. In 1997, NSW modified its template terms of reference to formalise this requirement (see Annexure 1, para 5).

Trade Practices Act exceptions

Notice of continuing exemption from competition laws

5.12 New South Wales gave the ACCC notice on 10 July 1998, under sub-clause 2 (3) of the Conduct Code Agreement, of New South Wales legislation that:

- existed at 11 April 1995;
- was enacted or made in reliance on the version of section 51 of the *Trade Practices Act 1974* (TPA) that was in force at 11 April 1995; and
- will continue to except conduct under section 51 TPA after 20 July 1998.

5.13 The following list is of the New South Wales legislation that includes exemptions of this type:

- *Marketing of Primary Products Act 1983*;
- *Grain Marketing Act 1991*;
- *Co-operatives Act 1992*;

5.14 All three Acts are either currently under, or scheduled for, competition policy legislation reviews.

Other section 51 (1) exceptions

5.15 The following legislation has been made during 1998 that includes exceptions made under section 51 of the *Trade Practices Act 1974:*

- *Liquor and Registered Clubs Legislation Amendment (Community Participation) Act 1998* : exemption relates to exclusive investment licence.
- *Marketing of Primary Products Amendment (Rice Marketing Board) Act 1998:* exemption to continue to January 2004, with a further review in 2000.
- *Marketing of Primary Products Amendment (Wine Grapes Marketing Board) Act 1997:* exemption mainly relates to vesting arrangements to continue to July 2000.
- *Dairy Industry Amendment (Trade Practices Exemption) Act 1998:* exemption to continue to July 2003.
- *Farm Produce (Repeal) Act 1996:* exemption arises from repeal of the *Farm Produce Act 1983* and relates to the Flemington Markets Commercial Services Scheme and only to contracts entered into before 1 September 1997.

5.16 In addition, the following Regulations have been made under sections 38 and 39 of the *Competition Policy Reform (New South Wales) Act 1995:*

- Competition Policy Reform (New South Wales) Amendment (Waste) Regulation 1998: exemption to continue to July 2000.
- Competition Policy Reform (New South Wales) Amendment (Grain Marketing) Regulation 1998: exemption to continue to July 2000 or earlier depending on progress with the current legislation review.
- Competition Policy Reform (New South Wales) Amendment (SOCOG and SPOC) Regulation 1998: exemption by regulation to continue until replaced by legislation. Exception to be in place until after the Sydney Paralympic Games. (This exception mirrors the exception already in place for the Sydney Olympic Games).

5.17 A number of these are discussed later in this chapter in the section on remaining first tranche issues. The ACCC has been notified of all these exceptions.

New Legislation

5.18 Since the Government's ratification of the *Competition Principles Agreement* in April 1995 and the passage of the *Competition Policy Reform (NSW) Act* through the NSW Parliament in June 1995, proposals for new legislation are required to take account of competition policy requirements. To ensure that this occurs all proposals for new legislation or amendments to existing statutes are reviewed by officials in The Cabinet Office.

5.19 Inconsistencies between new legislation and competition policy requirements are either referred back to the responsible Minister for further consideration or brought to the attention of Cabinet. Ministers are aware that, should they proceed with anti-competitive legislation, approval must be sought from the Premier for any statutory exemptions or authorisations in relation to the *Trade Practices Act*.

The Electricity Supply (NSW) Act 1995

5.20 In March 1999 the NCC wrote to The Cabinet Office advising of a letter received from an electrical contractor who was concerned that 'only accredited contractors can install underground service mains in NSW, whereas prior to October 1998 any NSW registered electrical contractor could undertake the installation'. The NCC indicated that it had been advised that section 16 of the Electricity Supply (General) Regulation 1996, states that a person who provides electrical services must be accredited to provide those services. The NCC has requested that NSW address this issue in this report in accordance with clause 5(5) of the Competition Principles Agreement.

5.21 In fact, s 16 of the above regulation states that "for the purposes of section 31 of the Act, all contestable services are prescribed". Contestable services are defined as any service provided for the purposes of complying with Division 4 of Part 3 of

the Act and any service comprising work related to an extension or an increase in capacity of a distribution system.

5.22 The NSW Government notes that S 31 of the Electricity Supply Act 1995 allows customers to elect to have any electrical or other goods or services required by the Act to be provided by a person chosen by the consumer, provided that person is accredited in accordance with the regulations. Hence, it is s 31 of the Act, which commenced in June 1998, that introduced the original requirement for accreditation, rather than s 16 of the regulation.

5.23 The Electricity Supply (General) Regulation 1996 was amended in September 1996 to include a timetable for the progressive introduction of contestablility (and the requirement for accreditation) for each category of work. Constestability for the category of work in question was to be introduced by February 1997. However, in Integral Energy's case, the requirement for accreditation was not enforced until October 1998.

5.24 As the requirement for accreditation originated in the Electricity Supply Act 1995 rather than any recent regulatory activity, the NSW Government considers that it has not contravened clause 5(5) of the Competition Principles Agreement. It is noted that the Act is scheduled for NCP review in 1999-2000. The requirement for accreditation will be considered as part of that review.

5.25 Notwithstanding the above position, the following information is provided to assist clarifying recent pro-competitive reforms in this area.

5.26 One of the main purposes of the Electricity Supply Act 1995 is to promote consumer choice and create consumer rights in relation to electricity connections and electricity supply (refer to Section 3 of the Act).

5.27 The Act has enabled consumers to employ contractors of their choice to perform work on the distributors' systems for which customers are paying a capital contribution. Previously responsibility for this work rested exclusively with the distributors. Now, any accredited contractor, of which there are approximately 500, may compete for the work. The benefits to the consumer seeking connection to the grid and supply of electricity are freedom of choice of contractors in a competitive environment, resulting in significant savings for the consumer. A market of $50-$100 million has been opened up to contractors.

5.28 The only restriction on this new competitive market is that the contractors must be accredited. Accreditation is required because the distributors are now liable for the safety, reliability and quality of the system even though under the competitive system they do not have direct control over the personnel carrying out the work.

5.29 For reasons of safety (not only safety of the consumers but also for the personnel who may be working in close contact to high voltage and other energised wires) it is considered absolutely necessary that an accredited person is responsible for the work. There are, on average, 2 fatalities and 40 serious accidents per annum to electricity industry employees. There are also 3 fatalities and 19 serious accidents per annum to the general public involving distribution assets. Relaxation of the

accreditation requirements would have an adverse impact on this situation. The benefits to the community of having an accreditation requirement for electrical contractors are considered to outweigh the costs of the restriction on competition.

5.30 In regard to work on consumers' installations, the consumers continue to be responsible for this work and may employ any licensed contractor to carry it out. The 1996 and 1999 NSW Service and Installation Rules describe the procedures and practices to be followed in relation to the connection of a consumer's installation to a distribution system. The Rules provide clear definitions of what constitutes consumer installations as opposed to distribution assets.

5.31 The Electricity Supply (Safety Plans) Regulation 1997 requires distributors to prepare, lodge and implement a safety and operating plan taking into account the provisions of a code of practice that calls up the Service and Installation Rules. Distributors can vary their practices from the Rules, if they can justify how the variations ensure an equal or better outcome. The Rules are also referenced in the connection contracts between customers and their distributor, as required under the Act; making them legally binding on customers as well as distributors.

5.32 With the introduction of contestability, distributors are now adopting definitions as to who owns which assets in accordance with the Rules and are working towards a uniform approach. This will enhance the opportunities for contractors to compete on a State-wide basis. Previously there may have been some variations between distributors in their interpretation of the previous Rules, particularly in regard to the definition of what constitutes consumer installations as opposed to distribution assets.

The Liquor and Registered Clubs Legislation Amendment (Community Partnership) Act 1998

5.33 The NCC has asked the NSW Government to demonstrate that the above Act complies with clause 5(5) of the Competition Principles Agreement. The Government's view is that the Act introduced reforms that increase, rather than restrict, competition. Accordingly, the Government does not believe it is required to demonstrate compliance with clause 5(5). The following information is provided to assist clarification of the issues.

5.34 The exception made under section 51 of the *Trade Practices Act 1974* relates to the exclusive investment licence granted to TAB Limited ('TAB') or a wholly owned subsidiary of TAB under Part 13 of the *Liquor Act 1982* for the exclusivity period (being a period of approximately 15 years).

5.35 When considered in isolation, the granting of an exclusive investment licence may be perceived as introducing a new restriction on competition. However, if a 'big picture' view of the regulatory environment is taken, it will be seen that the granting an exclusive investment licence in this case, actually increases competition. The investment licence removes a barrier to entry by the TAB into certain markets.

5.36 For example, before the introduction of an investment licence:

- approved gaming devices could only be supplied to hoteliers by the holder of an amusement device dealer's licence ('a dealer') or the holder of an amusement device seller's licence ('a seller');
- only a person approved by the Liquor Administration Board ('the Board') could finance the acquisition of approved gaming devices, and the Board would not approve a dealer or a seller; and
- an hotelier could only share receipts from an approved gaming device with a person who had a financial interest in the hotel, which had been declared to the Licensing Court.

5.37 After the introduction of an investment licence:

- a new market entrant (the licensee) is able to *acquire* approved gaming devices; *supply* approved gaming devices to hoteliers; *finance* the acquisition by hoteliers of approved gaming devices; and *share in the profits* of a machine supplied or financed by the licensee.

5.38 Introducing the investment licence is expected to increase competition:

- in the markets for the supply of approved gaming devices and the financing of the acquisition of approved gaming devices, by giving hoteliers a choice between:
  - outright acquisition from a dealer or a seller;
  - outright acquisition from the holder of an investment licence;
  - acquisition from a dealer, seller or the holder of an investment licence with some form of financing from a financier not otherwise connected to the gaming industry; and
  - acquisition from the holder of an investment licence with some form of financing or sharing of profits.

- previously, an hotelier could only acquire an approved gaming device from a dealer or a seller and could only obtain financing for acquisition of an approved gaming device from a financier not otherwise connected to the gaming industry; and

- in the gaming market generally, by assisting smaller hotels to acquire approved gaming devices, enabling them to compete more effectively with other hotels and with registered clubs.

5.39 The Government's reasons for introducing the investment licence were:

- to assist smaller hotels to acquire approved gaming devices that comply with the 'X standard' adopted by the Board in 1995. All approved gaming devices must comply with this standard by 31 December 2000. Many smaller hotels require assistance to finance the replacement of non-complying approved gaming devices; and

- to facilitate the introduction of the State Wide Linked Jackpots System ('SWLJS') by permitting TAB to finance approved gaming devices in hotels. TAB was granted an exclusive licence to operate the SWLJS for approximately 15 years under the *Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Act 1997* ('the Links

Act'). The NCC has accepted that TAB's exclusive licence in relation to SWLJS and the other exclusive licences granted to TAB under the Links Act and the *Totalizator Legislation Amendment Act 1997* comply with clause 5(5) of the CPA. The exclusive investment licence complements TAB's exclusive SWLJS licence and the net community benefit associated with the SWLJS licence applies equally to the investment licence.

5.40 Recognising the social costs of gambling, the Government is particularly concerned to maintain responsible gambling policies. The investment licence will enable the Government to maintain responsible gambling policies.

Review of Legislation Timetable

5.41 The Government's legislation timetable is reviewed by the Premier in consultation with other Ministers, in accordance with the Government's overall policy agenda. Any alterations to the timing of reviews are agreed between the Premier and responsible Minister. The NSW Government's timetable for review of legislation is expected to permit the completion of reviews of nominated legislation by the year 2000.

Licence Reduction Program

5.42 Details of this program were provided in the March 1997 report. The Licence Reduction Program reviewed 250 licences between August 1995 and February 1997. Of the 85 licences identified for repeal, 72 have already been repealed. Proclamation of the remaining 13 repeals have been made contingent on the outcomes of other review processes, including NCP reviews.

Reforming Planning, Land Use and Natural Resource Approvals Systems

5.43 The Government's *Policy Statement on Legislation Review* identified a number of inefficiencies in the State's planning and land use approvals systems. The Statement indicated that the Government would address these issues through the application of overarching reform principles within a NCP framework. The reform principles are described in paragraphs 3.5 - 3.15 of the Policy Statement.

5.44 Attachment 2 of the Policy Statement listed a program of 30 reform projects. The Government indicated that it would report the outcomes of these projects to the NCC. Annexure 3 of this report provides information on the status of each of the 30 projects, including where applicable, the relevant outcomes. Several of the projects were addressed in the context of recent reforms to the State's development approval system. Information on these reforms is presented below.

Reforms to the State's Development Approval System

5.45 The *Environmental Planning and Assessment (Amendment) Act 1997* passed by the NSW Parliament in December 1997, came into effect on 1 July 1998. The Act introduces reforms that reduce 'red tape' and provide more certain and consistent decisions on development proposals for business and families.

5.46 The Act covers three principal areas of reform:

1. integrating development consents;
2. providing appropriate assessment; and
3. increasing competition in the area of compliance functions.

Integrating development consents

5.47 A clearer, simpler and more certain process is established for obtaining approvals for a project such as construction of a building or a new business. Integration is achieved by:

- providing a single system for the development, building and subdivision aspects of a project under the *Environmental Planning and Assessment Act* 1979 (EP&A Act);
- removing the need for subsequent *Local Government Act* approvals, where relevant; and
- linking associated licences, permits and approvals required under other environmental legislation with the development consent (i.e. a 'one stop shop' concept).

Providing appropriate assessment

5.48 A more streamlined decision-making system is established to ensure that the level of assessment reflects the complexity and likely environmental impact of a development. This is to be achieved by the establishment of separate categories of development:

- **State significant development** is development that is of State or regional significance, such as a new coal mine, or major industrial development. The Minister for Urban Affairs and Planning will be the consent authority for these developments. A more consistent and integrated decision-making process applies to these major developments.
- **local development** is development that requires consent, and is not 'State significant development'. In most cases, councils will be the consent authority. Examples include shopping centres and townhouse developments. The Act provides a simplified approach when applying to applications for building and development.
- **complying development** is routine development, which can be certified entirely as complying with predetermined standards. Separate complying

development procedures provide a faster system for assessing development.

- **exempt development** removes the need for any approval for minor development, provided that certain standards are satisfied.

Increasing competition in the area of compliance functions

5.49 The Act provides for increased choice and competition in the assessment process. This will be achieved by enabling private sector professionals to perform compliance functions currently conducted by consent authorities.

5.50 The Government has also decided to deregulate development control fees where there is competition, and to regulate only where there is a monopoly. To this end the Government has given a terms of reference to the IPART to review and develop a pricing policy and recommended indicative fees charged by Local Government and other consent authorities for development control services under the *Environmental Planning and Assessment Amendment Act 1997*. IPART is to provide its report to the Premier by 31 July 1999.

Success in the implementation of the changes

5.51 The Government has spent considerable time and resources on the successful implementation of the new development assessment system. This has involved providing training and assistance to local government and State Government agencies, continued involvement in the monitoring of the effectiveness of the new system, and ongoing work to provide the complete package of reforms.

5.52 The Government is reviewing the procedural aspects of the new development assessment system to ensure applications are dealt with in a clear and transparent, as well as a timely manner. This will enable the Government to further improve the operation of the system.

5.53 Private certifiers have begun competing with local government in the provision of building and subdivision assessment. At the end of March 1999 there were approximately 60 certifiers who had been accredited under the schemes developed by the Institution of Engineers and the Building Surveyors and Allied Professions Accreditation Board. The Minister for Urban Affairs and Planning approved these schemes in late 1998. Schemes prepared by the Royal Australian Planning Institute and the Professional Surveyors Occupation Association are currently being considered by the Minister.

5.54 Exempt and complying development will be introduced across the State by December 1999. This will provide quick simple and effective approval systems for straight forward and routine types of development. The Government has provided assistance to the local government areas willing to introduce exempt and complying development at the local level by preparing a model local environmental plan.

5.55 State agencies are working to improve the effectiveness of their approval requirements following the introduction of integrated development consents. The new system of referrals and integrated consents has seen State agencies lift their performance in terms of providing timely advice on development proposals. This has enabled major proposals to be dealt with in reduced timeframes.

Review of Plan Making in NSW

5.56 The Government has commenced a review of the plan making aspects of the EP&A Act with the aim of developing a more strategic approach to plan making at the local and regional levels.

5.57 There are a large and growing number of plans and strategies prepared outside the EP&A Act especially in the area of natural resource management but also in areas such as transport planning and social planning. The links between these plans and the planning instruments under the Act and the potential for consolidating planning and related natural resource management legislation into a single statute is being explored.

5.58 A Green Paper was released in February 1999 which looks at these and many other issues associated with plan making. The 5 themes of the paper are:

- **improving coordination and integration** between different levels and agencies of government to achieve better integration of plans and policies;
- **reducing complexity** to create a system of better organised plans, where it is clear how various plans relate to one another as well as the more particular issue of what provisions apply to a parcel of land;
- **better communication and participation** through improving the opportunities for involving the wider community in the strategic planning process including the areas of monitoring and review;
- **more effective land use controls** examining the possibility of rationalised zones through to removing prohibitions in plans and continuing the move to a more performance based or outcome focussed consideration of all proposals; and
- **a more efficient process for plan making and review** to streamline these procedures while maintaining an appropriate level of checks and balances.

5.59 The Green Paper also recognises as a key issue for debate, the need for a more holistic approach to environmental management. This issue is referred to in project 30 of Annexure 3. Discussion in the Paper focuses on how to achieve better integration across areas such as social transport, infrastructure, land use, corporate and natural resource planning.

Remaining first tranche issues

5.60 In its second tranche assessment framework, the NCC has identified a number of remaining first tranche matters for NSW. Information on each of these matters follows.

Rice Marketing

5.61 In its June 1997 assessment of NSW's performance, the Council referred to the explanation given in the 1997 NSW Annual NCP Report for the Government's 1996 decision to retain the current rice vesting arrangements for five years beyond their expiry in 1999.

5.62 In its 1997 report NSW had indicated that:

- the benefits from the current regulatory arrangements, when taken as a whole, were estimated to be in the range of $26 - 35 million in 1996 - 97, rising to $36 - 45 million in 2000 - 2001. These benefits significantly exceed the domestic costs of the regulation, which were estimated to be between $2 - 12 million annually;

- Commonwealth export licensing arrangements were unnecessary given that the great majority of Australian rice is produced in NSW. State-based arrangements other than vesting which might retain benefits of single desk export selling, yet achieve deregulation of the domestic market, are unlikely to be feasible.

5.63 The Council responded in its Assessment Report that it was not convinced that the NSW approach was consistent with the Competition Principles Agreement that restrictive arrangements be retained only where a net benefit to the community is demonstrated. The Council noted that "meaningful discussions" had to take place between it and the NSW Government, and that these would be taken into account for the purposes of the second part of the first tranche assessment.

5.64 In June 1998 the NCC recommended to the Commonwealth Treasurer that the Commonwealth deduct $10 million from NSW's remaining 1998-99 NCP payments as NSW had not demonstrated why the domestic rice market cannot be deregulated.

5.65 In February 1999 the Commonwealth Treasurer presented a proposal for a Commonwealth single export desk arrangement. He asked NSW for an in-principle agreement to remove NSW rice marketing arrangements if it could be shown that the Commonwealth proposal is effective in maintaining export premiums.

5.66 NSW has now given in-principle agreement and further evaluations of the Commonwealth proposal are now taking place.

Dairy Industry Act 1979

5.67 The NSW Government has undertaken a comprehensive review of the Dairy Industry Act. The review was undertaken by a Review Group consisting of Government and industry members. The review followed all the requirements of the Government's '*Consulting on Reform - A Consultation Framework for Review of Anti-Competitive Legislation'* document, and involved a significant amount of research. A copy of the final report has been provided to the NCC.

5.68 Under the Dairy Industry Act, all milk produced in NSW is formally vested in the NSW Dairy Corporation. The Corporation sets the gross farm gate price to producers, and the processor input price for market milk. To ensure that the Dairy Corporation has sufficient milk to meet demand, it issues a milk quota to farmers.

5.69 While the review group agreed that the current pricing arrangements result in an annual transfer to dairy farmers of $56-87 million per year, a majority of the review group supported continuation of the current pricing arrangements on the basis that:

- they provide farmers with countervailing power against processors and retailers;
- they 'cushion' the NSW industry against corrupt world prices; and
- their removal would result in significant negative impacts on dairy regions.

5.70 In May 1998, the Government announced that it had accepted the recommendations of the review group majority, and that the current dairy industry pricing and supply management arrangements will continue until 2003.

Dentists Act 1989

5.71 The entry in the 1997 report to the NCC incorrectly reported the review as being complete. Pre-consultation on the review is underway and an issues paper is being prepared.

Factories, Shops and Industries Act 1992

5.72 The review of Part 3 of the Act is linked to current reviews of the Occupational Health and Safety Act. Review of Part 4 (trading hours & industrial issues) will commence in 1999. Review of Part 6 (hairdressers) will also commence in 1999.

Gaming and Betting Legislation

5.73 In the 1997 Annual Report NSW indicated that the Gaming and Betting Act 1912 was to be repealed and remade in three parts to be separately reviewed.

5.74 The three new replacement Acts were instituted in 1998 and include:

- Unlawful Gambling Act;

- Gambling (Two Up) Act;
- Racing Administration Act.

5.75 The *Unlawful Gambling Act 1998* specifically covers the criminal provisions relating to gambling which were previously bundled with regulatory, licensing and administrative provisions in the Gaming and Betting Act 1912. Basically the Bill's controls can be broken down into 3 types:

- arbitrary prohibitions of certain types of gambling and blanket prohibition of any other gambling except that permitted through separate legislation;
- universal prohibitions of types of gambling such as gambling of minors; and
- penalties associated with unlicensed operators involved in legal gambling.

5.76 NSW determined that because there are no markets or licensing regimes associated with prohibited gambling activities, there are no anti-competitive features in the Unlawful Gambling Act which merit an NCP review.

5.77 The *Gambling (Two Up) Act 1998* generally prohibits the playing of two up in NSW, except for permitting play on Anzac Day across NSW, and in Broken Hill (at the Crystal Lane Two Up School run by the Broken Hill Council) all the year. The Act prescribes the rules of the game (even odds) and requires it be played on a non-profit basis on Anzac Day and that profits made in Broken Hill be applied to promotion of tourism in Broken Hill. Two up is also permitted at the Sydney casino authorised under the Casino Control Act.

5.78 The general objective of the Act is to ensure that where two up is permitted, games are conducted honestly; games are conducted free from criminal influence; and the adverse social effects of lawful gambling are minimised. The exemptions for Anzac Day and for Broken Hill are based on recognition of the historical and cultural associations of the game.

5.79 The Two Up Act was reviewed by an inter-department committee which determined that the Act should be retained on public benefit grounds.

5.80 On 17 December 1998, the Premier approved the terms of reference and review arrangements for the *Racing Administration Act* and the following related Acts:

- Bookmakers Taxation Act 1917;
- Thoroughbred Racing Board Act 1996;
- Harness Racing New South Wales Act 1977; and
- Greyhound Racing Authority Act 1985.

This multi act review will be completed in 1999.

Grain Marketing Act 1991

5.81 As at April 1999, the review is yet to be completed.

Legal Profession Act 1987

5.82 The report of the Legal Profession Act was tabled in Parliament in November 1998. The Government is considering the Report.

Superannuation Administration Act 1996

5.83 Legislation for corporatisation of the Superannuation Administration Authority will be introduced in Parliament in May 1999 and will largely address residual competition issues and clarify the need for any formal legislative review.

6 Development of Third Party Access Regimes

Requirements of the Agreement

6.1 Clause 6 of the Agreement indicates that States and Territories can develop regimes for the provision of third party access to services that are provided by means of significant infrastructure facilities. State based access regimes are to apply where:

- it would not be economically feasible to duplicate the facility;
- access to the service is necessary in order to permit effective competition in a downstream or upstream market; and
- access can be provided safely.

Application in NSW

Gas

6.2 In August 1996, the Government gazetted the NSW Third Party Access Code for gas distribution infrastructure, along with associated regulations under the *Gas Supply Act 1996*. These measures implemented the NSW Gas Pricing and Access Regime, with application to various sectors of the gas distribution market being phased in over several years. The NSW Access Regime was the first gas access regime of any state or territory to be certified as an effective access regime under section 44M of the *Trade Practices Act 1974*.

6.3 The NSW Third Party Access Code is now replaced by the National Third Party Access Code as part of the *Gas Pipelines Access (NSW) Act 1998*, which commenced in August 1998. This is in accordance with the Inter Governmental Agreement on Natural Gas Pipelines Access, and follows the lead legislation passed by SA earlier in the year.

6.4 The NSW Government submitted its Access Regime (as embodied in the *Gas Pipelines Access (NSW) Act*) to the National Competition Council on 28 October 1998 for recommendation as an "effective regime" under the *Trade Practices Act 1974*. The Council is expected to make a recommendation for certification to the Commonwealth Treasurer early in 1999.

Rail

6.5 Also in August 1996, the Government gazetted the NSW Third Party Access Regime for all rail services in NSW, along with associated amendments to the *Transport Administration Act 1988*. The Regime was submitted to the NCC for its recommendation to the Commonwealth Minister that the Regime be certified an effective access regime in accordance with the Agreement in June

1997. Discussions between the NCC and the NSW Government as to the effectiveness of the Regime have been continuing. On 9 April 1998 the NCC issued its draft recommendation on the Regime for public comment, and on 2 November 1998 issued a public Circular stating that if NSW gazetted a Regime in the terms set out in the Circular, and provided it to the NCC for assessment, the Council would send its final recommendation to the Commonwealth Treasurer for his decision. New South Wales gazetted an amended Regime on 19 February 1999, which has been provided to the NCC for final assessment.

7 Application of the Competition Principles Agreement to Local Government

Requirements of the Agreement

7.1 Clause 7 of the Agreement indicates that all the principles in the Agreement should be applied to local government. Jurisdictions were required to have prepared a Policy Statement by June 1996 on how they are applying the principles of competitive neutrality, structural reform and legislation review to local government.

Application in NSW

7.2 The NSW Government published its *Policy Statement on the Application of National Competition Policy to Local Government* in June 1996. The Policy Statement, prepared in consultation with local government, details the Government's approach to the application of the Agreement to Local Government and makes a series of commitments with respect to the ongoing implementation of competition reforms.

7.3 The Government has since issued the following guidelines for the assistance of councils:

- *Competitive Tendering Guidelines* (January 1997);
- *Pricing and Costing for Council Businesses: A Guide to Competitive Neutrality* (July 1997); and
- *Guidelines on the Management of Competitive Neutrality Complaints* (November 1997).

7.4 The Government also conducted workshops across NSW and continues to provide assistance, via the Department of Local Government, to councils in applying NCP principles.

7.5 As indicated in the Policy Statement, different requirements apply to council businesses depending on whether they are category 1 or category 2 businesses. Category 1 businesses have an annual sales turnover of $2M and above, while category 2 businesses have a turnover of less than $2M.

7.6 As category 2 businesses are less likely to have a significant distortionary impact on resource allocation at either State or national levels, the requirements applying to these businesses are less strict. For example, councils can determine the extent to which category 2 business activities are to be separated from its associated mainstream activities. Similarly, councils are only required to apply full cost attribution where practicable. In contrast, these requirements are mandatory for category 1 businesses. However, in all other respects (e.g. making subsidies explicit and complying with the same regulation as the private sector) the requirements are the same.

7.7 For both Category 1 and Category 2 businesses implementation was to be phased in during 1997-98. The timetable was stated in the *Pricing and Costing Guidelines* to be as follows:

Table 7.1. *Timetable for implementation of Local Government NCP commitments.*

Type of Business Activity		**Timeframe**
Category 1 – annual sales turnover $2M pa and above.	***Category 2*** - annual sales turnover less than $2M pa.	
Separate internal reporting for business activity (i.e. corporatisation model).	Council may determine the extent of separation of the activity.	From 1 July 1997
Apply full cost attribution, including: • Tax equivalent payments • Debt guarantee fees • Return on capital.	Adopt where practicable. Can use % 'rule of thumb' margin	Phased implementation from 1 July 1997 and full implementation on 1 July 1998
Make subsidies to business activities an explicit transaction.	Make subsidies to business activities an explicit transaction.	Phased implementation from 1 July 1997 and full implementation on 1 July 1998
Comply with the same regulation as the private sector.	Comply with the same regulation as the private sector.	Councils already comply. Not applicable
Establish a complaints handling system for competitive neutrality issues	Establish a complaints handling system for competitive neutrality issues	From 1 July 1997

7.8 In its June 1997 assessment, the Council was not convinced on the basis of the available evidence that the objectives outlined in the NSW Policy Statement had been achieved, particularly in relation to competitive neutrality reform.

7.9 In response, the NSW Government surveyed all councils in January 1998 to assess progress in applying competitive neutrality principles to local government businesses mid-way through the phase-in period. Preliminary findings were reported to the Council in the Government's June 1998 report. The NCC has since indicated that NSW, along with all other

jurisdictions, has demonstrated progress sufficient to meet its first tranche commitments.

7.10 The Government's June 1998 report to the NCC indicated that a follow-up survey would be conducted as soon as practicable after 1 July 1998. The purpose of the survey being to gauge the extent of compliance at the conclusion of the phase-in period and to identify any areas where further follow-up is needed. The results of the survey of 197 councils are discussed below.

Identification of Business Activities

7.11 The follow-up survey indicates that NSW councils have made significant progress in applying competitive neutrality principles over the nine months to September 1998. Eighty five per cent of councils have completed the task of identifying and categorising business activities. The remaining 15% of councils are expected to complete the task soon.

7.12 The most common reported categories of business are water and sewerage operations (38%), waste collection and related services (8.8%), child care facilities (5.8%), caravan parks (4.5%) and leisure centres and pools (3.9%). These categories collectively account for 61% of reported businesses.

7.13 The following tables indicate the number of businesses in different turnover ranges.

Table 7.2 Category 1 Businesses

TURNOVER RANGE ($ million)	**NUMBER OF BUSINESSES**
2 - 5	71
5 - 10	42
10 - 20	9
Over 20	7

Table 7.3 Category 2 Businesses

TURNOVER RANGE ($'000)	**NUMBER OF BUSINESSES (1*)**
0 – 50	27 (40)
50 – 100	50 (24)
100 - 1,000	345 (175)
1000 plus	107 (60)

(1) Numbers in brackets represent the situation as at January 1998

* The net increase in the overall number of businesses, since the earlier survey, reflects the increase in responses received. However, where individual councils have revised earlier categorisations, this has generally caused a fall in the number of businesses reported, per council.

Table 7.4 Progress in applying competitive neutrality principles to Category 1 businesses

REQUIREMENT FOR COUNCILS	LEVEL OF COMPLIANCE (1)-JANUARY 1998	LEVEL OF COMPLIANCE (1)-SEPTEMBER 1998
Apply corporatisation model	80%	88%
Apply full cost attribution: (a) Tax equivalent payments (b) Debt guarantee fees (c) Return on capital	 NA NA NA	 (a) 100% for State taxes (2) (b) 69% (c) 46% (3)
Subsidies made explicit (4)	60%	70%
Comply with the same regulation as private sector (5)	100%	100%

1. *Percentages represent the proportion of businesses complying.*
2. *54 % of businesses reported that they are factoring other taxes into prices.*
3. *The relatively low figure reflects widespread concerns about the impact on prices.*
4. *Level of compliance includes cases where either the subsidy is made explicit or where there are reported to be no subsidies.*
5. *Councils are already required to operate under the same regulatory framework as the private sector (e.g. Trade Practices Act and environmental and planning laws).*

Progress in applying competitive neutrality principles to Category 2 businesses

7.14 In the context of the more flexible application of the principles to category 2 businesses, it is noted that 63% of these businesses are either applying full or partial cost attribution and 54% are making subsidies explicit (or report that there are no subsidies). However, it should be noted that all council water and sewerage and domestic waste management operations are already required to maintain separate accounting and reporting regimes. This requirement is independent of NCP obligations.

Complaints

7.15 As indicated in the Policy Statement, local councils are responsible in the first instance for dealing with complaints regarding the application of competitive neutrality principles. The Department of Local Government reviews those complaints which councils are unable or have failed to

resolve or where, after consideration by the council, the complainant requests a review by the Department, and in the circumstances, the request is reasonable. Complainants are also able to approach the Department of Local Government in order to obtain additional information concerning the application of competitive neutrality principles.

7.16 In contrast to the position in January 1998, nearly all councils now have in place a formal written competitive neutrality complaint handling mechanism, which enables separate reporting of these complaints in their annual reports. As indicated in the Policy Statement, a decision by a council not to apply competitive neutrality principles to a particular business activity requires an independent cost benefit analysis to substantiate the decision. To date, no such exemptions have been sought. Accordingly, all competitive neutrality complaints are investigated as per the above arrangements.

7.17 In addition, in June 1998 the Government amended the relevant regulations to require councils to include information on NCP implementation in their annual reports. For the 1997-98 year, this information includes detailed information on Category 1 businesses; a summary of progress in implementing competitive neutrality principles; and information on the establishment of a competitive neutrality complaint handling mechanism and complaints received. In subsequent years, councils will also be required to report on category 2 businesses. Members of the public will be able to get specific information on which businesses have been identified by contacting the relevant Council or the Department of Local Government.

7.18 Changes have also been made to the financial reporting and accounting standards applying to councils' businesses to increase the level of accountability and transparency of their operations. Effective from 1998-99, councils are required to include Special Purpose Financial Reports on businesses (both category 1 and 2 businesses) in their annual financial statements. These Reports will give detailed financial information, where applicable, on subsidies, TER payments, debt guarantee fees and notional dividend payments to council as owner of the business. This information will make it easier for complainants to identify any potential instances of non-compliance with competitive neutrality principles. It will also provide the public with valuable information about the performance of council businesses.

7.19 Complaints dealt with by councils are reported in their annual reports, as discussed above. However, it is noted that the latest survey of councils indicates that only 6 out of the 197 councils reported receiving a competitive neutrality complaint during 1997-1998. Each of these councils received only one complaint, all of which are complete.

7.20 The NCC has advised that only those complaints that progress to the second stage (those formally investigated by the Department of Local Government) are required to be included in this report. However, while no 1998 complaints progressed to the second stage, complaint summary forms are provided for instances where there was significant Department of Local

Government assistance and involvement in examining complaints, and for a pre 1998 complaint previously reported to the NCC.

7.21 As a general overview, it is apparent that there are still instances of complainants being unaware of the existing procedures for lodging complaints in the first instance. In 1998 the Department of Local Government received six complaints that had not been made directly to the relevant councils. The Department referred each of these complaints to these councils for consideration and response. In addition, it is apparent that a common misunderstanding concerning the application of competitive neutrality appears to be reflected in the proportion of complaints that contend that competitive neutrality principles prohibit councils from competing at all with private businesses.

Structural Reform

7.22 As indicated in the Policy Statement, the Government has no plans to apply the principles of structural reform to local government, beyond those measures that are integral to the application of competitive neutrality.

Legislation Review

7.23 As noted in section 6, the Government has completed its review of planning, land use and natural resource approvals systems and has enacted legislation which consolidates and streamlines those parts of the *Environment Planning and Assessment Act 1979* and the *Local Government Act 1993* relating to planning, land use and natural resource approvals systems.

7.24 Previously, a development approval for a project such as a commercial building may have required a subsequent approval under the *Local Government Act* for a related activity, such as the operation of a public car park. Under the new system, effective from 1 July 1998, the issuing of a development consent will remove the need for this subsequent approval.

7.25 The review of the *Local Government Act 1993* is currently subject to a statutory review pursuant to section 747 of the Act. This review, although not a NCP review, is addressing a number competitive neutrality issues arising as a result of the Act. The report of this review must be tabled in Parliament in the 1999 Budget session. A second stage review of the Act will commence during 1999.

7.26 It will address any remaining restrictions on competition in the Act, including occupational licensing of undertakers and mortuaries and councils' ability to provide goods, services and other facilities.

Independent Pricing Oversight

7.27 As indicated in the Policy Statement, the Independent Pricing and Regulatory Tribunal (IPART) in NSW has the power to review the pricing

practices of local government business activities that can be declared as monopolies under the IPART legislation. Alternatively, IPART can inquire into industry pricing that may involve local government business activities.

Fees for Development Control Services

7.28 Amendments under the Environmental Planning and Assessment Act 1979 took effect from 1 July 1998. The amendments provide for:

- the introduction of a single, integrated system of providing consent to development;
- a proposed development to be assessed by a process which reflects the significance of that development; and
- the involvement of the private sector in the assessment process and in issuing certificates.

7.29 The IPART is currently reviewing indicative fees to be charged by Local Government and other consent authorities for development control services. The review will establish pricing principles and an indicative fee schedule for fees charged for development assessment services, and provide guidance for fees for the 2 areas opened up to competition – complying development and post-approval processes.

7.30 As part of the review, IPART released its Report on Competitive Neutrality in Pricing in December 1998 and the Report on Miscellaneous Fees in February 1999. A consultation paper outlining options for a major overhaul of fees charged by local councils for development control services was released in July 1998. IPART is currently undertaking further study on the costs of assessing development prior to making its final report to the Government on setting fees for development applications for monopoly services.

Third Party Access to Essential Infrastructure

7.31 To date, no local councils appear to own or operate services that require the application of a State-based access regime. As such, their services will be subject to the generic regime in Part IIIA of the *Trade Practices Act*.

8 Application of the Agreement to Implement Related Reforms

Requirements of the Agreement

8.1 Under the *Agreement to Implement National Competition Policy and Related Reforms* (attached as Annexure 2) jurisdictions are required to implement reforms in the electricity, gas, water and road transport sectors, as agreed to by the Council of Australian Governments (COAG). As discussed in Chapter 3 of this Report, jurisdictions are required to implement specified reforms in the electricity, gas and road transport areas, if they are to qualify for the first stage of competition dividend payments.

Application in NSW

Electricity

8.2 Following independent reviews of generation and distribution structure, the electricity industry in NSW has been restructured in order to give effect to the COAG agreements concerning the introduction of the National Electricity Market.

8.3 The NSW electricity industry has been separated into its regulatory and operating parts (Generation, transmission, distribution and retail) and the latter then separated into its natural monopoly (transmission and distribution) and potentially competitive parts (generation and retail).

8.4 On 1 March 1996 a substantial portion of Pacific Power's electricity generating capacity was segregated into two new generator entities: Delta Electricity and Macquarie Generation. Pacific Power continues to be responsible for the Eraring Power Station and the State's entitlement from the Snowy Scheme. Power from the Snowy Scheme is traded in the National Electricity Market by Snowy Hydro Trading.

8.5 A program of amalgamations reduced the number of electricity distributors from 25 to 6, two of which are metropolitan based. While the restructure has involved implementation costs of around $80 million, the scale economies arising from the revised structure are estimated to generate recurrent savings in excess of $130 million per annum.

8.6 Excluding Pacific Power, the 8 new businesses (2 generators and 6 distributors) were established as State-owned energy services corporations under the *Energy Services Corporations Act (NSW) 1995*. Administered by independent Boards with a strong commercial focus, they are accountable to the Government as their shareholder, and each year must formulate a statement of corporate intent.

8.7 The transmission network was transferred from Pacific Power and vested with the Electricity Transmission Authority, trading as TransGrid. In 1998

TransGrid was corporatised as a state-owned energy services corporation. TransGrid, as a monopoly, is subject to IPART monopoly prices oversight.

Pricing

8.8 IPART will regulate transmission pricing until 30 June 1999, when it will be taken over by the ACCC. IPART will continue to regulate distribution pricing until 31 December 2000 under the IPART Act and after that under the National Electricity Code. IPART will continue to regulate electricity tariffs applying to the non-contestable sector until effective competition and choice is in place for small consumers.

8.9 In order to establish a five year price path for regulated electricity services, the Premier requested IPART, under Section 12A of the IPART Act, to report on transmission and distribution pricing from 1 July 1999. IPART is expected to report to the Premier on 31 May 1999. The ACCC, which is reviewing the appropriate revenue cap for transmission services in NSW, will complete its work in June 1999. In light of both these pricing reviews, price paths for NSW's electricity transmission, distribution and franchise pricing will be established for the period until June 2004. These reviews were necessary, as NECA is not expected to finalise chapter six of the NEM Code relating to pricing in sufficient time to put in place prices.

Legislative Framework

8.10 Legislation to corporatise TransGrid, the *Energy Services Corporations Amendment (TransGrid Corporatisation) Act* was passed during the Budget session of Parliament in 1998. The legislation commenced on 14 December 1998 making TransGrid a statutory State Owned Corporation under the *State Owned Corporations Act*.

National Electricity Market

8.11 Under the *Agreement to Implement the National Competition Policy Reforms*, second tranche payments will be dependent (partly) on the "completion of the transition to a fully competitive NEM by 1 July 1999". The ACCC approved the National Electricity Code, after which the NSW Government, and all other participating jurisdictions, commenced the National Electricity Legislation, bringing the NEM into operation on 13 December 1998.

8.12 Now that the NEM is operational, NSW and other jurisdictions are implementing a review of the liability and related governance arrangements of the NEM institutions (NEMMCO and NECA). NSW is also participating actively in the NECA review of transmission and distribution pricing in the National Electricity Code.

8.13 In addition, NSW has continued to pursue electricity interconnection with both Queensland and South Australia. NorthPower has begun the development of DirectLink, an interconnection to link the Tweed Valley to the NSW electricity grid. NorthPower expects the project to be completed by January 2000 and will enable the export of NSW electricity to Queensland

8.14 The Queensland-New South Wales Interconnector (QNI), to be built by TransGrid and Powerlink (Qld) is in the process of receiving planning approval in NSW. TransGrid and Powerlink propose to complete the interconnector by 2001.

Retail Competition

8.15 The development of a policy for retail competition involved a program of industry, customer and community consultation and the preparation of detailed recommendations for the timing, progressive introduction and management of customer choice in retail electricity supply. The policy was announced by the Minister for Energy in June 1996.

8.16 Under this policy competition was to be progressively extended to include all customers by 1 July 1999. However due to the need to establish suitable metering and financial settlement systems, the policy has been amended.

8.17 As of 1 July 1998, customers in the range of 160 – 750 MWh per annum have been contestable. By 1 July 1999 businesses with multiple small sites of 100 MWh per annum and over will be able to aggregate to become contestable. Small customers below 160 MWh per annum will become contestable over a period commencing 1 January 2001. This will enable suitable customer choice programs, including customer information, to be developed.

Consumer Benefits

8.18 The Government's electricity reform program has been aimed at improving the efficiency and performance of the NSW electricity industry, offering customers the choice of supplier, and implementing the National Electricity Market.

8.19 Since May 1995, electricity customers have received savings of around $930 million in real terms on their power bills. A typical small business in NSW pays an average of 34 percent less for its electricity than its counterparts in Victoria, delivering an annual average saving of about $3000 a year.

8.20 As businesses become more competitive through lower input costs, new jobs are created and the overall wealth of NSW will increase. Retail competition has already delivered significant benefits for contestable customers who are able to choose from 25 licensed electricity retailers.

Gas

8.21 New South Wales has been the lead State in introducing competition reform to the gas sector. Because of the slow progress nationally in developing a national third party access regime for gas pipelines and the potential benefits to NSW consumers from this reform, NSW legislated in 1996 to become the first State in Australia to give retailers and customers 'third party access' to the gas distribution networks. The interim NSW access regime was certified by the Commonwealth Treasurer in 1997 as an 'effective' regime under Section 44M of the Trade Practices Act.

8.22 As a result of the development of the NSW access regime ahead of other States, NSW has been at the forefront of competition reform implementation in the gas sector. The Independent Pricing and Regulatory Tribunal (IPART) undertook the first determination of an access undertaking for a distribution network in July 1997. AGL supplies 97% of the NSW market and its access undertaking provides access to the gas system for third parties at agreed Reference Tariffs or at negotiated prices. The benefits of the early implementation of reforms were realised as the access undertaking led to reductions in the cost of transporting gas.

8.23 The AGL undertaking set a price path which IPART forecast would achieve annual energy cost savings for the State's larger industrial and commercial customers of $60 million by 1999-2000. The access undertaking covers the period to 30 June 1999. IPART is now considering AGL Gas Networks' next proposed access arrangement under the national access regime.

8.24 In March 1998 IPART received a proposed access undertaking from Great Southern Energy Gas Networks (GSN) for access to the Wagga Wagga gas distribution system and from Albury Gas Company for access to the Albury gas distribution system in June 1998. Public hearings were held in Wagga Wagga and Albury on 21 May 1998 and 27 August 1998, respectively. A Draft Decision for GSN was issued in September 1998 and a final decision on 8 March 1999. A Draft Decision for the Albury system is expected in early 1999.

8.25 The early implementation of gas reform in NSW also enabled an early start on the transition to full competition. To ensure a smooth transition to a competitive gas market, contestability has been phased in since mid 1996. On 1 July 1998 the third group of customers (new and existing loads greater than 10 terajoules per annum) became eligible as system users for third party access rights. All customers in Greenfield sites are also classified as system users. Greenfield sites are those that, in IPART's opinion, form significant extensions of existing natural gas networks or are new distribution systems.

8.26 On 25 February 1999 the NSW Minister for Energy announced that customers using over 1 terajoule per annum would become contestable from 1 October 1999 and all remaining customers, including residential customers, would be contestable from 1 July 2000.

8.27 The opening of the market in NSW has created significant market interest. As at January 1999 there were 24 gas suppliers authorised to retail gas in NSW.

8.28 NSW continued to pursue market reform at the national level because of the benefits to NSW of removing regulatory barriers in other states to free and fair trade in natural gas across borders. This work culminated in an intergovernmental agreement, the Natural Gas Pipelines Access Agreement, which was signed at the COAG meeting on 7 November 1997.

8.29 In 1998 NSW legislation was prepared to give effect to NSW's commitments under the agreement. The Gas Pipelines Access (NSW) Act 1998 passed through Parliament in early June 1998. The Act applies the national Gas Pipelines Access Law and the national Gas Pipelines Access Code in NSW. Savings and transitional provisions provide for the transfer of existing industry arrangements under the interim NSW regime into the national access regime. Commencement of the Act was delayed until 14 August 1998 because of the need for the prior commencement of the complementary legislation by the Commonwealth and South Australia.

8.30 Applying a national, uniform regulatory framework for third party access to the State's natural gas pipelines is expected to deliver the following benefits:

- future security of natural gas supplies for NSW through the development of new infrastructure to create an interconnected pipeline grid, which will allow gas to be freely traded in a national market across state borders;
- wider choice of suppliers and services for customers;
- lower energy costs for industry and businesses, leading to improved competitiveness and better employment opportunities; and
- substantial greenhouse benefits from the increased use of natural gas over other fossil fuels for electricity generation and energy consumption.

8.31 NSW has sought to promote a consistent national approach to the regulation of pipeline access. Accordingly, the national access regime as it is applied in NSW has the following features:

- access regulation of transmission pipelines, including the Moomba to Sydney pipeline, is undertaken by the ACCC;
- the Australian Competition Tribunal is the appeal body for decisions by the NSW Minister and IPART; and
- judicial review of administrative decisions is undertaken by the Federal Court.

8.32 NSW has negotiated with neighbouring jurisdictions for the crossvesting of access regulation for distribution networks in Queanbeyan and Yarrowlumla Shire to the Australian Capital Territory, and for the crossvesting of networks in Corowa and Howlong to Victoria. The crossvesting agreements were finalized in February and March 1999 respectively, following the process established under the Gas Pipelines

Access Law. NSW was the first State to crossvest access regulation of networks to other jurisdictions.

8.33 The NSW Government submitted its access regime (as embodied in the Gas Pipelines Access (NSW) Act to the National Competition Council on 28 October 1998 for certification as an "effective regime" under section 44M of the Trade Practices Act 1974.

8.34 NSW agencies worked with industry stakeholders during 1998 to address the many issues that arise from the implementation of a fully contestable retail market. Again, NSW is at the forefront of reform in Australia in developing responses to these challenges. Regulators and the industry recognise the complexity of the task and are working cooperatively to develop a competitive market design and the supporting business rules and operating framework.

8.35 The implementation of competitive reforms in the NSW gas sector is already bearing fruit. The early establishment of third party access rights to the distribution networks has given industry the confidence to come forward with proposals for new pipeline infrastructure. The $50 million, 150 kilometer pipeline linking Wagga Wagga to Barnawatha, near Wodonga, came into operation on 12 August 1998, joining the Victorian and NSW gas markets for the first time.

8.36 The reforms have also led to the Eastern Gas Pipeline proposal which represents a major new source of gas on which new retailers can base their entry into the NSW market. In December 1998 Duke Energy International announced its intention to begin construction in July 1999 of the $450 million, 800 kilometer pipeline to bring Bass Strait natural gas from Longford to Horsley Park in western Sydney. First deliveries are expected by September 2000. Initial capacity of the pipeline will be 60 petajoules of gas per annum, with the potential to increase to around 100 petajoules of gas per annum. The current NSW market gas consumption is around 110 petajoules per annum.

8.37 The two cross-border pipelines will provide for increased trade between interstate gas markets and increased competition between gas producers.

Upstream competition

8.38 NSW has no commercial sources of gas within its own borders and has historically been reliant on the one gas field, the Cooper Basin in South Australia. NSW is concerned that barriers to competition in the upstream sector can hinder effective competition in the downstream sector in other states.

8.39 Prospective retailers in NSW have been unable to access gas supplies from the upstream sector and thereby compete effectively with the incumbent retailers. The full benefits of gas reform will not be achieved without greater upstream competition.

8.40 NSW was an active participant in the Upstream Issues Working Group (UIWG) during 1998. The UIWG is a joint COAG and the Australian and New Zealand Minerals and Energy Council (ANZMEC) project to foster competition in the upstream sector of the gas industry. UIWG delivered a final report in December 1998 for consideration by the Council of Australian Governments and ANZMEC Ministers. The UIWG's key recommendations are:

- for industry, in cooperation with jurisdictions, to develop a set of best practice principles for access to upstream facilities;
- on the need for greater transparency and predictability in the onshore acreage award processes; and
- for the longer-term policy objective to be adopted of encouraging separate marketing by joint venture partners as soon as this is feasible.

Pipelines Act Review

8.41 A fundamental review of the Pipelines Act 1967 was undertaken during 1998 which incorporated the legislative review requirement under the Competition Principles Agreement. The Act and Regulations were examined to determine if any provisions work or could work to restrict competition. In particular:

- transparency and effectiveness of approvals procedures;
- barriers to entry;
- whether government and non-government entities would be treated differently; and
- whether there is any urgent need to remove the third party access provisions of the Act.

8.42 Accordingly , the review examined restrictions on competition in the context of pipeline approvals, construction and operation. The review identified some provisions of the Act which in theory could be argued to act in a very minor way to restrict competition. These matters have been taken into account in the preparation of an Issues Paper on the Pipelines Act review which is expected to be released for public consultation in the first half of 1999.

Road Transport

8.43 In 1991 the Commonwealth and States entered the Heavy Vehicles Intergovernmental Agreement in order to develop uniform or consistent road transport law. The National Road Transport Commission (NRTC) was established to manage the reform process. In 1992 the reform process was expanded by the Light Vehicles Intergovernmental Agreement.

8.44 In 1995, the NRTC reform process was brought within the ambit of National Competition Policy. Consequently, implementation of some of the reforms is subject to assessment under the NCP process.

8.45 The relevant Ministerial Council, the Australian Transport Council (ATC) has developed a list of agreed road transport reforms to be used in the assessment of the second tranche of competition payments. The ATC is seeking COAG endorsement of this reform framework. NSW recently provided the Prime Minister with its endorsement of the framework for the purposes of COAG. The framework covers reforms in the following areas:

- dangerous goods;
- vehicle registration;
- driver licensing;
- mass and loading regulation;
- vehicle standards;
- driving hours;
- access to road networks for large vehicles; and
- roadworthiness standards.

8.46 As at 1 March 1999, NSW has implemented all of the nineteen reform projects contained in the ATC proposed framework for the second tranche of competition payments (see Annexure 4). In most cases NSW implemented the reforms ahead of the target dates and prior to other states.

Water

8.47 Annual Report to NCC

NSW provided a comprehensive report to the NCC in 1998, covering actions undertaken by NSW to comply with the COAG Strategic Water Framework to the end of 1997. Subsequently, NSW agreed to participate in a case study assessment. A similar exercise is being undertaken for Victoria

8.48 Two meetings were held in October and November between NSW officials and the NCC, at which information was provided with which the NCC can make its assessment. This information still stands for the annual report.

8.49 The only additional item subsequent to the case study meetings has emerged after COAG Senior Officials considered a Report on outcomes of the Tripartite Meeting on Implementation of the Requirements of the COAG Water Reform Framework. Senior Officials agreed to the recommendations in the report, including that, for second tranche payments, jurisdictions would submit individual implementation programs outlining a priority list of river systems and groundwater resources, including all river systems which have been over-allocated, or are deemed to be stressed, and detailed implementation actions and dates for allocations and trading to the NCC for agreement, and to Senior officials for endorsement.

8.50 NSW is currently preparing its implementation program. It will be ready for submission to the NCC by early June.

Annexure 1:

NSW Template Terms of Reference for NCP Reviews.

1 The review of the *(insert name of Act)* shall be conducted in accordance with the principles for legislation reviews set out in the Competition Principles Agreement. The guiding principle of the review is that legislation should not restrict competition unless it can be demonstrated that:

(a) the benefits of the restriction to the community as a whole outweigh the costs, and

(b) the objectives of the legislation can only be achieved by restricting competition.

2 Without limiting the scope of the review, the review is to:

(a) clarify the objectives of the legislation, and their continuing appropriateness

(b) identify the nature of the restrictive effects on competition

(c) analyse the likely effect of any identified restriction on competition on the economy generally

(d) assess and balance the costs and benefits of the restrictions identified, and

(e) consider alternative means for achieving the same result, including non-legislative approaches.

3 When considering the matters in (2), the review should also:

(a) identify any issues of market failure which need to be, or are being addressed by the legislation, and

(b) consider whether the effects of the legislation contravene the competitive conduct rules in Part IV of the *Trade Practices Act 1974* (Cth) and the NSW Competition Code.

4 The review shall consider and take account of relevant regulatory schemes in other Australian jurisdictions, and any recent reforms or reform proposals, including those relating to competition policy in those jurisdictions.

5 The review shall consult with and take submissions from *(describe stakeholders)* and other interested parties.

Annexure 2:

Status of NSW Legislation Reviews at 31 December, 1998

Agriculture

Act	Review Year	Objective	Status
MIA Wine Grapes Marketing Board	1995/96	Constitutes the MIA Wine Grapes Marketing Board - a statutory marketing authority responsible for the marketing of MIA wine grapes and to represent the interests of growers.	**Complete.** The Wine Grapes Marketing Board vesting power was extended until 31 July 2000, with extension subject to constrained conditions. The Board will be wound up at that date.
Meat Industry Act 1987	1995/96	Constitutes the NSW Meat Industry Authority and provides for the regulation and control of the NSW meat industry.	**Complete** Act will be amended and regulatory powers transferred to Safe Food Production (a new statutory body) upon commencement of the part of the *Food Production (Safety) Act 1998* that deals with red and white meat.
Rice Marketing Board	1995/96	The NSW Rice Marketing Board markets, or arranges to market, the annual rice crop in its role as the sole statutory marketing body for rice.	**Complete**. Legislative arrangements maintained to 2004, with review in 2000. Negotiations with the NCC and the Commonwealth are continuing.
Murray Valley Citrus Marketing Act 1989 (complementary with Murray Valley Citrus Marketing Act (Vic.))	1996/97	Makes provision for a joint NSW-Victorian scheme for marketing citrus fruit.	**Underway.** Joint review with Victoria.
Dairy Industry Act 1979	1996/97	Constitutes the NSW Dairy Corporation which is responsible for the production, quality, supply and distribution of milk and the production, quality and storage of dairy products.	**Complete** Legislative arrangements to continue until July 2003 when another review will be undertaken, unless market conditions dictate an earlier review of, or an amendment to , the legislation.

Act	Review Year	Objective	Status
MIA Citrus Fruit Promotion Marketing Committee	1996/97	Part of *Marketing of Primary Products Act* 1983 (see below) which relates to the marketing of certain primary products and provides for the establishment of marketing boards and enables the making of marketing orders.	**Complete.** Committee retained. However, some of its industry functions were removed while others were limited to ensure greater accountability to constituent growers.
Horticultural Stock and Nurseries Act 1969	1996/97	Provides for the registration of certain nurserymen and resellers of horticultural stock and regulates the sale or propagation of certain horticultural stock.	**Underway.** Final report being prepared by review group.
Poultry Meat Industry Act 1986	1996/97	Constitutes the Poultry Meat Industry Committee and defines its functions and regulates and controls the poultry growing industry.	**Underway.** Final report being prepared by review group.
Rural Lands Protection Act 1989	1996/97	Establishes Rural Lands Protection Districts and associated boards that levy and collect rates, provide animal health services and control of noxious weeds and animals.	**Underway** Previous reviews completed. Assessment being undertaken of need for further review to satisfy NCP requirements.
Apiaries Act 1985	1996/97	Regulates the keeping of bees; requires and provides for the registration of beekeepers; prevents the introduction of, and to control and eradicate, certain diseases and pests which afflict bees and apiaries and provides for the payment of compensation to registered beekeepers in certain cases.	**Underway.** Part of a generic review of disease legislation, including the Exotic Diseases of Animals Act 1991, the Plant Diseases Act 1924, the Stock Diseases Act 1923 and the Swine Compensation Act 1928. The review is linked to the development of an Animal and Plant Health Bill.
Cattle Compensation Act 1951	1996/97	Provides for the establishment of a Cattle Compensation Fund and for payment of compensation to owners of cattle and carcasses of cattle destroyed as suffering from disease.	**Underway.** Part of a generic review of all disease legislation.
Exotic Diseases of Animals Act 1991	1996/97	Provides for the detection, containment and eradication of certain diseases affecting livestock and other animals.	**Underway.** Part of a generic review of all disease legislation.

Act	Review Year	Objective	Status
Banana Industry Act 1987	1995/96	Constitutes the Banana Industry Committee (a statutory marketing authority) and links the compulsory grower charges to services provided by the committee.	**Complete.** The Government has agreed to: • the retention of the Banana Industry Committee and its powers to provide industry service functions; • the removal of some obsolete and unexercised powers of the Committee; and • remove the Committee's Transport Direction power. Legislative amendments were considered by Parliament during the Spring 1998 Session, however, the Bill lapsed due to the prorogation of Parliament.
Plant Diseases Act 1924	1996/97	Makes further provisions to prevent the introduction into NSW of diseases and pests affecting plants and fruit, to provide for the eradication of such diseases and pests, and to prevent their spread. Also makes certain provisions regarding the sale and grading of fruit and cotton plants.	**Underway.** Part of a generic review of all disease legislation.
Stock Diseases Act 1982	1996/97	Relates to diseases in stock and repeals the *Stock Diseases (Tick) Act* 1901 and the *Stock Diseases (Tick) Amendment Act* 1915.	**Underway.** Part of a generic review of all disease legislation.
Swine Compensation Act 1928	1996/97	Provides for the establishment of a Swine Compensation Fund and for payment of compensation to owners of pigs and carcasses of pigs destroyed as suffering from disease.	**Underway.** Part of a generic review of all disease legislation.

Act	Review Year	Objective	Status
Stock Foods Act 1940	1996/97	Regulates the sale of food for stock.	**Underway.** Part of a generic review of all chemical residue legislation, including the *Stock Foods Act 1940*, *Fertilisers Act 1985*; the *Stock Medicines Act 1989*, the *Stock (Chemical Residues) Act 1975* and part 7 of the *Pesticides Act 1978*. Final report being prepared by review group.
Fertilisers Act 1985	1996/97	Provides for the registration of brand names for fertilisers and liming materials and regulates the sale of fertilisers, liming materials and trace element products.	**Underway.** Part of a generic review of all chemical residue legislation (as above). Final report being prepared by review group.
Stock (Chemical Residues) Act 1975	1996/97	To prevent the slaughter for human consumption of stock which contain certain concentrations of residues of chemicals or which are otherwise chemically affected and to prevent stock from becoming chemically affected.	**Underway.** Part of a generic review of all chemical residue legislation (as above). Final report being prepared by review group.
Stock Medicines Act 1989	1996/97	Relates to medicines for stock and other animals for the purposes of enhancing the quality of agricultural production, protecting the environment and safeguarding the health of stock and other animals.	**Underway.** Part of a generic review of all chemical residue legislation (as above). Final report being prepared by review group.
Noxious Weeds Act 1993	1996/97	Provides for the identification, classification and control of noxious weeds.	**Underway** Review complete - awaiting Ministerial and Cabinet consideration.
Seeds Act 1982	1996/97	Regulates the sale of seeds and prohibits the sale of certain seeds and plants.	**Underway.** Final report being prepared by review group.
Prickly Pear Act 1987	1996/97	Provides for the control and destruction of Prickly Pear.	**Complete.** Act repealed. Provisions now listed under the *Noxious Weeds Act 1993*.

Act	Review Year	Objective	Status
Poultry Processing Act 1969	1996/97	Provides for the registration of plants in which poultry is processed for sale and to make provisions for the regulation and control of these plants.	**Complete** Considered with the *Meat Industry Act 1987*. To be repealed upon the commencement of the *Meat Industry Amendment Act 1998*.
Prevention of Cruelty to Animals Act 1979	1996/97	Provides for the prevention of cruelty to animals.	**Not commenced.** Rescheduled to 1999/2000.
Homing Pigeons Protection Act 1909	1996/97	Provides for the protection of homing pigeons during their flights.	**Complete.** Act repealed.
Agricultural Tenancies Act 1990	1996/97	Regulates the rights of agricultural landowners, tenants and sharefarmers and provides for the determination of disputes by arbitration.	**Underway.** Final report being prepared by review group.
Farm Debt Mediation Act 1994	1996/97	Makes provision for mediation concerning farm debts.	**Not commenced.** Scheduled to commence in early 1999.
Sydney Market Authority Act 1968	1996/97	Constitutes the Sydney Market Authority and to define its powers, authorities, duties and functions and to vest certain property in the Authority.	**Review Unnecessary** Act repealed.
Farm Produce Act 1983	1995/96	Makes provisions for the registration and regulation of farm produce merchants and farm produce agents.	**Complete.** Act repealed.
Tobacco Leaf Stabilisation Act 1976	1995/96	Makes provisions with respect to the stabilisation of the tobacco leaf industry.	**Complete.** Act repealed.
Agriculture and Veterinary Chemicals Act 1994	1996/97	Applies certain laws of the Commonwealth relating to agricultural and veterinary chemical products as laws of NSW. Complementary to Commonwealth legislation.	**Underway** National review.

Act	Review Year	Objective	Status
Wheat Marketing Act 1989	1996/97	Relates to the marketing of wheat and other grains. Complementary to Commonwealth legislation.	**Review unnecessary.** Legislation to be repealed under the Statute Law Revision Program.
Dried Fruits Act 1939	1997/98	Make provision for the regulation of the dried fruits industry and reconstitutes the NSW Dried Fruits Board.	**Review unnecessary**. Legislation was repealed on 15/12/97. Consistent with prior resolutions of the Board, the Government decided on 20/10/98 to dissolve the Board; repeal the Act; immediately deregulate the dried vine fruit industry; & provide for transitional arrangements for the prune industry. The transitional arrangements involve the making of a Prune Industry Marketing Order under the Marketing of Primary Products Act. The marketing order expires on 31/12/99. Its main purpose is to constitute the Prune Industry Marketing Committee which is to promote the smooth transition of the dried prune industry from a regulated to a deregulated industry.
Grain Marketing Act 1991	1997/98	Relates to the marketing of coarse grains and oilseeds and to constitute the NSW Grains Board.	**Underway** Final report being prepared by review group.
Marketing of Primary Products Act 1983	1997/98	Relates to the marketing of certain primary products and to provide for the establishment of marketing boards in relation to certain of those products, and to enable the making of marketing orders.	**Not commenced.** Act will be reviewed when all marketing boards and marketing orders constituted under it have been separately reviewed.
Murray Valley Wines Grapes Industry Development Committee	1997/98	Constituted under the *Marketing of Primary Products Act 1983.*	**Underway.** Joint review with Victoria.
Murray Valley Wines Grapes Industry Negotiating Committee	1997/98	Constituted under the *Marketing of Primary Products Act 1983.*	**Underway.** Joint review with Victoria.

Act	Review Year	Objective	Status
Exhibited Animals Protection Act 1986	1997/98	An Act with respect to the exhibition of animals at marine or zoological parks, circuses and other places.	**Underway.** Being reviewed in conjunction with the review of the *Non-Indigenous Animals* Act. Final report being prepared.
Non Indigenous Animals Act 1987	1997/98	Controls and regulates the introduction into the State of certain species of animals and the movement and keeping of those animals within the State.	**Underway.** Being reviewed in conjunction with the review of the *Exhibited Animals Protection Act* and the part 7 of the *National Parks and Wildlife Act 1974*. Final report being prepared.
Animal Research Act 1985	1997/98	An Act to protect the welfare of animals used in connection with animal research.	**Underway** Act rescheduled for review 1999/2000.
Rural Assistance Act 1989	1996/97	Constitutes the NSW Rural Assistance Authority.	**Underway.** Final report being prepared by review group.
Veterinary Surgeons Act 1986 (1) Stock (Artificial Breeding) Act 1985 (2)	1997/98	(1) Regulates veterinary surgeons and premises; defines acts to be performed by vets; establishes the Veterinary Surgeons Board and disciplinary procedures; controls delegation of duties; regulates advertising and use of the title 'Veterinary Surgeon'. (2) Repeals the *Stock (Artificial Insemination) Act 1948* and makes provisions with respect to the artificial breeding of stock.	**Underway.** Review completed - awaiting Ministerial and Cabinet consideration.

Arts

Act	Review Year	Objective	Status
Library Act 1939 (Library Regulation 1995)	1995/96	Makes further provisions for the establishment, maintenance and management of libraries, library services and information services and creates certification scheme for librarians.	**Complete.** Certification scheme abolished.

Attorney-General

Act	Review Year	Objective	Status
Public Notaries Act 1985	1995/96	Provides for appointment, enrollment and disciplinary procedures for Public Notaries	**Complete.** New Act in place.
Public Trustee Act 1913	1995/96	Establishes the Public Trustee as a corporation empowered to conduct personal trust work.	**Complete.** Legislation was rejected by Parliament. Other measures to implement review recommendations are under consideration.
Monopolies Act 1923	1995/96	Amends the law in relation to monopolies and restraint of trade.	**Complete.** Possible repeal.
Restraints of Trade Act 1976	1995/96	Provides for Supreme Court action based on applications against activities which create restraints of trade.	**Complete.** Possible repeal.
Trustee Companies Act 1964	1995/96	Consolidates and amends the law relating to the restrictions, liabilities, privileges and powers of trustee companies.	**Underway** Draft Standing Council of Attorneys General (SCAG) Bill providing for uniform legislation is well advanced. There will be a NCP assessment of the impact of the Bill prior to implementation. Possible national review.
Legal Profession Act 1987	1996/97	Regulates the admission and practice of barristers and solicitors and repeals the *Legal Practitioners Act 1898*. Constitutes the Barristers Admission Board and Legal Practitioners Admission Board.	**Underway.** Report tabled in Parliament in November 1998. Implementation is underway.

Act	Review Year	Objective	Status
Motor Accidents Act 1988 (1) Motor Vehicles (Third Party Insurance) Act 1942 (2)	1996/97	(1) Relates to the recovery of damages and compulsory insurance against liability for the death or injury of persons as a consequence of motor accidents. (2) Requires that owners & drivers of motor vehicles are insured against liability in respect of death or bodily injury, amends the *Transport Act 1930 &* the *Compensation to Relatives Act 1987.*	**Underway.** Report complete. Receiving consideration by Government.
Partnerships Act 1892	1998/99	To declare and amend the law of Partnership.	**Not commenced.**
Standard Time Act 1987	1998/99	Relates to standard time and daylight saving in NSW.	**Not commenced.** Possible national review.
Council of Law Reporting Act 1969	1998/99	Constitutes a Council of Law Reporting to New South Wales and defines its powers, authorities, duties and functions.	**Underway.** Terms of reference and membership settled. Discussion paper to be released by July 1999.
Professional Standards Act 1994	1998/99	Provide for the limitation of liability of members of occupational associations in certain circumstances and to facilitate the improvement of the standards of services provided by those members.	**Not commenced.**
Classification (Publications Films and Computer Games) Enforcement Act 1995	1999/2000	Provides for a classification scheme for publications, films and computer games. Complementary to Commonwealth legislation.	**Not commenced.** Review may be unnecessary. A revised censorship regime with the support of all Australian jurisdictions came into operation on 1 January 1996.

Act	Review Year	Objective	Status
Theatres and Public Halls Act 1908	1999/2000	Provides for the licensing and regulation of theatres and public halls and of places used for public entertainment or public meetings, and the licensing and regulation of the holding of public entertainment and public meetings in temporary structures.	**Not commenced.**

Energy

Act	Review Year	Objective	Status
Energy Administration Act 1987	1995/96	Establishes the Department of Energy, constitutes the Energy Corporation of NSW and defines its functions.	**Complete**. Licence and approval requirements repealed with proclamation of *Electricity Supply Act 1995*. Other provisions dealt with as part of structural reform of gas industry.

Act	Review Year	Objective	Status
Pipelines Act 1967	1996/97	Relates to the construction, operation and maintenance of pipelines.	**Underway**. A fundamental review of the Pipelines Act 1967 was undertaken during 1998 which incorporated the legislative review requirement under the Competition Principles Agreement. The Act and Regulations were examined to determine if any provisions work or could work to restrict competition. In particular: • transparency and effectiveness of approvals; procedures; • barriers to entry; • whether government and non-government entities would be treated differently; and • whether there is any urgent need to remove the third party access provisions of the Act. Accordingly, the review examined restrictions on competition in the context of pipeline approvals, construction and operation. The review identified some provisions of the Act which in theory could be argued to act in a very minor way to restrict competition. These matters have been taken into account in the preparation of an Issues Paper on the Pipelines Act review which is expected to be released for public consultation in the first half of 1999.
Liquefied Petroleum Gas Act 1961 Liquefied Petroleum Gas (Grants) Act 1980	1997/98	Regulates the supply of gas.	**Complete.** Repealed by the *Gas Supply Act 1996*.
Electricity (Pacific Power) Act 1950	1999/2000	Provides for the constitution of Pacific Power and to define its principal objectives, powers, authorities, duties and functions. Amends and repeals certain other Acts.	**Not commenced.**

Act	Review Year	Objective	Status
Electricity Transmission Authority Act 1994	1999/2000	Establishes the NSW Electricity Transmission Authority and defines its functions.	**Review Unnecessary** Act repealed by s5 of the Energy Services Corporations Amendment (TransGrid Corporatisation) Act 1998 on 14 December 1998.
Electricity Safety Act 1945	1999/2000	Provides for the development of electricity supply; confers certain powers, authorities, duties and functions on the Energy Corporation of NSW; provides for the regulation of the sale and hiring of electrical apparatus and amends certain Acts.	**Not commenced** Much of the Act is now the responsibility of the Minister for Fair Trading. A Joint DOE/DFT review is planned for 1999/2000.
Electricity Supply Act 1995	1999/2000	Regulates the supply of electricity in the wholesale and retail markets; sets out the functions of persons engaged in the conveyance and supply of electricity.	**Not commenced.**
Gas Industry Restructuring Act 1986	1999/2000	Makes provision with respect to the supply and consumption of gas and the regulation of gas distributors.	**Not commenced.**

Environment

Act	Review Year	Objective	Status
Pesticides Act 1978	1995-96	Controls the sale, supply, use and possession of pesticides, the application of pesticides from aircraft and provides for the prevention of foodstuff contamination.	**Complete.** Dealt with under the Licence Reduction Program. However, Part 7 of the Act is currently being subject to further review in the context of a generic review of several Acts dealing with chemical residues (see Agriculture).

Act	Review Year	Objective	Status
Radiation Control Act 1990	1995-96	Makes provision for the regulation and control of the sale, use, keeping and disposal of radioactive substances and radiation apparatus.	**Complete.** Dealt with under the Licence Reduction Program. A national review of radiation control legislation may have implications for this Act.
Recreation Vehicles Act 1983	1995-96	Regulates the off-road use of motor vehicles.	**Complete.** Act to be repealed.
National Parks and Wildlife Act 1974	1995-96	Consolidates and amends the law relating to the establishment, preservation and management of national parks, historic sites and certain other areas and the protection of certain fauna, native plants and aboriginal relics.	**Complete.** Dealt with under the Licence Reduction Program.
Ozone Protection Act 1989	1995-96	Empowers the regulation and prohibition of the manufacture, sale, distribution, use, emission, recycle, storing and disposal of stratospheric ozone depleting substances and articles which contain those substances.	**Complete.** Dealt with under the Licence Reduction Program.
Environmentally Hazardous Chemicals Act 1985	1995-96	Provides for the control of the effect on the environment of chemicals and chemical waste. Constitutes the Hazardous Chemicals Advisory Committee.	**Complete.** Dealt with under the Licence Reduction Program. Partially replaced by the *Contaminated Land Management Act 1997*.
Waste Disposal Act 1970	1995-96	Provides for the constitution of a corporation to be called the 'Metropolitan Waste Disposal Authority'; confers and imposes on the corporation responsibilities, powers, authorities, duties and functions with respect to the transport, collection, reception, treatment, storage and disposal of waste within the Metropolitan Waste Disposal Region.	**Review Unnecessary** The Act was repealed and replaced by the *Waste Minimisation and Management Act 1995.*

Act	Review Year	Objective	Status
Unhealthy Building Act 1990	1996-97	Provides for the declaration of certain land as unhealthy building land and for the effect of such a declaration.	**Complete.** Dealt with under the Licence Reduction Program.
Waste Minimisation and Management Act 1995	1999-2000	Relates to the management, regulation and reduction of waste.	**Not commenced.**

Fair Trading

Act	Review Year	Objective	Status
Hawkers Act 1974	1995/96	Provides for the licensing and control of hawkers.	**Complete.** Act repealed.
Trade Measurement Act 1989	1995/96	Relates to trade measurement in NSW as part of the scheme for uniform trade measurement legislation throughout Australia.	**Underway** National review being undertaken by Ministerial Council on Consumer Affairs.
Building Services Corporation Act 1989	1996/97	Makes provisions concerning the residential building industry and certain specialist work and to constitute the Building Services Corporation and define its functions.	**Underway.** Legislative changes arising from the review have abolished the BSC, privatised the compulsory insurance arrangements, and abolished business licensing. Additional reforms to occupational licensing are under consideration.
Door to Door Sales Act 1967	1996/97	Controls and regulates certain agreements relating to the sale or bailment of goods and the provision of services on credit.	**Underway** Being reviewed concurrently with the review of the *Fair Trading Act 1987.*
Prices Regulation Act 1948	1996/97	Makes provision for the regulation of prices and rates of certain goods and services.	**Complete.** Measures to implement review recommendations are under consideration.

Act	Review Year	Objective	Status
Motor Dealers Act 1974 No 52 (1) Motor Vehicles Repair Act 1980 (2)	1996/97	(1) Provides for the granting of licences to people carrying on the business of a motor dealer, an auto-dismantler, a wholesaler, a motor vehicle parts reconstruction, a car market operator or a motor vehicle consultant, or a prescribed business; requires the keeping of certain records; imposes certain obligations on motor dealers; provides for the settlement of disputes and establishes a motor dealers compensation fund. (2) Constitutes the Motor Vehicle Repair Industry Council and confers on it licensing functions concerning repair businesses and tradesman and loss assessors.	**Underway.** Awaiting Cabinet consideration**.**
Business Names Act 1962	1996/97	Makes provision with respect to the registration and use of business names.	**Underway.** Final report being prepared.
Residential Tenancies Act 1987 (1) Landlord and Tenant (Rental Bonds) Act 1977 (2)	1997/98 1996/97	(1) Relates to the rights and obligations of landlords and tenants under residential tenancy agreements; makes provision with respect to excessive rent increases and rents; confers functions onto the Residential Tenancies Tribunal of NSW with respect to landlords and tenants. Repeals and amends certain Acts. (2) Constitutes a Rental Bond Board; confers and imposes certain powers, authorities, duties and functions on the Board; requires lessors of residential premises to deposit rental bonds with the Board; provides for the paying out of rental bonds and enabled the investment of rental bonds and the investment and expenditure of rental bonds.	**Underway.** Review has been expanded to include related general residential tenancies legislation. Final report being prepared.

Act	Review Year	Objective	Status
Funeral Funds Act 1979	1996/97	Controls and regulates contributory and pre-arranged funeral funds.	**Underway.** Issues paper being prepared.
Property, Stock and Business Agents Act 1941	1996/97	Regulates real estate, stock and station, business and managing agents.	**Underway.** Final Report being prepared.
Retirement Villages Act 1989	1996/97	Relates to the termination of occupation rights of residents in retirement villages and confers jurisdiction over certain matters relating to retirement villages, on the Residential Tenancies Tribunal.	**Underway.** Final report being prepared.
Valuers Registration Act 1975	1996/97	Provides for the registration of real estate valuers; regulates the qualifications for and the effect of such registrations and confers and imposes functions on the Property Services Council.	**Underway.** Final report being prepared.
Travel Agents Act 1986	1997/98	Provide for the licensing of travel agents and the regulation of their operations.	**Underway.** National review, coordinated by WA.
Cooperatives Act 1992 (1) Cooperation Act 1923 (2)	1997/98	(1) Provides for the establishment of cooperatives and the regulation of their operations. (2) Amends the law relating to cooperation; provides for the formation, registration and management of co-operative societies.	**Underway** Issues paper being prepared.
Fair Trading Act 1987	1997/98	Regulates the supply, advertising and distribution of goods and services and, in certain respects, the disposal of interests in land.	**Underway**
Business Licences Act 1990	1997/98	Relates to business licences.	**Underway**

Act	Review Year	Objective	Status
Consumer Credit (NSW) Act 1995	1999/2000	Regulates the provision of consumer credit.	**Underway** National review. The Ministerial Council on Consumer Affairs (MCCA) is undertaking a post-implementation review of the Uniform Credit Code.which includes NCP analysis. Terms of reference have been endorsed by COAG Committee on Regulatory Reform.
Credit (Finance Brokers) Act 1984	1999/2000	Relates to the conduct of business of finance brokers.	**Not commenced.**
Pawnbrokers and Second Hand Dealers Act 1996	1999/2000	Provides for the licensing of pawnbrokers and dealers in certain classes of second hand goods. Repeals and amends certain Acts.	**Not commenced.**
Strata Titles Act 1973 Strata Titles (Leasehold Development) Act 1986	1999/2000	Acts replaced by *Strata Schemes Management Act 1996* which provides for the management of strata schemes and the resolution of disputes in connection with strata schemes.	**Not commenced.** *Strata Schemes Management Act 1996* will be reviewed.

Fisheries

Act	Review Year	Objective	Status
Fisheries Management Act 1994	1999/2000	Relates to the management of fishery resources.	**Not commenced** NSW review to commence mid-1999 following the meeting of the Standing Committee on Fisheries and Aquaculture which will consider outcomes of scoping NCP review undertaken in Western Australia.

Gaming and Racing

Act	Review Year	Objective	Status
Australian Jockey Club Act 1873 (1) Sydney Turf Club Act 1943 (2)	1995/96	(1) Extends the period for which the trustees of the Randwick Racecourse are enabled to grant leases and to enable members of the Australian Jockey Club to sue and be sued in the name of the Chairman. (2) Constitutes and incorporates the Sydney Turf Club and declares its objects, functions and powers and provides for associated matters.	**Underway.** Final report being prepared.
Registered Clubs Act 1976 (1) Liquor Act 1982 (2)	1996/97	(1) Makes provisions with respect to the registration of clubs and their rules and management. (2) Regulates the sale and supply of liquor and regulates the use of premises at which liquor is sold.	**Underway.**
Gaming and Betting Act 1912	1997/98	Consolidates Acts relating to games, wagers and betting houses, the restriction of race meetings and the licensing of race courses. Act was repealed and remade in three parts to be separately reviewed: • core gaming and betting provisions (Unlawful Gambling Act); • racecourse licensing (new Racing Administration Act); and • two-up (Gambling (Two Up) Act).	**Completed /Underway** • Unlawful Gambling Act (Complete -exempt from review); • Racing Administration Act and associated Acts- review underway; and • Two Up Act (inter-department review complete). (for expanded discussion on gaming and betting legislation see Chapter 5).
Racing Administration Act 1998 Greyhound Racing Control Board Act 1985 Harness Racing Act 1977 Bookmakers Taxation Act 1917 Thoroughbred Racing Board Act 1996	VARIOUS	These Acts establish controlling bodies for these race codes.	**Underway** Reviews of theses Acts merged with Racing Administration Act review. An issues paper was released in early 1999, and a report is expected in late 1999 (see chapter 5 for detail).

Act	Review Year	Objective	Status
Innkeepers Act 1968	1997/98	To make provision with respect to certain rights and liabilities of innkeepers and persons having dealings with innkeepers.	**Underway** Inter-departmental review.
Lotteries and Art Unions Act 1901	1999/2000	An Act with respect to the conduct of lotteries, games of chance and art unions.	**Not commenced.**
Lotto Act 1979 NSW Lotteries Act 1990 Soccer Football Pools Act 1975	1999/2000		**Not commenced.** The Acts were repealed and replaced by the *NSW Lotteries Corporatisation Act 1996* and the *Public Lotteries Act 1996*.
Casino Control Act 1992	ADDITIONAL ITEM	Establishes the Casino Control Authority and issues exclusive license for Sydney casino.	**Underway** Review in final stages. Awaiting outcomes of Productivity Commission's review of Gambling Industries.
Totalizator Act 1916	1999/2000	Amends and consolidates the law as it relates to the conduct of totalizators and the regulation of totalizator betting.	**Complete** Act repealed by Totalizater Act 1997 which privatised the TAB. Clause 5(5) CPA analysis submitted to NCC. NCC reported analysis adequate in "Framework for the NCP Second Tranche Assessment: June 1999" page 16.
Totalizator (Off-Course Betting) Act 1964	1999/2000	Makes provision with respect to off-course betting by means of the totalizator system; provides for the conduct of sweepstakes in respect of certain events; establishes a Totalizator Agency Board and defines its powers, authorities, duties and functions.	**Complete.** Act repealed by Totalizater Act 1997 which privatised the TAB. Clause 5(5) CPA analysis submitted to NCC. NCC reported analysis adequate in "Framework for the NCP Second Tranche Assessment: June 1999" page 16.

Health

Act	Review Year	Objective	Status

Act	Review Year	Objective	Status
Therapeutic Goods and Cosmetics 1972	1995/96	Regulates the manufacture, distribution and advertising of certain therapeutic goods and imposes standards in relation to certain therapeutic goods and cosmetics.	**Complete.** Act repealed. Provisions relating to cosmetics not re-enacted. Licences for wholesalers of therapeutic goods eliminated. Remaining provisions incorporated into the *Poisons Act 1966* and the *Therapeutic Goods Act 1972.*
Poisons Act 1966	1995/96	Regulates, controls and prohibits the sale and use of poisons, restricted substances, drugs of addiction and certain dangerous drugs and establishes a Poisons Advisory Committee.	**Not commenced.** NSW has agreed to participate in a national review.
Dentists Act 1989	1995/96	Regulates the practice of dentistry.	**Underway.** Pre-consultation underway and issues paper being prepared.
Medical Practice Act 1992	1995/96	Provides for the registration of medical practitioners and medical students, the making of complaints and disciplinary action.	**Underway** Final report tabled in Parliament in December 1998. Further consultation needs to be completed prior to Cabinet consideration.
Tobacco Advertising Prohibition Act 1991	1995/96	Prohibits the advertising of tobacco and tobacco products, trade marks, brand names and logos.	**Complete.** Act repealed. Advertising restrictions were minimised and incorporated into the *Public Health Act 1991.*
Podiatrists Act 1989	1996/97	Regulates the practice of podiatry; makes provisions for the registration of podiatrists and regulates the qualifications for and the effect of such registration; constitutes the Podiatrists Registration Board and specifies its functions.	**Not commenced.** Act will be reviewed in 1999.

Act	Review Year	Objective	Status
Human Tissue Act 1983	1996/97	Relates to the donation of tissue by living persons, the removal of tissue from deceased persons and the conduct of post-mortem examinations of deceased persons.	**Underway.** Issues Paper released. Review is examining the regulation of blood and blood products.
Optometrists Act 1930	1996/97	Provides for the registration of optometrists and regulates the practice of optometry.	**Underway** Issues paper released in August 1998. Final report being prepared.
Psychologists Act 1989	1996/97	Makes provision for the registration of psychologists; regulates the qualifications for the effect of such registration and constitutes the Psychologists Registration Board and specifies its functions.	**Underway.** Final report awaiting Cabinet consideration.
Nurses Act 1991	1997/98	Regulates the practice of nursing.	**Underway**
Physiotherapists Registration Act 1945	1997/98	Makes provision for the registration of physiotherapists; regulates the qualifications and effect of such registration; provides for the constitution of a Physiotherapists Registration Board and defines the powers and functions of that Board.	**Underway**
Public Health Act 1991	1997/98	Regulates the funeral industry, skin penetration, microbial control and other matters.	**Underway** Issues Paper being prepared.
Nursing Homes Act 1988	1997/98	Provides for the licensing and control of nursing homes.	**Underway** Terms of reference have been finalised. Department is considering whether to engage a consultant to assist with the review.

Act	Review Year	Objective	Status
Friendly Societies Dispensaries Enabling Act 1945	1997/98	Enables Friendly Societies to operate pharmacies.	**Complete.** Act repealed. Relevant provisions were incorporated into the *Pharmacy Act*, which is scheduled for national review in 1999.
Chiropractors and Osteopaths Act 1991	1997/98	Regulates the practice of chiropractic and osteopathy and repeals the *Chiropractic Act 1987*.	**Underway** Final report being prepared.
Pharmacy Act 1964	1997/98	Regulates the carrying on of the business of a pharmacist; authorises friendly societies and trading and rural societies established under the *Co-operation, Community Settlement and Credit Act 1923* to carry on the business of a pharmacist in certain circumstances. Amends relevant Acts.	**Not commenced.** National review in 1999
Private Hospitals and Day Procedures Centres Act 1988	1997/98	Provides for the licensing and control of day procedure centres.	**Underway.** Issues Paper being prepared.
Optical Dispensers Act 1963	1999/2000	Makes provision for the licensing of optical dispensers; regulates the qualifications and the effect of such licensing; provides for the constitution of an Optical Dispensers Licensing Board and defines the powers and functions of that Board.	**Not commenced.**
Dental Technician Registration Act 1975	1999/2000	Constitutes the Dental Technicians Registration Board & defines its powers, authorities, duties and functions; makes provisions for the registration of dental technicians; regulates the qualifications for, and the effect of, registration.	**Not commenced.**
Pathology Laboratories Accreditation Act 1981	1999/2000	Provides for the accreditation of Pathology Laboratories.	**Complete.** It is expected that the Act will be repealed in 1999.

Act	Review Year	Objective	Status
Food Act 1989	1999/2000	Consolidates and amends the law relating to the preparation and sale of food.	**Underway** National review.

Industrial Relations/Workcover

Act	Review Year	Objective	Status
Bread Act 1969	1995/96	Makes provisions in respect of times for the baking and delivery of bread, licensing of bread manufacturers, certification of operative bakers, standard bread size; constitutes a Bread Industry Advisory Council and amends other Acts.	**Complete.** Repealed.
White Phosphorous Matches Prohibition Act 1915	1995/96	Prohibits the use of white phosphorus in the manufacture of matches and prohibits the sale of matches made with white phosphorous.	**Complete.** Repealed.
Occupational Health and Safety Act 1983	1999/00	To secure the health, safety and welfare of persons at work and to amend certain other Acts.	**Not commenced.** The OH & S Act has been the subject of several significant reviews with a view to making a consolidated OH & S regulation. Competition issues to be addressed in drafting of new regulation.
Industrial Relations Act 1991	1996/97	Restates and reforms the law concerning industrial relations.	*Industrial Relations (IR) Act 1991* repealed & replaced with *IR Act 1996*. Regulation of employment agents was separated from IR Act into *Employment Agents (EA) Act 1996*. The EA Act is being transferred from the administration of the Dept. of Industrial Relations to the Dept. of Fair Trading from 1/7/98. The EA Act may be reviewed in light of recent Cwth reforms to employment services.

Act	Review Year	Objective	Status
Rural Workers Accommodation Act 1969	1999/00	Provides for the accommodation of rural workers and constitutes the Rural Workers Accommodation Advisory Council. Creates certificate of compliance for accommodation.	**Not commenced.** Some industrial issues involved. To review concurrently with new OH&S regulation.
Factories, Shops and Industries Act 1962	1999/00	Makes provisions with respect to the supervision and regulation of factories, shops and certain other industries and to the health, safety and welfare of employees; restricts trading hours; controls advertising and description of goods; regulates outdoor work in clothing trade; restricts hours of trade and labour; controls advertising; creates licensing regime for hairdressers and prescriptive requirements for hairdressing premises.	Part 3: **Not commenced.** Linked to current reviews of the Occupational Health and Safety Act. Part 4: **To commence in 1999** Trading Hours. Part 6: **To commence in 1999** Hairdressers.
Construction Safety Act 1912	1999/00	Provides for the regulation and inspection of construction work and consolidates the Acts controlling scaffolding and lifts.	**Not commenced.** Linked to Occupational Health and Safety Act review. Creates several certificates of competency, some have already been reviewed and removed under the Licence Reduction Program.
Dangerous Goods Act 1975	1999/00	Consolidates and amends the law relating to explosives and other dangerous substances.	**Not commenced.** Draft national standard on storage and handling has been released for public comment. Legislative amendments involving the transport of dangerous goods commenced 20 April 1998 to give effect to the first module of reforms to national road transport law developed through the National Road Transport Commission. The proposed Dangerous Goods (General) Regulation was released for public comment in January 1999 and is expected to be finalised in September 1999. NCP review to take place after the current process is complete.

Act	Review Year	Objective	Status
Funeral Services Industry (Days of Operation) Act 1990	1998/98	Regulates the days of operation of businesses providing funeral, burial or cremation services.	**Not commenced.**
Entertainment Industry Act 1989	1999/2000	Relates to the regulation of the entertainment industry and amends and repeals certain legislation.	**Not commenced.**

Department of the Surveyor-General

Act	Review Year	Objective	Status
Surveyors Act 1929	1995/96	Provides for the registration of surveyors of land, regulates the making of surveys.	**Underway.** Issues Paper being finalised. Some delay has occurred as a result of a transfer of Ministerial responsibility for this legislation.

Local Government

Act	Review Year	Objective	Status
Local Government (Theatre and Public Halls) Amendment Act 1989	1995/96	Amends the *Local Government Act* to make provision for approval and regulation of places of public entertainment and certain structures.	**Complete.** Dealt with under the Licence Reduction Program. Licence retained. Issues of public safety outweigh costs.

Act	Review Year	Objective	Status
Local Government Act 1993	1997/98	To provide for Local Government in New South Wales.	**Not commenced.** Partly dealt with under the Licence Reduction Program and the recent reform of planning laws. However, the Act requires review under S 747 of the Act. Restrictions on competition that were not addressed during the aforementioned processes will be addressed in a NCP review commencing in 1999.

Mineral Resources

Act	Review Year	Objective	Status
Petroleum (Onshore) Act 1991	1995/96	Regulates the search for, and mining of, petroleum.	**Complete**. Dealt with under the Licence Reduction Program.
Petroleum (Submerged Lands) Act 1982	1995/96	Relates to the exploration for, and exploitation of, petroleum resources and certain other resources adjacent to the coast of NSW.	**Not commenced** Some portions dealt with under the Licence Reduction Program. Remainder to be examined as part of a national review.
Mining Act 1992	1995/96	Makes provisions with respect to prospecting for and mining minerals.	**Complete**. Dealt with under the Licence Reduction Program.
Coal Ownership (Restitution) Act 1990 (1) Coal Acquisition Act 1981 (2)	1996/97	(1) Provides for the restitution of certain coal acquired by the crown as a result of the Coal Acquisition Act 1981. (2) Vests all coal in the Crown.	**Complete**. Acts will be superseded by new legislation - Coal Acquisition Amendment Act. The Acts are likely to be repealed when the Coal Compensation Board is abolished.

Act	Review Year	Objective	Status
Mines Inspection Act 1901 (1) Coal Mines Regulation Act 1982 (2)	1996/97 1999/2000	(1) Makes better provision for the regulation and inspection of mines, other than coal and shale mines, and regulates the treatment of the products of such mines. (2) Regulates coal mines (and oil shale and kerosene shale mines) and certain related places.	**Underway.** A review of mine safety legislation is underway in response to the Mine Safety Review, which reported in April 1997. The review will impact on both metalliferous and coal safety legislation and will take account of NCP requirements.

Police

Act	Review Year	Objective	Status
Wool, Hides and Skins Dealers Act 1935	1995/96	Regulates the buying and selling of wool, hides and skins.	**Underway.** Report complete and under Government consideration.
Security (Protection) Industry Act 1985	1995/96	Provides for the licensing and regulation of persons carrying on, or employed in, the business of providing security and protection for persons or property.	**Complete.** Act has been repealed and replaced by the *Security Industry Act 1997*.
Commercial Agents and Private Inquiry Agents Act 1963	1996/97	Provides for the licensing and control of commercial agents, private inquiry agents and their subagents.	**Underway.**

Ports and Waterways

Act	Review Year	Objective	Status
Marine Safety Act 1998		Marine Safety Act 1998 repealed and consolidated the following Acts • Commercial Vessels Act 1979 Regulates the use of certain vessels and of certain motors for propelling vessels; provides for marking of load lines and the carriage of certain equipment by vessels. • Maritime Services Act 1935 Provides for the constitution of the Maritime Services Board of NSW and its powers. • Marine Pilotage Licensing Act 1971 Provides for the licensing of pilots. • Navigation Act 1901 Consolidates the Acts relating to navigation.	**Not commenced** Some anti competitive elements of former Acts dealt with under Licence Reduction Program with 10 licences and permits abolished from 2 February 1997 under the *Regulatory Reduction Act 1996.* Remainder of NCP issues in new Marine Safety Act still to be reviewed.
Ports Corporatisation and Waterways Management Act 1995	1999/2000	Establishes statutory state-owned corporations to manage the State's port facilities on major ports; transfers waterways management and other marine safety functions to the Minister; establishes the Waterways Authority and provides for port charges, pilotage and other marine matters.	**Not commenced.**

Public Works and Services

Act	Review Year	Objective	Status
Architects Act 1921	1995/96	Provides for the registration of architects and regulation of the practice of architecture.	**Underway.** NSW has indicated its willingness to participate in a national review. A State-based review had commenced, but has been terminated pending outcome of governments' consideration of a national review.

Public Sector Management (Goods and Services) Regulation 1995	1998/99		**Not commenced.**

Roads

Act	Review Year	Objective	Status
Driving Instructors Act 1992	1995/96	Provides for the licensing of driving instructors and repeals the *Motor Vehicle Driving Instructors Act* 1961.	**Underway.** Issues Paper being prepared.
Traffic Act 1909	1997/98	Provides for the regulation of vehicles and of vehicular and pedestrian traffic.	**Not commenced.**
Roads Act 1993	1997/98	Makes provision with respect to the roads of NSW. Repeals certain Acts.	**Not commenced.**

Sport and Recreation

Act	Review Year	Objective	Status
Motor Vehicle Sports (Public Safety) Act 1985	1995/96	Makes provision for the control and regulation of meetings for motor vehicle racing.	**Underway.** Issues Paper being prepared.
Boxing and Wrestling Control Act 1986	1995/96	Regulates the conduct of professional boxing; constitutes the Boxing Authority of NSW and defines its functions; regulates the conduct of wrestling and amateur boxing contests.	**Underway.** Terms of Reference approved by Premier.

State Development

Act	Review Year	Objective	Status
Country Industries (Payroll Tax Rebates) Act 1977	1996/97	Allows rebates of pay-roll tax in respect of certain country manufacturing or processing industries.	**Underway.**

Retail Leases Act 1994	1997/98	Makes provision with respect to the leasing of certain retail shops and the rights and obligations of lessors and lessees of those shops.	**Not commenced.** Retail Leases (Amendment Act) 1998, assented to by the Governor of NSW on 14/12 98.
State Development and Industries Assistance Act 1966	1997/98	Constitutes the Minister administering the Act as a corporation sole and confers certain powers on that sole relating to the establishment, expansion and development of certain industries and to the acquisition of land.	**Underway**
Act	**Review Year**	**Objective**	**Status**
Small Business Loans Guarantee Act 1977	1997/98	Authorises the execution of guarantees for the repayment of loans made to certain small businesses.	**Underway**

Transport

Act	**Review Year**	**Objective**	**Status**
Tow Truck Act 1989	1995/96	Provides for a licensing and certification scheme for tow truck drivers and operators; regulates other matters and constitutes the Tow Truck Industry Council.	**Not commenced**. Act repealed and replaced by Tow Truck Act 1998. New regulatory scheme being developed for introduction in 1999. NCP review will commence after 6 months operation of new scheme.
Air Transport Act 1964	1995/96	Prohibits, in certain circumstances, the carriage by aircraft of passengers or goods from one place to another within NSW except if a licence is granted by the Minister. Amends certain Acts.	**Completed** NCP review completed and legislation to repeal Act introduced to Parliament in 1998. Legislation currently being considered by Parliamentary Committee.
National Rail Corporation (Agreement) Act 1991	1996/97	Approves and gives effect to an agreement between NSW, the Commonwealth and other States relating to the National Rail Corporation Ltd.	**Not commenced.** Will need to be a national review.

Act	Review Year	Objective	Status
Parking Space Levy Act 1992	1996/97	To discourage car use in business districts by imposing a levy on off-street parking and using the revenue to develop infrastructure and encourage the use of public transport.	**Complete.** Act retained on the basis that competition restrictions were notional only.
Passenger Transport Act 1990	1997/98	Regulates public transport services – buses, taxis, hire cars and ferries	**Underway.** Buses segment is complete. Taxis/hire cars – IPART conduction inquiry for report in 1999. Ferry segment yet to commence.
Rail Safety Act 1993	1999/2000	To promotes the safe construction, operation and maintenance of railways.	**Not commenced.**

Treasury

Act	Review Year	Objective	Status
Business Franchise Licence (Petroleum Products) Act 1987	1995/96	Provides for the licensing of people carrying on the business of selling certain petroleum products.	**Complete** Legislation was repealed in December 1997.
Business Franchise Licence (Tobacco) Act 1987	1995/96	Provides for the licensing of people carrying on the business of selling tobacco.	**Complete** Legislation was repealed in December 1997.

Payroll Tax Act 1971	1995/96	Imposes a tax upon employers in respect of certain wages and provides for the assessment and collection of the tax.	**Underway** State Heads of Treasury have commenced a national review of compliance arrangements associated with payroll tax. The Victorian Government is providing the Secretariat.
Public Finance and Audit Act 1983 (1) Public Authorities (Financial Arrangements) Regulations 1997 (2)	1995/96	(1) Makes provision with respect to the administration and audit of public finances. (2) Makes provisions with respect to certain financial arrangements and investments of public authorities; constitutes the NSW Capital Works Financing Corporation.	**Underway** Treasury is finalising a clause 5 (5) public benefit assessment for the statutory borrowing and investment control components of new omnibus legislation. A green paper, incorporating competition policy issues, was released and submissions received.

Act	Review Year	Objective	Status
Friendly Societies Act 1989	1997/98	Provides for the formation, registration, management and regulation of friendly societies and to consequently appeal and amend certain other legislation.	**Review unnecessary** NSW has adopted national template legislation (following Victorian NCP review) which became effective on 1/11/97. Since this date, NSW has entered into negotiations with the Commonwealth regarding the transfer of prudential regulatory responsibilities for credit unions, building societies and friendly societies to the Commonwealth, with a view to this being concluded on or before 1/7/99. The Victorian template legislation will be repealed once the transfer has being executed.
Petroleum Products Subsidy Act 1965	1997/98	The Act implements a Commonwealth scheme that provides for the subsidisation of fuel transport costs in rural areas.	**Review unnecessary** The Act is expected to be repealed.
Government Guarantees Act 1934	1997/98	Validates certain guarantees given to certain banks by the Treasurer or pursuant to Minutes of the Governor and Executive Council; authorises the Treasurer to execute certain guarantees in certain cases; makes certain contingent appropriations out of the Consolidated Revenue Fund and to amend certain Acts.	**Underway** Review commenced in March 1999.
Superannuation Administration Act 1996	N.A.	Provides for trustees for State public sector superannuation schemes and the provision of investment and administration services for such schemes. Constitutes the Superannuation Administration Authority of NSW.	**Not commenced.** Legislation for corporatisation of the Superannuation Administration Authority will be introduced in Parliament in May 1999 and will largely address residual competition issues and clarify the need for any formal legislative review.

Urban Affairs and Planning

Act	Review Year	Objective	Status
Land Development Contribution Act 1970	1997/98	Levies a contribution in relation to certain land within the Sydney region.	**Review unnecessary**. The Act was introduced to collect contributions from developers who benefit from rezonings. The Act has not been used to collect contributions for several years, and the subordinate legislation which provided the power to collect contributions has been repealed. The Act is likely to be repealed when the funds have been spent or allocated to other funds.

Annexure 3:

State Reviews of Regulatory Restrictions on Competition - Planning, Land Use and Natural Resource Approvals Systems

Projects	Status
1. Development of policy options for integrated approvals system.	***Complete*** Integrated Development amendments commenced 1 July 1998.
2. Review of referrals and concurrences in local environmental planning policies.	***Underway*** The first stage of the review is complete with approximately 1420 clauses identified with around 650 marked for deletion and approximately 300 to be retained.
3. Extend Guarantee of Prompt Service to concurrent approvals under the Environmental Planning and Assessment Act.	***Complete*** New concurrence processes in place since 1/7/98 reduce timeframes from 80 days to 60 days.
4. Review of multiple controls on land clearing State Environmental Planning Policy (SEPP) 46.	***Complete*** SEPP 46 was replaced by the Native Vegetation Conservation Act 1997, which came into force on 1/1/98, following a detailed public consultation and review process.
5. Integration of total catchment management objectives in planning instruments.	***Underway*** To be considered as part of the Department of Urban Affairs and Planning (DUAP) discussion paper '*Plan Making in NSW: Opportunities for the future*'. The paper canvasses options to improve the plan making system under the Environmental Planning and Assessment Act 1979 (EP&A Act). In addition, the *Outcomes of the review of Total Catchment Management in NSW* was published in December 1997 and its 35 actions are currently being implemented, including: • a State Catchment Management Coordinating Committee and local councils joint strategy to achieve greater local government participation and commitment to TCM;

	• the Department of Land and Water Conservation, in consultation with DUAP and the Department of Local Government, will examine measures to promote consistency and compatibility between Catchment Management Committee and Catchment Management Trust strategies and policies, and the requirements of the Environmental Planning and Assessment Act (1979) and the Local Government Act (1993).
6. Examination of feasibility of incorporating plans for: river management; land management; habitat management; environment protection; forestry reserves into planning instruments under the Environmental and Planning Assessment (EP&A) Act.	***Underway*** To be considered as part of the DUAP discussion paper '*Plan Making in NSW: Opportunities for the future'*.
7. Review and reform of regulations affecting mining.	***Underway*** NSW Department of Mineral Resources is currently conducting reviews of the Mines Inspection Act 1901 and the Coal Mines Regulation Act 1982.
8. Review and reform of regulations affecting mariculture.	***Not commenced*** Regulations will be reviewed as part of the NCP review of the Fisheries Management Act 1994, which is due to commence in mid 1999.
9. Review and reform of regulations affecting forestry including the corporatisation of State Forests.	***Underway*** The Forestry and National Parks Estate (FNPE) Act (1998): Provides for the making of Forest Agreements in NSW; and Streamlines and integrates the existing regulatory environment by linking existing licences under an Integrated Forestry Operations Approvals (IFOAs) process. Full corporatisation of State Forests' commercial activities is yet to occur.

10. Review of s90 EP&A Act 'heads of consideration' for development consent.	***Complete*** Section 79C of the reformed EP&A Act introduces generic heads of consideration streamlining old processes.
11. Review potential for increasing 'as of right developments'.	***Complete*** Completed with the introduction of State-wide complying/exempt development by December 1999. Some councils have already introduced complying/exempt Development.
12. Consider potential for private certification of building, sub-division water and sewerage approvals.	***Complete*** Reforms to development assessment system introduced 1/7/98 contains certification for building and subdivision.
13. Integrate building and planning approvals.	***Complete*** Reforms to development assessment system combined the development, building and subdivision approval processes.
14. Examine zoning prohibitions for anti-competitive effects; consider wider adoption of performance standards.	***Underway*** Discussion Paper on Plan Making Process will examine this issue. DUAP encouraging performance standards in other areas, ie NSW Model Code for Multi-Unit Housing.
15. Review and reform development without consent (SEPP 4) for change of use in industrial areas.	***Complete*** Undertaken through the establishment of the new categories of Exempt and Complying Development under the EP&A Act.
16. Consider combining development and re-zoning applications.	***Complete*** EP&A Act amended to allow for this situation.
17. Review heritage approvals and consider better integration with Development Approval/Building Approval (DA/BA) processes.	***Complete*** Heritage approvals now integrated under the EP&A Act. Heritage Act amendments streamline the process where development is in accordance with a Conservation Plan.

18. Consider potential for standardising consent conditions, zoning classifications and definitions as performance standards.	***Underway*** DUAP will be working with councils through advisory notes to improve consent conditions. Discussion Paper on Plan Making process will examine zoning.
19. Stage II review of pollution control acts to streamline and rationalise licensing procedures.	***Complete*** The Protection of the Environment Operations Act 1997 (POEO Act) and regulations (due to commence in July 1999) will replace five core pollution control statutes and provide for stronger environment protection, while streamlining the licensing process. As a result, businesses will only require the one environment protection licence that recognises the ongoing, long term nature of operations.
20. Review water legislation and licensing.	***Underway*** In the Spring 1997 session of Parliament the following amendments were passed: Amendments to the Water Administration Act to require decision makers to have regard to ESD; Amendments to the Water Act to enable – large water users to be appropriately licensed (e.g. Sydney and Hunter Water Corporations); new rules for temporary trading in regulated river systems; new groundwater licensing powers. The paper '*Water Sharing in NSW, Access and Use*' was released in April 1998 to develop policy on which to base changes to water licensing legislation. Community response to this paper is now being examined.
21. Develop framework for Co-ordinated/Integrated Development Approval Conditions and other requirements and advice on the use of the framework.	***Underway*** DUAP will be working on Best Practice Guidelines with agencies involved in Integrated Development.

22. Develop Best Practice Guidelines for a Co-ordinated/Integrated Development Approval System for Mining and Extractive Industry.	***Complete*** Guidelines were issued in September 1997. Relevant amendments to the Environmental Planning and Assessment Act came into effect in July 1998.
23. Develop Best Practice Guidelines for Planning Focus.	***Underway*** Draft guidelines being prepared for consultation.
24. Develop Best Practice Guidelines for Community Consultation.	***Underway*** NSW Minerals Council has released '*Best Practice Community Consultation Guidelines'*. The DUAP Discussion Paper on Plan Making Process will also address community consultation issues.
25. Review of endangered species legislation so as to integrate licenses and DAs.	***Complete*** The Threatened Species Conservation (TSC) Act 1995 amended the National Parks and Wildlife Act 1974 to integrate licences and development applications/consents with respect to harming, picking threatened species populations or ecological communities. The relevant section of the National Parks and wildlife Act is Section 18A (3) (b). This amendment took effect on 1 January 1996.
26. Adopt reformed Australian Building Code (as performance standards) with minimal variations.	***Complete*** Performance based 1996 Building Code of Australia was adopted in NSW.
27. Convert siting rules to performance standards.	***Complete*** In relation to fire standards, these provisions are to be repealed on 1 July 1999 and regulated under the performance based Building Code of Australia. In other respects the EP&A Act siting requirements will form part of Local Environmental Plans by individual councils if required.
28. Extend and improve performance benchmarking of local councils.	***Underway*** The IPART has released its final report on benchmarking local government performance in NSW. The Government is considering the report's recommendations.

29. Public consultation to improve operation of current approval rights and dispute resolution system.	***Underway*** DUAP is monitoring implementation of this issue as part of its ongoing assessment of the operation of the planning system.
30. Examine the potential for consolidating land, water and related natural resource management legislation into a single statute.	***Underway*** Examined in the Discussion Paper on the Plan Making Process – integration of planning and natural resource management.

Annexure 4:

National Road Transport Reform

Legislation Modules	Reform Strategy	First Heavy Vehicle Reform Package	Second Heavy Vehicle Reform Package
Charges	• Second Charges Determination	• Uniform Registration Charges	
Vehicle Operations	• Vehicle Operations - Restricted Access Vehicles, Mass and Loading and Oversize and Overmass • Heavy Vehicles Standards Regulations • Combined Vehicle Standards • Australian Road Rules • Truck driving Hours Regulations • Bus Driving Hours Regulations	• Common Mass and Loading Rules • Improve Network Access • Common Pre-Registration Standards • Common Roadworthiness Standards • Enhanced Safe Carriage and Restraint of Loads • Adoption Of National Bus Driver Hours	• Improve Fatigue Management for Truck Drivers • Mass Limits Review • Truck/Trailer Mass Ratios • Axle/Mass Spacing Schedule (above 42.5 tonne) • Reduction in Truck Noise
Heavy Vehicle Registration	• National Vehicle Registration Scheme for Heavy Vehicles		• NEVDIS (First Stage) • Short Term Registration
Driver Licensing	• National Driver Licensing Scheme for all Drivers (other then learner and novices)	• One Driver/One Licence • Interstate Conversions of Driver Licence	• Information on Driver Offences and Licence Status
Compliance and Enforcement	• Consistent Compliance and Enforcement Arrangements	• Alternative Compliance Program	• Management of Speeding Heavy Vehicles • Consistent On-Road Enforcement for Roadworthiness
Dangerous Goods	• Uniform Arrangement for the transport of Dangerous Goods		

REFORM STRATEGIES
STATUS REPORT DECEMBER 1998

REFORM	PROGRESS
National Reform Project 5 *Heavy Vehicle Standards Regulations (including amendments)* - these Regulations provide all the standards for the construction and performance of heavy vehicles and trailers.	These Regulations have been in place in NSW law since October 1995. They were incorporated into the Motor Traffic Regulations made under the Traffic Act 1909.
Linked to National Reform Project 5 *Combined Vehicle Standards* - the NRTC proposes to combine its current work on construction and performance of light vehicles and trailers into a combined heavy/light vehicle standards package.	The NRTC submitted Regulations to Ministerial Council for vote by end of January 1999. *Regulations approved by Ministers January 1999. NSW expects to implement by June 1999.*
Australian Road Rules – these Rules deal with basically all issues relating to the duties of drivers, riders (including bicycle riders) and pedestrians, apart from the more serious offences like drink-driving, dangerous driving etc. They cover matters such as, speed limits, use of seat belts, parking regimes, rules about footpath cycling, roundabout rules; use of mobile phones while driving etc.	The NRTC submitted an Australian Road Rules package to Ministers for vote by end of January 1999. *Ministers approved the Australian Road Rules package in February 1999. NSW expects to implement the Rules on 1 December 1999.*
National Reform Project 6 *Truck Driving Hours Regulations* - cover all the rules for drivers and operators in regard to hours spent behind the wheel, rest break requirements, other work related activities which may cause fatigue etc. They also stipulates requirements for a Transitional Fatigue Management Scheme (TFMS) for organisations which meet agreed training and medical requirements. The Regulations were approved by Ministerial Council in January 1998.	The RTA is now consulting with industry on the new arrangements. A new log book was introduced in August 1998 and new driving hours Regulations became effective from November 1998.

REFORM STRATEGIES
STATUS REPORT DECEMBER 1998

REFORM	PROGRESS
National Reform Project 5 *Heavy Vehicle Standards Regulations (including amendments)* - these Regulations provide all the standards for the construction and performance of heavy vehicles and trailers.	These Regulations have been in place in NSW law since October 1995. They were incorporated into the Motor Traffic Regulations made under the Traffic Act 1909.
Linked to National Reform Project 5 *Combined Vehicle Standards* - the NRTC proposes to combine its current work on construction and performance of light vehicles and trailers into a combined heavy/light vehicle standards package.	The NRTC submitted Regulations to Ministerial Council for vote by end of January 1999. *Regulations approved by Ministers January 1999. NSW expects to implement by June 1999.*
Australian Road Rules – these Rules deal with basically all issues relating to the duties of drivers, riders (including bicycle riders) and pedestrians, apart from the more serious offences like drink-driving, dangerous driving etc. They cover matters such as, speed limits, use of seat belts, parking regimes, rules about footpath cycling, roundabout rules; use of mobile phones while driving etc.	The NRTC submitted an Australian Road Rules package to Ministers for vote by end of January 1999. *Ministers approved the Australian Road Rules package in February 1999. NSW expects to implement the Rules on 1 December 1999.*
National Reform Project 6 *Truck Driving Hours Regulations* - cover all the rules for drivers and operators in regard to hours spent behind the wheel, rest break requirements, other work related activities which may cause fatigue etc. They also stipulates requirements for a Transitional Fatigue Management Scheme (TFMS) for organisations which meet agreed training and medical requirements. The Regulations were approved by Ministerial Council in January 1998.	The RTA is now consulting with industry on the new arrangements. A new log book was introduced in August 1998 and new driving hours Regulations became effective from November 1998.

REFORM STRATEGIES
STATUS REPORT DECEMBER 1998

REFORM	PROGRESS
National Reform Project 7 *Bus Driving Hours Regulations* - covering all rules for bus drivers and operators. These Regulations were rejected by NSW, but endorsed by the majority of Ministerial Council in late 1994.	The key elements of the national Regulations (from the bus industry's viewpoint) have already been adopted in NSW law. These are basically the time allowed for driving. However, the NSW rest break requirements (which are non existent in the national Bus Regulations) have been kept. Regulations effective from September 1996.
Consistent Compliance and Enforcement Arrangements - this part of the National Law covers issues such as monetary penalties, powers of enforcement officers (including powers of entry and stopping vehicles), review of administrative decisions, production of records etc.	The NRTC has indicated that this program is now under review.
Second Charges Determination - including fixing anomalies from initial charges. NRTC has now set a target date of late 1999 for the finalisation of a Ministerial Council vote.	NSW is actively participating in the determination of new national charges.

FIRST HEAVY VEHICLE REFORM PACKAGE
STATUS REPORT DECEMBER 1998

National Reform Project 12 **Common Roadworthiness Standards and Consistent Management of Defective Vehicles** * National roadworthiness guidelines * Mutual recognition of defect clearance	Adopted October 1995 - as the basis for in-service inspections and as a resource for the training of inspectors. In place - NSW is participating, with other jurisdictions, in mutual recognition and clearance of defects.
National Reform Project 13 **Enhance Safe Carriage and Restraint of Loads** * Load restraint guide - adopt Regulations and promote load restraint guide	Adopted - the "performance standards" of the national Load Restraint Guide were adopted into NSW law in October 1995. RTA continues to promote the use of the Guide.
National Reform Project 14 **Adoption of national Bus Driving Hours Regulations**	NSW has adopted the legal framework of the national Bus Driving Hours regime. NSW adopted the 12 hours regime, 15 minute breaks, 28 day cycle and two-up requirements from September 1996. NSW has retained its extending definitions of rest. NSW has not adopted the 1999 NRTC Bus Driving Hours regime.
National Reform Project 9 **One Driver-One Licence** * Common licence classifications * National exchange of vehicle and driver information system (NEVDIS) * National heavy vehicle driver licence >15 tonne GVM	NSW adopted national licence classes on 28 July 1997. NSW is managing this project - to exchange registration and licensing information between jurisdictions to ensure (among other things) one driver-one licence. Stage one was implemented from August 1998. In place - all NSW drivers are now required to have this licence.
National Reform Project 15 **Interstate conversions of driver licences** Portability of licence between States - no re-testing required - no transfer fee required	 Agreed and in place from August 1997. Agreed and in place from August 1997.

FIRST HEAVY VEHICLE REFORM PACKAGE
STATUS REPORT DECEMBER 1998

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National Reform Project 15 **Interstate conversions of driver licences** Portability of licence between States - no re-testing required - no transfer fee required	 Agreed and in place from August 1997. Agreed and in place from August 1997.

National Reform Project 16 **Alternative Compliance**	NSW participated in trials. Trials are now complete and NSW now participates in a national implementation group. In February 1998 NSW recognised the Road Transport Forums' industry accreditation program Trucksafe. Operators recognised by Trucksafe are exempt from the RTA annual Heavy Vehicle Inspection Scheme.

SECOND HEAVY VEHICLE REFORM PACKAGE
STATUS REPORT DECEMBER 1998

REFORM	PROGRESS
Improve Fatigue Management for Truck Drivers - This involves the introduction of uniform regulated driving hours across all jurisdictions except WA and NT, the introduction of a Transitional Fatigue Management Scheme for industry and the issue of a national logbook for drivers.	Regulations and logbook format implemented in NSW in November 1998.
Mass Limits Review - This involves the consideration of increases to heavy vehicle mass to facilitate improvements to industry capacity and productivity.	NSW has generally opposed the MLR recommendations without guaranteed financial supplementation to offset costs imposed on infrastructure and clarification of implementation issues.
Truck/Trailer Mass Ratios - This involves a review of safety and performance effects for truck/trailer combination of increasing towed mass ratio above 1:1 to determine whether greater mass may be safely carried in trailers.	The Minister approved extra gross mass for truck/dog trailer combinations, effective from March 1998.
Axle/Mass Spacing above 42.5 tonne - This involves determining the axle/mass spacing schedule for vehicles above 42.5 tonne to provide certainty for bridge designers, vehicle manufacturers and purchasers, without compromising road and bridge infrastructure.	NSW opposes the recommendations of the NRTC discussion paper since they are based on vehicles operating at higher mass limits. The NRTC is in the process of revising its submission to be put to Ministerial Council.
Reduction in Truck Noise - This involves developing a code of practice for drivers to help reduce the frequency and impact of use of engine brakes.	This project is to be developed by industry through the Road Transport Forum.

SECOND HEAVY VEHICLE REFORM PACKAGE
STATUS REPORT DECEMBER 1998

REFORM	PROGRESS
National Reform Project 19 *National Exchange of Vehicle and Driving Information Systems* (NEVDIS) - This involves the development of a national data service facilitating the transfer of approved information between registration and licensing authorities.	NSW is project managing NEVDIS. NSW commenced operation in August 1998 with the Vehicle Identification Numbers component. Commenced registration transactions on 5 October 1998 for NSW and Victoria. NSW commenced licensing from November 1998.
National Reform Project 17 *Short term Registration* - This provides for optional 3 month registration period for heavy vehicles to provide flexibility and to better match user needs, including cashflow.	Optional 3 monthly registration has been available in NSW prior to reform initiative. Six monthly registration introduced with national registration scheme, effective from 1 June 1998.
National Reform Project 18 *Information on Driver Offences and Licence Status* - This involves the development of guidelines to govern the provision of information to owners of vehicles and driver license status and offences.	*NSW introduced this policy with the National Licensing Scheme in March 1999.*
Management of Speeding Heavy Vehicles - This involves the development of an agreed warning and penalty regime for speeding vehicles.	NSW implemented the enforcement regime in July 1998.
Consistent on-road enforcement for road-worthiness - This involves the development of nationally agreed guidelines for the identification, classification and clearance of vehicle defects.	Implemented in NSW with National Registration Scheme in June 1998.

State Government
of Victoria

National Competition Policy

SECOND TRANCHE ASSESSMENT REPORT

Volume I

March 1999

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VOLUME I

VOLUME II

1 Introduction

National Competition Policy (NCP) contributes to the national economic objectives of improved productivity, enhanced international competitiveness and the maintenance and improvement of living standards.

NCP is contained in three intergovernmental agreements:

- the Conduct Code Agreement (CCA);
- the Competition Principles Agreement (CPA); and
- the Agreement to Implement National Competition Policy and Related Reforms.

Each government reports to the National Competition Council on progress with implementing their commitments made under National Competition Policy.

Victoria's second tranche assessment report provides the NCC with information on Victoria's progress in meeting its commitments under NCP. The report is separated into ten discrete sections, to deal with each particular reform commitment, and is based upon the requirements outlined in the recent NCC second tranche assessment framework.

Victoria has had considerable success at implementing National Competition Policy. Legislation reviews have seen the removal of restrictions on competition in a number of sectors and occupations. Some of the major legislative reforms have involved the areas of retail trade (through shop trading and liquor law reform), fair trading (providing greater flexibility to businesses), agriculture (deregulation of the domestic market for barley), resource industries (through modern framework of issuing rights to explore and extract petroleum) and transport (allowing for greater competition in ancillary services).

Reform of the professions has included both reform to restrictions on competition and administrative arrangements for the operation of professional boards. In general, reviews have resulted in retention of statutory registration and associated restrictions on the use of professional title, removal of restrictions on ownership of practices by registered professionals, and limited restrictions on advertising (principally requirements for fair and accurate advertising). Ongoing reform ensures that regulation does not inhibit growth and change in these specialist labour markets, and provides greater scope for professions to compete, as markets for professional services become increasingly integrated at a national level and with New Zealand.

Victoria has made substantial progress in the two and a half years since the publication of its time table, and the legislation review program is on track to be completed by the December 2000 deadline.

However, success has not been limited to legislation reviews. The introduction and implementation of competitive neutrality (CN) has seen a levelling of the playing field between government organisations and private businesses. All significant Victorian government business enterprises (GBEs) are now subject to income and wholesale

sales tax equivalents. As well, CN has been promoted through presentations to regional hospitals, discussions with universities on the appropriate application of the policy, and advice to government agencies on the application of CN policy to their business activities. The Victorian Government Purchasing Board has incorporated CN into its best practice guidelines - to ensure that tenders put forward by Victorian government businesses are appropriately priced. The result of these reforms are to ensure that the most efficient business (be it government or private) provides the service or good.

The reforms of gas, water, and electricity have all generated benefits to Victorian consumers. These benefits are not only coming through the expected price reductions for these services, but also through increased security and quality of supply. As these reforms progress, the benefits will become even more pronounced.

The following sections will cover Victoria's progress on:

- Legislation Reviews
- Competitive Neutrality
- Local Government Reform
- Structural Reform Compliance
- Prices Oversight
- Conduct Code Obligations
- Electricity Reform
- Gas Reform
- Water Reform
- Road Transport Reform.

It is anticipated that this report will demonstrate Victoria's on-going commitment to abide by the spirit and intent of National Competition Policy.

Legislation

Reviews

2 Legislation Reviews

2.1 Introduction

In order to reduce unwarranted restrictions on competition, all governments have agreed to adopt, under clause 5(1) of the CPA, the following guiding legislative principle:

Legislation (including Acts, enactments, ordinances or regulations) should not restrict competition unless it can be demonstrated that:

- *the benefits of the restriction to the community as a whole outweigh the costs; and*
- *the objectives of the legislation can only be achieved by restricting competition.*

Application of the guiding legislative principle involves both a review of existing legislation contained in the Victorian Government's Timetable for Review of Legislative Restrictions on Competition, June 1996; and the testing of proposed new legislation under the Victorian Government's Guidelines for the application of the Competition Test to New Legislative Proposals 1996.

2.2 Highlights of reform

Victoria has made substantial progress in the two and a half years since the publication of its timetable for review of legislative restrictions on competition. It is anticipated that the legislation review program will be completed by the December 2000 deadline. The following provides a flavour of the legislation review inspired reforms that have occurred in Victoria so far:

Retail regulation

Major reforms to retail regulation have been made through deregulation of shop trading hours in 1996, and reform to liquor licensing in 1998. High levels of retail industry growth have, in part, been sustained by the Government's willingness to provide greater flexibility to businesses and choice to consumers.

Fair Trading regulation

A key fair trading reform to date has been the removal of various competitive restrictions on finance brokers. The licensing of finance brokers and their agents has been discontinued, and finance brokers' commissions are no longer capped.

Agriculture, Resources, and Transport reform

Competitiveness is of particular importance to agricultural industries due to their exposure to international markets. The review of barley regulation found no net community benefit from requiring growers to sell through a statutory marketing authority. Following extensive industry consultation, the Government will complete initial deregulation of the domestic barley market from July 1999, and allow competition in export barley marketing from July 2001. In addition, the Government is facilitating the restructuring of the Australian Barley Board into a company, able to

compete successfully in an open market, and owned by Victorian and South Australian barley growers. An important and far-reaching review of dairy regulation is currently underway.

In the resources industries, reviews of petroleum regulation provided a modernised framework for issuing rights to explore and extract petroleum.

Reviews for transport industries are in progress with a completed review of marine regulation providing a framework for greater competition in ancillary services such as pilotage. Competition and competitiveness in the transport services is important to a wide range of industries, particularly export industries.

Reform of the Professions

National Competition Policy has sparked further reform to the regulation of the professions. Recent reforms have been concentrated in health industries - with reform to regulation of chiropractors and osteopaths in 1996 followed by optometrists and chiropodists in 1997, and physiotherapists in 1998. Reform for psychologists is pending along with dentists.

Reform has included both the removal of unnecessary restrictions on competition and new administrative arrangements for the operation of professional boards. In general, reviews have resulted in retention of statutory registration and associated restrictions on the use of professional title (eg "osteopath"), removal of restrictions on ownership of practices by registered professionals, and limited restrictions on advertising (principally requirements for fair and accurate advertising.) In specific cases, procedures can only be performed by registered professionals, as in the case of prescription of glasses which offers an opportunity to screen for eye disease.

Legal professional regulation was the subject of new legislation in 1996 that removed many barriers to competition in the legal services industry. Significant reforms have included the removal of the distinction between solicitors and barristers with consequent direct access by clients to barristers, and opening of the market for conveyancing services to non-lawyer providers.

Ongoing reform ensures that regulation does not inhibit growth and change in these specialist labour markets, and provides greater scope for professions to compete, as markets for professional services become increasingly integrated at a national level and international level through World Trade Organisation agreements and mutual recognition.

Volume II of the report demonstrates, in detail, Victoria's progress on implementation of the legislative review agenda.

The following sections highlight Victoria's response to the legislative review issues raised by the NCC in the second tranche assessment framework. These are the:

- Legal Practice Act
- Legal Practice (Amendment) Act 1998
- Liquor Control Act 1987
- Residential Tenancies Act (1980) and regulations (1992)
- Housing Act (1983) and regulations (1985, 1994)
- Transport Accident Compensation Legislation
- Workplace Accident Compensation Legislation
- Barley Marketing Act 1993
- Dairy Industry Act 1992
- Public Sector Superannuation (Administration) Act 1996

2.3 Legal Practice Act 1996

The *Legal Practice Act 1996* was developed in consultation with members of the Attorney-General's Working Party on the Legal Profession. Membership of the Working Party was widely drawn from both inside and outside Government, including representatives of both the Victorian Office of Regulation Reform and the Micro-Economic Reform Branch of the Department of Premier and Cabinet. The Working Party paid particular attention to National Competition Policy and the provisions of Part IV of the *Trade Practices Act.*

A competition policy review in accordance with the Victorian Guidelines for the Application of the Competition Test to New Legislative Proposals (December 1995) was carried out concurrently with, and as part of, the drafting of the Act. The Act was passed in the last parliamentary sittings of 1996 and received royal assent on 6 November 1996. The new Act came into operation on 1 January 1997.

The Act contained various features to ensure competition occurred in the market for legal services.

- The Legal Ombudsman was given an ongoing power to investigate anti-competitive behaviour, practice rules or legislation relating to the market for legal services, and to report to Parliament.
- Practitioners were given a full right of appearance before the courts and to practise as advocates without having to be members of the Bar.
- Clients were given direct access to brief barristers, without having to do so through a solicitor.
- Various practice restrictions for barristers were removed (e.g. compulsory clerking and chambers).
- Lawyers were allowed to incorporate their practices.
- Lawyers and clients were allowed to enter into fee agreements and are not bound by any particular costs scales.
- Fee agreements were allowed to be conditional on success.

- Non-lawyers were allowed to carry on conveyancing businesses.
- All interstate practitioners were allowed to practise in Victoria, without having to be admitted to practice in Victoria or obtain a practising certificate in Victoria[1].
- Compulsory practitioner membership of the Law Institute and Bar Council was abolished.

There are, however, two features of the Act which involve some restrictions.

The first is the requirement that lawyers be licensed and that they must hold a practising certificate in order to carry on business. The second is the Solicitors' Guarantee Fund (or Fidelity Fund).

Licensing of lawyers

Licensing of lawyers is justifiable because the benefits to the community of not allowing persons without a minimum level of qualification to represent other persons before the courts, and to carry out work which affects personal property rights, and even personal health and safety, is greater than the costs which flow from the restriction. The costs to the community of allowing unlicensed persons to perform specialised work requiring legal knowledge and skill would include:

- losses suffered in the course of litigation or in commercial or other transactions due to the inadequate knowledge, experience or expertise of the unlicensed person handling it;
- wasted professional fees and expenses;
- increased litigation costs through an increased number of transactions and legal relationships breaking down;
- increased costs being caused to business through delays and failures in the efficient handling of commercial disputes and the creation and management of commercial relationships;
- substantial additional court time and justice system resources (including those of the police, the courts and other enforcement bodies, such as the sheriff's office) being devoted to, and wasted by, unnecessary delays, adjournments and additional unnecessary litigation and appeals, all of which are additional resources that must be funded by taxpayers; and
- additional costs to other parties, caused by inefficiencies arising from dealing with parties being represented by unlicensed persons, and to other court users, as a result of delays and inefficiencies being caused to the overall operation of the court system.

A person is entitled to obtain a practising certificate if the person has been admitted to legal practice. The criteria for admission to practice are not set by the legislation but are rather set independently by a body outside the Act, the Supreme Court of Victoria.

[1] Victoria is the only State which does not require reciprocal practising certificate recognition legislation in the interstate practitioner's home state as a pre-condition for allowing the interstate practitioner to practise in Victoria.

Possession of a practising certificate is also necessary in order for a practitioner to make use of the national reciprocal practising certificate regime, whereby a Victorian practitioner can then practise in New South Wales or the ACT on the strength of his or her Victorian practising certificate. Similar criteria apply in order for a Victorian practitioner to make use of the Mutual Recognition Scheme to gain admission to practise in other States. The current level of qualifications required for admission to practice and practising certificates have been set nationally to achieve a consistent basis. Maintaining national uniformity in relation to these matters is central to allowing a competitive national market for legal services to develop.

Fidelity Fund

The Fidelity Fund (formerly known as the Solicitors' Guarantee Fund) is a statutory fund required by the Act to provide automatic reimbursement to clients of monies which have been misappropriated from solicitors' trust accounts. It is administered by the Legal Practice Board, a statutory authority independent of the profession. It effectively acts as a monopoly provider of this service.

This restriction on competition is justified as any alternative form of insurance scheme would provide reduced cover at greater cost.

The primary source of income for the Fund is interest earned on pooled monies in trust accounts. This interest could not otherwise be recoverable, as it could not be practically divided up and paid to individual clients without the imposition of a severe administrative and cost burden on practitioners. In fact, until the Solicitors' Guarantee Fund was first introduced, banks did not pay interest on trust accounts.

Fidelity Fund cover is therefore provided at a considerably lower cost to providers of legal services and their clients than would be any kind of comparable insurance, which would have to be fully funded directly by practitioners (and, through increased fees, by their clients). Any refund of interest earned on trust account monies, to offset the cost of insurance, would be reduced by the additional administration expenses incurred in calculating and paying such refunds. Further, as the Fidelity Fund's purpose is to reimburse clients for defalcations of trust monies, there is a direct nexus and rationale for that reimbursement being funded by interest earned on the same trust monies.

No less restrictive alternative will meet the objective of ensuring unlimited cover to users of solicitors' trust account services. There is no per claim limit on the amount of cover provided by the Fidelity Fund. The private market, on the other hand, will not provide unlimited cover.

2.4 Legal Practice (Amendment) Act 1998

The Legal Practice (Amendment) Act 1998 retained the statutory mutual fund monopoly on supply of compulsory professional indemnity insurance for solicitors. Previously the statutory monopoly was to sunset on 31 December 1998.

Net community benefit

It was found that, pursuant to clause 5(1) of the *Competition Principles Agreement*, the benefit to the community conferred by the retention of the current mutual fund monopoly outweighs any costs to the community.

The costs were that the application of a standardised insurance scheme to the whole profession prevented the tailoring of insurance to the individual practice areas or specialisations of practitioners[2].

However, independent reports provided by various external consultants to the Legal Practice Board, including Frank Hoffmann and Geoff Masel and Trowbridge Consulting, found that:

- the mutual fund monopoly's on overall premiums would be cheaper than those of the commercial insurance market over the long term;
- the mutual fund could provide greater premium stability than the commercial insurance market over the long term;
- the mutual fund would not leave gaps in its coverage which the private market definitely would.

Trowbridge Consulting, which carried out an actuarial review of the relevant benefits of an open market scheme for Victorian solicitors, specifically concluded:

> "*Premium levels, premium stability and coverage are fundamental components of any insurance scheme and all three are likely to suffer in a move to a competitive market.... In our view these three advantages significantly outweigh any perceived costs of not having a competitive market.*"

It is likely that, in an open market, private insurers will initially loss-lead to create a market niche and that they will also concentrate their efforts on skimming off the more commercially attractive firms. Later, as claims liabilities mount and the cyclical nature of the re-insurance market impacts, premiums will rise and insurers will become more selective as to which practitioners they will insure. Premiums will therefore exhibit significant volatility. Solicitors' insurance premiums in Victoria are currently the cheapest in Australia. Even so, the average insurance premium for each solicitor costs approximately ten times as much as the solicitor's practising certificate fee. This is therefore a significant cost for solicitors and for their clients (to whom the cost must ultimately be passed on.) Premium stability is in the interests of the community, as excessive volatility may dissuade practitioners from entry into the legal services market, thereby reducing the competitive pressure within that market which consumers would otherwise benefit from.

No alternative to restricting competition

[2] Risk rating of professional indemnity insurance premiums is already required by the *Legal Practice Act* and this requirement will continue. Accordingly, firms with poor claims histories are already being required to pay higher premiums.

The objectives of the legislation in requiring the maintenance of the mutual fund monopoly are:

- to ensure that each consumer of legal services is covered by comprehensive professional indemnity insurance against financial loss suffered as a result of the actions of their solicitor or former solicitor;
- to ensure that consumers have access to the economical and locally provided services of sole practitioner and small firm legal practices; and
- to ensure that competition within the legal services market is not reduced as a result of the ability to obtain insurance becoming in itself a barrier to entry.

Alternative means of achieving these objectives were considered but found to be deficient. An open market for professional indemnity insurance would not achieve the objectives.

Professional indemnity insurance is written world-wide on a claims made basis. Accordingly, "run off" cover is required for practitioners to cover consumers who do not make a claim until after the practitioner has ceased practice. Almost 50% of all negligence claims are made 3 or more years after the alleged negligence has occurred and 10% of claims are made 7 or more years afterwards. On the other hand, the private industry will resist providing run off cover for more than 1 year at a time and will also resist any requirement which makes its provision, in any form, compulsory. Recent experience in the domestic building, stock broking and insurance broking industries confirms this level of resistance.

Even where private industry run off cover is available to a practitioner, the former lawyer cannot practically be compelled to take out run off cover. Consumers will also be left exposed in the following situations because the former practitioners either will not take out run off cover or run off cover will be unavailable:

- deceased practitioners;
- firms disbanded because of partnership disputes and breakdown;
- practitioners with a poor claims history while in practice;
- retired practitioners who are insolvent; and
- disgraced solicitors who have been struck off.

On the other hand, the mutual fund provides run off cover to all former practitioners and covers all claims made against the practitioners after they cease practice.

An alternative, to deal specifically with the run off problem, would be the imposition of a condition within a standardised insurance policy requiring those private insurers who provide professional indemnity cover to the legal services market also to give "last on risk" run off cover as part of the policy. Last on risk cover involves requiring the insurer to provide run off cover for no extra premium to any practitioner who ceases practice while still insured with that insurer. This alternative would avoid some of the run off problems set out above. However:

- while the run off cover so provided is unlimited in the period for which it applies, the amount of cover is capped for that whole period at the aggregate policy limit

for one year (currently $3 million) - once that limit has been exhausted any further claims are not covered;

- private insurers will try to avoid insuring practitioners who are seen as being at greater risk of ceasing practise and going into the run off stage (such as older practitioners, women who recently had a first child or practitioners with any history of ill health), with the effect that at least some of these practitioners will be forced to leave practice early through inability to obtain insurance;
- there is nothing to stop a private insurer who has written cover on a last on risk basis from withdrawing from the market, ceasing to provide cover to former practitioners and taking its accumulated reserves with it;
- a last on risk requirement would impose a considerable burden on consumers of legal services, who would experience difficulties in identifying what insurer was on risk when the practitioner ceased practice, even more so when the practitioner has since died or his or her location is unknown;
- such a requirement would reduce the number of insurers prepared to compete in the market because it is difficult for insurers to obtain re-insurance cover if run off is to last more than a reasonably short fixed period;
- in any event, such a compulsory requirement would not be accepted by the private market (as has already occurred in the case of proposed run off requirements in the domestic building and insurance broking industries).

The current mutual fund does not suffer from any of these problems. Run off cover is provided for all former practitioners and the amount of run off cover is renewed annually.

An open market would also reduce the availability to consumers of the economical and locally-accessible services provided by sole practitioners and small firm legal practices. This is because the availability of cover for these legal service providers would fall substantially due to the information asymmetry in the professional indemnity insurance market between the insurer and insured.

Of the approximately 2,500 legal practices in Victoria, approximately 1,500 are sole practitioners or small firms. It is costly for insurers to judge the individual risk of each potential customer, and smaller firms will not yield sufficient premium income to warrant carrying out a detailed underwriting assessment of each firm. Sole practitioners and small firms are also perceived by the commercial insurance industry as having lower intra-partnership quality assurance and being at greater risk because they usually involve generalist practitioners practising across multiple areas of legal specialisation. Although not necessarily supported by claims statistics in Victoria, industry perception is therefore that, as a class, smaller practices involve a greater risk than middle to large practices. For the above reasons, insurers will use sometimes arbitrary risk indicators (for instance, whether a firm has had a claim previously or has incurred defence costs, irrespective of the actual merits or success of the claim), and will deny product to firms which fail these risk indicators, rather than properly price in the exposure of the practice. Administration and marketing costs, as a proportion of premium income actually received, are also substantially greater in the case of small firms, as against middle to large firms, and act as a significant disincentive to insurers to market or provide their product to small and country firms.

Because smaller firms do not have the same level of continuity as large firms when founding principals leave the practice, run off exposure is also a particular problem for small firms and this will be exacerbated by private insurer resistance to providing extended run off cover.

To address this, a market combining both commercial insurers and an assigned risk pool could be set up. An assigned risk pool is a system whereby practitioners who are unable to obtain insurance on the open market are able to obtain cover by being placed in an assigned risks pool funded by higher premiums and, possibly, by a levy on the private insurers. However, the problem with this alternative is that such a pool cannot generate sufficient income and reserves to allow it to provide the practitioner with insurance coverage for an unlimited period. The practitioner must always come back out of the pool and try to get insurance on the open market again. For example, the assigned risks pool in Ireland (the only jurisdiction where this system has been tried) allows a practitioner to stay in the pool for only 2 years before the practitioner is required to leave. Yet, once a person has been in an assigned risk pool, the person's insurance history will be such that the person will be effectively uninsurable once they leave. Entry to the pool will therefore do nothing more than delay the practitioner being forced to leave practice.

Another alternative is to legislate, in conjunction with setting minimum terms and conditions of insurance, to control premium setting and risk rating within certain limits and to prohibit insurers from refusing to grant insurance to various practitioners. However, the reality in any open market system is that one cannot force commercial insurers to participate in a particular market or to insure persons against their will or to grant insurance on conditions with which they do not agree. Insurers will refuse to participate in such a market. Experience in the domestic building, stock broking and insurance broking industries is that commercial insurers have refused to grant insurance on terms which they do not like, and have even forced a dropping of certain of those requirements, under threat of withdrawing from the particular market and leaving the various professionals uninsured.

2.5 Liquor Control Act

The review of the Liquor Control Act 1987 against National Competition Policy commenced in September 1997 with the report of the Review Panel provided to the Minister for Small Business and Tourism on 9 April 1998.

The Review was a Model 2 - Semi-Public Review, with the Review Panel consisting of:

- Hon Haddon Storey QC, Professional Associate in the Public Sector Research Unit, Victoria University of Technology (Chair).
- Associate Professor Margaret Hamilton, Director Turning Point Alcohol & Drug Centre, Department of Public Health and Community Medicine, University of Melbourne.
- Mr Gordon Broderick, Secretary of the Liquor Industry Consultative Council of Victoria.

The Review Panel recommended significant reform of Victoria's liquor laws. On 24 November 1998, the Liquor Control Reform Act 1998, which gave effect to the agreed recommendations of the Review Panel, received Royal Assent with the Act being subsequently proclaimed for implementation from 17 February 1999.

Upon considering the recommendations of the Review Panel, the Government determined to retain certain restrictions on competition provided for in the now repealed Liquor Control Act 1987. In particular:

> ***Certain premises not to be licensed***
>
> *(1) The Director must not grant a licence or BYO permit in respect of –*
> *(a) premises used primarily as a drive-in cinema; or*
> *(b) premises used primarily as a petrol station; or*
> *(c) premises that, in the opinion of the Director, are used primarily as a milk bar, convenience store or mixed business; or*
> *(d) premises in a class of premises prescribed for the purposes of this section.*
>
> *(2) The Director, with the approval of the Minister, may grant a licence in respect of premises referred to in sub-section (1)(c) if the Minister is satisfied that the area in which the premises are situated is a tourist area or an area with special needs and that there are not adequate existing facilities or arrangements for the supply of liquor in the area.*

The licensing of petrol stations is seen to have implications for drink/driving in that it may encourage the impulse purchase of packaged liquor in conjunction with petrol, unlike the situation in respect of drive-in liquor outlets where the clear intention is to purchase liquor.

Furthermore, in its submission to the Review Panel, the Victorian Police stated that "because there are so few controls over the consumption of packaged liquor, it is submitted that the sale of packaged liquor should be more closely regulated than sale for consumption in licensed premises".

With the current ready availability of packaged liquor through hotels and retail bottle shops and supermarkets, and the ongoing community concerns regarding underage drinking, it is the Government's view that it is not in the community interest that petrol stations be eligible to obtain liquor licences.

In respect of convenience stores, mixed businesses and milk bars, the licensing restriction is such that to be able to be licensed they must meet the standard licensing criteria and additional legislated tests of special need or tourism and an inadequate availability of liquor in the community. Between 1988-1998 seventy-nine (79) convenience stores/mixed businesses in smaller regional communities have been licensed in accord with these criteria. Convenience stores/mixed businesses in CBD and metropolitan Melbourne and provincial cities are unable to meet the licensing criteria.

Convenience stores are generally seen to be premises of not more than 240 square metres selling food, drink and a range of convenience products. They vary from small supermarkets in that the range of products available is such that the purchase of daily or weekly household supplies is unlikely to occur at a convenience store.

Youth under the age of 18 years are often attracted to, or in proximity to, convenience stores, in response to the products offered for sale.

On this basis the Government determined that at this time the potential for increased underage access to liquor through convenience stores, if licensed, would be contrary to its underage drinking policy. Special consideration would be given if there is no alternative supply of liquor available to the community.

Limit on packaged liquor licences held by the same or related persons

The Director must not grant or transfer to a person a packaged liquor licence if, at the time of the application for the grant or transfer –

(a) in the case of a natural person, the person holds more than 8% of all packaged liquor licences granted and in force under this Act; or

(b) in the case of a body corporate, the sum of the number of packaged liquor licences held by the body corporate and by any related entities is more than 8% of all packaged liquor licences granted and in force under this Act.

It is agreed by Victoria Police and Alcohol/Drug agencies that access to packaged liquor through supermarkets is a significant contributor to the problem of underage drinking in public places.

Following a survey of research literature concerning the availability of liquor and harm commissioned by the National Competition Policy Review Panel, Dr Ann Roche, Queensland Alcohol and Drug Research and Education Centre, University of Queensland, found that:

> *"Ease of access to alcohol for young and very young drinkers highly predictive of problems. As these drinkers do not usually frequent on-licence premises, there are important implications here for the provision of alcohol through off-licence (packaged liquor licence) premises such as supermarkets, convenience store and petrol stations. As such there is a good basis for curtailing sale of alcohol through these outlets ....."*.
> [Liquor Control Act Review P103].

Between March 1996 and June 1998, two thousand five hundred and ninety four (2594) infringement notices have been issued to youth by the Victoria Police for breaches of the underage provisions of the Liquor Control Act 1987. Two thousand one hundred and ninety (2190) or 85% of those notices relate to youth under 18 years of age purchasing/possessing/ consuming liquor.

Additionally, in 1996 and 1997 a total of eight hundred and twenty six (826) prosecutions were pursued in the Magistrates Court in respect of youth purchasing/possessing/consuming liquor.

The draft report of Victorian Secondary Students and Drug Use in 1996 (Centre for Behavioural Research in Cancer, Anti-Cancer Council of Victoria) reported inter-alia that:

> *"episodes of binge drinking were relatively common among secondary students, with well over one-third being involved in at least one session during the two weeks preceding the survey"*.
> [Draft Report - Victorian Secondary Students & Drug Use in 1996 - P17].

The Government response to these concerns have included significant education and program initiatives through "Turning the Tide" and amendments to the Liquor Control Act in 1995 to provide for more targeted and pragmatic offence provisions in respect of underage access to alcohol and illegal consumption.

The maintenance of the 8% limit in respect of packaged liquor licences is seen to be consistent with the objective of minimising underage drinking.

From the small business perspective, an expansion of the number of licensed major supermarkets could be expected to result in the closure of smaller retail bottle-shop, particularly in regional Victoria.

In NSW, there is no restriction on the number of licences held by an entity, but an existing packaged liquor licence must be purchased by a new entrant for an average premium of $35,000 paid to the Government. Of the 1416 packaged liquor licences at 30 June 1998, 321 (22.6%) were held by Liquorland/Safeway, compared to 115 (15.5%) of the 1133 packaged liquor licences in Victoria. The fee is a barrier to market entry not applied in Victoria.

Whilst sales ($) market share data has not been available since the abolition of liquor licence fees, such data at 31 December 1996 revealed that whereas Liquorland/Safeway held 14.7% of packaged liquor licences, their sales ($) market share was 33%.

It is not unreasonable to expect that in entirely unregulated market a duopoly may emerge.

2.6 Residential Tenancies Act (1980) and regulations (1992)

The Residential Tenancies Act (1980), Caravan Parks and Moveable Dwellings Act (1988) and the Rooming Houses Act (1990) and associated regulations were subjected to a review under National Competition Policy principles in 1997. The review was undertaken in the context of the introduction of a new Residential Tenancies Act (1997) which consolidated existing legislation in this area. The review also considered a draft of the 1997 Act.

The Review was undertaken by consultants (KPMG Management Consulting) under the direction of a Steering Committee. The Steering Committee was represented by the Department of Premier and Cabinet, Department of Treasury and Finance, Department of State Development, Department of Justice and Department of Human Services.

Consultations occurred with peak real estate industry, landlord and tenant groups. Importantly, the Review was also able to draw on the submissions to, and findings of, the 1995 Ministerial Review into Residential Tenancies Legislation which undertook extensive community consultations and led to the development of new draft legislation.

The review was undertaken in the context of the introduction of important new legislation in relation to residential tenancies. While the model adopted for the review did not directly include an extensive public consultation process, such a process had occurred some 18 months prior to the review which led to the development of draft new legislation.

The consultants found that both the existing and the proposed new legislation has a negligible impact on competition, but the legislation can, by setting the framework within which competition operates, have a significant direct impact on market efficiency and equity. The consultants found that the potential restrictions on competition contained in the legislation apply generally to the market and thereby minimise distortions between existing market participants and do not raise significant barriers or disincentives to new entry. Many of the notional restrictions are in fact clarifications of property rights, and/or interventions designed to enhance efficiency and minimise disputes.

There were several areas in the draft legislation which the consultant identified as restrictions on competition. These were:

- the six month period of notice for termination of a lease without a prescribed reason;
- the six monthly limit on rent increases; and
- the regulation of bonds.

The draft legislation was amended in line with the consultant's recommendations regarding notice for termination and rent increases.

The consultants found that bonds should continue to be regulated to protect low income tenants, but with some flexibility introduced in respect of guarantees. The

Government considered that the introduction of guarantees would require additional legislative controls and act counter to the proposed centralised bond fund. No change to the draft legislation was made in relation to bonds.

2.7 Housing Act (1983) and regulations (1985, 1994)

The Office of Housing has undertaken a scoping review of the Housing Act and associated regulations to determine whether a full legislative review is required.

Since the Housing Act was originally scheduled for Review its major regulatory functions have been repealed from the Act. Sections 46-61 of the Housing Act and associated regulations relating to Rental Housing Cooperative were repealed in 1996 (Cooperatives Act, 1996). Sections 63-66 of the Housing Act which related to Standards of Habitation were also repealed in 1996 (Housing (Amendment) Act, 1996).

There are now no regulatory functions remaining in the Act and it is the initial view of the Scoping Review that the Housing Act has no anti-competitive provisions. External advice on this matter is now being obtained.

Each State and Territory has housing legislation which needs to be considered in the context of competition policy. The States and Territories have agreed to cooperate in examining such legislation and the implications for the bilateral Commonwealth State Housing Agreement (through Housing CEOs meetings). This work is expected to be completed over the next six months.

The Office of Housing will be writing to the Department of Premier and Cabinet before the end of January to request either that the Act be removed from the legislative review schedule or an extension of time be granted to allow the outcomes of the States cooperative examination of housing legislation to be considered.

2.8 Transport Accident Compensation Legislation

The current transport accident legislation was enacted in 1986 and the current scheme commenced on 1 January 1987. At that time the new TAC scheme took over an unfunded liability of over $1 billion from the previous Motor Accidents Board. Benefits in the previous scheme were poorly targeted and fraud was a major problem.

The scheme was established by Government to provide no-fault benefits to all persons injured in or as a result of transport accidents. That is the benefits will often flow to third parties. The no fault arrangements avoid the onerous responsibility of victims being required to sue for compensation at a time when they may be physically and emotionally disadvantaged. Common law claims are limited to those who suffer serious injury.

Legislation establishing the transport accident scheme was reviewed in 1997-98 by the Department of Treasury and Finance. The Government announced its decision in

October 1998 to retain the main features of the existing scheme while accepting the need for ongoing review and reform. This review and the Government's response were conducted in accordance with clause 5 of the Competition Principles Agreement.

Net Community Benefit Test

The net community benefit test in clause 5 of the CPA requires that "the benefits of the restriction to the community as a whole outweigh the costs."

Benefits

Premium Level and Stability and Lifetime Care Benefits

The premium compares favourably with that in the other States in terms of its level and stability but the benefits are generally more generous than other jurisdictions - most notably in the provision of lifetime care. For example, TAC's 1998-99 metropolitan premium is $275 compared with the average premium in other jurisdictions of $289. In NSW the premium is $429. The relatively low and stable premium level in Victoria benefits both businesses and household vehicle owners who meet the cost of the scheme. The cost-effective provision of no fault benefits, which includes lifetime care, is rated very highly by the community.

Community Rating

The community rating, that is pricing which is not fully risk reflective, also provides substantial community benefits. Without cross subsidisation of the premium charges, some vehicle owners would face a heavy burden to maintain freedom of movement in their own vehicles as occurs at present. In addition the removal of cross subsidies would increase incentives for avoidance of the premium in some cases. This would result in higher costs for Government in ensuring compliance with the compulsory product. The benefits provided by cross subsidisation are again important to the community.

Potential Costs

The costs of the present scheme were outlined in the NCP review. These include a statutory restriction on entry by private insurers and regulated product and pricing which thereby limits consumer choice and the scope for product differentiation. The review noted that with no direct competition there is less downward competitive pressure on prices normally present as an incentive to maintain market share. With a statutory monopoly there may be fewer incentives than are faced by private managers to control administrative and management costs and reduced incentives to maximise earnings. In addition the review argued that a monopoly provider does not have strong incentives to innovate and to respond to customer needs as the purchaser is unable to purchase the product from any other supplier.

Net Benefit

The Government's view is that the no fault compensation including a provision for lifetime care, lower and more stable premium relative to the other States' average and the community rating in the premium, provide greater benefit to the community than the costs of restricting competition. The benefits have been provided by a stable scheme over a period in excess of 10 years. The costs of restricting competition in Victoria's scheme are judged to be smaller overall than the benefits. The Government has therefore concluded that there is a net benefit to the community as a whole from the existing arrangements.

Alternative Means of Achieving the Legislation's Objectives

Clause 5 of the CPA also requires that competition should only be restricted "where the objectives of the legislation can only be achieved by restricting competition."

Objectives of the Legislation

The critical objectives of the Transport Accident Act are to provide suitable and just compensation in respect of persons who are injured or die as a result of transport accidents which will at times include lifetime care. It is also critical that the compensation provided be universal and affordable which the Government achieves through a compulsory premium with community rating.

The Government believes that the objectives of the existing scheme cannot be achieved by any other means than the current restrictions on competition.

Attempting to achieve these objectives through a system of competing private insurance companies contains fundamental difficulties which are conceptually similar to those outlined above with respect to workplace accident compensation. The difficulties arise from cost effectively providing universal cover in private markets, volatility in private insurance premiums and the inability of private insurers to provide lifetime care.

<u>Adverse Selection and Universal Cover</u>

Adverse selection can develop in a private market. This occurs where insurance is not compulsory. Only high risk individuals or employers have an incentive to insure and the cost may be prohibitive. Universal insurance coverage with community rating may be pursued as legislative requirements on participating private insurers. However where the product is compulsory and the pricing contains community ratings, insurers may require subsidies from Government to support the market. Over time insurers would not want to insure vehicle owners identified as high risk unless Government provided subsidies for higher risks. In addition the regulation required to enforce and subsidise universal cover can be costly. In private markets the Government considers that the high regulatory compliance cost of enforcing universal and affordable coverage, and the high transitional costs that would be required, would potentially lead to a high premium and resulting costs on vehicle owners and the community.

<u>Premium Volatility</u>

Volatility in private insurance premiums is well documented. Insurers decrease prices in order to increase market share when they (or the re-insurance market) hold substantial reserves. Conversely they can sharply raise prices and restrict supply when large losses occur from unsustainably low premiums. This creates an unstable financial environment which can threaten the achievement of the scheme's objectives. Regulating to limit premium volatility such as through "file and write" pricing only introduces a lag in the volatility or causes withdrawal and/or collapse in the market where volatility is attempted to be tightly suppressed. The volatility in "file and write" systems is evidenced by the experience of the NSW Motor Accidents Board.

Lifetime Care

A competitive market in transport accident compensation is simply unable to provide lifetime cover. Insurers often face pressure from investors to deliver benefits in the short term. The insurer therefore has an incentive to dispute and delay claims and to commute long term entitlements.

Conclusion

The Government considers that a competitive model with compulsory coverage, lifetime care and community ratings would result in the problem of high ongoing regulatory costs. Furthermore, the transitional costs that would be required to move from the existing scheme to a competitive model would be a very heavy burden on motorists and could not be justified unless the Government was confident that the benefits would outweigh the costs.

The Government has therefore concluded that the objectives of the existing scheme can only be achieved by restricting competition.

The Government intends to carefully monitor reforms in other jurisdictions. Any experience that demonstrates scope for improvements will be analysed for possible incorporation in Victoria's public monopoly transport accident compensation scheme.

2.9 Workplace Accident Compensation Legislation

WorkCare, a public monopoly, was established in 1985 in response to the inability of the private market to deliver stable and affordable cover and to combat high accident frequency rates. However the previous WorkCare scheme had problems controlling costs. Average premiums rose from an initially projected 2.2 per cent to a high point of 3.3 per cent with unfunded outstanding liabilities peaking at over $4 billion.

At the time of its replacement by WorkCover in December 1992, its unfunded liability was in excess of $2 billion and set to rise again. Design failures meant there was little control over access and little effective focus on return to work within the scheme. The results were high levels of claims and a large cohort of long term partially incapacitated workers who were compensation dependent because the rehabilitation system was inefficient. One unfortunate side effect of this was the stigmatisation of workers on compensation benefits.

The benefits that have flowed from the major reforms to workplace accident arrangements in the existing WorkCover scheme are substantial. Since its inception in 1992 WorkCover has achieved a 40% reduction in claims and a 30% improvement in return to work rates. These gains eliminated a $2.1 billion deficit. The current premium is 1.9% of payroll, down from 3.0% at the start of the scheme.

The legislation establishing the WorkCover scheme was reviewed in 1997-98 by the Department of Treasury and Finance. The Government announced its decision in October 1998 to retain some features of the existing scheme while accepting some of the report's recommendations for reform. This review and the Government's response were conducted in accordance with clause 5 of the Competition Principles Agreement.

Net Community Benefit Test

The net community benefit test in clause 5 of the CPA requires that "the benefits of the restriction to the community as a whole outweigh the costs."

Benefits

Low and Stable Premium

The WorkCover premium, at 1.9% of payroll, is the lowest in Australia. The low and stable premium provides substantial benefits to the community. In 1997-98 alone this has meant a premium saving to employers of $580 million compared with a premium of 3.0% in 1992. The premium savings and the stability of the premium have benefited employers through a more predictable business environment which assists planning and investment decisions which in turn creates further employment. The Government sees these benefits as extremely important to the community.

Lower Injury Rates

The elimination of the deficit has been a genuine efficiency gain in the operation of the scheme. It has not been achieved through a major reduction in benefits or through a simple increase in the premium paid by employers. The improvement in the scheme has been achieved through an increased focus on workplace safety and rehabilitation and improved targeting of the benefits to injured workers. In fact Victoria now has the second lowest injury rate after Tasmania (14.9 and 14.0 per 1,000 employees respectively) and much lower injury rates than most other States according to standardised data in a National Workplace Safety Report recently released by the Federal Minister for Employment, Workplace Relations and Small Business.

Financial Stability and Certainty of Cover

The stability of the scheme overall benefits injured employees by providing a more certain financial environment in which compensation is available and return to work services are given a high priority. The Government has recognised that the community places a high value on "fair" treatment of injured workers and regards this benefit as having a high value. Where a scheme is financially unstable, the longer term focus on return to work for injured employees may necessarily receive less attention and resources in the short term. This results in unequal treatment of injured workers across time or even generations.

Potential Costs

The NCP review ("the review") of the Accident Compensation Act prepared under the Competition Principles Agreement has identified the costs of the existing arrangements. These are restrictions on competition including barriers to entry and regulated pricing in the accident compensation market. No insurer other than WorkCover is able to underwrite accident compensation liabilities and the price or premium charged to employers is set by the Governor in Council. As noted in the review, these restrictions may limit the scope for innovation, flexibility and consumer (employer) choice. The review argued that a regulated premium eliminates potential price competition between insurers and that this reduces opportunities for insurers to engage in innovative premium and product competition and dampens incentives for cost minimisation. The review also criticised the restrictions on self insurance as potentially limiting competition in the market.

The Government accepted some of these findings in the review and has since legislated to introduce greater competition in the delivery of claims management services, the provision of which is now no longer limited to insurers. In addition access to self insurance is being expanded and any unnecessary obstacles to employers taking this route are being removed. The Government recognises that self insurers do have an incentive to invest in prevention and rehabilitation.

Net Benefit

The Government's assessment is that the remaining restrictions on competition represent a lesser cost to the community as a whole than the benefits that are outlined above. The low and stable premium is clear and observable and represents benefits to employers and injured workers that the community rates very highly. The lack of competition in underwriting and the lack of consumer choice are a cost whose value cannot be readily measured. However over the period 1993-94 to 1996-97 workers' compensation costs in Victoria as a percentage of total labour costs fell by 19% while the national average increased by 11%. At the same time benefits in the Victorian scheme are at least comparable or better than the other States, some of which are privately underwritten. The costs of restricting competition are therefore judged to be less than the benefits that are provided by the existing arrangements.

Alternative Means of Achieving the Legislation's Objectives

Clause 5 of the CPA also requires that competition should only be restricted "where the objectives of the legislation can only be achieved by restricting competition."

Objectives of the Legislation

The objectives of the Accident Compensation Act which the Government regards as critical are to provide universal and affordable compensation to all Victorians for work related injury or illness. A further key objective of the scheme is to provide for accident prevention and return to work including long term care and rehabilitation of injured workers.

The Government believes that the objectives of the existing scheme cannot be achieved by any other means than the current restrictions on competition.

The Government believes that it is inherently difficult to achieve these objectives by recourse to other means such as a competitive insurance market due to the problems of:

- adverse selection;
- the volatility in private insurance premiums; and
- the inability of private insurers to capture the benefits of investment in accident prevention and long term rehabilitation.

<u>Adverse Selection</u>

Adverse selection can develop in a private market. This occurs where insurance is not compulsory, only high risk individuals or employers have an incentive to insure and the cost may be prohibitive. Where the product is compulsory, insurers and workers turn to Government to meet or share the costs of covering high risk individuals or employers. This means that the objective of universal coverage cannot be achieved without significant, costly regulation of private markets to enforce and subsidise universal coverage, either directly or through an insurer of last resort. In private markets the Government considers that the high regulatory compliance cost of enforcing universal and affordable coverage, and the high transitional costs that would

be required, would potentially lead to a higher premium and resulting costs on employers and ultimately the community.

Premium Volatility

Volatility in private insurance premiums is also well documented. Insurers seek to increase market share when they (or the re-insurance market) hold substantial reserves and decrease prices. Conversely they can sharply raise prices and restrict supply when large losses occur from unsustainable low premiums. This creates an unstable environment in workplace accident insurance and sends incorrect signals to employers where premium volatility is not dependent on risk but related to other external factors. Significant premium volatility threatens the achievement of all of the objectives of the workplace accident legislation. Regulating to limit premium volatility such as through "file and write" pricing only introduces a lag in the volatility or causes withdrawal and/or collapse in the market where volatility is attempted to be tightly suppressed. The volatility in "file and write" systems is evidenced by the experience of the NSW Motor Accidents Board.

The existing scheme sets premiums to reflect risk or workplace performance. The premium is not affected by external factors such as general capacity in the domestic and worldwide reinsurance market or strategic objectives of insurers, such as enhancing market share. The ability of the scheme to price purely on the cost of workplace injury and rehabilitation, and administration costs, is unlikely to be achieved where competition is not restricted.

Long Term Accident Prevention and Rehabilitation

The existing legislation has removed claimants' access to common law to ensure that long term rehabilitation and return to work remains a primary focus of the scheme. This has significantly increased the size of the scheme's liability tail. Private insurers have, however, a strong preference to commute long term entitlements. Insurers face pressure from investors to deliver short term benefits. For a private insurer, there is a cost advantage in disputing claims rather than investing in programs aimed at long term incidence reduction and injury prevention. Therefore removing restrictions on competition would not be successful without allowing the scheme to revert to benefit types that have been rejected explicitly by Government.

In addition in a private insurance market, an insurer wishing to engage in risk management and prevention activities faces the prospect of developing and maintaining a costly overhead in staff and equipment. This overhead reduces its capacity to compete on price with rivals which do not incur these overheads. An insurer who spends time and resources with an employer in improving that employer's workplace safety is likely to face the risk that the employer will, in the longer term, transfer to another insurer that only competes by offering a lower price. As insurers cannot readily internalise the long term benefits of investing in accident prevention, they tend to prefer to compete on price rather than quality of the product.

Conclusion

The problems of adverse selection, the volatility in private insurance premiums and the inability of private insurers to capture the benefits of investment in accident prevention and long term rehabilitation, mean that the objectives of the legislation can only be achieved by restricting competition. Achievement of the objectives could be pursued through a system of competing private insurance companies which would require heavy handed regulation that imposes high compliance costs, which could result in increases in overall premiums. This approach would also involve substantial transition costs. The Government believes that there is a significant risk that the costs of such regulation would lead to an overall welfare loss rather than a gain.

The Government intends to carefully monitor reforms in other jurisdictions. Any experience that demonstrates scope for improvements will be analysed for possible incorporation in Victoria's public monopoly workplace accident compensation scheme.

2.10 Barley Marketing Act 1993

The National Competition Policy review of the Barley Marketing Act 1993, released in December 1997, recommended (inter alia) the removal of the single export desk after the shortest possible transition period.

The statutory arrangements for the marketing of barley were scheduled to sunset on 30 June 1998. An amendment was passed last year to extend these arrangements for a further twelve months in order to allow time for Government and industry to complete the design of the reforms. This assisted the reform process to take a positive and co-operative approach. Notwithstanding this amendment an open market for domestic stockfeed barley was introduced via the on-demand supply of relevant permits by the Board.

A further amendment Bill was introduced in the Victorian Parliament during the Spring 1998. This provides for the progressive opening of the market to competition, as follows:

- 1 July 1999 - the domestic market for barley and the export market for bagged and containerised barley; and

- 1 July 2001 - the export market for all forms of barley.

A transition period for removal of the export market powers was considered necessary to allow the Australian Barley Board (and its successor) to adjust to operating in an open and competitive market. It also recognised the substantial investment which barley growers have in the Board (net assets totalled $37.9 million as at 30 June 1998).

2.11 Dairy Industry Act 1992

The National Competition Policy review of the Dairy Industry Act 1992 commenced in November 1998. The Centre for International Economics has been engaged by the Department of Natural Resources and Environment to undertake the review and report with recommendations in May 1999. An issues paper is to be released in March to facilitate stakeholder and public consultation. In addition there will be public/stakeholder meetings and a call for submissions.

2.12 Public Sector Superannuation (Administration) Act 1996

The supply of information concerning the compliance of Victoria's public sector superannuation legislation with the Government's commitments under clause 5 of the Competition Principles Agreement has been delayed pending an imminent Government decision relevant to the legislation. This information will be delivered shortly.

Competitive

Neutrality

3 Competitive Neutrality

3.1 Introduction

As outlined in the Competition Principles Agreement, clause 3 (4), Victoria has the following obligation to implement competitive neutrality with respect to significant Public Trading and Financial Enterprises (Model 1):

To the extent that the benefits to be realised from implementation outweigh the costs, for significant Government business enterprises which are classified as "Public Trading Enterprises" and "Public Financial Enterprises" under the Government Financial Statistics Classification:

(a) the Parties, will, where appropriate, adopt a corporatisation model for these Government business enterprises; and

(b) the Parties will impose on the Government business enterprise;

> *(1) full Commonwealth, State and Territory taxes or tax equivalent systems;*
>
> *(2) debt guarantee fees directed towards offsetting the competitive advantages provided by government guarantees; and*
>
> *(3) those regulations to which private sector businesses are normally subject, such as those relating to the protection of the environment, and planning and approval processes, on an equivalent basis to private sector competitors.*

As outlined in the Competition Principles Agreement, clause 3 (5), Victoria has the following obligation to implement competitive neutrality with respect to other significant business activities (Model 2):

To the extent that the benefits to be realised from implementation outweigh the costs, where an agency undertakes significant business activities as part of a broader range of functions, the Parties will, in respect of the business activities:

(1) ensure the prices charged for goods and services will take account, where appropriate:

- *full Commonwealth, State and Territory taxes or tax equivalent systems;*
- *debt guarantee fees directed towards offsetting the competitive advantages provided by government guarantees; and*
- *those regulations to which private sector businesses are normally subject, such as those relating to the protection of the environment, and planning and approval processes, on an equivalent basis to private sector competitors.*

(2) reflect full cost attribution for these activities.

3.2 Highlights of reform

The Victorian Government has been committed to reforming the structure of Government Business Enterprises, and the financial and regulatory environment within which they operate, so that they do not receive a net competitive advantage over private sector providers simply as a result of their public ownership.

All significant commercial Victorian Government Business Enterprises (GBEs) are subject to income and wholesale sales tax equivalents. There are now 22 GBEs under the Tax Equivalent System (TES) as several have been sold since the NCC's first tranche assessment. Subject to reform timetables, further GBEs will be reviewed for potential TES inclusion subject to benefits exceeding costs. In 1997, exemptions from State taxes were removed and local government rate equivalents were required to be paid by relevant GBEs. The Financial Accommodation Levy applies to all entities who have a government guarantee and have financial accommodation of more than $5 million.

Since 1997, in addition to investigating competitive neutrality complaints, the Government has implemented strategies to:

- monitor the implementation of the recommendations of the Complaints Unit, where a breach of policy was found;
- improve compliance with competitive neutrality policy in areas where there are concerns that the policy may not be correctly applied; and
- improve awareness of competitive neutrality policy and the benefits of correctly applying the policy.

3.3 Victoria's progress

In order to demonstrate Victoria's progress, the following information is provided to the NCC on competitive neutrality, consistent with the requirements outlined in the second tranche assessment framework:

- Tables outlining relevant business activities and the status of application of competitive neutrality (Model 1 and Model 2);
- Reasons for non-application of competitive neutrality;
- Competitive neutrality complaints;
- Specific competitive neutrality matters; and
- Other relevant information.

Table 3.3.1 Relevant Business Activities and the Status of Application of Competitive Neutrality
Model 1

: Public Trading or Public Financial Enterprises	Status as at 31 December 1998
ıt of Treasury and Finance	
ıtion businesses	Model 1 policy applies to the three distribution businesses. To be s
ɔn Pipelines Australia Lt	Model 1 policy applies. To be sold in 1999.
ːs Business Pty Ltd	Model 1 policy applies. To be sold in 1999.
	Model 1 policy applies.
Victoria (Ecogen)	Required to make income and sales tax equivalent payments; to be
Water Corporation	Model 1 policy applies.
Vater Ltd	Model 1 policy applies.
Water Ltd	Model 1 policy applies.
ːy Water Ltd	Model 1 policy applies.
politan and Rural Water Authorities	Major review of the application of CN is under way.
Port Corporation	Model 1 policy applies.
Channels Authority	Model 1 policy applies.
l Corporation (ULC)	The ULC was corporatised in 1997 and is now liable for all taxes a payments. It is also subject to the Tax Equivalent System.
ısport Corporation	Unbundled into one statutory authority and five corporatised passe businesses. The five passenger businesses will be franchised to the sector.
ːght	To be sold. Until the sale, required to make income tax equivalent
ːail Track Corporation	Required to make income tax equivalent payments.
unds Management Corporation	Required to make income and sales tax equivalent payments.
Accident Commission	Required to make income and sales tax equivalent payments.

Table 3.3.1 Relevant Business Activities and the Status of Application of Competitive Neutrality
Model 1

: Public Trading or Public Financial Enterprises	Status as at 31 December 1998
ees Ltd	Required to make income and sales tax equivalent payments.
ıce Corporation	Required to make income and sales tax equivalent payments.
Workcover Authority	Required to make income tax equivalent payments.
ıt of State Development	
roject Corporation of Victoria	Made a State Owned Company on 1 July 1996 under section 66 of Owned Enterprises Act 1992, and became subject to the Commonv Equivalent Regime administered by the Department of Treasury ar

Table 3.3.2 General Application of Model 1 Policy

ıent of Model 1	**Status as at 31 December 1998**
:ion	In 1997, the Urban Land Authority was corporatised and is now liable for all taxes and divid payments. It is also subject to the rates equivalence regime.
ılth Tax Equivalents	All significant commercial Victorian Government Business Enterprises (GBEs) are subject tc wholesale sales tax equivalents. There are now 22 GBEs (several have been sold) under the T Equivalent System (TES), and subject to reform timetables, further GBEs will be reviewed fo TES inclusion subject to benefits exceeding costs.
ccommodation Levy	The FAL applies to all entities who have a government guarantee and have financial accomn more than $5 million.
ınd State taxes and	Legislative amendments in 1997 provided for the removal of ownership based exemptions frc taxes and charges and provides for local government rate equivalents to be paid by relevant C 1 July 1998, exemptions for water and sewerage charges in the metropolitan area, were remo connected properties. Therefore, all GBEs are liable for a fixed water service charge and a fix sewerage charge from that date.

Table 3.3.3 Relevant Business Activities and the Status of Application of Competitive Neutrality
Model 2

ficant Government Business Activity	Model 1 or Model 2 or other (eg. review)	Status as at 30 June
: of Premier and Cabinet		
tivities (such as venue and facility hir tre type activities and catering) of majo ıding Museum of Victoria, Geelong Arts Centre, State Film Centre, Nationa ictoria, Victorian Arts Centre Trust and th / of Victoria	Model 2	All venues have implemented Comp accordance with Government policy
: of Infrastructure		
rmation Survey Bridge Design ıs Surfacing Services	Model 2	Arrangements for compliance with developed and are in place.
vices Agency	Model 2	Competitive Neutrality Pricing prin implemented.
: of Natural Resources and Environment		
search institutes and research an : activities.	Identified for review	Following a review undertaken in 1 Standing Committee of Agriculture Management (SCARM), each State responsible for determining implem

Table 3.3.3 Relevant Business Activities and the Status of Application of Competitive Neutrality
Model 2

:icant Government Business Activity	**Model 1 or Model 2 or other (eg. review)**	**Status as at 30 June**
		continuing to raise this matter unde view to developing a uniform comm jurisdictions to the application of co to research and development.
activities in National Park	Identified for review	Competitive neutrality is being impl Victoria following its establishment service agency responsible for mana
*v*ood logs from State forests	Identified for review	A review of the application of comp the Department's commercial forest undertaken in 1997/98. Competitiv principles are to be implemented fol review of Forests Act 1958 and the t the forest management activities of t to be completed in 1998/99.
consultancies of the Environment Protectio	Model 2	Competitive Neutrality Pricing prin implemented.
*M*arket Authority	Identified for review	A review of the application of comp the Melbourne Market Authority wa 1997/98. This matter is to be furthe an NCP review of the Melbourne M 1977, to be undertaken in 1999.
urvey of Victoria	Model 2	Competitive Neutrality Pricing prin implemented.

Table 3.3.3 Relevant Business Activities and the Status of Application of Competitive Neutrality
Model 2

ficant Government Business Activity	**Model 1 or Model 2 or other (eg. review)**	**Status as at 30 June**
Ltd (now known as Agriculture Services Ltd)	Identified for review	Competitive Neutrality Pricing prin implemented in 1998/99.
mental commercial activitie	Model 2	Departmental procedure for applicat neutral pricing fully implemented.
rts Commissior		The Alpine Resorts (Management) A Alpine Resorts Commission with re management boards. These boards competitive neutrality principles.
of Justice		
vernment Solicitor's Office	Model 2	CN has been identified as applicabl
spection and servicing etc of fire equipmen	Model 2	CN now applies.
nanagement planning and trainir services by VICSES	Model 2	CN now applies.
of State Development		
ctivities (such as venue and facility hir tre type activities and catering, and sporting, reational, social, entertainment and relate major venues, including the Melbourne and ks Trust (which includes the National Tenni the Melbourne Sports and Aquatic Centre	Model 2	The Melbourne Convention an recognises the requirements of the Policy, in relation to the pricing of with competitively neutral pricing. in the process of reviewing its pri regard to the obligations outlined Policy Statement, with the aim o

Table 3.3.3 Relevant Business Activities and the Status of Application of Competitive Neutrality
Model 2

ficant Government Business Activity	**Model 1 or Model 2 or other (eg. review)**	**Status as at 30 June**
		achieving these obligations over term. The Melbourne and Olympic P Greyhound Racing Control Board the requirements and application o to competition policy. The Melbourne Sports and Aquati implemented the principles in re policy. The Cinemedia Corporation repor comply with the Victorian Gov competitive neutrality.
: of Education		
)usiness activities of post secondary educatior viz: TAFE Institutes, Universities, an(.dult Education.	Model 2	All post secondary education agenci they have complied with the applica neutrality principles to their busines
:ultural Education Services (AMES)	Model 1—AMES has been restructured as a service agency.	As a service agency, AMES receives funding and is therefore obliged to a

Table 3.3.3 Relevant Business Activities and the Status of Application of Competitive Neutrality
Model 2

:icant Government Business Activity	Model 1 or Model 2 or other (eg. review)	Status as at 30 June
		principles that reflect full cost attrib
ll fee paying students in Universitie	The further application of competitive neutrality is subject to consultation with the other States and the Commonwealth because of national implications and joint State/Commonwealth funding arrangements.	The tuition of full fee paying studen Victoria is based on full cost attribu
tendering between TAFE institutes anc ivate training providers for taxpayer funde	Model 2 reform is being applied to the Victorian Government Funded Program and the New Apprenticeship Program, currently about 18 per cent of TAFE budget.	Competitive neutrality is being appl institutes in Victoria in all competit Government funded programs. This of mandatory reporting in the annua institute.
ng overseas students in government school	This matter is subject to a special policy review of the school sector ordered by the Premier.	Standard fees are set for Governmer the relevant entity being the Govern rather than individual schools. In se Department has been mindful of the cost attribution so as to avoid any su competition with non-government s been at issue.

Table 3.3.3 Relevant Business Activities and the Status of Application of Competitive Neutrality
Model 2

ficant Government Business Activity	Model 1 or Model 2 or other (eg. review)	Status as at 30 June
: of Human Services		
f private patients in public hospital	Review	This issue is being examined as part Services Act review which is due to 1999. However, as noted in the CN decision to apply CN will need to be consultation with other States and th because of the national implications Commonwealth/State funding arran
ly provided ancillary services undertaken b :als*	Model 2	Individual hospitals have developed application of CN principles to their These hospitals have applied CN fro

ɔublic hospitals have the legal status of independent public statutory bodies and all qualify as Public Benevolent Instituti policy strictly defined does not apply to Victorian hospitals. Nevertheless, the Department of Human Services ha develop timetables for the application of CN policy including Model 2 pricing to their business activities to support mo tures and foster competition for the provision of support services.

Table 3.3.4 Reasons for Non-Application of Competitive Neutrality Model 1

t Public Trading or Public Financial Enterprises	Status as at 31 December 1998
ıt of Treasury and Finance	
Smelters of Victoria Ltd (Aluvic	Sold to existing partners; policy no longer applicable.
distribution businesse:	Five distribution businesses sold over the period August 1995 and 1995.
Power Corporation	Sold in August 1996; policy no longer applies.
ower Corporation	Loy Yang Power was sold in June 1998; policy no longer applies.
A Power Station	Sold in May 1997; policy no longer applies.
ictoria	Sold in October 1997; policy no longer applies.
ydro Ltd	Sold in November 1997; policy no longer applies.
nergy	Sold in May 1996; policy no longer applies.
bourne Authority	Assets transferred to Melbourne Port Corporation.
Port Services	Sold; policy no longer applies.
long Authority	Sold in 1996; policy no longer applies.
land Authority	Sold in 1996; policy no longer applies.
lantations Corporation	Sold in 1998.
ıission Corporatior	Not applicable - no material items remaining following industry - to be wound up.
orporation Victoria	Not applicable - centralised borrowing service for State Governm operating in non competitive environment.
l	Not applicable - manages residual issues and non commercial co following industry restructuring in non competitive environment

Table 3.3.4 Reasons for Non-Application of Competitive Neutrality Model 1

t Public Trading or Public Financial Enterprises	Status as at 31 December 1998
ower Exchange	Not applicable - functions to be transferred following industry res be wound up.
	Not applicable - centralised transmission operator ensuring reliab supply in non competitive environment.
ıt of Human Services	
ıputing Services	The company was sold on 31 July 1997.
ɔusing	Due to the Commonwealth/State Housing Agreement, no unilater can be made by any State on the issue of CN pricing. A replacem agreement proposed to operate from July 1999 contains similar su objectives to the current CSHA and therefore no progress on CN anticipated in the medium term.

Table 3.3.5 Reasons for Non-Application of Competitive Neutrality
Model 2

ficant Government Business Activity	Model 1 or Model 2 or other (eg. review)	Status as at 30 June
of Treasury and Finance		
Australia		Sold in August 1996, policy no long
of Premier and Cabinet		
terpreting and Translating Service (VITS		CN no longer applicable
of Infrastructure		
tation of Urban Traffic Control Systems	Model 2	This activity was identified in the G However, this involves only intermit with private sector partners and does Government's definition of significa Formal arrangements for compliance therefore not been implemented. Ho kept under review.

Table 3.3.5 Reasons for Non-Application of Competitive Neutrality
Model 2

:icant Government Business Activity	Model 1 or Model 2 or other (eg. review)	Status as at 30 June
of Justice		
ıg, installation and monitoring of alarm uni		CN not applicable, as the business a
:ries	Model 2	Not required to apply CN principles exempted Prison industries from ap principles on the grounds that the p the business activity is to provide m employment for prisoners and to ass rehabilitation.
and sale of fire trucks and equipment (CFA		Commercially operated - CFA holds venture; therefore CN not applicabl
of State Development		
ıg Board		Not required to undertake CN pricir undertakes a regulatory function.

3.4 Competitive Neutrality Complaints

The Competitive Neutrality Complaints Unit in the Department of Treasury and Finance has been operational since July 1996. It is the aim of the Unit to investigate all complaints fairly, independently and rigorously and to come to a finding on the basis of the best available information.

The attached table shows a summary of allegations of non-compliance with Competitive Neutrality policy from 1 July 1997.

Date of receipt	Target of Complaint	Summary of Complaint	Finding
22/8/97	Melbourne Sports and Aquatic Centre (MSAC) gymnasium	It was alleged the gymnasium at MSAC had competitive advantages which allowed it to offer low memberships, including a special deal offered to residents of Port Phillip.	No breach of the policy was established, although MSAC was advised that its costing and pricing should be more transparent.
9/12/97	Hawthorn International Education Ltd (part of Melbourne University)	It was alleged that Hawthorn submitted a bid for an AusAID contact which was not consistent with competitive neutrality. The bid was submitted in June 1997.	No breach of the policy was found as the bid was submitted before July 1997, the date for the application of the policy to business activities of universities. Even in the absence of the timing issue it was found that Hawthorn was consistent with competitive neutrality policy and any tax advantages derive from legal status not from government ownership.
6/2/98	Energy and Telecommunications Training Australia, Central Gippsland College of TAFE	It was alleged that ETTA had a competitive advantage in providing fee for service training courses in competition with the private sector.	A breach of the policy was found. Although the TAFE had attempted to comply with competitive neutrality from July 1997, some practical steps required to fulfil the Model 2 guidelines had been misapplied.

Date of receipt	Target of Complaint	Summary of Complaint	Finding
11/2/98	Soils and Concrete Laboratory, Bendigo Campus of La Trobe University	It was alleged that the laboratory had a competitive advantage in bidding for contracts to undertake analysis of soil samples.	A breach of the policy was found. Although the laboratory had attempted to identify and offset its competitive advantages, the Complaints Unit had concerns about the methodology adopted by the laboratory, and whether it was appropriately pricing its bids.
20/2/98	Hospital Central Linen Services, in particular those of Warrnambool Base Hospital, Hamilton, Hamilton Base Hospital and Wimmera Health Care Group.	It was alleged that the linen services of the three regional hospitals have advantages which allow them to consistently underquote for work.	No breach of policy was found as hospitals do not have to apply Competitive Neutrality to their business activities until 1 July 1998. Hospitals do have advantages of Government ownership (such as requiring a rate of return) and will be in breach if they do not apply Competitive Neutrality after July 1998.
28/4/98	School of Earth Sciences, La Trobe University	It was alleged that the School of Earth Sciences submitted a bid for an Indonesian Government contract on the basis of subsidised prices.	No breach of policy was found. The University had included Competitive Neutrality adjustments in submitting its bid for the contract. While some adjustments lacked transparency, the University indicated its intention to review adjustments from first principles in accordance with the Guide.

Date of receipt	Target of Complaint	Summary of Complaint	Finding
21/5/98	Shire of Campaspe Echuca War Memorial Aquatic Centre	Complainant alleged that the Aquatic Centre offered gymnasium and aerobics activities for less than full cost recovery and benefited from a number of competitive advantages.	The Complaints Unit found that the Council has not applied competitive neutrality to the gym/aerobics facility but as the existing management contract was entered into prior to 1 July 1997 when the policy came into operation, no breach of the policy was found. The Complaints Unit recommended that if competitive neutrality principles can be accommodated in the existing contract that this be done and that any new contract be consistent with the policy.
2/7/98	Victorian non-metropolitan water authorities	Complainant alleged that Victorian non-metropolitan water authorities require connection to the reticulated sewerage system they provide and are not approving alternative waste treatment systems.	The Complaints Unit recommended that competitive neutrality principles be applied to the water authorities by separating the regulatory and business activities of water authorities. This would reduce the perception that water authorities may be exercising an unfair advantage over potential competitors.

Date of receipt	Target of Complaint	Summary of Complaint	Finding
5/6/98	Ambulance Service Victoria (ASV) - North Eastern Region; Goulburn Ovens Institute of TAFE; and Goulburn Ovens Murray Regional Council of Adult, Community and Further Education	Complainant alleged that level 2 first aid courses offered by the three Government entities are priced at well below market rates and may be in breach of competitive neutrality policy.	The Complaints Unit found that: • ASV is required to apply the policy to first aid courses. The ASV was found in breach of the policy because the Complaints Unit found that were problems in the way in which the ASV applied the policy; • The TAFE is not required to apply competitively neutral pricing to the delivery of centrally funded courses because the courses offered by the TAFE are centrally funded. As a result, it was not in breach of the policy; and • the regional council was not in breach of the policy because it does not directly provide first aid courses.
20/7/98	CityWide Service Solutions Pty Ltd (CityWide) / City of Melbourne	Complainant(s) alleged that CityWide's lower prices for two recycling bids may be due to CityWide not implementing competitive neutrality costing and pricing policies.	The Complaints Unit found no breach of the policy but recommended that the City of Melbourne: • improve the transparency of CityWide's tax equivalent payments by undertaking a tax audit on CityWide under the tax equivalent policy; and • review the ownership of CityWide to (1) reduce the commercial risk to the City of Melbourne of CityWide's business activities and (2) reduce the cost to CityWide of its current borrowing constraints.

Date of receipt	Target of Complaint	Summary of Complaint	Finding
24/9/98	Baw Baw Shire Council	The complainant alleged that: • the Council had agreed to subsidise the operation of the saleyards while they remained in Council ownership; and • that the Council's offer had been made to a single operator only and had not been subject to competition.	The Complaints Unit found there had been no breach of the policy. This was because the saleyards were to be sold and the benefits offered to the single operator were not due to Government ownership but had been made available by the Shire to other privately owned businesses. However, the Complaints Unit recommended that councils conducting similar asset sales in future should carefully consider how they manage the sale so as to obtain the most cost-effective result and ensure community confidence in the integrity and fairness of the sale process.
24/9/98	Department of Human Services	The complainant alleged that: • Government-owned childcare centres were eligible for higher subsidies from the Department of Human Services than private providers; and • some funding programs operated by the Department of Human Services were not available to private sector providers.	The Complaints Unit found that in the absence of any underlying policy reasons for targeting funding arrangements under the Youth and Family Services program specifically to non-profit services providers, the Department of Human Services had breached the policy by not allowing existing private sector providers to apply for funding. The Complaints Unit also examined some issues related to Commonwealth Disadvantaged Area Subsidy and Childcare Assistance programs. These were found to be outside the scope of the Victorian complaints mechanism and referred the matter to the Commonwealth complaints mechanism.

Date of receipt	Target of Complaint	Summary of Complaint	Finding
12/10/98	Gascor / Department of Treasury and Finance	The complainant alleged that health card holders could only be reimbursed for repairs and replacement of hot water systems if they were Gasmart customers.	The Complaints Unit found that there was no breach of the policy because of the unusual circumstances under which the decision was made and evidence that there were implicit policy objectives of responding quickly and cost-effectively to cases of genuine hardship caused by the gas shutdown. But the Complaints Unit recommended that in future, Government agencies should ensure that alternative methods of providing financial assistance are assessed so that the most cost-effective provider is selected.
24/10/98	Landata	The complainant alleged that Landata provided exclusive rights to data to two of the business activities of the Titles Office and that competitive neutrality costing and pricing was not being applied.	The Complaints Unit found that: • Landata pricing has not breached competitive neutrality pricing principles; and • Landata has breached the competitive neutrality structural review requirements due to the absence of adequate policy documentation to justify the decision not to implement the principal recommendations of a structural review of Landata's ongoing service delivery arrangements.

Date of receipt	Target of Complaint	Summary of Complaint	Finding
18/11/98	City of Port Phillip	The complainant alleged that the City of Port Phillip provided competitive advantages to not for profit and council operated childcare centres that were not available to private sector childcare centres, including access to funding and use of rent free buildings and facilities.	The Complaints Unit found that the City of Port Phillip has breached the Victorian Government's competitive neutrality policy because it has: • provided financial assistance to council managed childcare centres which is not available to competing private sector centres; and • not applied competitive neutrality pricing principles in estimating the full cost of its childcare services.

3.5 Government Policy Responses to Complaints Unit recommendations

Date of receipt of complaint: 6/2/98

Energy and Telecommunications Training Australia (ETTA), Central Gippsland College of TAFE

The Complaints Unit prepared separate, written advice to ETTA on how their costing and pricing should be adjusted to accurately incorporate competitive neutrality policy. Issues addressed included the opportunity cost of capital and tax exemptions due to Government ownership.

Date of receipt of complaint: 11/2/98

Soils and Concrete Laboratory, Bendigo Campus of La Trobe University

The Complaints Unit prepared technical guidance to the Laboratory on the preparation of future bidding documentation and financial statements consistent with competitive neutrality. The guidance focussed on the treatment of alleged competitive disadvantages, adjustments for tax advantages of Government ownership and the treatment of the cost of capital in the costing and pricing of the Laboratory's services.

Date of receipt of complaint: 21/5/98

Shire of Campaspe Echuca War Memorial Aquatic Centre

The Office of Local Government and the Complaints Unit is working with the Shire of Campaspe to consider options for achieving compliance with competitive neutrality policy of the gym/aerobics facilityunder the existing management contract.

Date of receipt of complaint: 2/7/98

Victorian non-metropolitan water authorities

Two reviews are to be conducted which examine the structural reform of water authorities, namely:

1. an Environment Protection Authority-led review of the regulatory role of water authorities; and
2. a National Competition Legislative Review of the *Water Act* 1989, which is scheduled for December 1999. The Act establishes the legislative framework for the activities of non-metropolitan water authorities.

The Department of Premier and Cabinet is coordinating the activities of relevant Victorian Government agencies to ensure that the recommendations of the Complaints Unit are addressed in these reviews.

Date of receipt of complaint: 5/6/98

Ambulance Service Victoria (ASV) - North Eastern Region

The contestability of ASV public education services is currently being considered in the current National Competition Policy Legislative Review of the *Ambulance Services Act* 1986.

The ASV (North Eastern Region) has advised the Complaints Unit that it is reviewing its approach to its costing of First Aid courses and is seeking advice on the issues identified by the Complaints Unit.

Date of receipt of complaint: 24/9/98

Department of Human Services

In response to the Complaints Unit's investigation, the Department of Human Services indicated that it will amend its funding policies to ensure that any legally constituted service providers are able to apply for funding.

The Complaints Unit advised the Commonwealth Competitive Neutrality Complaints Office and the Commonwealth Department of Treasury of issues raised in the course of the investigation that related to the application of competitive neutrality under Commonwealth programs.

Date of receipt of complaint: 18/11/98

City of Port Phillip

The Complaints Unit has recently completed an investigation relating to the childcare services provided by the City of Port Phillip. It will contact the City of Port Phillip by June 1999 to seek information on action taken or proposed to ensure compliance with competitive neutrality policy.

3.6 Specific Competitive Neutrality Matters

3.6.1 Prison based industries

Victoria has written to the NCC on 10 June 1998 and 13 July 1998, and outlined our justification for the exemption of competitive neutrality in the prison industries. As the NCC has not requested any further explanatory material since this time, the following is a reiteration of our position.

Achievement of Social Objectives

The Premier has recommended that CORE (Public Correctional Enterprise) prison industries be exempted from the application of model 2 CN policies. The objective of prison employment in publicand privately owned and/or operated prisons is to provide meaningful employment for prisoners and to assist in the management, control and rehabilitation regimes within the prison environment. The CN pricing principles are not intended to over-ride these social policy objectives.

The application of CN to CORE prison industries may help to determine any competitive advantages that exist (compared with competitors that supply the same product) such as a return on capital employed. However, whether prisons are public or private, a return on the capital employed is not and should not be the objective from prisoners work for rehabilitation purposes.

Problematic application of CN

A prerequisite for the application of CN to prison industries is the attribution of all costs incurred in the production of outputs, consistent with the Government's financial management reforms. In order to ensure competitive neutrality, these costs would then be adjusted for any net competitive advantage.

The allocation of costs can only be correctly allocated when the outputs are clearly identified. In prison industries the two outputs are rehabilitation and goods. These outputs are not currently identified separately.

The cost of the goods produced would depend on the allocation of costs. Some of the building and staff costs should be allocated to rehabilitation and some to the output. The costs of the goods produced would include some capital (building costs, tools, equipment etc), some consumables (raw materials, power etc), some supervisory costs (wardens), an administration (office, marketing, management etc) component, and large amounts of cheap labour. Labour is captive and low cost: prisoners are paid between $4.50 and $6.50 per day.

The application of CN would require:

- adjustment to offset exemptions from wholesale sales tax, land tax, local government rates, and FID.
- an 8% return on the capital employed. As prison industries are labour intensive, this would have little impact on total cost.

Although labour costs are very low, productivity is also low and supervision costs high. The production of goods for sale is a secondary objective, and in some cases may lead to goods being sold at a loss. These losses are accepted in order that rehabilitation objectives are met.

This situation may lead to a conflict between prison industries and private sector providers of similar goods. However, this is not due to any unfair advantage as a result of ownership. It is true irrespective of ownership.

Prison Industry Code of Practice

The Government is aware of the problems this may cause, and as a result has required CORE to implement a "Prison Industries Code of Practice." This practice requires CORE to place a particular emphasis on marketing its products into areas which provide an alternative to imports. CORE is also required to prepare a market impact statement before entering into new industries, and to ensure no promotional activities result in a perception that prison industries pose a threat to private sector businesses. The Department of Premier and Cabinet is satisfied that this policy is being adhered to.

Conclusion

Therefore, it is our belief that the application of CN would not lead to increased efficiency in prison industries, or to more efficient competition with the private sector, than what are already realised through the Government's reform program. This, along with out stated desire that CN should not over-ride social objectives, are the rationale for prison industries not been required to comply with model 2 CN pricing principles from July 1997.

3.6.2 Water authorities

The NCC has identified the separation of regulatory and business functions of non-metropolitan water authorities as an issue that requires resolution. Victoria agrees with the NCC that the functions of the non-metropolitan urbans needs to be separated. As a result, it is progressing this issue in order to reach a viable long term solution. However, it needs to be noted, that while Victoria (like the NCC) would prefer the matter to be resolved quickly, there remains a problem regarding regulatory gap - which needs to be worked through.

Specifically, the concerns relate to a complaint from a Mr Burrows that regional water authorities in Victoria are refusing to allow customers to opt out of compulsory connection to reticulated sewerage systems. Mr Burrows complains that there is no opportunity for consumers to utilise alternative waste water treatment systems which have been endorsed by health and environmental regulators.

The Competitive Neutrality Complaints Unit investigated the matter in July 1998. The Unit recommended that a decision to require a person to connect should be based on health and environmental grounds, and that the business and regulatory activities of water authorities should be separated to reduce perceptions that water authorities are exercising an unfair advantage over potential competitors.

It is accepted that a strong case can be made that the regulatory and commercial activities of the non-metropolitan urbans should be separated. However, it is also clear that it would be irresponsible to leave the regulatory function unfulfilled or to assign it to a body that is not equipped to carry out the function properly. The issue, therefore, is one of regulatory gap.

We agree with your proposal that, in the interim, all non-metropolitan urbans could be requested to not exercise their current statutory powers to require connection to mains sewerage, where a customer can demonstrate an alternative is available that meets the requirements of health and environmental regulators. However, it is our opinion that the only acceptable way in which a customer can demonstrate that an alternative has met the requirements of health and environmental regulators is by approval from a relevant body for the use of a particular system in a specific location.

To this end, the Environment Protection Authority (EPA) established a Working Party earlier this year to review existing arrangements, and identify a body that could take on this regulatory function. One of the proposals arising out of the review was that local government should take responsibility for enforcing connections and assessing, in the first instance, whether public and environmental needs can be met by alternative on-site waste water systems.

However, this and other measures which placed new responsibilities on local government, are yet to be resolved. As a result, the package of proposals developed by the EPA is to be further reviewed. The Department of Natural Resources and Environment, and Department of Premier and Cabinet, have kept the NCC informed of these developments.

It is anticipated that the working group, after developing new proposals and taking into account the need to still have a proper regulatory system, will be able to provide an acceptable alternative that will satisfy all parties.

Measures similar to the NCC's interim proposal have already been adopted by Coliban Water, which decided to not enforce connection of individual properties to the community systems where the owners obtain the approval of the EPA and the Municipal Environmental Health Officer to an alternative on-site system which provides an equivalent service. However, the Victorian Government may assume unnecessary health and environmental risks if it were to direct all authorities to not exercise their current statutory powers to require connections to mains sewerage while the regulatory gap exists.

It should also be noted that this is not the only initiative that Victoria is undertaking to resolve these concerns. The regulatory role of Victorian water authorities will be considered as part of the review of the *Water Act 1989,* the terms of reference of which is before the Treasurer.

The Department of Premier and Cabinet has contacted each of the relevant departments and agencies - each of which is aware of the NCC's and the complainant's concerns - and is in a position to co-ordinate and push along the resolution of this matter. However, as noted earlier, this is not an issue that is likely to be resolved overnight. Victoria is in agreement that a resolution is required and is endeavouring to reach that resolution as soon as is practicable - to ensure a long term, viable independent regulatory body.

3.7 Other Relevant Information

The Victorian Government has played an active role in publicising and ensuring the satisfactory compliance with competitive neutrality policy. The following information is a summary of some of its more major initiatives.

Promotion of competitive neutrality policy

In 1998, the Department of Treasury and Finance:

- completed presentations to regional hospitals and health sector interest groups such as the Victorian Hospitals Association and the Health Sector Finance Managers Association;
- participated in sessions convened by the Local Government Compliance Working Party;
- met with university officers to discuss the application of the Government's policy to universities; and
- advised Government agencies on the application of competitive neutrality policy to their business activities.

New procedures to monitor implementation of recommendations of the Complaints Unit

From 1 July 1998, Victorian competitive neutrality policy applied to all Victorian Government business activities. As a result, the issue of how the Complaints Unit should respond to concerns that Government agencies may not be applying competitive neutrality policy after a breach of policy has been found has become increasingly important.

In response, the Complaints Unit has recently amended its protocol. Where the Complaints Unit has found a breach of policy, the Complaints Unit now seeks information from agencies within six months of the investigation on how compliance with competitive neutrality policy has been achieved.

Best practice guidelines developed for Victorian Government purchasing on competitive neutrality

On 7 December 1998, the Accredited Purchasing Units in Victoria agreed to incorporate suggested wording on competitive neutrality into the Victorian Government Purchasing Board's best practice guidelines. The guidelines advise on the preparation of Registration of Interest (ROI) and Request for Tender (RFT) documentation when Victorian Government agencies are among the likely bidders for Victorian Government contracts.

The Department of Treasury and Finance developed the guidelines in response to requests for assistance by Government agencies on applying competitive neutrality during the tender evaluation process. A draft of the guidelines was distributed to Victorian Government purchasing units for their comments.

Joint Municipal Association of Victoria (MAV) / Complaints Unit proposal to undertake case studies on local government implementation of competitive neutrality

The Municipal Association of Victoria (MAV) and the Complaints Unit are planning to jointly develop case studies in relation to the implementation of competitive neutrality by local councils. This exercise is intended to provide informed advice to councils on whether their implementation of competitive neutrality is consistent with the Victorian Government's policy.

The MAV and the Complaints Unit hopes to be able to disseminate and publish the case studies.

Application of

Competition Policy to

Local Government

4 Application of Competition Policy to Local Government

The Minister for Planning and Local Government is responsible for ensuring that councils comply with National Competition Policy.

Early in 1998 the Department of Infrastructure, with support from the Department of Premier and Cabinet, issued guidelines to Councils to assist them in planning and undertaking reviews of local laws to remove unwarranted restrictions on competition by June 1999. The guidelines were workshopped with Councils in a series of regional and metropolitan seminars. In mid-1998 the Department of Infrastructure issued guidelines to Councils for annual reporting on the implementation of NCP. The guidelines gave particular emphasis to the implementation of competitive neutrality.

The following points relate to the key NCP obligations for Victorian local government and indicate the progress made by councils in implementation:

- Councils are subject to the Competition Code (Part IV of Trade Practices Act) and will report on implementation of their trade practices compliance programs in the financial year 1998/99;

- Councils were required to subject a minimum of 50% of their total expenditure to competitive tendering in 1997/98, with some Councils achieving results as high as 85%. In this period, with only 4 of 78 councils failing to achieve the legislated target, 60.9% of total local government expenditure across Victoria was market tested;

- a small number of complaints of non-compliance with competitive neutrality principles was investigated by the Competitive Neutrality Complaints Unit in the Department of Treasury and Finance. The Department of Infrastructure liaised with the Complaints Unit on these investigations;

- all Councils reported satisfactorily to the Minister on all elements of NCP for 1997/98; and

- all new local laws made during the year by councils and submitted to the Department of Infrastructure had been certified by the council to comply with competition principles.

Victorian Government

Competitive Neutrality
In-house Agreements and Significant Business Activities

ACTS & INESS	APPLICATION OF COMPETITIVE NEUTRALITY STRUCTURAL REVIEW	APPLICATION OF COMPETITIVELY NEUTRAL PRICING
cludes: ts; council ocess ternal *nly - not gislation .]*	Model 2 is the approach reported by and observed in most councils. Model 1 has been applied by two metropolitan councils. The second round of Compulsory Competitive Tendering (CCT) has commenced. Many councils reported that they intended to undertake structural reviews as part of their CCT program.	All councils reported applying the pricing principles to in-hou agreements entered into since July 1997. For contracts which have been entered into prior to July 1997, councils will be required to apply CN pricing principles once they are retendered. Councils' reports confirm their intention to continue to apply CN review and pricing principles in 1998/99.
tivitie ys) f total significanc	As above. A number of councils do not own, or have already divested, significant businesses. A small number of councils are considering joint ventures and other Model 1 type structures, but none have yet been concluded.	Councils with significant businesses have applied CN pricing principles to them or are currently reviewing them and applyi CN pricing in the course of review. CN pricing complaints were made about a small minority of significant council businesses.

Structural

Reform

5 Structural Reform

5.1 Introduction

Under clause 4(3) of the Competition Principles Agreement:

Before a party introduces competition to a market traditionally supplied by a public monopoly, and before a Party privatises a public monopoly, it will undertake a review into:

(a) the appropriate commercial objectives for the public monopoly;
(b) the merits of separating any natural monopoly elements from potentially competitive elements of the public monopoly;
(c) the merits of separating potentially competitive elements of the public monopoly;
(d) the most effective means of separating regulatory functions from commercial functions of the monopoly;
(e) the most effective means of implementing the competitive neutrality principles set out in this Agreement;
(f) the merits of any community service obligations undertaken by the public monopoly and the best means of funding and delivering any mandated community service obligations;
(g) the price and service regulations to be applied to the industry; and
(h) the appropriate financial relationships between the owner of the public monopoly and the public monopoly, including the rate of return targets, dividends and capital structure.

This clause is relevant to the structural reforms affecting the following organisations:

- Australian Barley Board;
- Victorian Public Transport Systen; and
- V/Line Freight.

5.2 Australian Barley Board

The Victorian Government is confident that imminent reforms of the statutory monopoly currently held by the Australian Barley Board will fulfil its commitments under clause 4 of the Competition Principles Agreement.

Following the December 1997 report of the Centre for International Economics into the Barley Marketing Acts of Victoria and South Australia, the respective State Governments have agreed to progressively open up the barley acquisition and trading market in both State's to competition. The key market opening milestones are:

- 1 July 1998 - the domestic market for stockfeed barley;

- 1 July 1999 - the domestic market for malting barley and the export market for bagged and containerised barley; and

- 1 July 2001 - the export market for all forms of barley.

In addition, the Australian Barley Board is to be dissolved by 30 June 1999. Its assets and liabilities will be transferred to ABB Grain Ltd, and its wholly-owned subsidiary ABB Grain Export Ltd, and shares in ABB Grain Ltd transferred to barley growers under a scheme of arrangement determined by the Victorian and South Australian Governments.

A Bill to amend the Barley Marketing Act along these lines is currently before the Victorian Parliament. This will remove all provisions from the Act that are not required for the progressive opening of the market and the "privatisation" of the Australian Barley Board. In particular, neither the Board nor its successor will have any responsibilities for industry regulation, or for fulfilling community service obligations. The objectives of ABB Grain Ltd, its pricing and trading policies and practices, will be determined under the authority of its grower-shareholders.

Prior to completion of market opening, the export monopoly powers will be quarantined from the domestic market through the conduct of export market trading activities by ABB Grain Export Ltd. Trading rules for both companies will ensure that all grain sales and grain swaps are transparent and auditable. Further, the State Governments will retain the power to require the companies to provide information on their operations.

5.3 Victorian Public Transport System

The Victorian Government has made significant progress in the structural reform of public monopoly businesses providing public transport services.

Until 1993 the Public Transport Corporation (PTC) provided a significant part of Melbourne's public route bus transport services. On 27 December 1993 the National Bus Company assumed responsibility for about 75 per cent of the service previously provided by the PTC following a comprehensive public tender process. The National Bus Company purchased buses and leased depots from the Government under a 10 year patronage-based incentive contract.

On 13 April 1998, the Melbourne Bus Link Company assumed responsibility for the balance of the services provided by the PTC (trading as Met Bus). This also followed a comprehensive public tender process. The Melbourne Bus Link Company purchased the remaining buses and depots from the Government under a 10 year contract similar to that entered into with the National Bus Company.

The Government has adopted a two-stage approach to structural reform of its public sector train, tram and rail freight businesses -

- From 1 July 1997 V/Line Freight Corporation, and from 1 July 1998 five separate Corporations were created under the Rail Corporations Act to provide metropolitan train and tram services and country rail passenger services:
  - Bayside Trains
  - Hillside Trains
  - Swanston Trams

- Yarra Trams
- V/Line Passenger

The Public Transport Corporation (PTC) remains as a statutory corporation with a limited life to manage residual non-operational functions and to provide certain integration services for the new operating Corporations.

- The Transport Reform Unit of the Department of Treasury and Finance is conducting a process of franchising the five businesses to the private sector and selling the V/Line Freight business. Expressions of Interest have been sought for the passenger businesses. They are being assessed to establish a short list of bidders to be invited to make final submissions.

The Public Transport Division within the Department of Infrastructure has been established to manage all contractual arrangements with private sector public transport service providers.

Guarantees of third party access to infrastructure have been clearly established in the privatisation arrangements.

Public transport industry regulation is now fully separated from service provision. Importantly a separate Public Transport Safety Directorate has been established within the Department of Infrastructure to regulate safety across all of the public transport modes.

5.4 V/Line Freight

As part of the restructuring of the Victorian rail industry, two new directorates have been created within the Department of Infrastructure. These are the Director of Public Transport and the Director, Public Transport Safety. The private sector operator of the V/Line freight business has no responsibility for the safety accreditation of third party operators.

Given the lightly trafficked nature of most of the Victorian country rail network, it was considered that a vertically separated model would impose transaction cost and inefficiencies in excess of the benefits of this structure. Accordingly, the V/Line freight business has been sold with a long term lease over the country rail infrastructure. Operational control and maintenance responsibilities for the leased infrastructure lie with the private operator. However, the lease imposes significant obligations in relation to minimum standards of maintenance, carrying out of state sponsored investment, line closures etc.

The entire country network leased to the new operator of the V/Line freight business, plus its Dynon freight terminal, will be subject to a third party access regime as set out in the Rail Corporations Act. Under the terms of this regime, an operator of rail services (either passenger or freight) that is unable to obtain access to the network on agreed terms, or that considers its rights of access are being hindered, may apply to the Office of the Regulator General for a determination. The Office also has significant powers in relation to the specification of the form of information which must be

provided to access seekers and the ring fencing of the provision of network access from the rest of the activities of the V/Line freight business.

In the public sector, V/Line conducted a business of transporting parcels and palletised freight. This was an uneconomic business and resulted in loss making over a number of years. However, it is considered to have a significant Community Service Obligation (CSO) element, and continuation of this activity while this remained the case was a condition of sale. A specific and defined CSO payment will be made to the private sector operator in this regard. No CSO payments are made for maintenance of the infrastructure or for any above rail activities.

Prices Oversight

6 Prices Oversight

6.1 Introduction

As outlined under Clause 2(4) of the Competition Principles Agreement:

An independent source of price oversight advice should have the following characteristics:

(a) it should be independent from the Government business enterprise whose prices are being assessed;
(b) its prime objective should be one of efficient resource allocation but with regard to any explicitly identified and defined community service obligations imposed on a business enterprise by the Government or legislature of the jurisdiction that owns the enterprise;
(c) it should apply to all significant Government business enterprises that are monopoly, or near monopoly, supplier of goods or services (or both);
(d) it should permit submissions by interested persons; and
(e) its pricing recommendations, and the reasons for them, should be published.

6.2 Current Arrangements

In Victoria, the Office of the Regulator-General provides independent prices oversight in electricity, gas, water, ports and grain handling.

This prices oversight is done in accordance with the conditions outlined above under clause 2(4) of the Competition Principles Agreement.

Conduct Code

7 Conduct Code

Under clause 2 (1) of the Conduct Code Agreement:

> *Where legislation, or a provision in a legislation, is enacted or made in reliance upon section 51 of the Competition Laws, the Party responsible for the legislation will send written notice of the legislation to the Commission within 30 days of the legislation being enacted or made.*

Under clause 2 (3) of the Conduct Code Agreement:

> *Each party will, within three years of the date on which the Competition Policy Reform Act 1995 receives the Royal Assent, send written notice to the Commission of legislation for which that Party is responsible, which:*
>
> *(a) existed at the date of commencement of this Agreement;*
>
> *(b) was enacted or made in reliance upon section 51 of the Trade Practices Act (as in force at the date of commencement of this Agreement); and*
>
> *(c) will continue to except conduct pursuant to section 51 of the Trade Practices Act after three years from the date on which the Competition Policy Reform Act 1995 receives the Royal Assent.*

Under Clause 2 (3) of the Conduct Code Agreement, statutory exemptions that existed at the time of the Conduct Code Agreement included:

Water Industry Regulations 1995 made under the Water Industry Act 1994.

These regulations exempted the three metropolitan water agencies from Part IV of the Trade Practices Act.

This exemption expired on 31 December 1996. Therefore, no further information is relevant to meet the requirements of clause 2 (3).

The following information is for statutory exemptions that have occurred since the Conduct Code Agreement was signed, clause 2 (1):

Legal Practice Act 1996:

Schedule 2 of the Act provided for a temporary exemption to the Act with regard to the employment of Barrister's clerks. The transitional provision sunsetted on 30 June 1997.

Electricity Industry (Trade Practices) Regulations 1994

Reg.4, approval. This only operated until 30/9/96 as per Reg 4.

Competition Policy (Gas Supply Contract Exemption) Regulations 1996

Reg.5, approval expired 20/11/97.
Reg.7, approval expired 20/11/97.

Gas Industry Act 1994:

Part 6B - Competition Policy Authorisation
s.62M, definitions inserted by 36/1997, s.13, as from 3/6/97, amended by 91/1997, s.27, as from 11/12/97 and amended by 40/1998, s.26 as from 8/6/98.
s.62O, approval inserted by 36/1997, s.13, as from 3/6/97
s.62P, application, inserted by 36/1997, s.13, as from 3/6/97.

Part 6C - Master Agreements
s.62Q, definitions inserted by 40/1998, s.27 as from 8/6/98
s.62S, approval inserted by 40/1998, s.27 as from 8/6/98
s.62T, application inserted by 40/1998, s.27 as from 8/6/98

Electricity Industry Act 1993

s.91AA - TPA and Competition Code
inserted by 8/1996, s.13, as from 25/6/96, and to be repealed from 1/1/2001 by 8/1996, s.14

Related Reforms:

Electricity

8 Related Reforms: Electricity

8.1 Introduction

Under the *Agreement to Implement the National Competition Policy and Related Reforms*, the second tranche obligation is for 'relevant jurisdictions' to complete the transition to a 'fully competitive national electricity market' by 1 July 1999.

The reform program and timetable proposed in the Prime Minister's letter of 10 December 1996 is being used as the basis on which to assess relevant jurisdictions' progress in meeting the second tranche commitment to establish a national electricity market.

The information provided by Victoria in this report will demonstrate the State's progress in:

- Implementing the National Electricity Market; and
- Providing an appropriate structure for the electricity sector.

8.2 Benefits of reform

In 1992, average electricity prices were 40 per cent above the most efficient Australian State (Queensland) and well short of world's best practice, despite Victoria having an abundance of relatively low-cost brown coal and gas reserves as a natural resource. Construction costs of new plant were 60 per cent higher than would be expected under best practice and generation availability was around 65 per cent.

Restructuring and reform of the State's electricity industry undertaken by the Government has since transformed the industry from a State owned vertically integrated monopoly based structure to a dynamic and competitive structure. The reforms are almost complete with only the sale of Ecogen Energy remaining to complete the privatisation process.

These reforms have resulted in substantial benefits for Victorian consumers and businesses in terms of lower prices, and improved service and reliability. In this new energy market, consumers have greater protection than ever before. The Office of the Regulator General regularly monitors price and service levels. An Energy Ombusdsman has been established to protect consumer interests and to resolve disputes between customers and energy businesses in the gas and electricity industries. Also, the Office of the Chief Electrical Inspector has been created to ensure both industry compliance with set regulations and, increasingly, auditing and monitoring of industry behaviour against statutory safety outcomes.

With the commencement of the National Electricity Market (NEM) in December 1998, the Government embarked upon the last phase of its successful electricity reform program.

8.3 National Electricity Market

The National Electricity Market (NEM) formally commenced on 13 December 1998 after several weeks of extensive testing. The National Electricity Market Management Company (NEMMCO) and the National Electricity Code Administrator (NECA) have taken up their respective functions under the National Electricity Law and the National Electricity Code (NEC). The NEM is currently operating under the auspices of an authorised NEC.

The NEC was submitted to the Australian Competition and Consumer Commission (ACCC) on 15 November 1996 and has since undergone a process to obtain authorisation. Currently some sections of the Code are operating under an interim authorisation. This has come about primarily because changes were made near to the commencement of the Market to accommodate specific arrangements in some other jurisdictions and because of the procedure adopted by NECA in presenting the Code to the ACCC. These interim authorisations will lapse when the Commission reaches a final determination in regard to each application.

In February 1999, the ACCC re-opened its public consultation process regarding proposed amendments to the Code. If the ACCC authorises the NEC, an application to vary the Access Code is then likely to be submitted to the ACCC.

In 1997 the commencement of the NEM was scheduled for March 1998. However, NEMMCO were unable to finalise the necessary systems and develop a suitable testing regime to meet this tight deadline. This delay was aggravated by the need for all participants in the Market to develop interfaces with the NEMMCO systems. The development of these arrangements ultimately proved in practice to be extremely complex.

Market participants faced substantial commercial risks in shifting from the existing Market arrangements (NEM 1) to the NEM. NEM 1 delivered most of the functionality of the NEM along with a capacity to trade between NSW and Victoria. Consequently, participants in NSW and Victoria were unwilling to switch to the new Market until the system had been rigorously tested and until the settlements system was proven. Testing included 'live trials' which required changes to NEM 1 rules to be agreed, drafted and authorised. The success criteria for the tests also needed to be clearly identified and agreed. A dispute resolution process was developed (chaired by a representative from the Commonwealth) and used to manage the issues raised through the testing and acceptance procedure.

Delays to the commencement of the NEM came about for a variety of reasons. However, the over-riding issue was one of co-ordinating a large number of participants facing substantial commercial risks arising from potential system failures in commencing the NEM.

Victoria has supported all attempts to bring forward the establishment of the NEM and has undertaken a substantial amount of work to achieve that objective. For example, in September 1997, Victoria engaged an external consultant to determine the readiness of NEMMCO and NECA to deliver the NEM by March 1998. The consultant identified several issues and this report was provided to all Market participants. The 'readiness criteria' developed were used to establish a joint process between the participating jurisdictions to take the Market forward and to obtain agreement from all

stakeholders as to what was required to commence the operation of the NEM. This process led to the successful implementation of the NEM on 13 December 1998.

8.4 Structural Reform of the Electricity Sector

Victoria has completed all its commitments with regard to the structural reform of the electricity industry as detailed in the First Tranche Assessment Report to the NCC.

Victoria had fully disaggregated its electricity supply industry by 1994 and has since privatised most of the electricity industry assets previously in public hands. Full structural separation of generation and transmission and ring fencing of retail and distribution businesses were completed as part of the reform program. Independent economic and safety regulators (Office of Regulator General and Office of Chief Electrical Inspector respectively) were also established.

Related Reforms:

Gas

9 Related Reforms: Gas

9.1 Introduction

Under the April 1995 *Agreement to Implement the National Competition Policy and Related Reforms,* the second tranche obligation is that jurisdictions fully implement free and fair trading in gas between and within the States including the phasing out of transitional arrangements.

The 1994 COAG gas reform agreement proposed that future arrangements for the gas industry be settled within two years, with the objective of achieving free and fair trade in natural gas by 1 July 1996. The central plank of the reform program was a uniform national framework for third party access to natural gas transmission pipelines. In addition, COAG called for the removal of all legislative and regulatory barriers to trade in gas and the structural reform of gas utilities.

In accordance with the COAG Agreement of 1994, and the NCC's second tranche assessment framework, the information provided by Victoria will demonstrate the State's progress in:

- effective implementation of the national gas access code;
- removal of all legislative and regulatory barriers to free and fair trade in gas; and
- structural reform of gas utilities.

9.2 Benefits of reform

A comprehensive reform of the Victorian gas industry is now almost complete. The objective of the reform process is to encourage the development of a fully competitive and integrated energy market in south-eastern Australia.

The industry is being restructured from a State-owned monopoly to a competitive industry based on providing the lowest possible cost and better service to all consumers.

The reform of the Victorian Gas Industry will deliver the following benefits for consumers:

- Lowest possible gas prices;
- Better choice of supply services and products;
- Greater consumer protection;
- Retention of Community Service Obligations;
- Higher service standards; and
- New jobs through more efficient industry and greater investment.

9.3 National Gas Access Code

Victoria originally introduced the national gas access code by way of the Victorian Access Code in December 1997. The Gas Pipelines Access (Victoria) Act 1998 applying the national code in accordance with the National Gas Law was passed on 19 May 1998. The Act could not be proclaimed during 1998 because:

1. Regulatory processes commenced under the code in November 1997 were not completed;
2. Due to the delays in regulatory approval of the access arrangements, effective transitional provisions had to be added to the application law, and errors corrected; and
3. The national law could not commence until the effective commencement of the operation of the access arrangements approved under the Victorian code.

Victoria intends to proclaim the Gas Pipelines Access (Victoria) Act by 31 March 1999 following consultation with COAG Ministers on a minor amendment to the Act. The amendment is necessary to correct an anomaly in the wording of the savings provisions in the Act as originally approved by COAG Ministers.

The savings provisions refer to "the first review" of the access arrangements and were intended to operate until the Victorian access arrangements had been reviewed under the Code in 2002 and new access arrangements commenced on 1 January 2003. The provision needs to be amended to ensure that any interim revisions under the Access Code to the existing access arrangements before the 2002 review do not inadvertently repeal the savings provision.

The necessary amendment will be considered by the Parliament in May 1999. To ensure the Act can commence in a workable form as soon as possible, Victoria proposes to proclaim the Act as soon as the amendment has been approved in principle by COAG Ministers. Subject to the agreement of the relevant COAG Ministers, the Act, and therefore the National Gas Access Code, can be expected to commence by 31 March 1999.

9.4 Removing Regulatory Barriers to Free and Fair Trade in Gas

Historical legislative and regulatory barriers to free trade in gas were removed as part of the November 1996 settlement of the dispute between the Commonwealth Government, Victorian Government and the Bass Strait producers (Esso and BHPP) regarding the liability for the Petroleum Resource Rent Tax on Bass Strait gas production.

The settlement removed the State’s exclusive contractual franchise and allowed other

gas suppliers to enter the market on a competitive basis. In particular, restrictions preventing:

a) Esso or BHP from selling gas, directly or indirectly, to end consumers;
b) GASCOR buying gas from suppliers other than Esso or BHPP; and
c) GASCOR's customers from on-selling gas;

were removed.

In addition, the market arrangements established in Victoria, including the Market and System Operating Rules enacted under the Gas Industry Act 1994, facilitate trade in gas and provide for its more efficient use. A Gas Release Program has also been established to ensure gas is available for new entrants.

9.5 Structural Reform of Gas Utilities

The Gas Industry Act 1994 provides for the restructuring of gas utilities. The industry have been restructured in the following way:

(a) three gas retailers which initially sell gas to non-contestable customers in defined areas of Victoria and will compete to directly supply gas to customers as they progressively become 'contestable" over the period to 1 September 2001;

(b) three gas distributors which own and operate the existing gas distribution systems in defined areas of Victoria. As these are effectively monopoly service providers, the terms and conditions upon which access to the networks is provided to third parties are subject to regulation by the Victorian Office of the Regulator General;

(c) a transmission business, Transmission Pipelines Australia Pty Ltd, which maintains existing high pressure transmission pipelines in Victoria and undertakes related activities. The terms and conditions upon which access to the pipelines is provided to third parties are subject to regulation by the ACCC;

(d) an independent system operator, Victorian Energy Networks Corporation (VENCorp) which is responsible for operating the capacity of the high pressure transmission pipelines, managing the proposed gas spot market and maintaining transmission system security; and

(e) Gas Services Business Pty Ltd which provides a number of centralised services to a number of the new businesses under relatively short term contracts, including information technology support, call centre services and a number of specialised and technical functions.

The three gas retailers and distributors have been structured with three holding companies each owning one retailer and one distributor. Legal and operational separation of the distribution and retail businesses is a requirement under the National and Victorian Gas Industry Third Party Access Codes.

The Victorian Government has announced the sale of all three gas retailer/distributors. Competition between private companies is expected to increase innovation and investment in new technologies. It is expected that Transmission Pipelines Australia Pty Ltd will be sold by the end of April 1999.

Related Reforms:

Water

10 Related Reforms: Water

10.1 Introduction

Under the *Agreement to Implement the National Competition Policy and Related Reforms,* jurisdictions by June 1999 must have implemented the requirements specified in the strategic framework and the processes as endorsed at the February 1994 COAG meeting.

The specific obligations arising from these agreements on water reform have been subject to considerable discussion. Victoria, in line with the requirements set out in the second tranche framework, will provide information on progress on water reform in the following areas:

- Cost reform and pricing;
- Institutional reform;
- Allocation and trading;
- Environment and water quality; and
- Public consultation and education.

10.2 Benefits of reform

Over the past five years the Government's wide ranging reforms have improved the structure of the water industry and the regulatory framework within which it operates. These changes have encouraged efficiency, delivered service improvements and led to lower prices for consumers and improved environmental outcomes.

Most recently, a reform package implemented on 1 January 1998 has reduced the water and sewerage bills for 85 per cent of Victorian properties, with the average household receiving an 18 per cent reduction in its bill. The Government also injected $450 million into the non-metropolitan and rural water authorities, in order to accelerate water quality and environmental projects and to fund a range of projects by rural water authorities and catchment management authorities.

10.3 Cost Reform and Pricing

10.3.1 Full Cost Recovery

(a) Drawing on the advice of the Expert Group and complying with the Agriculture and Resources Management Council of Australia and New Zealand full cost recovery guidelines, jurisdictions are to implement full cost recovery.

Victoria has been implementing the principles of full cost recovery pricing since the early 1990s. Full cost recovery pricing has been implemented successfully for Victoria's major and non-major urban authorities.[3] Victoria's rural water authorities

[3] For the purposes of this paper major urbans are Victoria's 4 metropolitan corporatised service providers – a water/wastewater/major drainage wholesaler and 3 water/wastewater retailers. The non-major urbans are Victoria's 15 non-metropolitan urban water authorities.

began implementing full cost recovery in 1992 and are well placed to meet the 2001 deadline.

10.3.1.1 Major Urban Authorities

In terms of the requirement to price between incremental cost (lower bound) and standalone cost (upper bound), the major urban authorities all set prices within these bounds. Victoria's understanding of the upper bound is that prices should not exceed those which would be charged by an efficient new entrant to the industry. This could be interpreted as the ratio of the industry's Earnings Before Interest and Tax (EBIT) to the Optimised Depreciated Replacement Cost (ODRC) of its assets not exceeding the weighted average cost of capital (WACC).

With respect to the lower bound, the metropolitan industry's earnings after the recent price reductions remain sufficient to cover operating expenditures, including tax, the capital expenditure required to meet service obligations, interest payments and dividends. This indicates that earnings exceed the lower bound.

While exhaustive analysis of the appropriate upper and lower bounds was not undertaken, Victoria's view in early 1997 was that the metropolitan industry's revenues were close to or even above the upper bound. The metropolitan industry's return on assets (EBIT/ODRC) in 1996-97 was around 10 percent. However, the October 1997 price reforms, which delivered an overall 18% reduction in revenue, have brought revenues below the upper limit. Late last year, following extensive debate over the appropriate WACC for determining gas distribution reference tariffs, the Office of the Regulator-General ultimately determined the WACC to be 7.75 percent. While this WACC is not directly transferable to water, it is nevertheless consistent with the view that the current revenues are below the upper bound. The projected long-term return on assets is currently around 5 to 6 per cent.

10.3.1.2 Non-Major Urban Authorities

Victoria's non-major urban authorities (NMUs) also meet the full cost recovery guidelines.

To assess whether NMU revenues comply with the cost recovery guidelines, lower and upper bounds have been estimated for each NMU and graphed alongside revenue levels. With NMUs, the concern was that revenues may not reach the lower bound.

NMUs do not use or report on renewals expenditure. Instead they develop capital expenditure plans which they fund through retained earnings and/or borrowings. Three renewal figures were estimated to establish the lower bound. The three estimates were: 2% of written down replacement costs of fixed assets; 1.5% of written down replacement costs of fixed assets; and an average of "capital expenditure on asset replacement" forecasts for the next five years, expressed in 1997/98 dollars. The first two estimates are based on work done by the Asset Management Group at the Water Agencies Branch which estimated the required expenditure on assets for maintaining current NMU service levels as being 1.5% to 2% of the written down value of fixed assets.

Using these renewal estimates, three lower bounds were estimated for each NMU. Two upper bounds based on WACC values of 8% and 6% respectively were also calculated for each NMU. When revenue from each NMU was graphed alongside its lower and upper bound estimates, revenue levels for all of the NMUs were found to lie between their lower and upper bound estimates.[4]

Although the lower and upper bound values are estimates, Victoria is confident that its NMU revenues meet the cost recovery requirements.

10.3.2 Consumption Based Pricing

(b) Jurisdictions must implement consumption based pricing. Two part tariffs are to be put in place by 1998 where cost effective. Metropolitan bulk water and wastewater suppliers should charge on a volumetric basis.

Victoria's major urbans, non-major urbans and rural water authorities have all implemented consumption based pricing. Two part tariffs, including a volumetric component, have been implemented throughout Victoria.

10.3.2.1 Major Urban Authorities

In relation to wholesale prices, the three metropolitan retail companies have paid bulk water and sewerage charges to Melbourne Water since 1995. For both services, these are presented as two part tariffs, with a fixed component and a volumetric component. A cost allocation model is used to allocate Melbourne Water's overall revenue requirement between the three retailers on the basis of factors which are broadly related to the proportion of assets used to service each retailer and the operating expenditure attributable to each retailer. A long run marginal cost calculation is used to determine the volumetric component of the tariffs paid by each retailer, with the fixed charge making up the residual revenue requirement.

As part of the October 1997 water reforms, the 3 metropolitan retail water authorities introduced two part tariffs comprised of different, more cost reflective, service and usage charges. The fixed service charges for connected properties have replaced water and sewerage property rates. The usage charge has been set having regard for long run marginal cost, which ensures customers are paying for the incremental cost of supply while ensuring the correct pay-for-use signals are being given.

10.3.2.2 Non-Major Urban Authorities

All non-major water and sewerage services are provided on a pay-for-use basis. Victoria's NMUs have been implementing two part tariffs since the early 1990s – all water services were provided on a pay-for-use basis by 1995. The October 1997 reforms enabled those few authorities still using sewerage rates based on property value to progress to a fixed charge and, in some instances, an additional volumetric charge.

Total usage charges account for 61% of the NMU sector's total water tariff revenue.[5]

[4] For more detail see "Item 5: Full Cost Recovery", submitted to the NCC in December 1998.
[5] For more detail see "Item 2: Tariffs for Major Towns", submitted to the NCC in December 1998.

10.3.3 Removal of Cross-Subsidies

(c) Jurisdictions are to remove cross-subsidies, with any remaining cross subsidies made transparent (published).

Given that the underlying purpose of the COAG agreement on water policy is to promote greater efficiency in the use of assets, it is appropriate to apply an efficiency test for assessing cross-subsidies, namely that cross-subsidies are:

- received when one customer or location pays less than its incremental cost of supply for services received;
- paid when one customer or location pays more than the bypass or standalone cost of supply for services received.

By removing water and sewerage rates based on property valuations Victoria has removed its distortionary cross-subsidies. Victoria has commissioned consultants, Marsden Jacob Associates, to develop a methodology for identifying whether, after removing rates based tariffs, there are any remaining cross-subsidies. An initial case study of one of the non-major urban water authorities has established that it has no remaining distortionary cross-subsidies.

10.3.3.1 Major Urban Authorities

Prior to the October 1997 reforms[6], Victoria's metropolitan water tariffs had many deficiencies, which included:

- 70 per cent of revenue for water and sewerage services was raised through rates based charges;
- these charges bore no relationship with the use of the service which gave rise to large cross-subsidies between customers;
- non-domestic customers received a "free allowance" which meant that they only paid for usage once the value of the water consumed exceeded their rates. In practice, most non-domestic customers did not pay a usage charge for water;
- there was no sewage disposal charge for non-domestic customers;
- unconnected land (including vacant land) was liable for the (higher) domestic rate, even if it was zoned residential;
- some properties which were deemed to be "gratuitous" also did not pay usage charges for water and sewage disposal. These non-rateable and exempt properties were exempt from rates by virtue of being non-rateable under the *Local Government Act.*

By removing these deficiencies the October 1997 reforms effectively removed its distortionary cross-subsidies. The retail prices have been completely restructured to correct the deficiencies outlined above:

- water and sewerage property rates have been abolished and replaced by fixed service charges for connected properties;
- charges for unconnected properties have been abolished;
- each retailer now charges different, more cost reflective, service and usage charges;

[6] For more detail on October reforms see "The Melbourne Metropolitan Price Reforms", a paper prepared by the Department of Treasury and Finance, submitted to the NCC in August 1998.

- the sewage disposal charge has been substantially increased and there has been a small increase in the water usage charge;
- the sewage disposal charge is now applied in the non-domestic sector;
- the "free allowance" for non-domestic customers has been abolished; and
- all legislated exemptions have been abolished and a new CSO scheme of rebates for not-for profit organisations has been introduced.

Under the new tariff structure, all customers pay a volumetric price which has been set having regard to Long Run Marginal Cost[7]. Hence it is unlikely that any customers are paying less than the incremental costs involved in supplying them. With the abolition of rates, there is much less variation between the average prices paid by different customers. It is therefore also unlikely that any customers are paying above the standalone costs of supply.

10.3.3.2 Non-Major Urban Authorities

Following the October 1997 reforms, the NMU sector also removed its distortionary cross-subsidies by removing sewerage rates based on property values, in the few cases where this still applied. The reforms also provided the opportunity to remove some cross-subsidies between customer groups, lower or eliminate charges for vacant land and to rationalise demarcations between customer and authority responsibilities.

As with the metropolitan reforms, legislated exemptions for non-rateable and exempt properties have been abolished and a new CSO scheme of rebates for not-for profit organisations has been introduced for both major and non-major urban businesses.

To ensure all inefficient cross-subsidies have been removed, Victoria has commissioned consultants, Marsden Jacob Associates, to develop a methodology for identifying whether, after removing rates based tariffs, there are any remaining cross-subsidies. An initial case study on one of the NMUs using the methodology developed by Marsden Jacob has established that the authority has no remaining distortionary cross-subsidies. However, further case studies will be carried out and the findings will be reviewed by the Department of Natural Resources and Environment and the Department of Treasury and Finance before any decision is made on the Marsden Jacob methodology.

Victoria has removed distortionary cross-subsidies in the NMU sector.

[7] With the exception of fire hydrants, which do not pay for water use.

10.3.4 Community Service Obligations

(d) Where service deliverers are required to provide water services to classes of customers at less than full cost, this must be fully disclosed and, ideally, be paid to the service deliverer as a community service obligation.

Community Service Obligations (CSOs) in Victoria include the provision of concessions to pensioners, rebates for not-for-profit organisations, and the rates and charges relief grant scheme. The Government funds all of these CSOs in a transparent way.

10.3.4.1 Major and Non-Major Urban Authorities

There are three circumstances under which urban water and sewerage services can be delivered at less than full cost:

- a rebate of up to $260 a year is available on the fixed water and sewerage charges of not-for-profit organisations in the fields of education, hospitals or nursing care, religious worship, charity, outdoor sporting or recreation, activities and war veterans organisations. These rebates are explicitly listed on customers' bills. The water authorities are reimbursed for these rebates directly by the Government. (It is the Government, not the water authorities, which determine eligibility for the rebate);
- concessions of up to 50% of service and usage charges are available to pensioners; and
- the Water Relief Grant Scheme, which is administered by the Department of Human Services, provides once-off assistance to eligible domestic customers who are unable to pay their water and/or sewerage bills due to a temporary financial problem.

The Government funds all of these CSOs in a transparent way to ensure authorities continue to charge full cost recovery prices, with the difference between the full cost recovery price and the amount paid by a customer receiving services at less than full cost being funded by the Government.[8]

10.3.5 Rates of Return

(e) Publicly owned supply organisations should aim to earn a real rate of return on the written down replacement cost of assets for urban water and wastewater.

Victoria's major and non-major water authorities earn positive rates of return. Each authority covers operating expenditures, including tax (where applicable), the capital expenditure required to meet service obligations, interest payments and dividends. This indicates that positive rates of return have been achieved.

[8] For more detail see "Item 7: Community Service Obligations", submitted to the NCC in December 1998

10.3.5.1 Major and Non-Major Urban Authorities

As discussed in section 1.1, revenue levels in the metropolitan and non-metropolitan sectors are set within an upper and lower bound. Victoria's major urban and NMU authorities meet the full cost recovery requirements, with revenue levels set above the lower bound but below the upper bound, which indicates that a real rate of return is being achieved.

10.3.6 Rural and Irrigation Services

10.3.6.1 Full Cost Recovery

(a) Where charges do not currently cover the costs of supplying water to users, jurisdictions are to progressively review charges and costs so that no later than 2001 they comply with the principle of full cost recovery with any subsidies made transparent.

Victoria's rural water authorities will recover operational, maintenance and administrative costs, finance charges and renewals annuity for all districts by 2001. Only 11 (of the 34) districts in Goulburn Murray and one in Wimmera Mallee do not currently recover full business costs.

Victoria's rural water authorities are well placed to achieve full cost recovery by 2001. Using normalised revenues based on ten year rolling averages of sales, all authorities have already achieved or will achieve full cost recovery by 2001.

Only 11 (of the 34) districts in Goulburn Murray and one in Wimmera Mallee do not currently recover full business costs. The 11 districts in Goulburn Murray represent only 10% of Goulburn-Murray Water's total rural water services revenue.

With the agreement from their Water Services Committees, both Wimmera Mallee Water and Goulburn-Murray Water will phase full cost recovery prices in for these remaining districts before 2001.

10.3.6.2 Economic Viability and Ecological Sustainability

(b) Jurisdictions are to conduct robust independent appraisal processes to determine economic viability and ecological sustainability prior to investment in new rural schemes, existing schemes and dam construction. Jurisdictions are to assess the impact on the environment of river systems before harvesting water.

Any work on new or existing schemes must meet the legislative requirements of the *Water Act* 1989. The *Act* requires ecological sustainability to be assessed before any revisions can be made to a bulk entitlement order. Since bulk entitlement orders are affected by changes to rural schemes and dam construction, any new investment must prove its ecological sustainability before a new bulk entitlement or the necessary amendments to the existing bulk entitlement will be approved. The "Investment Evaluation Policy and Guidelines (1996)" and "Infrastructure Investment Policy for Victoria (1994)", issued by the Department of Treasury and Finance, ensure that all new investments are economically viable.

Under the legislative framework of the *Water Act* 1989, Victoria's bulk entitlement program, discussed in section 3.1 below, directly deals with the allocation of water to authorities and the environment and provides a comprehensive framework for the trading of surface water entitlements.

Any work on new or existing schemes or dam construction on the system will affect the nature of the bulk entitlement for that system. A new bulk entitlement will be required or the existing bulk entitlement on that system will need to be amended before the work can proceed. Since the *Act* requires any new bulk entitlements or amendments to existing bulk entitlements to be ecologically sustainable, the proposed investment must also be ecologically sustainable.

Victoria's rural water authorities are well placed to meet the full cost recovery requirements by 2001. Victoria's compliance with the full cost recovery principles ensures that, as a minimum, any revenue raised from new schemes will be set above the economically viable lower bound.

Project evaluations must also comply with "Investment Evaluation Policy and Guidelines (1996)" and "Infrastructure Investment Policy for Victoria (1994)", issued by the Department of Treasury and Finance. These documents require new investments to earn rates of return which lie between the lower and upper bounds of the COAG full cost recovery requirements.

In addition to meeting the legislative requirements of the *Water Act* 1998 and complying with full cost recovery principles, extensive pre-feasibility studies, assessing economic viability and ecological sustainability, are undertaken prior to any investment in major rural schemes or dam construction.[9] These pre-feasibility studies are made available to the public.

10.3.6.3 Devolution of Irrigation Management

(c) Jurisdictions are to devolve operational responsibility for the management of irrigation areas to local bodies subject to appropriate regulatory frameworks.

All of Victoria's rural water authorities have Water Services Committees in place. By negotiating district Corporate Plans with their authorities, Water Services Committees provide local input into the management of their irrigation areas.

By setting up Water Services Committees (WSCs), rural water authorities ensure they receive local input into the management of irrigation areas.

An authority's customers, who hold voting rights weighted in proportion to water rights, elect the WSCs. Once elected, WSCs represent either a district or a group of customers.

WSCs provide an invaluable service to rural water authorities and the Government. The function of a WSC may include:

[9] See "Deakin Irrigation Development Pre-Feasibility Study", submitted to the NCC in February 1999.

- negotiating district Corporate Plans with the authority;
- developing its own WSC Corporate Plan;
- negotiating a water services agreement;
- prioritising local investment/replacement program;
- involvement in local salinity management plans;
- communicating strategies between the authority and customers; and
- advising on service delivery issues.

Both the authority and the WSC sign off on the Water Services Agreement, which covers:

- pricing;
- service availability;
- performance standards for each service delivered;
- the authority's expectations of customers; and
- customers' expectations of the authority.[10]

The authorities and WSCs negotiate trade offs between price and service delivery standards. For example, if a WSC wants to pay a lower price it may negotiate a reduction in the level of service it receives from its authority. These types of trade offs have helped to facilitate the move towards full cost recovery. The WSCs understand the principles of full cost recovery and have assisted authorities by negotiating the necessary price, service delivery and work programs to meet the 2001 deadline.

As well as negotiating the Water Services Agreements, WSCs provide a vital communication link between authorities and their customers. Some of the activities undertaken by WSCs include:

- producing newsletters;
- holding field days;
- organising "Hayshed" information sessions;
- performing customer service reviews;
- producing irrigation handbooks;
- providing induction programs for new customers; and
- writing information columns in local press.

[10] For an example of a Water Services Agreement see "Customer Services Agreement between Central Goulburn WSC and Goulburn-Murray Water", submitted to the NCC in February 1999.

10.4 Institutional Reform

10.4.1 Institutional Role Separation

(a) As far as possible the roles of water resource management, standard setting and regulatory enforcement and service provision should be separated institutionally by 1998.

Victoria's institutional arrangements for the provision of water and sewerage services ensure that the responsibility for service provision is as far as possible separated from water resource management, standard setting and regulatory enforcement. Victoria's major urbans, NMUs and rural water authorities are responsible for service delivery, with the Office of the Regulator-General, the Department of Natural Resources and Environment, the Department of Treasury and Finance, the Department of Human Services and the Environment Protection Authority assuming responsibility for the other roles in a manner which minimises conflicts of interests.

10.4.1.1 Major Urban Authorities

Table 1 outlines the Ministerial responsibilities for the major urban authorities.

Table 1: Major Urban Industry: Current Ministerial Responsibilities

Function	
Service Provision	Retail water supply and sewerage services are supplied by three State owned *Corporations Law* companies. Wholesale water supply and sewerage functions are supplied by Melbourne Water Corporation. The Minister for Agriculture and Resources (*Resources Minister*) is the relevant portfolio Minister for these businesses and, under current arrangements, responsible for licensing the retail businesses. The Treasurer also has responsibilities in relation to the financial performance of the businesses and is responsible for appointing Directors to their Boards.
Water Resource Management	Responsibility for water resource management issues throughout the State lies with the Resources Minister.
Standard Setting	

• Customer Service	Minimum standards are established and issued by the Resources Minister through the operating licence. These standards are monitored and reported on by the Office of the Regulator-General (ORG). Under the licence, ORG is responsible for determining the benchmark terms of the customer contract between customers and the relevant retail service provider, in consultation with its customer consultative committee. Also, each retail business consults with its own customer consultative committee on customer matters and to set the terms of the customer contract within the framework established by the ORG. The ORG is a statutorily independent regulatory body, which reports to the Minister for Finance.
• Drinking Water Quality	Water quality standards are contained in the retail businesses' licences, which are issued by the Resources Minister. The Minister for Health is also responsible for health related standards.
• Environmental	The Environment Protection Authority is responsible for setting environmental standards. The Authority sets standards within a policy framework endorsed by Government, and reports to the Minister for Conservation and Environment.
Regulatory	
• Price	The Treasurer was responsible for submitting to Cabinet the pricing reform package introduced in Melbourne in January 1998. Prices are regulated through a pricing order made by the Governor in Council.
• Customer Service and Performance Standards	The Office of the Regulator-General is responsible for monitoring compliance with customer obligations contained in the customer contract and with obligations imposed by Government in the retail water and sewerage licences.
• Business performance	The Treasurer is responsible for monitoring the financial performance of the four metropolitan businesses.
• Asset management	The Resources Minister is responsible for establishing guidelines and monitoring compliance.
• Drinking Water Quality	Enforcement of standards set in the retail licences lies with the Office of the Regulator General. Regulation of public health issues lies with the Minister for Health.
• Environmental	Enforcement of environmental standards lies with the Environment Protection Authority.

In summary:

- Service provision in the metropolitan area is the responsibility of the major urban retail water businesses. The retail businesses are State owned *Corporations Law* companies with an explicit commercial focus.
- The bulk water and bulk sewerage functions are provided by Melbourne Water Corporation (a State owned business created under the *Melbourne Water Corporation Act* 1992), in accordance with a bulk service agreement negotiated between Melbourne Water Corporation and the retailers.
- The service providers are not responsible for setting standards in the key areas of customer service, drinking water quality and the environment.
- Responsibility for water resource management issues essentially rests with the Minister for Agriculture and Resources. In terms of departmental arrangements, resource allocation and catchment management functions are separated from service delivery monitoring arrangements.
- In the key area of environmental regulation, there is an independent regulator, the Environment Protection Authority.
- Victoria has an independent economic regulator, the Office of the Regulator-General, but the role of the Office in relation to the water industry is confined to specific areas - importantly customer service and monitoring and reporting on non-financial performance.

The Treasurer is responsible for regulating metropolitan prices. While under current arrangements the Treasurer is responsible for both metropolitan pricing and the oversight of the financial performance of the businesses, these activities are separated in terms of departmental arrangements.

10.4.1.2 Non-Major Urban Authorities

Table 2 outlines the Ministerial responsibilities for the NMU water industry.

Table 2: NMU Industry: Current Ministerial Responsibilities

Function	
Service Provision	Retail water supply and sewerage services are supplied by fifteen statutory authorities in accordance with the *Water Act* 1989. The Minister for Agriculture and Resources (*Resources Minister*) is the relevant portfolio Minister for these businesses.
Water Resource Management	Responsibility for water resource management issues throughout the State lies with the Resources Minister.
Standard Setting	
• Customer Service	Responsibility for setting minimum standards for customer service also lies with the Resources Minister.
• Drinking Water Quality	The Minister for Health is responsible for setting Drinking Water Quality monitoring standards.

• Environmental	The Environment Protection Authority (EPA) is responsible for setting environmental standards. The EPA monitors effluent standards and reports to the Minister for Conservation and Environment.
Regulatory	
• Price	Under the *Water Act* 1989 tariffs must be set in accordance with the authority's Corporate Plan. The Resources Minister has the power to veto NMU pricing decisions.
• Customer Service and Performance Standards	The Resources Minister is responsible for customer service. Authorities also develop Customer Participation Strategies which customer input into developing service levels.
• Business performance	The Resources Minister is responsible for monitoring the financial performance of the NMUs. The Department of Treasury and Finance is also involved with the monitoring of financial performance to assist with the dividend and revenue determinations.
• Asset management	The Resources Minister is responsible for establishing guidelines and monitoring compliance.
• Drinking Water Quality	Regulation of public health issues lies with the Minister for Health. The Department of Health monitors Drinking Water Standards.
• Environmental	Enforcement of environmental standards lies with the Environment Protection Authority.

In summary:

- Service provision in the regional urban areas is provided by 15 non-major urban retail water businesses who have skills-based boards and a commercial focus.
- Bulk water is either provided by rural water authorities and/or a financially ringfenced separate business units.
- The service providers are not responsible for setting standards in the key areas of customer service, drinking water quality and the environment.
- Responsibility for water resource management issues essentially rests with the Minister for Agriculture and Resources. In terms of departmental arrangements, resource allocation and catchment management functions are separated from service delivery monitoring arrangements.
- In the key area of environmental regulation, there is an independent regulator, the Environment Protection Authority.

While the Resources Minister is responsible for both service delivery and water resource management, these activities are separated in terms of departmental arrangements, and there is significant involvement from the Department of Treasury and Finance. The Department of Human Services and the EPA are responsible for quality regulation. These arrangements ensure no conflicts of interest exist.

10.4.1.3 Rural Water Services

The institutional arrangements for rural water services are based on an integrated management approach. Attachment 2 outlines the institutional arrangements for rural water services.

Attachment 2 illustrates the relationship between the various regulatory bodies and service providers. The responsibilities can be summarised as follows:

- Service provision is the responsibility of the five rural water authorities. These statutory authorities deliver rural services in accordance with the *Water Act* 1989.
- The Minister for Agriculture and Resources and the Minister for Conservation and Land Management are responsible setting standards in the key areas of resource management, corporate planning and the environment.
- The Water Services Committees have effectively assumed the responsibility for determining rural water prices. These committees negotiate the prices with the authorities and no price will be set without their agreement. When agreement cannot be reached the issue is referred to the Minister for Agriculture and Resources.
- The recently formed Catchment Management Authorities (CMAs), discussed in section 4.1, are responsible for performing resource management duties. These authorities are working closely with rural water authorities to develop an agreement on the management of the catchment (eg. Goulburn Broken CMA's tripartite agreement with Goulburn-Murray Water and Goulburn-Valley Water). The CMAs report to the Minister for Conservation and Land Management.

10.4.2 Commercial Focus for Metropolitan Service Providers

(b) Metropolitan service providers must have a commercial focus, whether achieved by contracting out, corporatisation etc, to maximise efficiency of service delivery.

Victoria's metropolitan service providers are State owned *Corporations Law* companies. They have skills-based boards, pay dividends and tax equivalents, and compete by comparison with each other over customer service and performance standards.

The three metropolitan retailers are State owned *Corporations Law* companies, subject to the same legislative requirements as private companies.

Melbourne Water Corporation is a statutory business corporation under *the Melbourne Water Corporation Act* 1992. Melbourne Water Corporation has a statutory charter to act in a commercial manner.

All four entities have skills-based boards appointed by the Treasurer, pay dividends to the shareholder based on their profitability, and pay tax equivalents under the State Tax Equivalent Regime system. The Business Enterprises Branch of the Department of Treasury and Finance monitors the financial performance of these businesses.

The Office of the Regulator-General (ORG) monitors the retail businesses for comparative performance. The retail businesses use the ORG's annual performance report to compete by comparison with each other over the quality of service they provide to their customers.

10.4.3 Performance Monitoring and Best Practice

(a) ARMCANZ is to develop further comparisons of interagency performance with service providers seeking best practice.

Victoria's major and non-major urban authorities participate in a number of performance monitoring and benchmarking programs, including those carried out by the Water Services Association of Australia (WSAA) and the Victorian Water Industry Association (VWIA). The rural authorities are currently participating in the irrigation benchmarking project being carried out by the consultants, Barraclough and Co, for the High Level Steering Group on Water.

The WSAA performance monitoring and benchmarking program includes the major urban businesses and the large non-major urban authorities. WSAA also provides contracted services to the Victorian Water Industry Association for benchmarking the Urban Water Sector in Victoria.[11]

The ORG collects comprehensive data on service delivery performance of the major urban retailers and publishes a comparative report annually. An independent auditor verifies the collection processes for data provided by the companies to ORG.

Independent audits of the asset management practices of the major urban retail companies have commenced for the first time. This will give confidence that service standards can be maintained in the future.

There are also routine monitoring and performance comparisons of the industry through the corporate plans and annual reports submitted to Government. Part of this involves electronic data transfer.

Victoria is also involved in the performance monitoring and benchmarking pilot study for rural water authorities, now in its second year, which is being undertaken by consultants, Barraclough and Co, for the High Level Steering Group on Water.

[11] See "The VWIA Urban Water Review", submitted to the NCC in December 1998.

10.5 Allocation and Trading

10.5.1 Comprehensive System of Water Entitlements

(a) There must be comprehensive systems of water entitlements backed by separation of water property rights from land title and clear specification of entitlements in terms of ownership, volume, reliability, transferability and, if appropriate, quality.

Under the legislative framework of the *Water Act* 1989, Victoria's bulk entitlement program directly deals with the allocation of water to authorities and the environment and provides a comprehensive framework for the trading of surface water entitlements. This program has reached the stage where flow sharing arrangements at approximately 70% of the diversion sites across the State have been negotiated and agreed with stakeholders.

The Victorian *Water Act* 1989 is the legislative framework which enables water entitlements to be clearly defined and provides the statutory basis for environmental allocations.

Water may be allocated through the bulk entitlement provisions of the *Water Act* 1989 or via the licensing provisions. In each case clear tradeable volumetric entitlements to water are established.

Victoria's comprehensive system of water entitlements is based on the establishment of bulk entitlements. Bulk entitlements replace the previous ill-defined bulk rights to water and define the relationship between the Crown, bulk entitlement holders, users, and the environment.

The process by which bulk entitlements are established is complex, with some systems requiring up to three years of public consultation with stakeholders before the entitlement is finalised.[12] Once established, bulk entitlements are explicitly available from a specified location and source; have an exclusive share granted to the authority and no other authority; are tradeable; and are enforceable at law through proper monitoring and policing arrangements.

There are three types of bulk entitlements: source; delivery; and hybrid source/delivery.

Source entitlements provide the right to harvest direct from a waterway (weir or storage). Source entitlements specify the rights to all or some of the following:

- the amount of water that can be drawn from a water way;
- share of storage capacity;
- share of inflows;
- share of carrier capacity;
- share of losses; and
- passing flow regime.

[12] For more detail see "The Bulk Entitlement Conversion Process (Report No. 2)", submitted to the NCC in February 1999.

Delivery entitlements provide the right to divert from a regulated waterway operated by another authority. Delivery entitlements specify the rights to:

- the maximum and annual volume that can be diverted at a specified point;
- the security of the entitlement;
- a restriction policy;
- headworks and delivery financial obligations;
- measurement and reporting obligations; and
- water accounting requirements.

Hybrid entitlements include aspects of both source and delivery entitlements which have been adapted for special circumstances.

Bulk entitlements may be issued to authorities (any person empowered to carry out a function under the *Water Act* 1989) and for the environment. A register of entitlements lists the entitlement holders and records the nature of the entitlement. Where appropriate the register also details the appointment of a storage operator and resource managers for each entitlement. Advanced hydrological models are used to quantify sharing arrangements, document benchmark water flows in each system, and review exchange rates as required. Basin water accounts are being developed and will be published annually for each system.

There are differences between the entitlements held by urban water authorities and those held by rural water authorities.

Urban entitlements have no subsidiary retail entitlements. Rather than breaking bulk entitlements held by urban authorities into subsidiary retail entitlements, statutory obligations require urban authorities to deliver water from their bulk entitlements to urban customers on demand. The bulk entitlement can be traded but there is no trading at the retail (urban customer) level.

Rural bulk entitlements establish the primary property right at the retail level to maximise water trading. They are an aggregation of retail entitlements and distribution system losses. When trades occur at the retail level the bulk entitlements are adjusted to reflect the transfer between retail entitlement holders. Retail entitlement trading is discussed below in section 3.2.

Rural water authorities own their entitlements' distribution losses. This provides an incentive for rural authorities to minimise system losses in order to benefit from the use of any saved water. Savings of losses may be traded.

The bulk entitlement program ensures secure water property rights, separate from land title, are in place. The program also enables the provision of water for the environment, either by establishing bulk entitlements for the environment or by imposing conditions which specify an environmental flow regime on entitlements held by other authorities. This program has reached the stage where flow sharing arrangements at approximately 70% of the diversion sites across the State have been negotiated and agreed with stakeholders[13]. At the vast majority of sites this has

[13] For more detail on progress see "Bulk Entitlement Conversions – Progress Report as at February 1999", submitted to the NCC in February 1999.

resulted in improved environmental outcomes. Formal bulk entitlements are being progressively granted and regulatory systems, to monitor and manage the entitlement system including water trading, are being implemented. A forward implementation program outlining Victoria's work program for the next three years is discussed below in section 3.5.

Licensed diversions from unregulated waterways are not included within the bulk entitlement regime. Instead the Minister has the power to issue licences. This power has been delegated to the rural water authorities. The licences provide a tradeable entitlement to water. Licensed diversions on unregulated waterways account for approximately 5 percent of water diverted.

When considering an application for a new licence, Section 40 of the Water Act 1989 ensures that the environment and existing water users are protected. These provisions are identical to those that apply to bulk entitlements.

Streamflow Management Plans are prepared in catchments where there is a significant demand for water. The objective of these plans is to ensure that the water resources are managed on a sustainable basis. The plans put in place sharing arrangements between the environment and other users and trading rules appropriate to the local conditions. These plans are discussed in section 3.3.

10.5.2 Water Trading

(b) Arrangements for trading in water entitlements must be in place by 1998. Water should be used to maximise its contribution to national income and welfare.

Where cross border trade is possible, trading arrangements must be consistent between jurisdictions and facilitate trade. Where trading across State borders could occur, relevant jurisdictions must jointly review pricing and asset valuation policies to determine whether there is any substantial distortion to interstate trade.

The Victorian *Water Act* 1989 enables both temporary and permanent transfers of water entitlements. With the *Act's* sound property rights system in place, water trading is already starting to play an ever-increasing role in agricultural production. In 1997/98 many irrigators only coped with the low allocations of water by turning to the water market. This prompted record levels of water trading with permanent transfers up to 20,000ML and temporary transfers of up to 250,000ML. While temporary interstate trade has been possible since 1995, Victoria is an active participant in the MDBC's pilot project, confined to high-security licences between Nyah and the Barrages, which has now processed 9 permanent interstate trades. Victoria is keen for the project to be expanded and is currently working with its interstate trading partners to facilitate the extension of the project.

Prior to the implementation of the bulk entitlement program, irrigators' rights (water rights, licences and attached 'sales' allocations) existed for 80 years. However, these rights had no defined level of security and, in an environment of increasing competition for water, the security of these rights would have been eroded. Under the bulk entitlement program these irrigators' rights are being better defined, and when aggregated with the other primary entitlements in a system, constitute the bulk

entitlement for that system. The better-defined water rights are essentially the same as the previous irrigators' rights but have the added security of being part of a bulk entitlement rather than being attached to the previous ill-defined bulk allocations.

Both licences and water rights have been temporarily transferable since 1989.

Victoria introduced permanent transfers of water rights in 1991/92 and now has an active water market which enables water to move to its highest value use. Since 1991/92 Victoria has experienced a rapid growth in both temporary and permanent transfers since that date. Permanent transfers are up to 20,000ML per season and temporary transfers of up to 250,000ML per season, depending on seasonal conditions.

Victoria's trading rules do not create significant impediments to trade. The rules have been developed to ensure that trades do not adversely affect third parties (ie. channel capacity constraints and security of supply) or the environment (ie. salinity). The rules include:

- exchange rates, which provides the buyer with the same security of supply as the seller;
- 2% per annum limit on permanent transfers out of one system to slow the rate of structural adjustment in order to manage community concerns;
- compliance with Murray-Darling Salinity and Drainage Strategy;
- channel capacity constraints must be considered before a trade is approved; and
- certain statutory requirements (e.g. the seller must advertise 28 days in advance) must be met for the less frequent and more expensive permanent trades.

The only rule which might be considered to be restricting trade is the 2% per annum limit on permanent transfers out of a system. The other rules which may appear restrictive, like the "no increase in saline" drainage rule, exist to minimise any harmful environmental impacts of water trading.

The 2% per annum limit rule was introduced to allay fears that increased permanent trade could cause rapid structural adjustment which may have undesirable social impacts on a particular region. At this stage, trades out of any of the systems have not reached the 2% per annum limit. However, the Victorian Government will consider removing the rule as it develops more sophisticated trading rules.

Water trades may occur through direct farmer to farmer transactions, through a water broker or via a water exchange. In response to requests from its customers, Goulburn-Murray Water established a water exchange dealing in temporary transfers in September 1998. The Goulburn-Murray Water region is where there is the biggest need for an exchange - most of the water is there, and it has the dairy farmers who are keen to make up for their reliance on "sales" water. The new exchange handles temporary transfers across all northern Victoria, including Sunraysia, and aims to make price information more readily available with a view to facilitate and encourage temporary water trading, particularly amongst irrigators who have not previously traded water. The pool price has reached $200/ML on the Goulburn, and $80/ML on the Murray. The volume traded at each weekly exchange has ranged between approximately 400ML to 1,400ML, mainly on the Goulburn System.

The water exchange accounts for about 10 percent of the water traded but plays a very important role in providing price information to the market. To complement the introduction of the water exchange, Victoria's rural water authorities have agreed to include a box on their transfer application forms for voluntary disclosure by each buyer of price paid for the water. This will be used to publish regular pricing information in the local press, which should prove a neat and economical way of overcoming the major irrigator concern with the market.

As water markets are already operating successfully for a large part of the State, the main issue that needs to be considered is whether the metropolitan industry's structural arrangements would enable gains from water trading. The Water Reform Unit, together with the Department of Natural Resources and Environment, has established a Tradeable Water and Entitlements Project to carry out this study.

While temporary interstate trade has been possible since 1995, Victoria has been participating in the MDBC's pilot project for permanent interstate trade. The pilot project, confined to high-security licences between Nyah and the Barrages, aims to assist the irrigation industry become more environmentally and economically sustainable by facilitating the movement of water from current irrigation activities to higher value irrigation developments that are subject to rigorous environmental clearance processes.

Since commencement of the project, nine trades have taken place with water permanently moving from NSW to Victoria; Victoria to South Australia; and NSW to South Australia. The trades have resulted in the movement of 1.77 gigalitres of water into high value viticulture enterprises.

Victoria is keen for the project to be expanded and is currently working with its interstate trading partners, through a MDBC working group, in an effort to resolve cost recovery and security of supply issues which need to be addressed before the project can be extended.

10.5.3 Water for the Environment

(b) Jurisdictions must develop allocations for the environment in determining allocations of water and should have regard to the relevant work of ARMCANZ and ANZECC.

Best available scientific information should be used and regard had to the inter-temporal and inter-spatial water needs of river systems and groundwater systems. Where river systems are overallocated or deemed stressed, there must be substantial progress by 1998 towards the development of arrangements to provide a better balance in usage and allocations for the environment.

Jurisdictions are to consider environmental contingency allocations, with a review of allocations five years after they have been initially determined.

Water allocations for the environment are being addressed in two phases: firstly through the process of conversion to bulk entitlements where there is the opportunity for environmental managers to negotiate improved environmental flows or secure bulk entitlements for the environment; in this phase, provisions for environmental water will

also be made in Streamflow Management Plans for unregulated rivers. In the second phase, stressed basins will be identified and addressed through the implementation of Streamflow Management Plans and River Restoration Plans.

The Victorian *Water Act* 1989 requires the Minister to consider the environment when making water allocation decisions.

As discussed in section 3.1, the bulk entitlement program enables the provision of water for the environment in regulated systems either by establishing bulk entitlements for the environment or by imposing conditions which specify an environmental flow regime on entitlements held by other authorities.

This method of providing water for the environment has been successful to date because the negotiation between stakeholders, undertaken as part of the bulk entitlement conversion process, ensures that environmental managers, irrigators, water authorities and other groups have been consulted and agree before the entitlement is finalised. There is recognition by the irrigators of their dependence on healthy rivers to sustain their business and therefore, of the need to provide water for the environment. It should be noted that in 90% of these negotiations, some improvements to environmental flow regimes were achieved. For example, the environmental flow regime specified in conditions on the bulk entitlement held by Goulburn-Murray Water for Lake Eildon provided an increase in minimum daily flows from 120ML/day to 250ML/day and a flushing flow of 80 000ML in November for wetland watering.

On unregulated rivers, not covered under the bulk entitlement program, the management of diversions will be undertaken through the development and implementation of streamflow management plans (SMPs)[14]. SMPs will establish environmental objectives, immediate and, where necessary, long term environmental flow provisions, mechanisms to achieve long term environmental flows provisions, rostering rules, trading rules, and rules covering the granting of any new licences. In addition, they will include provisions for monitoring and compliance and plan review. SMPs are developed in consultation with the relevant group of stakeholders with a general public consultation phase. Victoria will have a long-term program of SMP development undertaken by the Rural Water Authorities. The criteria for setting priorities for SMPs and the work program for the next three years are discussed in section 3.5.

River Restoration Plans (RRPs) will be developed for rivers where the environmental provisions made through the Bulk Entitlement process are considered to be insufficient to meet environment objectives[15]. RRPs will build on the current environmental provisions. They will set clear environmental objectives, set priorities for any additional water, identify mechanisms to provide additional water, identify complementary instream and riparian habitat works that will maximise environmental gains and establish agreed cost sharing for implementation. The criteria for setting priorities and the work program for the next three years is discussed in section 3.5 below.

[14] For more detail see "Streamflow Management Plans" folder, submitted to the NCC in February 1999.

[15] For more detail see "River Restoration Plans" folder, submitted to the NCC in February 1999.

In addition to the bulk entitlement conversion process, SMPs and RRPs, there is the opportunity for any further water rights that are required for environmental purposes to be acquired through market mechanisms with cost sharing to be determined by government. Conversely, where there is an entitlement for the environment it can be, and in some cases has been, traded temporarily.

10.5.4 Groundwater

(1.1) Clause 4(a) of the COAG water resource framework has been interpreted as requiring a working "comprehensive system" of establishing water allocations to be in place which recognises both consumptive and environmental needs. This system is to be applicable to both surface and ground water. However, applications to individual water sources will be determined on a priority needs basis.

In relation groundwater pricing, private withdrawals of groundwater are not subject to the pricing clauses of the 1994 Framework Agreement.

A rigorous statutory licensing process monitors Victoria's groundwater allocation system. These groundwater licenses are linked to community driven Groundwater Management Plans, which are being implemented on a priority needs basis. A few of Victoria's non-metropolitan urban water authorities make a small number of non-private withdrawals. These authorities meet the full cost recovery pricing requirements, discussed in section 1.2.2, when they on-sell groundwater withdrawals.

Victoria controls the extraction of all groundwater through a rigorous statutory volumetric licensing process. The construction of all groundwater bores including production and investigation bores is also subject to a licensing process. Licensed drillers must construct all groundwater bores.

Victoria reviewed its groundwater management structure in 1997. The State Groundwater Council appointed by the Minister responsible for water resources undertook this work. The Council proposed a management regime based on sustainable development and a cost sharing arrangement between Government and groundwater users.

Victoria has identified over 50 groundwater management areas in the State where there is a potential for groundwater development or where groundwater development has already occurred.

The sustainable yield of the aquifers in these areas has been quantified, as has the volume of groundwater allocated to users. Within these areas a Permissible Annual Volume (PAV), which is the optimum level of allocation, has been set to reflect the sustainable yield of the aquifer.

Victoria's groundwater management regime is based on sustainable development through the establishment of community driven Groundwater Management Plans. The need to develop Groundwater Management Plans is determined by demand on the resource. When resource commitments reach 70 per cent of the PAV, groundwater community management groups are established and more intensive management is

triggered. The work program priorities for implementing Groundwater Management Plans are discussed in section 3.5.

In relation to the framework's pricing requirements, Victoria's non-private withdrawals are carried out by only a few non-metropolitan urban water authorities and most of the rural authorities. There are no large cooperatives that act as wholesalers in Victoria and when selling groundwater withdrawals to their customers, Victoria's water authorities ensure the full cost recovery pricing requirements are met. Victoria's full cost recovery achievements are discussed in section 1.1, which establishes that non-metropolitan urbans authorities are meeting the requirements and the rural authorities well placed to meet the requirements by 2001.

Charges are already recovered from licensed groundwater users. The charge comprises a service fee and a volumetric component.

10.5.5 Victoria's Implementation Program

(1.2) For the second tranche, jurisdictions should submit individual implementation programs, outlining a priority list of river systems and groundwater resources, including all river systems which have been over-allocated, or are deemed to be stressed and detailed implementation actions and dates for allocations and trading to the NCC for agreement, and to Senior Officials for endorsement.

Victoria's Implementation Program, detailing the priority work programs for bulk entitlement conversions, Streamflow Management Plans, River Restoration and Groundwater Management is provided in Attachment 1.

10.6 Environment and Water Quality

10.6.1 Integrated Resource Management

(a) Jurisdictions must have in place integrated resource management practices, including:

- *demonstrated administrative arrangements and decision making processes to ensure an integrated approach to natural resource management and integrated catchment management;*
- *an integrated catchment management approach to water resource management including consultation with local government and the wider community in individual catchments; and*
- *consideration of landcare practices to protect rivers with high environmental values.*

Progress on integrated resource management has been made through the establishment of 9 Catchment Management Authorities (CMAs) in non-metropolitan Victoria. The CMAs are responsible for strategic planning for land and water resources management in their region and the provision of integrated waterway and floodplain management. In addition, they provide advice to Government on priorities for action and investment.

Victoria revised its catchment management arrangements in March 1997 to establish nine Catchment Management Authorities (CMAs). The CMAs are governed by boards reporting to the Minister. They are responsible for the development of integrated regional management plans to guide future investment of Government funding and local rates in the catchment. Once Government agrees to the regional management plans and the annual CMA levies on property owners in the catchment, the CMAs are accountable for catchment management outcomes.

CMAs are responsible for:

- the development and coordination of implementation of the Regional Catchment Strategies (RCSs);
- the provision of advice on both federal and State resourcing priorities at a regional level;
- the provision of integrated waterway and floodplain-related service delivery; and
- the negotiation with the Department of Natural Resources and Environment of an annual project-based works program for its regional staff which is in line with the implementation of the RCS.

The majority of a CMA's work lies in the implementation of the RCS. A typical RCS's objectives would include:

- developing an integrated vision for natural resource management in the region
- establishing key natural resource management priorities for the region on the basis of economic, social and environmental benefits
- consolidating the natural resource management strategies already in place;
- identifying gaps and putting in place actions to rectify these
- accelerating implementation through other funding sources;
- improving the delivery of on-ground works through strategic planning, improved efficiency and ongoing landholder involvement; and
- improving the viability of catchment landholders by acknowledging and addressing social economic and environmental constraint.

CMAs work closely with rural water authorities, landowners, local government, landcare groups, environmental groups and the community to ensure effective implementation of their RCSs. Each CMAs develop detailed action plans and work programs for the priority issues or areas within their region in consultation with stakeholders and the general community. These action plans include river management and water quality strategies, floodplain strategies, biodiversity strategies, vegetation management strategies, communication strategies, nutrient management strategies and land and water salinity management plans[16]. CMAs recognise the importance of local government in achieving the objectives of their RCSs and are developing partnerships with local government and water authorities in their region. CMAs and rural water authorities are also responsible for the coordination of Landcare groups within the regions and therefore provide support to Landcare and ensure that activities undertaken by these groups are coordinated to achieve regional natural resource management objectives.

CMAs provide increased community input to, ownership of and commitment to decisions on catchment management. They are also improving the integration and

[16] See "Land and Water Salinity Management Plans" folder, submitted to the NCC in February 1999

coordination of all relevant service delivery programs in a region by either significantly influencing or being directly responsible for all relevant service delivery. By integrating the planning and service delivery for catchment management, CMAs also ensure that all government funding, including both State and Commonwealth, together with local funding through rates are directed towards the key land and water management priorities within the region.

10.6.2 National Water Quality Management Strategy (NWQMS)

(b) Support ANZECC and ARMCANZ in developing the National Water Quality Management Strategy (NWQMS), through the adoption of market-based and regulatory measures, water quality monitoring, catchment management policies, town wastewater and sewerage disposal and community consultation and awareness.

The NWQMS is implemented in Victoria through a range of mechanisms. The strategic directions of the NWQMS are implemented through the catchment management arrangements in the development of Regional Catchment Strategies, their component action plans and in the regional schedules of State Environmental Protection Policies (SEPPs). Guidelines produced as part of the Strategy are being considered for use as the basis for revising related state guidelines.

The strategic directions of the NWQMS as outlined in the *Policies and Principles* document are implemented through the institutional framework for catchment management. The process of identifying environmental values and setting water quality objectives at the regional scale is undertaken by regional communities under the auspices of a CMA through the development of their Regional Catchment Strategy (RCS) and through the development of water quality and nutrient management action plans. In some areas where it is considered to be a priority, regional schedules to the State Environment Protection Policy – *Waters of Victoria,* may also be developed. All of these regional water quality objective setting processes use the *ANZECC Australian Water Quality Guidelines for Fresh and Marine Waters* as the minimum standards to be adopted and in many cases, set regional water quality objectives that are more stringent that those recommended.

The technical guidelines for specific activities and industries which are regarded as nonpoint source activities, are adopted in implementation of these action plans and SEPP schedules. Work programs are developed which utilise the information available in these documents.

The technical guidelines for specific industries which are managed as point source discharges are used in the development of environmental performance benchmarks for use in the development of licence conditions.

10.7 Public Consultation and Education

(a) Jurisdictions must have consulted on the significant COAG reforms (especially water pricing and cost recovery for urban and rural services, water allocations and trade in water entitlements). Education programs related to the benefits of reform should be developed.

Victoria has widespread public consultation and education throughout its water industry. Customer consultative committees in the urban sector and water services committees in the rural sector ensure adequate consultation takes place. Substantial stakeholder involvement is also a key part of the process to develop bulk water entitlements and environmental flows.

Formal mechanisms for public consultation used by the authorities include:

- each major urban company has a customer consultative committee as required by its operating licence;
- all NMUs have or are developing a customer consultative committee as part of an overall Customer Participation Strategy; and
- all rural water authorities have water service committees for major services.

Customer contracts in the major urban sector set out customers' basic rights and obligations in dealing with their retail service provider. As discussed in section 10.4.1.1, the Office of the Regulator-General (ORG) is responsible for determining the benchmark terms of the customer contract between customers and the relevant major urban retail service provider, in consultation with its customer consultative committee. This benchmark customer contract ensures retailers have adequate consultation mechanisms in place, with each retail business is consulting with its own customer consultative committee on customer matters and setting the terms of the customer contract within the framework established by the ORG.

Although not governed by licensing arrangements, the NMUs also have customer consultative arrangements in place. Each NMU authority develops its own Customer Participation Strategy outlining the relationship between the authority and its customers. These Strategies include mechanisms for public consultation and education.

During the implementation of the October 1997 price reforms, where rates based on property values were replaced with more cost reflective service and usage charges, only minimal consultation took place. Once the reforms were announced, the Government, with assistance from the retail water authorities, undertook an extensive media campaign to ensure customers understood the implications of the reforms.

As discussed in section 10.3.6.3, Water Services Committees (WSCs) play an important role in the implementation of full cost recovery for rural and irrigation services. The rural water authorities use their WSCs to communicate the objectives of the reform. Experience has shown WSCs to be receptive to the implementation of full cost recovery. WSCs assist the rural authorities by negotiating the necessary pricing and service arrangements to meet the 2001 deadline.

Section 10.5.1 outlines Victoria's bulk entitlements program. This program ensures adequate consultation and stakeholder involvement occurs before bulk entitlements are finalised. Experience to date has shown that successful public consultation is time consuming, with some systems requiring up to three years of public consultation with stakeholders before the entitlement is finalised.

Public education is also addressed through variety of public education programs. These programs include:

- National Water Week: all Victorian water authorities participate in National Water Week;
- Waterwise Program: which covers 75% of water customers in Victoria;
- Waterwatch: where the Department Natural Resources and Environment distributes material and encourages community monitoring of water quality;
- major urban water retailers have education and schools programs as part of their water conservation plans, which they must submit as a condition of their operating licences. Each major retailer has an Internet site for education purposes and produces educational brochures for distribution;
- NMUs also have education programs in place and distribute educational materials to the community;
- rural water authorities have regular radio spots and media releases to announce water allocations and trading news. They also distribute educational videos on the dangers of swimming in open channels; and
- both the major urbans and NMUs produce television commercials to educate the public about the importance of Victoria's water resources.

10.8 Attachment on Victorian Programs for Implementation of COAG Water Resource Reforms

10.8.1 Water Allocation Framework

The Victorian 1989 Water Act established the legislative framework to enable water entitlements to be clearly defined and provided the statutory basis for environmental allocations.

The bulk entitlement program directly deals with the allocation of water to authorities and the environment and provides a comprehensive framework for the trading of surface water entitlements. This program has reached the stage where flow sharing arrangements at approximately 70% of the diversion sites across the State have been negotiated and agreed with stakeholders. At the vast majority of sites this has resulted in improved environmental outcomes. Formal bulk entitlements are being progressively granted and regulatory systems, to monitor and manage the entitlement system including water trading, are being implemented.

WATER ALLOCATION AND TRADING FRAMEWORK
Bulk Entitlement Program

1999

Bulk Entitlements finalised and granted
- All Murray Bulk Entitlements to Urban and Rural Water Authorities
- Campaspe System Bulk Entitlements
- Maribyrnong
- Central Highland urbans

Conversion process actively progressed
- Thomson/Macalister Bulk Entitlements
- Melbourne
- Tarago System
- Barwon River
- Ovens River
- Broken River

Management of Entitlements
- New data base completed and populated
- Basin accounts published (for completed systems)
- Progress documentation of model runs

2000

Bulk Entitlements finalised and granted
- Thomson/Macalister Bulk Entitlements
- Melbourne
- Tarago System
- Barwon River
- Ovens River
- Broken River

Conversion process actively progressed
- Loddon River
- Birch Creek
- Wimmera-Mallee D&S System
- Grampians urbans

Management of Entitlements
- Basin accounts published (for completed systems)
- Resource Management arrangements reviewed
- Progress documentation of model runs

2001

Bulk Entitlements finalised and granted
- All remaining major systems
- Progress documentation of model runs

10.8.2 Streamflow Management Plans

On unregulated rivers, not covered under the bulk entitlement program, the management of diversions will be undertaken through the development and implementation of streamflow management plans (SMPs). SMPs will establish environmental objectives, immediate and, where necessary, long term environmental flow provisions, mechanisms to achieve long term environmental flows provisions, rostering rules, trading rules, and rules covering the granting of any new licences. In addition, they will include provisions for monitoring and compliance and plan review. SMPs are developed in consultation with the relevant group of stakeholders with a general public consultation phase. Victoria will have a long-term program of SMP development undertaken by the Rural Water Authorities.

Criteria for Setting Priorities for SMPs

In developing the work program for the development of SMPs, the following criteria were used to set priorities.

- level of consumptive use (ie. ecological impact due to changed flow regimes)
- conservation value
- demand for new licences
- frequency of rosters/restrictions
- history of management problems
- recreational value
- community expectations of the need for a SMP

Table One. Three Work Program for Streamflow Management Plans

Timing	River	Responsible Water Authority
In preparation *Completion date:*		
Dec 1999	• Merri River (draft report prepared)	Southern Rural Water
Dec 1999	• Gellibrand River (draft report prepared)	Southern Rural Water
Jun 2000	• Moorabool River	Southern Rural Water
Jun 2000	• Upper Maribyrnong River	Southern Rural Water
Dec 1999	• Upper Latrobe River	Southern Rural Water
Mar 2001	• Kiewa River	Goulburn Murray Water
Mar 2001	• Hoddles Creek	Melbourne Water
To commence in 1999	• Avon/Valencia/Freestone Creeks	Southern Rural Water
	• Barwon/Leigh Rivers	Southern Rural Water
	• Hopkins River	Southern Rural Water
	• Mitchell River	Southern Rural Water
To commence in 2000	• Morwell River	Southern Rural Water
	• Tarra River	Southern Rural Water
	• Narracan Creek	Southern Rural Water
	• Snowy River	Southern Rural Water
	• Tambo River	Southern Rural Water
To commence in 2001	• Bunyip/Tarago River	Southern Rural Water
	• Moe River	Southern Rural Water
	• Albert River	Southern Rural Water
	• Dandenong Creek	Southern Rural Water
	• Fitzroy River	Southern Rural Water
To be commenced by 2001 *Note: These SMPs will all be commenced by 2001. A number will be completed. Priorities within this group have still to be determined*	• Ovens River above Myrtleford	Goulburn Murray Water
	• Yea River	Goulburn Murray Water
	• King Parrot Creek	Goulburn Murray Water
	• Seven Creeks	Goulburn Murray Water
	• Delatite River	Goulburn Murray Water
	• Nariel Creek	Goulburn Murray Water
	• Loddon above Cairn Curran	Goulburn Murray Water
	• Woori Yallock Creek	Melbourne Water
	• Badgers Creek	Melbourne Water
	• Watts River	Melbourne Water
	• Stringy Bark Creek	Melbourne Water
	• Wandon Yallock Creek	Melbourne Water
	• Little Yarra	Melbourne Water
	• Steels Creek	Melbourne Water
	• Diamond Creek	Melbourne Water
	• Plenty River	Melbourne Water
	• Merri Creek	Melbourne Water

10.8.3 Stressed Rivers

River Restoration Plans (RRPs) will be developed for rivers where the environmental provisions made through the Bulk Entitlement process are considered to be insufficient to meet environment objectives. RRPs will build on the current environmental provisions. They will set clear environmental objectives, set priorities for any additional water, identify mechanisms to provide additional water, identify complementary instream and riparian habitat works that will maximise environmental gains and establish agreed cost-sharing for implementation.

Criteria for Setting Priorities for River Restoration Plans

The development of a work program for undertaking river restoration plans for 'flow stressed' rivers involved two components

1 The identification of the range of 'flow-stressed' rivers. These were identified as rivers where there were significant changes in
   - Total annual flow
   - Seasonality of flow
   - Variability of flow
   - Flooding regimes
   - Duration and frequency of low flow periods
   - Duration and frequency of zero flow periods

2 Establishment of priorities for action. These priorities were established using the following criteria
   - Primary factors
     Environmental significance
     Potential for restoration including
     Degree of flow stress and capacity to overcome this
     Other limiting factors eg water quality, fish passage, riparian condition
     Potential for habitat improvement
     Environmental gain
     Feasibility

   - Secondary factors
     Existing knowledge of system
     Public interest
     Capacity to assess response
     Scale
     Appropriateness as a case study

Three Year Work Program

Table 2. Three Work Program for Stressed Rivers Program

River	Responsible Authority	Timing
Thomson River d/s Cowwarr Weir	West Gippsland CMA	Case study: Commence July 1999 Draft - Sept 2000
Avoca River	North Central CMA	Case study: Commence July 1999 Draft - Sept 2000
Loddon River	North Central CMA	Commence Jan 2001 Draft Sept 2001
Glenelg River	Glenelg-Hopkins CMA	Commence Jan 2001 Draft Sept 2001
Broken River	Goulburn-Broken CMA	Commence Jan 2001 Draft Sept 2001
Lerderderg River	Melbourne Water	Commence Jan 2001 Draft Sept 2001
Badger Creek	Melbourne Water	Commence Oct 2001 Draft June 2002
Maribyrnong River	Melbourne Water	Commence Oct 2001 Draft June 2002

10.8.4 Integrated Resource Management

Progress on integrated resource management has been made through the establishment of 9 Catchment Management Authorities (CMAs) in non-metropolitan Victoria. The CMAs are responsible for strategic planning for land and water resources management in their region and the provision of integrated waterway and floodplain management. In addition, they provide advice to Government on priorities for action and investment. This ensures that all government funding including both State and Commonwealth, together with local funding through rates are directed towards the key land and water management priorities within the region.

10.8.5 NWQMS

The NWQMS is implemented in Victoria through a range of mechanisms. The strategic directions of the NWQMS are implemented through the catchment management arrangements in the development of regional catchment strategies, their component action plans and in regional State Environmental Protection Policies.

The technical guidelines are adopted-

- For non-point sources - in the development of implementation schedules for catchment action plans
- For point sources – in the development of environmental performance benchmarks for use in the development of licence conditions

10.8.6 Groundwater Management

Victoria controls the extraction of all groundwater through a rigorous statutory licensing process.

The construction of all groundwater bores including production and investigation bores is also subject to a licensing process. Licensed drillers must construct all groundwater bores.

Victoria reviewed its groundwater management structure in 1997. The State Groundwater Council appointed by the Minister responsible for water resources undertook this work. The Council proposed a management regime based on sustainable development and a cost sharing arrangement between Government and groundwater users.

Victoria has identified over 50 groundwater management areas in the State where there is a potential for groundwater development or where partial groundwater development has already occurred. The sustainable yield of the aquifers in these areas has been quantified, as has the volume of groundwater allocated to users. Within these areas a Permissible Annual Volume (PAV), which is the optimum level of allocation, has been set to reflect the sustainable yield of the aquifer.

Victoria's groundwater management regime is based on sustainable development through the establishment of community driven Groundwater Management Plans. The need to develop Groundwater Management Plans is determined by demand on the resource.

Groundwater Management Plans

When allocations reach 70% of the sustainable yield of the aquifer (expressed as the Permissible Annual Volume or PAV), a mechanism to establish a Groundwater Supply Protection Area (GSPA) is triggered and a Groundwater Management Plan developed. A consultative committee, comprising mainly farmers but representing all relevant interests, is responsible for developing the management plan.

The management plan must address issues such as metering and monitoring, allocation arrangements including transferable water entitlements, and costs associated with implementing the plan.

Progress to date

Eleven GSPAs have been established to date. Groundwater Management Plans have been prepared for two of these areas. The remaining nine GSPAs were established in late 1998 early 1999. Target dates for establishment of and Consultative Committees development of Management Plans are shown in Table 3.

Future Targets

Over the next three years it is proposed to establish a further fifteen GSPAs to cover all areas in the State where allocation is greater than the PAV. Five areas are at the initial stage of GSPA set up whereby the first rounds of community consultation takes place, refer Table 4. On current trends it is likely that there will be a demand for the development of groundwater supply protection areas over the next three years for at least some of the aquifer systems listed in Table 5.

Table 3
Declared Groundwater Supply Protection Areas

Groundwater Supply Protection Areas	Declared	Consultative Committee Established (Target)	Management Plan (Target)
Kooweerup Dalmore	Long established	NA	In place
Shepparton Irrigation Area	8 September 1995	NA	In place
Campaspe Deep Lead (incorporates Echuca South, Diggora)	15 December 1998	April 1999	December 2001
Katunga	16 December 1998	April 1999	December 2001
Spring Hill	15 December 1998	April 1999	December 2001
Murrayville	16 December 1998	April 1999	December 2001
Neuarpur	16 December 1998	April 1999	December 2001
Yangery	9 February 1999	April 1999	December 2001
Nullawarre	9 February 1999	April 1999	December 2001
Denison	24 November 1998	April 1999	December 2001

Table 4

Initial Steps taken for Groundwater Supply Protection Areas

Groundwater Supply Protection Areas – Initial Steps	Initial Consultation (Target)	Decision on Declaration
Avenel/Nagambie	June 1999	December 1999
Bungaree	April 1999	December 1999
Sale	April 1999	December 1999
Wy-Yung	April 1999	December 1999
Deutgam	May 1999	December 1999

Table 5

Potential Future Groundwater Supply Protection Areas – (Priorities depend on the future demands to develop the groundwater resources in these aquifers)

Groundwater Management Areas
Warrion
Ascot
Merrimu
Wandin Yallock
Bridgewater
Lancefield
Seacombe
Lang Lang
Balrootan
Gerangamete

Related Reforms:

Road Transport

11 Related Reforms: Road Transport

11.1 Introduction

The Agreement to Implement the National Competition Policy and Related Reforms provides the base framework for assessing road transport performance.

The second tranche assessment requires jurisdictions to demonstrate continued effective observance of the agreed package of road transport reforms. Currently, there is no agreed package of reforms that assessment can be made against. However, Victoria understands that the most likely scenario is that agreement will be made against the 19 reform commitments currently being discussed.

While recognising there is currently no formal agreement yet undertaken, Victoria is prepared to provide information on progress against these proposed 19 reform commitments, in order to assist the NCC in its assessment of performance.

11.2 Summary of Victoria's Progress with Assessable Road Transport Reforms

No.	Reform	Implementation	
		Status	Date
1	Dangerous Goods	Completed	April 1997
2	National Heavy Vehicle Registration Scheme	In Progress	(1 May 1999)
3	National Driver Licensing Scheme	Partial	(1 May 1999)
4	Vehicle Operations	Completed	December 1995
5	Heavy Vehicle Standards	Completed	July 1995
6	Truck Driving Hours	Completed	September 1998
7	Bus Driving Hours	Completed	February 1996
8	Common Mass and Loading Rules	Completed	June 1995
9	One Driver/One Licence	Completed	October 1995
10	Improved Network Access	Completed	December 1995
11	Common Pre-Registration Standards (for Heavy Vehicles)	Completed	July 1995
12	Common Roadworthiness Standards	Completed	July 1995
13	Enhanced Safe Carriage and Restraint of Loads	Completed	August 1995
14	Adoption of National Bus Driving Hours	Completed	February 1996
15	Interstate Conversions of Driver Licence	Completed	October 1995
16	Alternative Compliance	Completed	December 1995
17	Short Term Registration	Completed	January 1998
18	Driver Offences Licence Status	Completed	1997
19	NEVDIS (National Exchange of Vehicle and Driver Information System) – Stage 1	Completed	October 1998

11.3 Details of Road Transport Reforms

Reform 1: ***DANGEROUS GOODS***

Objective: To establish a national regulatory framework for the carriage of dangerous goods by road.

Implementation: COMPLETE April 1997

- The dangerous goods legislation in the Commonwealth Act was adopted in template form by the Victorian Road Transport (Dangerous Goods) Act 1995. The subsequent national Regulations and dangerous goods Codes were consequentially adopted in Victoria when they were made in April 1997.
- Information, which outlines the requirements of the national dangerous goods regulations, has been distributed to the road transport industry by the responsible authority, the Victorian WorkCover Authority.

Outcomes:

- Adopting the Commonwealth legislation in template form has ensured that the national regulatory framework for the carriage of dangerous goods by roads is in place. Further, this approach automatically adopts any subsequent amendments to the Commonwealth legislation and Dangerous Goods Codes.

Reform 2: ***NATIONAL HEAVY VEHICLE REGISTRATION SCHEME***

Objective: To implement the National Heavy Vehicle Registration Scheme, including nationally agreed procedures and requirements for initial registration, transfer of registration and cancellation of registration, to all vehicles registered in Victoria.

Implementation: IN PROGRESS

- New regulations, known as the Road Safety (Vehicles) Regulations 1999, are proposed to be introduced on 1 May 1999. These regulations will implement the National Heavy Vehicle Registration Scheme. The regulations will also apply to all Victorian light vehicles.
- In anticipation of implementation of the scheme, business rules reflecting the new regulations are being prepared and computer systems are being modified. A (draft) comprehensive publicity strategy has been prepared to notify all vehicle operators of the scheme.

Outcomes:

- The National Heavy Vehicle Registration Scheme will be fully implemented in Victoria on 1 May 1999.

Reform 3: ***NATIONAL DRIVER LICENCE SCHEME***

Objective: To introduce uniform requirements for key driver licence transactions including licence issue, renewal, suspension and cancellation.

Implementation: PARTIALLY COMPLETE

- The majority of the key elements of the scheme already exist in Victorian Legislation. The remainder will be introduced as part of the implementation of a new set of regulations on 1 May 1999.
- Key elements of the National Driver Licence Scheme that are currently in place are:
  - uniform practices for mutual recognition of licences and offences
  - uniform national driver licence classes
  - nationally agreed medical guidelines for light and heavy vehicle drivers
  - core demerit points
- The remaining elements require only minor adjustments to existing procedures and arrangements have been made to implement these when the new regulations are made.

Outcomes:

- The National Driver Licence Scheme will be fully implemented in Victoria when new regulations are made on 1 May 1999.
- Extensive publicity of the reform will accompany its introduction.

Reform 4: ***VEHICLE OPERATIONS***

Objective: To introduce nationally consistent mass and dimension regulations and associated conditions of operation for heavy vehicles, including oversize and overmass vehicles and restricted access vehicles.

Implementation: COMPLETE December 1995

- The national Mass and Loading Regulations were adopted through the following Victoria Government Gazette Notices:
  - Mass Limits: S126, dated 22 December 1995; and
  - Dimension Limits: S66, dated 30 June 1995.
- The national mass and dimension limits and operating conditions for oversize and overmass load carrying vehicles, Special Purpose Vehicles and

agricultural machinery and implements were adopted through Victoria Government Gazette Notice S56, dated 23 June 1995.

- The national vehicle mass and dimension limits for restricted access vehicles were adopted through the following Victoria Government Gazette Notices:
  - B-doubles: S59, dated 26 June 1995;
  - Car carriers: G50, dated 23 December 1993; and
  - Livestock vehicles: G50, dated 23 December 1992.

  Controlled access buses have been operating over a network of routes through a permit system since July 1995.
- Fifteen separate Information Bulletins advising of national mass and dimension standards and new regulations covering requirements for Oversize and Overmass vehicles and new innovative Restricted Access Vehicles, have been widely distributed to the road transport industry. These reforms have also been promoted through industry information sessions and forums.

Outcomes:

- National mass and dimension standards and associated conditions of operation for heavy vehicles, including oversize and overmass vehicles and restricted access vehicles, have been adopted in Victoria.
- Permits are no longer required for vehicle combinations up to 42.5 tonnes and for B-doubles up to 62.5 tonnes. Individual permits for a wide range of operations by oversize and overmass vehicles and restricted access vehicles have been replaced by general permits.
- The following higher productivity vehicles have been approved to operate in Victoria under the Restricted Access Vehicle Regulations, that allow vehicles to exceed the national mass and dimension limits by up to 10 per cent:
  - 45.0 tonne container trucks servicing rural rail terminals on specified permit routes since February 1995;
  - 3 axle truck and 4 axle dog trailer combinations grossing 50.0 tonnes were gazetted in S147 of 23 December 1997;

    container trucks up to 4.6 metres in height were gazetted in S38 of 11 April 1998;
  - 4.6 metre high cubic freight carrying vans were gazetted in S61 of June 1997;
  - 14.6 metre long semi-trailers were gazetted in S66 of 30 June 1995;
  - 45.0 tonne 3 axle dog trailer combinations were gazetted in S137 of 31 October 1997.

Reform 5: ***HEAVY VEHICLE STANDARDS***

Objective: To introduce national vehicle construction and in-service standards for heavy vehicles.

Implementation: COMPLETE July 1995

- The Heavy Vehicle Standards Regulations were adopted in template form through Victoria Government Gazette Notice G27, dated 13 July 1995.

Outcomes:

- All heavy vehicles are now required to be constructed to the national construction and in-service standards.
- Adopting the Heavy Vehicle Standards Regulations in template form ensures that national requirements are in place in Victoria and any subsequent changes to the national regulations will be automatically adopted in Victoria.

Reform 6: ***TRUCK DRIVING HOURS***

Objective: To provide a national legal and administrative framework for managing truck driver fatigue in the road transport industry.

Implementation: COMPLETE September 1998

- Victoria's Driving Hours Regulations have been amended to reflect the intent of the agreed national regulations.
- The national log book has been introduced and is available at all VicRoads' Registration and Licensing offices throughout the State.
- The amended regulations make provision for fatigue management programs including the Transitional Fatigue Management program.
- An information brochure, advising of the reform, has been mailed to the owners of all Victorian registered vehicles greater than 12 tonne gross vehicle mass (gvm). Information material promoting the Transitional Fatigue Management program has also been widely circulated to industry.
- Information sessions outlining changes have been conducted throughout the State for truck drivers and operators, Victoria Police and VicRoads' enforcement operators.
- A three month amnesty period was provided for drivers to change over their old log book to the new national log book. Books less than half used were exchanged at no charge.

Outcomes:

- In Victoria, all drivers of vehicles greater than 12 tonne gvm, are required to comply with the nationally agreed truck driving hours regulations and use the national log book. Drivers and transport operators also have access to the nationally recognised Transitional Fatigue Management Scheme.

- Approximately 35,000 National Log Books have been sold in Victoria.
- Approximately 30,000 Information brochures advising of driving hour changes have been widely distributed to industry.
- Ten companies and over 600 drivers are undertaking training in fatigue management as a requirement of accreditation to the national Transitional Fatigue Management scheme.

Reforms 7 & 14: ***NATIONAL BUS DRIVING HOURS***

Objective: To introduce national bus driving hours as a basis for the management of fatigue amongst drivers of larger commercial buses.

Implementation: COMPLETE February 1996

- Victoria's Driving Hours Regulations were amended to reflect the intent of the national regulations in February 1996.
- A revised log book was introduced and the reform extensively advertised to the industry, through information bulletins and industry information sessions.
- These driving hours regulations have now been superseded by the national truck driving hours regulations and national log book (refer reform 6). Victoria has subsequently further amended its Driving Hours Regulations to reflect the national combined truck and bus regulations.

Outcome:

- The national bus driving hours regulations were implemented in Victoria in February 1996. The regulations have since been amended in Victoria to reflect the national truck driving hours regulations and the national combined truck and bus regulations.

Reform 8: ***COMMON MASS AND LOADING RULES***

Objective: To introduce national mass and dimensions limits for heavy vehicles.

Implementation: COMPLETE June 1995

- National mass and dimension limits and the Axle Mass Spacing Schedule for vehicles up to 42.5 tonnes set down in the Mass and Loading Regulations, were adopted by the following Notices in the Victoria Government Gazette:

- Mass limits	S126, dated 22 December 1995;
- Dimension Limits	S66, dated 30 June 1995.

- National mass and dimension limits for tri-tri B-doubles were adopted through Victoria Government Gazette Notice S59, dated 26 June 1995.

- Information bulletins describing the new national mass and dimension limits were widely distributed to the road transport industry. These changes were further reinforced at industry information sessions and presentations throughout the State.

Outcomes:

- National mass and dimension limits for heavy vehicles now apply in Victoria.
- Tri-tri B-doubles complying with national mass and dimension limits are approved to operate in Victoria. There are currently about 1,100 B-doubles registered in Victoria, approximately 80 per cent of which are tri-tri B-doubles.

Reform 9: ***ONE DRIVER/ONE LICENCE***

Objective: To introduce common and simplified national licence categories and improved processes to eliminate multiple licences.

Implementation: COMPLETE October 1995

- The national driver licence classes were introduced, through legislative change, in September 1995.
- Victoria agreed to the exchange of demerit points with other State licensing agencies in July 1989 and the Demerit Points Exchange (DPX) scheme was introduced shortly afterwards.
- The National Driver Licence Checking System (NDLCS) and the Multiple Licence Advice Tracking System (MLATS) were introduced in October 1995, following the development and implementation of appropriate changes to VicRoads' computer systems.

Outcomes:

- There has been a reduction in the number of licence categories in Victoria from nine to six by combining the separate bus and truck classes under the national driver licence classification system. Existing licences were converted to the closest, higher category of licence so that no licence holder was disadvantaged by the scheme.
- The introduction of licence graduation now requires a driver to gain experience in a vehicle in a lower class before progressing to a licence to drive a larger class of vehicle.
- The NDLCS checks the licence status of people who have converted an interstate licence to a Victorian one. Action is taken against licence holders who are found to have outstanding periods of licence disqualification in their original State.
- MLATS now runs national snapshots of State's licence databases to identify people with more than one licence. They are then required to surrender all but one of their licences.

Reform 10: ***IMPROVED NETWORK ACCESS***

Objective: To expand (as of right) access to the road network for B-doubles and other approved large vehicles.

Implementation: **COMPLETE December 1995**

- The B-double network has been enlarged to allow B-doubles to operate on all suitable Freeways, Highways and Main Roads within Victoria.
- General access has now been provided for the following larger vehicles:
  - car carriers;
  - 4.6 metre high livestock vehicles;
  - 3 axle truck & 4 axle dog trailers;
  - trucks carrying 2.9 m (9'6") high containers;
  - 4.6 m high vans & curtain-sided trailers;
  - 48 foot (14.6 m) trailers; and
  - 45 tonne truck & 3 axle dog trailers.
- Excluding defined mountainous areas, general access is also now provided for:
  - oversize, overmass load carrying vehicles;
  - oversize, overmass special purpose vehicles; and
  - oversize agricultural machinery.

Outcomes:

- B-doubles are now approved to operate on all Freeways, Highways and Main Roads except for a small number of road lengths, predominantly around mountainous areas.
- Significantly improved access has also been achieved for other large, high productive vehicles.

Reform 11: ***COMMON PRE-REGISTRATION STANDARDS***

Objective: To introduce national heavy vehicle construction standards.

Implementation: **COMPLETE July 1995**

- The Heavy Vehicle Standards Regulations were adopted in template form through Victoria Government Gazette Notice G27, dated 13 July 1995.

Outcomes:

- Vehicles complying with the national construction standards are able to be registered in Victoria without any additional construction requirements.
- Adopting the Heavy Vehicle Standards Regulations in template form ensures that national requirements are in place in Victoria and any subsequent changes to the national regulations will be automatically adopted in Victoria.

Reform 12: ***COMMON ROADWORTHINESS STANDARDS***

Objective: To introduce national roadworthiness standards and to mutually recognise defect notice clearances issued in other States and Territories.

Implementation: COMPLETE July 1995

- The national roadworthiness standards were introduced in Victoria in July 1995, as a requirement to be met when examining and testing vehicles for the purpose of issuing certificates of roadworthiness.
- Business rules and administrative procedures used by VicRoads and Victoria Police were amended to provide for the mutual recognition of defect notices and their clearance in other States and Territories.
- Two information brochures providing advice on the management of defective vehicles and roadworthiness requirements were widely distributed to industry. The new reform was also promoted through industry information sessions and forums.

Outcomes:

- Victoria has adopted the national roadworthiness standards and mutual recognition of defect notices and their clearance in other jurisdictions.

Reform 13: ***ENHANCED SAFE CARRIAGE AND RESTRAINT OF LOADS***

Objective: To introduce national regulations and a practical guide for the securing of loads on heavy vehicles.

Implementation: COMPLETE August 1995

- Victoria's regulations were amended to reflect the intent of the national load restraint regulations including calling up the national performance standards for load restraint as set down in the 'Load Restraint Guide' (Joint National Road Transport Commission and Federal Office of Road Safety publication).
- The Load Restraint Guide, which also outlines the general principles of restraining and positioning loads is available from all VicRoads' Registration and Licensing offices throughout the State, VicRoads' Bookshop, the Victorian Road Transport Association and the Transport Workers Union (Victoria).
- The Guide and the amended regulations have been extensively publicised to the road transport industry through information sessions, seminars for enforcement personnel, advertisements in newspapers and various industry publications and VicRoads' Information bulletins.

Outcomes:

- National performance standards for load restraint have been incorporated in amended Victorian regulations, which now also reflect the national regulations.
- Extensive publicity of the Load Restraint Guide and the amended regulations has increased awareness within the industry of the need to safely and securely restrain loads.
- Over 5,000 copies of the Load Restraint Guide have been sold in Victoria and continue to be sold at an average of 100 copies per month.
- The Guide is being used by various industry training bodies in their conduct of courses on load restraint.

Reform 15: ***INTERSTATE CONVERSION OF DRIVER LICENCE***

Objective: To introduce simplified no cost conversions of interstate licences.

Implementation: COMPLETE October 1995

- Victoria has amended regulations and VicRoads has changed its business rules and modified its computer systems to allow interstate licence holders to convert their licence to a Victorian one when moving from interstate.

Outcomes:

- Interstate licence holders can now convert their licence at no cost and without any testing.
- The licence period is set at the expiry date of the converted licence.
- Information on the application form regarding previous convictions and licence status is checked after the licence is issued through the National Driver Licence Checking System and appropriate action taken.

Reform 16: ***ALTERNATIVE COMPLIANCE***

Objective: To support development of alternative compliance regimes.

Implementation: COMPLETE December 1995

- Victoria has strongly supported the development and implementation of national alternative compliance pilot programs covering mass, maintenance and fatigue management.
- VicRoads developed the national Mass Management Accreditation Scheme, conducted a pilot test, and carried out an evaluation of the scheme.
- VicRoads has assisted in the development of other alternative compliance schemes for maintenance and fatigue management, through its representation on the National Alternative Compliance Co-ordinating Committee and the Queensland Transport Fatigue Management Project Team.

- VicRoads has also played a leading role in the development of the audit module and national business rules to support the National Alternative Compliance Scheme.

Outcomes:

The Ministerial Council for Road Transport has approved the National Alternative Compliance Scheme comprising mass management and maintenance management.

VicRoads has now accredited over 90 companies including over 1,000 heavy vehicles in the mass management scheme.

Approval has been given to participants in both the fatigue management and maintenance management schemes to operate in Victoria.

Reform 17: ***SHORT TERM REGISTRATION***

Objective: To introduce options for 3 and 6 month registration for heavy vehicles.

Implementation: COMPLETE January 1998

- Victoria's Road Safety (Vehicles) Regulations 1988 were amended to allow for 3 and 6 month registration periods in 1996 and 1998.
- A further option of part year or seasonal registration has also been introduced in 1998.
- Computer system changes to accommodate the shorter periods of registration were made in 1995 and 1998.
- Heavy vehicle operators were made aware of the optional shorter periods of registration by means of publicity material inserted with vehicle registration renewal papers. The reform has been further publicised through distribution of information bulletins and through industry information sessions and forums.

Outcomes:

- Options for 3 and 6 month heavy vehicle registrations are available in Victoria.
- The shorter registration periods now allow operators to spread registration payments over a full year.
- Approximately 8 per cent of the Victorian heavy vehicle fleet has taken up the option of either a 3 or 6 month registration period.

Reform 18: ***DRIVER OFFENCE/LICENCE STATUS***

Objective: To provide employers with information about an employee's driver licence status, with their consent.

Implementation: COMPLETE 1997

- Victorian legislation was clarified in 1997 to ensure that it allowed the release of information from a licence holder's record to their employer (or prospective employer) provided that their consent is given. VicRoads has established a system to facilitate requests for such information.

Outcomes:

- Employers can now obtain information on their employee's (or prospective employee's) licence record, including licence class, current status (ie whether it is valid, suspended or cancelled) and the number of demerit points recorded. The availability of such information is subject to the informed consent of the licence holder, consistent with privacy principles.
- VicRoads is also currently developing an on-line computerised system that will improve access to licence status information, again subject to informed consent of the licence holder.

Reform 19: ***NEVDIS (National Exchange of Vehicle and Driver Information System)***

Objective: To complete Stage 1 of the project requiring the development of the NEVDIS computer system specification.

Implementation: COMPLETE October 1998

- The NEVDIS national system, developed by IBM, was completed in August 1998.
- Victoria's vehicle registration information was loaded into NEVDIS in September 1998.
- Necessary agreements and inter-jurisdictional memoranda of understanding were finalised in September 1998.
- Victoria commenced exchange of vehicle registration information on 5 October 1998 with NSW, the only other currently participating jurisdiction.

Outcomes:

- Stage 1 of NEVDIS is complete and Victoria is exchanging vehicle registration information with NSW.
- For transactions with NSW, NEVDIS is providing:
  - confirmation of registered operators and addresses;
  - ease of registration transfer;
  - improvements in the functionality and accuracy of the Vehicle Identification Number System (VINS); and

  generally streamlining registration operations.

National Competition Policy

SECOND TRANCHE ASSESSMENT REPORT

Volume II
Progress and Outcomes
of Legislation Reviews

March 1999

VOLUME II

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No.	Legislation	Portfolio
1	• **Accident Compensation (WorkCover Insurance) Act 1993** • **Accident Compensation Act 1985** • **Accident Compensation Regulations 1990**	Finance
2	**Associations Incorporation Act 1981**	Fair Trading
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9	**Finance Brokers Act 1969**	Fair Trading
10	• **Liquor Control Act 1987** • **Liquor Control Prescribed Substances Regulations 1997**	Small Business
11	**Motor Car Traders Act 1986**	Fair Trading
12	**Optometrists Registration Act 1958**	Health
13	**Physiotherapists Registration Act 1978**	Health
14	**Psychologists Registration Act 1987**	Health
15	**Prevention of Cruelty to Animals Act 1986**	Agriculture & Resources
16	**Petroleum Act 1958**	Agriculture & Resources
17	• **Residential Tenancies Act 1980** • **Rooming House Act 1990** • **Caravan Parks and Moveable Dwellings Act 1988**	Housing

No.	Legislation	Portfolio
	• **Rooming Houses Act 1990** • **then draft Residential Tenancies Bill**	
18	**Road Safety Act 1986**	Roads and Ports
19	**Second-hand Dealers and Pawnbrokers Act 1989**	Fair Trading
20	• **State Trustees (State Owned Company) Act 1994** • **Accident Compensation Act (1985) Division 7 of Part 4**	Treasurer, Attorney-General
21	**Transport Accident Act 1986**	Treasurer

Details on these completed and announced reviews follow.

Legislation:	• **Accident Compensation (WorkCover Insurance) Act 1993** • **Accident Compensation Act 1985,** • **Accident Compensation Regulations 1990**	Portfolio:	Finance
Reviewer:	In-House (Department of Treasury & Finance)	Date review completed:	January 1998
Consultation:	Release of issues paper and call for submissions	Date response released:	October 1998

No.	Review Recommendations	Government Response	Implementation
1	The Victorian WorkCover Authority (VWA) cease to be a provider of reinsurance and all underwriting risks be borne by private insurers.	Not accepted.	-
2	Premium setting should be more decentralised with insurers competing, at a minimum, on the basis of administrative costs and services such as risk and injury management.	Not accepted.	-
3	All premium funds be owned and managed by insurers.	Not accepted.	-
4	Insurers, underwriters and self-insurers be licensed by an independent regulator subject to satisfying "appropriate" prudential requirements.	Not accepted.	-
5	Current approval criteria for occupation providers be removed.	Not accepted - however the approval criteria will be reviewed to promote more competition between providers.	By VWA
6	The quality of service delivery by insurers, self-insurers and occupational rehabilitation providers be monitored by the regulator with a focus on outcomes.	Accepted - VWA will monitor service provision outcomes and will use its ability to approve insurers, self-insurers and service providers to affect behaviour.	By VWA.
7	The regulator facilitate the collection and dissemination of information with minimal burden on insurers and other parties.	Accepted - VWA will continue to collect and disseminate claims information and use it to analyse and improve performance by insurers, self-insurers and service providers.	By VWA.
8	The Government undertake an industry review prior to implementation. This will be consistent with clause 4 of the Competition Principles Agreement regarding "Structural Reform of Public Monopolies". Inter alia this should consider: · the appropriate commercial incentives for participants; · the most effective means for separating policy regulatory and commercial functions; and · the need for, and form of, price and service regulations. These principles for the "Structural Reform of Public Monopolies" have been applied	Not accepted.	-

No.	Review Recommendations	Government Response	Implementation
	successfully in the electricity and gas industries.		

No.	Restrictions on Competition Remaining	Competition Policy Justification
1	Public underwriting, centralised premium setting and funds management.	*See Volume 1 for more detail.* · The Government's assessment is that the remaining restrictions on competition represent a lesser cost to the community as a whole than the benefits that are outlined above. The low and stable premium is clear and observable and represents benefits to employers and injured workers that the community rates very highly. The lack of competition in underwriting and the lack of consumer choice are a cost whose value cannot be readily measured. However over the period 1993-94 to 1996-97 workers' compensation costs in Victoria as a percentage of total labour costs fell by 19% while the national average increased by 11%. At the same time benefits in the Victorian scheme are at least comparable or better than the other States, some of which are privately underwritten. The costs of restricting competition are therefore judged to be less than the benefits that are provided by the existing arrangements. · The problems of adverse selection, the volatility in private insurance premiums and the inability of private insurers to capture the benefits of investment in accident prevention and long term rehabilitation, mean that the objectives of the legislation can only be achieved by restricting competition. Achievement of the objectives could be pursued through a system of competing private insurance companies which would require heavy handed regulation that imposes high compliance costs, which could result in increases in overall premiums. This approach would also involve substantial transition costs. The Government believes that there is a significant risk that the costs of such regulation would lead to an overall welfare loss rather than a gain. · The Government intends to carefully monitor reforms in other jurisdictions. Any experience that demonstrates scope for improvements will be analysed for possible incorporation in Victoria's public monopoly workplace accident compensation scheme.
2	Conditions on applicants to be approved as authorised insurers.	Necessary to support first restriction.
3	Type of firms permitted to self-insure.	Necessary to support first restriction.
4	Conditions on approval of occupational rehabilitation providers.	In the absence of independent accreditation of these providers approval conditions set by the VWA are necessary to ensure cost-effectiveness and quality of return-to-work services.

Legislation:	**Associations Incorporation Act 1981**	Portfolio:	Fair Trading
Reviewer:	In-House (Office of Fair Trading & Business Affairs)	Date review completed:	May 1998
Consultation:	None	Date response released:	Via passage of legislation in Spring 1998.

No.	Review Recommendations	Government Response	Implementation
1	Remove restriction on contestability of the administrative function(s) of Registrar.	Accepted	Associations Incorporation (Amendment) Act 1997

No.	Restrictions on Competition Remaining	Competition Policy Justification
1	None.	-

Legislation:	**Audit Act 1994 Parts 1,2 and 6 (Part 7 is repealed) (the Act is otherwise administered by the Minister for Finance)}**	Portfolio:	Premier
Reviewer:	Panel	Date review completed:	1997
Consultation:	Public notice, Issues paper, Submissions, targeted consultation	Date response released:	1997

No.	Review Recommendations	Government Response	Implementation
1	Make public sector audits contestable	Accepted	Amendments to the Audit Act passed in 1997.
2	Separate the purchaser (Auditor General) from the public sector provider (Audit Victoria) to support competition for public sector audits	Accepted	as above

No.	Restrictions on Competition Remaining	Competition Policy Justification
1	None	-

Legislation:	**Australian Grand Prix Act 1994**	Portfolio:	Tourism
Reviewer:	In House	Date review completed:	1997
Consultation:	Targeted internal consultation	Date response released:	1997

No.	Review Recommendations	Government Response	Implementation
1	The review concluded that the Act did not contain any restrictions on competition. Accordingly, no options for reform of the Act were recommended.	Accept	None required

No.	Restrictions on Competition Remaining	Competition Policy Justification
1	None	-

Legislation:	**Barley Marketing Act 1993**	Portfolio:	Agriculture & Resources
Reviewer:	Consultant (Centre for International Economics)	Date review completed:	November 1997
Consultation:	Release of issues paper and call for submissions, targeted interviews	Date response released:	Completed in November 1998

No.	Review Recommendations	Government Response	Implementation
1	That the domestic market for feed barley in South Australia and Victoria be formally deregulated. This can be achieved by abolishing the current permit system and exempting, in a regulation, feed barley destined for the domestic trade.	Accepted.	Individual permits no longer required from July 1998.
2	That the domestic market for malting barley in Victoria and South Australia be deregulated. This can be achieved by removing the current requirements for maltsters and processors to have deeds of arrangements with the ABB and the need for licences for purchases of malting barley other than from the ABB. As for feed barley, malting barley for domestic sale can be exempted in a regulation from the current provisions to compulsorily deliver barley to the ABB.	Accepted.	An Amendment Bill was introduced and Second Read in the Victorian Parliament during the Spring 1998 Sittings. It will remove the domestic malting barley single desk from July 1999.
3	That the ABB retains its single desk for export barley sales for the shortest practicable transition period.	Accepted.	The above amendment Bill will remove the single export desk from July 2001.
4	That the oats market in South Australia be deregulated by removing oats from a new barley marketing act in South Australia.	Not applicable to Victoria.	-

No.	Restrictions on Competition Remaining	Competition Policy Justification
1	The barley single export desk of the ABB will be retained until 30 June 2001.	The transition period was considered necessary in order to allow a fully commercial approach to marketing to be developed and to protect the current value of the Australian Barley Board (total net assets of $37.9 million as at 30 June 1998).

Legislation:	**Chiropractors & Osteopaths Act 1978**	Portfolio:	Health
Reviewer:	In House (Panel)	Date review completed:	1996
Consultation:	Discussion paper, Public consultation, Submissions received and further targeted consultation prior to report	Date response released:	1996

No.	Review Recommendations	Government Response	Implementation
1	Restrictions on commercial practice that exceed that necessary for the protection of public safety should be removed	Accepted	Act replaced by Chiropractors Registration Act 1996 and Osteopaths Registration Act 1996 (proclaimed on 1 July 1997)
2	Retain restrictions on use of title	Accepted	As above
3	Retain restrictions on advertising (fair and accurate)	Accepted	As above

No.	Restrictions on Competition Remaining	Competition Policy Justification
1	Use of title	Benefits of consumers information more than offset limited costs
2	Advertising (fair and accurate)	Limited restrictions on advertising should ensure an informed market. Provision mainly gives powers to the Board to investigate advertising.

Legislation:	**Chiropodists Act 1968**	Portfolio:	Health
Reviewer:	In-House (Panel)	Date review completed:	1998
Consultation:	Discussion paper, public consultation	Date response released:	1998

No.	Review Recommendations	Government Response	Implementation
1	Remove restrictions on types of work	Accepted.	Via the *Podiatrists Registration Act* 1997 proclaimed on 1 July 1998.
2	Retain restriction on use of title	Accepted	as above
3	Retain restrictions on advertising (limited to fair and accurate)	Accepted	as above

No.	Restrictions on Competition Remaining	Competition Policy Justification
1	Use of title	Benefits of consumers information more than offset limited costs.
2	Restrictions on advertising (limited to fair and accurate)	Limited restrictions on advertising should ensure an informed market. Provision mainly gives powers to the Board to investigate advertising.

Legislation:	• **Guidelines for educational services to International Students under s.85 of the Vocational Education & Training Act 1990.** • **Governor in Council declarations under s.49 & State Training Board determination of training schemes under s.50, of the Vocation Education & Training Act 1990.** • **Ministerial direction on fees & charges under Adult, Community & Further Education Act 1991.** • **Ministerial direction on fees & changes 1994 under the Vocational Education & Training Act 1990.** • **Private Provider Guidelines under s.81 of the Vocational Education & Training Act 1990.** • **Adult, Community & Further Education Act 1991 to establish Adult Community Further Education Board, Regional Councils & make provision with respect to Adult, Community & Further Education** • **Tertiary Education Act 1993 to provide for promotion, development & co-ordination of post-secondary education in Victoria.** • **Vocational Education & Training Act 1990 establishment of State Training Board, TAFE college, Industry Training Boards, accreditation of vocational & training courses by TAFE institutions.**	Portfolio:	Education; Tertiary Education & Training
Reviewer:	Departments of Education, Treasury & Finance, Premier & Cabinet	Date review completed:	January 1998
Consultation:	Advice of the review was given to and comment sought from the following organisations: • Australian Chamber of Manufacturers • Victorian Employers' Chamber of Commerce and Industry • Association of Directors of Victorian TAFE Institutes • Australian Council of Private Education and Training • Victorian Students and Apprentices Network • Victorian Universities • Adult and Community Education Victoria • Association of Neighbourhood Houses and Learning Centres	Date response released:	January 1998

No.	Review Recommendations	Government Response	Implementation
1	Retain the current system of setting fees and charges by Ministerial Direction	Accepted	-
2	Retain registration of private providers.	Accepted	-
3	Retain prohibition on institutions other than recognised universities or approved institutions offering higher education awards	Accepted	-
4	Other restrictions recommended to be removed, namely: • removing the requirement that 'the demand for skills provided by the course be considered by the State Training Board when considering an application for registration' • removing the requirement that registered providers also require approval to deliver courses • confirming the system of approved training agents so as to give registered providers the option to seek the power to self-accredit courses • giving registered providers the option to seek endorsement to deliver courses to overseas students as part of their registration, subject to agreement with the Commonwealth Government • reforming apprenticeship and traineeship arrangements with respect to institutions applying for approval to deliver and authority to conduct individual courses leading to higher education awards, removing the requirement that applicants demonstrate the 'the need in Victoria for the course of study'	Accepted	Legislation amended in Spring 1997 sittings through the Vocational Education and Training (Training Framework) Act 1997 passed - the reform of legislation proceeded in consonance with the review which enabled the Government to anticipate its recommendations

No.	Restrictions on Competition Remaining	Competition Policy Justification
1	Current system of setting fees and charges by Ministerial Direction	Ensures equitable access to vocational education and training and enables government to determine training mix and provision of training places.
2	Compulsory registration of private providers	Benefits students by lowering transaction costs and protecting Victoria's participation in the national system of recognised qualifications. Benefits taxpayers by ensuring public monies are directed only to appropriate institutions.
3	Prohibition on institutions other than recognised universities or approved institutions offering higher education awards	Benefits students by ensuring minimum course standards and comparability with similar qualifications issued by other recognised universities.

Legislation:	**Finance Brokers Act 1969**	Portfolio:	Fair Trading
Reviewer:	In-House (Office of Fair Trading & Business Affairs)	Date review completed:	Early 1998
Consultation:	None	Date response released:	Via legislation passed in Spring 1998

No.	Review Recommendations	Government Response	Implementation
1	Licensing of finance brokers and finance brokers' agents be discontinued.	Accepted.	Consumer Credit (Finance Brokers) Act 1998 which repealed the Finance Brokers Act 1969
2	Capping of finance brokers' commissions be discontinued.	Accepted.	See above.
3	Restrictions as to the circumstances in which fees may be charged be retained, subject to recommendations 4 and 5 below.	Accepted.	See above.
4	Brokers be permitted to give notice that a termination fee will be payable should the client withdraw from the broking agreement.	Accepted.	See above.
5	Provision be made for the loan terms in the document of appointment, the securing of which determines the broker's entitlement to a fee, to be varied by consent.	Accepted.	See above.
6	Brokers not be permitted to accept payment of third party charges in cash or in any form which can be converted to cash by the broker.	Accepted.	See above.
7	The provisions necessary to satisfy recommendations 3-6 above be housed in the proposed new Fair Trading Act, and the Finance Brokers Act 1969 be repealed.	Act repealed and necessary provisions included in the Consumer Credit (Finance Brokers) Act 1998	See above.

No.	Restrictions on Competition Remaining	Competition Policy Justification
1	Negative licensing of brokers	The costs to individuals (other than those few disqualified from trading due to relevant offences etc) are very small, and numbers in the industry will be little affected. The benefits are preventive. The regulation will effectively combat dishonest operations whereby less sophisticated would-be borrowers are persuaded to make payments for sham services or are manoeuvred into accepting loans on unsuitable terms. While not quantifiable, it is reasonable to conclude that the benefits outweigh the costs. There is presently no potential for self-regulation. While the problem is largely one of information, it would be very difficult and costly to reach and influence the behaviour of at-risk consumers at the critical time.
2	Documentation of terms of finance sought required	See above.
3	Up-front fees prohibited	See above.
4	Taking of third-party fees in cash prohibited	See above.

Legislation:	**Liquor Control Act 1987, Liquor Control Prescribed Substances Regulations 1997**	Portfolio:	Small Business
Reviewer:	Semi Public (Panel)	Date review completed:	1998
Consultation:	Issues Paper, Discussion Paper, submissions, public consultation, targeted consultation and meetings with industry, community and government groups	Date response released:	1998

No.	Review Recommendations	Government Response	Implementation
1	Harm minimisation should be the principal purpose of the Act. The objects of the Act should be: - to encourage responsible attitudes towards the promotion, sale, supply, consumption and use of liquor, to develop and implement principles directed towards that end and minimise the harm associated with the consumption of liquor; - to ensure as far as practicable that the sale and supply of liquor contributes to, and does not detract from, the amenity of community life; - the facilitation of the development of a diversity of styles of licensed premises and related services; and - to regulate, and to contribute to the responsible development of the liquor, hospitality, tourist and related industries in the State.	Accepted	Implemented through Liquor Control Reform Act 1998
2	The type and number of licence categories should be modified to provide for: · an on-premises licence; · an off-premises licence; · an on and off-premises licence; · a club licence; · a pre-retail licence; · a vigneron's licence; and · a limited licence The existing general (class 2) licence should be absorbed within the on-premises licence type, the existing residential licence should be absorbed within the on-premises or the on and off premises licence type defending upon individual requirements and the restricted club permit should be absorbed into the limited licence category. The existing provisions in respect of a vigneron's licence should be maintained except that the current provisions requiring that wine produced pursuant to a vigneron's licence must be at least 70% from fruit "grown or pressed" by the licensee should be replaced by the requirement that such fruit must be "grown or fermented" by the licensee.	The recommendation of the Review Panel is accepted except that: • for ease of recognition and continuity, the term "packaged liquor licence" will be maintained rather than the proposed "off-premises", and the term "general licence" will be maintained rather than the proposed "on and off premises" licence; • the restricted club permit will be maintained to facilitate expansion of smaller clubs and migration to a full club licence (the cost and renewal period for	See above

No.	Review Recommendations	Government Response	Implementation
		such permits will be reviewed to facilitate their operation). The Review Panel further recommended that BYO be as of right for unlicensed restaurants and clubs. This recommendation is not accepted - see recommendation 27.	
3	All liquor sellers should be licensed.	Accepted	See above
4	All licence conditions should be prominently displayed in licensed premises.	Accepted	See above
5	The current prohibitions on the licensing of petrol stations, convenience stores, mixed businesses and drive-in cinemas should remain.	Accepted	See above
6	Restrictions on the sale or supply of liquor to persons under 18 years of age should remain.	Accepted	See above
7	Restrictions that prohibit the presence of minors on licensed premises (for example, restaurants, cafes, packaged liquor outlets and similar) should be removed, except for bar areas in premises with on-licences or on and off-licences (for example, hotels, nightclubs and similar).	Accepted	See above
8	Persons under 18 years of age should continue to be prohibited from selling liquor.	Accepted	See above
9	Licence applicants should continue to be subject to suitable person criteria and that they have an adequate knowledge of the Act.	Accepted	See above
10	All licensed premises having residents and guests should be permitted to sell liquor to them at any time.	Accepted	See above
11	There should be no restrictions on the trading hours of licensees whose licences do not allow them to sell to the public ie. wholesalers.	Accepted	See above
12	The restrictions on the sale or supply of liquor to intoxicated person should remain.	Accepted	See above
13	The restriction that no licensee or associates can hold more than 8% of packaged liquor or general licenses should be removed.	The recommendation of the Review Panel is accepted in respect of abolition of the 8% limit on general licences, but not accepted in respect of packaged liquor licences.	See above
14	The “primary purpose” requirement of licence types should be removed.	Accepted	See above
15	Packaged liquor sales in supermarkets, whilst separately stored and displayed on licensed area, should be able to be transacted through normal checkouts, provided the check-out attendant is at least 18 years of age.	Accepted	See above

No.	Review Recommendations	Government Response	Implementation
16	The licensing of "Bed and Breakfast" should be significantly simplified.	Accepted	See above
17	The "needs" criteria in assessing licence applications should be removed.	Accepted	See above
18	Objections to licence applications on community interest grounds should be subject to: • only affected persons may object; • an objection must state the reason for the objection and how the objector is affected; and • an objection considered to have been made for the commercial advantage of objector may be rejected. Any matters that have or could be raised in relation to land planning approval should be excluded from liquor licensing consideration. Consideration of community interest in liquor licensing applications should not include local amenity planning issues.	Accepted	See above
19	Contemporaneous processing and determining of planning permit and liquor licence applications should occur where possible	Accepted	See above
20	A poll should be taken of "dry area" residents to assess whether they support modification or retention of the existing provisions.	Accepted	See above
21	The requirement for approval for the sub-letting of food services by licensee should be removed.	Accepted	See above
22	The restriction that restaurant licensees may only sell liquor without a meal in up to 25% of the licensed area should be removed.	Accepted	See above
23	The prohibition on lodging a further application in respect of a refused matter within 12 months should be removed.	Accepted	See above
24	Schedule 1 of the Act in respect of the mandatory provisions of club rules should be simplified and revised to ensure that all requirements are relevant and written in plain English. Schedule 1 should be incorporated into the constitutions of all clubs to ensure that this occurs. Whilst not anti-competitive, the Review notes that club provisions are quite burdensome. Requirements for forwarding amendments to club rules to the licensing authority are unnecessary and should be removed. New clubs should present their constitutions as part of their application for a licence.	Accepted	See above
25	Initial licence decision-making should be made administratively without a hearing, with a right of appeal to a review tribunal.	Accepted	See above
26	Common "ordinary hours" should apply to all licence types, and that "ordinary hours" be increased to 7 am to 1 am the day following, except in respect of Anzac Day and Good Friday when "ordinary hours" of 12 noon to 1 am the day following should apply.	The recommendation of the Review Panel was rejected. Regard was had to community concerns regarding amenity, effective enforcement and misuse and abuse of alcohol in rejecting the recommendation.	Not Applicable
27	Unlicensed restaurants and clubs should be able to offer BYO without the requirement	The recommendation of the	Not applicable

No.	Review Recommendations	Government Response	Implementation
	for a BYO permit.	Review Panel was rejected. Regard was had to community concerns regarding the availability of BYO liquor in a range of inappropriate businesses if no regulating regime was maintained	
28	Liquor Control Prescribed Substances Regulations 1997	Repeal	Implemented through Liquor Control Reform Act 1998

No.	Restrictions on Competition Remaining	Competition Policy Justification
1	Prohibitions on the licensing of petrol stations, convenience stores, mixed businesses and drive-in cinemas.	On this basis that youth under the age of 18 years are often attracted to, or in proximity to, convenience stores, in response to the products offered for sale. at this time the potential for increased underage access to liquor through convenience stores, if licensed, would be contrary to its underage drinking policy. Special consideration would be given if there is no alternative supply of liquor available to the community.
2	Restrictions on the sale or supply of liquor to persons under 18 years of age.	On the grounds that youth less than 18 years of age may not be sufficiently informed or mature enough to make appropriate decisions regarding alcohol-use.
3	Restrictions that the presence of minors on licensed premises for bar areas in premises with on-licences or on and off-licences (for example, hotels, nightclubs and similar).	Youth under 18 years of age are to be permitted unaccompanied in licensed restaurants. However, existing restrictions remain in respect of hotels, bars, nightclubs due to their more volatile nature.
4	Persons under 18 years of age should continue to be prohibited from selling liquor.	On the grounds that youth under 18 years of age selling liquor may be subject to peer pressure to engage in underage sales and may be not sufficiently mature to enforce liquor laws.
5	Licence applicants subject to suitable person criteria and that they have an adequate knowledge of the Act.	On the grounds that the exclusion of the criminal element from the sale of liquor is an essential element of effective control.
6	Restrictions on the sale or supply of liquor to intoxicated person.	On the grounds that sales of liquor to an intoxicated (drunken) person promote misuse and abuse of alcohol.
7	No licensee or associates can hold more than 8% of packaged liquor or general licenses	The recommendation of the Review Panel is accepted in respect of abolition of the 8% limit on general licences, but not accepted in respect of packaged liquor licences.
8	Poll should be taken of "dry area" residents to assess whether they support modification or retention of the existing provisions.	On the grounds that it is appropriate that affected residents determine the future of "dry areas" through a democratic process.
9	Retain ordinary hours	On the grounds that community concerns regarding amenity, effective enforcement and misuse and abuse of alcohol in rejecting. The concept of "ordinary hours" is maintained in order that targetted provisions may apply to problematic late night trading.
10	Requirement for a BYO permit.	On the grounds that to community concerns regarding the availability of BYO liquor in a range of inappropriate businesses if no regulating regime was maintained.

11	Liquor Control Reform (Prescribed Substance) Regulations 1999: The objective of these Regulations is to contribute to further minimise misuse and abuse of alcohol by persons under the age of 18 years by regulating the supply of food preparations that are intended for consumption in a frozen form e.g. alcoholic icy poles.	The regulations have an impact on the wholesale and retail sale of the products in question in that such sellers are required to be licensed pursuant to the Act and sales of such products may not be made to youth under 18 years of age and drunken persons. Whilst the regulations will restrict the sale of frozen alcoholic food preparations, such a restriction is warranted having regard to public intent in respect of minimising the misuse and abuse of alcohol, particularly by youth under 18 years of age.

Legislation:	**Motor Car Traders Act 1986**	Portfolio:	Fair Trading
Reviewer:	In-House (Office of Fair Trading & Business Affairs)	Date review completed:	Early 1998
Consultation:	None	Date response released:	Via legislation passed in Spring 1998

No.	Review Recommendations	Government Response	Implementation
1	The eligibility criterion for a trader to have 'suitable premises' be replaced by a criterion that a trader have all relevant planning approvals for any premises at which the trader carries on business, or proposes to carry on business, as a motor car trader.	Accepted	Amendments made by the Tribunals and Licensing Authorities (Miscellaneous Amendment) Act 1998
2	The eligibility criterion for a trader to carry on a motor trading business 'efficiently' should be removed.	Accepted	See above
3	The potential for unwarranted claims on the Motor Car Traders' Guarantee Fund should be reduced by: • ensuring that a financier cannot claim in relation to a trader's failure to cancel a security interest where the debtor was a motor car trader; • ensuring that a financier cannot claim where a vehicle has been repossessed from a trader's premises and sold at a loss; and • specifying the provisions in relation to which a claim can be made for loss incurred from the failure of a trader 'to comply with [the] Act' as sections 36 (prohibition on consignment selling), 38 (prohibition on odometer tampering), 43(3) (disposal of a trade-in vehicle during the cooling-off period), s54(1) (traders' obligations with respect to warranties), and s56(2) (special conditions purporting to limit or modify warranty obligations).	Accepted	See above

No.	Restrictions on Competition Remaining	Competition Policy Justification
1	Licensing of Motor Car Traders	Ordinary carbuyers lack information to assess the safety, quality and reliability of motor vehicles, particularly used vehicles. This information imbalance is compounded by the complexity of the product and the fact that cars are infrequently purchased and essentially experience goods. Third party vehicle testing is costly and only a partial solution to the problem. In an unregulated market, it will be more common for traders to avoid the investment of resources necessary to meet expectations they have created in buyers in relation particular vehicles. Licensing excludes: certain people with criminal records relating to dishonesty, drug trafficking or violence; insolvents; and traders without council approved trade premises. The Act imposes direct costs on traders (and therefore their customers) by requiring them to pay licensing fees and to comply with various conduct requirements. It benefits the community by: reducing the potential for unfair trader conduct (including odometer tampering); improving the chances of and reducing the costs to the buyer of obtaining a safe vehicle of reasonable quality having regard to price; providing for a fund of last resort, the Motor Car Traders Guarantee Fund, which compensates for losses incurred as a result of specified trader misconduct. The Act's

No.	Restrictions on Competition Remaining	Competition Policy Justification
		documentation requirements also make it harder for the trade to be used as a conduit for the disposal of stolen vehicles. While not quantifiable, it is reasonable to conclude that these benefits outweigh the costs. There is no potential for effective self-regulation at present, and lighter-handed regulation such as negative licensing or registration would not sufficiently reduce the threat of serious loss through trader misconduct. General law prohibiting misrepresentations, requiring services to be rendered with due care and skill, and requiring goods sold to be of merchantable quality, is not sufficiently clear-cut and straightforward of enforcement to constrain the types of misconduct observed in this industry. The development and continued availability of reasonably-priced commercial insurance products adequate to cover relevant consumer risks cannot be relied upon. Information strategies are already used where appropriate but are not a panacea.
2	Statutory warranty on certain used cars must be honoured	See above.

Legislation:	**Optometrists Registration Act 1958**	Portfolio:	Health
Reviewer:	Panel	Date review completed:	1996
Consultation:	Targeted consultation, Invitation to make submissions	Date response released:	1996

No.	Review Recommendations	Government Response	Implementation
1	Retain restriction on use of title ("optometrist")	Accepted	Act replaced by Optometrists Registration Act 1996 proclaimed on 1 July 1997.
2	Extend restriction rights to prescribe glasses to orthoptists (on referral from an optometrist or ophthalmologist)	Accepted	As above
3	Extend prescribing rights to scheduled drugs to optometrists.	Accepted	As above
4	Retain restrictions on Advertising (limited to fair and accurate)	Accepted	As above

No.	Restrictions on Competition Remaining	Competition Policy Justification
1	Use of title ("optometrist")	Benefits of consumers information more than offset limited costs.
2	Types of work (prescription or referral for prescription of glasses)	Prescription by ophthalmologists and optometrists provide concurrent screening for eye pathologies.
3	Advertising (limited to fair and accurate)	Limited restrictions on advertising should ensure an informed market. Provision mainly gives powers to the Board to investigate advertising

Legislation:	**Physiotherapists Registration Act 1978**	Portfolio:	Health
Reviewer:	In-House (Panel)	Date review completed:	1998
Consultation:	Discussion paper, public consultation, submissions received, and further targeted consultation	Date response released:	1998

No.	Review Recommendations	Government Response	Implementation
1	Retain restriction on use of title	Accepted	Via the *Physiotherapists Registration Act* 1998 proclaimed on 1 July 1998.
2	Retain restrictions on advertising (limited to fair and accurate)	Accepted	As above

No.	Restrictions on Competition Remaining	Competition Policy Justification
1	Use of title	Benefits of consumers information more than offset limited costs
2	Advertising (limited to fair and accurate)	Limited restrictions on advertising should ensure an informed market. Provision mainly gives powers to the Board to investigate advertising

Legislation:	**Psychologists Registration Act 1987**	Portfolio:	Health
Reviewer:	In-House (Panel)	Date review completed:	1998
Consultation:	Targeted consultation	Date response released:	Pending\June 99

No.	Review Recommendations	Government Response	Implementation
1	Restrictions on statutory registration, use of the title "psychologist", advertising and enquires into capacity and conduct were necessary to achieve the objectives of the legislation and should be retained	Accepted	It is anticipated that a new Bill will be introduced in Autumn 1999.
2	Restrictions on specialist approvals, psychological tests and consent to use of certain titles by bodies corporate and similar entities were not necessary to achieve the objectives of the legislation. Specialist approvals were to be replaced by less restrictive provisions providing for endorsement of the register with post graduate qualifications and/or training	Accepted	As above
3	In view of the substantial inconsistencies between the PRA and more modern health practitioner registration Acts, the PRA should be repealed and a new Act introduced incorporating the above recommendations and based on the model contained in the *Medical Practice Act 1994*	Accepted	As above
4	Amendments to model provisions which received endorsement as a result of reviews of the *Medical Practice Act 1994* and *Nurses Act 1993* were to be incorporated, where appropriate, in drafting of a new Act	Accepted	As above
5	There are no practice restrictions contained in the current *Psychologists Registration Act 1987*, and none are contained in the proposal for the new Bill. The remaining restrictions are therefore those arising from the core provisions contained in the *Medical Practice Act*, as modified by the *Physiotherapists Registration Act 1998* and *Dental Practice Bill*.	Accepted	As above
4	In addition to the above recommendations, the proposal provides for: • replacement of the current PRB with a new incorporated Board of the same name • the Board to appoint its own staff and administer its own funds, subject to certain limitations • criteria for registration which facilitate mutual recognition • the Board to have the power to impose conditions, limitations or restrictions on registration of a practitioner • the Board to have the discretionary power to require a registered practitioner to have professional indemnity insurance as a condition of registration • inclusion of a provision enabling individuals or those concerned with or taking part in the management of bodies corporate to be prosecuted for use of testimonials or false, misleading or deceptive advertising	Accepted	As above

	• inclusion of model provisions relating to disciplinary inquiries, including informal hearings and open formal hearings • the Board to notify complainants of action taken with respect to complaints.		

No.	Restrictions on Competition Remaining	Competition Policy Justification
1	Use of title	Benefits of consumers information more than offset limited costs
2	Advertising (limited to fair and accurate)	Limited restrictions on advertising should ensure an informed market. Provision mainly gives powers to the Dental Board to investigate advertising

Legislation:	**Prevention of Cruelty to Animals Act 1986**	Portfolio:	Agriculture & Resources
Reviewer:	Consultant (KPMG)	Date review completed:	November 1997
Consultation:	Release of issues paper and call for submissions, targeted interviews	Date response released:	September 1998

No.	Review Recommendations	Government Response	Implementation
1	Retain requirement for a registered veterinarian to be present at rodeos.	Accepted	-
2	Retain requirement that a registered veterinarian inspect animals and remain on stand-by at rodeo schools.	Accepted	-
3	Remove requirement that an Australian Professional Rodeo Association (APRA) stock contractor supply animals to rodeos and rodeo schools. Stock contractors are to be any stock contractors subject to the introduction of a Code of Practice.	Accepted	Regulations to be amended in 1999. A Code of Practice is being developed and will be tabled in Parliament in Spring 1999.
4	Remove the requirement that rodeo school instructors are APRA accredited.	Accepted	See above.
5	Retain requirements on scientific establishments to adhere to minimum standards concerning animal housing, cleanliness, equipment, record keeping and reporting.	Accepted	-
6	Retain minimum space and other requirements contained in the animal farming and transport codes of practice.	Accepted	-
7	Retain requirement for minimum cage floor areas in egg production.	Accepted	-

No.	Restrictions on Competition Remaining	Competition Policy Justification
1	Requirement for a registered veterinarian to be present at rodeos.	No alternative as practitioner must be able to administer drugs and perform surgery.
2	Requirement that a registered veterinarian inspect animals and remain on stand-by at rodeo schools.	No alternative as practitioner must be able to administer drugs and perform surgery.
3	Requirements on scientific establishments to adhere to minimum standards concerning animal housing, cleanliness, equipment, record keeping and reporting.	The requirements do not impose a burden on institutions above that which they would do as a matter of course.
4	Minimum space and other requirements contained in the animal farming and transport codes of practice.	The requirements do not have a substantial effect on competition in the market for production and transport of animals. Further, they contribute to reducing the chance of foreign markets imposing trade sanctions on animal welfare grounds under the relevant WTO agreement.
5	Requirement for minimum cage floor areas in egg production.	Benefit of improved bird welfare outweighs small increase in egg prices. Previous voluntary code found to be ineffective.

Legislation:	**Petroleum Act 1958**	Portfolio:	Agriculture & Resources
Reviewer:	Consultant (KPMG)	Date review completed:	February 1997
Consultation:	Call for submissions and targeted interviews	Date response released:	March 1999

No.	Review Recommendations	Government Response	Implementation
1	Retention of Crown ownership of petroleum resources, along with the overall permit lease system for petroleum exploration and production, to be justified under NCP.	Accepted	Petroleum Act 1998 passed in Spring 1998 sitting.
2	That a number of changes be made to the legislation in order to remove obstacles to exploration and production of petroleum and to increase administrative efficiency, i.e. a longer term for exploration permits and greater certainty for persons wishing to move from an exploration permit to a production licence.	Accepted	See above.

No.	Restrictions on Competition Remaining	Competition Policy Justification
1	Crown ownership of petroleum resource with access for exploration and production restricted via permit lease system. Two aspects of the permit/licence system may restrict competition due to increased compliance costs for permit and licence holders. The Act requires compensation to be paid to landowners for use and damage to freehold land. The Act also provides for the imposition of conditions on permits, leases and licences with regards to safety standards and protection of the environment. The Act also contains provisions to vary conditions upon consolidation and transfer of titles, at the request of the title holder and otherwise at intervals of not less than 5 years. This provision recognises that the basis of project progress or development may have altered and therefore a review of the ground rules is appropriate both in terms of orderly development and public benefit.	The permit/licence system enhances security of tenure for potential investors without compromising safety and environmental considerations. The allocation process by which tenure is secured will almost exclusively be by a tender process that affords maximum opportunity for participation and hence enhances contestability for petroleum rights. The benefits to the community from the restrictions contained in the proposal will flow from the orderly development of valuable petroleum resources with due regard to public safety and environmental protection. The proposed legislation ensures that petroleum exploration and extraction activities are carried out with minimal effects on the environment and, as the value of recovery of petroleum is very high, that such recovery represents optimal land use without impacting substantially on other land uses. There is also provision for land to be readily returned to some alternate land use upon completion of petroleum activities. Costs to explorers or producers of petroleum arising from restrictions contained in the proposal will arise primarily through complying with requirements for safety and environmental protection, compensation to owners of land and the payment of royalties. Such costs are considered essential in deriving optimal community benefit and to achieve the objectives of the proposal. The costs of any restrictions contained in the proposal are considered to be outweighed in terms of returns to the operator and benefits to the community as a whole. Therefore the proposal satisfies the guiding legislative principle as it pertains to national competition policy considerations.

Legislation:	**Residential Tenancies Act 1980, Rooming House Act 1990, Caravan Parks and Moveable Dwellings Act 1988, the Rooming Houses Act 1990, and the then draft Residential Tenancies Bill**	Portfolio:	Housing
Reviewer:	In House (Consultant) - Steering Committee had representation from the following departments: Premier and Cabinet; Treasury and Finance; State Development; Justice and Human Services	Date review completed:	April 1997
Consultation:	Targeted - peak real estate industry, landlord and tenant groups - submissions to and findings of the 1995 Ministerial Review into Residential Tenancies Legislation which undertook extensive community consultations and led to the development of new draft legislation	Date response released:	1997

No.	Review Recommendations	Government Response	Implementation
1	The existing and the then proposed new legislation has a negligible impact on competition, but that the legislation can, by setting the framework within which competition operates, have a significant direct impact on market efficiency and equity.	Accepted	-
2	Retain the six month period of notice for termination of a lease without a prescribed reason.	Accepted	The redrafted *Residential Tenancies Act* 1997 was passed by Parliament in November 1997. The Act came into operation on July 1 1998.
3	Retain the six monthly limit on rent increases.	Accepted	See above.
4	Retain the regulation of bonds.	Accepted	See above.

No.	Restrictions on Competition Remaining	Competition Policy Justification
1	The six month period of notice for termination of a lease without a prescribed reason	The consultants found that the potential restrictions on competition contained in the legislation apply generally to the market and thereby minimise distortions between existing market participants and do not raise significant barriers or disincentives to new entry. Many of the notional restrictions are in fact clarifications of property rights, and/or interventions designed to enhance efficiency and minimise disputes
2	The six monthly limit on rent increases	As above
3	The regulation of bonds	In relation to bonds the consultants found that bonds should continue to be regulated to protect low income tenants, but with some flexibility introduced in respect of guarantees. It was considered that the introduction of guarantees would require additional legislative controls and act counter to the proposed centralised bond fund. A subsequent consultancy (undertaken by the Allen Consulting Group) which primarily addressed the issue of investment in rental housing re-examined this matter in some detail. This consultancy concluded that existing regulations on bonds were not restrictive and compared favourably with arrangements in other states. The KPMG recommendation in relation to guarantees would not measurably increase returns to any potential investors in the private rental market and the common form of guarantee may add legal costs for market participants.

Legislation:	**Road Safety Act 1986**	Portfolio:	Roads and Ports
Reviewer:	Semi Public (panel)	Date review completed:	1997
Consultation:	Public notice, issues paper, submissions.	Date response released:	1997

No.	Review Recommendations	Government Response	Implementation
1	The review found that the Act did not contain significant restrictions on competition affecting commercial transport service industries..	Accept	No change necessary.

No.	Restrictions on Competition Remaining	Competition Policy Justification
1	Licensing of motor vehicle inspections	Road worthiness tests were found to be important to road safety. Licensing of private provides allows for competition.
2	Prescription over equipment used for testing blood alcohol levels.	In accurate readings could contribute to road accidents involving third parties.
3	Drink driving program providers.	Providers are used where a judge order attendance at a rehabilitation program. The review found that exclusion of less than competent providers was necessary to ensure that Court orders are effective in rehabilitating offenders.

Legislation:	**Second-hand Dealers and Pawnbrokers Act 1989**	Portfolio:	Fair Trading
Reviewer:	In-House (Office of Fair Trading & Business Affairs)	Date review completed:	Late 1996
Consultation:	None	Date response released:	Via passage of legislation in Autumn 1997.

No.	Review Recommendations	Government Response	Implementation
1	The various licensing types for second-hand dealers and pawnbrokers be replaced by a registration system, with provision for prescribing requirements for notification of the type of business being conducted (e.g. dealing from business premises, dealing at markets, pawnbroking).	Accepted	Amendments made by the Law and Justice Legislation Amendment Act 1997
2	The "fit and proper" test for applicants be replaced by a "no serious offences" test, using s.14(5)(e) of the Estate Agents Act 1980 as a model.	Accepted	See above
3	The obligation to retain goods for seven days after acquisition no longer apply for metals except gold and silver (whenever obtained) and copper and brass (when acquired from a source not used in the preceding three months).	Accepted	See above
4	The requirement on dealers to conduct particular transactions only at a registered business premises or a market be removed, and that instead dealers be required to register any place habitually used for holding goods acquired and, where goods subject to the seven day retention requirement are not to be kept at a registered place, to record on acquisition where they will be kept.	Accepted	See above
5	Restrictions on the rates of interest chargeable by pawnbrokers be removed.	Accepted	See above

No.	Restrictions on Competition Remaining	Competition Policy Justification
1	Registration	Second-hand dealers may – deliberately or inadvertently – become conduits for stolen property. Registration, together with documentation and storage requirements, are necessary to contain this problem. There is no potential for self-regulation (which would require industry-wide adherence to a code of practice without specific consumer pressure - it is victims of theft, not consumers of dealers' services, who benefit from regulation. Negative licensing is reactive rather than preventative and insufficient to deal with the problems. The compliance costs are slight and any anti-competitive effect is outweighed by the improved capacity for price comparison this affords.

Legislation:	**State Trustees (State Owned Company) Act 1994; Accident Compensation Act (1985) Division 7 of Part 4**	Portfolio:	Treasurer, Attorney-General
Reviewer:	In-House (Department of Treasury & Finance)	Date review completed:	June 1997
Consultation:	Targeted consultation	Date response released:	Via legislation assented to in April 1998

No.	Review Recommendations	Government Response	Implementation
1	Remove legislative preference toward State Trustees in the appointment of administrators of estates.	Accepted	Act amended by the State Trustees (Amendment) Act 1998 assented to in April 1998
2	Remove legislative preference for State Trustees to be appointed to administer children's funds.	Accepted	See above
3	Remove legislative preference for State Trustees in the administration of CSOs	Accepted	See above
4	Remove State Trustees ' exclusive powers of administration of "uncared for" properties.	Accepted	See above
5	Allow all estate administrators to advance own monies to beneficiaries or represented persons in necessitous circumstances where there are insufficient estate or personal funds available at the time.	Accepted	See above
6	Remove exclusive right of State Trustees to administer small estates in circumstances where an individual dies and there are no known next of kin.	Accepted	See above
7	Remove exclusive rights to State Trustees to be appointed administrator of worker's (lump sum) compensation.	Accepted	-
8	Remove exclusive right of State Trustees to hold and manage death benefits payable to surviving children until age 18.	Accepted	-
9	Remove legislative preference for State Trustees or legislative rights to State Trustees providing them with the exclusive right to provide particular services (administrator of certain worker's compensation payments), by amending Division 7 of Part 4.	Accepted	See above

No.	Restrictions on Competition Remaining	Competition Policy Justification
1	Exclusive reciprocal arrangements with public trustees in other jurisdictions for administration of estates for persons with disabilities.	Private sector companies already have the ability to reciprocate orders through their own interstate links. Therefore, in practice, this section places the State Trustees on an equal footing with private competitors and does not provide a competitive advantage.
2	An explicit government guarantee to discharge liabilities incurred in respect of management of estates by State Trustees (resulting from negligence, wilful default or	If the guarantee was abolished, it would be necessary for any professional insurance to provide the same extent of cover. The current professional insurance held by State Trustees does not indemnify against a claim brought about by a dishonest or fraudulent act by State Trustees or its employees.

No.	Restrictions on Competition Remaining	Competition Policy Justification
	fraud), to the extent that proceeds from any insurance contract and/or the assets of State Trustees are not sufficient to meet the liability.	
3	Exclusive arrangements for public trustees in other jurisdictions to facilitate the administration of deceased estates.	This section provides State Trustees with administrative arrangements designed to overcome jurisdictional constraints and place them on an equal footing with the private sector. Therefore, this restriction in practice does not confer a practical competitive advantage on State Trustees.

Legislation:	**Transport Accident Act 1986**	Portfolio:	Treasurer
Reviewer:	In-House (Department of Treasury & Finance)	Date review completed:	December 1997
Consultation:	None	Date response released:	October 1998

No.	Review Recommendations	Government Response	Implementation
1	As a means of effectively achieving all of the objectives of the transport accident compensation scheme, the Government should remove existing statutory price setting provisions and allow the introduction of risk reflective premiums. This will enable the identification of existing cross-subsidies which should then be transparently funded or removed.	Not accepted.	-
2	In the medium to longer term, the Government should separate commercial from regulatory and other non-commercial functions in the delivery of transport accident compensation. Structural reform of the public monopoly should be consistent with the principles of structural reform contained in the Competition Principles Agreement.	Not accepted.	-
3	This report should be released for public comment to assist the Government in developing its response to these recommendations.	Not accepted - the Government reviewed the scheme intensively in its 1992 - 1996 term and hence is in a position to respond without further assistance.	-

No.	Restrictions on Competition Remaining	Competition Policy Justification
1	The monopoly held by the Transport Accident Commission on the supply of transport accident compensation through the Transport Accident Fund.	*See Volume 1 for more detail.* · The Government's view is that the no fault compensation including a provision for lifetime care, lower and more stable premium relative to the other States' average and the community rating in the premium, provide greater benefit to the community than the costs of restricting competition. The benefits have been provided by a stable scheme over a period in excess of 10 years. The costs of restricting competition in Victoria's scheme are judged to be smaller overall than the benefits. The Government has therefore concluded that there is a net benefit to the community as a whole from the existing arrangements. · The Government considers that a competitive model with compulsory coverage, lifetime care and community ratings would result in the problem of high ongoing regulatory costs. Furthermore, the transitional costs that would be required to move from the existing scheme to a competitive model would be a very heavy burden on motorists and could not be justified unless the Government were confident that the benefits would outweigh the costs. · The Government has therefore concluded that at this stage the objectives of the existing scheme can only be achieved by restricting competition. · The Government intends to carefully monitor reforms in other jurisdictions. Any experience that demonstrates scope for improvements will be analysed for possible incorporation in Victoria's public monopoly transport

No.	Restrictions on Competition Remaining	Competition Policy Justification
		accident compensation scheme.
2	Compulsory payment of contributions to the Fund by all motor vehicle owners.	All vehicle owners share the risk burden associated with transport accidents and it enables cross-subsidisation to maintain premiums at affordable levels. It may be considered socially appropriate and with wide application may potentially reduce the overall cost to the community of compensating for transport accidents. These benefits are considered to outweigh the costs of potentially reduced incentives on the insurer for cost control and product innovation.
3	Governor-in-Council may make regulations prescribing fees.	The introduction of risk reflective premia is unlikely to modify driver behaviour more than the pain and suffering arising from personal injury. It would also be inequitable for road users such as motorcyclists who are usually innocent victims of accidents caused by other users. The Government must also have regard to ability to pay.

Section 2

Legislation Reviews: Completed but Response Still Under Consideration

Reviews where the report has been released

No.	Legislation	Portfolio
1	**Agricultural Industry Development Act 1990 and Orders made under that Act**	Agriculture & Resources
2	• **Dentists Act 1972** • **Dental Technicians Act 1972**	Health
3	**Marine Act 1988 (& Notices made under Section 15)**	Roads and Ports
4	**Mental Health Act 1986**	Health
5	**Mineral Resources Development Act 1990**	Agriculture & Resources
6	**Pipelines Act 1967**	Agriculture & Resources

Details on these released reviews follow.

Legislation:	**Agricultural Industry Development Act 1990 and Orders made under that Act**	Portfolio:	Agriculture & Resources
Reviewer:	Consultant (KPMG)	Date review completed:	January 1999
Consultation:	Release of an issues paper and call for submissions, targeted interviews		

No.	Review Recommendations
1	The Murray Valley (Victoria) Wine Grape Industry Marketing Order 1994 not be renewed after it expires on 23 November 1998.
2	The Murray Valley (New South Wales) Wine Grape Processing Industry Marketing Order 1995 not be renewed after it expires on 30 November 1998.
3	Murray Valley Wine Grape Industry Development Order (Victoria) 1994 and Murray Valley (New South Wales) Wine Grape Processing Industry Marketing Order 1995: • remove the function prescribed in sub-clauses 8(a) regarding closer relationships between industry participants and 8(c) regarding provision of resources to the Murray Valley Wine Grape Growers Council; • retain the market information function prescribed in sub-clauses 8(b) and (d) in the short term while considering whether these could be undertaken by industry organisations; and • review the activities of the Grape and Wine Research and Development Corporation to determine whether it could undertake or fund the research and development currently undertaken by the Murray Valley Wine Grape Industry Development Council.
4	Remove from the Northern Victoria Fresh Tomato Industry Development Order 1995 and the Victorian Strawberry Industry Development Order 1996 sub-clause 10(b) which provides a power for the respective Industry Development Council to act as a purchasing agent.
5	Remove from the Emu Industry Development Order 1996 the discretionary function in sub-clause 11(b) of providing resources to the Emu Producers Association of Victoria.
6	Review the effectiveness of the Northern Victoria Fresh Tomato, Victorian Strawberry and Emu Industry Development Councils in undertaking or funding research and development and promotion. Examine whether other statutory-based agricultural research and development and promotion bodies could undertake or fund these activities. Seek an explanation from each of these Industry Development Councils for the level of unexpended funds and examine the appropriateness of the investment of the funds.
7	Remove from the Agricultural Industry Development Act provisions relating to price recommendation and payment terms and conditions functions of Negotiating Committees.
8	Remove from the Agricultural Industry Development Act the power for an Industry Development Council to act as a purchasing agent.
9	Consider amending the Act to provide that all Orders made must require reasons for any retention of funds raised from charges to be published in the Industry Development Council financial statements in annual reports; particularly in view of the fact that Orders are limited in time to four years.

Legislation:	**Dentists Act 1972** **Dental Technicians Act 1972**	Portfolio:	Health
Reviewer:	Semi Public (Panel)	Date review completed:	Jan 1999
Consultation:	Release of an issues paper and call for submissions		

No.	Review Recommendations
1	Retain restrictions on use of title (“dentist, dental technician”)
2	Retain restrictions on types of work
3	Retain restrictions on advertising (limited to fair and accurate)

Legislation:	**Marine Act 1988 (& Notices made under Section 15)**	Portfolio:	Roads and Ports
Reviewer:	Semi-public (Panel)	Date review completed:	1998
Consultation:	Public notice, submissions, targeted discussions.		

No.	Review Recommendations
1	Clarify responsibilities of harbour masters
2	Retain licensing of ships pilots
3	Increase competition for ships pilotage services (NB this recommendation has been accepted and a Bill is in preparation)
4	Establish performance based standards for crewing
5	No changes on recreational vessels

Legislation:	**Mental Health Act 1986**	Portfolio:	Health
Reviewer:	In House (Panel)	Date review completed:	1998
Consultation:	Targeted consultation		

No.	Review Recommendations
1	In relation to community support services, the panel considered that the registration requirements were unnecessarily restrictive in their current form and were not necessary to achieve the objectives of the legislation. The panel recommended that the definition of 'community support service' remain in the Act (without a requirement to register with the Department) to ensure that the regulatory mechanisms in the Act continue to apply.
2	The panel also considered that the current funding provisions of the Act should be removed and that community support services should be funded pursuant to the *Health Services Act* as are other non-government service providers. This allows streamlined and consistent funding across agencies.
3	The panel considered that in relation to proclamation of services, ECT licensing requirements and the regulation making power, the benefits of the restriction on the market outweighed the costs to the community.
4	In view of the above, the restrictions in relation to proclamation of services, ECT licensing requirements and the regulation making power remain in the Act.

Legislation:	**Mineral Resources Development Act 1990**	Portfolio:	Agriculture & Resources
Reviewer:	Consultant (Peter Day Consulting)	Date review completed:	March 1997
Consultation:	Call for public submissions and targeted interviews		

No.	Review Recommendations
1	Reference to "fit and proper, intends to comply and genuinely intends to do work or cause work to be done" in relation to applying for a licence, should be revoked.
2	Compensation provisions for assessment of the value of land for agricultural purposes should replace provisions relating to determination of economic significance of proposals on agricultural land.
3	Reference to employment condition in relation to granting of a licence should be revoked.
4	Any renewal of an exploration licence beyond 5 years should be limited to the area of interest to the licensee and not the total area covered by the licence.
5	The requirement to give notice to the chief mining inspector prior to commencing work should be revoked.
6	All entry requirements for certification of mine managers not related to health and safety skills, experience and knowledge should be deleted.
7	An application for a small area mining licence should be able to be registered before the consent of a prior tenement holder is negotiated.
8	It should be an offence for the holder of an exploration licence to seek or receive a financial incentive to grant consent for a mining licence without the agreement of both parties and the Minister.

Legislation:	**Pipelines Act 1967**	Portfolio:	Agriculture & Resources
Reviewer:	Consultant (Alex Dobes)	Date review completed:	February 1997
Consultation:	Call for public submissions and targeted interviews		

No.	Review Recommendations
1	Victoria should initiate moves to introduce a consistent regulatory regime for pipelines throughout Australia. If national harmonisation is not possible, the next best option is harmonisation with neighbouring markets and with large markets. If full harmonisation is not possible, an initial step of harmonising elements such as safety regulations should take place.
2	The exact definition of which pipelines fall under the Pipelines Act should be placed in the Act itself.
3	Consideration should be given to formalising time limits for government assessment of pipeline projects.
4	The system of separate permits and licences should be clarified and consideration given to a system of stages of approval.
5	The restrictions on tradeability of pipelines, permits and licences should be relaxed in a way which removes possible delays from the mergers and acquisitions process, but which maintains safety and environmental standards.
6	Unilateral powers on the part of regulators to alter permits or licences should be subject to appeal to the Victorian Civil and Administrative Tribunal.
7	The restriction on transporting only authorised substances in pipelines should be retained.
8	Open access provisions should be removed from the Act and open access should be governed by the forthcoming National Gas Access Code. If open access provisions are to remain in the Act, they should be clarified by specific regulations concerning the exercise of those powers, and those powers should be subject to appeal.
9	Safety requirements within the Act should be based on future guidelines being developed by the Department of Treasury and Finance.
10	Absolute prohibitions on damage should be modified to allow for prior agreed compensation for damage.
11	The liability of operators for damages should be extended beyond two years.
12	The Government should consider issues connected with future rehabilitation and compensation expenses, possibly through a detailed review.
13	The Government should retain control over the development of permitted pipelines. This control should be clarified in regulations.
14	The Government should examine the possibilities for the introduction of a standard electronic format for lodgement of maps and other documents.

Reviews where the report is yet to be released

No.	Legislation	Portfolio	Reviewer	Consultation	Date Review Completed
1	**Adoption Act 1984**	Attorney-General, Youth and Community Services	In-House (Departments of Justice and Human Services)	Notice and call for submissions, targeted interviews (various organisations representing domestic and intercountry adoption agencies, birth mothers, adoptees and adoptive families)	Late 1998
2	**Agriculture and Veterinary Chemicals (Control of Use) Act 1992; Agriculture and Veterinary Chemicals (Victoria) Act 1994**	Agriculture & Resources	Consultant (PriceWaterhouseCoopers)	Release of an issues paper and call for submissions, targeted interviews	January 1999
3	**Borrowing & Investment Powers Act 1987**	Treasurer	In-house (Department of Treasury and Finance)	Targeted	July 1997
4	**Cemeteries Act 1958**	Health	Semi Public (Panel)	Discussion paper released, extensive consultation undertaken.	1998
5	**Club Keno Act 1993**	Gaming	In-house (Department of Treasury and Finance)	Targeted	August 1997
6	**Domestic (Feral and Nuisance) Animals Act 1994**	Agriculture & Resources	Consultant (KPMG)	Release of an issues paper and call for submissions, public meetings and targeted interviews	November 1998
7	**Electricity Industry Act 1993 and State Electricity Commission Act 1958**	Treasurer	Consultant (Freehill, Hollingdale and Page)	None	January 1998
8	**Flora & Fauna Guarantee Act 1988**	Conservation & Land Management	Consultant (KPMG)	Issues paper and call for submissions, targeted interviews	
9	**Food Act 1984**	Health	National	Extensive consultation by ANZFA	1998
10	**Forests Act 1958**	Conservation & Land Management	Consultant (KPMG)	Call for public submissions, public meetings and targeted interviews	April 1998
11	**Gaming & Betting Act 1994 (all, except Part 5, Div 2 of Part 6, Part 15 of Div 2, & Div 2 of Part 18,**	Gaming	Consultant (Centre for International Economics)	Release of issues paper and call for submissions	November 1998

No.	Legislation	Portfolio	Reviewer	Consultation	Date Review Completed
	which are jointly administered by the Office of Racing).				
12	**Legal Aid Act 1978**	Attorney-General	Consultant (KPMG)	Targeted (legal professional bodies, Federation of Community Legal Centres, and Victoria Legal Aid)	November 1998
13	**Museums Act 1983**	Arts	In House (Consultant)	Targeted	1998
14	**Racing and betting legislation (Racing Act 1958, Rules of the Harness Racing Board, Rules of the Greyhound Racing Control Board, Lotteries Gaming and Betting Act 1966, Gaming and Betting Act 1994, Casino Control Act 1991)**	Sport and Gaming	Semi Public (Consultant)	Issues Paper, Discussion Paper, submissions, public consultation, targeted consultation and meetings with industry, and interested groups	December 1998
15	**Surveyors Act 1978**	Conservation and Land Management	Consultant (Southbridge)	Call for submissions, targeted interviews	July 1997
16	**Tattersall Consultations Act 1958**	Gaming & Treasurer	Panel (Michael Pryles and Peter Swan)	Targeted consultation	January 1998
17	**Wildlife Act 1975**	Conservation & Land Management	Consultant (KPMG)	Release of issues paper and call for submissions and targeted interviews	November 1998

Section 3

Legislation Reviews: Commenced but not Completed

No.	Legislation	Portfolio	Reviewer	Consultation	Expected Completion Date
1	**Ambulance Services Act 1986**	Health	Semi Public (consultant)	Discussion paper published in December 1998 and targeted consultation	Report in April 1999. Any changes to the Act will proceed in Autumn 2000
2	**Auction Sales Act 1958**	Fair Trading	Consultant (Public Sector Research Unit, Victoria University of Technology)	Release of issues paper and call for submissions.	June 1999
3	**Broiler Chicken Industry Act 1978**	Agriculture & Resources	Consultant (KPMG)	Release of issues paper and call for submissions and targeted interviews	May 1999
4	**Building Act 1993; Architects Act 1991**	Planning and Local Government	Semi Public (Consultant)	Public notice, issues paper, submissions, targeted consultation.	March 1999
5	**Consumer Credit (Victoria) Act 1995**	Fair Trading	National review led by NSW and conducted by a consultant	Release of issues paper and call for submissions	June 2000
6	**Dairy Industry Act 1992**	Agriculture & Resources	Consultant (Centre for International Economics)	Release of issues paper and call for submissions and targeted interviews	July 1999
7	• **Education Act 1958** • **Ministerial Order No. 14 1998 (Payment of fees by overseas students) which has replaced Ministerial Order No. 3 1995, Ministerial Order No. 4 1995, and Ministerial Order No. 5 1995**	Education	The initial part of the review was undertaken by a Department of Education Legislative Review Steering Committee comprising representatives of the Departments of Education, Premier & Cabinet and Treasury & Finance The review of school education policy is to be undertaken by a consultant (Melbourne Economics) working for review and steering committees comprising representatives from the Departments of	With respect to the registration of teachers and non-government schools, consultation was undertaken with the Catholic Education Office and the Association of Independent Schools in Victoria With respect to the setting of fees for overseas students, provision was made for consultation with the Association of School Councils in Victoria, the International Students Policy and Programs Unit of the Department and relevant parent/school council	June 1999

No.	Legislation	Portfolio	Reviewer	Consultation	Expected Completion Date
			Education, Treasury & Finance, Premier & Cabinet.	groups With respect to the school education policy review, consultation, as appropriate, will be conducted following receipt of the consultant's report	
8	**Environment Protection Act 1970; Litter Act 1987**	Conservation & Land Management	Consultant (The Allen Consulting Group)	Release of issues paper and call for submissions and targeted interviews or meetings	July 1999
9	**Estate Agents Act 1980**	Fair Trading	In-House (Office of Fair Trading & Business Affairs)	None	December 1999
10	**Fisheries Acts 1995 (including the remaining provisions of the Fisheries Act 1968)**	Agriculture & Resources	Consultant (ACIL)	Release of issues paper and call for submissions, public meetings and targeted interviews	April 1999
11	**Health Act 1958**	Health	In-House (Panel)	Discussion paper published in December 1998. Submissions closed 26 February 1999.	May 1999.
12	**Health Services Act 1988**	Health	Semi Public (consultant)	Targeted consultation, Discussion paper to be released in March 1999, there will be public consultation and submissions received.	June 1999
13	**Heritage Act 1995**	Planning and Local Government	Semi Public (Consultant)	Public notice, issues paper, submissions, targeted consultation.	March 1999
14	**Medical Practice Act 1994**	Health	In House (Panel)	Release of issues paper and call for submissions, targeted interviews	March 1999
15	**Mines Act 1958**	Agriculture & Resources	Victorian WorkCover Authority	No public consultation	April 1999
16	**Murray Valley Citrus Marketing Act 1989**	Agriculture & Resources	Consultant (Centre for International Economics)	Release of issues paper and call for submissions, public meetings and targeted interviews	April 1999
17	**Nurses Act 1993**	Health	In House (Panel)	Release of issues paper and call for submissions, targeted	March 1999

No.	Legislation	Portfolio	Reviewer	Consultation	Expected Completion Date
				interviews	
18	**Pathology Services Accreditation Act 1984**	Health	In House (Panel)	public notice, discussion paper will be published in June 1999, submissions	Nov 1999
19	**Planning & Environment Act 1987**	Planning and Local Government	Semi Public (Consultant)	Public notice, issues paper, submissions, targeted consultation.	late 1999
20	**Public Transport Competition Act 1995**	Roads and Ports	Semi Public (Consultant)	Public notice, issues paper, submissions, targeted consultation.	Dec 1999
21	**Tobacco Act 1987**	Health	In-House (Consultant)	No consultation	1999
22	**Transport Act 1983 - Part 6: Division 5 (Commercial Passenger Vehicles)**	Transport and Roads and Ports	Semi Public (Consultant)	Public notice, issues paper, submissions, targeted consultation.	March 1999
23	**Transport Act 1983 - Part 6: Division 8 (Tow Trucks)**	Roads and Ports	Semi Public (Consultant)	Public notice, issues paper, submissions, targeted consultation.	April 1999
24	**Transport Act 1993 - Schedule 7 (Covenants to be Included in Deed of Assignment)**	Roads and Ports	Semi Public (Consultant)	Public notice, issues paper, submissions, targeted consultation.	April 1999
25	**Travel Agents Act 1986**	Fair Trading	National review led by Western Australia and conducted by a consultant (CIE)	Release of issues paper and call for submissions, targeted meetings	December 1999

Section 4

Legislation Reviews: Completion Expected to be Delayed

No.	Legislation	Portfolio	Scheduled Completion Date	Expected Completion Date	Comment
1	**Ambulance Services Act 1986**	Health	December 1997	March 1999	Delayed due to reorganisation within the Department of Human Services.
2	**Auction Sales Act 1958**	Fair Trading	June 1997	June 1999	Delayed pending completion of general policy review. Terms of reference now approved and consultant appointed.
3	**Broiler Chicken Industry Act 1978**	Agriculture & Resources	December 1998	May 1999	Delayed to allow other reviews to be brought forward.
4	**Business Names Act 1962**	Fair Trading	June 1998	December 1999	Delayed due to resource constraints.
5	**Civil Aviation (Carriers' Liability) Act 1961**	Industry, Science and Technology	Dec 1998	unknown *	This Act adopts Commonwealth legislation as part of a national uniform scheme. Due to the nature of this arrangement, unilateral action by Victoria is not feasible. A national review is being considered.
6	**Corrections Act 1986**	Corrections	July 1997	-	A review has been delayed pending an assessment of whether the Act contains restrictions.
7	**Council of Law Reporting in Victoria Act 1983**	Attorney-General	December 1997	December 1999	Delay due to resource constraints. Terms of reference are being prepared.
8	**Dairy Industry Act 1992**	Agriculture & Resources	December 1998	May 1999	Delayed to allow other reviews to be brought forward.
9	**Drugs, Poisons & Controlled Substances Act 1981**	Health	Aug 1998	Dec 1999 *	National Review, Cwth has delayed commencement until 1999. The end date for the review of this Act is specified in the Timetable as August 1998. This Act is part of a national review which is about to start.
10	• **Education Act 1958** • **Ministerial Order No. 14 1998 (Payment of fees by overseas students) which has replaced Ministerial Order No. 3 1995, Ministerial Order No. 4 1995, and Ministerial Order No. 5 1995**	Education	June 1997	June 1999	The legislation review was delayed for inclusion in a special policy review of the application of competition principles in the school education sector.
11	**Employment Agents Act 1983**	Industry, Science and Technology	Dec 1996	-	The Act has never been brought into operation and as such is considered redundant.

No.	Legislation	Portfolio	Scheduled Completion Date	Expected Completion Date	Comment
					Consideration is being given to reviewing the Act for repeal.
12	**Environment Protection Act 1970; Litter Act 1987**	Conservation & Land Management	January 1997 and December 1997 respectively	July 1999	Review delayed due to proposed legislative amendments to Environment Protection Act in 1998. Review commenced February 1999.
13	**Estate Agents Act 1980**	Fair Trading	June 1997	December 1999	Delayed for consultancy on framework for assessing fair trading legislation. Review now underway.
14	**Extractive Industries Development Act 1995**	Agriculture & Resources	July 1999	December 1999	Delayed to allow other reviews to be brought forward.
15	**Gaming Machine Control Act 1991**	Gaming	June 1998	June 2000	Postponed for inclusion in planned wider policy review of the Act.
16	**Health Act 1958**	Health	December 1998	May 1999	Minor delay.
17	**Health Services Act 1988**	Health	December 1997	Late 1999	Delayed due to decision to include in a wider review of the policy framework underlying this legislation.
18	**Housing Act 1983**	Housing	January 1999	to be determined	The regulatory parts of the Act have been repealed. The *Housing (Amendment) Act* of 1996 removed regulatory control over standards of habitation (Part 7 of the Act) from the Director of Housing and transferred remaining powers to local government. Provisions relating to Rental Housing Cooperatives (and associated regulations) under part 6 of the Act were repealed under the *Cooperatives Act* of 1996. A scoping review of the remaining Housing Act was undertaken during 1998. This review found that the Housing Act generally provides enabling powers only (for the Director of Housing and the Commonwealth State Housing Agreement (CSHA)), has no significant regulatory functions, and that therefore the Act did not operate to reduce competition. Two issues were, however, raised in this

No.	Legislation	Portfolio	Scheduled Completion Date	Expected Completion Date	Comment
					review on which external advice has been sought. The issues related to insurance and the powers of the Director of Housing acting as an agent for CSHA matters, as set out in the Act. Preliminary external advice obtained from KPMG Consulting has raised some potential competition policy issues in relation to the delivery and administration of public housing. Such matters go beyond the provisions of the Housing Act alone, however, and involve the CSHA. These wider CSHA matters are under examination with other jurisdictions. Particular issues include subsidy arrangements and any potential monopoly market outcomes. It is expected the completion date will be extended until December 1999.
19	**Labour & Industry Act 1958**	Industry, Science and Technology	July 1997	-	This Act is largely redundant. Consideration is being given to reviewing the Act for repeal.
20	**Livestock Disease Control Act 1994; Stock (Seller Liability & Declarations) Act 1993**	Agriculture & Resources	April 1999	December 1999	Review delayed due to legislative changes in 1998 and 1999.
21	**Long Service Leave Act 1992 (formerly Employee Relations Act 1992)**	Industry, Science and Technology	Dec 1997	1999	Review of this Act was delayed due to makes provision with respect to long service leave entitlements of certain employees. The changes to the Act occurred at the scheduled time of the competition policy review resulting in the deferral of the review. The Act is listed as a low priority review. An assessment is now underway to determine whether or not any of the remaining provisions of the Act restrict competition.
22	**Medical Practice Act 1994**	Health	December 1998	March 1999	Delay minor.
23	**Melbourne Market Authority Act 1977**	Agriculture & Resources	June 1998	December 1999	This review was delayed pending the completion of a competitive neutrality review of the Authority in 1998. The legislative review will be undertaken in 1999.

No.	Legislation	Portfolio	Scheduled Completion Date	Expected Completion Date	Comment
24	**Mines Act 1958**	Agriculture & Resources	February 1998	April 1999	This legislation is jointly administered by the Department of Natural Resources and Environment and the WorkCover Authority. This Act has largely been repealed. The few remaining provisions relate to occupational health and safety. Consequently the WorkCover Authority is undertaking the review.
25	**National Parks Act 1975; Water Industry Act 1994 (Part 4)**	Conservation & Land Management	December 1998	December 1999	These Acts are to be reviewed concurrently with land legislation (Land Act, Crown Land Reserves Act and various minor land acts) to promote a consistent approach to competition issues in relation to leases, licences and permits on Crown land. Preliminary work has been done for this review but commencement has been delayed while preliminary work is done for land reviews.
26	**Nurses Act 1993**	Health	December 1998	March 1999	Delay minor.
27	**Partnership Act 1958**	Fair Trading	June 1999	December 1999	Delayed due to resource constraints.
28	**Pathology Services Accreditation Act 1984**	Health	June 1997	Late 1999	Delayed by difficulties of finding independent pathology experts for the review panel.
29	**Petroleum Retail Selling Sites Act 1981**	Fair Trading	June 1999		Referred to Scrutiny of Acts and Regulation Committee of Parliament which will consider, in June 1999, the case for repeal.
30	**Petroleum (Submerged Lands) Act 1982**	Agriculture & Resources	December 1997	July 2000	This is national legislation with mirror legislation in each state. Victoria is unable to review its legislation until the Commonwealth proceeds with its review or initiates a multi-jurisdictional review.
31	**Pharmacists Act 1974**	Health	Aug 1997	Dec 1999 *	National Review, Cwth has delayed commencement until 1999. The end date for the review of this Act is specified in the Timetable as August 1998. This Act is proposed to be part of a national review. Terms of reference have been circulated to jurisdictions and the Minister has agreed to the

No.	Legislation	Portfolio	Scheduled Completion Date	Expected Completion Date	Comment
					proposed terms of reference.
32	**Plant Health & Plant Products Act 1995**	Agriculture & Resources	April 1999	December 1999	Delayed to allow other reviews to be brought forward.
32	**Police Regulation Act 1958**	Police and Emergency Services	June 1998	-	Delayed pending policy review of policing by the Police Board. Need for NCP review to be reconsidered.
34	**Private Agents Act 1966**	Police and Emergency Services	June 1998	June 1999	Delay due to proposal for national review. Terms of reference being prepared.
35	**Road Transport (Dangerous Goods) Act 1995**	Finance (formerly Industry Science & Technology)	December 1998	Unknown	This is mirror legislation to the Commonwealth's 1994 Act of the same name. Awaiting outcome of Commonwealth review.
36	**Therapeutic Goods (Victoria) Act 1994**	Health	Feb 1998	May 1999 *	It is anticipated that the review will commence in February 1999. The end date for the review of this Act is specified in the Timetable as December 1998. This Act is scheduled to report in May 1999. It has not been started as yet as the Public Health and Development Division has a heavy program of legislative review and has directed available resources to other reviews to date. It is expected that this review will commence in March 1999 and report to the Minister on time in May 1999.
37	**Tobacco Act 1987**	Health	November 1997	March 1999	Internal Departmental consultation only.
38	**Trade Measurement Act 1995**	Industry, Science and Technology	Dec 1998	June 1999	This Act forms part of a national uniform scheme and requires a national review. The Ministerial Council for Consumer Affairs has proposed a national review to be undertaken by Queensland. The review is proposed to be completed by June 1999.
39	• **Transport Act 1993 - Schedule 5 (Provisions with Respect to Roads)** • **Transport Act 1993 - Schedule 4 (Further Particular Powers of the Roads Corporation)** • **Transport Act 1983 - Part 6:**	Transport and Roads and Ports	Dec 1998	March 1999	Nominated for an in-house assessment jointly with the Powers of the Corporations, Financial and Traffic Regulations. Assessment delayed to accommodate the process of transport reforms.

No.	Legislation	Portfolio	Scheduled Completion Date	Expected Completion Date	Comment
	(Traffic Regulation, Registration & Licensing) Division 1 (General Provisions) • **Transport Act 1993 - Part 4 (Financial)** • **Transport Act 1993 - Part 3 (Powers of the Corporations)**				
40	**Travel Agents Act 1986**	Fair Trading	June 1998	December 1999	Approval of the national review process was delayed. Terms of reference has been approved and a consultant appointed.
41	**Trustee Act 1958**	Fair Trading	June 1998	December 1999	Delayed due to resource constraints.
42	**Wheat Marketing Act 1989**	Agriculture & Resources	June 1999	July 2000	The Commonwealth Act is the main wheat marketing legislation. Each state has complementary legislation. Consequently Victoria is unable to review its legislation until the Commonwealth proceeds with its review or initiates a multi-jurisdictional review.

Section 5

Legislation Reviews: Removed

No.	Legislation	Portfolio	Reason for Removal
1	**Victorian Plantations Corporation Act 1993**	Agriculture & Resources	The assets of the Corporation were sold in December 1998. Consequently most of the Act will be repealed leaving only provisions related to the Crown's residual interests in the land, licence and legislated supply agreements.
2	**Dried Fruits Act 1958**	Agriculture & Resources	Act repealed by the Dried Fruits (Repeal) Act 1998 following industry decision to wind-up the Dried Fruits Board.
3	**Biological Control Act**	Agriculture & Resources	National legislative scheme. Not considered to restrict competition because it requires a transparent public inquiry process and review to determine the net public benefit of a biological control release.
4	**Veterinary Surgeons Act 1958**	Agriculture & Resources	Act repealed and replaced by the Veterinary Practice Act 1997.
5	**Rules of the Council of Legal Education 1993**	Attorney-General	The Rules are to be replaced by proposed new Rules pursuant to the Legal Practice Act 1996, subject to an RIS review. Rules are being drafted for the RIS. The competition review and the RIS process will be combined.
6	**Housing Act 1983 (Part IV)**	Attorney-General	Part VI of the Act (relating to rental housing co-operatives) was repealed and replaced by the Co-operatives Act 1996. The Housing (Rental Housing Co-operative) Regulations 1994 are redundant and will be revoked.
7	**Registration of Births, Deaths & Marriages Act 1959**	Attorney-General	Act repealed and replaced by Births, Deaths and Marriages Act 1996. The new Act was assessed against Competition Policy and did not contain restrictions.
8	**Benefit Associations Act 1958**	Attorney-General	Act is obsolete and no associations are registered under it. Some finalisation of outstanding matters is required before repeal can be progressed.
9	**Alpine Resorts Act 1983**	Conservation & Land Management	Act replaced by the Alpine Resorts (Management) Act 1997.
10	**Range of forest agreement Acts (primarily for softwoods) including: Victree Forests Agreement; Australian Newsprint Mill Limited; Bowater-Scott Agreement; Laminex Industries Agreement; Pulpwood Agreement; and Wood Pulp Agreement.**	Conservation & Land Management	These are contractual agreements between the owner of the Victorian Plantations Corporation (VPC) and private parties. They were taken on by the newly privatised VPC on behalf of the Government. Several of these agreements have expired/terminated and the legislation will be repealed. These include the Victree Forests Agreement & Bowater-Scott Agreement. The Australian Newsprint Mill Ltd, Laminex Industries Agreement & Woodpulp Agreement remain and have been exempted from review as there is no scope for amendment without renegotiation and compensation.
11	**Order - authorises the Alpine Resorts Commission to act as a gas undertaking solely within the Mount Buller Alpine Resort**	Conservation & Land Management	Order made under Gas & Fuel Corporation Act which is administered by the Department of Treasury and Finance. Amendments made by an order under the Gas Industry Act make this order redundant.
12	**Victorian Prison Industries Commission Act 1983**	Corrections	Act repealed by the Corrections (Amendment) Act 1996.
13	**Business Investigations Act 1958**	Fair Trading	To be repealed.
14	**Trustee Companies Act 1984**	Fair Trading	To be repealed and replaced by uniform national legislation currently under development.

No.	Legislation	Portfolio	Reason for Removal
15	**Prostitution Control Act 1994**	Fair Trading	No scope for change due to overriding social objectives.
16	**Building Societies Act 1986**	Fair Trading	To be repealed once jurisdiction passes to the Commonwealth under financial sector reforms.
17	**Co-operation Act 1981**	Fair Trading	This Act was repealed and replaced by the Cooperatives Act 1996.
18	**Financial Institutions (Victoria) Act 1992**	Fair Trading	To be repealed once jurisdiction passes to the Commonwealth under financial sector reforms.
19	**Friendly Societies Act 1986**	Fair Trading	Repealed and replaced by the Friendly Societies (Victoria) Act 1996
20	**Industrial and Provident Societies Act 1958**	Fair Trading	To be repealed once jurisdiction passes to the Commonwealth under financial sector reforms.
21	**Fundraising Appeals Act 1984**	Fair Trading	Repealed and replaced by Fundraising Appeals Act 1998.
22	**Construction Industry Long Service Leave Act 1983**	Finance	Repealed by the Construction Industry Long Service Leave Act 1997.
23	**Dangerous Goods Act 1985**	Finance	The Act prohibits the sale of prescribed goods. As no legal market is permitted this is not a restriction on competition. Various regulations made under the Act are being reviewed as they sunset over the next few years via a RIS process.
24	**State Superannuation Act 1988**	Finance	Removed as, following various changes made by the [what] (Amendment) Act 1996, no restrictions on competition remain.
25	**Workers Compensation Act 1958 (Div 8 of Part 1)**	Finance & Attorney General	Assessed as non-restrictive as compensation payments are no longer awarded under this Act.
26	**Casino Control Act 1991 (excluding sections 128H to 128L which are administered by the Minister for Major Projects, excepting section 128K(2), which administered by the Minister for Finance)**	Gaming	Withdrawn due to lack of scope for amendment without varying contractual arrangements with the existing casino operator and requiring payment of compensation.
27	**Lotteries Gaming & Betting Act 1966 (all except Parts I, IA, II, III, IV & V which are jointly administered with the Office of Racing)**	Gaming	Legislation related to minor gaming was amended in 1997. The amendments were essentially in the form of enabling legislation to set up a framework under which various forms of minor gaming are regulated. This replaced the previous enforcement-based approach.
28	**Casino (Management Agreement) Act 1993**	Gaming	Withdrawn due to lack of scope for amendment without varying contractual arrangements with the existing casino operator and requiring payment of compensation.
29	**Fuel Emergency Act 1977**	Industry, Science and Technology	The review of the Fuel Emergency Act 1977 was undertaken in conjunction with other emergency powers legislation by the Department of Premier and Cabinet Legislative Review Steering Committee. The other Acts being the Public Safety Preservation Act 1958, the Vital State Projects Act 1976 and the Vital State Industries (Works and Services) Act 1992. The Committee concluded that the Acts did not entail restrictions on competition and recommended that they be removed from the legislative review timetable. The Premier subsequently agreed on 18 November 1997 with the assessment and the removal of the Fuel

No.	Legislation	Portfolio	Reason for Removal
			Emergency Act (and the other emergency powers Acts) from the review timetable.
30	**Local Government Act 1989.**	Planning and Local Government	Assessed as non-restrictive
31	**Cultural & Recreational Lands Act 1963.**	Planning and Local Government	Assessed as non-restrictive
32	**Impounding of Livestock Act 1994**	Planning and Local Government	Assessed as non-restrictive
33	**Building Control (Plumbers Gasfitters & Drainers) Act 1981 No. 9720**	Planning and Local Government	Act repealed by the Building (Amendment) Act 1996
34	**Environment Effects Act 1978 No. 9135**	Planning and Local Government	Assessed as non-restrictive
35	**Subdivision Act 1988 No. 53/1988**	Planning and Local Government	Assessed as non-restrictive
36	**Urban Land Authority Act 1979 No. 9320**	Planning and Local Government	Act replaced by the Urban Land Corporation Act 1997
37	**Bourke Street Mall Act 1982.**	Planning and Local Government	Act repealed
38	**Public Authorities Marks Act 1958.**	Planning and Local Government	Assessed as non-restrictive
39	**City of Greater Geelong 1993 (excluding Part 5).**	Planning and Local Government	Act repealed
40	**City of Melbourne Act 1993.**	Planning and Local Government	Act repealed
41	**Project Development & Construction Management Act 1994**	Planning and Local Government	Assessed as non-restrictive
42	**Ministerial Direction No.1, Tendering Provisions**	Planning and Local Government	Assessed as non-restrictive
43	**Land (Goonawarra Golf Course) Act**	Planning and Local Government	Assessed as non-restrictive
44	**Planning Authorities Repeal Act 1994**	Planning and Local Government	Now Part 3(8) of the Planning and Environment Act
45	**Firearms Act 1958**	Police and Emergency Services	Repealed and replaced by the Firearms Act 1996
46	**Control of Weapons Act 1990**	Police and Emergency Services	No scope for change due to overriding social objectives.
47	**Vital State Projects Act 1976 {excluding ss 5 to 16 (these provisions are administered by the Attorney General)}**	Premier	Assessed as non-restrictive
48	**Vital State Industries (Works and Services) Act 1992**	Premier	Assessed as non-restrictive
49	**Superannuation (Public Sector) Act 1992 {Part 2 (the Act is otherwise administered by the Minister for**	Premier	Assessed as non-restrictive

No.	Legislation	Portfolio	Reason for Removal
	Finance)}		
50	**Public Safety Preservation Act 1958**	Premier	Assessed as non-restrictive
51	**Parliamentary Salaries and Superannuation Act 1968 {excluding: Part II (this part, concerned with the superannuation scheme, is administered by the Minister for Finance)}**	Premier	Assessed as non-restrictive
52	**Transport Act 1983 - Part 6: Division 7 (Hire & Drive Omnibuses)**	Roads and Ports	Repealed by the Transport Acts (Amendment) Act 1997
53	**Transport Act 1983 - Part 6: Division 9 (Commercial Goods Vehicles)**	Roads and Ports	Repealed by the Transport Acts (Amendment) Act 1997
54	**Transport Act 1983 - Part 6: Division 6 (Private Omnibuses)**	Roads and Ports	Repealed by the Transport Acts (Amendment) Act 1997
55	**Pollution of Waters by Oil & Noxious Substances Act 1986**	Roads and Ports and Conservation and Land Management	Assessed as non-restrictive
56	**Chattel Securities Act 1987 - Part 3 (Registrable Goods)**	Roads and Ports and Fair Trading	Assessed as non-restrictive
57	**South Australian & Victorian Border Railways Act 1930**	Transport	Act repealed
58	**Railways (Standardisation Agreement) Act 1958**	Transport	Act repealed
59	**Transport Act 1983 - Part 6: Division 10 (Passenger Ferry Services)**	Transport	To be repealed in the 1999 Autumn session.
60	**Transport Act 1993 - Schedule 8 (Classes, Kinds or Descriptions of Goods)**	Transport	Repealed by the Transport (Amendment) Act 1998.
61	**Gas Industry Act 1994**	Treasurer	The Act has been very substantially amended over the past two years in order to progress reform of the industry and to facilitate privatisation. These amendments were subjected to the Competition Policy Test.
62	**Snowy Mountains Hydro-Electric Agreements Act 1958**	Treasurer	The Act is expected to be repealed upon proclamation of the legislation corporatising the Snowy Mountains Hydro Electric Scheme. This legislation has been passed in Vic, NSW and the Commonwealth but proclamation has been delayed pending satisfactory resolution of environmental and other concerns.

No.	Legislation	Portfolio	Reason for Removal
63	**Business Franchise (Tobacco) Act 1974**	Treasurer	Following High Court ruling on excises the licensing provision of this Act no longer operate and the Act will be repealed.
64	**Energy Consumption Levy Act 1982**	Treasurer	Repealed by the Gas Industry (Amendment) Act 1997.
65	**Electric Light & Power Act 1958**	Treasurer	Repealed by the Electricity Safety Act 1998.

Section 6

New Legislation that Restricts Competition

(other than that implementing a Government response to an NCP Legislative Review)

No.	Legislation	Portfolio
1	**Alpine Resorts (Management) Act 1997**	Conservation and Land Management
2	**Building (Plumbing) Act 1998**	Planning and Local Government
3	**Drugs Poisons and Controlled Substances (Amendment) Act 1997**	Agriculture and Resources
4	**Electrical Safety Act 1997**	Treasurer
5	**Fisheries (Further Amendment) Act 1997**	Agriculture & Resources
6	**Gas Industry Act 1998**	Treasurer
7	**Gas Safety Act 1997**	Treasurer
8	**Hire Purchase (Amendment) Act 1997**	Fair Trading
9	**Introduction Agents Act 1997**	Fair Trading
10	**Legal Practice (Amendment) Act 1998**	Attorney-General
11	**National Parks (Amendment) Act 1997**	Conservation & Land Management
12	**National Parks (Amendment) Act 1998**	Conservation & Land Management
13	**Parks Victoria Act 1998**	Conservation & Land Management
14	**Police and Corrections (Amendment) Act 1997**	Police and Emergency Services
15	**Road Safety (Amendment) Act 1998**	Roads and Ports
16	**Shop Trading Reform Act 1996**	Industry, Science and Technology
16	**Transport Acts (Amendment) Act 1997**	Transport
17	**Travel Agents Regulations 1997**	Fair Trading
18	**Wildlife (Amendment) Act 1997**	Conservation & Land Management

Details on restrictions contained in the above new legislation follow.

Legislation:	**Alpine Resorts (Management) Act 1997**		
Portfolio:	Conservation & Land Management	Date passed:	Assented to on 9 December 1997

No.	Restrictions on Competition Introduced	Competition Policy Justification
1	Planning controls may restrict the commercial activities of resorts and the smaller business units within these resorts.	In 1983 the Alpine Resorts Act was enacted to establish a common management regime for Victoria's alpine resorts. The Act also established the Alpine Resorts Commission (ARC). The Alpine Resorts (Management) Act 1997 repealed the original Act and replaced it with new legislation which disaggregated the functions of the ARC. It placed some broader regulatory functions, such as land use planning, within the ambit of normal state-wide controls, and other functions, such as day to day operations, within the management of resort-specific management boards. The Crown, as landowner, will continue to be the sole supplier of the resource and resorts will be subject to planning control under the State-wide regime and guidelines issued by the Minister. While these controls operate consistently between resorts, they may place some restrictions on the commercial activities and management of resorts and the smaller business units operated within resorts. The restrictions imposed by Crown ownership and environmental requirements may have some effect on the prices charged within alpine resorts. However, it is considered that the creation of a competitive market between resorts will tend to minimise any impacts. Further, there are benefits to the community from the assurance of sustainable management of the land resource. The alpine resort areas are contained within some of the most environmentally sensitive land areas in Victoria and are consequently best retained in Government ownership. As such, the alternative of relinquishing the Government ownership of the land resource would not be in the public interest. Consequently the benefits of the restrictions outweigh the costs.

Legislation:	**Building (Plumbing) Act 1998**		
Portfolio:	Planning and Local Government	Date passed:	1998

No.	Restrictions on Competition Introduced	Competition Policy Justification
1	Removal of the exemption from licensing or registration of refrigeration mechanics.	This exemption was anomalous and could not be justified. The costs and benefits of the regulation of refrigeration mechanics had been fully assesses and it was concluded that the removal of the exemption is justified in the public interest. The benefits to the public of this regulation overwhelmingly outweigh the costs.

Legislation:	**Drugs Poisons and Controlled Substances (Amendment) Act 1997**		
Portfolio:	Agriculture and Resources	Date passed:	Assented to on 21 October 1997

No.	Restrictions on Competition Introduced	Competition Policy Justification
1	Authorisations for producers to cultivate, possess and supply low-THC hemp are limited to persons who are determined to be fit and proper. Further, the costs associated with meeting the authorisation criteria and the authorisation application fees may limit entry into the market.	Previous provisions of the Drugs, Poisons and Controlled Substances Act 1981 prohibited persons from possessing low-THC hemp without a permit, cultivating low-THC hemp without an authorisation, and manufacturing and selling low-THC hemp products without a licence. Consequently, processed products containing hemp material would have been deemed to be Cannabis within the meaning of the Act. Given that Cannabis fibre can be readily identified in hemp products such as paper and fabric, any person purchasing such products would have been committing the offence of being in possession of a drug of dependence. The Drugs, Poisons and Controlled Substances Act 1981 was amended to remove disincentives to investment in the development of a hemp industry. The amendments exempt from the provisions of the Act, processed hemp products, which do not pose a drug risk or jeopardise the ability to effectively police illegal activities associated with Cannabis. They also empower the Minister for Agriculture and Resources to authorise and impose conditions on fit and proper persons to cultivate, possess, process and sell low-THC industrial hemp for commercial or research purposes. The amendments increased competition by deregulating the sale and possession of processed hemp products which do not pose a drug risk. However, authorisations to cultivate, possess and supply low-THC hemp are limited to persons who are determined to be fit and proper persons on the basis of documented evidence, including a national police records check, and those who can provide documented evidence of bona fide research plans or a commercial end use for their products. Costs are imposed on potential market entrants in meeting the criteria required for authorisation. In addition to these costs, authorisation application fees are to be imposed to meet administrative costs associated with the scheme. Some producers may view these costs as prohibitive. Restrictions on entry to the market and conditions imposed on the cultivation and disposal of low-THC hemp material and hemp seed ensure that unauthorised possession and use of Cannabis remains an offence which can be effectively policed without costly evidence procedures. They are also necessary to minimise the risk of: • cultivation of low-THC hemp being used as a cover for illegal cultivation of high-THC plants for drug purposes; • low-THC plant material being diverted and sold for drug purposes, with consequent "pay-back" action by purchasers when they discover that it is low-THC material; • low-THC Cannabis becoming naturalised in favourable environments and becoming a serious weed; and • low-THC cannabis varieties reverting over time to high THC levels.

No.	Restrictions on Competition Introduced	Competition Policy Justification
		There are no alternative means of achieving the desired outcome without statutory restrictions on competition. The economic and social benefits arising from the restrictions would far outweigh the costs to market participants and the community as a whole. Benefits are gained through minimising the risk of criminal activity associated with the production and processing of low-THC hemp. Unregulated production of low-THC hemp would inevitably result in criminals using the low-THC crops as a cover for the production of high-THC Cannabis for drug purposes, with consequent additional high costs of drug law enforcement. This would ruin the opportunity for Victorian farmers to develop a profitable hemp enterprise and the development by processors and manufacturers of domestic and export markets for hemp pulp and manufactured end products.

Legislation:	**Electrical Safety Act 1997**		
Portfolio:	Treasurer	Date passed:	May 1998

No.	Restrictions on Competition Introduced	Competition Policy Justification
1	The Office of the Chief Electrical Inspector licences electrical workers and persons contracting with customers to carry out electrical wiring work.	The benefits of the restrictions are to enable the easy identification of specific areas of work for specialist licensing and competencies and to encourage high standards of electrical work. The need to ensure safety standards and hence a high level of safe use of electrical goods and safe conduct in the provision of electrical services in the community is paramount. In the event of an electrical accident, the negative externalities placed on the community could be substantial in terms of disruption to households and businesses. Assurance of safety standards also helps overcome an information asymmetry, whereby relatively uninformed consumers (in a technical sense) may be unable to properly assess the safety implications of complex products. Similarly, consumers may be unable to assess the competencies and expertise of electrical tradesmen. In this sense, setting minimum standards of safety for equipment and licensing electrical workers meets consumer protection objectives. It is recognised that there may be some cost to the restrictions in terms of diminished competition. However, it was assessed that the imperatives of assuring public safety and enhancing consumer protection outweighed any anti-competitive element.
2	The Office of the Chief Electrical Inspector may introduce provisions enabling identification of specific areas of work for specialist licensing and the competencies required by persons working in those areas; and	See above.
3	The Office of the Chief Electrical Inspector may set minimum safety standards for all electrical equipment for sale or hire (or that can be advertised).	See above.

Legislation:	**Fisheries (Further Amendment) Act 1997**		
Portfolio:	Agriculture & Resources	Date passed:	Assented to on 22 April 1997

No.	Restrictions on Competition Introduced	Competition Policy Justification
1	Limiting the number of commercial fishing licences in particular categories and limiting the total catch for prescribed fisheries potentially restricts competition in the short term.	This act amends existing commercial fishing licensing provisions. It limits the number of licence holders and limits some catches to enable the harvesting of fisheries resources to be managed at a sustainable level. It also allows for other uses of the resource (eg recreational fishing). Such regulation is considered necessary to ensure sustainable commercial harvesting of those fisheries concerned. Without these restrictions, fisheries would be over exploited and subsequently collapse. A major review of the Fisheries Act 1995, including the amendments made under this Act, is being undertaken in 1999.

Legislation:	**Gas Industry Act 1998**		
Portfolio:	Treasurer	Date passed:	November 1998

No.	Restrictions on Competition Introduced	Competition Policy Justification
1	Licenses issued to a retailer may be made subject to a condition requiring the licensee to meet specified standards in relation to the supply of gas.	The benefits of the restriction are that all customers in Victoria have a safe supply of gas and that there is a smooth transition for customers as the industry is reformed and privatised. It is paramount to the successful operation of industry that peak deliverability standards for gas supply can be met. Unlike electricity, significant safety and operational issues arise from an interruption to gas supply. In addition, the continuation of the requirement will be at the discretion of the Office of the Regulator General. If, having regard to the competitiveness of the market, the ORG considers the measure inappropriate, the measure can be removed. The measure should, therefore, be seen as predominantly transitional, to preserve the safe supply of gas in the move to a competitive market. Although it is acknowledged that there are costs associated with this measure (namely the inhibition of competitive behaviour of gas retailers), it is considered that the benefits of the restriction outweigh the costs.

Legislation:	**Gas Safety Act 1997**		
Portfolio:	Treasurer	Date passed:	December 1997

No.	Restrictions on Competition Introduced	Competition Policy Justification
1	Equipment that may be sold or installed must be approved as meeting safety standards set by the Office of Gas Safety. Under certain circumstances, customers are able to develop their own safety standards and use safety equipment which matches the particular risks of their own organisation.	The new legislation was introduced to accompany the introduction of competition in the supply of gas. Previously, the government –owned entities had been responsible for the safe supply of gas. The benefits of the new legislation are to maintain public confidence in the safe supply of gas under the new competitive arrangements governing the supply of gas. Ensuring high safety standards in the provision and installation of gas equipment is the main benefit from the restriction. The sale or installation of faulty gas equipment could potentially result in significant externalities for the community. The costs of the restriction include, arguably, restricted choice, higher prices and lack of competition on the supply side. Thes~~e~~ benefits were assessed to outweigh these costs.
2	Persons carrying out upstream gas work must be approved by the Office of Gas Safety. Approval criteria are educational and experience appropriate to the work.	See above.

Legislation:	**Hire Purchase (Amendment) Act 1997**		
Portfolio:	Fair Trading	Date passed:	Autumn 1997

No.	Restrictions on Competition Introduced	Competition Policy Justification
1	Retains the principal Act's special consumer protection measures for new hire-purchase agreements for farm machinery for two years, (while removing all other new hire-purchase agreements from coverage).	There is benefit in continuing to use the Act to address rural sector difficulties in relation to hire purchase for two years while a more comprehensive policy is developed in relation to finance in the rural sector.

Legislation:	**Introduction Agents Act 1997**		
Portfolio:	Fair Trading	Date passed:	Spring 1997

No.	Restrictions on Competition Introduced	Competition Policy Justification
1	Imposes disclosure requirements and a cooling-off period.	Regulation was only introduced after other forms of intervention had demonstrably failed to correct problems in the market for introductory services: large advance payments were frequently being extracted for services which did not meet the expectations created in clients; consumer complaints were not being heeded, and civil action by aggrieved consumers was not deterring further malpractice. The benefits of better informed consumers and reduced consumer loss due to poor service delivery following advance payments outweigh the compliance costs imposed. No less restrictive alternatives would achieve the objective of deterring dishonest operators and promoting effective competition in the industry.
2	Restricts the acceptance of advance payments to 30% of the total contract price.	See above
3	Provides for certain operators to be excluded from the market (negative licensing).	See above

Legislation:	**Legal Practice (Amendment) Act 1998**		
Portfolio:	Attorney-General	Date passed:	Spring 1998

No.	Restrictions on Competition Introduced	Competition Policy Justification
1	Retention of statutory mutual fund monopoly on supply of compulsory professional indemnity insurance for solicitors.	The benefits of lower and more stable premiums outweigh the costs flowing from reduced incentives for product innovation and tailoring to different solicitor's needs (and those of their clientele). In addition the objectives of comprehensive cover for legal service consumers, and access to the services of sole and small firm practices, cannot be met without restricting competition. See Volume I for further information.

Legislation:	**National Parks (Amendment) Act 1997**		
Portfolio:	Conservation & Land Management	Date passed:	Assented to on 22 April 1997

No.	Restrictions on Competition Introduced	Competition Policy Justification
1	The reservation of areas as national parks may preclude certain activities, such as mining and forestry, which may otherwise be permitted.	The National Parks Act 1975 provides for the reservation, protection and appropriate use of certain areas of Crown land. Various activities, such as mineral exploration, mining and timber harvesting, are mostly not permitted in areas reserved under the Act depending on special provisions and the category of the park. The National Parks (Amendment) Act 1997 reserved an additional 23,000 hectares of Crown Land under the National Parks Act and changed the status of several parks already reserved under the Act. Included in the new reservations is land at Arthurs Seat. The Act also provides for the existing Arthurs Seat chairlift to run its term and for the Minister to grant a new lease to the successful tenderer upon its expiry. The reservation of areas as national parks may preclude certain activities which may otherwise be permitted. However, as the mining and forestry sectors have access to resources from elsewhere, the impact on competition of this restriction is minor. Further, the reservation of additional areas under the National Parks Act will provide long term statutory protection to significant parts of the State's natural and cultural heritage. The exclusion of activities that may negatively impact on those values is necessary to achieve this protection. There are no workable alternatives to this statutory restriction. The non-reservation of land does not provide the long-term and accepted statutory protection which reservation under the National Parks Act provides.
2	The provisions relating to the tenancy of the Arthurs Seat chairlift provide for a 20-year lease. This may be considered to have some impact on competition by reducing the opportunities for firms to compete to enter the market.	Any new tenancy of the Arthurs Seat chairlift will be open to competitive tendering. However, providing for a 20-year lease may be considered to have some impact on competition by restricting the frequency of which firms can compete to enter the market. The potential restriction is justified as the operation of a chairlift at Arthurs Seat State Park requires a tenancy provision to be included in the Act and the 20-year lease ensures that appropriate private sector investment in the facilities can be attracted.

Legislation:	**National Parks (Amendment) Act 1998**		
Portfolio:	Conservation & Land Management	Date passed:	Assented to 4 November 1998

No.	Restrictions on Competition Introduced	Competition Policy Justification
1	The Act restricts the provision of park management services to one provider.	This Act includes provisions that will empower the Secretary to the Department of Natural Resources and Environment to enter into an agreement with Parks Victoria only for the management of land under the National Parks Act. This is considered a deemed restriction as it limits the provision of services to one provider. Areas reserved under the National Parks Act have special environmental attributes that require expert and careful management. The proposal aims to ensure that all of these areas are managed by the State's expert management authority (Parks Victoria) to ensure consistent and appropriate management across the state. The Government considers that the alternative of allowing other service providers to manage national parks would not provide adequate protection of these parks and their resources. Further, given the environmental management expertise required for these areas, the opportunity for other providers to enter the market is considered limited. The private sector can, and does, provide a range of secondary services in these areas.

Legislation:	**Parks Victoria Act 1998**		
Portfolio:	Conservation & Land Management	Date passed:	Assented to 26 May 1998

No.	Restrictions on Competition Introduced	Competition Policy Justification
1	The merger of the National Parks Service (NPS) and Melbourne Parks and Waterways (MPW) potentially restricts competition by reducing (by one) the number of potential providers of park management services and giving Parks Victoria an advantage compared to other providers.	Parks Victoria was established in 1996 by combining NPS and MPW. The main purpose of the Parks Victoria Act is to establish Parks Victoria as a statutory corporation. The benefits of this potential restriction outweigh the costs as the formation of Parks Victoria allows for the skills and resources of the two leading and complementary, park management agencies to be combined to deliver an enhanced service to the State. The alternative of retaining MPW and NPS as separate organisations would be less efficient and impede resource re-allocation for the benefit of the State's national parks and conservation reserves.

Legislation:	**Police and Corrections (Amendment) Act 1997**		
Portfolio:	Police and Emergency Services	Date passed:	Autumn 1997

No.	Restrictions on Competition Introduced	Competition Policy Justification
1	Pursuant to a national agreement between Police Ministers only certain persons may use body armour. These are: • classes of persons specified by order of the Governor in Council (the military, enforcement personnel, licensed security agents) may use specified types of body armour; and • individuals approved by the Chief Commissioner of Police for temporary purposes (e.g. witnesses, stalking victims, persons attending dangerous situations)	Exemptions will be available for authorised users and export markets, which largely covers the existing market for body armour. The amendments implement an agreed national approach, so there will be no effect on competition between suppliers in different States. The benefit to the community of restricting the availability of body armour to persons requiring it for recognised purposes and preventing criminals gaining access to it is considered to outweigh any negative impact on activity in this market.

Legislation:	**Road Safety (Amendment) Act 1998**		
Portfolio:	Roads and Ports	Date passed:	1998

No.	Restrictions on Competition Introduced	Competition Policy Justification
1	The introduction of the registration scheme with mandatory minimum standards restricts competition by imposing additional costs on entry to the market for the provision of driving instruction for hire or reward and by excluding potential entrants who do not meet the standards.	The costs relate to the requirements to attain minimum competency standards and to undergo criminal and driving record checks and to the administration of the scheme by a Government agency. However, the overall public benefits outweigh the compliance costs.

Legislation:	**Shop Trading Reform Act 1996**		
Portfolio:	Industry, Science and Technology	Date passed:	October 1996

Note: The Shop Trading Act 1987 and the Capital City (Shop Trading) Act 1992 were listed for review in the Victorian Government Timetable for Review of Legislative Restrictions on Competition of June 1996. The review period was listed from July 1996 to January 1997. However, the Government undertook a review of shop trading laws before these dates and before the release of the Victorian Government Guidelines for Review of Legislative Restrictions on Competition under a commitment given to the community prior to the March 1996 election. The Shop Trading Act 1987 and the Capital City (Shop Trading) Act 1992 were listed for review in the Victorian Government Timetable for Review of Legislative Restrictions on Competition of June 1996. The review period was listed from July 1996 to January 1997. However, the Government undertook a review of shop trading laws before these dates and before the release of the Victorian Government Guidelines for Review of Legislative Restrictions on Competition under a commitment given to the community prior to the March 1996 election. The major restriction to competition removed by the new Act was the repeal of times in which shops could not trade. These times included Sundays, public holidays and the hours on a Saturday between 5.00 pm and midnight in metropolitan areas and 1.00 pm and midnight in non-metropolitan areas.

No.	Restrictions on Competition Introduced	Competition Policy Justification
1	The only times that shops, except exempt shops, are now not permitted to trade are on Christmas Day, Good Friday and Anzac Day until 1.00 pm.	The restriction is minimal.
2	The new Act also provides that a municipal council may make a local law requiring shops, other than exempt shops, to close on Sundays or between certain hours on Sundays.	Such a local law can only be made if a poll is conducted and carried in the local area.

Legislation:	**Transport Acts (Amendment) Act 1997**		
Portfolio:	Transport	Date passed:	1997

No.	Restrictions on Competition Introduced	Competition Policy Justification
1	The provisions introduced in this amendment do no restrict competition, with the exception of the amendments to the *Public Transport Competition Act 1995* relating to accrediting hire and drive and courtesy bus services.	These restrictions were justified on public safety considerations.

Legislation:	**Travel Agents Regulations 1997**		
Portfolio:	Fair Trading	Date passed:	January 1997

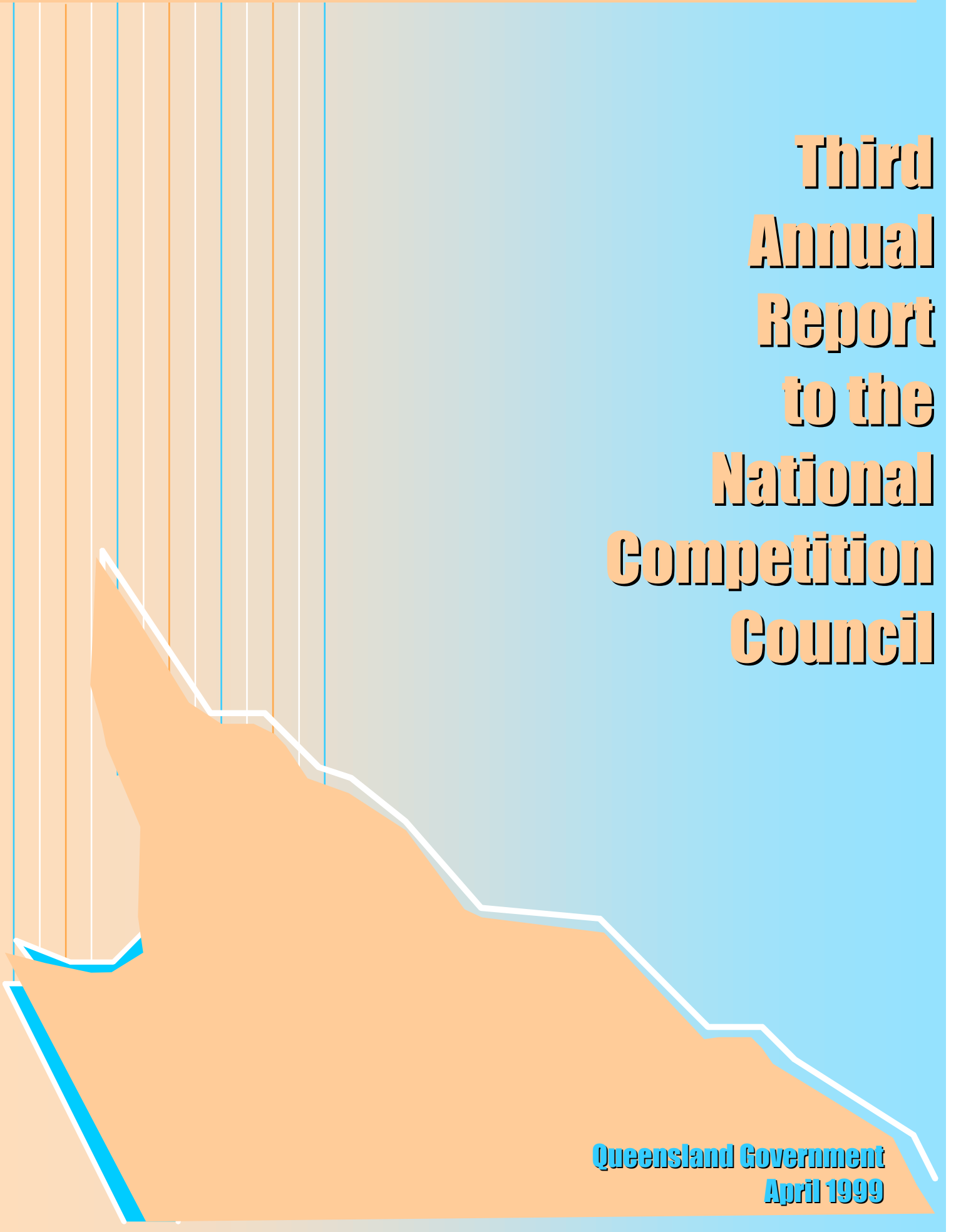
No.	Restrictions on Competition Introduced	Competition Policy Justification
1	Prescribed qualifications for managers of travel agency offices.	The prescribed qualifications are minimal but provide some assurance that bookings made through a travel agent will not miscarry due to incompetence on the part of the agency and that the national compensation fund remains viable. The Travel Agents Act 1986 and these regulations are currently subject to a national review.

Legislation:	**Wildlife (Amendment) Act 1997**		
Portfolio:	Conservation & Land Management	Date passed:	Assented to on 2 December 1997

No.	Restrictions on Competition Introduced	Competition Policy Justification
1	Limitations to the number of permits made available to whale and dolphin tour operators in Port Phillip Bay.	Limiting the number of permits for whale and dolphin tour operators restricts entry into the dolphin tour market. However, this restriction is justified on the grounds of protecting the welfare of the animals and maintaining sustainable tourist access. Too many tour boats in close vicinity of dolphins in the Bay are likely to stress the animals and encourage their departure from the Bay. This in turn would result in the collapse of the industry. Consequently there are no alternatives to restricting entry into this market.

Queensland Government

Third Annual Report to the National Competition Council



Queensland Government
April 1999

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ATTACHMENTS

GLOSSARY

ACCC	Australian Competition and Consumer Commission
ATC	Australian Transport Council
BMA	Brisbane Market Authority
BMA	Brisbane Market Authority
COAG	Council of Australian Government
CPA	Competition Principles Agreement
CRR	Committee on Regulatory Reform
CRR	Committee on Regulatory Reform
DNR	Department of Natural Resources
GAWB	Gladstone Area Water Board
GMBA	Government Monopoly Business Activities
ITAA	Income Tax Assessment Act 1936
M&L	Mass and Loading
MIWB	Mt Isa Water Board
NCP	National Competition Policy
NEM	National Electricity Market
NEVDIS	National Exchange of Vehicle and Driver Information System
NRTC	National Road Transport Commission
NRTL	National Road Transport Law
OSOM	Oversize/Overmass
PBT	Public Benefits Test
PBTP	The Public Benefit Test Plan
PTO	Public Trust Office
QCA	Queensland Competition Authority
QHPS	Queensland Health Pathology Services
QIRC	Queensland Industrial Relations Commission
RAV	Restricted Access Vehicles
SEQWB	South East Queensland Water Board
SMA	Statutory Marketing Authority
TAB	Totalisator Administration Board
TER	Tax Equivalent Regime
TO(RUM)	***Transport Operations (Road Use Management)***
TPA	Trade Practices Act 1974
TTWSB	Townsville Thuringowa Water Supply Board
UIWG	Upstream Implementation Working Group

INTRODUCTION

Queensland's Third Annual Report to the National Competition Council is made pursuant to the reporting requirement in the *Competition Principles Agreement* (*CPA*)[1].

The report is made in respect of Queensland's further progress in implementing national competition policy reform in the period between 31 December 1997 and 31 December 1998. The report records the progress of Queensland's State Government and Local Governments in pursuing national competition policy reform in respect of that period.

The report describes Queensland's progress in reviewing legislation, implementing competitive neutrality and reforming public monopolies pursuant to the *Competition Principles Agreement*. The report records Queensland's compliance with the *Conduct Code Agreement*, and the report describes Queensland's progress in pursuing infrastructure reform in the electricity, gas and water industries, and in road transport.

Further, the report addresses matters of specific interest to the National Competition Council following the assessment of the period ending 31 December 1997, to enable the NCC to assess Queensland's eligibility for the second tranche of competition payments from the Commonwealth.

PART 1

THE COMPETITION PRINCIPLES AGREEMENT

1. LEGISLATION REVIEW

1.1 Queensland's legislation review process

Queensland's legislation review processes include the following:

- Terms of Reference and Public Benefit Test Plans for minor through to major reviews. The Public Benefit Test Plan (PBTP) is a detailed document used by the Department or Agency responsible for the legislation under review and Queensland Treasury to scope the nature and structure of the review;

- Issues or Discussion Papers, generally for medium to major reviews;

- Independent review panels for the majority of reviews. Review panels may, in exceptional cases, include key stakeholder representatives in addition to independent and government representatives. The review panels in these cases conduct a public

[1] *Competition Principles Agreement*: clause 3(10); 5(10).

interest assessment and develop proposals to address complex implementation issues affecting major industries and the general community;

- Consultation with interested parties on review matters;

- Analysis consistent with the guiding principle in clause 5(1) of the *Competition Principles Agreement*;

- Phased implementation of reforms beyond the year 2000, which are appropriately discussed in the review report and justified through the public benefit test;

- Review papers which are made available publicly, excluding information which is commercial-in-confidence; and

- Reduced reviews that involve targeted consultation where appropriate, risk analysis and analysis based on clause 5(1) of the *Competition Principles Agreement*, and public availability of the review report that is forwarded to the National Competition Council on completion of each reduced review. Reduced reviews occur in cases in which the legislation generally has social objectives, there is minimal restriction on competition, there are no contentious issues, the Government's policy position is clear and not likely to change, and there is therefore no justification for funding a full review.

1.2 Progress report

Attachment 1 is a Schedule of information regarding Queensland's progress in reviewing and reforming legislation in the current review schedule against the completion date of the year 2000.

The Schedule is a record of the following information:

- The name of the legislation;
- The name of the review;
- The name of the agency conducting the review;
- The status of the review;
- The type of review[2];
- Commentary on the review;
- The date of the review;
- The date of completion of the review; and
- Reform progress.

[2]Note that though a single description of the type of review is made in respect of the reviews in the schedule, a number of reviews exhibit characteristics of multiple review types.

As at the end of March 1999, the percentage of scheduled reviews which were completed, commenced and in progress, being scoped, or pending, as follows:

- 33% completed;
- 32% commenced and in progress;
- 15% being scoped; and
- 20% pending review.

Queensland has revised the timing of a number of reviews in Queensland's legislation review program and is delaying the commencement of a number of reviews. The 1998-1999 year was the year in which the greatest number of reviews was scheduled to occur. To counterbalance that, a number of major reviews scheduled to commence in the 1998-1999 year were commenced in the beginning of 1998, with scoping, consultation, strategy and issues papers being developed ahead of schedule. Queensland will apply that strategy in appropriate cases for future reviews. Additional resources are being directed to current and future reviews to achieve the overall timeframe for completion of the review program.

1.2.1 Reviews completed

Reviews completed to date include the Brisbane Market Authority, Dairy, Sugar, Chicken Meat, Grain/Barley, a major examination of Health and Medical Practitioner registration legislation, Residential Tenancies, various moderately sized reviews of conservation and transport legislation, and legislation covering the Indy Car event on the Gold Coast.

1.2.2 Reviews commenced and in progress

A number of Queensland's most significant reviews are in progress. The reviews include the review of legislation governing Liquor, Taxis/Buses/Limousines/Rural Air Services, Local Government Local Laws, restrictions on practice in the Dental profession, Optometry ownership restrictions, the Land Act, Farm Produce Marketing, Forestry and Sawmilling.

Reviews in progress which form part of the wider CoAG reform agenda are those relating to legislation regulating the Gas and Petroleum industries, and various pieces of Water legislation. Major legislative changes were made to Electricity legislation in 1997 to implement a national market. Queensland is currently examining whether there are residual NCP issues of an operational nature in the Electricity legislation which require attention.

Reviews of a general nature with an NCP dimension are occurring in State Government Superannuation, correctional services, and contemporary issues affecting the Legal Profession. NCP issues will be fully addressed either as part of each general review or in the development of any legislative proposals emanating from the review process.

Regarding national reviews, the review of Travel Agents is in progress, and reviews of Food regulation and Agricultural and Veterinary Chemicals legislation are well advanced.

1.2.3 Reviews pending

Significant reviews which are pending include reviews of Trading Hours, Workcover, Auctioneers and Agents, legislative aspects of the Compulsory Third Party Insurance scheme, Fisheries and the Environmental Protection legislation.

National reviews which are pending include Pharmacy, Radiation Control, Trade Measurement, Submerged Lands (Offshore Petroleum), Architects, the Uniform Consumer Credit Code and Drugs and Poisons legislation. While these reviews were agreed by the CoAG Committee on Regulatory Reform (CRR) and in a number of cases by Senior Officials of CoAG, formal "sign-off" by jurisdictions on a number of reviews is outstanding.

1.2.4 Proposed legislation which may restrict competition

Queensland continues to employ "gatekeeping" arrangements, consistent with clause 5(5) of the *Competition Principles Agreement*. Attachment 2 is a schedule of anti-competitive legislation passed during 1998.

1.3 Matters of relevance following the 1997 assessment

Auctioneers and Agents Act 1971, Auctioneers and Agents Regulation 1986 - Proposed legislation (Agents and Motor Dealers Bill) that addressed NCP issues was considered prior to the change of government. The Queensland Government is revising the Bill and will conduct a public benefit test in 1999.

Dairy Industry Act 1993 - Post-farm-gate regulation, including processor franchises, sunsetted on 1 January 1999. The NCP Review of farm-gate regulation commenced in May 1997 and concluded in July 1998. Economic analysis conducted in the review process suggested that deregulation would likely lead to little overall impact on the Queensland economy. However, the review committee was of the opinion that the regional impact of deregulation would likely cause very significant adverse consequences on sections of Queensland's rural community. While the public benefit test justified the retention of farm-gate regulation, farm-gate regulation is probably not sustainable in the medium to long term. National industry changes are substantially dependent on the outcome of the review of Victoria's Dairy legislation later in 1999. Consequently, Queensland's Dairy review recommended, and Cabinet endorsed, continuation of farm-gate regulation until 31 December 2003, with extension beyond that time subject to further review before 1 January 2003.

The Queensland Government will retain supply management arrangements in South East Queensland in conjunction with retaining regulation of the farm-gate price for milk. Further, Queensland will extend that position to Central Queensland and North Queensland to ensure equitable arrangements for all dairy farmers throughout the State, following the removal of exclusive franchise areas from 1 January 1999.

Queensland's review committee expressed a preference for a national approach to further industry deregulation to facilitate orderly industry rationalisation across Australia.

Queensland will monitor changes to Dairy regulation in other States and Territories with interest.

Grain Industry (Restructuring) Act 1993 – Queensland completed the review in June 1997. Cabinet will consider early in 1999 an Authority to Prepare legislation to give effect to the following NCP matters:

- Retention of the statutory monopoly of Grainco for export barley for up to three years to 30 June 2002;

- Retention of wheat regulations as dormant provisions as long as Commonwealth provisions continue to apply (these will be subject to review under NCP); and

- Removal of regulation of all other grains.

Queensland was the first State to review Statutory Marketing Authority (SMA) arrangements for barley. The decision to extend the Grainco monopoly over export barley for a period of up to 5 years was based on the results of a public benefit test. A significant factor bearing on the analysis was the Japanese Food Agency's policies on sourcing barley from SMAs. A further factor was the likely outcome of comparable NCP reviews in other States in respect of their SMAs. Since that time, a joint Victoria-South Australia review has recommended removal of the Australian Barley Board's statutory monopoly over barley sourced from these two States.

In endorsing the policy proposal to extend the statutory monopoly position of Grainco for up to three years, the Queensland Government also agreed that an earlier review of these arrangements may be required should industry changes and/or market forces compel a shorter transition period. Queensland is presently monitoring progress in the implementation stage of the Victoria-South Australia review to determine the impact of the review on Queensland.

A review of government accountability requirements applying to Grainco was completed in November 1998. There were no NCP issues associated with that review.

Liquor Act 1992, Liquor Regulation 1992 - The review commenced in October 1998 and is expected to finish around the middle of 1999. The review committee comprises three independent members, one of whom will chair the review. Further, officials from two central government agencies will assist the committee. The review committee has prepared an issues paper, invited public submissions and is conducting public hearings.

Queensland Law Society Act 1952, Queensland Law Society (Indemnity) Rule 1987 - The review is pending. Further information on the review of the regulation of the Legal Profession is available in section 1.4 of the report.

Public Sector Superannuation - State Government superannuation arrangements are the subject of an ongoing general review. The matter of a statutory monopoly fund manager is being addressed as part of the general review. Residual NCP issues will be considered after

the completion of the general review. Preliminary work on the nature of the superannuation scheme for NCP purposes commenced early in 1999.

Trading (Allowable Hours) Act 1990, Trading (Allowable Hours) Regulation 1994 - The Act gives the Queensland Industrial Relations Commission (QIRC) powers to determine trading hours. In early 1999, the QIRC decided not to extend Sunday trading hours. An appeal to that decision was lodged in the Industrial Court. A decision on the appeal is expected around May 1999. The NCP review will not commence prior to that time.

1.4 Matters of specific relevance to the 1999 assessment

1.4.1 Mutual Recognition Act (Commonwealth) 1993

Queensland was responsible for chairing the national review of the *Mutual Recognition (Commonwealth) Act 1993*. The review was completed in October 1998. Premiers and Chief Ministers are presently assessing the report and will advise the Prime Minister of their position on the report shortly. The report is not publicly available pending the completion of that consultation process. The review essentially found that the legislation is working properly and is generally consistent with national competition policy, and that no major change is in order. The Queensland Government will forward a copy of the report to the NCC once the report is publicly available.

1.4.2 Professions' Regulation

Under the auspices of the COAG Committee on Regulatory Reform (CRR), Queensland has contributed to the development of guidelines specifically designed to aid the review of legislation governing the professions. These guidelines are a useful resource in applying NCP principles to the review of the professions.

Health and medical practitioners – Queensland has completed a major review of health and medical practitioner registration Acts (12 in total) and relevant regulations (17 in total). The review was wide-ranging and included a consideration of NCP issues. The review recommended retention of registration/licensing provisions, and retention of a number of titles. The review recommended winding back of commercial controls (with the exception of Pharmacy and Optometry, which will be the subject of separate reviews) and significant lessening of advertising controls. Legislation is being drafted to implement these recommendations.

Pharmacists - A national legislation review of ownership restrictions and other matters in respect of Pharmacies is due to commence in the first half of 1999.

Optometrists – A State-based review of legislative ownership restrictions applying to Optometrists commenced in December 1998.

Dental Practitioners – A State-based review of legislative restrictions on practice of Dental practitioners commenced early in 1999.

Restrictions on practice – A review of restrictions on practice in a number of pieces of health and medical practitioner legislation is due to commence in the first half of 1999.

Veterinary Surgeons – Queensland commenced the review of restrictions on competition in Veterinary Surgeons' legislation in March 1999.

Architects – A working group of CRR is developing a proposal for the Productivity Commission to conduct a national review of competitive restrictions in Architects' legislation.

Surveyors – Queensland completed the review of legislation regulating Surveyors in November 1997. The review supported the retention of regulation of cadastral surveyors. Other aspects of the proposed regulatory framework are presently the subject of consideration by a Cabinet Committee.

Legal profession – The legislation review proper of legislation regulating the Queensland legal profession is pending. The Queensland Government commenced a broad review of contemporary issues in the legal profession in December 1998 with the release of a Discussion Paper, and the development of legislative proposals will contemplate competition policy requirements.

2. COMPETITIVE NEUTRALITY

2.1 Status of competitive neutrality policy implementation

The National Competition Council assessed that Queensland satisfied the competitive neutrality reform agenda requirements for eligibility for the first tranche payments. The following information is supplied on specific competitive neutrality reviews currently in progress. Note that a number of the following competitive neutrality reviews are conducted in combination with legislation and structural reform reviews.

2.1.1 Public Trust Office

Information on the reform of the Public Trust Office was included in Queensland's Second Annual Report.

The Public Trust Office is currently the subject of a competitive neutrality public benefit test. A committee comprising representatives of Queensland Treasury, the Public Trust Office and the Department of Justice and the Attorney-General (chair) is steering the review process. The competitive neutrality public benefit test is due to finish before 30 June 1999.

2.1.2 Brisbane Market Authority

The Brisbane Market Authority (BMA) was identified as a 'significant business activity' under the Queensland Government's 1996 NCP Competitive Neutrality Policy Statement. Accordingly, a public benefit test was undertaken to determine whether to introduce

competitive neutrality reform (i.e corporatisation, commercialisation or full cost pricing) to the BMA. The structural reform/competitive neutrality review was conducted in 1997/98 in conjunction with the legislation review of the *City of Brisbane Market Act 1960*.

The independent Review Committee was appointed in 1997 to conduct a combined review and comprised major stakeholders in the Brisbane Market, namely wholesalers, retailers and growers, in addition to representatives from Queensland Treasury, the Department of Tourism, Small Business and Industry and the Department of Primary Industries. The Review Committee finalised the Issues Paper in October 1997 and conducted an extensive round of public consultations.

An independent consultant produced a draft report on the public benefit assessment aspects of the review in December 1997. The Review Committee recommended deregulation (i.e. the removal of the exclusivity arrangements) based on the public benefit test and on consultation. The Review Committee recommended that, in the absence of privatisation, the Government should corporatise the BMA.

The Queensland Government publicly released the BMA report in May 1998 and noted the Review Committee's recommendations. The Government is employing an independent implementation steering committee to scope the corporatisation options for the BMA. The steering committee will consider the contractual arrangements governing the current leases by tenants of the BMA.

2.1.3 Totalisator Administration Board (TAB)

Consistent with information on the reform of the TAB that was included in Queensland's Second Annual Report, Queensland is conducting a comprehensive process of structural reform of the TAB and its relationship with the Queensland racing industry. The process will reform the commercial structure of the TAB, the structure and level of wagering taxation, and the regulatory regime. Negotiations in regard to the potential privatisation of the TAB are presently in progress.

Under the *Racing and Betting Act 1980*, the TAB, which is a Government Owned Enterprise, has the control and general supervision throughout Queensland of investments on its totalisators, and has the power to make rules over the operation of its totalisators. The TAB faces heightened competition from a wider gambling market and other privatised totalisator businesses.

A legislative package comprising the *Wagering Act 1998* and the *Racing Legislation Amendment Act 1998* is a key component of the reform process underway. It will transfer those regulatory functions from the TAB to the Treasury Departments's Queensland Office of Gaming Regulation (QOGR) consistent with the NCP Agreements and the State's corporatisation policy.

2.1.4 TAFE

The full fee for service activities and competitive tendering processes within TAFE are candidate Significant Business Activities (SBAs). The competitive neutrality review of TAFE was due to commence no later than December 1996. A Competitive Neutrality Steering Committee was established to ensure that competitive neutrality obligations were satisfied, and the Committee conducted a public benefit test to assess whether to introduce competitive neutrality reforms.

Significant changes in the training market are impeding the progress of the PBT. During 1998, the TAFE Review Taskforce and Accrual Output Budgeting Project recommended and progressed the implementation of a number of reforms relating to the commercial and operating framework of TAFE. These reforms include increasing TAFE autonomy, establishing a more appropriate public funding framework, infrastructure management and accrual accounting. The implementation of these reforms has deferred the second stage of the PBT, which involves completing a cost benefit analysis on competitive neutrality reform options.

Progressing the PBT for TAFE is dependent on the outcomes of the proposed reforms. Application of competitive neutrality assessment to determine the costs and benefits of introducing competitive neutrality reform will be evaluated during 1999.

2.1.5 Queensland Health Pathology Services

Queensland Health Pathology Services (QHPS) are a candidate SBA. Queensland Health is currently conducting a desktop Public Benefits Test (PBT) on the QHPS, focusing on the provision of services by public hospitals to private patients. Queensland Treasury endorsed the terms of reference for the PBT in early March 1999, and Queensland Health is expecting to complete the review by the end of July 1999.

2.1.6 South East Queensland Water Board (SEQWB)

In 1997, a public benefit test completed for the SEQWB recommended the implementation of commercialisation.

SEQWB is characterised by somewhat blurred and interconnected arrangements between State and Local Governments concerning asset ownership and control issues (ie legal ownership and operational control of the assets associated with the entity has switched between State and Local Governments on several occasions, without financial consideration). With this in mind, traditional reform options, such as commercialisation or corporatisation, do not necessarily meet the long-term strategic issues for the two levels of Government in relation to this entity.

The Queensland Government and the customer councils of the SEQWB are currently considering options for the incorporation of the Board under the Corporations Law. Incorporation of the SEQWB is considered to be an optimal approach for introducing genuine commercial reforms to the Board whilst recognising the important role played by local government in SEQWB. The proposed conversion of SEQWB into a jointly owned State and

Local government owned Corporations Law company goes considerably beyond the commercialisation recommendation of the competitive neutrality Public Benefit Test.

As an incorporated entity, the SEQWB would become a Commonwealth taxpayer and pay dividends to State and local Government owners commensurate with its commercial status. Other competitive neutrality issues such as the determination of a commercial capital structure and the implementation of full cost pricing are also being introduced as part of incorporation.

The target date for incorporation of the SEQWB is 1 November 1999. However, in meeting this target, a number of obstacles to the reform process will need to be overcome in particular, a turbulent taxation environment.

Whilst reform conducted solely within the realm of State Government can be appropriately managed through the application of a Tax Equivalent Regime (TER), joint ownership with local government prevents the application of a TER. Accordingly, the proposed joint ownership between State and Local Government of an incorporated SEQWB has had to be considered in the context of the Commonwealth tax regime.

However, as a Commonwealth taxpayer, SEQWB would potentially be caught by section 51AD and Division 16D of the *Income Tax Assessment Act 1936* (ITAA) which would severely restrict the profitability of the new company and prohibit reform. This taxation problem has added considerable cost, complexity and time to an already difficult reform exercise. Moreover, it is an issue that would not arise in the case of a private sector entity considering similar reform; ie the ITAA effectively creates a significant disincentive for governments to consider reforming fixed asset-intensive entities where this involves conversion into Commonwealth tax paying entities.

A process is currently in place to seek a taxation ruling from the Australian Taxation Office in relation to these provisions. However, both State and Local Governments are also keenly aware of the uncertain taxation environment that possibly holds further negative implications for an incorporated SEQWB. For instance, the recently released Ralph Report flags another possible income tax deterrent to reforming government businesses; ie. the Deferred Company Tax proposal. In the case of SEQWB the impact on the shareholders (State and Local Governments) is estimated to potentially be as large as if Division 16D were to apply.

Until the State and Local Governments obtain sufficient comfort in relation to the application of prohibitive taxation provisions such as section 51AD and Division 16D or the extension of Division 1AB exemptions as part of the proposed National Tax Equivalent Regime, reform of SEQWB will not be able to occur. (An interim strategy of commercialisation would not adequately take account of the historical arrangements of effectively shared local and State Government ownership and control.) Accordingly, the incorporation model is preferred and the model is being progressed.

Both levels of Government are committed to ensuring a successful and beneficial outcome for SEQWB which protects the integrity of valuable water resources and promotes the most

environmentally sustainable and economically appropriate resource allocation for this significant business activity.

Overall, the SEQWB experience highlights the difficult problems faced by Governments (both State and Local) in attempting to genuinely reform their business activities in a turbulent Commonwealth Government taxation environment. It is hoped that the National Competition Council will consider this matter in its assessment of reform across the country and seek to assist in addressing the current hurdles facing reform progress.

2.1.7 Townsville Thuringowa Water Supply Board

The Townsville Thuringowa Water Supply Board (TTWSB) is a bulk water supplier of two councils and a small number of industrial customers. In 1997, a public benefit assessment recommended the implementation of commercialisation.

During the process of negotiating the implementation of competitive neutrality reforms to the Townsville Thuringowa Water Supply Board (TTWSB), the Townsville City Council and Thuringowa City Council approached the Queensland Government with a proposal to convert the TTWSB to a local government body. The conversion of the TTWSB from a State entity to a local government body is intended to more closely align the decision making of the Board with the community that it serves.

Accordingly, the Queensland Government is proposing to amend the *Local Government Act 1993* to create a new local government body similar to a joint local government body as defined in the *Local Government Act 1993*. The key feature at variance with a joint local government body is the provision for the component councils to appoint a chairperson who is not an elected representative of either of the component councils. The presence of an independent chairperson is intended to complement the regional focus of the water supply activities.

Commercialisation arrangements will be implemented to the new entity in accordance with the commercialisation provisions of the *Local Government Act 1993*. The new entity will also be required to full cost price in accordance with the provisions of the *Local Government Finance Standards*.

The target date for implementation of the new legal structure and commercialisation arrangements is 1 July 1999.

2.1.8 Gladstone Area Water Board

Gladstone Area Water Board (GAWB) supplies bulk water to industrial customers and two local governments in the Gladstone Region. In 1997, a public benefit test recommended commercialisation.

During the process of negotiating the implementation of competitive neutrality reform for the GAWB, it became apparent that two different commercialisation approaches were preferred by the two different sets of key stakeholders.

The Board's local government consumers – the Gladstone City Council and the Calliope Shire Council – preferred a Joint Local Government entity (an approach proposed for the TTWSB), while the Board's industrial consumers (who consume 80% of the Board's water by volume) generally preferred that the Board become a commercialised statutory authority.

Both models satisfactorily address the requirements for commercialisation. However, the application of the models may have different effects for the Board's two broad categories of consumers, for water pricing, and for the region's economic development.

For these reasons, it has been decided a more detailed assessment of the implications of both models needs to be completed before a final decision is made as to which model provides the best basis for commercialisation of the GAWB. This assessment will be undertaken by a Steering Committee comprising the Department of Natural Resources (DNR), the two customer councils and the GAWB. Industrial consumers will be consulted at key stages.

Investigation of the relative merits of the two models should be completed by the end of June 1999. Target date for implementation of interim commercialisation to the GAWB is 1 July 1999, with full commercialisation by 31 December 1999.

2.1.9 Mt Isa Water Board (MIWB)

The MIWB is the smallest of the urban water boards, and supplies water to both Mt Isa Mines Ltd and Mt Isa City Council. Of all the urban water boards, the MIWB is currently the furthest behind in terms of having in place readily transferable commercial arrangements on which commercialisation arrangements can be built.

However, since the public benefit test was completed, the MIWB has made substantial progress in this area.

Interim commercialisation arrangements will be implemented to the MIWB from 1 July 1999. This will include implementation of a full cost price path, implementation of a commercial rate of return target and a requirement to pay tax equivalents and dividends.

Opportunities to integrate the activities of the MIWB with the water supply activities of the Mt Isa City Council are being investigated.

2.2 Complaints handling and implementation of recommendations of the Queensland Competition Authority

Attachment 3 is a summary of complaints made to the Queensland Competition Authority (QCA) in the relevant assessment period, and action following the recommendations of the QCA.

The only complaint made in the relevant period is that regarding the Queensland Rail rail fares on the Brisbane to Gold Coast route (see section 3.2, following).

2.3 Matters of specific relevance to the 1999 assessment

Queensland Rail fares on the Brisbane to Gold Coast route

The decision of the Premier and Treasurer regarding the recommendations of the QCA made in respect of the complaint against Queensland Rail is the subject of litigation in the Supreme Court of Queensland.

Therefore, no comment is made on the matter pending the decision of the Court.

3. STRUCTURAL REFORM OF PUBLIC MONOPOLIES

3.1 Status of implementation of structural reform of public monopolies

Public monopolies currently under review include the following:

- Public Trust Office (PTO)
- Brisbane Market Authority (BMA)
- Totalisator Administration Board (TAB)

The PTO, BMA and TAB are reported on under the Competitive Neutrality section of the report (2.1.1, 2.1.2 and 2.1.3).

4. PRICES OVERSIGHT

The Queensland Competition Authority is responsible for administering the Queensland monopoly prices oversight regime.

The regime applies to government business activities, which are monopolies or near monopolies, and which the Premier and Treasurer declare Government Monopoly Business Activities (GMBA's).

The QCA published criteria for identifying GMBA's in December 1997. The Queensland Government has commenced the process of assessing major government businesses against the criteria. The first category of government businesses subject to assessment is the port authorities. The Queensland Government engaged a consultant to assess the Cairns and Mackay port authorities; and directed the QCA to assess all other government port authorities (ie. Port of Brisbane, Gladstone, Townsville, Bundaberg, Rockhampton, and the ports of the Ports Corporation of Queensland).

The Government has received reports in respect of Cairns and Mackay port authorities, the Port of Brisbane, Gladstone Port Authority and Townsville Port Authority. The remainder of the assessments should finish in the middle of 1999. Following the completion of the assessment process, the Premier and Treasurer will consider the appropriate course of action in respect of each authority.

5. LOCAL GOVERNMENT

5.1 Introduction

5.1.1 Approach to Local Government NCP Implementation

As outlined in previous reports to the NCC, the Government's strategy for applying NCP reforms to Queensland local government has focussed on the largest business activities through the application of competitive neutrality reforms to the significant business activities (SBAs) of the 17 largest local governments[3]. These SBAs account for over 80% of local government business activities and have the greatest impact on the Queensland and national economies.

However, there has also been a significant take up of competitive neutrality reforms not only for the middle range business activities targeted for reform in the *Local Government Act 1993*, but also for the small scale business activities.

In addition, other important elements of the NCP reforms such as the review of anti-competitive provisions in local laws, are being applied across all local governments. This has been encouraged by the operation of the local government NCP Financial Incentive Package (discussed later in this report) which was designed to encourage all councils to adopt relevant NCP reforms.

5.1.2 The Legislative Framework

The program of amendments to the *Local Government Act 1993* and *City of Brisbane Act 1924* since 1996 have put in place almost all the elements of the legislative framework for NCP. The statutory framework provides for the application of competitive neutrality reforms (namely corporatisation, commercialisation and full cost pricing), the COAG urban water reform requirements and the review of anti-competitive provisions in local laws and local law policies.

The outstanding element relates to extending the initial corporatisation framework to provide for the establishment of Local Government Owned Corporations (LGOCs) under the *Corporations Law* (previously, the legislation only allowed for statutory LGOCs). A draft legislative proposal was circulated for public comment in December 1998.

In addition, the *Queensland Competition Authority Act 1997* is to be amended to provide – in lieu of Commonwealth regimes - for State-based third party access and prices oversight regimes to apply to Queensland local government infrastructure and monopoly businesses.

[3] This has now become 18 with the inclusion of Bundaberg whose water and sewerage activity is a new Type 2 business activity

5.1.3 Local Government NCP Financial Incentive Package

As previously reported, the Queensland Government has established a Financial Incentive Package of up to $150 million (in 1994-95 prices) to be made available to local governments over the 5 year period commencing 1 July 1997 to support and encourage local governments to implement NCP related reforms. The package comprises:

- $7.5 million to assist local governments with the cost of undertaking NCP-related reviews;
- $141.5 million to be paid as an incentive to adopt NCP related reforms, primarily competitive neutrality reforms; and
- $1 million to fund training and assistance programs for councils.

More detail on the application of the Financial Incentive Package is provided in section 5.1.7.

5.1.4 Training Initiatives

An extensive training program has been undertaken, including elements funded from the Financial Incentive Package, and has proved highly beneficial. The Government has worked closely with the Local Government Association of Queensland (LGAQ) to provide appropriate training and resource material to enable councils to make informed NCP implementation decisions.

The training initiatives have been crucial to the success in implementing NCP reforms by a large number of councils across the State.

The various training initiatives are summarised below and discussed in more detail in Attachment 4.

NCP Training Initiatives Undertaken in 1998	
Full Cost Pricing Software and Training	Software package and user guide to assist local governments to identify Type 3 business activities and the steps to apply full cost pricing. Associated training sessions on using the software as well as Volumes 1 and 2 of the Full Cost Pricing Guidelines that were issued in 1997.
Meeting the Challenge Workshops	To provide local government elected members and officers with broad based skills and practical knowledge on 13 topics related to implementation of NCP.
Study Tour - Identifying Obstacles to Commercialising	To provide senior officers of local governments with Type 1 and 2 business activities that could be commercialised with both technical and first hand information on how two leading local governments were preparing for commercialisation and the structural changes being implemented.

Accounting Issues Consultancy	To identify problems with NCP implementation and to develop an action plan indicating which issues required further training and which needed other solutions
Guidelines for Valuation of Infrastructure	To develop practical guidelines for valuation of infrastructure - one outcome of Accounting Issues Consultancy: to be completed in early 1999
Public Interest Test Workshops	To assist local governments to carry out PITs for their review of anti-competitive provisions of local laws and local law policies by providing information and practical exercises in conducting a review.
Local Law Workshops	To ensure each local government could meet the deadlines for anti-competitive reviews and redundant local law reviews by explaining the interrelationship with the review of local laws required by the new Integrated Planning Act, and assisting to develop an action plan and timetable for reform.
Review of Chinchilla Shire Local Laws	To review and repeal or replace redundant provisions and anti-competitive provisions.
Regional Anti-Competitive and Redundancy Review (South Burnett)	To assist with regional approach to scoping the NCP and redundancy review of local laws.
TER Training Seminars	To assist local governments in the application of the Local Government Tax Equivalents Regime (TER) to SBAs. A TER Manual was issued by the Treasurer in May 1998 as required under legislation.
Model Local Laws	To develop four new model local laws on key areas identifying possible anti-competitive provisions.
Bulletin on Process to Identify Anti-competitive Local Laws	To develop material to assist local governments on identifying anti-competitive provisions.
Volume 3: Public Interest Tests	To develop case studies of PIT processes for assistance of local governments carrying out anti-competitive reviews.
Guidelines to Establishing Complaint Processes or Accreditation	To develop Guidelines and carry out training to: assist local governments to: determine whether to seek accreditation or to establish a competitive neutrality complaint process (and the appropriate complaints model) for their type(s) of business; and implement the chosen approach.
Guidelines for Referees Investigating Complaints	To develop Guidelines and carry out training to: provide referees with the economic, accounting, legal and investigatory knowledge to effectively investigate complaints in an in-house complaint process; and provide advice on common pitfalls and good practice.
Commercialisation and Corporatisation Guidelines	To assist local governments with the implementation of corporatisation and commercialisation reforms of significant business activities

5.2 Competitive Neutrality

5.2.1 Overall Approach

Under the *Local Government Act 1993,* the State's 17 councils with significant business activities (ie Type 1 and 2 business activities) were required to conduct Public Benefit Assessments (PBAs) to assess the net public benefit of applying one of three identified competitive neutrality reforms - namely, corporatisation, commercialisation or full cost pricing. Local governments were required to decide whether to adopt the recommendations in their public benefit assessment reports and, if adopted, to implement their reforms by 1 July 1998. Over time, the number of councils required to conduct assessments is expected to increase, as their business activities expand in size above the relevant expenditure threshold provided in the Act. This approach is consistent with that outlined in Queensland's 1996 local government NCP application statement.

The Queensland Government's 1998 report to the NCC indicated that the 17 largest councils had complied with the first stage of this timetable by completing PBAs for the 25 significant business activities and making decisions on the level of reform to be implemented from 1 July 1998.

The 1996 application statement also included an undertaking by the Queensland Government to provide for the identification of smaller Type 3 local government business activities, and to encourage councils to implement an appropriate level of competitive neutrality reform for such smaller activities (eg the Code of Competitive Conduct). Accordingly, the *Local Government Act* was amended to require councils to identify Type 3 activities and make a decision on whether to apply the Code. To encourage reform, funding has been allocated under the Financial Incentive Package for Type 3 and other smaller business activities, with payment, as for SBAs, to be dependent on satisfactory implementation of reforms.

The task of assessing whether local governments have achieved a satisfactory level of reform has been delegated by the State Government to the Queensland Competition Authority (QCA). The QCA has been given the responsibility for undertaking an independent and objective annual assessment of local government performance in implementing all NCP reforms and recommending payments based on that assessment. The QCA delivered its first progress report in November 1998, the recommendations of which have been accepted by the Government.

5.2.2 Reform Progress

Type 1 and 2 Business Activities

All councils with Type 1 and Type 2 activities implemented competitive neutrality reforms from 1 July 1998 as required. Of the 25 businesses, 15 were commercialised and full cost

pricing[4] was applied to the remainder. A number of councils opted for a staged approach to implementation, with full cost pricing from July 1998 and commercialisation from July 1999. Details are provided in Table 2.1 (Attachment 5).

The Act also provides for "new Type 1 and 2" business activities that emerge as the result of such activities growing and thereby exceeding the expenditure threshold outlined in the Act (indexed appropriately). As a result, Bundaberg and Pine Rivers have advised that their water supply and sewerage services and refuse services respectively, have met the requirements for a new Type 2 business activity. Under the Act, these business activities will need to be reviewed and a decision made by July 1999 on whether to apply competitive neutrality reforms.

Local governments can also "self select" any smaller business activity and treat the activity in the same way as a Type 1 or 2 business activity by carrying out the PBA process and deciding on an applicable competitive neutrality reform. Redland (refuse management)[5], Logan (building certification), Maroochy (building certification) and Ipswich (internet provider) have followed this course and commercialised the activities indicated.

As previously reported, while some councils have indicated an intention to consider corporatisation, there have been no proposals from councils to corporatise their business activities in the first instance. Councils continue to be deterred by the uncertainty over the tax status of local government owned corporations (LGOCs). Both the Queensland Government and the State's local government sector have made repeated claims to the Commonwealth for this issue to be clarified. The Queensland Government and the local government sector in this State have argued for the Commonwealth to agree to a tax equivalent regime for LGOCs, similar to the arrangements that currently apply to State Government corporations. Under this proposal, LGOCs would make income and sales tax equivalent payments back to their parent council.

It may be that some of this uncertainty will be resolved if a national income tax equivalents regime is established as has been foreshadowed by the Commonwealth. However, the details of how such a scheme would operate in practice will need to be provided before Queensland councils could sensibly evaluate their options. As previously indicated, the issue is of considerable importance to Queensland's largest local governments which undertake businesses of a size which would ordinarily require serious consideration of corporatisation.

Type 3 Business Activities

Reform of Type 3 business activities is making significant progress. Most of these larger local governments with Type 1 or 2 business activities have also made progress in reforming

[4] The level of reform adopted differed in two instances from that foreshadowed in Queensland's 1998 report. Gold Coast resolved to apply full cost pricing from 1 July 1998 and commercialisation from 1 July 1999 to its refuse activities (the 1998 report incorrectly indicated that Gold Coast would be commercialising its refuse activities from 1 July 1998). Thuringowa originally resolved to apply commercialisation to its water and sewerage activities from 1 July 1998, but later chose to apply full cost pricing as an interim step and to move to commercialisation in 1999.

[5] This business was included in the list provided in last year's annual report as being a prospective subject for reform.

their Type 3 business activities. Of the other local governments, many have commenced a review of their business activities with a view to implementing reform, while a small number have begun reform processes.

In total, 15 local governments applied competitive neutrality reforms to a total of 60 Type 3 business activities in 1998. In most instances this involved the application of the Code of Competitive Conduct, however, in a four instances, councils chose to treat the activities as Type 2 activities and commercialise them (see above).

The main Type 3 business activities where reform has been applied comprise: building services including private building certification services (10), external competitive road works (7), childcare services (7), cultural and civic centres (6), sports facilities including swimming pools (5), caravan and camping grounds (5), quarries (4), tourism facilities (3), as well as cemeteries, airports, private works and design services (each with 2). Details are provided in Table 2.1 (Attachment 5).

In addition to those Type 3 business activities where implementation of the Code of Competitive Conduct was commenced in 1998, 16 local governments have also resolved to apply the Code of Competitive Conduct to another 40 Type 3 activities in 1999 and beyond. These are listed in Table 2.2 (Attachment 6).

As well as many of the smaller local governments, a small number of medium size local governments have yet to make decisions on the implementation of relevant reforms. However, it is expected that the distribution of significant funds in early 1999 from the Financial Incentive Package to those local governments which have made some progress will encourage the further consideration and implementation of reform in 1999.

Other Business Activities

In addition to operating Type 3 business activities, many local governments also operate other small business activities which trade in goods and services and exceed the $200,000 annual expenditure threshold for Type 3 business activities, but do not qualify as Type 3 businesses because they do not compete directly with the private sector. Although the potential reform of these other business activities was not foreshadowed in the 1996 application statement, they have been included in the eligibility criteria for funding under the Financial Incentive Package to provide an additional incentive for councils to reform all business activities that have a potential impact on the markets in which they operate (particularly those with annual expenditure in excess of $200,000).

In total, 7 local governments applied competitive neutrality reforms via the Code of Competitive Conduct to a total of 11 other business activities in 1998. Of these 11 business activities, the main activities include: internal roadworks activities (4), cleansing/refuse (4) and water and sewerage (2). Details are provided in Table 2.1 (Attachment 5).

In addition to those other business activities where implementation of the Code of Competitive Conduct was commenced in 1998, 16 local governments have also resolved to

apply the Code of Competitive Conduct to another 36 other business activities in 1999 and beyond. Of these 36 business activities, the main activities include external road works (13), water and sewerage services (7) and refuse/garbage services (4). These are listed in Table 2.2 (Attachment 6).

As with the Type 3 business activities, it is expected that the distribution of funds from the Financial Incentive Package will continue to encourage reform in 1999.

5.2.3 Training and Assistance

As indicated previously, a comprehensive training and assistance program to assist local governments in the application of competitive neutrality reforms was provided by both the Government and the LGAQ (funded by the Financial Incentive Package). Consistent with the focus on applying competitive neutrality reforms to council businesses, much of the training in 1998 centred on competitive neutrality issues (see Attachment 4 for details).

5.3 Legislation Review

5.3.1 Review of Existing Local Laws and Local Law Policies

Under the *Local Government Act 1993*, local governments were required to review their existing local laws and local law policies to identify "possible anti-competitive provisions" by 31 December 1997. By 1 July 1999, local governments are required to have:

- conducted Public Interests Tests (PITs) on the identified provisions using the process set down under Regulation (which provides for both minor or major reviews depending on the extent of the restriction on competition, the number of stakeholders, the size of the impact, the complexity of the issues and the level of community concern);
- prepared a PIT report on each of its possible anti-competitive provisions;
- resolved whether or not to implement the recommendations of the PIT; and
- implemented the appropriate action.

All local governments have completed the identification of possible anti-competitive provisions, with approximately 3,300 such provisions being identified. Most of the anti-competitive provisions prohibited a particular business activity unless authorised by a local government issued permit (which may be subject to conditions about the operation of the activity). Business activities regulated in this manner include:

- entertainment venues;
- pet shops, catteries and kennels;
- itinerant vending;
- extractive industries and blasting operations;
- caravan parks, camping grounds and rental accommodation;

- cemeteries;
- advertising;
- domestic water carrying; and
- public swimming pools.

5.3.2 Review of Redundant Provisions

Local governments are also required under the Act to review all their local laws that had been in existence when the Act came into force in 1994. This review was to identify and repeal any redundant provisions. This review pre-dated the NCP review, but its deadline has been extended to operate simultaneously with the NCP review. The number of local laws in existence has been reduced from 5,191 when the Act commenced in 1994 by the repeal of 2,020 local laws as well as the replacement of 811 local laws with modern local laws. Further, 1,331 new local laws have been added to the remaining 2,328 local laws as part of the modernising process, leaving 3,659 local laws to date (see Table 2.3 in Attachment 7). This reduction greatly facilitated the review of possible anti-competitive provisions.

5.3.3 Review of Proposed New Local Laws and Local Law Policies

When local governments are proposing to make new local laws and local law policies, they must also identify and carry out a PIT for any possible anti-competitive provisions before making the law or policy. In 1998, possible anti-competitive provisions were identified in 36 proposed laws, and more than 250 other local laws were identified in early 1999. These were generally of a similar nature to those discussed under section 5.3.1. For some laws or policies, the review process has been completed and the laws or policies have been made, while others are still at the stage of conducting the PIT and carrying out public consultation. (See Table 2.3 in Attachment 7).

5.3.4 Impact of Possible Anti-competitive Provisions

The impact on competition from possible anti-competitive provisions in local laws or local law policies is not considered to be high. As discussed under section 5.3.1, most such provisions set up a permit regime with local governments having the discretion to grant permits and to impose conditions on such permits. While this is technically anti-competitive by creating a barrier to entry to a particular market and restricting conduct within a market, councils do not generally use their discretionary power to limit the number of participants in the market. In most cases, a permit is granted as a matter of course and a range of fairly generic conditions are applied which relate to health, safety and amenity issues.

5.3.5 Progress and Outstanding Issues

Given the requirement for local governments to have completed their PITs and implemented decisions by 30 June 1999, the Government conducted surveys of progress by local governments in August 1998 and again in February 1999.

Following an indication from the August 1998 survey that only a small percentage of councils had progressed sufficiently to be able to meet the June 1999 deadline, further training was specifically conducted to assist local governments to either commence their PITs or to progress work already begun and to deal with two significant impediments to the timely completion of councils' legislation review programs.

The first impediment arose because the review of local laws for redundant provisions imposed a significant workload of overhauling and updating each local governments' entire suite of local laws, particularly for smaller councils. To accommodate this, the statutory deadline for the repeal of redundant local laws was intended to coincide with the NCP review completion date.

The second impediment stemmed from the additional workload caused by the introduction of Queensland's new system for land use, development and building control as set out in the *Integrated Planning Act 1997* (IPA), which came into force on 31 March 1998. Under the IPA, all local governments must overhaul all local laws or planning scheme provisions related to development control, because under the Act, local governments can no longer make local laws or local law policies dealing with development control issues.

Regulation of development must be moved to local governments' planning schemes by 2002, at which time the development provisions contained in local laws or local law policies will become redundant. All local governments must introduce an IPA planning scheme by 2002 - in the meantime, local governments must amend their existing planning schemes to operate as interim schemes.

Therefore, the advent of the IPA meant that local governments could not simply amend development-related local laws to remove possible anti-competitive provisions – their only options were to retain the anti-competitive provisions until 2002 (ie beyond the 1999 deadline) or repeal the entire local law and be faced with a loss of legitimate development-control provisions designed to ensure community standards are met. A minor amendment to the IPA was undertaken to address this issue by allowing councils to alter local laws until a new planning scheme comes into effect, despite the existence of development control provisions.

In the second survey in early 1999, 106 out of 125 local governments responded to the effect that:

- 6 local governments have completed their PITs;
- 37 local governments have made substantial progress;
- 46 local governments have just started the PIT process; and
- 12 local governments have not yet started.

Of the 76 local governments that have less than 15 local laws or local law policies on which PITs have yet to be carried out, however, all but 3 have a plan in place to ensure they meet the June 1999 deadline. Of the 24 local governments with more than 15 local laws and local law policies on which PITs have yet to be carried out, all but 1 have plans in place for meeting the June 1999 deadline.

5.3.6 Training and Assistance for Local Law Reviews

In 1998, two sets of training workshops were conducted and a number of specific initiatives were undertaken to assist with the anti-competitive reviews and implementation. A key focus of the various training initiatives was to alert councils to the potential for the use of non-regulatory options as a means of achieving desired outcomes and minimising the impact on competition.

The February-March 1998 workshops focussed on the PIT process. The November 1998 workshops were designed to ensure local governments met their deadlines by providing assistance to commence and complete PITs, complete the redundancy review and fully explain the implications of the IPA in completing both the redundancy and NCP reviews (see Attachment 4 for details).

5.4 Competitive Neutrality Complaint Process

5.4.1 Framework for Complaint Processes

The amendment to the *Local Government Act* in December 1997 that created the framework for the complaint and accreditation processes for local government business activities to which competitive neutrality reforms are applied, was modelled on the processes applying at the State Government level, including the role of the QCA. In essence, once a competitive neutrality reform has been applied to any local government business activity, the local government must establish a process to deal with complaints about breaches of competitive neutrality. Details of the processes required were outlined in Queensland's 1998 annual report to the NCC.

5.4.2 Establishment of Complaint Processes and Applications for Accreditation

Of the 100 businesses subjected to competitive neutrality reform prior to December 1998, and the 76 businesses where a resolution to reform has been made but implementation has not yet commenced, valid complaints processes have been established as follows (see Table 2.1 in Attachment 5 for details):

- 15 local governments have established a complaint process with the QCA as their referee for 13 Type 1 and 2 business activities, 1 Type 3 business activity treated as a Type 2, and 4 road business activities;

- 11 local governments have established in-house complaint processes with independent referees for 11 Type 1 and 2 business activities and 2 Type 3 business activities treated as Type 2;

- 9 local governments have established in-house complaint processes for 41 Type 3 business activities (complaint processes for 4 business activities are incomplete but close to finalisation);

- in addition, 7 of the 16 local governments that resolved to apply competitive neutrality reforms but have not commenced implementation have created complaint processes for 31 Type 3 business activities;

- 5 local governments have established in-house complaint processes for 5 smaller other business activities;

- in addition, 7 of the 16 local governments that resolved to apply competitive neutrality reforms but have not commenced implementation, have created complaint processes for 11 smaller other business activities; and

- 1 local government (Maroochy) is seeking accreditation from the QCA for all of the 12 business activities (including 2 Type 1/2 and 10 Type 3 businesses) that it has subjected to reform, however, that accreditation has not yet been granted because of the rigorous, and therefore time consuming, process required to be followed. Although Maroochy has not established a complaint process for the interim, Maroochy's commitment to the reform process has been, and remains, very strong. Toowoomba is also seeking accreditation from the QCA for Type 2 and other business activities but has created a complaint process for the interim.

5.4.3 Complaints Lodged

By the end of December 1998, no complaints have been lodged under any of the established complaint processes.

5.4.4 Training on complaint processes and accreditation

The complaints mechanism training and assistance program conducted in 1998 centred around a series of workshops designed to equip council staff and prospective complaints mechanism referees with appropriate technical and process skills (see Attachment 4 for details).

5.5 COAG Water Reforms

Local Governments in Queensland are required to comply with clauses 3(a) and (b) of the 1994 COAG Water Resource Policy. Implementation of COAG water reforms by local Governments is outlined in Section 9.1.

5.6. Trade Practices Act Compliance

In 1997 the State Government provided funding to the LGAQ to develop a manual on local government compliance with the *Trade Practices Act* (based on the State Government's compliance manual) and to conduct workshops on this matter. To date, Queensland Local Governments have not been the subject of any trade practices complaints.

5.7 Prices Oversight

As outlined in Queensland's previous reports, it is proposed that the State Government's regimes for prices oversight of government monopoly business activities will be extended to apply to local government SBAs that meet the relevant monopoly criteria. A discussion paper outlining the proposal was circulated in early 1999 and a number of seminar sessions have been undertaken to inform stakeholders on the issues. Supporting legislation is scheduled for 1999.

The proposed prices oversight regime will be administered by the QCA which performs a similar function in relation to State Government monopoly businesses. As with State Government monopolies, the QCA will not have the power to set prices, but will make recommendations to the owner council in relation to possible changes to any pricing practices the QCA finds are inappropriate.

5.8 Third Party Access

The State-based third party access regime currently applies to local government owned infrastructure. There have been no applications for declaration of any local government owned infrastructure. The most likely candidates for declaration would be water and sewerage infrastructure. Local governments have recently been consulted on whether to make some amendments to the access regime to: (i) provide local government with a more formal role in the declaration process; (ii) provide for an access code for water infrastructure; and (iii) define local government infrastructure in a similar manner to State Government infrastructure.

Consultation on this proposal is also being undertaken in conjunction with that being carried out for prices oversight.

5.9. Local Government NCP Financial Incentive Package

5.9.1 Framework for NCP Financial Incentive Package

The NCP local government Financial Incentive Package provides for approximately one-fifth of the Queensland Government's competition payments from the Commonwealth to be earmarked for local governments who implement NCP reforms. The commitment is to share up to $150 million (in 1994-95 prices) with local governments over the 5 year period commencing 1 July 1997.

The Financial Incentive Package is divided into three pools, and the distribution of funds across the pools shows the emphasis in the Package on rewarding outcomes:

- Training Pool - $1 million to provide training and assistance to local governments;

- Review Pool - $7.5 million to assist local governments with undertaking NCP-related reviews, particularly reviews of prospective competitive neutrality

reforms, of the costs and benefits of implementing aspects of the COAG urban water agenda and of anti-competitive local laws and policies; and

- Implementation Pool - $141.5 million (or around 95% of the funds) to local governments implementing NCP reforms. Local governments will only receive their maximum funding if they implement the full array of reforms appropriate to their circumstances.

In order to determine each local government's potential maximum payment from the implementation pool, local governments were required to nominate, by 1 July 1998, which of their business activities that they were considering for reform (ie. in addition to those Type 1 and Type 2 businesses already identified for reform). This information, along with information provided on the size of each activity in terms of expenditure, was used to calculate the maximum allocation for each local government, and the proportion of each allocation assigned to individual businesses.

The response from local governments was considerably greater than expected with local governments nominating over 180 Type 3 business activities and over 280 other business activities as under consideration for reform over the next four years (see Tables 2.1 and 2.2 in Attachments 5 and 6 for those local governments that have resolved to or have commenced implementing reforms in 1998 from among these 460 nominations). A number of smaller local governments (approximately 23) have not nominated any activities for reform, either because all their activities are too small or because they have decided not to participate in the reform process. Some of these may review their involvement when they become aware of the payments potentially available.

The allocation of funds and the criteria to be used by the QCA in assessing progress as the basis for its annual funding recommendations to the Government are encapsulated in the *Local Government NCP Financial Incentive Package Implementation Pool Guidelines*. The Guidelines provide for the Implementation Pool to be sub-divided into three sub-pools:

- a competitive neutrality sub-pool (85% or $120.3 million) to cover reforms such as corporatisation, commercialisation, full cost pricing or the Code of Competitive Conduct. This includes a small "bonus" payment for local governments which elect to reform all of their eligible business activities as well as a "reserve" component" for local governments which subsequently elect (but within the 5 year period) to reform activities not nominated initially as under consideration for reform (ie. where local governments change their mind);

- a COAG water reform sub-pool (10% or $14.1 million) to cover reforms such as the introduction of user-pays water tariff reforms and the identification and disclosure of subsidies, cross-subsidies and community service obligations in the delivery of water services; and

- a flagfall sub-pool (5% or $7.1 million) under which a fixed amount of $56,600 (to be adjusted for inflation) has been allocated to each local government to cover miscellaneous reforms such as reforming local laws and assisting local governments in making changes to financial and reporting and tendering arrangements.

5.9.2 Role of the QCA

The QCA is the body responsible for recommendations to the Queensland Government on payments to councils from the implementation pool. The QCA is required to conduct a rigorous annual assessment of local government progress with NCP reforms in accordance with the requirements in the *Local Government NCP Financial Incentive Package Implementation Pool Guidelines*. The Guidelines set out the criteria and the acceptable level of performance to be achieved in order to access payment.

The QCA produces a report in November of each year (commencing in 1998) covering progress up to 31 July in that year, that contains recommendations on the share of each local governments allocation to be paid in that year. The initial report also took account of payments made to local governments prior to the QCA formally commencing its role.

The QCA assessment is based on three elements:

- structural change – councils are required to provide evidence of organisational change or establishment of a separate entity;

- reform implementation – councils are required to provide evidence of satisfactory implementation of reforms; and

- outcomes – review of ongoing performance indicating that the desired outcomes are being achieved.

This approach provides for a significant initial payment for introducing those structural changes necessary for reform application, while recognising that implementation of reforms and ongoing compliance can only be demonstrated over a longer period.

The QCA recommended payment of $26.5 million from the $32.6 million available this year, with the balance of $6.1 million to be carried forward into the next assessment period (1 August 1998 to 31 July 1999). These withheld payments relate mainly to council business activities which, due to timing constraints, were not subject to detailed review for the purpose of the 1998 assessments. The QCA recommended the distribution of payments as follows:

- Brisbane City Council - $10.7 million;

- 11 local governments with Type 1 or 2 business activities which have undertaken the required structural changes and implemented the benchmark level of reform (ie. commercialisation) - from $420,000 to $2.7 million;

- local governments with Type 1 or 2 business activities who have implemented full cost pricing - from $160,000 to $540,000;

- 34 local governments with smaller scale business activities, being a proportion of flagfall payments plus recognition of some reform implementation - from $32,000 to $200,000;

- 43 local governments with smaller scale business activities, being a proportion of flagfall only in recognition that the local governments had begun serious consideration of a number of NCP issues - $31,600; and

- 8 local governments who have made minor progress on general NCP issues - from $1,100 to $16,000.

The State Government has accepted the recommendations of the QCA report.

5.9.3 Expenditure from the Financial Incentive Package

Payments to local governments from the Financial Incentive Package to the end of December 1998 are:

- Training pool - $842,400 expended on or committed to training projects. It is expected to exhaust this pool by the end of 1999;

- Review pool - $5,530,500 expended. The highest payments have been made to the 17 local governments with Type 1 or 2 business activities with the greatest responsibilities to conduct reviews, but all local governments have received payments from this pool. In early and mid 1999, further payments will be made to local governments who have implemented two-part tariffs and completed their local law reviews, which will exhaust this pool;

- Implementation Pool - $5,900,000 has been expended on payments to the 17 local governments with Type 1 or 2 business activities in 1998. This was in recognition that they were required to implement earlier and higher level competitive neutrality and COAG water reforms for their "significant business activities" and consequently incurred earlier and greater implementation costs than other local governments. These payments were made prior to the QCA formally commencing its role in respect of the Implementation Pool (as discussed above). Payment of a further $26.5 million has been made in 1999 in accordance with the recommendations made in the QCA's report on progress to 31 July 1998.

Attachment 10 indicates the payments made to local governments to the end of 1998 (from both the Review Pool and Implementation Pool) as well as the future allocations from each pool.

5.10 Conclusion

The first substantive implementation of NCP reforms for local government began in 1998. The previously successful approach of partnership with local government on NCP reform implementation has continued, aided by further training and assistance initiatives and through encouraging reform via the Financial Incentive Package.

The primary focus has remained with the 17 local governments with Type 1 and 2 business activities. All 17 have applied competitive neutrality reforms - most have commercialised their business activities - and some have indicated a willingness to consider corporatisation once the income tax barrier to that reform is removed.

Natural growth in business activities means that smaller business activities are meeting the threshold used to distinguish new Type 2 business activities. These activities are then subject to assessment for competitive neutrality reform.

There has also been a widespread pick up of competitive neutrality reforms across middle and small range local governments.

Similarly, there has been significant progress in implementing COAG water reforms by the 17 largest local governments, and a number of smaller local governments are also considering consumption based pricing for their smaller scale water services.

Local governments are also progressing with the review of their local laws for anti-competitive provisions.

The continuation of NCP training initiatives and, in particular, the Financial Incentive Package have been important factors in encouraging councils to implement the most significant reforms as identified in last year's annual report to the NCC. The distribution of significant sums to almost all local governments – based on achievements in 1997-98 – in early 1999 will be a significant inducement to further reform.

The independence of the QCA, and the rigour of its assessments of local government progress, has also been critical to the impact of the Financial Incentive Package.

The challenge for 1999 and future years will be to maintain the momentum of reform and to convert the structural and other changes into positive community outcomes. This will require continuing State Government support for those larger local governments with large scale business activities, and to encourage such local governments to embark on higher levels of reform where this is appropriate to local circumstances. In all cases, however, the final decisions to reform will rest with the councils themselves, and their decisions to reform will

need to be based on appropriate assessments of the costs and benefits to their community/stakeholders of implementing the reforms.

In addition, it is critical to continue to provide training and support for smaller local governments. Attention will also need to be directed in the coming year to overcoming any backlogs in implementing reform that occurred because of the impact of short reform timetables on resource availability, including complaint processes and finalising reviews of local laws for anti-competitive provisions. Nonetheless, continuing emphasis will need to be placed on the competitive neutrality reforms nominated by the larger councils, as this is where the potential overall community benefits are greatest.

PART 2

THE CONDUCT CODE AGREEMENT

6. COMPLIANCE

Pursuant to clause 2(1) of the *Conduct Code Agreement*, the Queensland Government advised the Australian Competition and Consumer Commission (ACCC) on 17 October 1996 of the making of the *Competition Policy Reform (Queensland – Exemptions) Regulation 1996*.

The regulation established a temporary authorisation for practices surrounding the sale of forest products under the native forest sawlog allocation system and the transfer of water allocations. The regulation expired on 27 September 1998. A further temporary authorisation which sunsets on 15 November 1999 was established via an amendment to the F*orestry Act 1959* in respect of the practices surrounding the sale of forest products under the native forest sawlog allocation system.

Further, the Queensland Government advised the ACCC on 31 July 1998 that the following regulations were made under section 39 of the *Competition Policy Reform (Queensland) Act 1996*:

- *Competition Policy Reform (Queensland – Dairy Industry Exemptions) Regulation 1998*
- *Competition Policy Reform (Queensland – Chicken Meat Industry Exemptions) Regulation 1998*
- *Competition Policy Reform (Queensland – Sugar Industry Exemptions) Regulation 1998*

These regulations established temporary authorisations for certain practices undertaken under the *Dairy Industry Act 1993*, the *Chicken Meat Industry Committee Act 1976* and the *Sugar Industry Act 1991*.

At the time of the making of the regulations, the conduct which was the subject of the temporary authorisations either had been, or was being, examined as part of the NCP reviews of relevant legislation. The need for any long-term authorisation of activity was to be addressed in the context of competition policy reform. The regulations essentially preserved the status quo until the outcomes of the reviews were implemented. Any continuation of these authorisations will comply with clause 5(5) of the *Competition Principles Agreement*.

Pursuant to clause 2(3) of the *Conduct Code Agreement*, the Queensland Government advised the Australian Competition and Consumer Commission (ACCC) of the result of an extensive review of Queensland legislation on 10 July 1998. The review determined that few provisions constituted exceptions under section 51 of the *Trade Practices Act 1974* (TPA), due to the specificity requirements of that section of the Act.

The Queensland Government advised the ACCC that a number of areas of doubt were identified and specific temporary exemptions made in accordance with section 51 of the TPA.

PART 3

AGREEMENT TO IMPLEMENT THE NATIONAL COMPETITION POLICY AND RELATED REFORMS

INFRASTRUCTURE REFORM

7. ELECTRICITY

7.1 Overview

Queensland electricity reforms were the subject of lengthy discussion in Queensland's first and second annual reports to the NCC.

A number of significant electricity reforms were delivered in 1998/99, including:

- Further industry restructuring to achieve good corporate governance and long term sustainability, primarily in the case of Government Owned Corporations.

- The successful implementation of the second stage of retail competition (for customers using greater than 4GWh per year).

- The commencement of the National Electricity Market (NEM) on 13 December 1998, which replaced the Queensland interim wholesale market established in January 1998. Queensland will continue to operate as a separate region in the National Market prior to the interconnection with New South Wales in late 2000.

In February 1999, the Queensland Government announced the following changes to the industry structure:

- The engineering corporation, AUSTA Energy to be wound up, with staff to be transferred to the government owned generation corporations, the Department of Mines and Energy and possibly other electricity corporations;

- The establishment of an Electricity Monitoring Unit to address concerns about maintenance practices within the industry;

- All 6 regional distributors to be amalgamated into a single corporation which will adopt the Ergon name, with Ergon Retail as subsidiary; and

- Regional electricity councils to be formed across the State to provide direct community input to their distribution corporations.

Work is continuing on the implementation of the remaining tranches of contestability (tranche 3 in July 1999 and tranche 4 in January 2001), development of standard customer contracts, retailer of last resort, and a number of other on-going economic, administrative and technical issues.

While Queensland is participating in the competitive national market, the Government is also committed to maintaining electricity tariff equalisation to ensure that the State's regional areas are not disadvantaged as the electricity market becomes contestable. Therefore, the Queensland Government will apply a public benefit test to the proposed introduction of competition in the supply of electricity to domestic and small business consumers, to ensure that price and service standards are protected. These initiatives will address the major issues in the Queensland electricity industry and provide for the long-term growth of the industry and the community.

Queensland's performance against specific reform commitments is the following:

7.2 Interconnection with NSW

The Queensland Government has made a commitment to fast track the completion of the interconnection. The original completion date for the interconnector was October 2001. Powerlink and TransGrid are presently jointly pursuing an accelerated program targeting January 2001 for completion. This is an aggressive schedule with virtually no float for unforeseen events. The critical path in the program is the environmental impact studies, easement acquisition and transmission line construction.

Queensland is currently a participant in the NEM in advance of the interconnection. The National Electricity Code is applied to market operations in Queensland and the NEM systems are fully operational.

7.3 Structural Separation of Generation and Transmission

No change.

7.4 Ringfencing Retail and Wires in the Distribution Sector

Company separation exists between the distribution and retail sectors.

Six separate regional distributors currently own Ergon Energy (the northern retailer). With the Government's announcement of the restructure of the Queensland electricity industry, these 6 regional distributors will be amalgamated into a single corporation adopting the Ergon name, with Ergon Retail as a subsidiary. Regional electricity councils are to be formed across the State to provide direct community input to their distribution corporations.

This restructure of the distribution corporations simplifies the governance arrangements and allows the State's regional electricity sector to be able to conduct business more effectively. The new structure will reduce the number of reporting lines to shareholding Ministers, allow a more coordinated approach to regional development of the distribution sector, and provide a more workable arrangement for the ownership and business development of the retailing corporation.

8. GAS

8.1 Overview

The Natural Gas Pipeline Access Agreement was signed by all jurisdictions on 7 November 1997. This Agreement committed Queensland to enacting legislation to apply the *Gas Pipelines Access Law* by the end of June 1998. The *Gas Pipelines Access Law* will make the obligations placed on pipeline operators and users by the Code legally binding.

Under the Agreement, South Australia was made the lead legislator for the *Gas Pipelines Access Law*. The South Australian legislation was enacted in December 1997. The *Gas Pipelines Access Law* comprises Schedule 1 to the South Australian Act, and the National Third Party Access Code for Natural Gas Pipeline Systems (the Code) which is set out in Schedule 2 to the South Australian Act.

Progress on specific Code agreements is outlined below.

8.2 Removal of all remaining legislative and regulatory barriers to free trade across jurisdictions

As a further part of Queensland's compliance with the national competition policy reforms and in accordance with issues raised in the Upstream Implementation Working Group (UIWG), the Government is undertaking a review of the *Petroleum Act 1923* and the *Gas Act 1965*. The review will allow the updating of the legislation to ensure that it is consistent with the UIWG recommendations in regard to the following two key upstream gas issues.

The UIWG report identified the efficient, transparent and contestable-system of allocating exploration permits and managing perspective acreage as one of the keys to increasing upstream competition. Proposed changes to the Petroleum and Gas Acts are consistent with these recommendations particularly in regard to supporting transparency of the process and the award of acreage on an open and competitive basis.

Secondly, the UIWG is developing a national approach to third party access to upstream facilities. The proposed changes to the Petroleum and Gas Acts provides for a level of flexibility that should enable the incorporation of any such national approach if considered appropriate. For example, the proposed legislation will provide for a regulation to be made extending the scope of the provisions to upstream facilities.

Queensland is well advanced with its review, and a discussion paper on the review has been released for public comment. Submissions and comment on the discussion paper close on 1 April 1999.

8.3 Uniform national framework for third-party access to all gas transmission pipelines

See below.

8.4 Principles for free and fair trade in gas embodied in legislation

On 7 November 1997, Queensland signed the Natural Gas Pipelines Access Agreement, which commits the State to enacting legislation to apply the national *Gas Pipelines Access Law*. The legislation will make the obligations placed on pipeline operators and users by the National Gas Access Code ('the Code'), legally binding.

The Gas Pipelines Access (Qld) Bill was introduced into Parliament on 21 April 1998. It was passed on 13 May and assented to on 18 May. The commencement of the legislation has yet to occur, and will be fixed by proclamation.

This legislation will:

- apply the *Gas Pipelines Access Law* in Queensland;
- provide for derogations from the *Gas Pipelines Access Law* for certain Queensland pipelines;
- provide transitional arrangements before the full application of the *Gas Pipelines Access Law* in Queensland; and
- establish the Queensland Gas Appeals Tribunal.

The derogations aim to protect existing pipeline tariffs and other access conditions, which were established in accordance with the access regime under the Queensland *Petroleum Act 1923*, prior to the development of the *Gas Pipelines Access Law*. These derogations effectively deem the existing tariff arrangements as the reference tariffs under the Code.

The legislation also implements a threshold reduction strategy, which provides for the introduction of contestability into the Queensland gas distribution market. The threshold reduction strategy provides for customers who consume greater than 100 TJ to become contestable on 1 January 2000 and all remaining customers on 1 September 2001.

Since the assent was given to the *Gas Pipelines Access (Qld) Act*, it has come to the attention of industry and Departmental officers that some minor 'administrative' amendments need to be made to the legislation prior to its proclamation.

Furthermore, the Government believes that Queensland's derogations from the Code form an integral part of the legislation, and the proposed access regime. Therefore, the Government considers that it is appropriate to await the outcome of the NCC review of the Queensland derogations, before setting a final date for the commencement of the legislation.

It is envisaged that the NCC review of the Queensland derogations will be completed by mid-1999.

8.5 Adoption of AS2885

Jurisdictions agreed to adopt AS2885 to achieve uniform national pipeline construction standards by the end of 1994 or earlier.

8.6 Open ended exclusive franchises

The CoAG noted that open-ended franchises are inconsistent with the principles of open access. As such, no new open ended exclusive franchises have been approved in Queensland. Approvals to develop new distribution franchises have been granted on the understanding that they will be subject to full open access provisions upon the introduction of the national gas access regime.

The Queensland Government has adopted a Threshold Reduction Strategy (TRS) whereby those large customers which consume greater than 100Tera Joules per annum will gain access to competitive supply in January 2000 with all remaining customers gaining access to competitive supply in September 2001. The TRS is generally consistent with those adopted by other participating jurisdictions. It should be noted that 75% of tradeable gas volume in Queensland is already contestable.

8.7 Gas utilities to be placed on a commercial footing

In 1998, Energex made a successful takeover bid for Allgas. The Energex bid was motivated by the perceived need to strengthen the company's position in the highly competitive energy trading sector.

Energex is a Government owned electricity corporation established under the electricity industry reforms in 1998. The Queensland Government has strong policies in regard to commercial performance of Government owned corporations and competitive neutrality. Energex is free to pursue its day-to-day business but is required to report to Shareholding Ministers on matters set out in its Statement of Corporate Intent.

8.8 Ringfencing distribution and transmission

Jurisdictions agreed that where publicly-owned transmission and distribution activities are at present vertically integrated, they be separated, and legislation introduced to 'ring-fence' transmission and distribution activities in the private sector by 1 July 1996. Heads of

government noted that Victoria's ability to commit to this timetable is contingent upon satisfactory and timely resolution of the petroleum resource rent tax issue.

There are no publicly-owned transmission and distribution services in Queensland that are vertically integrated. Currently, in Queensland there are three main transmission pipelines and two main natural gas distributors which are privately owned. Major gas industry participants are aware that transmission and distribution assets will need to conform with the ring-fencing provisions of the national access code.

9. WATER – COAG WATER REFORMS

1999 is the first year that COAG water reform has formed a formal part of the tranche assessments by the NCC. Accordingly, a brief summary of the water industry is provided.

The occurrence of natural water resources in Queensland is varied and often erratic. Some coastal regions, and in particular, northern Queensland are characterised by regular, tropical rains, while western regions often experience long drought periods followed by large flood events. Water planning, allocation and infrastructure provision in Queensland is a function of these climatic and hydrological conditions.

Water supply in Queensland is provided by a diverse range of entities including the State Government, over 120 local governments, 4 urban water boards (Government statutory authorities), 2 joint local governments as well as 55 smaller rural water and drainage boards. There is also a small, but increasing, number of private sector providers operating in the industry, including a proposal for the first major private sector dam development on the Dawson River.

The Queensland Government approach to the implementation of the COAG water reforms reflects both the characteristics of the natural resource and the wide variety of participants within the industry. The approach also reflects that, historically, water infrastructure has been provided to meet a range of Government objectives (eg. regional development, industry assistance etc) and has not been provided with a purely commercial or environmental focus. Water reforms in Queensland are intended to maximise the benefits from existing infrastructure, while ensuring that, in future, water resource use and development occurs in an environmentally and ecologically sustainable manner.

The Queensland Government is encouraging greater private sector involvement in the Queensland water industry. In this respect, new regulatory arrangements are currently being developed to ensure that all water services providers, public or private, are treated in a similar manner.

In 1998, recognising the importance of the water industry in Queensland and the role that an efficient water industry plays in the State, the Queensland Government established a special purpose reform unit to coordinate and accelerate the implementation of the COAG Water Reform agenda from a whole-of-government perspective.

Queensland Water Reform Unit

The Water Reform Unit is responsible for:

- Development and implementation of a new framework for water allocations and trading, including a comprehensive system for providing water for the environment.
- Implementation of new arrangements for rural water pricing.
- Institutional reform of State Water Projects and the urban water boards.
- Development of a new legislative framework to facilitate reform of the water industry and to accommodate private sector involvement.
- Public consultation regarding elements of the water reform agenda.

9.1 Water Pricing - Local Government

Domestic water supply in Queensland is provided by local governments which supply water to in excess of 3 million people, as well as commercial and industrial customers. The asset base for local government water supply and sewerage is in excess of $15 billion. Local governments vary in size from the Brisbane City Council, which is the largest local government body in Australia, to councils with extremely small populations dispersed over vast areas of Queensland's western regions.

Queensland's response to water reform though local governments recognises the autonomy of local government as well as the wide disparity in the size and functions of local government water services. In this context, there has been substantial progress in the implementation of COAG reforms to local government water service provision activities.

In particular, the local government water reforms to date have concentrated on the "big 17" local government water service businesses; namely Brisbane, Caboolture, Cairns, Caloundra, Gold Coast, Hervey Bay, Ipswich, Logan, Maroochydore, Mackay, Noosa, Pine Rivers, Redlands, Rockhampton, Thuringowa, Toowoomba, Townsville. Collectively, revenue from the big 17 local governments' water supply and sewerage services equates to approximately 85% of total annual revenue from local government water activities.

However, water reforms are not confined to these local governments. The remaining local governments are being encouraged to implement water reforms formally through a Code of Competitive Conduct and through access to the Local Government NCP Financial Incentive Package. Specifically, some 76 of the smaller local governments have nominated water and sewerage as businesses to be considered for the application of competitive neutrality reforms, including application of full cost pricing, over the four years to 2003.

Several amendments to the *Local Government Act 1993* and the *Local Government Finance Standard 1994* have provided the legislative framework for the package of COAG water reforms and have given statutory force to the implementation of the COAG Water Resources Policy. This has been done in a way consistent with the application of the relevant competitive neutrality reforms to local government water and sewerage business activities.

These legislative amendments are to be complemented by a raft of proposed amendments to other Acts including:

- the *Queensland Competition Authority Act 1997* regarding economic regulation;

- the *Water Resources Act 1989* which will streamline common elements of water industry regulation including water allocation and resource management regulation, technical/operational regulation of the water industry to ensure public health and safety and customer protection.

The wide adoption of the COAG water reforms by the local governments is a further indication of the generally positive approach adopted towards NCP-related reforms by Queensland's largest local governments, especially when many of these reforms have been implemented at a time of considerable public disquiet towards NCP. Two-part tariffs, in particular, have been an issue of considerable contention in some communities. Many of these reforms by local governments are already yielding significant results including the Brisbane City Council which, following the introduction of water meters, achieved a 13% reduction in water usage across the City of Brisbane in 1997-98.

9.1.1 Full Cost Pricing

The 1994 COAG agreement requires that local government price water in accordance with the principle of full cost recovery with any community service obligations and cross-subsidies made transparent.

The implementation of full cost pricing arrangements for local government water businesses forms an integral part of the application of competitive neutrality. Further information regarding implementation of the broader competitive neutrality requirements by local governments is outlined in the local government section of this report. The *Local Government Act 1993* requires those local governments with Type 1 and Type 2 water and sewerage services[6] to consider the application of full cost pricing. The elements of full cost pricing as defined by the *Local Government Finance Standard 1994* align with the ARMCANZ Water Pricing Upper Bound, ie. prices cover operational, maintenance and administration costs, externalities, taxes or TERs, provision of asset consumption and cost of capital, the latter being calculated by WACC.

On 1 July 1998, 11 of the 17 large local governments implemented commercialisation (which incorporates full cost pricing), with the six remaining local governments implementing full cost pricing.

[6] Type 1 activities defined as those businesses with an annual revenue in excess of $10 million per annum, Type 2 activities have an annual revenue in excess of $7.5 million per annum. Businesses caught by this threshold are reviewed annually. For example, during 1998-99 Bundaberg City Council water and sewerage activities will be required to consider application of the COAG water reforms.

Local Government Finance Standards 1994 and Full Cost Pricing

Full cost pricing - councils must ensure that the projected total revenue from carrying on the activity is enough to cover the projected total costs of carrying on the activity for the council's financial year. This means that all relevant costs must be appropriately identified and prices set in a manner that covers all of these costs.

Asset valuation - non-current assets must be valued at deprival value by 30 June 1999.

Rates of return - a return on capital comparable to a private sector entity carrying on a similar activity must be included in pricing however, for 1998-99, (to aid the transition) councils can choose their own rate of return.

Debt - local governments must have regard to the split between equity and loan capital and the return appropriate on each. This includes consideration of an appropriate debt neutrality fee.

Taxation - taxes that would be payable if the business was not carried on by a local government should be accounted for by an amount equivalent to the tax.

Community service obligations (CSOs) - CSOs should be explicitly identified by the owner governments, and funded in a transparent manner.

Cross-subsidies – from 1 July 2000, water businesses will be required to identify and publicly report cross-subsidies between classes of customer.

From 1998-99, annual reports prepared by these local governments will detail the performance of the water and sewerage activities of these local governments, including competitive neutrality adjustments, tax equivalents, dividends and debt neutrality fees. 1997-98 reflects a transitional period where financial information regarding pricing arrangements is not readily available. Accordingly, full financial information for all 17 local government water businesses will be reported in next year's Annual Report to the NCC.

From 1998-99, the Queensland Competition Authority (QCA) will assess the effectiveness of the big 17 local governments in implementing full cost pricing as part of the *Local Government NCP Financial Incentive Package*. Successful implementation of full cost pricing is a condition of local governments receiving their proportion of the Competition Payments.

9.1.2 Cross-Subsidies and Community Service Obligations

The *Local Government Act 1993* requires urban water service providers with Type 1 or 2 water and sewerage activities to disclose cross-subsidies and community service obligations.

Guidelines for Identification and Measurement of Cross Subsidies were issued by the Department of Natural Resources in September 1998. The *Local Government Finance Standard* makes these Guidelines mandatory in relation to disclosure of cross-subsidies between the consumer classes of domestic, commercial, industrial, another class or classes (for example, where local government use or a particular consumer is sufficiently significant to be identified separately), and "other consumers" (as a miscellaneous category).

By December 1998, each of the 17 local governments had approved and commenced to implement strategies for disclosure of cross-subsidies and community service obligation payments. Once again, due to the transitional nature of financial information available at this time, initial disclosure will occur in Local Government's annual reports for 1999/2000.

9.1.3 Two-Part Tariffs

The COAG Water Resource Policy requires the adoption by local government of charging arrangements made up of an access or connection component together with an additional component or components to reflect usage (ie. two-part tariffs) where this is cost effective.

The *Local Government Act 1993* required the big 17 local governments to undertake an economic/financial cost benefit assessment of the effectiveness of introducing two-part tariffs for water supply by 31 December 1998.

Guidelines for Evaluation of Introduction and Improving Two Part Tariffs (1997) issued by DNR outlined the methodology for conducting the public benefit assessment and a recommended approach for structuring two-part tariff arrangements.

At 31 December 1998, 12 of the 17 big local governments had completed the required assessment. The 5 remaining local governments obtained Ministerial approval for extensions of time to complete the assessment and make decisions by 31 March 1999. Separate advice will be provided to the NCC once the outcome of these decisions is known. Of the 12 local governments:-

- 10 resolved to adopt a two-part tariff as the basis of utility charges for the supply of water.

- Gold Coast City Council resolved to adopt a managed transition to a two-part tariff over three years. Gold Coast has an extremely high proportion of multi-dwelling accommodation (33%) amongst its domestic properties rating base relative to other areas and a direct shift from the existing fixed charge allocation/excess water charging regime to a two-part tariff model would mean substantial increases in water charges to owners of detached dwellings. Modelling indicates that implementation of the two-part tariff is likely to delay augmentation of the council's major storage, Hinze Dam, between 15 and 20 years beyond the date envisaged under the existing tariff structure.

- Rockhampton City Council, resolved not to adopt a two-part tariff at this stage. Less than 1% of Rockhampton's 20,000 residential water connections are metered and the cost of installing meters is estimated to be $3M over five years. Net present value analysis over a twenty year period of the "with" and "without" cases under the range of feasible scenarios did not indicate significant benefits from adoption of two-part tariffs. The Council has advised it will conduct another two-part tariff assessment in June 2000. Rockhampton City Council is committed to a metering program for all commercial and industrial consumers, and increasing non-price demand management strategies.

Of the five local governments which requested an extension of time to complete their investigations:

- Brisbane City Council, the largest municipal authority in Australia, has applied a two-part tariff since 1996/97 and required an extension of time simply to permit comprehensive review and refinement of its two-part tariff structure.

- Townsville City Council and Thuringowa City Council have since resolved not to adopt a two-part tariff for the supply of water services to residential properties, although tariffs for commercial and residential properties are more closely aligned with consumption.

- Mackay City Council and Pine Rivers Shire Council have resolved not to apply a two-part tariff for domestic consumption, but commercial and industrial premises are charged by two-part tariff.

Details of the resolutions and the domestic water charges of significant business activities (Type 1 and Type 2 activities) is at Attachment 5. Aside from the two-part tariff requirement, all but two of these councils meet the consumption-based charging requirement under the Act and its subordinate legislation for residential application, but all commercial and industrial tariffs comply with the statutory requirements.

Overall, of the 121 councils that levy rates for water, available data indicates there would be only a few where water charges do not related to consumption in some respect. The majority apply a charge per unit, and most apply excess water charges. For example, a domestic dwelling could be charged for four units of consumption (a unit representing some volume of water), with a charge per kilolitre for excess consumption. By comparison, a hotel may be charged for twenty units, with excess water charges.

In Shires where dwellings are not metered, or where a water scheme or schemes are not metered, the charge is generally unit based with respect to the estimated consumption for a particular type of dwelling. It appears that, at most, a dozen local governments do not read meters and apply excess water charges. It may be that some of these have adopted or extended metering since the 1996 survey.

There has been significant uptake of two-part tariff structures in the last two years. On the best information available, two-part tariffs apply to at least 54% of the population of the State. With recent adoption by major local governments such as Logan, Cairns, and Ipswich Cities and Caboolture Shire, the actual figure is likely to be appreciably greater.

9.2 Water Pricing - Urban Water Boards

South East Queensland Water Board (SEQWB), Townsville Thuringowa Water Supply Board (TTWSB), Gladstone Area Water Board (GAWB) and Mount Isa Water Board (MIWB) provide bulk water to the major urban and industrial regions in Queensland. In total, the urban

water boards supply 17 local governments, plus a number of industrial customers and power stations.

The primary emphasis of water reforms to the urban water boards has been driven through the application of competitive neutrality reforms. As outlined in the competitive neutrality section of this report, implementation of competitive neutrality reforms to the urban water boards, including the adoption of full cost pricing arrangements is to occur from 1 July 1999 onwards. The four urban water boards have a combined asset base of over $700 million.

9.2.1 Full Cost Pricing

The COAG Water Resources Policy requires that these boards comply with the principle of full cost recovery and price on a volumetric basis, with any CSOs and cross-subsidies made transparent.

Consistent with the application of competitive neutrality reforms, each of the urban water boards will, in future, be required to price water to reflect the cost of tax equivalents, a return on assets commensurate with a comparable private sector entity, and debt neutrality fees. Boards will also be required to make any CSOs and cross-subsidies transparent.

The urban water boards have been traditionally operated with no ongoing financial assistance from the Queensland Government. The interim level of cost recovery for the urban water boards for the period 1997-98 is shown in the table below. All boards are covering the costs of operation and earning some return on assets.

Cost Recovery by Urban Water Boards 1997-98

	Revenue ($,000)	Expenditure[1] ($,000)	EBIT ($,000)	Assets[1] ($,000)	ROA
SEQWB	28,342	19,303	9,289	398,971	2.33%
TTSWB	16,748[1]	9,681	7,067	145,674	4.85%
GAWB	12,853	9,849	3,649	165,421	2.21%
MIWB[1]	4,932	3,644[1]	1,288	26,204	4.92%

Source: 1997-98 Annual Reports

9.2.2 Urban Water Boards and Volumetric Charging

All urban water boards currently charge for water on the basis of usage. Charging structures for the urban water boards are being examined as part of the implementation of competitive neutrality reforms.

9.3 Rural Water Supply and Irrigation Services

9.3.1 Rural Water Pricing

Under the COAG Water Resource Policy rural water prices are to comply with the principle of full cost recovery by 2001, with any subsidies made transparent.

Rural water infrastructure in Queensland has been provided under a range of policies including regional development, agricultural support, and soldier settlement. Traditionally when schemes were established, water prices were set to cover the operating and maintenance costs of running the schemes. However, over time, with both the effects of inflation and changing cost structures, prices have shifted away from bearing a resemblance to the cost of service provision. As a result, the level of cost recovery across State-owned irrigation schemes, and between sectors within schemes, varies significantly, with some schemes covering above cost recovery, but with others well below covering the costs necessary to ensure ongoing financial viability.

The Queensland Government is committed to ensuring that rural water prices are set at a level to ensure the ongoing financial viability of its irrigation schemes and has adopted the ARMCANZ Lower Bound as the target for rural water pricing. That is, prices as a minimum, should reflect operational, maintenance and administrative costs, externalities, taxes or TERs, dividends (if any) and make provision for future asset refurbishment/replacement.

During 1998, the Department of Natural Resources completed a comprehensive assessment of the cost recovery position of all rural water supply schemes. Based on 1996-97 costs and revenues, the average cost recovery across all rural schemes was 78% of the lower bound requirement[7]. The urban and industrial sectors of rural water schemes achieved averages of 107% and 108% of lower bound cost recovery requirements.

The Queensland Government has adopted a pragmatic approach to the implementation of the COAG pricing target. The policy approach is that water prices should be set at a level to achieve long term financial viability. The rate at which this target is achieved reflects an assessment of the level of cost recovery currently being achieved by individual schemes and a desire to encourage long term sustainable use of the resource without significant adverse economic and social impacts.

Specifically, a three tier approach to the implementation of the COAG water price target has been adopted:-

- *Category 1* – irrigation schemes that will achieve, or exceed ARMCANZ lower bound cost recovery by, or before 2001. Category 1 schemes cover 84% of the total nominal allocation in Queensland, including the Burdekin Irrigation Area where irrigation prices are already above the lower bound;

- *Category 2* – irrigation schemes that will achieve the ARMCANZ lower bound pricing target by 2004, with transitional subsidies made transparent. Category 2 schemes account for approximately 11% of Queensland's total nominal allocation; and

- *Category 3* – those schemes that will require transparent Government assistance over the longer term. Category 3 schemes reflect 5% of the total nominal allocation in Queensland.

[7] Excluding resource management charges where cost data is as yet unavailable.

Strategies to increase the average level of cost recovery among schemes presently below the lower bound will be progressed during 1999. Also during 1999, the Water Reform Unit will develop a 5-year price path for all schemes starting from July 2000. Price path development will include economic impact studies to determine the economic and social impacts of the proposed price adjustments.

The Water Reform Unit will also undertake a benchmarking study for State Water Projects to ensure that prices reflect the costs of efficient water service delivery. The benchmarking study is understood to be one of the first to be undertaken in the rural water industry in Australia, and reflects the policy of the Queensland Government to ensure pricing reforms do not entrench inefficient cost structures.

Also during 1999, principles for determining and implementing the resource management cost component of the ARMCANZ lower bound will be considered.

9.3.2 Investment in New Water Infrastructure

Under the COAG Water Resource Policy, jurisdictions agreed to development of new infrastructure occurring only where projects were economically viable and ecologically sustainable. The Queensland Government is committed to these principles.

All major water infrastructure development projects must be submitted to comprehensive assessment studies prior to being considered for development approval by Government. Impact assessment studies for new infrastructure projects (including environmental, cultural and social) must comply with the following Queensland and, where applicable, Commonwealth legislation:

- *State Development and Public Works Organisation Act 1971 (Qld);*
- *Environmental Protection (Impact of Proposals) Act 1974 (Comm);*
- *Environmental Protection Act 1994 (Qld);*
- *Integrated Planning Act 1997 (Qld);* and
- *Financial Management Standard 1997 (Qld)*.

For projects expected to have only minor impacts and located in existing regulated streams, or where the Initial Advice Statement has adequately evaluated the key issues, the studies may proceed directly to the formulation of an Environmental Management Plan (EMP).

Impact Assessment Studies are carried out by suitably qualified experts, usually through the engagement of independent consultants. As part of this process Environmental Impact Statement (EIS) and draft Environmental Management Plan (EMP) are prepared and subject to public review before being considered by Government. An EMP sets out a strategy to ensure that adverse impacts are minimised and positive impacts maximised and ascribes responsibility for implementation of the elements.

Economic assessment studies are carried out in accordance with the Queensland Treasury *Project Evaluation Guidelines*. Projects only proceed where they are demonstrated to be economically viable.

The results of the comprehensive assessment studies are conveyed to the community through project reference groups, public meetings and the publication of project reports.

As part of the planning for new water resource developments, the Environmental Protection Agency (EPA) is implementing a five year program with the Department of Natural Resources and other government agencies to develop complementary conservation plans. The program includes the development of conservation priorities for affected Queensland waterways and assembling information to assist in defining the sustainability of future water resource developments.

A new feature of the infrastructure planning and development environment is the Water Allocation and Management Planning (WAMP) process to specify water flow requirements to preserve environmental values and to ensure that only water surplus to that required to maintain environmental values is allocated for consumptive use. The Queensland Government recognises the competing interests in the water industry and every effort is made to strike a balance between responsible environmental management and sustainable regional development and growth.

The NCC has previously expressed some concerns that the Queensland Government is, in some cases, proceeding with the development of new infrastructure prior to the completion of WAMPs. The Queensland Government supports ecologically sustainable development, therefore where a project is approved prior to the outcome of a WAMP study being finalised, allowances for environmental flows are built into the project to ensure that environmental values can be satisfied in the longer term.

A summary of new water infrastructure projects that have been completed, are currently being developed or which are under consideration is included as Attachment 9.

Development of Nathan Dam by SUDAW

In April 1998 the Queensland Government announced SUDAW as the preferred developer for the Nathan Dam on the Dawson River. SUDAW is currently completing detailed feasibility studies before a final decision to proceed with development is made.

The proposed development of the Nathan Dam is the first private sector development of a major storage in Queensland. Expressions of interest for the Nathan Dam were called on the basis of little or no financial contribution from the Queensland Government. Thus, should SUDAW proceed with the development of the Nathan Dam irrigation water is expected to be sold at fully commercial rates.

The Nathan Dam will be the first large dam built in the new resource management environment, and will be operated within the boundaries established by the Fitzroy Basin Water Allocation Management Plan.

9.3.3 Development Incentive Scheme

In 1997 the Development Incentive Scheme (DIS) was introduced by the Queensland Government to encourage agricultural producers to invest in new water storage for irrigation where commercially and ecologically sustainable. The NCC has previously requested that information be provided regarding projects subsidised under this scheme.

The DIS is administered by the Queensland Rural Adjustment Authority (QRAA) and provides for the payment of a subsidy to landholders or occupiers of leasehold land of 22.5% (up to a maximum payment of $150 000) of eligible costs of construction for new water storages for irrigation costing $200 000 or more.

To qualify for subsidy, applicants must prepare an approved land and water management plan and submit a cash flow budget demonstrating the financial viability of the proposed development. QRAA subjects each proposal to an economic assessment based on a 20 year discounted cash flow analysis of both the current situation and proposed situation after development. To be eligible for subsidy, the proposed development must demonstrate an improvement to the existing farm situation, have a positive net present value and an improved internal rate of return.

To date, 16 applications have been approved to a total value of $800,000.

9.4 Institutional Reform

9.4.1 Separation of Functions

The COAG principles require as far as possible, jurisdictions institutionally separate resource management, standard setting and regulatory enforcement from water service delivery where appropriate and by 1998.

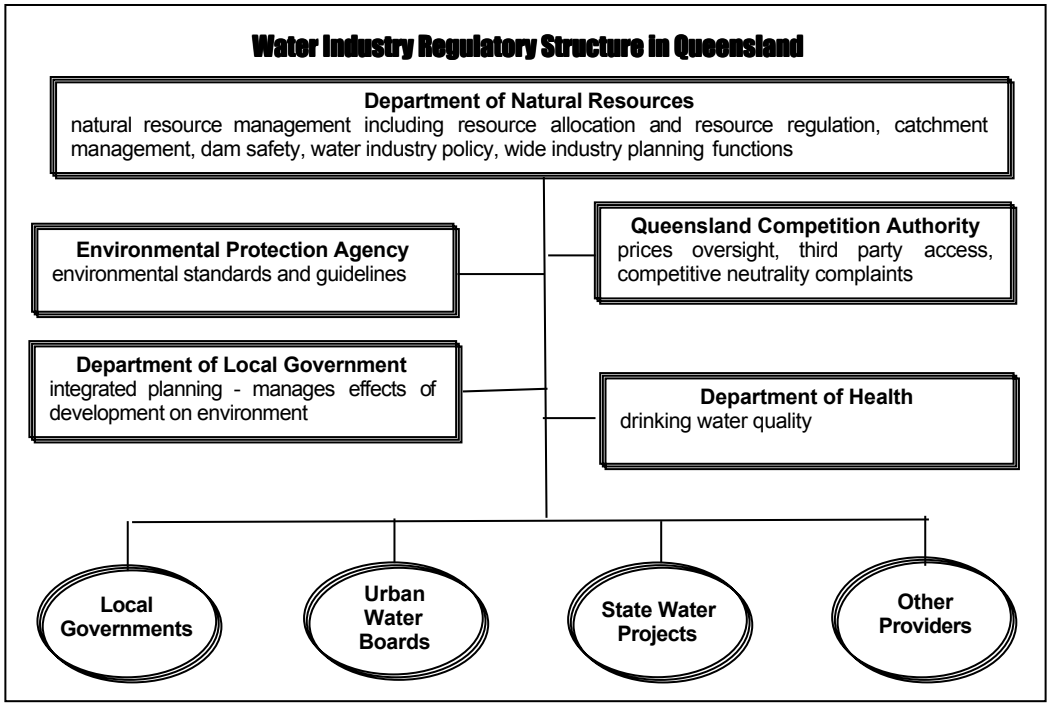
DNR has primary responsibility for regulation and licencing of water use, industry policy, and strategic planning of water requirements/resource availability in Queensland. DNR's regulatory functions are separated into two divisions specifically, Resource Management (RM) and Regional Infrastructure Development (RID). (DNR also delivers rural water services through the ringfenced State Water Projects (see below)).

DNR (RM) is responsible for ensuring that the State's water, land and forest resources are used, developed and managed in an economically, culturally, socially and ecologically sustainable manner. Accordingly, DNR (RM) is responsible for definition of water entitlements, allocation of water resources between consumptive and non-consumptive uses across the State; defining environmental water requirements; and providing a framework to facilitate water trading. Water service providers in Queensland operate, now and into the future, within water allocations issued by RM. As part of the new regulatory environment being developed for Queensland, the resource management regulatory functions of RM will be strengthened and applied to all service providers regardless of ownership.

DNR (RID) is responsible for infrastructure planning and management. DNR (RID) undertakes a role in identifying and developing plans to enhance the competitiveness of natural resource based industries and communities, undertakes regional water planning studies; and administers the State's capital works program for new water infrastructure, including the development of approved water infrastructure projects. (RID may contract out these activities to SWP or the private sector through a competitive tender process). Under the proposed new regulatory arrangements, RID will also become the technical/operational regulator of the industry, ensuring that public health and safety and customer protection is guaranteed.

The Queensland Competition Authority (QCA) will, in future, undertake economic regulation of the industry, including prices oversight, third party access and competitive neutrality complaints. Independence of the QCA from Government will minimise the potential for Government to exercise a conflict of interest to the extent resource management, in particular, is separated from economic regulation.

The Environmental Protection Agency, Department of Local Government and Planning, Department of Health also provide regulatory oversight of the water industry. In this respect, a broad oversight of the regulatory framework for the water industry is provided in the diagram below.



9.4.2 Review of the *Water Resources Act 1989*

The *Water Resources Act 1989* is the cornerstone of water industry regulatory framework in Queensland. The *Water Resources Act 1989* however predates the introduction of commercial reforms to the water industry and was developed at a time when the Queensland Government

and local Governments were the predominate providers of water services. Therefore, a major element of the water reform agenda for the Queensland Government is the overhaul of the *Water Resources Act 1989* to ensure that it complements the reform agenda and facilitates commercial operators within the industry, including private sector operators.

The proposed new *Water Resources Act* will:

(i) provide a new water allocation and management planning framework that will balance the needs of the environment and water users, provide for both public and private sector development and operation of infrastructure and clearly specify tradeable water entitlements;

(ii) provide a new regulatory framework for the provision of water services that applies to all water service providers and seeks to ensure the maintenance of a safe and reliable water supply and protect the interests of customers;

(iii) provide a corporate governance framework for public sector water service providers that will apply consistent accountability mechanisms and governance operations across existing and future public sector water service providers; and

(iv) provide a water supply planning and development framework that will support comprehensive assessments to achieve an efficient and sustainable water industry through cooperative information gathering, evaluation of current and future water demands and water supply strategies and the setting of guidelines for future management, allocation of water, future development and regulatory decision making.

It is proposed that the new *Water Resources Act* will be enacted by the end of 1999. A draft Bill, incorporating item (i) and (iv) above, is proposed for consultation prior to mid 1999.

9.4.3 Commercialisation of State Water Projects (SWP)

On 1 July 1997, SWP was established as a ringfenced commercialised business unit within DNR in accordance with *Commercialisation of Government Service Functions in Queensland.* As a commercialised entity, SWP is not a separate legal entity however, the Executive-Director, SWP is directly accountable to the Director-General of DNR and negotiates an annual Performance Contract with the Minister for Natural Resources and the Treasurer.

Since its commercialisation on 1 July 1997, SWP has:

- focused on increasing accountability within the organisation to improve the efficient operation of the organisation, including the separation of the business into four clearly defined business groups and has significantly changed its corporate culture by introducing management systems and practices which have improved the commercial focus;

- increased is emphasis on customer standards of service and has actively sought new investment opportunities;

- raised additional revenue from sale of water allocations in the Mareeba-Dimbulah Irrigation Area as a result of efficiency improvements; and

- entered into a number of facility management contracts with external organisations.

Further refinement of the commercial environment in which SWP is operated is will be considered through 1999.

9.4.4 Local Management

The COAG Water Resource Policy recommended that constituents be given a greater degree of responsibility in the management of irrigation areas, for example, through operational responsibility being developed to local bodies, subject to appropriate regulatory arrangements being established.

Scheme Advisory Committees have been present in SWP's Irrigation Areas and Projects for a number of years, with 28 Advisory Committees in total. Advisory Committees are constituted under the *Water Resources Act 1989*, and comprise a SWP representative and elected irrigator-customers. Advisory Committees provide scheme users with a vehicle to provide input to scheme managers and have been also used to review wider water policy issues. At the management level, Advisory Committees provide a forum for irrigators to suggest improvements in scheme operations and water supply priorities, and to make recommendations in relation to announced allocations. The Committees provide the opportunity for community advice to be provided to the Director-General of DNR.

During 1998, DNR also established Interim Local Management Committees (ILMCs) in most of the larger Irrigation Areas and Projects. The ILMCs comprised representatives from all user groups in rural water supply schemes, including local governments, irrigators and mining and other industry representatives. ILMCs have a broader role than Advisory Committees, covering a number of water reform-related issues, including water pricing, local management and transferable water entitlements.

Options for local management will be developed with ILMCs through 1999 and as part of the wider industry reform framework, with formal consideration of local management arrangements to occur in early 2000.

9.4.5 Benchmarking and Performance Monitoring

Under the COAG Agreement, jurisdictions agreed that ARMCANZ, in conjunction with the Steering Committee on National Performance Monitoring of Government Trading Enterprises, further develop its comparisons of inter-agency performance, with service providers seeking to achieve international best practice.

Queensland has 22 participants in the WSAA performance monitoring and benchmarking of Non-Major Urban Water Service providers. Two rural water boards and eight of State Water Projects' Irrigation Schemes are participants in WSAA benchmarking for Rural Water Service Providers.

9.5 Allocation and Trading

In excess of 159,000 million ML of water flows through Queensland each year. Of this, approximately 130,000 million ML drains into the Gulf of Carpentaria. Total consumptive water use is approximately 3 million ML per year.

The Queensland Government approach to water allocation and trading reflects that in much of Queensland water supply is considerably in excess of water demand. In this respect, Queensland differs from some of the southern States where alleviating the pressure on "stressed rivers" is a major driver for the definition of water allocations and trading.

The new allocation and management framework is, therefore, being applied in Queensland on a priority basis. Prioritisation of catchments across Queensland is based on those areas where new developments are planned, and where the availability of water for consumptive use has been assessed as approaching the supply constraint. This approach will apply the new framework so as to capture most of the water demand within the State. However, in a geographical sense, much of Queensland is unlikely to be covered by the new water allocations system in the future given the nature of water resource occurrence and the relatively low level of demand for water access in these areas.

9.5.1 Water Allocations and Management Planning (WAMPs)

Under the COAG Water Resource Policy jurisdictions agreed to implement a comprehensive system of water entitlements backed by separation of water property rights from land title and clear specification of entitlements in terms of ownership, volume, reliability, transferability and, to give priority to water allocations for the environment.

The Queensland Government is currently introducing a comprehensive system of defining and allocating water resources within the State through the development and approval of Water Allocation and Management Plans (WAMP) catchment or basin.

The development of WAMPs is considered to be at the frontier of water management across Australia and is a detailed and rigorous process, based on detailed hydrological and environmental analyses and best available social and economic data. A WAMP is therefore designed to provide the framework for clearly establishing environmental flows, water allocations, and the resource management conditions under which trading of water allocations can occur. In this regard, WAMPs:-

- describe the total water resources within each basin or catchment;
- define all existing entitlements within each basin or catchment;

- clearly define environmental water provisions, with a key objective to maintain and, where possible improve instream ecosystems;

- reserve priority future water requirements;

- define water resources available (if any) for further allocation; and

- describe the rules for the further allocation of entitlements and management of instream flows or aquifers throughout the basin or catchment.

The WAMP process emphasises community involvement through the establishment of community reference panels. The panels are drawn from a broad range of interest groups including industry and commerce groups, conservation groups, Indigenous Australians, fishing and tourism groups, recreational groups, local government and community groups. Diverse representation on the community reference panels as far as possible assists in striking the balance between water that can be withdrawn for stock, urban, domestic, industrial or irrigation purposes and water that should be left to maintain the health of the water basin in accordance with the principle of ecologically sustainable development.

In small catchments, Water Management Plans (WMPs) are being implemented. WMPs are less comprehensive than the full WAMP, and are used as the basis for considering licence applications predominantly for groundwater, although surface water is also covered. The WMP describes the total water available, existing water allocations, provision of water for ecosystems, future water needs, water flows and underground water levels.

WAMPs or WMPs are currently being undertaken for all Queensland sections of the Murray-Darling Basin. A WAMP is being jointly developed by Queensland and New South Wales (NSW) for the Border Rivers, and a WAMP for the Condamine-Balonne is also progressing. WMPs are currently being developed for the Warego, Paroo and Moonee Rivers. NSW is represented on the reference panels of all WMPs and WAMPs in the Murray-Darling Basin, and with WAMPs and WMPs subject to scrutiny from the MDBC Independent Audit Group.

WAMP/WMP Timetable

	1999/00	2000/01
Submit Final WAMP	Fitzroy Condamine-Balonne	Border Rivers Barron Logan
Release Draft WAMP	Condamine-Balonne Border Rivers Barron Logan	Burnett Pioneer Burdekin Mary Pioneer Groundwater Burdekin Groundwater

Development of WAMP	Burnett Pioneer Burdekin Mary Brisbane Bundaberg Groundwater Pioneer Groundwater Burdekin Groundwater	Brisbane Bundaberg Groundwater
Submit Final WMP	Cooper Warrego/Paroo/Nebine/Bulloo Moonie Calliope/Boyne	Mitchell Atherton Basalts Groundwater
Release Draft WMP	Mitchell Atherton Basalts Groundwater	Herbert Georgia/Diamintine Flinders

9.5.2 Water Allocations

In December 1998, the Queensland Government released the paper *Improving the Water Allocation and Management System in Queensland* for consultation. The paper outlines the framework for the application of a new system of water allocations and trading in Queensland. The key principles of the proposed new system are outlined below.

Improving the Water Allocation and Management System in Queensland also outlines the framework for a new system of resource management regulation across all water service providers in Queensland, regardless of ownership.

New Water Allocation and Management System for Queensland

The new water allocation and management system is to provide for ecologically sustainable development and will only be introduced following the completion of a WAMP.

The water allocation and management system will provide resource security for entitlement holders. No new entitlements will be issued in a manner inconsistent with a WAMP.

Water entitlements will be held separately from land.

Water entitlements will be fully tradeable, at the discretion of the entitlement holder and in accordance with transfer rules.

A water entitlement will bring with it responsibilities as well as benefits.

The State will reserve unallocated water for future uses.

The new system of water entitlements will apply to all water users regardless of sector.

The new system of water entitlements is to be administratively efficient.

All water entitlements and authorisations issued under the new system will be

Legislation to give effect to the new system of water allocation and management should be implemented in the second half of 1999, with the new arrangements implemented into Queensland catchments as WAMPs are completed.

9.5.3 Water Trading

The COAG Water Resource Policy requires that trading in water arrangements in water allocations or entitlements be instituted once entitlement arrangements have been settled.

Temporary transfer of water allocations within irrigation schemes has been possible in Queensland for approximately 10 years under Section 231 of the *Water Resources Act 1989*. Temporary transfers are available for a one year period, with no restriction on the number of consecutive periods that water may be transferred. The option to transfer water on a temporary basis has proved to be a useful tool in balancing annual fluctuations in water availability and demand.

Improving the Water Allocation and Management System in Queensland provides the draft framework for extending the system of water trading to cover permanent transfers within irrigation areas and for wider application to other sectors. Water entitlements will be fully transferable, subject to the transfer rules for the catchment. Transfer rules may cover:

- the resource management constraints on transferring water, including provision for a transfer "exchange rate" where a water entitlement is transferred between two geographically separate points in a catchment area;

- options for re-specification of a water entitlement ie. conversion of an entitlement from medium reliability to high reliability;

- social and economic consideration ie. subject to a public benefit test, transfer rules may limit the volume of water that can be traded away from a sector or region within a given period.

Interim permanent trading arrangements are being progressively implemented across the larger irrigation areas to allow the flexibility of full tradeability before the full legislative framework is in place. Interim permanent trading arrangements are currently being implemented for the Mareeba-Dimbulah Irrigation Area to facilitate structural adjustment from tobacco growing to higher-valued horticulture and sugar production. By the end of 1999, interim permanent trading arrangements should be in place for six of the State's eight largest irrigation schemes.

9.6 Environment and Water Quality

9.6.1 Integrated Resource Management

Under the COAG Water Resource Policy, the Queensland Government agreed to the adoption of integrated catchment management, where not already in place, including consultation with local government and the wider community.

DNR is designated as lead agency for Landcare and Integrated Catchment Management, and utilises effective coordinating and consultative processes with agencies including the Environmental Protection Agency (see box).

Environmental Protection Agency

The newly created EPA has been established with a charter to protect Queensland's environment in accordance with the *Environmental Protection Act 1994*.

The objective of the *Environmental Protection Act 1994* is to protect Queensland's environment while allowing for development that improves the quality of life of all Queenslanders.

The EPA plays a proactive role in monitoring, regulating and reporting on impacts on environment with a dual focus on pollution prevention and control.

In 1997, the Landcare and Catchment Management Council was formed to replace the Queensland Landcare Council and the Catchment Management Coordinating Committee. The Council provides strategic advice to the Minister on landcare, catchment management and the implementation of Natural Heritage Trust projects in Queensland. The Council includes representatives from landcare

and catchment management groups, industry, State Government, local Government, Queensland Conservation Council, Greening Australia and the Great Barrier Reef Marine Park Authority.

In 1997-98 DNR supported 23 integrated catchment management committees. Fifteen action plans were implemented. The Natural Resource Management Strategy for the Queensland Murray-Darling Basin was endorsed, which is Queensland's first natural resource management strategy. Catchment strategies for the Maranoa-Balonne and Border Rivers catchments were also endorsed.

9.6.2 National Water Quality Management Strategy

The policies and principles of the National Water Quality Management Strategy (NWQMS) are incorporated into Queensland legislation. The *Environmental Protection (Water) Policy 1997* (the EPP (Water)), is subordinate legislation to the Queensland *Environmental Protection Act 1994*. The EPP (Water) in effect delivers the NWQMS. The EPP (Water) provides a decision pathway for setting and formalising environmental values and water quality objectives for a specific waterway in accordance with the NWQMS.

The implementation of the main elements of the NWQMS is outlined below:

Implementation of National Water Quality Management Strategy	
Australian Water Quality Guidelines for Fresh and Marine Waters	EPP (Water) adopts the national guideline for use in deciding environmental values of water, water quality objectives to protect the environmental values of water and protocols to be used in sampling, measurement, analysis and reporting.
Australian Drinking Water Guidelines	Guidelines incorporated into the Queensland *Guidelines for Planning and Design of Water Supply Schemes* as the basis of practice in Queensland. Drinking water standards are monitored by the Queensland Department of Health.
Guidelines for Groundwater Protection in Australia	The EPP (Water) requires the development and implementation of environmental plans about protecting ground waters. The national guideline identifies vulnerability mapping, aquifer classification systems and wellhead protection as critical issues. These must be considered under the EPP (Water).
Guidelines for Sewerage Systems (Effluent Management, Trade Waste)	Document *"Treatment and Management of Sewage"* has been published by DNR and Department of Local Government and Planning. The Queensland Government also produces guidelines for the design of sewerage schemes. As part of the Standard Sewerage Laws *a "Code of Practice for On-site Sewerage Facilities"* sets out performance requirements and criteria for the management of on-site sewerage facilities with the aim of ensuring that effluent quality, operation and maintenance objectives are met and environmental values are not compromised.
Strategy for reusing sewage effluent and biosolids	In July 1997 the *Queensland Water Recycling Strategy* was introduced to maximise water recycling throughout the State. Work on the strategy is expected to assist in defining Government policy, legislative changes, monitoring and funding protocols; best practice guidelines; and developing education programs. The final strategy, to be completed over three years, will provide a framework to guide

	development of recycling.

9.7 Public Consultation and Education

Public consultation and eduction is a major element of the water reform agenda to ensure that all sections of the community have an awareness and understanding of the importance of the water reform process in ensuring a long term sustainable water industry.

9.7.1 Public Education

The Queensland Government, through DNR is a major sponsor of Waterwise. Waterwise aims to create an awareness of the true value of water across all parts of the community and encourages active involvement by all Queenslanders in conserving and managing water resources. A key objective of the Waterwise program is to assist water authorities and local Governments to save money and the environment by delaying the need for costly new water and wastewater infrastructure through the implementation of water conservation and demand management.

Waterwise has a comprehensive schools program, providing resources to primary and secondary school teachers and with the assistance of local government, sponsors speakers to travel to schools. In 1998, the Merrimac State High School was created as Australia's first Waterwise school. Through this initiative, water use and water bills at the Merrimac High School were reduced by 50% with an annual estimated cost saving of $13,000, from an initial capital outlay of $19,000. This program is now being marketed to other schools in Queensland and through schools in the rest of Australia.

9.7.2 Community Consultation

Community consultation on all water reform elements is actively encouraged. Specifically:

- Changes to rural water pricing arrangements have been discussed with water users since 1993 when *What Price Water?* was released for wide consultation. *Rural Water Pricing and Management 1996* was also widely discussed. A consultation strategy for the 1999 price increments is currently being devised and will focus on heightening awareness of revenue shortfalls, and other pricing issues, in all relevant irrigation schemes and projects.

- Community reference panels are actively involved in the development of WAMPs and the forum for community input into WAMP development.

- The draft policy *Improving the Water Allocation and Management System in Queensland* was circulated for consultation with key stakeholder groups and will form the basis for wider consultation through 1999.

10. NATIONAL ROAD TRANSPORT REFORM

10.1 Overview

The National Road Transport Law (NRTL), established in the Heads of Government agreement, has been broken down by the National Road Transport Commission (NRTC) into six modules of legislation and accompanying regulations. Due to its size, the Vehicle Operations module has been subdivided into several regulations.

The following table presents an overview of Queensland's progress in implementing these modules:

INITIAL REFORM MODULES	QUEENSLAND TIMETABLE
Heavy Vehicles Charges	Implemented (July 1995)
Dangerous Goods	Implemented (August 1998)
Vehicle Registration	In Progress (April 1999)
Driver Licensing	Partial Implementation (April 1996) Final Implementation (December 1999)
Vehicle Operations	Implemented (December 1995)
Mass and Loading (M&L)	Implemented (December 1995)
Restricted Access Vehicles (RAV)	Implemented (January 1999)
Oversize/Overmass (OSOM)	Implemented (January 1999)
Australian Road Rules	In Progress (December 1999)
Vehicle Standards	In Progress (July 1999)
Truck Driving Hours	Implemented (October 1998)
Bus Driving Hours	Implemented (October 1998)
Compliance and Enforcement	Not available.

In addition to these formal modules, the NRTC has twice developed additional reform packages. The First Heavy Vehicle Reform Package (First Ten Point Plan) identifies a number of components from the NRTL modules which were agreed to be priorities for accelerated implementation. Queensland has implemented all but one of the items under the First Ten Point Plan.

The outstanding item is the Interstate Transfer of Driver Licences. Queensland permits transfers with no testing. Whilst Queensland Transport supports free interstate conversions the proposition was rejected by Cabinet when submitted for consideration. This project is closely linked to the review of licensing fees and may be progressed with the Driver Licensing module. Queensland has not nominated an implementation date as a direction from Cabinet will be required.

The Second Heavy Vehicle Reform Package (Second Ten Point Plan) introduced additional policy reforms and was endorsed by the Ministerial Council for Road Transport in February 1997. Much of the Second Ten Point Plan is not yet available for implementation. Available

items have either been implemented or will be finalised in the first half of 1999.

10.2 Assessment Framework

In December 1998, the Australian Transport Council (ATC) endorsed an "Assessment Framework for Road Transport Reforms" and agreed that it be forwarded for endorsement by COAG. The framework captures the initial reform modules plus all other reforms proposed by the NRTC which have been endorsed nationally.

It is intended that this framework will assist the National Competition Council in its assessment of each jurisdiction's performance. It sets out the criteria by which jurisdictions should be assessed for each reform item in terms of the policy or legislative outcomes desired. In general, the adoption of template legislation has been rejected in favour of jurisdictions demonstrating their good faith towards the reform process by introducing whatever policy or legislation is required to produce these outcomes, which will create a nationally consistent operating environment for the road transport industry.

The framework also notes the target dates for each module. These dates are not definitive deadlines but are indicative of the implementation targets being pursued by each State/Territory.

10.3 Reform Progress

10.3.1 Prior Achievements

Queensland established the Transport Operations (Road Use Management) Act in 1995 to provide the framework and administrative structures for implementation of the reform modules. The TO(RUM) Act 1995 also provides the opportunity to revise existing Queensland road use legislation and provide a framework for managing road use which takes into account national and international best practice models.

Delivery of these reforms will facilitate an outcome of nationally consistent road transport legislation within one legislative structure. This is consistent with the original vision for the NRTL and allows the road transport industry to access all Queensland road transport law under a single piece of legislation and subordinate regulations. Queensland is the only state to have engaged in such a comprehensive law reform approach to the national process.

Queensland was the first jurisdiction to implement uniform registration charges for heavy vehicles and was the only jurisdiction to do so in accordance with the agreed national implementation date (July 1995).

Queensland was the second State to adopt national licence classifications (April 1996), which form the core of the National Driver Licensing Module. Queensland has also delivered two elements of the Second Ten Point Plan ahead of schedule.

10.3.2 Recent Achievements

Queensland proclaimed the Transport Operations (Road Use Management - Dangerous Goods) Regulation in August 1998.

Queensland introduced the new national logbook ahead of schedule on 3 August 1998. The Truck Driving Hours and Bus Driving Hours were combined in the Transport Operations (Road Use Management - Fatigue Management) Regulation which was proclaimed on 30 October 1998.

The National Exchange of Vehicle and Driver Information System (NEVDIS), part of the Second Ten Point Plan, went "live" on 19 October 1998. Queensland Transport is well progressed with integrating NEVDIS and its internal mainframe systems.

The Oversize/Overmass and Restricted Access Vehicles components of the Vehicle Operations Module were implemented under the Transport Operations (Road Use Management) Regulation. These amendments were approved in December 1998 and commenced in January 1999.

10.3.3 1999 Reform Agenda

Queensland will finalise implementation of the Vehicle Registration Module, including Short Term Registration from the Second Ten Point Plan, in April this year.

The driver licensing and vehicle registration computer mainframe is scheduled to interface with NEVDIS in April 1999. It is anticipated that Queensland will provide written-off (wrecked) vehicle data to NEVDIS in late 1999.

The Management of Speeding Heavy Vehicles policy, also from the Second Ten Point Plan, and the Vehicle Standards Module are scheduled for implementation by July 1999.

Both the Australian Road Rules and the National Driver Licensing Module are scheduled for implementation on 1 December 1999. The Queensland Police Service has advised that, due to conflicting training demands, it is unable to provide the necessary enforcement of these modules until this date. However, Queensland Transport will produce the required legislation by June 1999 as part of its legislative review program, and defer proclamation until the modules can be fully implemented. Also, as noted, Queensland has already adopted the national licence classifications.

Legislation review schedule: Queensland

Name of Legislation *Review Name*	*Agency*	*Status*	*Review Model*	*Review Comments*	*Date of Review*	*Date Review Completed*	*Reform Progress*
Building Act 1975 *Standard Building Law & Building Regulation 1991*	*CILGP*						
Review of Building Legislation		Yet to begin	To be Determined		1998/1999		
Local Government (Harbour Town Zoning) Act 1990	*CILGP*						
Review of Local Government (Harbour Town) Legislation		Yet to begin	To be Determined		1998/1999		
Local Government (Planning and Environment) Act 1990	*CILGP*						
Review of Integrated Planning Bill		Completed	Reduced NCP Review	The legislation scheduled for review was the Local Government (Planning and Environment) Act 1990. The department addressed NCP issues in the ATI Cabinet Submission for the proposed Integrated Planning Bill and has shown that it does not restrict competition.	1996/1997	10/97	New Act (1997) is far less prescriptive than that which it replaces and merely sets up a planning framework.
Local Government Act 1993, City of Brisbane Act 1924 *Local Government Finance Standard 1994*	*CILGP*						
Review of Local Government Legislation		Underway	Department Review		1997/1999		
Local Government Laws	*CILGP*						
Review of Local Government Laws		Underway	Department Review	Process and program for review of Local Govt legislation are in place. Local Government Amendment Act 1997 received assent May 97. Applies NCP requirements to Local Govt.	1997/1999		

Name of Legislation Review Name	Agency	Status	Review Model	Review Comments	Date of Review	Date Review Completed	Reform Progress
Sewerage and Water Supply Act 1949	*CILGP*						
Sewerage and Water Supply Regulation 1987 & Standard Water and Sewerage Laws Review of Sewerage and Water Supply Legislation		Yet to begin	To be Determined	Act administered jointly with Department of Natural Resources	1997/1998		
Corrective Services Act 1988	*CS*						
Corrective Services (Administration) Act 1988 Review of Corrective Services Legislation		Yet to begin	To be Determined	The draft Corrective Services Legislation Amendment Bill 1999 has been tabled in Parliament. The policy objectives were approved by Cabinet in February 1999. The Bill seeks to abolish the Queensland Corrective Services Commission and the Government Owned Corporation - Queensland Corrections. The amendments also establish the Corrective Services Authority Council and provide for a new head of power for the new Department of Corrective Services. The Bill amends the Corrective Services (Administration) Act 1988. It is expected that the legislation in its new form will be reviewed in light of NCP during 1999.	1996/1997		
Education (Capital Assistance) Act 1993	*E*						
Review of Education Capital Assistance Legislation		Completed	Reduced NCP Review	A formal review was not undertaken. The restriction related to affiliation will be resolved through proposed legislative amendment which will require schools to be listed (but not affiliate) with a group. Remaining issue was subjected to further analysis and was determined not to be restrictive.	1998/1999	03/98	Act is to be amended to remove the requirement for affiliation as a condition for accessing funds.
Education (General Provisions) Act 1989	*E*						
Education (General Provisions) Regulation 1989 Review of Education General Provisions Legislation		Underway	Department Review	This review has been brought forward to coincide with a general policy review of the legislation. Review of proposed new legislation pertaining to the establishment, registration and accountability of non-State schools will be completed in conjunction with the review of the Education (General Provisions) Act 1989.	1998/1999		

Name of Legislation *Review Name*	*Agency*	*Status*	*Review Model*	*Review Comments*	*Date of Review*	*Date Review Completed*	*Reform Progress*
Education (Overseas Students) Act 1996	*E*						
Review of Overseas Student Legislation		Underway	Department Review	Short form completed on recent amendments and this approach will be adopted for review of the Act.	1998/1999		
Education (Teacher Registration) Act 1988	*E*						
Education (Teacher Registration) Regulation 1989 & Board of Teacher Registration By-laws 1989							
Review of Teachers Registration Legislation		Underway	Department Review		1998/1999		
Grammar Schools Act 1975	*E*						
Review of Grammar Schools Act		Completed	Department Review	Further consultation with Education will be necessary in 1999 prior to consideration by Cabinet. The main issue is that if certain provisions (eg being subject to Statutory Bodies Financial Arrangements Act) are repealed thus separating Grammar Schools from Govt, Grammar Schools lose title to land and have no govt guarantee over loans. Their ability to borrow for expansion would be curtailed. Grammar Schools will be looking to be given title to school land to enable them to borrow. [Dept to confirm status and wording]	1997/1998	10/97	
Higher Education (General Provisions) Act 1989	*E*						
Review of Higher Education General Provisions Act		Draft Scope	To be Determined	This review will coincide with a general policy review of the legislation.	1999/2000		

Name of Legislation *Review Name*	*Agency*	*Status*	*Review Model*	*Review Comments*	*Date of Review*	*Date Review Completed*	*Reform Progress*
University Legislation	*E*						
Review of Universities Legislation		Yet to begin	To be Determined	Separate but similar Acts along the lines of the University of Southern Queensland Act 1989 and University of Southern Queensland (Investment) Statute 1993 are in place for each Qld university, namely: Central Queensland University, Queensland University of Technology, James Cook University (NQ), University of Queensland, Griffith University and Gold Coast University College. Review will cover all such legislation including University of Sunshine Coast legislation passed in 1998 under gatekeeping arrangements.	1999/2000		
Auctioneers and Agents Act 1971	*EFT*						
Auctioneers and Agents Regulation 1986							
Review of Agents and Motor Dealers Legislation		Draft Scope	Targeted Public	Legislation will be replaced by the Agents and Motor Dealers' Bill which is the subject of legislation review. A version of the Bill (that is now being revised) was considered by the Coalition government but was not enacted. Consultant to be appointed to carry out the public benefit test on the legislation and proposed amendments. Review to be completed by August 1999.	1996/1997		
Business Names Act 1962	*EFT*						
Business Names Regulation 1986							
Review of Business Names Legislation		Draft Scope	Reduced NCP Review	Although the legislation is common to all states, a national review is not contemplated. Queensland's review will take account of interstate legislation review exercises.	1998/1999		
Co-operative and Other Societies Act 1967	*EFT*						
Co-operative and Other Societies Regulation 1968							
Review of Co-operatives Legislation		Completed	Joint Jurisdictional	A formal review was not undertaken in Queensland. New Co-operatives Act is based on work and NCP justification undertaken by Victoria as a national scheme of regulation. New legislation enacted 1 September 1997. Act replaces existing Cooperatives and Other Societies Act and Primary Producers Co-operative Associations Act.	1996/1997	04/97	New Act providing for a national scheme of regulation has been enacted.

Name of Legislation Review Name	Agency	Status	Review Model	Review Comments	Date of Review	Date Review Completed	Reform Progress
Credit Act 1987	*EFT*						
Credit Regulations 1988							
Review of Credit Legislation		Yet to begin	To be Determined	National review of the Uniform Consumer Credit Code will be undertaken after post implementation review of the legislation is complete. NCP review will occur in 1999/2000. Review of Credit Act 1987 and regulations will occur at that time.	1997/1998		
Fair Trading Act 1989	*EFT*						
Fair Trading Regulation 1989							
Review of the Fair Trading Legislation		Yet to begin	To be Determined		1997/1998		
Funeral Benefit Business Act 1982	*EFT*						
Funeral Benefit Business Regulation 1989							
Review of Funeral Benefit Business Legislation		Draft Scope	Department Review		1997/1998		
Hawkers Act 1984	*EFT*						
Hawkers Regulation 1994							
Review of Hawkers Legislation		Draft Scope	Reduced NCP Review	Restrictive provisions may be repealed. Short form report currently being developed to assess alternative reform options available.	1997/1998		
Hire Purchase Act 1959	*EFT*						
Review of Hire Purchase Act		Yet to begin	To be Determined	May be reviewed in concert with the Credit Act and the Uniform Consumer Credit Code.	1998/1999		
Invasion of Privacy Act 1971	*EFT*						
Invasion of Privacy Regulations 1986							
Review of Invasion of Privacy Act		Underway	Reduced NCP Review	Draft short form report has been received by Treasury for comment. A number of issues such as impact of Freedom of Information are being considered.	1998/1999		

Name of Legislation *Review Name*	*Agency*	*Status*	*Review Model*	*Review Comments*	*Date of Review*	*Date Review Completed*	*Reform Progress*
Land Sale Act 1984	*EFT*						
Land Sale Regulation 1989							
Review of Land Sale Legislation		Underway	Reduced NCP Review	The department is finalising the review report, as at the end of March 1999.	1996/1997		
Loan Fund Companies Act 1982	*EFT*						
Review of Loan Fund Companies Act		Yet to begin	To be Determined	Similar legislation exists in NSW but is not set down for review. Possibly a reduced NCP review could occur as no loan fund companies are currently operating under the Act.	1998/1999		
Mercantile Act 1867	*EFT*						
Review of Mercantile Act		Completed	Reformed without Review	Completion of review requirements confirmed on 10 December 1998 with letter to Department of Equity and Fair Trading.	1998/1999	08/98	Provisions previously identified as restrictions on competition have been repealed or contained within other legislation timetabled for review.
Mobile Homes Act 1989	*EFT*						
Mobile Homes Regulation 1994							
Review of Mobile Homes Legislation		Yet to begin	To be Determined		1997/1998		
Partnership (Limited Liability) Act 1988	*EFT*						
Partnership (Limited Liability) Regulation 1993							
Review of Partership Legislation		Yet to begin	To be Determined	Both the Partnership Act and Partnership (Limited Liability) Act will be reviewed together.	1998/1999		
Partnership Act 1891	*EFT*						
Review of Partnership Act		Yet to begin	To be Determined	Both the Partnership Act and Partnership (Limited Liability) Act will be review together.	1998/1999		

Name of Legislation *Review Name*	*Agency*	*Status*	*Review Model*	*Review Comments*	*Date of Review*	*Date Review Completed*	*Reform Progress*
Pawnbrokers Act 1984	*EFT*						
Pawnbrokers Regulation 1984							
Review of Pawnbrokers and Secondhand Dealers Legislation		Draft Scope	Targeted Public	Combined with review of Second-hand Dealers legislation. A working group has been formed following requests from the Qld Policy Service to increase the reporting requirements. It is preferable to incorporate the NCP review as part of this process.	1997/1998		
Primary Producers Co-operative Associations Act 1923	*EFT*						
Primary Producers Co-operative Association Regulation							
Review of Cooperatives Legislation		Completed	Joint Jurisdictional	A formal review was not undertaken in Queensland. New Co-operatives Act is based on legislative work and NCP justification undertaken by Victoria as a national scheme of regulation. Act contains only minor NCP issues. New legislation enacted 1 September 1997. Act replaces existing Cooperatives and Other Societies Act and Primary Producers Co-operative Associations Act.	1996/1997	04/97	New Act providing for a national scheme of regulation has been enacted.
Profiteering Prevention Act 1948	*EFT*						
Review of Profiteering Prevention Act		Yet to begin	To be Determined		1998/1999		
Queensland Building Services Authority Act 1991	*EFT*						
Queensland Building Services Authority Regulation 1992 & Queensland Building Services Authority Policy 1995							
Review of Queensland Building Services Authority Legislation		Underway	Department Review	Consultation with Builders Licensing Australia indicates that a national review of builders and trade contractor licensing provisions is not feasible. It is proposed that a combined legislation review of existing provisions and proposed legislative reforms be conducted at the same time. The NCP requirements for both primary and subordinate legislation will be incorporated within the RIS process.	1997/1998		

Name of Legislation / Review Name	Agency	Status	Review Model	Review Comments	Date of Review	Date Review Completed	Reform Progress
Residential Tenancies Act 1994	*EFT*						
Residential Tenancies Regulation 1995							
Review of Residential Tenancies Legislation		Completed	Targeted Public	A public benefit test was undertaken in March 1998. The PBT supported the retention of the RTA's statutory monopoly over the administration of rental bonds. Cabinet agreed to the review recommendations.	1996/1997	04/98	Provisions subjected to PBT retained without change.
Retirement Villages Act 1988	*EFT*						
Retirement Villages Regulation 1989							
Review of Retirement Villages Legislation		Underway	Reduced NCP Review	Draft Bill released for public consultation some considerable time ago, but results required further consideration of various issues. Short-form PBT was conducted on the draft Bill. Some changes are being made to the Bill and, as a result, the PBT. Passage of the Bill has been deferred until mid 1999.	1996/1997		
Sale of Goods Act 1896	*EFT*						
Sale of Goods (Vienna Convention) Act 1986							
Review of Sale of Goods Legislation		Yet to begin	To be Determined		1998/1999		
Second-hand Dealers and Collectors Act 1984	*EFT*						
Second-hand Dealers and Collectors Regulation 1994							
Review of Second-hand Dealers Legislation		Draft Scope	Targeted Public	Combined with review of Pawnbrokers legislation. A working group has been formed following requests from the Qld Policy Service to increase the reporting requirements. It is preferable to incorporate the NCP review as part of this process.	1997/1998		
Security Providers Act 1992	*EFT*						
Security Providers Regulation 1995							
Review of Security Providers Legislation		Draft Scope	Targeted Public	Working group formed after requests from Qld Police Service to increase reporting requirements. NCP review to form part of this process.	1997/1998		

Name of Legislation *Review Name*	*Agency*	*Status*	*Review Model*	*Review Comments*	*Date of Review*	*Date Review Completed*	*Reform Progress*
Trade Measurement Act 1990	*EFT*						
Trade Measurement (Administration) Act 1990							
Review of Trade Measurement Legislation		Draft Scope	National Review	National review has been agreed to by CRR, SCOCA and the sub-committee for Trade Measurement. Queensland proposes to take lead jurisdiction role. Consultant will be engaged while funding requirements are still being negotiated among States. WA is understood to be contemplating withdrawing from the national review.	1998/1999		
Travel Agents Act 1988	*EFT*						
Travel Agents Regulations 1988							
National Review of Travel Agents Legislation		Underway	National Review	National Review is being undertaken under the co-ordination of Western Australia.	1997/1998		
Beach Protection Act 1968	*EPA*						
Coastal Management Control Districts Regulation 1994							
Review of Beach Protection Legislation		Completed	Reduced NCP Review	Review supported retention of provisions which do not materially restrict competition and are in the public interest. Review report made available to the public. No issues raised in response. NCC provided with report in February 1999.	1998/1999	11/98	Provisions subjected to PBT retained without change.
Canals Act 1958	*EPA*						
Canals Regulation 1992							
Review of Canals Legislation		Completed	Reduced NCP Review	Review supported retention of provisions which do not materially restrict competition and are in the public interest. Review report made available to the public. No issues raised in response. NCC provided with report in February 1999.	1998/1999	11/98	Provisions subjected to PBT retained without change.
Coastal Protection & Management Act 1995	*EPA*						
Review of Coastal Protection Act		Completed	Reduced NCP Review	Review supported retention of provisions which do not materially restrict competition and are in the public interest. Review report made available to the public. No issues raised in response. NCC provided with report in February 1999.	1998/1999	11/98	Provisions subjected to PBT retained without change.

Name of Legislation *Review Name*	*Agency*	*Status*	*Review Model*	*Review Comments*	*Date of Review*	*Date Review Completed*	*Reform Progress*
Contaminated Land Act 1991	*EPA*						
Contaminated Land Regulation 1991							
Review of Environmental Protection Legislation		Draft Scope		Act subsumed within the Environmental Protection Act 1994 in 1997 without any increase in restrictions on competition. The EP Act is scheduled for review in 1998/99. For further details refer to EP Act entry.	1996/1997		
Environmental Protection Act 1994	*EPA*						
EP (Interim) Regulation 1995							
Review of Environmental Protection Legislation		Draft Scope	To be Determined	Review will incorporate Environmental Protection Policies and Regulations passed under gatekeeping arrangements in 1997/98, as well as contaminated land provisions which have been subsumed within this Act. Draft Terms of Reference and PBT Plan submitted to Treasury for endorsement.	1998/1999		
Harbours (Reclamation of Land) Regulation 1979	*EPA*						
Marine Land (Dredging) By-Laws under the Harbours Act 1955 (sections 91-93)							
Review of Harbours Land Reclamation Regulation		Not for review	Reformed without Review	No review was proposed unless ongoing extension of the operations of the restrictive provisions is necessary. Provisions currently expire on 1 July 1999. No review required.	1997/1998	11/98	Provisions sunset on 1 July 1999.
Nature Conservation Act 1992	*EPA*						
Nature Conservation Regulation 1995 and Conservation Plans							
Review of Nature Conservation Legislation		Underway	Reduced NCP Review	Short Form analysis completed in December 1998. Review outcomes have been publicly notified and targeted consultation has been undertaken in January 1999. NCC to be advised of outcome following completion of review.	1998/1999		
Queensland Heritage Act 1992	*EPA*						
Queensland Heritage Regulation 1992							
Review of Heritage Legislation		Completed	Reduced NCP Review	Review justified retention of provissions on public interest grounds. Review report has been made available to the public. No issues raised in response. NCC provided with report in February 1999.	1998/1999	12/98	Provisions subjected to PBT retained without change.

Name of Legislation *Review Name*	*Agency*	*Status*	*Review Model*	*Review Comments*	*Date of Review*	*Date Review Completed*	*Reform Progress*
Ambulance Service Act 1991	*ES*						
Review of Ambulance Service Act		Draft Scope	To be Determined	Discussions are being held with QES and Ambulance Services on the nature and extent of review. Ambulance Services are currently preparing an issues paper.	1998/1999		
Fire Services Act 1990	*ES*						
Review of Fire Services Act		Yet to begin	To be Determined	Discussions are being held with QES on the nature and extent of review.	1998/1999		
Private Employment Agencies 1983	*ETIR*						
Private Employment Agencies Regulation 1989							
Review of Private Employment Agency Legislation		Yet to begin	To be Determined		1998/1999		
Trading (Allowable Hours) Act 1990	*ETIR*						
Trading (Allowable Hours) Regulation 1994							
Review of Trading Hours Legislation		Yet to begin	To be Determined	The recent Queensland Industrial Relations Commission decision not to extend Sunday trading hours has been appealed. The appeal will be heard by the Industrial Court. NCP review will not begin until there is a decision on the appeal which is not expected until the end of May 1999.	1998/1999		
Vocational Education, Training and Employment Act 1991	*ETIR*						
Vocational Education, Training and Employment Regulation 1991							
Review of Vocational Education, Training and Employment Legislation		Yet to begin	To be Determined	Minor review carried out on proposed new VET legislation (two Bills) with a view to undertaking a full review in 18 months once State and Commonwealth changes have taken effect and impacts can be more accurately defined. These Bills were proposed under the previous Government, but no action has been taken by the present State Government to proceed with these Bills.	1998/1999		

Name of Legislation *Review Name*	*Agency*	*Status*	*Review Model*	*Review Comments*	*Date of Review*	*Date Review Completed*	*Reform Progress*
WorkCover Qld Act 1997	*ETIR*						
Review of WorkCover Act		Yet to begin	To be Determined	The legislation originally scheduled for review were the Workers' Compensation Act 1990 and Workers' Compensation Regulation 1992. The 1996 Queensland Government endorsed the recommendations of the Kennedy Inquiry into Workers' Compensation arrangements in Queensland which includes the retention of the current monopoly accident insurance arrangements for three years with a further review at the end of that time.	1999/2000		
Workplace Health and Safety Act 1995	*ETIR*						
Workplace Health and Safety Regulations 1995 and 1997							
Review of Workplace Health and Safety Act 1995 and Regulation 1997		Underway	Department Review	The Act and 1997 Regulation will be reviewed concurrently in accordance with approved PBT Plan and ToR. An overall framework has been developed for examining the Act and the 1997 Regulation and 1995 Regulation.	1998/1999		
Workplace Health and Safety Act 1995	*ETIR*						
Workplace Health and Safety Regulations 1995 and 1997							
Review of Workplace Health and Safety Regulation 1995		Underway	Department Review	The 1995 Regulation will be reviewed, (and as required) remade and transferred to the 1997 Regulation with NCP requirements being addressed when these activities occur. Review was originally scheduled for 1996/97 but an overall framework has been developed for examining the Act and the 1997 Regulation and 1995 Regulation.	1996/1997		

Name of Legislation *Review Name*	*Agency*	*Status*	*Review Model*	*Review Comments*	*Date of Review*	*Date Review Completed*	*Reform Progress*
Child Care Act 1991 *Child Care (Child Care Centres) Regulation 1991 & Child Care (Family Day Care) Regulation 1991* Review of Child Care Legislation	*FYCC*	Underway	Department Review	Draft report under consideration in February 1999. Department advised that the Minister responsible for the legislation is about to establish a forum to examine all aspects of child care legislation (eg considering a less prescriptive approach) in consultation with a wide cross section of stakeholders. Therefore, the review report is somewhat redundant. NCP will be addressed as part of the forum's deliberations.	1997/1998	02/99	
Cremation Act 1913 *Crenmation Regulation 1987* Review of Cremation Legislation	*H*	Repealed	Reformed without Review	Decision taken by department to repeal the restrictive provisions without a formal NCP review.	1996/1997	12/98	Anti-competitive provisions were repealed in late 1998.
Fluoridation of Public Water Supplies Act 1963 *Fluoridation of Public Water Supplies Regulation 1964* Review of Fluoridation of Public Water Supply Legislation	*H*	Repealed	Reformed without Review	Decision taken by Department to repeal the restrictive provisions without formal NCP review.	1996/1997	09/97	Anti-competitive provisions were repealed in late 1997.
Food Act 1981 *Food Hygiene Regulations 1989, Food Standards Regulation 1994* Review of Food Legislation	*H*	Underway	National Review	Three reviews: Model Food Act; Food Hygiene Standards; and Food Regulations. The Food Regulation is being examined as a national review (the Blair Review) under NCP. This review is at a stage where comments on draft proposals are being sought by end February 1999. RIS is being revised for proposed changes to the Food Act. This legislation was listed as "Not proposed" for state-based review in Queensland Legislation Review Timetable.	1999/2000		

Name of Legislation *Review Name*	*Agency*	*Status*	*Review Model*	*Review Comments*	*Date of Review*	*Date Review Completed*	*Reform Progress*
Health Act 1937	*H*						
Review of Health (Drugs and Poisons) Regulation 1996		Draft Scope	National Review	Review of drugs, poisons and controlled substances provisions in the Health (Drugs and Poisons) Regulation 1996 under Part 4 of the Health Act 1937. CRR has agreed to a national review process. Terms of review are expected to be finalised shortly, as at the end of March 1999.	1998/1999		
Health Act 1937	*H*						
Review of Health (Nursing Homes) Regulation 1982		Completed	Department Review	Review of relevant provisions in the Health (Nursing Homes) Regulation 1982 under Part 3, Division 5 of the Health Act 1937. Department has examined Commonwealth's Aged Care Act 1997 to determine its impact on this legislation. Current legislation lapsed on 1 July 1998 and it is proposed that Cabinet consider in due course new legislation which provides a negative licensing scheme.	1996/1997	07/98	Restrictive provisions expired on 1 July 1998.
Health Act 1937	*H*						
Review of Health (Private Hospitals) Regulation 1978		Completed	Targeted Public	Review of relevant provisions in the Health (Private Hospitals) Regulation 1978 under Part 3, Division 4 of the Health Act 1937. The Private Health Facilities Bill will replace existing Regulation under Health Act that was scheduled for review. Review has justified retention of licensing regime in the interests of patient wellbeing and rejected the formal adoption of planning controls. Cabinet approved preparation of a new Bill in August 1998. Completed review report was forwarded to Treasury in February 1999. Summary of final review report to accompany Cabinet Submission proposing introduction of the Bill.	1996/1997	02/99	Review has justified retention of a licensing regime in the interests of patient wellbeing. The review rejected the formal adoption of planning controls.
Health Act 1937	*H*						
Review of Hyperbaric Chamber Therapy under Part 6 of Health Regulation 1996		Underway	Reduced NCP Review	Terms of Reference and PBT Plan were finalised early in 1999.	1997/1998		

Name of Legislation Review Name	Agency	Status	Review Model	Review Comments	Date of Review	Date Review Completed	Reform Progress
Health Act 1937	*H*						
Review of Pest Management under Parts 10&12 of the Health Regulation 1996		Underway	Targeted Public	Review of relevant provisions in Parts 10 and 12 of the Health Regulation 1996 under Part 4, Division 7 of the Health Act 1937. Terms of Reference and PBT Plan were finalised early in 1999.	1997/1998		
Health Act 1937	*H*						
Review of Therapeutic Goods under Part 16 of the Health Regulation 1996		Not for review		Proposal to adopt Commonwealth legislation. Any review should be a national review.	1997/1998		Queensland Health Minister has approved proposal to adopt the Commonwealth legislation.
Health Act 1937	*H*						
Skin Penetration,Beauty Therapy,Hairdressing Review under Health Regulation 1996		Underway	Targeted Public	Review of relevant provisions in Parts 5 and 15 of the Health Regulation 1996 under the Health Act 1937. The PBT is well advanced and the review is nearing completion as at the end of March 1999.	1997/1998		
Health Practitioner Legislation	*H*						
Review of Health and Medical Practitioner Registration Acts		Completed	Targeted Public	Stage 1 of review examined generic issues. That review is complete. Stage 2 will examine as separate reviews: Pharmacy as a national review; ownership controls for Optometry; certain restrictions in dental profession; and restrictions on core practice across professions.	1996/1997	05/98	Generally, registration/licensing provisions have been retained; some titles continue to be reserved; commercial controls removed apart from Pharmacy and Optometry as these will be subject of separate reviews; considerable lessening of advertising controls. ATP Submission for new legislation resulting from Stage 1 review endorsed by Cabinet in May 1998. New legislation still being drafted.
Health Practitioner Legislation	*H*						
Review of Ownership Restrictions under the Optometrists Act 1974 and By-Law 1984		Underway	Targeted Public	A second-stage Health Practitioner Legislation review, not individually scheduled in Queensland Legislation Review Timetable. The PBT will be undertaken in the first half of 1999.	1998/1999		

Name of Legislation *Review Name*	*Agency*	*Status*	*Review Model*	*Review Comments*	*Date of Review*	*Date Review Completed*	*Reform Progress*
Health Practitioner Legislation	*H*						
Review of Ownership Restrictions under the Pharmacy Act 1976 and By-Laws 1984		Draft Scope	National Review	Review of relevant provisions under Part 4 of the Pharmacy Act 1976. A second-stage Health Practitioner Legislation review, not individually scheduled in Queensland Legislation Review Timetable.	1998/1999		
Health Practitioner Legislation	*H*						
Review of Restrictions on Practice in Health Practitioner Legislation		Draft Scope	Targeted Public	A second-stage Health Practitioner Legislation review, not individually scheduled in Queensland Legislation Review Timetable. Terms of Reference and PBT Plan are expected to be finalised in March 1999.	1998/1999		
Health Practitioner Legislation	*H*						
Review of Restrictions on Practice under the Dental Act 1971 and By-Law 1988		Underway	Targeted Public	A second-stage Health Practitioner Legislation review, not individually scheduled in Queensland Legislation Review Timetable. Terms of Reference and PBT Plan have been finalised. The PBT is expected to be undertaken in the first half of 1999.	1998/1999		
Health Services Act 1991	*H*						
Health Services (Public Hospitals Fees and Charges) Regulation 1992 Review of Public Hospitals Fees and Charges in Health Services Regulation 1992		Completed	Reformed without Review	Department decided that the anti-competitive provisions would be repealed (Current legislation titled Health Services Regulation 1992).	1996/1997	07/97	Anti-competitive provisions were repealed in 1997.
Mental Health Act 1974	*H*						
Review of Mental Health Act		Completed	Reformed without Review	No formal NCP review was undertaken. Health and Justice Departments have jointly examined this matter and have determined that the restrictions will be repealed.	1997/1998	12/98	The anti-competitive provisions will be repealed under the Guardianship and Administration Bill that is being developed by the Department of Justice.

Name of Legislation Review Name	Agency	Status	Review Model	Review Comments	Date of Review	Date Review Completed	Reform Progress
Nursing Act 1992	*H*						
Nursing By-Law 1993							
Review of Nursing Legislation		Yet to begin	To be Determined		1998/1999		
State Housing Act 1945 and State Housing (Freeholding of Land) Act 1957	*HO*						
State Housing Regulation 1986 and Interest Rate Orders							
Review of the State Housing Legislation		Draft Scope	Department Review	PBT Plan is being finalised, as at the end of March 1999. Review is expected to be completed by mid 1999.	1996/1997		
Legal Practitioners Act 1995	*J*						
Review of Legal Practitioners Act		Yet to begin	To be Determined	Broad review of contemporary issues in legal profession commenced in December 1998 with release of discussion paper. NCP issues such as conveyancing will be addressed in review. NCP will be taken into account in development of legislative proposals flowing from the review.	1998/1999		
Queensland Law Society Act 1952	*J*						
Queensland Law Society Rule 1987, Queensland Law Society (Indemnity) Rule 1987 & Continuing Legal Education Rule							
Review of Queensland Law Society Legislation		Yet to begin	To be Determined	Indemnity Rule proposed by NCC for national review. Now to be reviewed by State in conjunction with other QLS legislation.	1998/1999		
Trustee Companies Act 1968	*J*						
Review of Trustee Companies Act		Yet to begin	To be Determined	A draft uniform trustee companies Bill has been developed by the Standing Committee of Attorneys-General. Any anti-competitive provisions will be examined prior to seeking introduction of the Bill. It is expected to be completed during 1998/99.	1997/1998		

Name of Legislation / Review Name	Agency	Status	Review Model	Review Comments	Date of Review	Date Review Completed	Reform Progress
Coal Industry (Control) Act 1948	*ME*						
Orders under Coal Industry (Control) Act 1948							
Review of Coal Industry Legislation		Repealed	Reformed without Review	Act repealed without formal NCP review.	1996/1997	12/97	The Act has been repealed.
Electricity Act 1994	*ME*						
Electricity Regulation 1994							
Review of Electricity Legislation		Underway	Department Review	Part of the broader CoAG electricity reform process. A separate legislation review exercise has not been undertaken. Following amendments to the legislation to give effect to the CoAG reforms, several provisions remaining in the legislation have been identified as potentially restricting competition. These aspects are currently being examined under NCP, as at the end of March 1999.	1996/1997		Three tranches of significant amendments to the Act were passed and changes made to the Regulation as part of the reforms. These legislative amendments during 1997 gave effect to CoAG reforms including the establishment of a National Electricity Market.
Explosives Act 1952	*ME*						
Explosives Regulation 1955							
Review of Explosives Legislation		Not for review		NCC supported removal of legislation from review timetable on the basis that the provisions are in the public interest and are not for the purpose of restricting competition.	1998/1999		Legislation is moving in the direction of national standards and has been modernised recently.
Gas Act 1965	*ME*						
Gas Regulations 1989							
Review of Gas and Petroleum Legislation		Underway	Targeted Public	Part of the broader CoAG gas reforms and includes a fundamental review of Gas and Petroleum legislation. A Discussion Paper outlining the department's position on key policy issues was released in February 1999. New legislation is expected to be considered by Parliament by the end of 1999.	1996/1997		
Gas Suppliers (Shareholdings) Act 1972	*ME*						
Review of Gas Suppliers Shareholding Act		Underway	Department Review	The restriction limits the level of ownership of shares in a nominated gas supplier and has only ever related to one company. In July 1998, the proclamation under the Act expired, removing that company from the protection of the Act. Consideration is being given to repeal of the Act in 1999.	1997/1998		

Name of Legislation *Review Name*	*Agency*	*Status*	*Review Model*	*Review Comments*	*Date of Review*	*Date Review Completed*	*Reform Progress*
Liquid Fuel Supply Act 1984	*ME*						
Review of Liquid Fuel Supply Act		Not for review		NCC supported removal of Act from review timetable on the grounds that the legislation is in place to serve the public interest in terms of controlling liquid fuel usage in times of shortage or emergencies. Provisions have never been used.	1997/1998		
Transport Infrastructure Act 1994	*MR*						
Various modal-specific Regulations							
Review of Main Roads Restrictions in Transport Infrastructure Legislation		Underway	Department Review	Assessment of various NCP issues for Main Roads, comprising: full review of limitations on services able to be provided at access points to limited-access main roads; and short-form reviews of policies underlying road-side advertising restrictions and delivery of Main Roads work by local government.	1998/1999		
Gladstone Area Water Board Act 1984	*NR*						
Review of Gladstone Area Water Board Act		Underway	Department Review	Urban Water Board legislation, that was listed jointly with Water Resources legislation, will be reviewed separately. Department has advised that the restrictive provisions may no longer be required, and these will be the subject of consultation with industry.	1997/1999		
Land Act 1994	*NR*						
Review of Land Act		Underway	Targeted Public	Review is nearing completion.	1996/1997		
Metropolitan Water Supply and Sewerage Act 1909, and Sewerage and Water Supply Act 1949	*NR*						
Standard Sewerage and Water Supply Laws Review of Water Supply Legislation		Underway	To be Determined	Review is part of broader water reform agenda. Discussion paper on regulation of provision of water services to be released for consultation by mid 1999.	1997/1999		

Name of Legislation / Review Name	Agency	Status	Review Model	Review Comments	Date of Review	Date Review Completed	Reform Progress
South East Queensland Water Board Act 1979, and Townsville/Thuringowa Water Supply Board 1987	*NR*						
Review of SouthEast and Townsville/Thuringowa Water Board Legislation		Underway	To be Determined	Part of broader CoAG water reform agenda. New institutional reforms for each Board are being pursued with likely repeal of existing Acts.	1997/1999		
Surveyors Act 1977	*NR*						
Surveyors Regulations 1992							
Review of Surveyors Legislation		Completed	Targeted Public	A new legislative framework has been developed. Review completed November 1997. Review supported retention of regulation of cadastral surveyors. Revised proposal calls for removal of certain anti-competitive provisions. Mutual recognition implications have been considered. Issues subject to consideration by Cabinet Committee. Bill to be revised in light of recent deliberations.	1996/1997	11/97	
Valuers Registration Act 1992	*NR*						
Valuers Registration Regulation 1992							
Review of Valuers Registration Legislation		Underway	Department Review	Review is nearing completion.	1996/1997		
Water Resources Act 1989	*NR*						
Water Resources (Watercourse Protection) Regulation 1993, Water Resources (Rates and Charges) Regulation 1992							
Review of Water Resources Legislation		Underway	To be Determined	Part of broader CoAG water reform agenda. Discussion paper on modules for new legislation are progressively being released for discussion.	1997/1999		
South Bank Corporation Act 1989	*P&C*						
South Bank Corporation By-law 1992, South Bank Corporation Regulation 1992							
Review of South Bank Corporation Legislation		Draft Scope	Department Review	Terms of Reference and PBT Plan will be finalised by the end of March 1999.	1998/1999		

Name of Legislation *Review Name*	*Agency*	*Status*	*Review Model*	*Review Comments*	*Date of Review*	*Date Review Completed*	*Reform Progress*
Agricultural and Veterinary Chemicals (Queensland) Act 1994	*PI*						
Review of Agricultural and Veterinary Chemicals Legislation		Underway	National Review	Three pieces of related legislation to be reviewed covering registration and control of use provisions. Review to be undertaken by Commonwealth Department of Primary Industries and Energy.	1997/1998		
Agricultural Chemicals Distribution Control Act 1996	*PI*						
Agricultural Chemicals Distribution Control Regulations 1970							
Review of Agricultural and Veterinary Chemicals Legislation		Underway	National Review	Three related pieces of Qld legislation to be reviewed covering registration and control of use provisions. Review to be undertaken by Commonwealth Department of Primary Industries and Energy.	1997/1998		
Chemical Usage (Agricultural and Veterinary) Control Act 1988	*PI*						
Chemical Usage (Agricultural and Veterinary) Control Regulation 1989							
Review of Agricultural and Veterinary Chemicals Legislation		Underway	National Review	Three related pieces to legislation to be reviewed covering registration and control of use provisions. Review to be undertaken by Commonwealth Department of Primary Industries and Energy.	1997/1998		
Chicken Meat Industry Committee Act	*PI*						
Review of Chicken Meat Act		Completed	Targeted Public	Committee signed off on review report in November 1997. Grower representative submitted dissenting report. Treasury engaged independent consultant to examine both reports. As a result, additional recommendations were added to the committee's recommendations that are consistent with potential outcome of NSW review. These do not jeopardise the net public benefit nor impose further restrictions. Grower and processor representatives agreed to expanded proposal. Temporary TPA exemption for collective bargaining arrangements expire on 30 June 1999. Review has shown there to be a public benefit in continuing this legislative exemption in the CMIC Act.	1996/1997	11/97	In December 1998, Cabinet approved that legislation be drafted that will provide: less deterministic role for industry committee; legislative authorisation for collective bargaining arrangements with option for individual growers to negotiate directly with processor; minimum contract conditions; maximum period for mediation; and arbitration on certain contract conditions but excluding initial growing fee. In ATP decision of 8 March 1999, Cabinet agreed the drafting of legislative amendments which are to be submitted to Parliament prior to June 1999.

Name of Legislation Review Name	Agency	Status	Review Model	Review Comments	Date of Review	Date Review Completed	Reform Progress
City of Brisbane Market Act 1960	*PI*						
City of Brisbane Market Regulation (formerly By-law) 1982							
Review of City of Brisbane Market Legislation		Completed	Full Public Review	Joint review covering ownership, competitive neutrality and legislation review.	1997/1998	05/98	Review recommended privatisation option be explored, with corporatisation as second preference. With change of State government, corporsatisation will be pursued (target date 1 July 1999) and restrictions will be wound back. "Exclusivity" (ie the legislative monopoly held by the Brisbane market Authority) to terminate on 31 August 1999 and other restrictions to terminate on 31 December 1999.
Dairy Industry Act 1993	*PI*						
Dairy Industry Regulation 1993, Dairy Industry (Market Milk Prices) Order 1995							
Review of Dairy Industry Legislation		Completed	Full Public Review	Legislative amendments being developed for extending supply management arrangements, etc.	1997/1998	07/98	Post farm-gate deregulation occurred on 31 December 1998. Restrictive provisions governing farm-gate arrangements (including broadening scope of supply management arrangements to cover CQ and NQ) have been extended until 31 December 2003. Further review is to occur prior to 1 January 2003 to determine extent of government involvement in dairy industry. Earlier review may be required should industry changes and/or market forces compel shorter transition period. Cabinet considered Policy Submission (in 7/98), ATP Submission (in 10/98) and ATI Submission (in 11/98).
Egg Industry (Restructuring) Act 1993	*PI*						
Review of Egg Industry Act		Completed	Reformed without Review	Act allowed to sunset on 31 December 1998 thereby removing all anti-competitive legislative provisions.	1997/1998		All anti-competitive provisions have been removed through the sunsetting of the Act on 31 December 1998.
Farm Produce Marketing Act 1964	*PI*						
Farm Produce Marketing Regulation 1984							
Review of Farm Produce Marketing Legislation		Underway	Full Public Review	Draft report under consideration, as at the end of March 1999. Final report expected by 30 June 1999. Current legislation sunsets on 31 December 1999.	1997/1998		

Name of Legislation *Review Name*	*Agency*	*Status*	*Review Model*	*Review Comments*	*Date of Review*	*Date Review Completed*	*Reform Progress*
Fisheries Act 1994	*PI*						
Fisheries Regulation 1995							
Review of Fisheries Legislation		Draft Scope	To be Determined	Queensland has partly funded a consultancy commissioned by WA Dept of Agriculture to develop a common approach to reviewing state fisheries legislation. Scope for state-based review is presently being developed. Review to commence in March 1999. It is expected to be a Full Public Review.	1998/1999		
Forestry Act 1959	*PI*						
Forestry Regulation 1987							
Review of Forestry Legislation		Underway	Department Review	Review, nearing completion, shows net public benefit in retaining funding of Timber Research and Development Advisory Council. However, economic cost but social benefits result from retaining crown sawlog allocation system for now. As allocations are increasingly traded and there is more competitive tendering, economic costs likely to be reduced. Review outcomes linked to review of Regional Forest Agreements. Result of RFA review may cause industry restructuring as supply of native sawlogs is expected to decrease. Issues raised in NCP analysis be taken into account during RFA review. Market structure and mechanism for moving to fully competitive tendering will be considered at that time. TPA exemption for sawlog allocation system (a policy not legislative provision) extended to allow completion of NCP review requirements. Based on findings of near-completed review. As allocation system may breach the TPA, exemption will apply until Decemebr 1999 to enable time to complete review of allocation system and to assess impact of RFA and resultant structural adjustment.	1996/1997		
Fruit Marketing Organisation Act 1923	*PI*						
Review of Fruit Marketing Act		Completed	Department Review	A general review is underway. This review is combined with a review of the Primary Producers' Organisation and Marketing Act 1926. Only NCP issue to consider in the FMO Act is future status of currently dormant market intervention mechanisms.	1997/1998	02/99	On 8 March 1999, Cabinet gave Authority to Prepare a Bill which includes the repeal of all the marketing provisions in the Act.

Name of Legislation / Review Name	Agency	Status	Review Model	Review Comments	Date of Review	Date Review Completed	Reform Progress
Grain Industry (Restructuring) Act 1993	*PI*						
Review of Grain Industry Act		Completed	Targeted Public	Aspects of NCP review (review panel composition and ToR) were based on Cabinet decision following previous non-NCP review of Act that failed to conclude issues under review at that time. Review supported retention of statutory marketing arrangements through Grainco for export barley. Outcome influenced by Japan Food Authority policies on sourcing barley from SMAs and status of interstate SMA arrangements. Joint Victoria-South Australia review recommended removal of ABB's statutory monopoly. Queensland is monitoring implementation stage of that review to determine its consequences for Queensland. A related review of accountability requirements applying to Grainco was completed in November 1998. This review recommended a supervisory panel be established in lieu of current Govt appointments to the Board of Grainco. The application of a number of Acts to Grainco will also be modified.	1996/1997	06/97	Statutory monopoly of Grainco for export barley retained, wheat regulation extended but "parked" while Commonwealth provisions still apply, regulation of all other grains removed. Export barley arrangements to be reviewed if there is a change either to interstate SMAs or to Japan Food Authority policy on sourcing barley from SMAs. In March 1999, Cabinet to consider an ATP Submission to extend the single-desk selling arrangements for export barley for a period of up to three years. Earlier review may be required should industry changes and/or market forces compel a shorter transition period. The ATP Submission will also propose amendments to the accountability provisions in the Act.
Primary Producers' Organisation and Marketing Act 1926	*PI*						
Orders in Council for tobacco leaf							
Review of Orders in Council for Tobacco Leaf		Completed	Department Review	Review found Orders in Council to be totally unnecessary as Tobacco Leaf Marketing Board no longer exists.	1996/1997	10/98	Repealed in October 1998.
Primary Producers' Organisation and Marketing Act 1926	*PI*						
Orders in Council for tobacco leaf							
Review of Primary Producers' Organisation and Marketing Legislation		Completed	Department Review	General review combined with Fruit Marketing Organisation Act 1923. The only restrictive provision relates to establishing marketing boards. It is intended that the creation of such boards in future (none exist at present) will be via industry-specific legislation on each occasion, subject to a prior public benefit test as required under NCP.	1996/1997	02/99	On 8 March 1999, Cabinet gave Authority to Prepare a Bill which includes the repeal of all existing provisions relating to marketing boards in the Act. Restrictive provisions to be repealed via the "PILA" Bill 1999 (expected by 30 June 1999).

Name of Legislation Review Name	Agency	Status	Review Model	Review Comments	Date of Review	Date Review Completed	Reform Progress
Sawmills Licensing Act 1936	*PI*						
Sawmills Licensing Regulation 1965							
Review of Sawmills Licensing Act		Underway	Department Review	Nearing completion. Draft report under consideration February 1999. Cabinet to consider in February 1999 an ATP Submission recommending extending temporary TPA exemption by regulation for one year until 30 June 2000 to permit completion of current NCP review.	1996/1997		
Sugar Industry Act 1991	*PI*						
Sugar Industry Regulation 1991, Sugar Industry (Assignment Grant) Guideline 1995							
Review of Sugar Industry Legislation		Completed	Full Public Review	Combined with review of Sugar Milling Rationalisation Act 1991.	1996/1997	11/96	Both Commonwealth and Queensland Governments have endorsed reform package. New legislation is being prepared for introduction into Parliament prior to June 1999. PBTs may be required in some cases where legislative provisions depart from review recommendations.
Sugar Milling Rationalisation Act 1991	*PI*						
Review of Sugar Industry Legislation		Completed	Full Public Review	Reviewed at same time as Sugar Industry Act 1991.	1996/1997	11/96	As per Sugar Industry Act 1991.
Veterinary Surgeons Act 1936	*PI*						
Veterinary Surgeons Regulation 1991 and various Orders in Council							
Review of Veterinary Surgeons Legislation		Underway	Full Public Review	Independent chair to be appointed and reference group established.	1998/1999		
Architects Act 1985	*PW*						
Architects Regulation 1985							
Review of Architects Legislation		Yet to begin	National Review	Candidate for national review as all jurisdictions have given support in response to Commonwealth proposal. CRR is to set up working group to undertake preliminary work on review using as input (near) completed reviews by Victoria and Northern Territory. Review will apply the recently developed guidelines for reviewing the professions. Subsequent stages including consultation strategy yet to be determined.	1998/1999		

Name of Legislation *Review Name*	*Agency*	*Status*	*Review Model*	*Review Comments*	*Date of Review*	*Date Review Completed*	*Reform Progress*
Professional Engineers Act 1988	*PW*						
Professional Engineers Regulation 1992							
Review of Professional Engineers Legislation		Yet to begin	To be Determined		1998/1999		
Industrial Development Act 1963	*SD*						
Review on Industrial Development Act		Completed	Reformed without Review	As the intention of the Act is not to limit use to industrial purposes, the definition section of the Act has been amended to remove this limitation. Submissions to Cabinet -ATP March 1998 and API October 1998.	1996/1997	09/97	The Act was amended in 1998 to remove sole restriction on competition.
Retail Shop Leases Act 1994	*SD*						
Retail Shop Leases Regulation 1994							
Review of Retail Shop Leases Legislation		Underway	Department Review		1998/1999		
State Transport (People-movers) Act 1989	*T*						
Review of People Movers Act		Underway	Department Review	The Act is to be repealed and certain provisions saved in the Transport Infrastructure Act and the Transport Operations (Passenger Transport) Act. The provisions transferred to these two Acts will be examined as a separate exercise to determine if any of the transferred provisions actually restrict competition. (A full review of the Transport Operations (Passenger Transport) Act is also currently underway.) The review of this Act was originally set down to occur in 1996/97. The review commenced on time and the course of action (as described) was determined. Delays in undertaking necessary legislative changes have occurred, and in view of recent developments in respect of the provisions of People Movers Infrastructure (Post-31 December) there is now some doubt in respect of the appropriateness of repeal. If repeal does not occur as planned, it will be necessary to renew the process and undertake a full PBT assessment.	1998/1999		

Name of Legislation / Review Name	Agency	Status	Review Model	Review Comments	Date of Review	Date Review Completed	Reform Progress
State Transport Act 1960	*T*						
State Transport Regulation 1987							
Review of Restricted Goods Legislation		Completed	Reduced NCP Review	The Act has been repealed by proclamation of certain provisions of the Transport Operations (Road Use Management) Act. Any future legislative control of restricted goods will be via regulation and subject to public benefit test requirements.	1996/1997	09/98	The Act has been repealed.
Tow-Truck Act 1973	*T*						
Tow-Truck Regulation 1988							
Review of Tow Truck Legislation		Completed	Reduced NCP Review	Public benefit justification has been provided in short-form for: the consumer protection and industry regulation provisions in the Act (which actually facilitate a competitive industry); and proposed amendments to strengthen consumer protection giving effect to Criminal Justice Commission recommendations. Public notification has occurred. Sections of industry have since raised concerns. As a result, Queensland Transport has revised some proposals. The proposed changes do not affect the public benefit justification.	1997/1998	01/99	Cabinet approved a policy submission on this issue in February 1999. As a result, drafting of necessary legislative amendments has commenced. Amendments will strengthen consumer protection provisions and retain industry regulatory provisions.
Transport Infrastructure - Ports	*T*						
Transport Infrastructure (Ports) Regulation 1994 under the Transport Infrastructure Act 1994							
Review of Harbour Towage Restrictions		Draft Scope	Department Review	This review examines harbourage towage restrictions in the Transport Infrastructure (Ports) Regulation 1994 under the Transport Infrastructure Act. Post-31 December, draft Terms of Reference and PBT Plan have been prepared and liaison is continuing with Treasury to finalise the documents.	1998/1999		
Transport Infrastructure - Ports	*T*						
Transport Infrastructure (Ports) Regulation 1994 under the Transport Infrastructure Act 1994							
Review of Restrictions on Port Activities Outside Prescribed Port Limits		Draft Scope	Department Review	Review examines restrictions on port activities outside of port limits in the Transport Infrastructure (Ports) Regulation 1994 under the Transport Infrastructure Act 1994. Post-31 December, draft terms of Reference and PBT Plan have been prepared and liaison is continuing with Treasury to finalise the documents.	1998/1999		

Name of Legislation / Review Name	Agency	Status	Review Model	Review Comments	Date of Review	Date Review Completed	Reform Progress
Transport Operations (Marine Safety) Act 1994	*T*						
Transport Operations (Marine Safety) Regulation 1995							
Review of Marine Pilotage Provisions		Completed	Department Review	Review recommends some pro-competitive legislative changes to take effect at end of three-year transition period for transfer of responsibility for pilotage services from Transport Dept to port authorities. Review recommends licensing of marine pilots by Queensland Govt to be retained, designated provider provisions to be removed in favour of periodic competitive tendering for service provision that includes a schedule of pilotage fees, and price controls to be removed. Licensing of marine pilots ensures safety of vessels/crews and avoids port closures and environmental damage caused by maritime accidents.	1996/1997	09/98	Transport Minister is, as at the end of March 1999, considering the review report's findings and recommendations.
Transport Operations (Passenger Transport) Act 1994	*T*						
Transport Operations (Passenger Transport) Regulation 1994							
Review of Passenger Transport Legislation		Underway	Full Public Review	A Terms of Reference and PBT Plan have been prepared and approved by Cabinet. An interdepartmental steering committee has been established comprising Transport, Treasury and the Department of the Premier and Cabinet. Post-31 December, a discussion paper has been prepared and distributed to stakeholders. Submissions are due by the end of March 1999, and public hearings are scheduled in April 1999.	1998/1999		
Art Unions and Public Amusements Act 1992	*TR*						
Art Unions and Public Amusements Regulation 1992							
Review of Charitable and Non-profit Gaming Bill		Yet to begin	To be Determined	New legislation being developed - the Charitable and Non-profit Gaming Bill. NCP requirements will be considered in developing the Bill.	1998/1999		

Name of Legislation Review Name	Agency	Status	Review Model	Review Comments	Date of Review	Date Review Completed	Reform Progress
Casino Agreement Acts	*TR*						
Review of Casino Agreements Legislation		Completed	Reduced NCP Review	These four Agreement Acts covering casinos at the Gold Coast, Brisbane, Townsville and Cairns were not originally scheduled for review on the basis that they underpin commercial arrangements entered into prior to NCP for the provision of major casino/tourism facilities provided by the private sector. A confidential summary report on the review of the four Agreement Acts was provided to the NCC as part of 1998 Annual Report. This matter is subject to Productivity Commission inquiry into gambling.	1997/1998	03/98	
Casino Control Act 1982	*TR*						
Casino Control Regulation 1984							
Review of Casino Control Legislation		Yet to begin	To be Determined	This matter is subject to the Productivity Commissions inquiry into gambling.	1998/1999		
Financial Intermediaries Act 1996	*TR*						
Review of Financial Intermediaries Act		Completed	Reformed without Review	The Act has become redundant and may possibly be repealed. This is the result of the proposed reforms to the financial services sector resulting from the Wallis Inquiry and the establishment of the Australian Prudential Regulation Authority, in line with the recommendations of the Wallis Inquiry.	1998/1999	10/98	Act is redundant and is expected to be repealed.
Gaming Machine Act 1991	*TR*						
Gaming Machine Regulation 1991							
Review of Gaming Machine Legislation		Yet to begin	To be Determined	General review is expected in 1999. This matter is subject to Productivity Commission's gambling inquiry.	1997/1998		
Keno Act 1996	*TR*						
Review of Keno Act		Completed	Reduced NCP Review	NCP issues were to be fully examined prior to introduction of the Bill. Certain outstanding NCP matters were examined and a draft report compiled subsequently. This matter is subject to Productivity Commission's inquiry into gambling.	1996/1997	04/98	

Name of Legislation *Review Name*	*Agency*	*Status*	*Review Model*	*Review Comments*	*Date of Review*	*Date Review Completed*	*Reform Progress*
Lotteries Act 1997	*TR*						
Review of Lotteries Act		Completed	Department Review	The 1997 Act amounts to a winding-back of anti-competitive provisions by replacing the statutory monopoly provisions with a limited period of exclusivity to enable the Golden Casket Corporation time to mature in a commercial environment following its corporatisation. Certain outstanding NCP matters were examined and a report compiled subsequently. This matter is subject to Productivity Commission inquiry into gambling.	1998/1999	04/98	Statutory monopoly provisions applying to the Golden Casket Corporation have been replaced with a limited duration exclusive licence.
Motor Accident Insurance Act 1994	*TR*						
Review of CTP Insurance Legislation		Draft Scope	To be Determined	It is proposed that the NCP review be linked to (and possibly proceed) the statutory review of Act that must occur from 1 September 1999.	1998/1999		
Superannuation (Government and Other Employees) Act 1988 and other superannuation legislation	*TR*						
Review of Superannuation Legislation		Yet to begin	To be Determined	Issue of Statutory Monopoly is being considered as part of a general review of superannuation arrangements for the public sector. Any residual NCP issues will be examined at the conclusion of the general review.	1996/1997		
Tobacco Products (Licensing) Act 1988 *Tobacco Products (Licensing) Regulation 1993*	*TR*						
Review of Tobacco Products Legislation		Completed	Reformed without Review	Restrictive provisions no longer have effect constitutionally following High Court decision in Ha & Lim v NSW. Only transitionary provisions remain which have no NCP implications.	1998/1999	10/98	Provisions that were deemed to restrict competition no longer have effect constitutionally following High Court decision in Ha & Lim v NSW.

Name of Legislation *Review Name*	*Agency*	*Status*	*Review Model*	*Review Comments*	*Date of Review*	*Date Review Completed*	*Reform Progress*
Wagering Bill	*TR*						
Review of Wagering Bill (that replaces part of Racing and Betting Act 1980)		Completed	Department Review	Two components in reviewing racing and betting legislation: firstly the Racing Industry Taskforce examined the statutory monopoly of the QLD TAB. This was addressed in developing the Wagering Bill. Second aspect is the review of the provisions of the Racing and Betting Act relating to bookmakers, conduct of race meetings and other related restrictions concerning the operation of race events. That review will be undertaken as a separate exercise. The review process to be subject to the Productivity Commission inquiry into gambling.	1997/1998	02/98	The statutory monopoly arrangements applying to TAB will be replaced by an exclusive licence of limited duration upon proclamation of the Wagering Act in 1999.
Indy Car Grand Prix Act 1990	*TSR*						
Indy Car Grand Prix Regulations 1990							
Review of Indy Car Grand Prix Legislation		Completed	Reduced NCP Review	Short-form justification, that included RIS process, supported retention of all legislative provisions under review. Legislation gives effect to conditionds for staging the race, including sole promoter role, that are contained in agreements with international owner of the rights to stage the race worldwide. All services and products associated with the Gold Coast event (eg catering) are competitively tendered.	1996/1997	10/98	Provisions subjected to PBT retained without change.
Liquor Act 1992	*TSR*						
Liquor Regulation 1992							
Review of Liquor Act		Underway	Full Public Review	The review began in October 1998 and is expected to be completed by the middle of 1999. An issues paper has been prepared and public hearings are being held, as at March 1999.	1998/1999		

Name of Legislation *Review Name*	*Agency*	*Status*	*Review Model*	*Review Comments*	*Date of Review*	*Date Review Completed*	*Reform Progress*
Racing and Betting Act 1980	*TSR*						
Racing and Betting Act Regulation 1981, Racing and Betting Act Notification and Rules of Greyhound Racing							
Review of Racing and Betting Legislation		Yet to begin	To be Determined	Two components in reviewing racing and betting legislation: firstly the Racing Industry Taskforce examined the statutory monopoly of the QLD TAB. This was addressed in developing the Wagering Bill. Second aspect is the review of the provisions of the Racing and Betting Act relating to bookmakers, conduct of race meetings and other related restrictions concerning the operation of race events. That review will be undertaken as a separate exercise and is expected to begin in 1999. The review process to be subject to the Productivity Commission inquiry into gambling.	1997/1998		
Racing Venues Development Act 1982	*TSR*						
Review of Racing Venues Development Act		Completed	Reformed without Review	An NCP review of this Act was not undertaken. However, amendments to racing legislation are to be made following a Racing Industry Task Force review of the racing indusrty.	1998/1999		To be amended upon proclamation of Racing Amendment Legislation in 1999.
Wine Industry Act 1994	*TSR*						
Wine Industry Regulation 1995							
Review of Wine Industry Legislation		Underway	Department Review		1998/1999		

ANTI-COMPETITIVE LEGISLATION ENACTED DURING 1998
ADDITIONAL TO ENTRIES IN THE LEGISLATION REVIEW SCHEDULE: QUEENSLAND

Title of Legislation	Agency	PBT Justification	Comment
Marine Park (Moreton Bay) Amendment Zoning Plan (No. 1)	EPA	No	Legislation excluded from NCP review on the basis of being for legitimate natural resource management purposes. The amendment confers a benefit by allowing continuance of non-conforming activity for existing operator. Non-conforming activity will be phased out in 1999 after ecological and economic study is completed.
Offshore Minerals Act 1998	ME	No	The new legislation closely follows the Commonwealth Offshore Minerals Act 1994, and is aimed at providing adequate management of Queensland's offshore minerals. Not seen as unnecessarily restricting competition.
Mineral Resources Amendment Act 1998	ME	No	Additional requirement enacted for mineral development licence holders. Not seen as a significant restriction on competition.
Gas Pipelines Access (Queensland) Act 1998	ME	No	Based on Queensland's commitment to apply the National Gas Pipelines Access Law. New Act will require pipeline operators and users to comply with the National Gas Access Code. Commencement is contingent on acceptance of derogations being reviewed by the NCC.
Standard Sewerage Law and Standard Water Supply Law	NR	No	Adopts National Plumbing and Drainage Code and separates regulations on plumbing and drainage standards from those dealing with management of water and sewerage utilities. No increase in restrictions on competition. The restrictive provisions will be examined as part of the scheduled review.
Transport Operations (Passenger Transport) Act 1994	T	No	Amendment made to prevent charter bus operators from behaving like taxis. Failure to rectify this matter may undermine the entry requirements of the Act. The restrictive provisions of the Act are scheduled for review in 1998/99.

Queensland Competition Authority

Individual Complaint Summary

Target of Complaint	Complainant	Date of Receipt of Complaint	Nature of Complaint	Findings of Investigation and Recommendation	Date of Advice of Recommendation to Complainant	Date of Advice of Recommendation to Target of Complaint	Action taken or proposed following Recommendation of Complaints Mechanism	Other Relevant Information
Queensland Rail (QR)	Coachtrans Australia	2 July 1997	Sita Queensland Pty Ltd, trading as Coachtrans Australia, lodged a complaint alleging that the principle of competitive neutrality had been breached by the prices that QR was charging for the Brisbane to Gold Coast passenger rail service and by certain procedural and regulatory advantages enjoyed by QR.	**Findings** The Authority investigated the compliant and concluded that: • The fares charged by QR for its Brisbane to Gold Cost services breach the principle of competitive neutrality; but • QR does not enjoy any procedural or regulatory advantage in respect of Brisbane to Gold Cost services which breach the principle of competitive neutrality. **Recommendations** The Authority recommended that: • A CSO (Community Service Obligation) framework be developed for the Brisbane to Gold Coast public transport service which: (i) complies with the principle or competitive neutrality; (ii) achieves an efficient resource allocation within the public transport market in South East Queensland; (iii) promotes competition in the public transport market; • until such time as the appropriate framework is established and implemented, the Queensland Government should, within six	9 July 1998	10 July 1998	The Authority submitted its report to the Honourable the Premier and the Treasurer. The Ministers have: (a) rejected the QCA's decision that there has been a breach of the principle of competitive neutrality in relation to the fares charged by QR for its Brisbane to Gold Coast services, on the basis that "the information available [to the Ministers] was not sufficiently conclusive to support the QCA's decision; and (b) accepted the QCA's decision that QR does not enjoy any procedural or regulatory advantages in respect of the Brisbane to Gold Cost services which breach the principle of competitive neutrality. The Ministers have also requested that Queensland Transport develop, as a matter of priority, a CSO framework which takes	

				months of the Report, ensure that passengers currently travelling by bus retain access to those or equivalent public transport services; and • Queensland Transport and QR establish a framework to facilitate adherence to the protocols required under the *Government Owned Corporations Act 1993* in respect of the establishment of prices for QR services and the payment of CSOs. Furthermore, the Authority suggested that in the interests of an overall efficient allocation of resources, the framework adopted in due course to remedy the breach of competitive neutrality should also reflect the contribution of public transport relative to private transport to the transport needs of the region.			account of the principle of competitive neutrality, based on model studies for South East Queensland.	

NCP Training – List of Training Materials

Full Cost Pricing Software and Training	*Software Users Guide: Identification and Review of Type 3 Business Activities*
	Competitive Neutrality Resource Kit – Full Cost Pricing – Data Sheets – Application of Full Cost Pricing
	Competitive Neutrality Resource Kit – Full Cost Pricing – Workbook (Student) Application of Full Cost Pricing
Meeting the Challenge Workshops	*Notice about the NCP Meeting the Challenge Workshops*
	Managing the Purchaser/Provider Separation: Handbook Notes
	Customer Service Agreements – Sample agreement
	Developing Service Level Agreements
	Developing Effective Tender Specifications
	Tendering and Contract Management
	Writing Business Plans for Business Units
	How to Make the Change in a Competitive Environment: A Real Life NCP Case Study
Study Tour – Identifying Obstacles to Commercialising	*The Road to Commercialisation – Identify the Obstacles Study Tour Workbook*
Accounting Issues Consultancy	*Discussion Paper on Accounting Issues*
Public Interest Test Workshops and Local Law Workshops	*Public Interest Test Examples*
	Public Interest Test Examples Volume 2
	Public Interest Test Examples Volume 3
	Public Interest Test Workshop Manual
	Local Law Review Workshop – Workshop Kit
	Local Government Bulletin 12/98 – Sample Public Interest Tests and Impact of Integrated Planning Act on Existing Model Local Laws
Establishing Complaint Processes or Accreditation & Investigations by Referees	*Local Government Business Activities and Competitive Neutrality – Part 1 – Complaint Process – June 1998*
	Local Government Business Activities and Competitive Neutrality – Part 2 – Referee Investigations - November 1998 (Draft) (final version with accompanying CD Rom to be released in 1999)
Commercialisation and Corporatisation Guidelines	*Establishing a Commercialised Business Unit: Exploring the Choices for In-House Service Providers*
Cross-subsides and Community Service Obligation Disclosure	*Progress Report and Case Studies for Cross-Subsidies and Inefficient Water Pricing: Identification and Reporting to Achieve Better Outcomes*

TABLE 2.1 COMPETITIVE NEUTRALITY REFORMS APPLIED TO 31 DECEMBER 1998

Council	Activity	Reform applied(to Dec 1998)	Comment	Complaints
Type 1 Significant Business Activities				
Brisbane	Brisbane Transport	Commercialised July 1998	Review for possible corporatisation in future	In-house
	Water & Sewerage	Commercialised July 1998	Review for possible corporatisation in future	In-house
	Cleansing (Refuse)	Full Cost Pricing July 1998		In-house
Gold Coast	Water & Sewerage	Commercialised July 1998	Review for possible corporatisation in future	In-house
	Cleansing (Refuse)	Full cost pricing July 1998	Commercialisation from July 1999	In-house
Ipswich	Water and Sewerage	Commercialised July 1998	Review for possible corporatisation in future	In-house
Logan	Water & Sewerage	Commercialised July 1998	Review for possible corporatisation in future	QCA appointed as Referee
Maroochy	Water & Sewerage	Full cost pricing July 1998	Commercialisation from July 1999	Seeking Accreditation
Townsville	Water & Sewerage	Commercialised July 1998		QCA appointed as Referee
Type 2 Significant Business Activities				
Caboolture	Water & Sewerage	Commercialised July 1998		In-house
Cairns	Water & Sewerage	Full cost pricing July 1998	Review for commercialisation in July 1999	In-house
	Cleansing (Refuse)	Full cost pricing July 1998	Activity contracted out until 2003	In-house
Caloundra	Water & Sewerage	Commercialised July 1998		QCA appointed as Referee
Hervey Bay	Water & Sewerage	Commercialised July 1998		QCA appointed as Referee
Ipswich	Cleansing (Refuse)	Commercialised July 1998	Review for corporatisation in 2000	In-house
Logan	Cleansing (Refuse)	Commercialised July 1998		QCA appointed as Referee
Mackay	Water & Sewerage	Commercialised July 1998		QCA appointed as Referee
Maroochy	Cleansing (Refuse)	Full cost pricing July 1998	Review for commercialisation when the current cleansing contract expires in December 2002	Seeking Accreditation
Noosa	Water & Sewerage	Full cost pricing July 1998	Consider for commercialisation in 2 years	QCA appointed as Referee
Pine Rivers	Water & Sewerage	Full cost pricing July 1998		QCA appointed as Referee
Redland	Water & Sewerage	Commercialised July 1998		QCA appointed as Referee
Rockhampton	Water & Sewerage	Commercialised July 1998		QCA appointed as Referee
Thuringowa	Water & Sewerage	Full cost pricing July 1998	Commercialise from July 1999[1]	QCA appointed as Referee
Toowoomba	Water & Sewerage	Full cost pricing July 1998	Review for commercialisation	In-house
Townsville	Cleansing (Refuse)	Commercialised July 1998		QCA appointed as Referee

[1] Originally resolved to commercialise from July 1998, but later resolved to implement full cost pricing from July 1998 with commercialisation from July 1999.

TABLE 2.2: FURTHER APPLICATION OF REFORMS

Type 3 Business Activities		
Council	**Activity**	**Reform to be Applied**
Banana	Road business activities	Code of Competitive Conduct
Boonah	Private works	Code of Competitive Conduct
Brisbane	+QEII Sports Complex	Code of Competitive Conduct
	+Sleeman Sports Complex	Code of Competitive Conduct
	+Golf Courses	Code of Competitive Conduct
	+City Pools	Code of Competitive Conduct
	+Brisbane Entertainment Centre	Code of Competitive Conduct
Burnett	Caravan Parks	Code of Competitive Conduct
Gold Coast	+Building Services	Code of Competitive Conduct
	+Tourism (Tourist Parks)	Code of Competitive Conduct
	+Quarry	Code of Competitive Conduct
Isis	+ Private Works	Code of Competitive Conduct
Mackay	+Entertainment	Code of Competitive Conduct
	+Sport & recreation	Code of Competitive Conduct
	+Building Services	Code of Competitive Conduct
	+Road business activities	Code of Competitive Conduct
Mareeba	Design	Advised it intends to apply Code of Competitive Conduct - but did not supply details of resolution
Mount Isa	Tourism (Riversleigh Fossil Museum & Tourist Centre)	Code of Competitive Conduct
Murilla	+Road business activities	Code of Competitive Conduct
Pine Rivers	+Building Services	Code of Competitive Conduct
Redland	+Land Development	Code of Competitive Conduct
	+Private Works (administrative schemes for land management (mowing))	Code of Competitive Conduct
	+Respite Care	Code of Competitive Conduct
	+Cultural (Community Halls)	Code of Competitive Conduct
	+Family Day Care	Code of Competitive Conduct from Jan 1999
	+Building Services	Commercialisation
	+Outside School Hours Care	Commercialisation from July 1999
	+Caravan Parks &camping	Commercialisation from July 1999
	+Childcare	Commercialisation from Jan. 1999
	+Cemetery Management Operations	Commercialisation from July 1999
	+Entertainment Centre/Hall	Commercialisation from July 1999
Thuringowa	Building Services (regulatory & certification units)	Full cost pricing
Tiaro	Private Works	Code of Competitive Conduct to be applied in 1999/2000
	Road business activities	Code of Competitive Conduct to be applied in 1999/2000
Toowoomba	+Entertainment	Full cost pricing
	+∇Cemeteries	Code of Competitive Conduct
	+∇Competitive Development Assessment	Code of Competitive Conduct
	+Road business activities	Full Cost Pricing
	+Sport & recreation	Full Cost Pricing
Whitsunday	Proserpine/ Whitsunday Airport	Code of Competitive Conduct

Other Business Activities		
Bendemere	Other road activities	Code of Competitive Conduct
Biggenden	Other road activities	Code of Competitive Conduct
Burnett	Other road activities	Code of Competitive Conduct
	Water & Sewerage	Code of Competitive Conduct
Cairns	+Other road activities	Code of Competitive Conduct
Esk	+Other Road Activities	Code of Competitive Conduct
	+Water & Sewerage	Code of Competitive Conduct
	+Refuse Management	Code of Competitive Conduct
	Engineering Management	Code of Competitive Conduct
Isis	+Water & Sewerage	Code of Competitive Conduct
Jericho	Other Road Activities	Code of Competitive Conduct
	Water & Sewerage	Code of Competitive Conduct
Mackay	Other road activities	Code of Competitive Conduct
	Refuse Management	Code of Competitive Conduct
	Plant & Equipment	Code of Competitive Conduct
	Workshop	Code of Competitive Conduct
	Cemeteries	Code of Competitive Conduct
	Design	Code of Competitive Conduct
	Public Toilets	Code of Competitive Conduct
	Land Development	Code of Competitive Conduct
	Plumbing Permits and Inspections	Code of Competitive Conduct
Mareeba	Other Road Activities	Advised it intends to apply Code of Competitive Conduct - but did not supply details of resolution
Maryborough	+Aerodromes	Code of Competitive Conduct
Miriam Vale	Other road activities (roads and drainage activity)	Code of Competitive Conduct
	Water & Sewerage	Code of Competitive Conduct
Paroo	+Other Road Activities	Code of Competitive Conduct
Redland	+Plant & Equipment (Fleet Management Operations)	Commercialisation from July 1999
	+Other road activities	Code of Competitive Conduct Will consider commercialisation from July 1999
	+Quarry	Code of Competitive Conduct
Tiaro	Other Road Activities	Code of Competitive Conduct to be applied in 1999/2000
	Water & Sewerage	Code of Competitive Conduct to be applied in 1999/2000
	Refuse Management	Code of Competitive Conduct to be applied in 1999/2000
Toowoomba	+∇Laboratory	Code of Competitive Conduct
Warwick	Other Road Activities	Code of Competitive Conduct
	Water & Sewerage	Full cost pricing
	Refuse Management	Full cost pricing

+ Local government has established a complaint process (or in some cases substantially commenced its establishment) although it has not yet implemented its competitive neutrality reform.
∇Local government intends to seek Queensland Competition Authority accreditation of the business activity.

TABLE 2.3 COMPARISON OF LOCAL LAWS BEFORE AND AFTER REVIEWS FOR ANTI-COMPETITIVE PROVISIONS AND REDUNDANT PROVISIONS

Council	No of Law 1994	Current No of Laws	Council	No of Laws 1994	Current No of Laws	Council	No of Laws 1994	Current No of Laws
Albert *	40	33	Diamantina	18	22	Moreton *	98	29
Allora *	39	14	Douglas	51	52	Mornington	17	17
Aramac	19	22	Duaringa	53	29	Mount Isa	45	23
Atherton	48	51	Eacham	26	26	Mount Morgan	30	23
Aurukun	17	17	Eidsvold	32	20	Mulgrave *	50	31
Balonne	33	24	Emerald	45	24	Mundubbera	48	29
Banana	52	28	Esk	45	20	Murgon	41	42
Barcaldine	26	22	Etheridge	30	8	Murilla	41	28
Bauhinia	31	6	Fitzroy	40	42	Murweh	36	36
Barcoo	19	19	Flinders	32	13	Nanango	39	37
Beaudesert	45	35	Gatton	36	37	Nebo	27	24
Belyando	43	31	Gayndah	41	22	Noosa	29	24
Bendemere	26	10	Gladstone	44	27	Paroo	39	26
Biggenden	45	7	Glengallan *	39	13	Peak Downs	29	9
Blackall	29	24	Gold Coast	41	49	Perry	41	27
Boonah	48	25	Goondiwindi	37	24	Pine Rivers	44	31
Booringa	34	15	Herberton	43	42	Pittsworth	47	21
Boulia	34	34	Hervey Bay	47	36	Quilpie	31	31
Bowen	55	45	Hinchinbrook	55	10	Redcliffe	44	38
Brisbane	21	26	Ilfracombe	20	23	Redland	48	33
Broadsound	40	22	Inglewood	44	19	Richmond	26	22
Bulloo	31	21	Ipswich	43	37	Rockhampton	55	39
Bundaberg	49	31	Isisford	28	20	Roma	41	25
Bungil	37	23	Isis	37	42	Rosalie	46	29
Burdekin	40	34	Jericho	32	17	Rosenthal *	24	9
Burke	26	29	Johnstone	50	40	Sarina	40	25
Burnett	103	47	Jondaryan	31	28	Stanthorpe	35	20
Caboolture	42	39	Kilcoy	28	30	Tambo	33	33
Cairns	48	50	Kilkivan	38	18	Tara	29	27
Calliope	26	17	Kingaroy	53	39	Taroom	75	46
Caloundra	50	51	Kolan	39	19	Thuringowa	32	33
Cambooya	33	11	Laidley	33	20	Tiaro	31	16
Cardwell	53	46	Livingstone	51	52	Toowoomba	45	32
Carpentaria	42	42	Logan	36	38	Torres	34	39
Charters Towers	30	26	Longreach	30	40	Townsville	40	40
Chinchilla	47	23	Mackay	68	41	Waggamba	40	15
Clifton	39	20	Mareeba	50	31	Wambo	36	25
Cloncurry	39	4	Maroochy	54	31	Warroo	47	35
Cook	42	47	Maryborough	48	42	Warwick	37	24
Cooloola	60	43	McKinlay	25	6	Whitsunday	58	34
Crows Nest	45	37	Millmerran	35	35	Winton	28	21
Croydon	21	21	Mirani	36	21	Wondai	48	21
Dalby	41	16	Miriam Vale	28	21	Woocoo	26	36
Dalrymple	15	18	Monto	33	22	**Total**		3659

* indicates local governments subject to amalgamations

Joint Local Governments	No of Laws 1994	Current No of Laws
Caloundra-Maroochy Water Supply Board	2	4
Dalby-Wambo Aerodrome Board	1	1
Dalby-Wambo Library Board	3	3
Dalby-Wambo Saleyards Board	5	5
Emerald-Peak Downs Saleyards Board	5	5
Gladstone-Calliope Aerodrome Board	1	1
Goondiwindi-Waggamba Aerodrome Board	1	1
Roma-Bungil Show Grounds and Saleyards Board	9	8
Rockhampton District Saleyards Board	6	6
Total	**33**	**34**

TABLE 2.4 APPLICATION OF TWO PART TARIFFS TO TYPE 1 AND 2 WATER BUSINESS ACTIVITIES

Council	Category	Current Tariff Structure	Tariff Details	
			Annual Access or Base Charge	Consumption Charge ($/c per kL)
Brisbane (a)	Domestic	Two-part tariff	$100	70c
	Com/Ind: metered	Two-part tariff	$330 (20mm dia. connection) to $74,160 (300mm dia. connection)	$0.67 to $1.10 per kL
	Com/Ind : unmetered	Property value	83c to 1.4c per $1 ucv	na
Caboolture (b) (universal)	Domestic Commercial/Industrial	Two-part tariff	$256 all users - $147.50 infrastructure - ($108.50 water usage allowance. This gives 350 kL - refund if 350kL is not used)	>350kL - 82/kLc
Cairns (b)	Domestic	Two-part tariff	$100 metered $253 unmetered (units)	51c per kL
	Commercial metered/ Comm./Indust. unmetered	Two-part tariff Unit based	$100 $14.88 per unit; may be 1 to 170 units	68c/kL
Caloundra (b)	Domestic	Two-part tariff	$80	75c/kL
	Commercial/Industrial			75c/kL
Gold Coast (b)(c)	Domestic	Fixed charge/ excess	$264 (for 300kL)	300-340kL: $1.02; >340kL: $1.30.
	Commercial/Industrial	Fixed charge/ excess	$264 (for 300kL)	300-340kL: $1.02; >340kL: $1.30.
Hervey Bay (b)	Domestic	Two-part tariff	$153	78c/kL
	Commercial/Industrial	Two-part tariff	$153	78c/kL
Ipswich (b)(d)	All metered (domestic 87%) and others	Two-part tariff	$135	0-450kL: 35c; 450-600kL: 60c; >600kL: $1.06
	Unmetered: Domestic	Fixed Charge	$560	na

Council	Category	Current Tariff Structure	Tariff Details	
			Annual Access or Base Charge	Consumption Charge ($/c per kL)
	Unmetered: Com/Ind	Fixed Charge	$1214 (500m^2) - $10655.20 (>2500m^2)	on area
Logan (b) (e)	Domestic	Two-part tariff	$135 x Flow Capacity Factor (FCF). FCF determined by (mm) 20mm = 1, to 200mm = 100	70c
	Commercial/Industrial		non-residential = $200 x FCF	
Mackay (a)	Domestic	Fixed charge/ excess	$230 for 300kL	301-1500kL: 43c; >1500kL: 60c
	Commercial/Industrial	Two-part tariff	$141 per factor (g) - may be 1 to 120 factors	0-1500kL per factor: 42c; >1500kL per factor: 58c
Maroochy (b)	Domestic	Two-part tariff	$145	87c/kL
	Commercial/Industrial	Two-part tariff	$372-$14,550	87c/kL
Noosa (b)	Domestic	Two-part tariff	$125	64c per kL
	Commercial/Industrial	Two-part tariff	$125-$12,500	64c/kL
Pine Rivers (h)	Domestic	Fixed charge	$263 (15mm dia. connection) $342 (20-25mm dia. connection)	No consumption charge
	Commercial/Industrial	Fixed charge	$224 to $1670	up to 600 kL per _ year - 76c between 600 and 1200 per _ year - 78c over 1200 kL per _ year - 80c
Redland (b)	Domestic	Two-part tariff	$179.60	0-360kL - 18c/ above 360kL - 70c
	Commercial/Industrial	Two-part tariff	$290-$3400	0-360kL - 18ckL. > 360kL - 70c
Rockhampton	Domestic	Fixed charge	$410.98	na
(b)(f)	Commercial/Industrial		unit based, see schedule	
Thuringowa	Domestic	Unit/ excess	$375.60 (for 768kL) $31.30/unit x 12 units	>768kL: 95c kL
	Commercial/Industrial		various unit-based; see schedule	

Council	Category	Current Tariff Structure	Tariff Details	
			Annual Access or Base Charge	Consumption Charge ($/c per kL)
Toowoomba (b)	Domestic	Two-part	$247	0-324kL: 38c; >324kL: $1.00 38c up to max. consump. Applicable to property. $1.00 above max. consump. Applicable to property.
	Commercial/Industrial	Two-part tariff	$247 - $13,382 (150mm)	0-324kL/38c 324kL - $1.00
Townsville	Domestic	Fixed charge/ excess	$346.88 (for 776kL)	>776kL: $1.05/kL
	Commercial/Industrial	Fixed charge/ excess	various by consumption. See schedule	

(a) Council has been granted an extension under the Act to 31/3/98 to complete the review and make a resolution
(b) Report and resolution on application of a two part tariff completed by 31/12/98
(c) Two-part tariff to apply from 2000/01
(d) 85% metered and steady progress to full metering
(e) Two-part tariff system implemented in 1998-99 Budget
(f) Rockhampton is largely unmetered. Although the review recommended introducing a two-part tariff, Rockhampton has resolved not to apply a two-part tariff at this stage and to undertake a further review within three years
(g) Commercial/industrial buildings and uses are allocated a factor between 1 and 120 dependant on Land Use and determined in accordance with the Council's Budget Resolution
(h) Where properties are metered, charges for excess water use may be levied if council considers water is being wasted
(i) Water charge varies according to land use/business type (public halls and churches are charged $69pa)

NEW WATER INFRASTRUCTURE

Completed Projects 1994-98		
Development[2]	**Results of Studies**	**Status of Project**
Teemburra Dam (Teemburra Creek, Pioneer Valley) Project cost $59.3 million 137,600 ML storage Development part of the Queensland Sugar Industry Infrastructure Package	University of Queensland concluded that the "economic return on the project would justify the dam". James Cook University concluded that the development of the dam and diversion will have no significant environmental or social impacts. Any effect on the storage area and the downstream habitats of Teemburra Creek and Palmtree Creek of a dam of 137,000 ML capacity could be mitigated with appropriate management strategies.	Completed
Walla Weir Project cost $14 million 29,000 ML storage Development part of the Queensland Sugar Industry Infrastructure Package	Project assessed to be economically viable. Environmental impacts assessed as: • potential impacts on lungfish habitats; • potential impacts on *Elseysa* tortise habitat and potential extinction in ponded area; • potential impacts on *Bertya cunninhamii* plant species; • potential impacts on platypus; • potential impacts on downstream fisheries. (Long term baseline studies on lungfish and turtle in progress). Environmental Management Implementation Plan to define storage operation practices to minimise identified impacts. An allowance for environmental flows made for Walla Weir in anticipation of the completion of the Burnett WAMP.	Completed
Borumba Dam Stage II (Yabba Creek) Project cost $3.1 million 12,000 ML additional storage capacity	Project assessed to be economically viable. Environmental impacts assessed as: • marginal impacts on river flows; • no notable impact on Yabba Creek biota; • some concerns regarding impacts on fish. EMP required to include a water release strategy to minimise impacts on Mary River Cod and Mary River Turtles. Estimated environmental flow allowances built into the new development in anticipation of the WAMP.	Completed

[2] New schemes are required, as a minimum to cover the ARMCANZ Lower Bound costs of providing water services, with progress towards the ARCANZ Upper Bound were possible.

Projects approved in 1998		
Development	**Results of studies**	**Status**
St George Off Stream Storage Project cost $15 million 55,000 ML storage	Government has had a commitment to redress the relatively low level of reliability of existing allocations since 1994 due to siltation of Beardmore Dam and revision of storage volume calculation. Alternatives considered included: • alternative sites; • alternative volumes of storage; • demand management; • alternative management options for storage; • do nothing. Final option selected was development of 25,000 off-stream cell to supplement allocations in existing St George Irrigation Project, plus 30,000 cell to supplement natural flows (primarily for stock and domestic purposes). 25,000 ML cell economically viable, 30,000 ML cell not justified on purely economic grounds, but may be justified on the basis of other non-economic criteria. Environmental impacts of storage assessed as: • reduced frequency of small floods; • reduced floodplain inundation; • average length of in-river drought periods likely to increase; • replacement of some aquatic vegetation by terrestrial vegetation; • reduction in the size of populations of frogs, waterbirds and their predators; • decrease in breeding frequency of waterbirds and frogs. Impacts to be addressed through an EMP and through environmental flows specified by the WAMP. Development of St George off-stream storage within the parameters of the interim cap policy.	Impact Assessment Studies completed. Planning and design well advanced. Negotiations for land resumption proceeding.

Impact assessment studies completed 1998		
Development	**Results of studies**	**Status**
Starlee Dam on the Comet River	Economically viable and manageable environmental impacts.	Government decision not to proceed on the basis of expected unfavorable impacts identified by the WAMP process.
Nathan Dam on Dawson River	Project assessed to be economically viable. Environmental impacts assessed to be: • loss of riparian corridor and riparian vegetation • impacts on boggomosses; • potential impact on downstream fisheries; • impacts on aquatic fauna. Final assessment that environmental impacts are not insignificant but not of a magnitude to interfere with the development of the proposed dam. Impacts to be managed though Environmental Management Plan and River Operations Management Plan.	SUDAW (a private sector consortium currently evaluating development of Nathan Dam on the basis of no Government funding. Assessment by SUDAW approaching completion. SUDAW proposal proceeds, Nathan Dam will be the first major private sector development of a large-scale irrigation dam on a commercial basis in Queensland.

Project planning assessment studies completed 1998		
Development	**Results of studies**	**Status**
Upper Teviot Brook Dam	Proposed development not financially viable at this stage	No further investigations planned
St Helen's Creek Dam	Draft Terms of Reference for study prepared	Government decision not to proceed with investigations
Finch Hatton Creek Dam	Draft Terms of Reference for study prepared	Government decision not to proceed with investigations
Stone River Dam	Proposed development not economically viable at this stage	Opportunities for groundwater development are being investigated
Dam on Flinders River at Richmond	Proposed development not economically viable at this stage	No further investigations planned. Private investigations for off-stream storages for irrigation is proceeding

Project planning assessment studies completed 1998		
Development	**Results of studies**	**Status**
Raising Jones Weir (Burnett River at Mundubbera)	Preliminary studies indicated prima facie feasibility	Planning, assessment and design currently proceeding
Raising Bucca Weir (Kolan River near Gin Gin)	Preliminary studies indicated prima facie feasibility	Planning, assessment and design currently proceeding
Condamine Weir	Terms of reference completed and expressions of interest currently being assessed.	
Paradise Dam on Burnett River	Preliminary engineering studies completed	Further investigations to proceed

Other Information

A weir on the Mary River near Gympie, Mary River Tidal Barrage and raising Kinchart Dam at conceptual stages only.

Local Government NCP Financial Incentive Package: Council Allocations and Payments

COUNCIL	Review Pool		Implementation Pool			Total	
	Maximum Allocation*	1998 Payments**	Maximum Allocation*	1998 Payments**	1999 Payments**	Maximum Allocation*	1998 & 1999 Payments**
Brisbane	$2,250,000	$2,100,000	$42,751,600	$2,400,000	$10,745,400	$45,001,600	$15,245,400
Gold Coast	$400,000	$280,000	$12,880,600	$605,400	$2,665,600	$13,280,600	$3,551,000
Logan	$215,000	$140,000	$5,905,600	$409,350	$1,442,150	$6,120,600	$1,991,500
Maroochy	$140,000	$98,000	$5,583,600	$360,350	$1,319,250	$5,723,600	$1,777,600
Ipswich	$215,000	$140,000	$5,199,600	$341,050	$1,215,350	$5,414,600	$1,696,400
Townsville	$215,000	$140,000	$4,206,600	$240,700	$863,500	$4,421,600	$1,244,200
Cairns	$140,000	$98,000	$3,770,600	$226,650	$539,950	$3,910,600	$864,600
Redland	$120,000	$84,000	$3,734,600	$178,250	$791,150	$3,854,600	$1,053,400
Pine Rivers	$120,000	$84,000	$3,342,600	$177,000	$312,000	$3,462,600	$573,000
Mackay	$120,000	$84,000	$3,021,600	$174,800	$756,500	$3,141,600	$1,015,300
Rockhampton	$120,000	$84,000	$2,567,600	$144,700	$479,800	$2,687,600	$708,500
Caloundra	$120,000	$84,000	$2,444,600	$135,450	$603,450	$2,564,600	$822,900
Hervey Bay	$120,000	$84,000	$1,914,600	$130,400	$418,000	$2,034,600	$632,400
Caboolture	$120,000	$84,000	$1,882,600	$101,200	$540,100	$2,002,600	$725,300
Toowoomba	$120,000	$84,000	$1,762,600	$89,300	$214,300	$1,882,600	$387,600
Noosa	$120,000	$84,000	$1,464,600	$103,900	$181,200	$1,584,600	$369,100
Thuringowa	$120,000	$84,000	$1,187,600	$81,500	$163,700	$1,307,600	$329,200
Sub-total	**$4,775,000**	**$3,836,000**	**$103,621,200**	**$5,900,000**	**$23,251,400**	**$108,396,200**	**$32,987,400**
Redcliffe	$55,000	$25,000	$1,386,600	-	$47,400	$1,441,600	$72,400
Bundaberg	$55,000	$25,000	$1,381,600	-	$31,600	$1,436,600	$56,600
Cooloola	$55,000	$25,000	$1,311,600	-	-	$1,366,600	$25,000
Beaudesert	$55,000	$25,000	$1,290,600	-	$36,100	$1,345,600	$61,100
Gladstone	$55,000	$25,000	$1,085,600	-	$53,300	$1,140,600	$78,300
Mount Isa	$43,000	$20,500	$923,600	-	$199,500	$966,600	$220,000
Burdekin	$43,000	$20,500	$827,600	-	$31,600	$870,600	$52,100
Maryborough	$43,000	$20,500	$772,600	-	$38,800	$815,600	$59,300
Johnstone	$35,000	$20,500	$761,600	-	$31,600	$796,600	$52,100
Bowen	$35,000	$20,500	$759,600	-	$35,500	$794,600	$56,000
Mareeba	$43,000	$20,500	$746,600	-	$31,600	$789,600	$52,100
Dalby	$35,000	$18,000	$721,600	-	$31,600	$756,600	$49,600
Calliope	$35,000	$20,500	$712,600	-	$46,500	$747,600	$67,000
Livingstone	$43,000	$20,500	$684,600	-	$31,600	$727,600	$52,100
Banana	$35,000	$20,500	$681,600	-	$57,400	$716,600	$77,900
Warwick	$35,000	$20,500	$665,600	-	$92,800	$700,600	$113,300
Burnett	$55,000	$25,000	$641,600	-	$114,700	$696,600	$139,700
Whitsunday	$35,000	$20,500	$641,600	-	$38,000	$676,600	$58,500
Cardwell	$25,000	$16,000	$587,600	-	$33,500	$612,600	$49,500
Douglas	$35,000	$20,500	$577,600	-	$31,600	$612,600	$52,100
Gatton	$25,000	$18,500	$547,600	-	$47,400	$572,600	$65,900
Emerald	$43,000	$18,000	$508,600	-	$31,600	$551,600	$49,600
Wambo	$25,000	$18,500	$509,600	-	$74,800	$534,600	$93,300
Esk	$35,000	$20,500	$486,600	-	$93,800	$521,600	$114,300
Crow's Nest	$23,000	$14,000	$478,600	-	$78,500	$501,600	$92,500
Belyando	$25,000	$16,000	$469,600	-	$45,200	$494,600	$61,200
Cloncurry	$25,000	$16,000	$435,600	-	-	$460,600	$16,000
Hinchinbrook	$35,000	$20,500	$414,600	-	$42,100	$449,600	$62,600
Dalrymple	$35,000	$18,000	$392,600	-	-	$427,600	$18,000
Charters Towers	$25,000	$16,000	$391,600	-	$34,100	$416,600	$50,100
Sarina	$23,000	$14,000	$378,600	-	-	$401,600	$14,000
Kingaroy	$25,000	$16,000	$346,600	-	$42,900	$371,600	$58,900
Blackall	$18,000	$13,000	$347,600	-	$31,600	$365,600	$44,600
Isis	$25,000	$16,000	$336,600	-	$63,200	$361,600	$79,200
Duaringa	$25,000	$16,000	$333,600	-	$31,600	$358,600	$47,600
Nanango	$25,000	$16,000	$321,600	-	$31,600	$346,600	$47,600
Chinchilla	$23,000	$14,000	$317,600	-	$31,600	$340,600	$45,600
Fitzroy	$25,000	$16,000	$315,600	-	$31,600	$340,600	$47,600
Stanthorpe	$25,000	$16,000	$308,600	-	$41,800	$333,600	$57,800
Peak Downs	$25,000	$16,000	$307,600	-	$79,500	$332,600	$95,500
Inglewood	$18,000	$13,000	$306,600	-	$32,100	$324,600	$45,100
Waggamba	$23,000	$14,000	$297,600	-	$31,600	$320,600	$45,600
Atherton	$25,000	$16,000	$289,600	-	$31,600	$314,600	$47,600
Carpentaria	$25,000	$16,000	$278,600	-	$31,600	$303,600	$47,600
Balonne	$25,000	$16,000	$276,600	-	$31,600	$301,600	$47,600
Barcoo	$18,000	$13,000	$278,600	-	-	$296,600	$13,000

COUNCIL	Review Pool		Implementation Pool			Total	
	Maximum Allocation*	1998 Payments**	Maximum Allocation*	1998 Payments**	1999 Payments**	Maximum Allocation*	1998 & 1999 Payments**
Herberton	$23,000	$14,000	$273,600	-	$31,600	$296,600	$45,600
Flinders	$25,000	$16,000	$259,600	-	$31,600	$284,600	$47,600
Millmerran	$18,000	$13,000	$265,600	-	$31,600	$283,600	$44,600
Rosalie	$18,000	$13,000	$259,600	-	$32,700	$277,600	$45,700
Longreach	$25,000	$16,000	$246,600	-	$31,600	$271,600	$47,600
Pittsworth	$18,000	$13,000	$249,600	-	$6,700	$267,600	$19,700
Eacham	$23,000	$14,000	$243,600	-	-	$266,600	$14,000
Jondaryan	$23,000	$14,000	$233,600	-	$31,600	$256,600	$45,600
Tiaro	$18,000	$13,000	$236,600	-	$33,500	$254,600	$46,500
Murgon	$25,000	$16,000	$227,600	-	-	$252,600	$16,000
Torres	$18,000	$13,000	$232,600	-	$31,600	$250,600	$44,600
Barcaldine	$25,000	$16,000	$219,600	-	$15,800	$244,600	$31,800
Boonah	$23,000	$14,000	$221,600	-	$34,000	$244,600	$48,000
Wondai	$18,000	$13,000	$225,600	-	$31,600	$243,600	$44,600
Winton	$25,000	$16,000	$217,600	-	$15,800	$242,600	$31,800
Kilkivan	$23,000	$14,000	$218,600	-	$31,900	$241,600	$45,900
Goondiwindi	$23,000	$14,000	$209,600	-	$33,600	$232,600	$47,600
Booringa	$23,000	$14,000	$205,600	-	-	$228,600	$14,000
Richmond	$18,000	$13,000	$210,600	-	$31,600	$228,600	$44,600
Boulia	$25,000	$16,000	$197,600	-	$31,600	$222,600	$47,600
Aramac	$18,000	$13,000	$195,600	-	$15,800	$213,600	$28,800
Isisford	$18,000	$13,000	$188,600	-	-	$206,600	$13,000
Kilcoy	$18,000	$13,000	$188,600	-	$31,600	$206,600	$44,600
Nebo	$18,000	$13,000	$188,600	-	$31,600	$206,600	$44,600
Paroo	$18,000	$13,000	$186,600	-	$35,900	$204,600	$48,900
Murilla	$18,000	$13,000	$183,600	-	$43,800	$201,600	$56,800
Tambo	$18,000	$13,000	$183,600	-	-	$201,600	$13,000
Laidley	$25,000	$16,000	$172,600	-	-	$197,600	$16,000
Bulloo	$18,000	$13,000	$178,600	-	-	$196,600	$13,000
Bungil	$18,000	$13,000	$178,600	-	$31,600	$196,600	$44,600
Biggenden	$18,000	$13,000	$177,600	-	$35,000	$195,600	$48,000
Jericho	$18,000	$13,000	$177,600	-	$34,800	$195,600	$47,800
Diamantina	$18,000	$13,000	$175,600	-	$31,600	$193,600	$44,600
Mirani	$23,000	$14,000	$170,600	-	$31,600	$193,600	$45,600
Gayndah	$18,000	$13,000	$173,600	-	-	$191,600	$13,000
Burke	$18,000	$13,000	$172,600	-	-	$190,600	$13,000
Cambooya	$18,000	$13,000	$172,600	-	$31,600	$190,600	$44,600
Croydon	$18,000	$13,000	$170,600	-	$31,600	$188,600	$44,600
Warroo	$18,000	$13,000	$170,600	-	$15,800	$188,600	$28,800
Miriam Vale	$18,000	$13,000	$169,600	-	$39,800	$187,600	$52,800
Broadsound	$23,000	$14,000	$161,600	-	$31,600	$184,600	$45,600
Monto	$18,000	$13,000	$164,600	-	$15,800	$182,600	$28,800
Etheridge	$23,000	$14,000	$153,600	-	$31,600	$176,600	$45,600
Bauhinia	$18,000	$13,000	$154,600	-	$31,600	$172,600	$44,600
McKinlay	$18,000	$13,000	$151,600	-	$31,600	$169,600	$44,600
Mundubbera	$18,000	$13,000	$150,600	-	-	$168,600	$13,000
Clifton	$18,000	$13,000	$145,600	-	$6,400	$163,600	$19,400
Taroom	$23,000	$14,000	$129,600	-	$31,600	$152,600	$45,600
Bendemere	$18,000	$13,000	$130,600	-	$1,100	$148,600	$14,100
Woocoo	$18,000	$13,000	$128,600	-	$31,600	$146,600	$44,600
Perry	$18,000	$13,000	$122,600	-	$31,600	$140,600	$44,600
Quilpie	$18,000	$13,000	$122,600	-	-	$140,600	$13,000
Murweh	$25,000	$16,000	$106,600	-	-	$131,600	$16,000
Roma	$25,000	$16,000	$106,600	-	-	$131,600	$16,000
Mornington	$23,000	$16,500	$106,600	-	-	$129,600	$16,500
Aurukun	$18,000	$13,000	$106,600	-	-	$124,600	$13,000
Cook	$18,000	$13,000	$106,600	-	$31,600	$124,600	$44,600
Eidsvold	$18,000	$13,000	$106,600	-	$31,600	$124,600	$44,600
Ilfracombe	$18,000	$13,000	$106,600	-	$31,600	$124,600	$44,600
Kolan	$18,000	$13,000	$106,600	-	-	$124,600	$13,000
Mount Morgan	$18,000	$13,000	$106,600	-	-	$124,600	$13,000
Tara	$18,000	$13,000	$106,600	-	-	$124,600	$13,000
Sub-total	**$2,758,000**	**$1,694,500**	**$37,851,800**	**-**	**$3,275,900**	**$40,609,800**	**$4,970,400**
TOTAL	**$7,533,000**	**$5,530,500**	**$141,473,000**	**$5,900,000**	**$26,527,300**	**$149,006,000**	**$37,957,800**

* Not indexed in line with competition payments from the Commonwealth to the Queensland Government.

** Indexed.

REPORT TO THE NATIONAL COMPETITION COUNCIL

IMPLEMENTATION OF NATIONAL COMPETITION POLICY AND RELATED REFORMS

IN

SOUTH AUSTRALIA

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ABBREVIATIONS

ACCC	Australian Competition and Consumer Commission
ANZMEC	Australia and New Zealand Mines and Energy Council
ARMCANZ	Agriculture & Resource Management Council of Australia and New Zealand
ATC	Australian Transport Council
CCA	Conduct Code Agreement
COAG	Council of Australian Governments
CPA	Competition Principles Agreement
GBE	Government Business Enterprise
GBE Act	Government Business Enterprises (Competition) Act 1996
GRIG	Gas Reform Implementation Group
LGA	Local Government Association
NCC	National Competition Council
NCP	National Competition Policy
NECA	National Electricity Code Administrator
NEM	National Electricity Market
NEMMCO	National Electricity Market Management Company
NRTC	National Road Transport Commission
OLG	Office of Local Government
SAIPAR	South Australian Independent Pricing and Access Regulator
SANI	South Australian Network Interconnector
TPA	Trade Practices Act 1974

CONTENTS

1. INTRODUCTION

This report summarises progress during 1998 by the South Australian Government in implementing the obligations contained in the three Intergovernmental Agreements (National Competition Policy Agreements) endorsed by the Council of Australian Governments (CoAG) on 11 April 1995, viz:

- Conduct Code Agreement;
- Competition Principles Agreement;
- Agreement to Implement the National Competition Policy and Related Reforms.

It provides the National Competition Council (NCC) with the information that the NCC requires in order to conduct its assessment for the second tranche of competition payments in June 1999. The first tranche assessment was conducted by the NCC in June 1997, with a supplementary assessment in June 1998. South Australia was assessed as having fully met its obligations for the first tranche of competition payments.

The report also fulfils the formal requirements of the Competition Principles Agreement (CPA) to publish an annual report concerning implementation of competitive neutrality requirements (refer CPA, Clause 3 (10)) and legislation review requirements (refer CPA, Clause 5 (10)).

The report is structured under the broad headings of Conduct Code Agreement, Competition Principles Agreement, and Related Reforms. A small bibliography provides details of relevant publications.

The report has been prepared by the Department of the Premier and Cabinet, in consultation with other agencies of the SA Government, including particularly the Department of Treasury and Finance, and the Justice Department. Inquiries about the report may be directed to the Economic Reform Branch, Department of the Premier and Cabinet, telephone (08) 8226 0903.

2. CONDUCT CODE AGREEMENT

The Conduct Code Agreement (CCA) obliges the South Australian Government to enact Application of Laws legislation to apply the Competition Code, without modification, in South Australia. The Competition Code (effectively the restrictive business practice provisions of Part IV of the *Trade Practices Act, 1974 (C/wth)*) is applied to all persons in South Australia, including the Crown in so far as it carries on a business.

Clause 2.(1) of the CCA requires that written notice of all exemptions made by State law, in reliance on section 51.(1) of the *Trade Practices Act*, will be given to the Australian Competition and Consumer Commission (ACCC) within 30 days of enactment. Clause 2.(3) requires written notice to be given to the ACCC by 20 July 1998 of section 51.(1) exemptions in existence at the commencement of the CCA and which will continue to have effect after 20 July 1998.

The *Competition Policy Reform (South Australia) Act, 1996 (SA)* and the *Competition Policy Reform (South Australia) Savings and Transitional Regulations, 1996 (SA)* came into force on 21 July 1996, and have continued in operation unaltered since that date. This legislation satisfies the obligations contained in clause 5 of the CCA. It applies the Competition Code to all persons coming within South Australia's jurisdictional reach, including those unincorporated persons, not engaged in interstate or foreign trade or commerce, to whom Part IV of the *Trade Practices Act* does not apply for constitutional reasons.

Over the last two and a half years South Australian Government business agencies have become more familiar with the requirements of the competition laws and consequently there have been no allegations of contraventions by them during the reporting period. Nevertheless, the Government is aware of the requirement for its agencies to put compliance programs in place, and to maintain compliance awareness. Over the last two and a half years several agencies assessed as most at risk have been targeted with compliance seminars. The Crown Solicitor's Office maintains a Competition Law Unit that can assist agencies with Trade Practices compliance and risk management. The Competition Law Unit maintains contact with the ACCC Adelaide Regional Office on issues that concern both the Government and the ACCC, including substantive trade practices matters and matters of mutual policy interest.

Within the reporting period, South Australia has not enacted any new section 51.(1) exemptions required to be notified pursuant to clause 2.(1) CCA. On 9 July 1998, the Government wrote to the ACCC as required by clause 2.(3) CCA reporting all exemptions in existence at the commencement of the CCA and which will continue to have effect after 20 July 1998.

The NCC has sought confirmation that the section 51 exemption in the *Dairy Industry Act 1992* satisfies CPA clause 5(5). This matter is being addressed in the review of the *Dairy Industry Act*.

During the reporting period there was contact with the Office of the Federal Treasurer concerning the appointment of members to the ACCC pursuant to clause 4 CCA, and concerning modifications to the Competition Laws pursuant to clause 6 CCA.

On 26 October 1998, Ms Yasmin King of Adelaide was appointed as an Associate Member of the ACCC for a period of three years, with responsibilities in the area of small business.

3. COMPETITION PRINCIPLES AGREEMENT

The Competition Principles Agreement (CPA) puts in place policy elements additional to those contained in the Conduct Code which are considered essential for a comprehensive National Competition Policy. These additional policy elements are:

- independent oversight of prices charged by monopoly Government businesses;
- competitive neutrality, to ensure significant Government businesses do not enjoy any net competitive advantage simply as a result of public sector ownership;

- structural reform of public monopolies prior to privatisation or introducing competition to the market supplied by the monopoly;
- review of legislation which restricts competition;
- third party access to services provided by means of significant infrastructure facilities;
- application of these principles to Local Government.

3.1 PRICES OVERSIGHT

The *Government Business Enterprises (Competition) Act 1996* came into operation on 15 August 1996. The Act establishes an independent prices oversight mechanism for monopoly or near monopoly Government Business Enterprises (GBEs) and provides for public consultation as part of the mechanism. SA Water Corporation was declared for prices oversight under this Act in October 1996 and an independent investigation commenced into water and sewerage pricing. The final report of that investigation was delivered to the Government in April 1997 and gazetted, after tabling in Parliament, in June 1997. The declaration of SA Water remains in force until 21 November 1999. During 1998 no other GBEs were declared for prices oversight.

3.2 COMPETITIVE NEUTRALITY

This section provides the Government's annual report for the 12 months to December 1998 on the implementation of the competitive neutrality policy and principles, as required by Clause 3(10) of the CPA.

As outlined in the Government's competitive neutrality policy statement of June 1996, competitive neutrality principles will be progressively applied to the Government's significant business activities.

Principles of competitive neutrality under section 16 of the *Government Business Enterprises (Competition) Act 1996* were proclaimed on 12 June 1997. The basic competitive neutrality principles are corporatisation, tax equivalent payments, debt guarantee fees and private sector equivalent regulation. Where application of these four principles is inappropriate, the CPA specifies that prices charged by significant Government business activities should reflect full cost attribution. Competitive neutrality principles are to be applied to the extent that the benefits of so doing outweigh the costs. The proclamation also identified seven Category 1 government businesses (ie those with revenue greater than $2 million or assets valued at greater than $20 million).

A further proclamation under Section 16 of the *Government Business Enterprises (Competition) Act* was made on 7 May 1998, so that a total of 30 Category 1 government businesses are now gazetted.

A Guide to the Implementation of Competitive Neutrality Policy was prepared in March 1998 to assist agencies responsible for implementing competitive neutrality. Considerable progress has been made in implementing the principles of competitive neutrality for the majority of Category 1 government businesses.

To date, the following reforms have been implemented or are underway:

- Corporatisation of the water, electricity and ports utilities;
- Scoping reviews in respect of SAGRIC, TAB and Lotteries Commission are being undertaken as part of the Government's comprehensive asset sales program announced in February 1998;
- Corporatisation of the Adelaide Festival Centre Trust, TransAdelaide and Forestry Plantation Products (Forestry SA) have commenced;
- Commercialisation of West Beach Trust, Enfield General Cemetery Trust and the Police Security Services Division of the South Australian Police have commenced; and
- For the remaining Category 1 businesses, further work is being undertaken on reviews and reforms complying with competitive neutrality principles. It is expected that this work will be completed by June 1999.

Forestry SA

Corporatisation and the full range of private sector equivalence measures is the preferred model of competitive neutrality for Forestry SA. Forestry SA is a public trading enterprise that controls significant State-owned resources. While it undertakes a range of community service activities, these comprise only a minor proportion of overall activities and can be structurally and/or financially separated from commercial operations. Corporatisation will provide the business with clear commercial and non-commercial objectives, improved incentive arrangements and a commercial board that will improve the efficiency of operations. The cost benefit assessment concluded that the benefits of increased efficiency would outweigh the minimal transaction costs associated with corporatisation.

TransAdelaide

In July 1998, the government approved the development of a proposal to establish TransAdelaide as a public corporation with oversight by an interim board. The interim board confirmed that full corporatisation under the Public Corporations Act 1993 is the best option to provide a clear set of accountabilities and to establish appropriate governance arrangements to ensure that the business is an efficient and effective competitor in the market for public transport. Legislation establishing TransAdelaide under the Public Corporations Act 1993 was recently passed by Parliament.

Adelaide Festival Centre Trust

In June 1998, the government endorsed a strategy to protect the long term viability of the Adelaide Festival Centre Trust. A key component of this strategy is the application of significant provisions of the Public Corporations Act 1993 to the Trust which should provide the necessary focus and incentive for improved commercial performance through the implementation of a corporate governance model that has clear accountabilities and stakeholder roles. Work has commenced on the development of a charter and performance statement for the Trust.

Police Security Services Division (PSSD)

PSSD is a minor part of the overall South Australian Police operations in terms of resource utilisation and annual expenditure. Due to organisational context and size, commercialisation is considered the most appropriate competitive neutrality principle to apply.

West Beach Trust and Enfield General Cemetery Trust

For both the West Beach Trust and the Enfield General Cemetery Trust, commercialisation is the proposed competitive neutrality principle to apply as this will clarify the relationship between the government and the Trust, increasing transparency and accountability and thereby capturing the benefits of corporatisation but at a lower overall cost.

As from 1 July 2000, wholesale sales tax will be abolished. Given the administrative cost associated with establishing a sales tax equivalent rate, it is proposed not to extend the coverage of the wholesale sales tax equivalent regime. All State Governments will be liable for actual Goods and Services Tax from 1 July 2000.

The Government's guarantee fee policy is that guarantee fees charged to agencies will be set at a level commensurate with benefits obtained from funds raised utilising the Government guarantee. The benefit to agencies is based on the cost to an agency of obtaining funds without Government backing (ie on a "stand alone" basis), where applicable.

Category 2 other significant business activities

A list of Category 2 other significant business activities ie those significant business activities which have revenue of $2 million or less per annum and assets valued at $20 million or less, has been prepared. The list will be gazetted once approved.

A detailed implementation plan for Category 2 businesses is being developed and is expected to be completed during April 1999. The plan will include requirements to undertake reviews of the gazetted Category 2 activities, identifying which competitive neutrality principles are to be applied, in line with published guidelines. The principles identified, as well as plans and timetables for final implementation of competitive neutrality in Category 2 business activities, are to be published by 31 December 1999 (where they have not already been implemented). Implementation of decisions on application of competitive neutrality policies to Category 2 businesses is expected to be completed by 30 June 2000.

Review of the SA Government's Competitive Neutrality Policy Statement

In December 1998 Cabinet endorsed the establishment of a process to review the 1996 Competitive Neutrality Policy Statement (the Statement), and the relevant part of the *Government Business Enterprises (Competition) Act 1996* (GBE Act).

The 1996 Statement required that its effectiveness be reviewed and a new policy statement published by 30 June 2000. However this review was brought forward for a number of reasons, including:

- the timeframes set down in the statement had proven not to be achievable and there was a need for greater prioritisation in implementing reforms;
- the report of the Competition Commissioner into a competitive neutrality complaint highlighted the need for greater definition and clarity of terms such as “government” and “business”;
- the section referring to competitive neutrality complaints needed updating to reflect that the GBE Act had been enacted, a Competition Commissioner appointed and a complaints secretariat established.

The review was conducted by a key agency working group comprising representatives from the Departments of Premier and Cabinet; Justice; Treasury and Finance; Administrative and Information Services; Industry and Trade; Human Services; and Education, Training and Employment.

A review of the Clause 7 statement on the application of competition principles to Local Government is proceeding in parallel with the State review.

In March 1999, Cabinet is expected to consider the drafting of amendments to the GBE Act and adoption of a new SA Government Competitive Neutrality Policy Statement to replace the existing statement. The new Statement will be published following the successful passage through Parliament of the legislative amendments.

The new Statement will provide greater definition and guidance with respect to the meaning of “business” and “significant” for the purposes of competitive neutrality policy, update the complaints mechanism section and revise the implementation timetable to one which is considered to be both achievable and to reflect the need to prioritise implementation. The new Statement is expected to include a list of Government business activities that have been identified, and gazetted, as Category 2 (other significant) Government business activities.

Publication of the new Statement is to be coordinated with the provision of greater practical assistance to agencies by the Department of Treasury and Finance, together with an increased emphasis on the benefits of competitive neutrality as a business improvement mechanism.

Competitive Neutrality Complaints

The GBE Act came into operation in August 1996. The GBE Act provides for the appointment of Competition Commissioners who can be assigned to investigate complaints of infringement of competitive neutrality principles. In August 1997, a Commissioner was appointed by the Governor to investigate complaints referred to him by the Premier.

The Department of the Premier and Cabinet provides a secretariat for the complaints mechanism. It responds to enquiries from potential complainants. A package of information relevant to competitive neutrality complaints has been compiled and is available to persons seeking further information.

Upon receipt of a written complaint against a State Government business activity, and subject to being within the scope of the GBE Act, the complaint is referred to the State agency for initial response. Complaints against a local government business activity are initially referred to the local government(s) concerned for investigation, report and possible resolution. Following the initial response by the State agency, or where the complaint cannot be satisfactorily resolved in the case of a Local Government complaint, consideration is given to the assignment of the Competition Commissioner.

Three investigations were incomplete at the end of 1997. Of these, two had been assigned to the Commissioner, and the third was subsequently assigned to him during 1998. The Commissioner completed his first investigation during 1998, finding that the Cleland Wildlife Park was a significant government business activity and recommending an analysis by the agency to determine which, if any, competitive neutrality principles it would be appropriate to apply. The Government accepted the Commissioner's recommendation and the agency has undertaken to conduct the analysis within a 12 month timeframe.

Five written complaints were received during 1998. One complaint was determined to be *ultra vires* the GBE Act, and another related to a local government authority. The complaint relating to the local government authority was referred to the local governments involved for investigation and report. The Competition Commissioner has been assigned to investigate and report on the remaining three complaints, following receipt of initial information from the agencies involved.

A summary of complaint statistics for 1998 is given in Table 1. Table 2 provides information on formal complaints finalised in 1998.

TABLE 1

SUMMARY OF COMPLAINTS STATISTICS FOR 1998

	Complaints investigated	Completed Investigations				Incomplete investigations			
		Upheld		Dismissed		In progress	Terminated – trivial / vexatious / *mala fide*	Terminated – complaint withdrawn	Terminated - other
	Number	Number	Av. time to recommend	Number	Av. time to recommend	Number	Number	Number	Number
State	7	1	13 mths			5			1 *Ultra vires*
Local Government	1			1	3 mths				
Total	8	1		1		5			1

On hand 1/1/98		3
Add complaints received	5	
Less complaints finalised	3	2
On hand 31/12/98		5*

*Of these, one investigation has since been suspended pending sale of the government business activity, and two investigations have been dismissed by the Competition Commissioner (Jan and Feb 1999 respectively)

TABLE 2

FORMAL COMPLAINTS FINALISED IN 1998

Date of receipt of complaint	*Target of complaint*	*Nature of complaint* [1]	*Findings of investigation and recommendation*	*Date of formal advice to complainant*	*Date of formal advice to target of complainant*	*Action taken or proposed following recommendation* [2]	*Other relevant information*[3]
10/6/97	Department for Environment, Heritage and Aboriginal Affairs: Cleland Wildlife Park	Government business activity: competitive neutrality principles not being applied	Investigation completed – complaint upheld Competitive neutrality to be introduced to significant business activity previously not covered by policy	17/8/98	17/8/98	Recommendations accepted - DEHAA to undertake analysis of appropriate principles	Timeframe for review - 12 months
3/7/98	ETSA	Use by the Department of Human Services of ETSA Power to distribute an energy rebate to pensioners	Investigation terminated by complaints secretariat on advice of Crown Law that complaint is *ultra vires* the GBE (Competition) Act 1996 - policy matter - fulfilment of a community service obligation - competitive neutrality not applicable	15/9/98			
7/9/98	Local Government -Eastern Waste Management Authority (East Waste)	Local Government business activity: competitive neutrality principles not being applied	Investigation completed – complaint dismissed East Waste had not undertaken any significant business activities since the Cl.7 CN Statement. <u>Specific recommendations</u> In bidding for any new commercial business activities East Waste to fully account for all costs that are applicable to private industry operating in the same market	/12/98	17/11/98	Local Governments involved in East Waste have adopted the recommendations resulting from the investigation and report	Local Governments involved in East Waste engaged an independent consultant to investigate and report on complaint

(1) brief description including any issues peculiar to the complaint
(2) including action by : Minister, target of complaint and dissatisfied complainants
(3) including reason for delay in resolving complaint where applicable
(4) *a complaint may be terminated by the complaints office because it is trivial, vexatious or mala fide*

3.3 STRUCTURAL REFORM

No structural reform investigations, pursuant to Clause 4 of the CPA, were required to be undertaken in South Australia during 1997. The electricity sector was the subject of considerable structural reform in 1998.

National agreements on the structure of the electricity industry commit jurisdictions, prior to their participation in the national market, to have:

- Structurally separated generation from transmission; and
- Ring-fenced the retail and distribution businesses.

On 1 January 1997, the South Australian Generation Company ('Optima') was formally separated from ETSA Corporation (which included transmission).

On 12 October 1998, the South Australian Generation Company was restructured into three new generation companies - Optima Energy, Flinders Power and Synergen - and a separate Gas Trader Company was formed. ETSA Corporation was disaggregated to form ElectraNet SA as owner of the State's high voltage transmission assets, with the retail and distribution businesses maintained as stapled ringfenced subsidiaries ETSA Utilities Pty Ltd and ETSA Power Pty Ltd under a common holding company.

The stapled entities will be "ringfenced" to the following extent:

- The accounts for each entity will be separated.
- The distribution and retail assets will be allocated to separate legal entities, to facilitate transparency in dealings between distribution and retail.
- The Boards of the distribution and retail companies will be separate and not identical, although some members may be common to both Boards.
- There will be no cross-subsidisation of the retail business by the distribution business.
- Strict 'Chinese wall' arrangements will be implemented to ensure that confidential information is quarantined within the relevant operating entity.
- The distributor will provide services to retailers on a non-discriminatory basis, with no advantage accruing to the stapled retailer.

Clause 4 of the CPA provides that, before introducing competition into a market traditionally supplied by a public monopoly, governments:

- Remove from the public monopoly any responsibilities for industry regulation; and
- Conduct a review of structural and competitive arrangements in the industry.

As required by Clause 4, the South Australian Government undertook a detailed review of structural and competitive arrangements in the industry, submitting a report to the NCC outlining the proposed reform and sale of the South Australian electricity assets on 15 September 1998.

A range of new regulatory and associated arrangements have been developed in conjunction with the structural reforms. These arrangements feature:

- an Independent Industry Regulator, responsible for pricing, licensing and network access;

- an Electricity Ombudsman, to deal with customer complaints;
- an Electricity Supply Industry Planning Council;
- a Sustainable Energy Authority; and
- a Technical Regulator, with responsibility for safety and technical service requirements.

The sale of the business entities and establishment of these arrangements is dependent on the passage of a package of reform legislation comprising:

- Independent Industry Regulator Bill 1998;
- Electricity (Miscellaneous) Amendment Bill 1998;
- Sustainable Energy Bill 1998; and
- Electricity Corporations (Restructuring and Disposal) Bill 1998.

This legislative package is due to be considered by Parliament in early 1999. Should the sale legislation not pass through Parliament, the intention to proceed with some elements of the package may need to be re-evaluated by the Government.

Subject to ensuring the appointment of an independent regulator for network pricing and access, and establishment of the proposed Electricity Supply Industry Planning Council, it is considered that South Australia will have discharged its responsibilities under the Competition Principles Agreement in relation to electricity reform for the second tranche of competition payments.

3.4 LEGISLATION REVIEW

This section provides the Government's annual report for the 12 months to December 1998 on the review of legislation that restricts competition, as required by clause 5(10) of the CPA.

Reviews completed by December 1998

Resources devoted to competition policy review of legislation increased significantly in 1998 compared to earlier years. While there is still some slippage against the timetable, there are only 7 reviews scheduled to have been completed in 1998 for which terms of reference and review arrangements have not yet been approved.

Table 3 summarises the reviews that were (according to the May 1998 timetable) scheduled to be completed in 1996, 1997 and 1998, and indicates whether the review has been completed. The table also includes the reviews scheduled for 1999 and 2000, some of which have been completed ahead of schedule. The 5 reviews which have no year designated are, in most cases, possible joint or national reviews for which arrangements are still being negotiated.

Table 3 shows that, of the 178 Acts in the current (May 1998) timetable, 121 were scheduled to have been reviewed by December 1998, and 44 such reviews have been completed. However, including reviews completed ahead of schedule, 49 have been completed, and 90 are underway, leaving only 7 reviews scheduled to be completed in 1998 for which terms of reference and review arrangements have

not yet been approved. These 7 reviews will become the focus of monitoring attention, along with the 32 reviews which, while they have not yet started, are not at this stage behind schedule, being scheduled to be completed by December 2000.

The summary table is based on detailed information contained in Attachment 1. Within each year, Acts in Attachment 1 are listed by portfolio. Reviews shown as being 'well underway' are expected to be completed by mid-1999.

TABLE 3
SUMMARY OF LEGISLATION REVIEWS

Year	Scheduled	Not started	Started	Completed	Underway
1996	17	0	17	14	3
1997	26	0	26	19	7
1998	78	7	71	11	60
sub total	121	7	114	44	70
1999	46	28	18	4	14
2000	6	2	4	0	4
Not stated	5	2	3	1	2
Total	**178**	**39**	**139**	**49**	**90**

Updating of timetable

In May 1998 the Government published an updated version of the timetable that was first published in June 1996. The revised version took account of

- changes to the timing of reviews;
- redesignation of some potential national reviews as State reviews;
- restructuring of Ministerial portfolios in October 1997 which resulted in changes in the committal of certain Acts.

Following submission of this report, the timetable will again be updated to reflect further changes to the timing of reviews. No Acts were added to, or removed from, the timetable during 1998. Following an approach by the NCC, the Crown Solicitor's Office undertook a review of the *Southern State Superannuation Act 1994* for restrictions on competition. The Crown Solicitor's Office has advised the Department of Treasury and Finance (see Attachment 2) that the Act includes trivial restrictions on competition that are clearly in the public interest and the Act should therefore not be placed on the South Australian government's schedule for legislation review.

The Crown Solicitor's Office is currently examining all indentures for restrictions on competition, and will recommend whether any additional indentures should be included in the competition policy review program.

Several significant reviews were completed during 1998, some of which are described below.

Prices Act 1948

The Act was reviewed in 1998 by the Office of Consumer and Business Affairs.

Originally introduced to address the problem of providing for a just and equitable distribution of a limited supply of consumer goods (particularly necessities) in the immediate post-war period, the social and economic problems that the Act originally sought to address have largely been overcome over the years, and the Act has now evolved to address new problems.

The Act allows for goods to be declared by the Governor, and for the Minister to set maximum prices in relation to these declared goods.

This can prove a useful emergency power. The Act grants wider powers for the setting of prices than does comparable emergency powers legislation, and these powers may be beneficial in circumstances of natural disasters or crippling infrastructure problems.

The pricing mechanisms provided for in the Act promote administrative efficiency, as they can be incorporated by reference into other legislation which may otherwise require separate and detailed pricing mechanisms. A current example is the setting of towing charges (which form part of a comprehensive scheme of regulation of the towing industry established under the *Motor Vehicles Act 1959*.)

The Act currently provides for the setting of maximum prices in relation to infant and invalid foods, medical services, ferry services, and tow truck charges.

The legislation also prohibits the reselling of bread and bread rolls by retailers to suppliers. Regulations were introduced in 1985 to prohibit the practice of “sale and return”. This practice involved large retailers over-ordering stocks of bread and bread rolls so they could be sure of not running out, and then using their market power to force bakeries to re-purchase unsold stock.

The practice resulted in large-scale inefficiencies and significant wastage (as unsold product had to be dumped). The regulations appear to promote greater efficiency in the ordering processes adopted by the large retailers, as they must now bear the costs of their own practices (which they previously transferred back to the suppliers through the practice of “sale and return”.)

The review noted evidence that wastage rates in South Australia are significantly lower than the national average (6% as opposed to 11-20% in other jurisdictions). While it is not claimed that the regulations are the sole cause of this difference, it is highly probable that they are a significant factor in the reduced level of wastage.

An examination of bread prices throughout Australia over a four year period demonstrated that the average price of a loaf of bread in Adelaide is some $0.40 per loaf cheaper than the national average. Again, while there is no evidence that the regulations are causative of lower prices, it is a positive indicator that South

Australian consumers are not being required to pay higher prices as a result of the existence of the regulations.

While retailers have indicated that market conduct has improved over time, and they would be unlikely to return to the practice of "sale and return" on the same scale should the regulations be revoked, the review has determined that the practice is widespread in other States and Territories which do not have similar restrictions. Further, the practice continues in South Australia in relation to other baked products (eg cakes and biscuits) which do not fall within the current restriction.

Therefore, there are strong economic and social arguments in favour of the retention of the regulations, even though they are restricting conduct within the market for bread and bread rolls in South Australia.

The review report is currently with the Government.

Dentists Act 1984

The review was conducted during 1998 by the Department of Human Services. Several other health professions were reviewed in the same period.

The provisions relating to registration, reservation of practice and title, scope of practice, disciplinary actions and ownership restrictions in the *Dentists Act* establish and maintain the system of practice protection. This system contains significant restrictions on entry to the dental profession and conduct within the profession. The most significant are the specific provisions relating to the practice protection regime which restrict entry to the dental profession to appropriately qualified persons. This is a serious restriction. There are restrictions upon the conduct of registered persons in the practice of dentistry, such as the restrictions on clinical dental technicians. There are also restrictions on the conduct of dentistry as a business, such as the ownership and advertising restrictions.

The system of practice protection established by the *Dentists Act* achieves significant public benefit, protecting the public from potential harm by incompetent dental care providers. It provides the public with confidence that registered dental care providers have appropriate qualifications and with information about a particular dental care provider's qualifications, expertise, and the results of any Board or Tribunal actions against the provider.

Two categories of cost arise from the restrictions in the *Dentists Act*. Restricting the numbers of dental care providers does cause a shortage of appropriately trained dental care providers in some areas, such as rural areas. It also causes the cost of such services to be higher than in an unrestricted system.

Compliance costs under the *Dentists Act* are generally minimal, because they are such a small percentage of the total expenditure of a dental practice. However compliance costs of obtaining the necessary qualifications are more significant.

Subject to implementation of its recommendations, the Review Panel assessed the public benefit of the restrictions contained in the *Dentists Act* as outweighing the costs of the restrictions.

Legislative changes recommended affect:

- ownership restrictions, direct and indirect
- which professional groups are regulated under the Act
- competitive behaviour
- the functions of the Board
- definition and scope of unprofessional conduct and appeal mechanisms

The review panel considered whether any alternatives to the legislative restrictions on competition in the Act would achieve the objective of protecting the public. These alternatives included:

- Consumer protection legislation such as the *Trade Practices Act* and the *Fair Trading Act;*
- Protection under the common law, such as claims in negligence, breach of contract and misrepresentation;
- Public health legislation, such as the *Public and Environmental Health Act 1987* and the *Controlled Substances Act 1984;*
- Self-regulation;
- Corporations Law.

The Review Panel concluded that these alternatives do not provide sufficient protection. The review report is currently with the Government.

Shop Trading Hours Act 1977

In March 1998, the Minister for Government Enterprises referred the *Shop Trading Hours Act 1977* to the Workplace Relations Policy Division of the Department for Administrative and Information Services for evaluation and report.

The review was conducted in accordance with competition policy principles and in the context of the expiration of the moratorium on changes to trading hours in June 1998.

The Review received 644 submissions.

Findings of the Review

The Review found that the *Shop Trading Hours Act 1977* and its regulations provide for a very complicated web of principles, licences, exemptions and exceptions. There is no consistent, coherent theme to the Act.

The objectives of the Act are unclear. Its genesis was as a response to a need to protect employees in the retail industry from working long hours. However, the Act now only regulates the trading hours of a select minority of 'non-exempt' shops. Any residual necessity for the Act on industrial grounds is arguable given the existence of industrial tribunals and the award system.

Since the inception of the *Shop Trading Hours Act 1977*, trading hours restrictions have been successively lessened, on an ad-hoc basis, through various legislative amendments and the use of the discretion of the Minister and Governor.

The Act is competitively discriminatory in its application. It currently regulates the trading hours of only some shops and only in some areas of the State. In general terms, the effect of the Act is to force larger supermarkets and department stores in some areas to be closed at certain times, whilst allowing other stores, including their direct competitors, to trade without restriction. In other areas of the State, the 'big' retailers have been able to trade at the same time as small retailers for many years. Additionally, big retailers selling certain products are exempt from the Act and have been able to compete with small retailers for many years.

The Act is often portrayed as providing protection and advantages for small retailers against large retailers, but the Act also provides anomalous advantages for some large retailers over their competitors. Additionally, the 'big' retail chains can avoid the restrictions imposed by the Act, and trade whenever they like, simply by purpose-building their stores within the size restrictions specified by the Act.

If the Act were repealed, it would in all likelihood alter the dynamics of the retail industry to the detriment of some existing, mainly smaller, retailers. However, the Review considered that the extension of trading hours is just one of a number of factors influencing small business in the retail sector.

Deregulation of trading hours in the suburbs could also have a detrimental effect on the central city area, particularly in the event of suburban Sunday trading.

The Review also considered that the deregulation of trading hours in the city centre could have a potential benefit in the area of tourism.

The Review considered that there is some consumer demand for extended or different trading hours and strong support for traders to have the choice of opening their stores outside of standard hours.

The Review considered that technological changes, such as increased opportunities for television shopping and buying goods through the Internet, mean that the application of the Act is reducing to some degree, and that it is probable that these changes will have an increasing impact on the Act's effect in the future.

Interested parties have extremely diverse views on the costs or benefits which flow from the Act to the community as a whole. The Review found little conclusive evidence on many of the matters raised. In any event, the Review considers that many of the concerns related to the mode rather than the nature, of reform. For example, a phased-in approach to extending trading hours would minimise the detrimental impact and would give those parties who would be adversely affected by deregulation the time to adjust to the changes.

The Review considered that a long-term planned approach to the reform of trading hours would give desirable certainty to all within the industry.

Interstate trading restrictions vary from restrictions based on the size of the business, goods sold and tourist areas to total deregulation in some states and territories.

Other options to legislative regulation include setting up a shop trading hours tribunal or allowing local councils to determine the trading hours to apply within their districts.

If the *Shop Trading Hours Act 1977* were repealed, some protection for retail tenants and retail employees would be lost. The provisions which provide for these protections could logically be transferred to the *Retail and Commercial Leases Act 1995* and the industrial system respectively

Legislative Changes

On 21 October 1998, the South Australian Government announced its proposal for changes to shop trading hours for non-exempt stores.

The State Government introduced legislation to the Parliament on 18 November 1998 and that legislation was passed through both Houses on 10 December 1998. The changes to the legislation by the Parliament give effect to the following:

- trading in the city by non-exempt shops to be allowed until 9pm, Monday to Friday.
- trading by non-exempt shops in the suburbs to be allowed until 7pm on Monday, Tuesday, Wednesday and Friday, with no change to Thursday night 9pm closing time.
- no change to trading hours arrangements on public holidays except that trading by non-exempt shops will be allowed on Easter Saturday, in the city only, from the year 2000 and thereafter.
- Sunday trading in the city to remain unchanged but allowed in suburbs between 11-5pm on six Sundays per year - four before Christmas with two others prescribed following consultation.
- extended trading not to be made available to traders selling motor vehicles or boats (ie closing time remaining at up to 6pm Monday to Wednesday, up until 9pm Thursday and Friday, and 5pm Saturday.)
- the only change to existing list of exempt shops is to add shops which predominantly sell caravans and trailers.
- retaining the current provisions relating to the type of retail facility and the size of retail facility.

The Government considers these changes represent a workable solution to balancing the interests of large and small retailers, of city and suburban traders and employees, employers and consumers.

The Government has announced that the changes will come into effect on 8 June 1999.

3.5 THIRD PARTY ACCESS

National Electricity Market

South Australia has worked closely with other jurisdictions, the National Electricity Code Administrator (NECA), the National Electricity Market Management Company (NEMMCO) and electricity industry participants over many years to establish the National Electricity Market. This market is regulated in accordance with the *National Electricity Code*, which applies pursuant to an Application of Laws scheme with the *National Electricity (South Australia) Act, 1996 (SA)* as the Lead Legislation. Chapter 5 of the *National Electricity Code* concerns network connection. The provisions of chapter 5 of the Code were accepted by the ACCC on 9 October 1998 as an Access Code under Part IIIA of the *Trade Practices Act, 1974 (C/wth)*. An access undertaking must be provided to the ACCC by any person intending to register as a Network Service Provider (distribution or transmission). The National Electricity Market, and the National Electricity Code, commenced operation on 13 December 1998.

Gas Pipelines

South Australia worked over a number of years, as part of an intergovernmental body, to develop a national regulatory framework to govern third party access to natural gas pipelines (both transmission and distribution pipelines). This process culminated in the passing of the *Gas Pipelines Access (South Australia) Act, 1997* which came into effect upon the commencement of the complementary Commonwealth legislation on 30 July 1998.

The *Gas Pipelines Access (South Australia) Act* makes provision for the appointment of a South Australian Independent Pricing and Access Regulator (SAIPAR) with functions and powers conferred by the *Gas Pipelines Access (South Australia) Law* and the *National Gas Agreement.* The SAIPAR, Mr Graham Scott, was appointed by the Governor on 2 April 1998.

The Act also makes provision for the establishment of the South Australian Gas Review Board to hear appeals from decisions regulating third party access to distribution pipelines in this State. On 19 February 1998, the Governor appointed six persons to the panel of experts within the SA Gas Review Board and, on the same date, three senior legal practitioners to act as Presiding Member.

In addition, South Australia, as lead legislator in an “application of laws” scheme, was the first jurisdiction to make submission to the NCC for assessment of the third party access regime as an “effective” access regime pursuant to Part IIIA of the *Trade Practices Act..* On 8 December 1998, the access regime was duly certified by the Minister for Financial Services and Regulation for a period of fifteen years.

Rail Facilities

South Australia and the Northern Territory are working closely to develop a third party access scheme and appropriate pricing principles for access to the Tarcoola to Darwin Railway. However, both parties are only committed to introducing mirror legislation in each jurisdiction to effect such a scheme if a statutory third party access scheme is required by the successful consortia. It is the intention of the

two jurisdictions at this point to make application to the NCC to recommend to the Commonwealth Minister that the access regime be certified as effective pursuant to Part IIIA of the *Trade Practices Act.*

Gas Fields

South Australia has been an active participant in the Australia & New Zealand Mines & Energy Council (ANZMEC) / Gas Implementation Reform Group (GRIG) Upstream Issues Working Group looking into, *inter alia*, acreage management and access to gas field infrastructure. At an Upstream Gas Regulation and Industry Reform Conference in October 1998, the Deputy Premier, the Hon. Rob Kerin MP, announced that: the "Government has determined that we will establish a transparent process enabling the consideration of any third party access application to use Cooper Basin infrastructure. The infrastructure would encompass facilities from field satellite to the points of sale of the gas and liquids. The favoured minimum option is for an industry based self regulatory Code."

3.6 LOCAL GOVERNMENT

Significant progress was made during 1998 in application of competition principles to the Local Government sector in South Australia, consistent with the Statement on the Application of Competition Principles to Local Government (the so-called Clause 7 Statement) published in June 1996. The Clause 7 Statement anticipates that decisions on implementation of the CPA will be taken by individual councils. The most important areas for councils are the application of competitive neutrality principles to significant business activities, and the review and reform of by-laws that may restrict competition.

Despite the considerable workload being experienced by many recently amalgamated councils, implementation of reforms remains on schedule.

Significant Business Activities

In accordance with the timetable contained in the Clause 7 Statement, by 30 June 1998 all councils had determined which principles of competitive neutrality are to be applied to their Category 2 business activities.

As previously reported, councils in South Australia are not at the present time involved in large scale business activities. The only exception to this is the Adelaide City Council (the local governing body for the central business district in Adelaide), which conducts 5 of the 6 Category 1 businesses identified. The remaining Category 1 activity is a fully commercial cemetery operation run jointly by two councils via a separately incorporated controlling authority.

Further information about the Category 1 business activities, and progress in implementing principles of competitive neutrality, is at Attachment 3.

A total of 34 Category 2 business activities have been identified by councils. The activities are almost exclusively small scale, with caravan parks occurring most frequently.

A table summarising Category 2 activities and the principles to be applied to them is at Attachment 4. In the majority of cases, cost reflective pricing is the principle of competitive neutrality to be applied or already applying. For a number of the caravan park operations, however, the small scale of the activity means that the cost of implementing a cost reflective pricing regime would outweigh the benefits. In these instance the councils have taken steps to ensure that they are charging at least the market price for the activity.

By-laws

By 30 September 1997 each Council had identified by-laws that may restrict competition and informed the State of its timetable for the review and, where appropriate, reform of the by-laws so identified before the end of the year 2000. (Note that 5 of the 68 councils in South Australia do not have any by-laws.)

Council reports confirm that the majority are conforming to their stated timetable, with only three councils deferring their review of by-laws from 1998 to 1999. This is considered to be a low rate of deferral given the rapid progress during 1998 of the Local Government Act review and the councils' desire to ensure that any reviews they undertake are in accordance with the likely thrust of the new legislation expected to be put in place later in 1999.

All by-laws in South Australia are subject to a sunset clause after seven years. This triggers a review, during which process they are examined by the Legislative Review Committee of Parliament and the issue of complying with National Competition Policy must be addressed.

Complaints mechanism

The State Government established a complaints mechanism in the Department of Premier and Cabinet to receive and consider complaints made about the implementation of national competition policy by both State and Local Governments.

The secretariat for the complaints mechanism provides information and advice about the implications of the policy. Formal complaints about competitive neutrality may be referred to an independent Commissioner, established under the *Government Business Enterprises (Competition) Act 1996*.

It was agreed between the State and Local Government that any complaints about the activities of a council in relation to competitive neutrality would be referred to that council in the first instance. The Clause 7 statement advises councils to establish their own formal mechanism to handle complaints, and a draft model was prepared to provide guidance. It is envisaged that the model complaints mechanism will be subject to continuous improvement over time. If, after investigation by Local Government, the complainant is dissatisfied with the response the matter can be referred to the State Government and investigated under that process.

The establishment of complaints mechanisms or grievance procedures is not new to Local Government in this State and there are good examples operating which will assist in the preparation of appropriate models and guidance for councils.

This practice is being given due recognition in the current review of the Local Government Act which seeks to mandate the establishment of formal grievance procedures including provision for the assessment of competition related complaints.

One complaint about a local authority was received by the State Government's competition complaints secretariat in 1998. This was referred to the councils concerned. Information on the outcome of the complaint is contained in section 3.2 of the State report on competitive neutrality complaints (see table 2).

Implementation assistance

A comprehensive set of guidelines was prepared in 1997 to assist councils to identify significant business activities and apply principles of competitive neutrality to them. These guidelines are now being reviewed and will be informed by the reviews of the State Government competitive neutrality policy and Clause 7 statement.

Guidelines were also produced in 1997 to assist councils with the identification of by-laws that may restrict competition and the process for the review, and, if necessary, reform of those by-laws. Additional advice is available to councils through the Local Government Association (LGA), including legal advice.

A particularly effective service to councils is being provided in the form of a consultant retained jointly by the State Office of Local Government (OLG) and LGA to provide telephone advice and undertake site visits as required. The majority of councils have sought assistance via this method and a number have retained the consultant in their own right to review and report on their business activities and related issues.

The consultant has assisted the OLG and LGA to review and revise the reporting formats through which councils provide information to the State, informed by the field experience gained through council visits.

The LGA conducted a survey of all councils in early 1998 to ascertain their training requirements in relation to competition policy. The OLG / LGA consultant was retained to design and conduct a series of city and country workshops for elected members and staff of councils, based on the training needs identified in the survey. The workshops included sessions by representatives of relevant State Government agencies, the LGA and the ACCC.

To help in circumstances where a review of a decision or investigation of a complaint within a council is impossible, due to its small size and consequent lack of distance of the reviewer from the original decision maker for example, the LGA has established a panel of independent experts to whom complaints can be referred with the consent of the complainant. Training was provided to panel members during 1998.

Review of the Local Government Act

The comprehensive review of the *Local Government Act 1934 (SA)* continued during 1998, and included a 3 month consultation period and the release in

December 1998 of revised drafts for negotiation with key stakeholders prior to the introduction of Bills to replace the existing Act early in 1999. Features of the proposed new legislation relating to competition policy implementation are as previously reported.

A consultation paper was issued with the draft Local Government Bills, identifying those aspects of the legislation which may have the potential to restrict competition, namely licensing the use of public land, requiring external auditors and valuers to be qualified, and the powers and processes for making by-laws. These issues did not attract any public comment.

A joint review of the effectiveness and implementation of the arrangements set out in the Clause 7 statement commenced in late 1998. This review is informed by the parallel review of the State Government competitive neutrality policy statement.

4. RELATED REFORMS

The Agreement to Implement National Competition Policy and Related Reforms makes provision of specified financial assistance by the Commonwealth conditional on the States making satisfactory progress with the implementation of the requirements of the Conduct Code Agreement and Competition Principles Agreement and also with implementation of related reforms which have been the subject of separate CoAG agreements. These related reforms include:

- establishment of competitive national electricity market;
- national framework for free and fair trade in gas;
- strategic framework for the efficient and sustainable reform of the Australian water industry;
- road transport reforms.

4.1 ELECTRICITY

The specific second tranche obligation in relation to electricity reform is for 'relevant jurisdictions' (South Australia, New South Wales, Victoria and the ACT) to complete the transition to a 'fully competitive national electricity market' by 1 July 1999, as modified by subsequent intergovernmental agreements.

The National Electricity Market (NEM) was initially due to commence on 29 March 1998. Due to a variety of factors including, but not limited to, the complexity of the Market design as per version 1.0 of the National Electricity Code, the late delivery of the NEM systems and the decision to create two National Dispatch Security Centres, the NEM did not commence on 29 March 1998.

During the period 1 April to 30 June 1998, the participating jurisdictions (SA, NSW, Vic, Qld and ACT), the National Electricity Market Management Company (NEMMCO) and the National Electricity Code Administrator (NECA) signed a Memorandum of Understanding for the implementation of the NEM. Included as part of the Memorandum was a list of preconditions to be met so as to ensure that sufficient preparation had occurred to both commence and operate the NEM. The 104 preconditions were satisfactorily completed prior to the start of the NEM. To provide confidence in the NEM systems a formal Market Trial process began on 1 September 1998. The objectives of the Market Trial were to verify that the NEM systems produced outcomes in accordance with the Code, and to build stakeholder confidence in the ability of NEMMCO to both administer and operate the NEM.

On 8 December 1998, the *National Electricity (South Australia) Act 1996* was proclaimed, providing for the commencement of the NEM across the five interconnected jurisdictions and South Australia's entry into the market on 13 December 1998.

The NCC has indicated that acceptance of the Code by the ACCC will signify that the market arrangements specified in the Code are appropriate.

Authorisation of the Code was granted by the ACCC in a determination dated 19 October 1998, with a number of market start amendments (including several SA Code derogations) granted interim authorisation on 9 October and 3 December

1998. A separate access decision was released by the ACCC on 9 October 1998 approving the Code as an access regime under the *Trade Practices Act*.

A further four outstanding SA Code derogations are the subject of ACCC consideration. These derogations are expected to receive approval following a public consultation process, due for completion in early 1999. From South Australia's perspective, this will complete formal acceptance of the initial Code.

The NCC has indicated that in the context of the jurisdictions' commitment to the effective operation of a competitive national electricity market, the action of South Australia in relation to the proposed SANI (previously known as Riverlink) interconnection with New South Wales will be considered. (SANI stands for South Australian Network Interconnector.)

It is important to recognise that regulatory decisions on inter-regional network connection and augmentation rest with the appropriate authorities under the Code and are not a matter for jurisdictions. Whilst the NCC proposes to take the State's actions in relation to the SANI proposal into consideration, the relevance of this issue to the assessment of compliance with NCP obligations is not clear to the South Australian Government.

In any event, it is considered that South Australia's position in relation to SANI will not impact on the State's assessment. South Australia's views on interconnector proposals have been driven by a desire to protect the interests of consumers and to ensure that the State's capacity needs are delivered in the most timely and cost-effective manner. Specifically, South Australia's position is that:

- Decisions on interconnectors are made independently by NEMMCO and are not a matter for jurisdictions;
- NEMMCO reached an independent decision on the basis of the Code assessment criteria that the SANI interconnector should not be regulated;
- Following NEMMCO's decision to deny SANI regulatory status, South Australia offered its full support for the construction of the SANI interconnector as an entrepreneurial project on an unregulated basis - whereby the proponents rather than the consumers of the importing jurisdiction bear the risk - including the creation of a working party to assist in the environmental approval process and assistance in refining the rules under the National Electricity Code for unregulated interconnects. While this offer remains, the parties involved have not demonstrated any willingness to build and operate the link at their own risk, despite the reputed benefits;
- The ACCC has recognised the need to ensure that the owners of regulated interconnectors are exposed to operational risks and are accountable to deliver benefits identified at the time of the decision to grant regulated status to the interconnector. Changes should be made to the assessment criteria accordingly.

In particular, SA has argued that new interconnects should ideally be unregulated, with the owners bearing the commercial risk associated with the investment rather than end customers. As an alternative, if regulation is considered justified based on the economic merits of an interconnector, the level of regulated return should be tied to the level of benefit consumers receive from the link, such that the risk of non-performance is borne by the proponent. A situation in which the consumer must

guarantee a regulated return to an interconnect owner over the lifetime of the asset (up to 50 years) regardless of whether consumer benefits are realised is not acceptable to SA.

4.2 GAS

CoAG endorsed the Natural Gas Pipelines Access Agreement (the Agreement) in November 1997. The Agreement establishes the basis for a National Third Party Access Code (the Code) for Natural Gas Pipeline systems, both transmission and distribution. The Agreement stipulated that the Code was to be given legal effect by a uniform Gas Pipelines Access Law, with South Australia as the lead legislator.

As outlined in section 3.5, the *Gas Pipelines Access (South Australia) Act 1997* was enacted by the South Australian Parliament and received the Governor's assent in December 1997. The Gas Pipelines Access Law and the Code are set out in schedules to that Act.

All jurisdictions with natural gas had enacted their application or equivalent legislation before the end of January 1999. This legislation will apply the Gas Pipelines Access Law (or in the case of Western Australia legislation with identical effect) as a law of that jurisdiction.

The *Gas Pipelines Access (South Australia) Act 1997* came into operation after the Commonwealth legislation received the Governor-General's assent on 30 July 1998. The Commonwealth legislation is integral to the operation of the National Access Regime. South Australia as the lead legislator had its gas pipelines access regime certified by the Commonwealth Minister as "effective" on 8 December 1998. This prohibits the use of *Trade Practices Act* provisions to obtain pipeline access. Other jurisdictions are following South Australia's lead.

In July 1997, the *Gas Act 1997* came into effect, establishing a new regulatory regime for the gas industry. The Act provides for separate licences to operate pipelines and to undertake gas retailing, thereby ensuring effective separation of these activities. The Office of Energy Policy supports the Technical Regulator in carrying out these functions. In July 1997, the pipeline networks previously owned by Boral in South Australia (eg Adelaide, Mt Gambier, and Berri) were sold to Envestra Limited, an energy infrastructure company. This sale meant that the former pipeline and retail parts of Boral within South Australia had been legally separated. Both legal entities which own/operate gas pipelines within South Australia, namely Epic Energy and Envestra, have not been issued with a licence to enable them to retail or sell natural gas. Boral Energy, the main natural gas retailer in South Australia, along with other entities including Optima Energy, have been issued with licences to retail natural gas, but not for the operation of gas pipelines. It is the South Australian Government's view that such structural separation, along with the provisions of the South Australian Gas Access Regime, ensures the continued separation of the natural monopoly element of the gas industry, namely the pipelines and the retailing part.

The above structural separation of the competitive retailing aspect of the gas industry from the natural monopoly pipeline element is seen as consistent with National Competition Policy. The 1997 CoAG Natural Gas Pipelines Access Agreement says that the access regime applies to both transmission and

distribution pipelines, rather than just transmission pipelines as noted in the February 1994 CoAG communique. This change is to facilitate a seamless approach to third party access to natural gas pipelines. In doing so, it is clear that the terminology "distribution activities" used in clause 10 of the February 1994 agreement, pertains to retailing gas. Annexe F (Licensing Principles) of the 1997 agreement confirms this view by its requirement to unbundle pipeline operating licences from other licence types (eg retailing). It seems inconsistent with the seamless approach to pipeline access that ownership of transmission pipelines should preclude ownership of distribution pipelines. From this it is concluded that clause 10 is satisfied as long as the above structural separation is maintained.

A contestability timetable has been established for the gas sector, similar to that for electricity, as follows:

Date	April 1998	1/7/99	1/7/2000	1/7/2001
Annual TJ	>100	10 –100	<10 (non domestic)	All customers

The *Gas Pipelines Access (South Australia) Act 1997* establishes the South Australian Independent Access and Pricing Regulator (SAIPAR) for gas distribution pipelines in South Australia. The distribution pipeline operator Envestra Limited submitted its Access Arrangement submission to SAIPAR on 22 February 1999. The Australian Competition and Consumer Commission will provide for national regulation of transmission pipelines. Once the Commission has made its Access Arrangement decision regarding the South Australian transmission pipeline, then the provisions of the State-based *Natural Gas Pipelines Access Act 1995* are revoked.

4.3 WATER

South Australia continued the implementation of COAG water industry reform commitments in 1998. Reporting against the 1994 Strategic Water Reform Framework as part of the second tranche assessment process, South Australia has provided detailed evidence of reform progress to the NCC. A detailed summary of South Australia's achievements to date in water reform can be found in Attachment 5. For the purposes of this annual report, key reform initiatives in South Australia during 1998 have included:

- South Australia's *Water Resources Act 1997* was enacted on 2 July 1997. Based on the principles of ecologically sustainable development, the implementation of the Act is now well advanced. Six catchment water management boards have been established. In addition, 15 water allocation plans and six catchment water management plans are currently in preparation. These plans include provisions for water for the environment. The focus of the legislation is to provide for increasing devolution of responsibility for management of water systems to the community and, accordingly, extensive community consultation and involvement is a feature of the development of these plans. In addition, a comprehensive system of property rights has been established under the Act, which includes the separation of water property rights from land title and the removal of any legislative and institutional impediments to trade.

- Work is continuing on an Environment Protection (Water Quality) Policy under the *Environment Protection Act 1993.* The policy will apply to South Australia's inland, estuarine and marine waters. Drafting is nearing completion and it is currently anticipated that the policy will undergo public consultation at the end of June 1999.

- The State Government has embarked on a review of the State Water Plan, as required under the *Water Resources Act 1997*.

  The purpose of the State Water Plan is to set out policies for the use and management of South Australia's water resources. It is a statement of high level water policy, that sets the framework for regional catchment water management plans and local water allocation plans. The Plan and the policy framework which it establishes must ensure that the use and management of the State's water resources sustain the physical, economic and social well being of the people of the State and facilitate economic development of the State, whilst protecting the ecosystems that depend on those resources and the reasonably foreseeable needs of future generations.

  The current State Water Plan, entitled South Australia - Our Water Our Future was published in September 1995. It was adopted as the State Water Plan for the purposes of the *Water Resources Act 1997* when the Act was proclaimed on 2 July 1997. However, the Act also recognised that this Plan may need to be reviewed to ensure that it remains contemporary and fully meets the requirements of the State Water Plan as specified in the Act.

  It is expected that the review will culminate in a revised State Water Plan being adopted during National Water Week in October 1999 to replace the current Plan.

- The Government announced significant reform of water prices in 1995-96 which:
  - provided for a user-pays pricing structure for non-commercial customers, including the elimination of free water allowances;
  - reduced commercial water charges by an average of 2.5% as a first step towards removing the cross subsidy paid by commercial customers.

- Subsequent pricing decisions in 1996-97, 1997-98 and 1998-99:

  - increased the low, first-step water price and lowered the high, top-step price in real terms consistent with converging to a single water price in the medium term approximating estimated long run marginal cost of supply; and
  - provided for further real reductions in the cross-subsidy paid by commercial customers.

- In December 1998, South Australia endorsed the Agriculture & Resource Management Council of Australia & New Zealand (ARMCANZ) pricing guidelines for use in the application of the full cost recovery elements of the COAG water reform framework.

- The SA Water Corporation's community service obligations are currently being reviewed against the South Australian Community Service Obligation Policy, endorsed by the Government on 16 December 1996, and agreed community service obligations are now being funded through explicit purchase agreements between purchasing Ministers and the Corporation.

- The South Australian Government is working with communities and research bodies to investigate environmental water requirements in several catchments outside those that fall within formal controls under the *Water Resources Act 1997*.

4.4 ROAD TRANSPORT

The national road transport reforms are developed under a process which has its genesis in the Heavy Vehicles Agreement signed by Heads of Government in 1991 and the Light Vehicles Agreement signed in 1992. Those Agreements have recently been revised, but their main features are unchanged.

The Agreements provide for the establishment under Commonwealth law of the National Road Transport Commission (NRTC) to propose national legislation and road transport reforms, and consider other questions referred to it by Ministers. The process now adopted by the NRTC in progressing reforms developed under these Agreements has four basic stages:

- Through an extensive consultative program with jurisdictions, the road transport industry, environmental agencies and other interest groups, the NRTC develops a three year Strategic Plan for approval of the Australian Transport Council (ATC). Before projects are incorporated into the plan, each is considered within a detailed scoping paper, which sets out issues such as the objectives, resources, performance measures and method of delivery (eg legislation, policy or other).
- Each project then goes through a preliminary design phase where the basic principles of the reform are clarified and policy determined, at least in broad detail. In cases where uniform or consistent legislation is not part of the reform, this may be all that is required and ATC endorsement can be sought at that stage with no further development work required.
- If required, a project can then be developed in detail with delivery via a more complex mode. At the conclusion of this phase, ATC approval would be sought. Where the reform is to be delivered through consistent or uniform legislation, ATC approval is required for the legislation that the NRTC develops.
- The final stage involves the Commission in monitoring and assisting implementation of each reform.

While this process may be seen as strictly sequential, in fact it is dynamic and interactive. The plan and forward program are subject to amendment if matters of sufficient import are raised. Such additions can be seen as part of a continuum of reform options where attention is directed to issues of major community benefit.

The NRTC has strong linkages with governments, their agencies, the industry bodies and other interest groups. These are maintained through regular meetings,

workshops and conferences, distribution of formal reports in a transparent policy development process and frequent informal contact. In addition, the Commission has formal consultative processes involving its peak groups (Industry Advisory Group, Bus Industry Advisory Group, Transport Agency Chief Executives and Remote Areas Advisory Group).

The Commission often runs workshops and meetings to consider policy proposals on a national basis and its processes in developing reforms contain up to four separate consultation periods as reforms are developed and refined. At the same time jurisdictions are also involved in extensive consultation with industry as reforms are developed.

Early in the process, the reforms to be developed and implemented under national legislation were divided into six modules, some of which had sub-modules. These were:

- Road Transport Charges
- Dangerous Goods
- Vehicle Operations:
    - Vehicles and Standards, including Roadworthiness Standard
    - Fatigue Management
    - Access and Loading:
        - Restricted Access Vehicles
        - Oversize and Overmass Vehicles
        - Mass and Loading
    - Road Rules
- Heavy Vehicle Registration
- Driver Licensing
- Compliance and Enforcement

Given the delays in developing and agreeing these reforms in full, the Ministerial Council on Road Transport agreed in 1994 to a First Heavy Vehicle Reform Package. This was a list of key reforms which it was agreed to implement early on a "best endeavours" basis, during the period 1993-94. The intention was that those jurisdictions which had sufficient flexibility under their existing legislation to introduce measures similar to the intended reforms, prior to their full development and specification in draft legislation for Ministers to consider them in detail, should do so. Jurisdictions which were not able to undertake such reforms without significant change to their existing legislation would await the development of that legislation and its approval by Ministers, under the normal process. Subsequently a Second Heavy Vehicles Reform Package was established in February 1997.

Assessability

ATC has categorised road transport reforms from the initial reform modules and the First and Second Heavy Vehicles Reform Packages as falling into two categories:

- under development
- available for implementation and assessable

The transition between the two is achieved by an affirmative vote by Ministers on a detailed proposal of action. This transition is clear when a formal vote by Ministers has occurred and the proposal by the NRTC has been approved.

Attachment 6 provides details of the reforms which are available for implementation, and their current status in South Australia. Items from the First and Second Heavy Vehicle Packages are shown in the context of the initial modules to which they belong.

5. BIBLIOGRAPHY

The following three Intergovernmental Agreements were endorsed by Heads of Government on 11 April 1995:

Conduct Code Agreement
Competition Principles Agreement
Agreement to Implement the National Competition Policy and Related Reforms.

The following documents summarise the NCC's 1st Tranche Assessment for all jurisdictions:

Assessment of State and Territory Progress with Implementing National Competition Policy and Related Reforms - June 1997
National Competition Policy and Related Reforms: Supplementary Assessment of First Tranche Progress - June 1998

Copies of these and other documents on aspects of NCP are available from the National Competition Council in Melbourne, telephone (03) 9285 7474.

Relevant documents concerning NCP implementation in SA include:

Competitive Neutrality Policy Statement, June 1996
Structure of Government Business Activities, March 1995
Review of Legislation which Restricts Competition - timetable, June 1996 (updated May 1997, May 1998)
Community Service Obligations - Policy Framework, December 1996
Clause 7 Statement on the Application of Competition Principles to Local Government under the Competition Principles Intergovernmental Agreement, June 1996
Water and Sewerage Pricing for SA Water Corporation, December 1996.
Report to the National Competition Council - Implementation of National Competition Policy and Related Reforms in SA - March 1997
Report to the National Competition Council - Implementation of National Competition Policy and Related Reforms in SA - April 1998
Water and Sewerage Pricing for SA Water Corporation - Final Report of investigation under the Government Business Enterprises (Competition) Act 1996 - June 1997
Government Business Enterprises (Competition) Act 1996, Section 16: Principles of Competitive Neutrality Proclamations by the Governor - 12 June 1997, 7 May 1998
A Guide to the Implementation of Competitive Neutrality Policy - February 1998.
Guidelines Paper for Agencies conducting a Legislation Review under the CoAG Competition Principles Agreement - February 1998

Copies of each of these publications are available from the Economic Reform Branch, Department of the Premier and Cabinet, telephone (08) 8226 0903. Some can be downloaded from the Department's website at -
http://www.premcab.sa.gov.au/html/nationalcompcont.html

Attachment 1

1996

Portfolio	Acts	Nature of Restriction	Comment
Consumer Affairs	Liquor Licensing Act 1985	Barrier to market entry and restricts market conduct.	Partial deregulation. This Act repealed by Liquor Licensing Act 1997.
Environment and Heritage	Catchment Water Management Act 1995	Restrict market conduct.	This Act repealed by Water Resources Act 1997.
Environment and Heritage	Water Resources Act 1990	Restrict market conduct.	This Act repealed by Water Resources Act 1997.
Government Enterprises	State Clothing Corporation Act 1977	Protects sheltered workshops.	Corporation sold in 1995-96. Amendment Act to allow 'winding up' has been assented to. Amendment Act repeals most of original Act including all reference to sheltered workshops.
Health	Tobacco Products Control Act 1986	Restricts market conduct.	Repealed by Tobacco Products Regulation Act 1997.
Industry and Trade	Industries Development Act 1941	Section 24 may be in conflict with Trade Practices Act.	Review underway.
Premier	Australian Formula One Grand Prix Act 1984	The Board is not subject to the same laws as private sector competitors.	Authority dormant. The Act should not be repealed until last money paid by Victoria in July 2000.
Primary Industries, Natural Resources & Regional Development	Apiaries Act 1931	Barrier to market entry and restricts market conduct.	This Act will be repealed by Schedule 2 Livestock Act 1997 when it is proclaimed.
Primary Industries, Natural Resources & Regional Development	Branding of Pigs Act 1964	Barrier to market entry and restricts market conduct.	This Act will be repealed by Schedule 2 Livestock Act 1997 when it is proclaimed.
Primary Industries, Natural Resources & Regional Development	Brands Act 1933	Barrier to market entry and restricts market conduct.	This Act will be repealed by Schedule 2 Livestock Act 1997 when it is proclaimed.
Primary Industries, Natural Resources & Regional Development	Cattle Compensation Act 1939	Barrier to market entry and restricts market conduct.	This Act will be repealed by Schedule 2 Livestock Act 1997 when it is proclaimed.
Primary Industries, Natural Resources & Regional Development	Deer Keepers Act 1987	Barrier to market entry and restricts market conduct.	This Act will be repealed by Schedule 2 Livestock Act 1997 when it is proclaimed.
Primary Industries, Natural Resources & Regional Development	Electrical Products Act 1988	Identified at a national level.	Regulations consistent with model Regulations developed by national body proclaimed and operating.
Primary Industries, Natural Resources & Regional Development	Foot and Mouth Disease Eradication Fund Act 1958	Barrier to market entry and restricts market conduct.	This Act was repealed by Livestock Act 1997.
Primary Industries, Natural Resources & Regional Development	Poultry Meat Industry Act 1969	In conflict with Trade Practices Act.	ACCC authorised collective negotiation of fees and conditions between growers and Inghams for 5 years from April 1997.
Primary Industries, Natural Resources & Regional Development	Stock Act 1990	Barrier to market entry and restricts market conduct.	This Act was repealed by Livestock Act 1997.
Primary Industries, Natural Resources & Regional Development	Swine Compensation Act 1936	Barrier to market entry and restricts market conduct.	This Act will be repealed by Schedule 2 Livestock Act 1997 when it is proclaimed. Compensation Fund can run for 2 years after assent.

1997

Portfolio	Acts	Nature of Restriction	Comment
Arts	South Australian Museum Act 1976	Restricts market conduct in relation to meteorites.	Review complete.
Attorney-General	Friendly Societies Act 1919	Restricts market conduct.	Repealed and replaced by Friendly Societies (SA) Act 1997.
Attorney-General	Starr-Bowkett Societies Act 1975	Identified at national level.	Payments through these societies almost complete. It is expected the Act will be repealed upon dissolution of 2 remaining societies.
Education, Children's Services and Training	Construction Industry Training Fund Act 1993	Restricts market conduct.	Report of Review of Act tabled in Parliament 26/2/98. Some outstanding issues under consideration.
Education, Children's Services and Training	Vocational Education, Employment and Training Act 1994	Identified at national level.	Review underway.
Environment and Heritage	Heritage Act 1993	Restricts market conduct.	Review underway.
Government Enterprises	Employment Agents Registration Act 1993	Barrier to market entry.	Review underway.
Government Enterprises	Manufacturing Industries Protection Act 1937	Exempts some industries from legal requirements applying to competitors.	Overtaken by Environment Protection Act 1993. Act repealed.
Government Enterprises	Shearers Accommodation Act 1975	Restricts market conduct.	Act repealed.
Industry and Trade	Local Government Act 1934	Restricts market conduct and product and service standards.	Review completed. New legislation to replace existing Act. Elements remaining to be considered with other legislation reviews.
Industry and Trade	Outback Areas Community Development Trust Act 1978	Restricts market conduct.	Crown Solicitor's Office found **no** restrictions to competition.
Primary Industries, Natural Resources & Regional Development	Agricultural and Veterinary Chemicals (South Australia) Act 1994	Identified at national level.	A national review for national registration issues and a state review for issues related to use. State review includes Stock Foods Act 1941 and Stock Medicines Act 1939. National and state reviews underway
Primary Industries, Natural Resources & Regional Development	Agricultural Chemicals Act 1955	Barrier to market entry and restricts market conduct.	Review report complete.
Primary Industries, Natural Resources & Regional Development	Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986	Barrier to market entry and restricts market conduct.	Review completed and combined with Soil Conservation and Land Care Act 1989. Report to Cabinet September 1996. Amendments made under the Soil Conservation and Land Care Act (Amendment) Act.
Primary Industries, Natural Resources & Regional Development	Barley Marketing Act 1993	Monopoly powers to the Australian Barley Board.	Review complete.

Portfolio	Acts	Nature of Restriction	Comment
Primary Industries, Natural Resources & Regional Development	Cooper Basin (Ratification) Act 1975	Authorises behaviour contrary to Trade Practices Act.	Review complete.
Primary Industries, Natural Resources & Regional Development	Natural Gas (Interim Supply) Act 1985	Restricts market conduct	To be repealed.
Primary Industries, Natural Resources & Regional Development	Natural Gas Pipelines Access Act 1995	Does not apply equally to all pipelines.	The National Gas Access legislation partly renders this Act redundant.
Primary Industries, Natural Resources & Regional Development	Soil Conservation and Land Care Act 1989	Restricts market conduct.	Review combined with Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986. Report to Cabinet September 1996. Amendments made under the Soil Conservation and Land Care Act (Amendment) Act.
Primary Industries, Natural Resources & Regional Development	Stock Medicines Act 1939	Barrier to market entry and restricts market conduct.	Review report complete.
Transport and Urban Planning	Architects Act 1939	Identified at national level.	Review well underway. National review being considered
Transport and Urban Planning	Commercial Motor Vehicles (Hours of Driving) Act 1973	Identified at national level.	Review complete. South Australia will implement national legislation.
Treasurer	Advances to Settlers Act 1930	Restricts market conduct.	No new business. Act for repeal when last repayment made. This is expected later than 2000.
Treasurer	Benefit Associations Act 1958	Restricts market conduct.	Review well underway.
Treasurer	Loans for Fencing and Water Piping Act 1938	Restricts market conduct.	No new business. Act for repeal when last repayment made. This is expected in 2000.
Treasurer	Loans to Producers Act 1927	Restricts market conduct.	No new business. Act for repeal when last repayment made. This is expected in 2000.

1998

Portfolio	Acts	Nature of Restriction	Comment
Arts	South Australian Film Corporation Act 1972	Restricts market conduct in granting of sole and exclusive right to produce Government films	Review well underway.
Attorney-General	Business Names Act 1996	Financial legislation (companies, securities, futures, consumer credit).	Review complete.
Attorney-General	Cremation Act 1891	Barrier to market entry and restricts market conduct, (in conjunction with review of Local Government Act in Local Government portfolio)	Review underway.

Portfolio	Acts	Nature of Restriction	Comment
Attorney-General	Legal Practitioners Act 1981	Barrier to market entry and restricts market conduct.	Review underway.
Attorney-General	Trustee Companies Act 1988	Barrier to market entry and restricts market conduct.	Review underway. National review.
Consumer Affairs	Carriers Act 1891 (The)	Restricts market conduct	Review completed. Act to be repealed
Consumer Affairs	Prices Act 1948	Restricts market conduct	Review well underway
Environment and Heritage	Coast Protection Act 1972	Restricts market conduct	Review well underway
Environment and Heritage	Crown Lands Act 1929	Restricts market conduct	Review well underway
Environment and Heritage	Discharged Soldiers Settlement Act 1934	Restricts market conduct	Review well underway
Environment and Heritage	Groundwater (Border Agreement) Act 1985	Restricts market conduct	Review underway.
Environment and Heritage	Irrigation (Land Tenure) Act 1930	Restricts market conduct	Review well underway
Environment and Heritage	Native Vegetation Act 1991	Restricts market conduct	Review well underway
Environment and Heritage	Pastoral Land Management and Conservation Act 1989	Restricts market conduct	Review well underway
Environment and Heritage	Prevention of Cruelty to Animals Act 1985	Regs 5, 6 - Restricts market conduct	Review well underway
Environment and Heritage	River Murray Waters Agreement Supplemental Agreement Act 1963	Regs 5, 6 - Restricts market conduct	Review complete.
Environment and Heritage	Sandalwood Act 1930	Restricts market conduct	Review well underway.
Environment and Heritage	War Service Land Settlement Agreement Act 1945	Restricts market conduct	Review well underway
Government Enterprises	Dangerous Substances Act 1979	Barrier to market entry and restricts market conduct	Review underway.
Government Enterprises	Explosives Act 1936	Barrier to market entry and restricts market conduct	Review underway.
Government Enterprises	Occupational Health, Safety and Welfare Act 1986	Restricts market conduct	To be reviewed jointly with Workers Rehabilitation & Compensation Act.
Government Enterprises	Renmark Irrigation Trust Act 1936	Restricts market conduct	Review underway.
Government Enterprises	Sewerage Act 1929	Barrier to market entry & restricts market conduct; product/service Standards	Review underway.

Portfolio	Acts	Nature of Restriction	Comment
Government Enterprises	Shop Trading Hours Act 1977	Restricts market conduct	Review complete.
Government Enterprises	South Australian Water Corporation Act 1994	Barrier to market entry & restricts market conduct; product/service standards	Review underway..
Government Enterprises	State Lotteries Act 1966	Barrier to entry & restricts market conduct	Review underway. Joint review with Lottery & Gaming Act and Racing Act.
Government Enterprises	Water Conservation Act 1936	Barrier to market entry & restricts market conduct; product/service standards	Review underway.
Government Enterprises	Waterworks Act 1932	Barrier to market entry & restricts market conduct; product/service standards	Review underway.
Government Enterprises	White Phosphorus Matches Prohibition Act 1915	Barrier to market entry and restricts market conduct	Review well underway.
Human Services	Chiropodists Act 1950	Barrier to entry & restricts market conduct	Review well underway.
Human Services	Chiropractors Act 1991	Barrier to entry & restricts market conduct	Review well underway.
Human Services	Controlled Substances Act 1984	(Poisons) Regs 8, 11, 14 - Barrier to entry & restricts market conduct	National review to be conducted.
Human Services	Dentists Act 1984	Barrier to entry & restricts market conduct	Review complete.
Human Services	Food Act 1985	Restricts market conduct	National review well underway.
Human Services	Medical Practitioners Act 1983	Barriers to entry & restricts market conduct	Review underway.
Human Services	Nurses Act 1984	Barrier to entry & restricts market conduct	Review complete. New legislation passed.
Human Services	Occupational Therapists Act 1974	Restricts market conduct	Review well underway
Human Services	Optometrists Act 1920	Barriers to entry. & restricts market conduct.	Review well underway
Human Services	Physiotherapists Act 1991	Restricts market conduct	Review well underway
Human Services	Psychological Practices Act 1973	Reg 10 Barrier to entry & restricts market conduct	Review well underway
Human Services	Public and Environmental Health Act 1987	Div 2, Regs 12, 17, 22. 22/5/89 Restricts market conduct	Review underway.
Human Services	Radiation Protection and Control Act 1982	Barrier to entry & restricts market conduct	National review to be conducted.

Portfolio	Acts	Nature of Restriction	Comment
Human Services	South Australian Health Commission Act 1976	Barrier to market entry and restricts market conduct of private hospitals.	
Human Services	South Australian Housing Trust Act 1995	Restricts market conduct	Review underway.
Human Services	Supported Residential Facilities Act 1992	Barrier to market entry and restricts market conduct.	Review complete..
Industry and Trade	Racing Act 1976	s 4 - Barrier to entry & restricts market conduct	Review underway. Joint review with Lottery & Gaming Act and State Lotteries Act.
Justice	Second-hand Dealers and Pawnbrokers Act 1996	s 6 - 9 - Barrier to entry & restricts market conduct	Review complete.
Primary Industries, Natural Resources & Regional Development	Bulk Handling of Grain Act 1955	Barrier to market entry and restricts market conduct	Review complete. Act to be repealed.
Primary Industries, Natural Resources & Regional Development	Citrus Industry Act 1991	Restricts market conduct	Review underway.
Primary Industries, Natural Resources & Regional Development	Dried Fruits Act 1993	Restricts market conduct	Review underway.
Primary Industries, Natural Resources & Regional Development	Fisheries Act 1982	Barrier to market entry and restricts market conduct	Review underway.
Primary Industries, Natural Resources & Regional Development	Fruit and Vegetables (Grading) Act 1934	Product standard - Restricts market conduct	Review underway.
Primary Industries, Natural Resources & Regional Development	Garden Produce (Regulation of Delivery) Act 1967	Restricts market conduct	Review underway.
Primary Industries, Natural Resources & Regional Development	Margarine Act 1939	Restricts market conduct	Review underway.
Primary Industries, Natural Resources & Regional Development	Mines and Works Inspection Act 1920	Remainder of Act committed to Minister for Mines. Barrier to market entry and restricts market conduct	Review underway.
Primary Industries, Natural Resources & Regional Development	Mining Act 1971	Entire regulation - Restricts market conduct	Review underway.
Primary Industries, Natural Resources & Regional Development	Noxious Insects Act 1934	Restricts market conduct	
Primary Industries, Natural Resources & Regional Development	Opal Mining Act 1995	Barrier to market entry and restricts market conduct	Review underway.
Primary Industries, Natural Resources & Regional Development	Petroleum Act 1940	Barrier to market entry and restricts market conduct	Review well underway.
Primary Industries, Natural Resources & Regional Development	Phylloxera and Grape Industry Act 1995	Restricts market conduct	
Primary Industries, Natural Resources & Regional Development	Roxby Downs (Indenture Ratification) Act 1982	Authorises behaviour contrary to TPA.	Review underway.

Portfolio	Acts	Nature of Restriction	Comment
Primary Industries, Natural Resources & Regional Development	Seeds Act 1979	Restricts market conduct	
Primary Industries, Natural Resources & Regional Development	Stony Point (Liquids Project) Ratification Act 1981	Authorises behaviour contrary to TPA	Review underway.
Primary Industries, Natural Resources & Regional Development	Veterinary Surgeons Act 1985	Barrier to market entry and restricts market conduct	Review underway.
Primary Industries, Natural Resources & Regional Development	Wine Grapes Industry Act 1991	Restricts market conduct	Review underway.
Transport and Urban Planning	Development Act 1993	S 6, Regs 3, 4, 8, 10 - Restricts market conduct	Review well underway.
Transport and Urban Planning	Enfield General Cemetery Act 1944	Restricts market conduct	Review well underway
Transport and Urban Planning	Harbors and Navigation Act 1993	Barrier to entry & restricts market conduct	Review underway. Intergovernment Agreement for national moves to develop consistent legislation.
Transport and Urban Planning	Highways Act 1926	Restricts market entry.	Review complete.
Transport and Urban Planning	Motor Vehicles Act 1959	s 3 - Restricts market conduct	Review underway. Uniform legislation to be implemented.
Transport and Urban Planning	Passenger Transport Act 1994	Regs 4, 5 Barrier to entry & restricts market conduct	Review underway.
Transport and Urban Planning	Road Traffic Act 1961	Barrier to market entry and restricts market conduct	Review underway. National legislation to be implemented.
Treasurer	Collections for Charitable Purposes Act 1939	Reg 4 Restricts market conduct	Review underway.
Treasurer	Government Financing Authority Act 1982	may restrict market conduct of GBEs.	Review well underway
Treasurer	Lottery and Gaming Act 1936	Regs 5, 7, 10	Review underway. Joint review with Racing Act and State Lotteries Act.
Treasurer	Motor Accident Commission Act 1992	Need to revise section 24 for consistency with the Competition Code.	Review underway.
Treasurer	Petroleum Products Regulation Act 1995	Part 2 Div 1, 2; Part 5 Div 4; Part 7	Review underway.
Treasurer	Public Corporations Act 1993	Restricts market conduct	Review well underway

Attachment 2

MINUTES forming ENCLOSURE to **AGD 2621 / 97**

Mr Greg Cox
☎ (08) 8207 2541

TO: **MS LINDA HART,**
A/ASSISTANT UNDER TREASURER (ECONOMICS)
DEPARTMENT OF TREASURY AND FINANCE

CC: **Ms Rosemary Ince**
Department of Premier and Cabinet, and

Mr Deane Prior,
Director, Superannuation Policy, DTF.

Re: **Legislation Review: Southern State Superannuation Act, 1994 (SA).**

1. As discussed with Mr Vince Duffy of your Branch, I have undertaken an examination of the *Southern State Superannuation Act, 1994 (SA)*, ("**the SSS Act**"), for the purpose of determining whether the SSS Act should have been put on the schedule of South Australian acts to be reviewed in accordance with the CoAG National Competition Policy ("**NCP**") legislation review obligation (see: clause 5 of the Competition Principles Agreement - "**the CPA**").

   The SSS Act was referred to at page 9 of the National Competition Council's Second Tranche Assessment Framework document of 16 November 1998.

   I note that this Office made an interim assessment of the South Australian superannuation legislation in late 1997 / early 1998, and a preliminary conclusion was reached that the superannuation legislation did not contain restrictions on competition of any significance such as to justify a legislation review. For that reason they were not included on the schedule for review. Since that date there have been amendments to the legislative scheme, including the repeal of the *Superannuation (Benefit Scheme) Act, 1992 (SA)*.

2. The purpose of this present examination of the SSS Act is not to conduct a full legislation review in accordance with clause 5 of the CPA, rather it is a preliminary examination of the Act to identify if it contains any restrictions on competition, and if it does, to situate those restrictions in a market context to determine if they have any impact in relevant markets or if they are restrictions in an analytical sense only. While this is not a full legislative review, nevertheless, the same methodology is employed as in clause 5 of the CPA and the South Australian Guidelines for Conducting a Legislation

Review. I do not consider that a detailed legislation review would come to a different conclusion from the one reached by this examination.

Summary of the State's Superannuation schemes:

3. Apart from the specialised schemes, which are provided for in legislation such as the *Governor's Pensions Act 1976*, the *Judges Pension Act 1971*, the *Parliamentary Superannuation Act 1974*, the *Police Superannuation Act 1990*, and the *Superannuation (Visiting Medical Officers) Act 1993*, there are three main schemes under which the SA Government provides superannuation benefits to its employees:

   3.1 The pension scheme (now closed to new members);
   3.2 The 15% benefit (lump sum) scheme (now closed to new members); and
   3.3 The SSS (Triple S) scheme.

4. Employees are not obligated to make contributions to the SSS scheme, but they are made a member of that scheme pursuant to section 14 of the SSS Act if they are a person in relation to whom the Government is liable to pay a superannuation guarantee charge under the *Superannuation Guarantee (Administration) Act, 1992 (C/wth)*, ("**the Commonwealth Act**").

5. State Government employees are at liberty to make their own contributions to any superannuation scheme they choose. By way of corollary, the State Government may make superannuation benefits that are part of its employee remunerative packages available to its employees in any way that it chooses - that is simply its own commercial decision as to how it wishes to manage its internal affairs [1]. Thus, the provision of certain SA Government benefits to its employees through nominated superannuation schemes is not a restriction upon competition.

6. However, a different analysis applies where the provision of a benefit is not an internal matter of employee remuneration, but an obligation under the Commonwealth Act. Under that Act, the SA Government is obligated to make a contribution to a complying superannuation fund in favour of its employees in accordance with the charge percentages set out in the Commonwealth Act, and to evidence that with a "benefit certificate", or be liable to the Commonwealth for a superannuation guarantee charge on its superannuation guarantee shortfall (see: ss. 16 - 23 of the Commonwealth Act).

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1. [1] It is part of the internal operations of the SA Government which the Government is entitled to "tie", and therefore should not subject to an NCP competition review. It has been often stated by the NCC itself, as well as in the Second Reading Speech to the Commonwealth's *Competition Policy Reform Act, 1995*, that the NCP does not require outsourcing or privatisation of government operations. See also clause 1.(5) CPA.

Identification of restrictions on competition:

7. Therefore, section 14 of the SSS Act has the effect of "tying" SA Government employees to receiving a benefit ensured to them by way of Commonwealth legislation through a nominated fund (the SSS Fund) that is managed and controlled by a nominated Funds Manager, namely, the Superannuation Funds Management Corporation of South Australia [2], ("**Funds SA**"), pursuant to section 4.(3) of the SSS Act. An employee may not nominate another fund into which the contribution should be paid, or another funds manager [3].

8. This restriction on competition should only be maintained if the requirements of clause 5.(1) CPA are satisfied, that is, the benefits to the community as a whole outweigh the costs, and the objectives of the legislation can only be achieved by restricting competition.

9. **Objectives of sections 14 & 4.(3):**

Clearly, the SA Government intends to manage its obligation under the Commonwealth Act through a single fund and a single funds manager. The SA Government would argue that this is the most efficient and cost-effective method of discharging its obligations under the Commonwealth Act, and because of the economies of scale and scope across its entire employee superannuation arrangements, minimises costs for scheme members.

10. **Nature of the restriction on competition:**

SA Government employees are "tied" to having a benefit, ensured to them by way of Commonwealth legislation, managed and invested through a nominated fund (the SSS Fund). This precludes other funds from competing for the right to administer and manage the moneys paid (pursuant to the Commonwealth Act) into the SSS Fund.

11. **Effect on competition and on the economy generally:**

The relevant markets are:

11.1 the market for superannuation scheme administration; and,
11.2 the market for funds management.

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[2] Established under the *Superannuation Funds Management Corporation of South Australia Act, 1995 (SA)*.

2. [3] I note the fact that superannuation benefits that are provided by the SA Government as part of its own employee remuneration scheme (thus, under the pension scheme and the 15% scheme) are also managed by Funds SA. That is not a restriction on competition, as the same analysis as to the management of those funds applies as to the provision of the superannuation benefit in the first place.

Both markets, and particularly funds management, are well developed and dynamic markets. Both have significant Australian and international participants, with the market for funds management being very large in size (on the supply side, it includes all investment services).

The funds from the SA Government's obligations under the Commonwealth Act is a very small percentage of that whole market (particularly funds management). Therefore, its capacity to cause distortions in that market is small.

12. The fact that the employee has no choice in fund selection is only relevant in the context of market analysis. If there is no, or negligible, effect on competition (or on the economy) the lack of consumer choice may be a matter of loss of individual rights, but it carries no anticompetitive weighting, and is therefore not relevant to the NCP.

13. I understand from discussions with Department of Treasury and Finance that Funds SA outsources all of its funds management function.

Thus, while there may be a loss of choice for individual members, **there is no anticompetitive impact at all in the market for funds management**. The management of the proportion of the SSS Fund attributable to the Commonwealth Act (in fact, all of the SSS Fund) is subject to the disciplines of the market.

14. That leaves only the area of economic activity associated with the market for superannuation scheme administration as "tied".

I understand from Department of Treasury and Finance that there are approximately five (5) full time staff positions committed to work associated with the Commonwealth Act, and associated computer assets, software, and office space, etc. This represents the volume of economic activity that is "tied".

15. If there is an anticompetitive effect in tying that area of economic activity, it will be reflected in the level of administration fees payable by SSS fund members to the Fund.

In fact, I understand from Department of Treasury and Finance that the fees charged by the SSS Fund to members are very low in comparison with others in the market. The maximum fee charged by the SSS Fund to contributing members is $40 *pa*, with the rider that the maximum fee must not exceed the amount of interest paid (thus, for small accounts, earning less than $40, the annual fee is less). A very low-end industry charge is just above $1.00 *per* week (over $60 *pa*). For non-contributing members, the maximum charged is $26-50 *per annum*.

While comparisons are dependent upon the product and service mix, a broad indication of an industry average was reported in the November 1998 edition of ASFA (Australian

Superannuation Funds Administration), which concluded that the average administration cost for corporate, public sector and industry funds was just less than $140 *per annum*.

The SA government always has the option of outsourcing the scheme administration function, and continually reviews the performance of the SSS Fund to that end. So far, because costs are constrained because of the economies of scale and administrative convenience provided by the SSS Act arrangements, there has not been an imperative to outsource this function.

From this analysis I conclude that **there is negligible, if any, anticompetitive effect from the tying of the superannuation scheme administration function**.

The volume of economic activity that is associated with superannuation scheme administration of the Government's obligations under the Commonwealth Act is irrelevant in terms of the whole SA economy and, *a fortiori*, the Australian economy.

16. **Assess Costs and Benefits of the restriction:**

16.1 **Costs:** The cost of the tying of the superannuation scheme administration function to the SSS Fund and to Funds SA would be reflected in the fees charged to fund members. Given that these fees are at the low end of the market, the cost should be assessed as **negligible**.

16.2 **Benefits:** There are three benefit arguments applicable to the tying arrangements with the SSS Fund:

16.2.1 The SSS Scheme is a lump sum scheme providing no SA Government contribution except as required by the Commonwealth Act. However, the SA Government has determined that the benefits paid to SSS Fund members who themselves contribute at a rate of at least 4.5 % of salary will be greater than those required under the Commonwealth Act (see: Schedule 2 of the SSS Act and section 3.(1) definition of "charge percentage" - where the percentage rises to 10, not 9 %).

The Government would incur additional transaction costs to provide this additional benefit on top of the Commonwealth benefit if it could not take advantage of the economies of scale and simplified administrative arrangements provided by the tying arrangement.

16.2.2 Through the SSS Act and the SSS Fund, the SA Government has provided a basic unit of death and disability insurance cover at a very low charge to SSS Fund members. Cost of this cover is an average of $2 *per* week for cover of up to $70,000.

For those members who become incapacitated for work as a result of an accident, or whose employment is terminated on account of invalidity before the age of 55, an insurance benefit is payable even if the member is non-contributing (although that affects the amount of benefit), pursuant to section 33A and 34 of the SSS Act.

Accidental death cover is provided to all members, regardless of whether they were contributors or not (although that affects the amount of benefit), pursuant to section 35 of the SSS Act.

The Government would incur additional transaction costs to provide these benefits to non-contributing members if it could not take advantage of the economies of scale and simplified administrative arrangements provided by the tying arrangement.

16.2.3 Significant administrative costs are saved by the tying arrangement. If employees were allowed to chose their own complying scheme, and change that scheme if market conditions so determined, the SA Government would have to:

- ensure that it was informed of the employee's scheme and the scheme address;
- arrange EFT and make payments to a myriad of different schemes;
- maintain records of such payments;
- satisfy SA Government audit requirements with respect to payments to the myriad of schemes;
- provide a report to employees;
- provide the Commonwealth with a benefit certificate in respect of each of the myriad of schemes.

As can be seen, this would impose significant compliance costs on the SA Government in satisfying the obligations under the Commonwealth Act. As a component of the cost of public sector employment, these compliance costs would be borne by the citizens of SA.

16.3 I have no doubt that the benefits of the tying arrangement outweigh its anticompetitive costs. This will be maintained if the SA Government continues to review the performance of the SSS Fund with the option of outsourcing its superannuation scheme administration function if it finds that economically sound.

16.4 There are reporting requirements (section 13: Board reports to the Minister) and auditing requirements (section 10: Treasurer to keep proper accounts, and annual audit by the Auditor-General) in the SSS Act that reinforce the Government's scrutiny over the operations of the Fund.

17. **Alternatives to legislative restrictions:**

The benefits of the tying arrangements are conditional upon the existence of the tying arrangement itself. Apart from using contractual methods (*viz*, making employment in the SA public sector dependent on the employee's contractual agreement to membership of the SSS Fund for the purposes of the employer's obligation under the Commonwealth Act) **the tying arrangement can only sensibly be achieved by legislative means**. Such a contractual tying would be administratively very costly and, in any event, would itself advisably require a statutory authority under the *Public Sector Management Act (SA)*.

With respect to business agencies & units of the SA Government, such a tying would technically breach the third-line forcing prohibition in the *Trade Practices Act, 1974 (C/wth)*, and so require use of the Notification procedure under that Act - although there would be no anticompetitive effect, it is a *per se* prohibition - at a cost of $ 700 per notification (ACCC's application fee) as well as application preparation costs !

Other restrictions:

18. There are a small number of what, at first glance, may appear to be restrictions on competition, but are either not restrictions or are readily justifiable.

19. **Auditor-General:** As referred to above, section 10.(2) requires annual audit of the SSS Fund and its financial statements by the Auditor-General. This could be seen as a "tying arrangement" itself, but the comments at paragraph 5 and footnote 1 above apply. The NCP does not require the SA Government to outsource its government audit function (whether or not, and for whatever reason, Victoria has taken that decision).

20. **Role of Funds SA:** As referred to at paragraph 7 and footnote 3 above, Funds SA is the "tied" funds management service provider (although Funds SA in fact outsources its funds management function and only provides outsource contract administration and high-level oversight). Again, the comments at paragraph 5 and footnote 1 above apply.

21. **Board approval of roll-over fund:** Section 32 of the SSS Act enables a person upon resignation from employment to which the SSS Act relates to elect to transfer the funds held in the SSS scheme to "some other superannuation fund or scheme approved by the Board".

The purpose of this fetter on the employee's election is to ensure that the scheme is a "complying scheme" within the meaning of the *Superannuation Industry (Supervision) Act, 1993 (C/wth)*, ("**the SIS Act**"). It would avoid the use of "personal schemes" that would be non-complying under the SIS Act.

22. I have not detected any other provisions in the SSS Act that could be seen as "restrictions on competition".

"Trivial" restrictions upon competition:

23. South Australia has adopted the legislation review methodology of giving restrictions on competition an initial analysis and then categorising them as either: trivial, intermediate or serious. This assists in prioritisation, and determines the level of resources that should be applied to the legislation review. Unless legislation also contains higher level restrictions, an Act containing only a trivial restriction need not be reviewed, particularly if the Act contains no administrative, reporting, etc, burdens that should be removed.

24. A "trivial" restriction upon competition has, at most, only a minimal or insignificant effect on competition within a market. It may be a restriction on competition simply because it fits the analytical pattern, but in fact have no practical adverse impact in relevant markets. Given that there is a market analysis and a consideration of the purpose of the restriction, categorisation as "trivial" carries with it an intuitive cost-benefit analysis of net public benefit.

Recommendation:

25. For the reasons set out above, I consider that the tying arrangement in section 14 of the SSS Act with respect to the SA Government's obligation under the Commonwealth Act should be categorised as "trivial".

    Therefore, I recommend that the SSS Act not be placed on the SA Government's Schedule for legislation review.

26. If required, I have no objection to this examination being provided to the National Competition Council.

27. Please contact me on telephone: 8 207 2541 if you have any questions about this matter or require any further information.

CROWN SOLICITOR

per:

Greg Cox
12 February 1999

Attachment 3

Local Government Category 1 business activities

Adelaide City Council

In 1997 a Competition Policy Task Force was established by the Adelaide City Council with the objective of analysing and applying national competition policy requirements to the Council's business activities. Council advised the State Government in 1997 that its significant business activities had been identified and the application of competitive neutrality principles determined for Category 1 activities.

The table illustrates all business activities (including two identified as 'potential' but which are not significant), their likely categorisation, and the competitive neutrality principles to be applied to them where appropriate.

Description of business activity	Category	Neutrality Principles recommended to apply				
		N1	N2	N3	N4	N5
Aquatic Centre	CS	r	r	r	r	r
Central Market Authority	1	✓	✓	r	r	✓
North Adelaide Golf Links	1	✓	✓	r	r	✓
Off-street Car Parking	1	✓	✓	r	r	✓
On-street Car Parking	RF	r	r	r	r	r
Property Management	1	✓	✓	r	r	✓
Town Hall Function Centre	2	✓	✓	r	r	✓
Wingfield Waste Mgt Ctr	1	✓	✓	r	r	✓
Road/footpath reinstatemts.	P2+	r	✓	r	r	✓
Building/Environmental	RF	r	r	r	r	r
Nursery operations	P2+	r	✓	r	r	✓

Category and neutrality principle definitions
1 - Category 1 business activity
2 - Category 2 business activity
P2+ - Potential only business activity (further examination only)
RF = Regulatory function
CS = community service - requires further assessment to justify CSO conclusion

N1 Corporatisation or business structure
N2 Tax equivalent regime
N3 Debt guarantees
N4 Private sector equivalent regime
N5 Cost reflective pricing

Work on implementing competitive neutrality principles to the Council's business activities is also largely complete. The full cost of each business activity has now been undertaken, including the allocation of all direct and indirect costs, using an activity based costing methodology. A 'tax equivalent regime' has been implemented, including analysis of all taxes for which the businesses are exempt; ie income tax, sales tax, payroll tax (where business over threshold), land tax, water rates etc.

An organisation structure has been implemented that separates Council's business activities from its other activities.

A difficulty encountered by the Council in applying competitive neutrality is that immediate costs are incurred as part of the evaluation before (any) benefits are

identified. It is generally expected that, because prices for all the businesses are predominantly market driven due to the nature of the activities, the costs to the Council and the community of national competition policy implementation will exceed the benefits. However, this was not known in advance of the exercise being undertaken.

City of Mitcham and City of Unley

The sixth Category 1 activity is a cemetery operation run jointly by the Cities of Mitcham and Unley via a separately incorporated controlling authority.

The controlling authority has obtained independent advice as to its national competition policy obligations and undertaken an analysis of its full costs including tax equivalents and debt guarantee fees. It is anticipated that cost reflective pricing will be fully implemented in the activity from 1 July 1999.

Attachment 4

Local Government Category 2 business activities

A total of 34 Category 2 business activities were identified by councils as set out below.

Nature of activity	Number	CRP*	COR*	TER*	DG*	Other*
Caravan Parks	18	5	4			9*
Works/development	5		4	1		
Recreation centres**	3	2				
Waste management	2				2	
Function centres	1		1			
Cemeteries	1	1				
Water supply(remote areas)**	1					
Electricity supply (remote areas)**	1					
Quarry	1		1			
Saleyards	1	1				

CRP* cost reflective pricing
COR* corporatisation
TER* tax equivalent regime
DG* debt guarantee
Other* activities are small scale and costs of implementation reform would outweigh the benefits. At least market prices are charged.

** The table includes 3 business activities for which further consideration is being given to the costs and benefits of applying principles of competitive neutrality to them. All 3 are business activities of the Municipality of Roxby Downs, a mining town in the unincorporated area of the State. The activities under consideration are the town's water and electricity supplies and its recreation centre.

GROUP 1: COST RECOVERY AND PRICING ELEMENTS

1.1 Adoption of General Principles

COAG Strategic Water Framework 1994, Section 3(a) - (i) and (ii)

3. In relation to pricing:

(a) in general

(i) to the adoption of pricing regimes based on the principles of consumption-based pricing, full-cost recovery and desirably the removal of cross-subsidies which are not consistent with efficient and effective service, use and provision. Where cross-subsidies continue to exist, they be made transparent.

(ii) that where service deliverers are required to provide water services to classes of customer at less than full cost, the cost of this be fully disclosed and ideally be paid to the service deliverer as a community service obligation.

* *Queensland, South Australia and Tasmania endorsed these pricing principles but have concerns on the detail of the recommendations.*

Implementation of the Water Reforms in South Australia

Achievements to Date in South Australia:

1. The Government announced significant reform of water prices in 1995-96 which:
   - provided for a user-pays pricing structure for non-commercial customers, including the elimination of free water allowances; and
   - reduced commercial water charges by an average of 2.5%, as a first step towards removing the cross-subsidy paid by commercial customers.
2. Subsequent pricing decisions in 1996-97, 1997-98 and 1998-99:
   - increased the low, first-step water price and lowered the high, top-step price in real terms consistent with converging to a single water price in the medium term approximating estimated long run marginal cost of supply; and
   - provided for further real reductions in the cross-subsidy paid by commercial customers.
3. The South Australian Government issued a *Competitive Neutrality Policy Statement* in June 1996, and on 16 August 1996 the *Government Business Enterprises (Competition) Act 1996 (South Australia)* came into operation. This Act provides for the establishment of mechanisms:
   - for pricing oversight of Government Business Enterprises having monopoly or near monopoly market power, following appropriate declaration by the Governor; and
   - to enable a complaint to be made concerning an alleged infringement of the principles of competitive neutrality by a state or local government agency, following establishment of such principles by proclamation.

   To carry out both pricing reviews and investigations of competitive neutrality complaints, the Act provides for the appointment by the Governor of Competition

Commissioners who are not subject to Ministerial direction with respect to their recommendations, findings or reports.

3. Pursuant to section 8 of the *Government Business Enterprises (Competition) Act 1996*, the South Australian Water Corporation was declared on 21 November 1996 for pricing oversight in relation to prices charged for water supply and the provision of sewerage services for the three year period 21 November 1996 to 21 November 1999 (inclusive). The Governor appointed Mr John Carey as the Competition Commissioner to conduct an investigation into the water and sewerage prices charged by the South Australian Water Corporation. The Competition Commissioner's final report to the Premier was completed in April 1997 and subsequently tabled in the South Australian Parliament on 5 June 1997. A Ministerial Statement responding to the report's recommendations was also delivered to Parliament on 5 June 1997 by the Deputy Premier and Minister for Infrastructure.

4. Pursuant to section 16 of the *Government Business Enterprises (Competition) Act 1996*, the Governor declared a set of principles of competitive neutrality on 12 June 1997. The South Australian Water Corporation was identified in this proclamation as one of several government agencies engaged in significant business activities and to which the principles apply.

5. A Community Service Obligation (CSO) Policy was endorsed by the Government on 16 December 1996. The policy provides for the following objectives:

   - to ensure that the Government's public policy and welfare programs are not put at risk by the Corporatisation process;
   - to enable rigorous performance monitoring of the commercial performance of government businesses;
   - to ensure that decisions on the appropriate level and quality of CSO services are made by Government rather than public enterprises;
   - to enable enterprises to be competitive; and
   - to ensure that the undertaking of CSO activities does not conflict with Competitive Neutrality Principles and that such activities can be recognised by the Competition Commissioner in recommending prices.

6. The South Australian Water Corporation's CSOs are currently being reviewed against this framework and agreed CSOs are now being funded through explicit purchase agreements between purchasing Ministers and the Corporation.

7. The *Water Resources Act 1990* was amended in December 1995 to include provision for a charge on water use and/or allocation. Pursuant to this legislation, a water resources charge was introduced in December 1995 for SA Water customers and River Murray users. The provision for a charge on water use and/allocation was incorporated into the new *Water Resources Act 1997* which came into operation on 2 July 1997 and repealed the 1990 Act.

8. A medium term target of a 6% rate of return on assets has been set for metropolitan water services.

9. South Australia endorsed the ARMCANZ pricing guidelines for use in applying the requirements of the full cost recovery elements of the framework in December 1998.

1.2 Water Pricing and Cost Recovery - Urban Services

COAG Strategic Water Framework 1994, Section 3(b) - (i), (ii) and (iii)

3(b) Urban water services

(i) to the adoption by no later than 1998 of charging arrangements for water services comprising an access or connection component together with an additional component or components to reflect usage where this is cost-effective.

(ii) in order to assist jurisdictions to adopt the aforementioned pricing arrangements, an expert group, on which all jurisdictions are to be represented, report to COAG at its first meeting in 1995 on asset valuation methods and cost-recovery definitions, and

(iii) that supplying organisations, where they are publicly owned, aiming to earn a real rate of return on the written-down replacement cost of their assets, commensurate with the equity arrangements of their public ownership.

Implementation of the Water Reforms in South Australia

Achievements to Date in South Australia:

1. The South Australian Government has adopted a two-part water pricing structure, comprising access and usage components, for the vast majority of customers. Commercial customers still pay water rates based on property values; however, it is intended to phase these out. Pricing reforms are reflecting a gradual shift to cost-reflective pricing for the delivery of water services.
2. As a commercially focussed entity, the South Australian Water Corporation's objective is to achieve commercial rates of return on assets after allowing for community service obligations.
3. With regard to depreciation, SA Water is expected to operate in accordance with private sector practices, and its performance targets are determined accordingly. In normal business practice, the depreciation charge represents a return of capital capacity to the owners rather than a dedicated funding source for asset replacement.
4. SA Water currently uses straight line depreciation. This has become the almost universal approach by businesses in the private sector to depreciation expenses in order to match to income streams rather than to year by year replacement/ rehabilitation requirements. Further, it is noted that the use of an annuity expense as a substitute for depreciation for financial reporting purposes is not in accordance with commercial accounting practices. Section 7.4 of the Ernst & Young *SCARM Water Industry Asset Valuation Study - Draft Guidelines on Determining Full Cost Recovery* (August 1997) states: 'The financial accounting records of each authority should follow conventional depreciation methods.'
5. It is also considered important to note that in section 4b of *The Report of the Expert Group on Asset Valuation Methods and Cost-Recovery Definitions for the Australian Water Industry* (February 1995), the emphasis on the use of an annuity approach was to ensure that there was a <u>minimum</u> level of cost recovery to ensure the maintenance of service capacity. It recognised that water businesses may adopt other approaches where

that minimum has already been achieved. Further, the Expert Group reported that:

> 'This work (research into the process that can cause water infrastructure to lose service potential) should not delay building into charging arrangements, at an early time, provision for maintaining service delivery capacity, where this does not occur either through depreciation of assets which are valued on the deprival value methodology or through, say, the infrastructure annuity approach.' *(emphasis added)*

6. It should be recognised that the research has not yet taken place, and consequently, no preferred replacement for the common straight-line assumption has yet been identified.
7. The *Guidelines for the Application of Sections 3(a)(i), (ii), (d)(i), (ii), (iii), (iv), (v), (vi) of the Strategic Framework and Related Recommendations 12.1, 12.2 (i), (ii), (iii) and 12.3 of the Expert Group* recognise that water business cost recovery should legitimately range between a minimum viable level of maintaining operating capacity (Principle 5) and achieving such a commercial return that can be achieved short of monopoly rent (Principle 4).
8. Whereas Principle 3 of the Guidelines explicitly identifies the annuity approach as the appropriate approach for asset consumption in Principle 5 (minimum viability), its use is not mandated under Principle 4 (commercial).
9. SA Water pricing is considered within the context of achieving, over time, a rate of return on assets of 6%, as set down in the Corporation's performance agreement with the Government as owner. It is important to note that the achievement of the target rate of return is expected to be achieved through a combination of competitive pricing (either in terms of comparative prices with peer water business or direct competition, as it develops under the National Competition Policy), productivity improvement and product diversification.
10. The best figures currently available suggest that the annuity cost for SA Water would be in the order of $30 million less than the current depreciation expense of around $95 million. However, Principle 4 of the Guidelines 'allows' pricing to recover a return on capital equivalent to the Weighted Average Cost of Capital (WACC). In the case of SA Water, WACC is estimated to be around 8% real.
11. Against the 8% WACC target, the real rate of return is calculated against a written down asset value of just under $6 billion, the budgeted outcome for 1998-99 is around 4.7%, and as identified above, the medium term target agreed with the Government through the Corporation's performance agreement is 6%. Consequently, the effective dollar difference between the current SA Water target of 6% and the 8% WACC is in the order of $100 million.
12. The cost recovery target sought by SA Water sits above the minimum requirements of the Guidelines (Principle 5) and below the maximum (Principle 4) and consequently, is acceptable practice.
13. As long as any difference between the annuity cost and the depreciation cost remains less than the difference (expressed in dollars) between the return target sought by the Government and WACC for SA Water, the current text of the Guidelines will not impact on the Corporation's goals and strategies. This would appear to be the case for the foreseeable future.

14. The Competition Commissioner has investigated and commented on the structure of the South Australian Water Corporation's prices for water and sewerage tariffs in his report to Government in April 1997.

Further Actions Being Implemented or Proposed:

1. The use of property values for commercial water supply customers is to be phased out.

1.3 Water Pricing and Cost Recovery - Metropolitan Bulk Supplies

COAG Strategic Water Framework 1994, Section 3(c) - (i)

3(c) Metropolitan bulk-water suppliers

(i) to charging on a volumetric basis to recover all costs and earn a positive real rate of return on the written-down replacement cost of their assets,

Implementation of the Water Reforms in South Australia

Achievements to Date in South Australia:

1. SA Water has divided its water operation business along the lines of wholesale (bulk water division), distribution, (Adelaide, Country Divisions) and retail (Customer Services Division). This is commensurate with the restructuring of other utility businesses worldwide.
2. Pricing for bulk water has yet to be determined. This is likely to lead to a two part tariff with an emphasis on consumption based pricing, which it is understood the National Competition Council views as akin to volumetric charging.
3. SA Water is providing transport for water purchased in one location by a user and used in a separate location by the same user. SA Water's pricing reflects the costs it incurs in usage of its pipelines and ancillary equipment for this purpose.
4. The framework established for pricing bulk water and the water transportation arrangements would have relevance for third party access applications.

1.4 Water Pricing and Cost Recovery - Rural Supplies

COAG Strategic Water Framework 1994, Section 3(d) - (i), (ii), (iii), (iv), (v) & (vi)

3(d) Rural water supply

(i) that where charges do not currently fully cover the costs of supplying water to users, agree that charges and costs be progressively reviewed so that no later than 2001 they comply with the principle of full-cost recovery with any subsidies made transparent consistent with 3(a) (ii) above

(ii) to achieve positive real rates of return on the written-down replacement costs of assets in rural water supply by 2001, wherever practicable

(iii) that future investment in new schemes or extensions to existing schemes be undertaken only after appraisal indicates it is economically viable and ecologically sustainable

(iv) where trading in water could occur across State borders, that pricing and asset valuation arrangements be consistent

(v) where it is not currently the case, to the setting aside of funds for future asset refurbishment and/or upgrading of government-supplied water infrastructure, and

(vi) in the case of the Murray-Darling Basin Commission to the Murray-Darling Basin Ministerial Council putting in place arrangements so that out of charges for water funds for the future maintenance, refurbishment and/or upgrading of the headworks and other structures under the Commission's control be provided.

Implementation of the Water Reforms in South Australia

Achievements to Date in South Australia:

1. A Community Service Obligation Policy has been endorsed by the Government. CSOs currently provided by the South Australian Water Corporation have been reviewed. The provision of country water services at a common state-wide price is a major CSO.
2. The Competition Commissioner has reviewed and reported on prices for reticulated supplies in rural areas.
3. As a party to the Murray-Darling Basin Agreement, the South Australian Government is committed to the establishment of a commercially focussed bulk water supply business within the Murray-Darling Basin Commission. Through the Murray-Darling Basin Ministerial Council, South Australia has addressed the long-standing inequity in funding of the MDBC operations. A revised funding formula based on 'user pays' now sees South Australian users of River Murray water paying a share of the costs of water storage and river management, commensurate with the level of service provided.
4. The South Australian Water Corporation is subject to commercial investment criteria for its capital expenditure program.
5. Where applicable, new irrigation schemes and dam developments are subject to the relevant provisions of the *Development Act 1993*, *Environment Protection Act 1993* and the *Water Resources Act 1997*. State Government involvement in these initiatives is assessed from a whole-of-government perspective prior to approval.

Further Actions Being Implemented or Proposed:

1. The South Australian Government is reviewing its criteria for investment in new irrigation or rural water supply schemes, or extension of existing schemes, with the aim of achieving the objective that investments be undertaken only after thorough economic and environmental assessment indicates that they are sustainable.
2. The Murray-Darling Basin Commission is undertaking a trial for interstate trade in the Mallee area (Sunraysia and the Riverland) of the Murray-Darling Basin. The pilot project commenced on 1 January 1998 for a period of 2 years or until a net volume of 10 gigalitres has been traded from any jurisdiction. The trial will identify impediments to interstate trade of water entitlements.

GROUP 2: INSTITUTIONAL REFORM ELEMENTS

2.1 Institutional Role Separation

COAG Strategic Water Framework 1994, Sections 6(c) and (d)

6. In relation to institutional reform:

(c) to the principle that, as far as possible, the roles of water resource management, standard setting and regulatory enforcement and service provision be separated institutionally,

(d) that this occur, where appropriate, as soon as practicable, but certainly no later than 1998,

Competition Principles Agreement 1995

1. Prices Oversight of Government Business Enterprises
2. Competitive Neutrality Policy and Principles
3. Structural Reform of Public Monopolies
4. Legislation Review
5. Access to Services Provided by Means of Significant Infrastructure Facilities

Implementation of the Water Reforms in South Australia

Achievements to Date in South Australia:

1. Water resources management functions (including the regulation of water allocations) were separated from water service provision with the transfer of these functions from the Engineering and Water Supply Department (now the South Australian Water Corporation) to the then Department of Environment and Natural Resources (now the Department for Environment, Heritage and Aboriginal Affairs) in January 1994. The Environment Protection Authority (which regulates the water quality aspects of water resources management) was established in 1994. Guided by the Australian Drinking Water Guidelines established nationally, the South Australian Health Commission may issue water quality alerts if acute problems are detected and urgent public notification is deemed necessary. In addition, the *Public And Environmental Health Act 1987* establishes the Public and Environmental Health Council responsible for waste and sanitation issues. Required to produce an annual report, the Council has the power to prosecute individuals found polluting the water supply under Section 21 of the Act.
2. Responsibility for coordinating South Australia's input into the Murray-Darling Basin Initiative was transferred from the Engineering and Water Supply Department to the Department of Environment and Natural Resources in December 1994. Responsibility for managing South Australia's financial contribution to the Murray-Darling Basin Initiative was effectively transferred to the Department of Environment and Natural Resources in 1996-97.
3. The South Australian Water Corporation was corporatised on 1 July 1995. It is subject to the *Public Corporations Act 1993* which provides a framework for the South Australian Water Corporation's commercial focus. The major accountabilities of the *Public Corporations Act 1993* include:

- provision of a Charter and Performance Statement;
- separation of the commercial and non-commercial operations (including procedures for directions from the Minister);
- implementation of competitive neutrality provisions (through tax and rate equivalents, debt guarantee fees);
- duties and liabilities of Board and Directors;
- establishment of subsidiaries; and
- miscellaneous provisions including dividends, internal audit, accounts and annual reports.

4. As indicated previously, the South Australian Government issued a *Competitive Neutrality Policy Statement* in June 1996, and on 16 August 1996, the *Government Business Enterprises (Competition) Act 1996 (South Australia)* came into operation. Competition Commissioners provide independent advice to the Government on the prices charged by declared Government Business Enterprises, and investigate and recommend solutions to competitive neutrality complaints.

Further Actions Being Implemented or Proposed:

1. The South Australian Government is reviewing all existing legislation which restricts competition in line with the Competition Principles Agreement. The *Waterworks Act 1932*, *Sewerage Act 1929*, *SA Water Corporations Act 1994*, *Water Conservation Act 1936, Irrigation Act 1994 and the Renmark Irrigation Act 1936* are being reviewed, and this review is expected to be completed in 1999.

2. Proposals for new legislation which restrict competition are required to be assessed by criteria applying competition principles to ensure that there is a net public benefit, and that the objectives of the legislation can only be achieved by restricting competition. The *Water Resources Act 1997* was the first piece of new legislation to be so assessed.

2.2 Performance Monitoring and Best Practice - Water Services

COAG Strategic Water Framework 1994, Section 6(e)

(e) the need for water services to be delivered as efficiently as possible and that ARMCANZ, in conjunction with the Steering Committee on National Performance Monitoring of Government Trading Enterprises further develop its comparisons of inter-agency performance, with service providers seeking to achieve international best practice,

Implementation of the Water Reforms in South Australia

Achievements to Date in South Australia:

1. The Department of Treasury and Finance and the Office for Government Enterprises provide quarterly performance monitoring reports on the South Australian Water Corporation to the Portfolio Minister and the Treasurer.
2. The South Australian Water Corporation performance, in terms of water services supplied to metropolitan Adelaide, is reported annually in "WSAA*facts*".
3. Three major South Australian irrigation authorities, Renmark Irrigation Trust, Central Irrigation Trust and Sunlands/Golden Heights Irrigation Trust have participated in the first National Irrigation Authority Benchmarking Study. Their performance is reported in *The 1997/98 Australian Irrigation Water Provider Benchmarking Report.*

Further Actions Being Implemented or Proposed:

1. The Steering Committee on National Performance Monitoring of Government Trading Enterprises was established by the Special Premiers Conference in July 1991. Representatives of the South Australian Water Corporation participate in performance monitoring managed by the Water Services Association of Australia.
2. Extension of performance monitoring to the non-major urban and rural water sectors (utilities with between 50 000 and 20 000 assessments) is proceeding under the direction of the national working group. Only two South Australian water supply areas fall into this category (Mt Gambier and Whyalla) but for comparison, it is proposed to also report on "Outer Metropolitan" and "Total Country".

2.3 Commercial Focus for Water Services

COAG Strategic Water Framework 1994, Section 6(f)

(f) that the arrangements in respect of service delivery organisations in metropolitan areas in particular should have a commercial focus, and whether achieved by contracting-out, corporatised entities or privatised bodies this be a matter for each jurisdiction to determine in the light of its own circumstances,

Implementation of the Water Reforms in South Australia

Achievements to Date in South Australia:

1. The South Australian Water Corporation, the major water utility in South Australia, was corporatised in 1995 and it has outsourced all water supply and sewerage services in the Adelaide metropolitan area to a private contractor, United Water.
2. The South Australian Water Corporation is a commercial entity subject to the *Public Corporations Act 1993*.
3. The South Australian Government is reviewing of all existing and proposed legislation which may restrict competition.

2.4 Devolve Irrigation Management

COAG Strategic Water Framework 1994, Section 6(g)

(g) to the principle that constituents be given a greater degree of responsibility in the management of irrigation areas, for example, through operational responsibility being devolved to local bodies subject to appropriate regulatory frameworks being established;

Implementation of the Water Reforms in South Australia

Achievements to Date in South Australia:

1. The South Australian Government transferred all of the Government Highland Irrigation Districts to 8 self-managing irrigation trusts on 1 July 1997. These bodies in turn created the Central Irrigation Trust to employ staff and provide day-to-day management and operational services for all of the individual irrigation trusts. The legislative basis for the transfer to self-management is the *Irrigation Act 1994*. The headworks of all 8 irrigation districts have been progressively rehabilitated, with rehabilitation of the last of these districts to be completed in 1999.

Further Actions Being Implemented or Proposed:

1. The only other State Government irrigation areas remaining are those located along the lower reaches of the River Murray. The transfer of these areas to self management is currently being considered but this is unlikely to occur before rehabilitation has occurred.
2. Discussions have been initiated with the Commonwealth Government on the future of the Loxton Irrigation District. This is currently being managed under contract by the Central Irrigation Trust on behalf of the South Australian Water Corporation which in turn is managing this on behalf of the Commonwealth Government. A proposal for rehabilitating the headworks of the Loxton Irrigation District has been prepared by the Loxton Irrigation Advisory Board, and is currently being negotiated between the State and Commonwealth Governments. It is expected that the irrigation district would be transferred to self-management as a condition of funding for rehabilitation.

GROUP 3: ALLOCATION AND TRADING ELEMENTS

3.1 Allocation and Entitlements

COAG Strategic Water Framework 1994, Sections 4(a), (b), (c), (d), (e) and (f)

4. In relation to water allocations or entitlements:

(a) the State Government members of the Council would implement comprehensive systems of water allocations or entitlements backed by separation of water property rights from land title and clear specification of entitlements in terms of ownership, volume, reliability, transferability and, if appropriate, quality,

(b) where they have not already done so, States would give priority to formally determining allocations or entitlements to water, including allocations for the environment as a legitimate user of water,

(c) in allocating water to the environment, member governments would have regard to the work undertaken by ARMCANZ and Australian and New Zealand Environment and Conservation Council (ANZECC) in this area,

(d) that the environmental requirements, wherever possible, will be determined on the best scientific information available and have regard to the inter-temporal and inter-spatial water needs, required to maintain health and viability of river systems and groundwater basins. In cases where river systems have been over-allocated, or are deemed to be stressed, arrangements will be instituted and substantial progress made by 1998 to provide a better balance in water resource use including appropriate allocations to the environment in order to enhance/restore the health of river systems,

(e) in undertaking this work, jurisdictions would consider establishing environmental contingency allocations which provide for a review of the allocations five years after they have been determined, and

(f) where significant future activity or dam construction is contemplated, appropriate assessments would be undertaken to, inter alia, allow natural resource managers to satisfy themselves that the environmental requirements of the river systems would be adequately met before any harvesting of the water resource occurs;

Implementation of the Water Reforms in South Australia

Achievements to Date in South Australia:

1. After a comprehensive review involving extensive community consultation, the *Water Resources Act 1997* was passed by the South Australian Parliament in 18 March 1997 and came into operation on 2 July 1997. The new Act, which repealed both the *Water Resources Act 1990* and the *Catchment Water Management Act 1995*, provides for a comprehensive system of transferable property rights for water allocations in accordance with the COAG requirements. Other important features of the *Water Resources Act 1997* include:

    - incorporation of the principles of ecologically sustainable development;
    - provision of holistic water resources management within the context of integrated natural resources management;

- provision for water for the environment;
- provision for devolving greater responsibility for water resources management to local communities through the establishment of catchment water management boards and water resources planning committees; and
- provision for the management of all water resources through a hierarchy of water management plans.

2. As specified in Part 5 of the *Water Resources Act 1997*, water licences are:

   - the holder's personal property
   - not linked to land title, and
   - fully tradeable, both on a temporary and permanent basis.

3. Licences must specify the volume of water that can be taken and the conditions of use. Licences remain in force until they are terminated by or under the Act. Reliability and quality are not specified on a water licence but can be dealt with through the development of water allocation plans. In fact, the context for the granting, review and transfer of licences is provided by the relevant water allocation plan developed through an extensive community consultation process. Catchment water management plans, water allocation plans and local water management plans must be consistent with the state-wide policy directions contained in the State Water Plan.

4. Part 5 (Divisions 2 and 3) of the *Water Resources Act 1997* also provides for interstate trade of water entitlements to occur. As indicated previously, the trial of permanent trading arrangements in the Riverland-Sunraysia region of the Murray-Darling Basin commenced in January 1998.

5. The State Water Plan is the key statutory document for water resources management in South Australia. The purpose of the State Water Plan is to set out policies for the use and management of South Australia's water resources. It is a statement of high level water policy, that sets the framework for regional catchment water management plans and local water allocation plans. The Plan and the policy framework it establishes, must ensure that the use and management of the State's water resources sustains the physical, economic and social well being of the people of the State and facilitates economic development of the State, whilst protecting the ecosystems that depend on those resources and the reasonably foreseeable needs of future generations. All other plans produced under the *Water Resources Act 1997* must be consistent with this Plan.

   The current State Water Plan, entitled **South Australia - Our Water Our Future** was published in September 1995. It was adopted as the State Water Plan for the purposes of the *Water Resources Act 1997* when the Act was proclaimed on 2 July 1997. However, the Act also recognised that this Plan may need to be reviewed to ensure that it remains contemporary and fully meets the requirements of the State Water Plan as specified in the Act.

   The State Government has embarked on a review of the State Water Plan, as required under the *Water Resources Act 1997*. It is expected that the review will culminate in a revised State Water Plan being adopted during National Water Week in October 1999 to replace the current Plan.

6. Formal recognition and protection of environmental water provisions for prescribed resources are provided under the *Water Resources Act 1997*. The main vehicle for

achieving this is the relevant water allocation plan that must be prepared for all prescribed resources by either a catchment water management board as a part of its catchment water management plan, or where a board does not exist, by the relevant water resources planning committee. The relevant board or committee is required to identify both environmental water requirements and environmental water provisions, and provide for regular monitoring. Therefore, instead of issuing a water licence for environmental requirements (as in the case for consumptive uses), environmental water provisions will be formally recognised and protected through the legally binding provisions of water allocation plans. An adaptive management approach is built into the regular, community-based review of these plans. If the results of monitoring indicate that the resource is over-allocated to consumptive use, then this can be addressed through making appropriate adjustments to the water allocation plan via the review process.

7. Both the draft policies and the *Water Resources Act 1997* are consistent with the policy directions of ARMCANZ and ANZECC with respect to water allocations and water for the environment.

8. Any monitoring and investigations undertaken by agencies, catchment water management boards and water resources planning committees will be scientifically rigorous and underpin subsequent planning, including the determination of environmental water requirements and provisions.

9. Most of the river systems that are either over-allocated or stressed are already prescribed resources under the *Water Resources Act* 1997, for which water allocation plans are required to be prepared. As indicated previously, these plans must identify and make provision for environmental water needs.

10. There are several stressed river systems that are not prescribed but which are located in catchment water management board areas. Although water allocation plans are not required in these cases, these resources will be addressed in the relevant board's catchment water management plan. Among other things, catchment water management plans are required to assess environmental water needs, set out programs for monitoring river health, and set out methods for improving the health of water dependant ecosystems. In addition to setting out what management actions the board intends to implement, the plan may also provide for the control of a number of prescribed water affecting activities such as the construction of dams through a requirement for, and conditions on, permits. If the results of monitoring undertaken by the board indicate that closer management controls are deemed necessary, prescription of these and other resources is provided for under the *Water Resources Act 1997*. If a prescribed resource is located within a catchment water management board's area, it is subject to both the provisions of the required water allocation plan and also those of the wider catchment water management plan of which the water allocation plan becomes a part.

11. For water resources located outside of prescribed areas and catchment water management board areas, the *Water Resources Act 1997* allows the Minister and local councils to take action to protect these water resources through the preparation of local water management plans. While this is not a mandatory requirement on local councils, councils will be encouraged to prepare these plans. One council will be shortly commencing this process. Several other councils that cover adjacent catchments, are currently investigating how best to use this management option to deal with local water management issues.

12. The *Water Resources Act 1997* provides a number of mechanisms for protecting water resources irrespective of whether or not they are prescribed or located in a catchment water management board's area. For example, the Act provides the Minister with a number of powers to respond to emergency situations when the water resource is under threat from overuse. Under section 16 of the Act, the Minister may, in the case of inadequate supply or overuse of the resource, publish a notice in the Government Gazette to (a) prohibit (or restrict) the taking of water from a resource (whether prescribed or not), or (b) direct that dams, embankments or other structures be modified to allow water to pass over, under or through them, for a period of up to two years. Furthermore, under section 37 of the Act, the Minister may reduce water allocations stipulated on water licences:

    - to prevent a reduction, or further reduction, in water quality,
    - to prevent damage, or further damage, to dependent ecosystems,
    - because there is insufficient water to meet existing or expected future water demands, or
    - because there has been, or is to be, a reduction in the quantity of water available pursuant to the *Murray-Darling Basin Act 1993* or the *Groundwater (Border Agreement) Act 1985*.

    In these circumstances, and in the absence of an alternative scheme set out in the regulations, water allocations on licences must be reduced proportionately.

13. With respect to section 4(f) of the COAG strategic framework, the granting of any new water licences (including the component allocation) or the transfer of existing licences must be consistent with the provisions of the relevant water allocation plan, which as indicated previously must reflect the ESD requirements of the object of the Act and provide for environmental water needs. In addition to providing controls over consumptive water use, the *Water Resources Act 1997* makes provision for the control of a number of other water affecting activities such as the construction of dams and other structures that will collect or divert water. For water affecting activities prescribed in the Act, authorisation in the form of either a permit or a water licence is required. As indicated above, the relevant water plan (ie catchment water management plan or local water management plan prepared by the local council) may also identify water affecting activities and the circumstances under which they may or may not be undertaken. In either case, the granting of permits and water licences must be consistent with the provisions of the relevant water plan.

14. All diversions from the River Murray are fully licensed. Diversions from the River Murray for irrigation purposes have been licensed for some time. More recently, licences have been issued to the South Australian Water Corporation for the water diverted for urban water supply purposes in metropolitan Adelaide and country towns. These licences comply with the cap on diversions in the Murray-Darling Basin.

15. In the interests of integration and streamlining, permits are not required for a water affecting activity when that activity is authorised in certain circumstances under a number of other statutes including:

    - *Development Act 1993*

- *Environment Protection Act 1993*
- *Pastoral Land Management and Conservation Act 1989*
- *Soil Conservation and Land Care Act 1989*
- *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986*
- *Native Vegetation Act 1991*, and
- *South Eastern Water Conservation and Drainage Act 1992*.

16. This streamlining of approvals, however, has been accompanied by consequential amendments to first four of these statutes, stipulating that applications required by these statutes must be referred to the relevant authority under the *Water Resources Act 1997* for direction or advice. This one-stop-shop approach will not apply to water licences which will continue be required under the *Water Resources Act 1997* irrespective of what authorisation has been granted under other legislation.

Further Actions Being Implemented or Proposed:

1. The water allocation plans for the State's prescribed resources must be prepared in accordance with an extensive community consultation process prescribed in the Act. The first round of water allocation plans under the *Water Resources Act 1997* are in different stages of preparation, but all are required by regulation to be completed by 1 July 2000. While these water allocation plans are being prepared, the water resources of all these regions are still subject to policy provisions of the management plans prepared under the previous *Water Resources Act 1990*. Under transitional arrangements, these management plans are deemed to be water allocation plans until replaced by the new plans under the 1997 Act. Although they are not as sophisticated as the plans being developed under the *Water Resources Act 1997*, particularly with respect to water for the environment, the existing management plans are still designed to protect the sustainability of the resource.
2. In addition to the introduction of new water resources legislation, several key policies are being developed, in particular:
   - an Environment Protection (Water Quality) Policy under the *Environment Protection Act 1993*, and
   - a state-wide water allocation policy for unregulated streams, a key component of which is the development of state-wide environmental flow principles.
3. The latter policy initiative, which is still in preparation, is being overseen by the South Australian Water Policy Committee, which is a high level, inter-agency committee established by Cabinet in 1996. It is proposed that these state-wide policy directions, once endorsed by the Government, would be included in the revised State Water Plan to provide a clear framework for community-based water resources plans required to be prepared under the *Water Resources Act 1997*.
4. In addition to the monitoring and investigations that catchment water management boards and water resources planning committees undertake, a number of other investigations are under way including:
   - investigations by the Lower Murray Flow Management Working Group and the Barrages Environmental Flows Scientific Panel;
   - monitoring and modelling work being undertaken as a part of AUSRIVAS (Australian Rivers Assessment Scheme) under the National River Health Program. At present

about 200 sites throughout the State are being monitored and this will increase to about 300 in 1999; and

- investigations on environmental flows and watercourse management requirements in a number of catchments under the Natural Heritage Trust program. Two of these investigations are nearing completion. These have been in seasonally flowing river systems that have had very little research to date within Australia. These investigations have identified quantitative environmental flows requirements for a number of ecosystem components. This information will be used in water allocation and catchment water management plans that are currently being developed.

5. These investigations complement a range of previous investigations and on-ground works. For example, trials to rehabilitate wetlands in the South East and along the River Murray, predominantly by manipulating the hydrologic regime, have been conducted by a range of organisations including the universities, government departments, non-government agencies and local government, either by themselves or in partnership with others.

6. A compendium of hydrological-ecological relationships for South Australian aquatic biota will be developed during this year. This information will be used to support the development of water allocation and catchment water management plans.

3.2 Trading in Water Entitlements

COAG Strategic Water Framework 1994, Sections 5(a), (b), (c) and (d)

5. In relation to trading in water allocations or entitlements:

(a) that water be used to maximise its contribution to national income and welfare, within the social, physical and ecological constraints of catchments,

(b) where it is not already the case, that trading arrangements in water allocations or entitlements be instituted once the entitlement arrangements have been settled. This should occur no later than 1998,

(c) where cross-border trading is possible, that the trading arrangements be consistent and facilitate cross-border sales where this is socially, physically and ecologically sustainable, and

(d) that individual jurisdictions would develop, where they do not already exist, the necessary institutional arrangements, from a natural resource management perspective, to facilitate trade in water, with the provision that in the Murray-Darling Basin, the Murray-Darling Basin Commission be satisfied as to the sustainability of proposed trading transactions;

Implementation of the Water Reforms in South Australia

Achievements to Date in South Australia:

1. South Australia has had arrangements in place for trade in water allocations since the early 1980s. The Water Resources Acts of 1976 and 1990 did not preclude intrastate and interstate trade, and in the absence of an explicit legal framework, policies facilitated trade more specifically during these early years. More recently, however, the current *Water Resources Act 1997* has clarified and made transparent the legal basis for water allocations and trading arrangements for both interstate and intrastate trade. This clarification and refinement will be extended to the policy framework for certain prescribed resources through the preparation of community-based water allocation plans.
2. Transferable water entitlements (both permanent and temporary) were formally introduced in 1983 for private diverters from the River Murray in South Australia and in 1984 for groundwater allocations in the Northern Adelaide Plains. Since then, trade has taken place in 7 other prescribed water resources (mainly groundwater resources) in the State. Although there are no legal or institutional impediments to trade in the remaining prescribed resources, trading will only commence in these areas when conditions in those areas are conducive to trade (eg the resource available for consumptive use is fully allocated).
3. As indicated previously, the context for the granting, review and transfer of licences is provided by the relevant water allocation plan which must be developed through an extensive community consultation process for each prescribed resource in the State.
4. The *Irrigation Act 1994* has been amended to facilitate trade by irrigation trusts on behalf of trust members. These amendments have removed significant barriers to trade and ensured that the water market works more effectively.

5. In June 1995, the Murray-Darling Basin Ministerial Council agreed to establish a cap on diversions from river systems in the Murray-Darling Basin. Arrangements for implementing the cap were finalised by the Murray-Darling Basin Ministerial Council in December 1996, taking into account the advice of the Independent Audit Group (IAG). The IAG has since reviewed the implementation of the cap for 1996-97 and 1997-98 in all basin states. In reporting its findings, the IAG indicated that South Australia is the best placed of all the states to quantify the cap and reliably report against the cap. The IAG also reported that both urban and irrigation consumption of Murray water in South Australia were within the cap. As a member of the Murray-Darling Basin Ministerial Council, the South Australian Government strongly supports the capping initiative.

Further Actions Being Implemented or Proposed:

1. South Australia is participating with other jurisdictions in a pilot program for interstate trade along the River Murray (the Mallee Project) with the aim of identifying the key constraints and opportunities. As indicated previously, the Mallee Project, which is being coordinated by the Murray-Darling Basin Commission, commenced on 1 January 1998. Agreement has recently been reached to expand the trial to include all pumped irrigation areas within the pilot trading zone in the trading regime.

3.3 Groundwater Pricing and Management

COAG Strategic Water Framework 1994, Section 3(e) - (i)

(e) groundwater

(i) that management arrangements relating to groundwater be considered by Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ) by early 1995 and advice from such considerations be provided to individual jurisdictions and the report be provided to COAG;

It is noted that Governments agreed that the 1994 Framework document would be revised to incorporate the ARMCANZ papers on Groundwater and on Stormwater/Wastewater and that this extended water reform framework would be known as the '1996 Framework for the Strategic Reform of Australia's Water Industry'. This outcome was recorded in the documents attached to the Prime Minister's letter to the Commonwealth Minister for Primary Industries and Energy dated 10 February 1997.

Implementation of the Water Reforms in South Australia

Achievements to Date in South Australia:

1. In December 1996, ARMCANZ released a policy position paper entitled, *Groundwater Allocation And Use - A National Framework For Improved Groundwater Management In Australia,* which took into account the report *Towards a National Groundwater Management Policy and Practice, October 1995*. The 1996 position paper identifies a number of key issues including consistency of pricing policies, consistency in defining sustainable yield especially in a climate of water trading, organisational arrangements which eliminate conflicts of interest, extension of the National Drilling Licensing System, education/research/investigation requirements, and assessment.
2. In 1997 in response to a proposal from the Task Force on COAG Water Reform, SCARM requested the National Groundwater Committee to provide advice and put a proposal to SCARM concerning monitoring and reporting on progress by States/Territories in implementing the recommendations of the 1996 policy position paper. The National Groundwater Committee has since prepared a draft paper on possible actions and a timetable to implement the recommendations of the 1996 policy position paper. Once endorsed by the Committee, the draft paper will be forwarded to SCARM for its consideration.

GROUP 4: ENVIRONMENT AND WATER QUALITY

4.1 Integrated Resource Management

COAG Strategic Water Framework 1994, Sections 6(a), (b) and 8(c):

6. In relation to institutional reform:

(a) that where they have not already done so, governments would develop administrative arrangements and decision-making processes to ensure an integrated approach to natural resource management,

(b) to the adoption, where this is not already practised, of an integrated catchment management approach to water resource management and set in place arrangements to consult with the representatives of local government and the wider community in individual catchments

8. In relation to the environment:

(c) to support consideration being given to establishment of landcare practices that protect areas of river which have a high environmental value or are sensitive for other reasons,

Implementation of the Water Reforms in South Australia

Achievements to Date in South Australia:

1. The South Australian Government is reviewing current institutional arrangements facilitating integrated natural resources management. The review is involving a comprehensive process of community participation.
2. South Australia will be developing integrated regional strategies across the State in partnership with the Commonwealth Government under the Natural Heritage Trust. Preparation of these strategies commenced in 1998 and have involved relevant stakeholders from the community, local government and state government. The process is being overseen by community-based regional organisations.
3. The Department for Environment, Heritage and Aboriginal Affairs has developed and implemented action plans for improved riparian zone management in four Mount Lofty Ranges catchments during 1994-97 using National Landcare Program funds. These projects are part of the Mount Lofty Ranges Catchment Program and have been conducted in partnership with rural community groups and the Torrens Catchment Water Management Board. The projects have used an innovative combination of survey work and community consultation. This has lead to a successful program of staged implementation of the on-ground actions that will improve water quality, control erosion, and provide improved riparian and aquatic ecosystem health. Three of the four catchments are critical for public water supply, namely the Torrens, Onkaparinga and the South Para catchments.
4. The Department conducted similar projects in two additional catchments, North Para and the Marne, during 1997-98 using funds from a local government-based Catchment Management Subsidy Scheme.
6. During 1998-2000 riparian zone management and environmental flows plans will be developed for a further four catchments, Wakefield, Broughton, Light and Gawler, using

Natural Heritage Trust funds.

6. In addition, officers from the Department for Environment, Heritage and Aboriginal Affairs and the Department of Primary Industries and Resources provide technical support to landcare groups and local government on riparian zone management issues.

7. In accordance with the requirements of the *Water Resources Act 1997* the Department for Environment, Heritage and Aboriginal Affairs is reviewing the State Water Plan.

4.2 National Water Quality Management Strategy

COAG Strategic Water Framework 1994, Section 8(b)

8. In relation to the environment:

(b) to support ARMCANZ and ANZECC in their development of the National Water Quality Management Strategy, through the adoption of a package of market-based and regulatory measures including the establishment of appropriate water quality monitoring and catchment management policies and community consultation and awareness

Implementation of the Water Reforms in South Australia

Achievements to Date in South Australia:

1. The SA Environment Protection Authority is currently preparing an Environment Protection (Water Quality) Policy under the *Environment Protection Act 1993 (South Australia)* and consistent with the national framework provided by the National Water Quality Management Strategy. This policy will apply to South Australia's inland (surface and ground), estuarine and marine waters.
2. The policy is needed to provide a consistent state-wide regulatory framework for protecting the water quality of all water bodies, and to ensure that all industries, irrespective of their scale of operation, operate under uniform conditions regarding water quality. The policy will seek not only to protect and improve the quality of the State's water bodies, but also to encourage better use of wastewater by waste avoidance or elimination, minimisation, reuse and recycling, waste treatment to reduce potential degrading impacts, and finally disposal.
3. Extensive community consultation on the policy's development is required under the *Environment Protection Act 1993*. Work is continuing on an Environment Protection (Water Quality) Policy under the *Environment Protection Act 1993*. The policy will apply to South Australia's inland, estuarine and marine waters. Drafting is nearing completion and it is currently anticipated that the policy will undergo public consultation at the end of June 1999.
4. Following water quality incidents in 1998, a meeting of high-level stakeholders was conducted on 17 September 1998 to discuss water catchment management strategies in South Australia. To facilitate the development of objectives and requirements for state-wide water monitoring, the State Water Monitoring Coordinating Sub-Committee was established. The State Water Monitoring Coordinating Sub-Committee has progressed water monitoring issues across the entire State with an initial focus on the Adelaide Hills, in particular the Onkaparinga catchment for trialing various methodologies.
5. The Sub-Committee has effectively established a methodology for developing state-wide monitoring programs by achieving significant progress in the following five areas:
    - establishing objectives for a State Water Monitoring Program;
    - clarifying roles and responsibilities of agencies involved in monitoring;
    - developing a Memorandum of Understanding between agencies, to be signed off at Chief Executive level;
    - establishing a data base and recording monitoring that is already occurring in the

catchment areas of the Onkaparinga Catchment Water Management Board; and

- developing a monitoring program for the Onkaparinga Catchment Water Management Board catchment area.

6. In addition, three key initiatives have resulted from water quality incidents in South Australia. These initiatives are:

   - better coordination across Government in relation to water quality incidents, with the development of a water quality incident coordinator and protocol involving three Ministers to be considered by Cabinet in the near future;
   - the re-establishment of the Water Policy Committee; and
   - the commissioning, and subsequent preparation, of a report by the Minister for Environment and Heritage entitled the State of the Health of the Mount Lofty Ranges Catchment.

4.3 Wastewater/Stormwater Management

COAG Strategic Water Framework 1994, Sections 8(a) and (d)

8. In relation to the environment:

(a) that ARMCANZ, ANZECC and the Ministerial Council for Planning, Housing and Local Government examine the management and ramifications of making greater use of wastewater in urban areas and strategies for handling stormwater, including its use, and report to the first Council of Australian Governments meeting in 1995 on progress,

(d) to request ARMCANZ and ANZECC, in their development of the National Water Quality Management Strategy, to undertake an early review of current approaches to town wastewater and sewage disposal to sensitive environments, noting that action is under way to reduce accessions to water courses from key centres on the Darling River system (it was noted that the National Water Quality Management Strategy is yet to be finalised and endorsed by governments).

Implementation of the Water Reforms in South Australia

Achievements to Date in South Australia:

1. The *Catchment Water Management Act 1995 (South Australia)* established catchment water management boards for the Torrens and Patawalonga catchments. Both boards are addressing major stormwater pollution problems through community-based management plans. The works and measures contained in the plans are funded through a catchment environment levy. This model has been incorporated into, and expanded upon, in the *Water Resources Act 1997* which repealed the *Catchment Water Management Act 1995*. Four additional catchment water management boards have since been established under the *Water Resources Act 1997* in the River Murray; South East; Northern Adelaide and Barossa; and Onkaparinga River catchments. Two additional boards for the Arid Areas and Eyre Region are currently being investigated.

2. A number of key initiatives are addressing the sustainable use of urban water, including stormwater. The *Spencer Region Strategic Water Management Plan* aims to optimise the contribution of local and imported water to the regional economy of the Spencer Region and has developed software to enhance planning of integrated water resource management. The *Water Sustainability in Urban Areas Project* investigated new technologies in urban planning and water infrastructure leading to an integrated supply of water from stormwater, groundwater, sewage effluent and conventional reticulation systems. This project focussed in the developing areas south of Adelaide.

4. In March 1999, the Department for Environment, Heritage and Aboriginal Affairs a report entitled *Use of Effluent and Urban Stormwater in South Australia 1998 – Total Water Cycle Management.* The report identifies trends in effluent (including urban run-off and roof run-off) *re*-use and scope to reduce or substitute second class water for potable water use. A report on *Integrated Water Management for Selected Rural Towns and Communities of South Australia* identifies, by example in specific towns, how a suite of water resources can be harnessed for appropriate uses, to provide a sustainable local water supply

Further Actions Being Implemented or Proposed:

1. The Bolivar-Virginia pipeline project, in the first instance, will result in the reuse by irrigation of up to 30 000 megalitres of sewage effluent (or approximately 35% of Adelaide's total effluent) from the Bolivar Wastewater Treatment Plant. With surface storage and/or aquifer storage and recovery, the amount reused would increase to 48 000 megalitres (or approximately 45% of Adelaide's total effluent).
2. The feasibility of using effluent from the Christies Beach Wastewater Treatment Plant for irrigation in the Willunga Basin was investigated, and in December 1997, the South Australian Government approved the terms and conditions of an agreement with a private consortium to take treated effluent from the treatment plant for irrigation purposes in the Willunga area. The scheme is being privately funded and constructed, operated and maintained at no cost to the Government. Implementation of the scheme was subject to it satisfying relevant planning and environmental requirements under a number of statutes including the *Development Act 1993*, *Environment Protection Act 1993* and the *Water Resources Act 1997*. Construction of the pipeline commenced in September 1998 and the planned date for the commissioning of Stage 1 of the scheme is 8 April 1999.

GROUP 5: PUBLIC CONSULTATION AND EDUCATION

5.1 Public Consultation

COAG Strategic Water Framework 1994, Sections 7(a) and (b):

7. In relation to consultation and public education:

(a) to the principle of public consultation by government agencies and service deliverers where change and/or new initiatives are contemplated involving water resources,

(b) that where public consultation processes are not already in train in relation to recommendations (3)(b), (3)(d), (4) and (5) in particular, such processes will be embarked upon,

Implementation of the Water Reforms in South Australia

Achievements to Date in South Australia:

1. Extensive community consultation and education program was undertaken as a part of the development of the *Water Resources Act 1997* which provides:
   - for the devolution of water resources management planning and implementation to catchment water management boards, water resources planning committees and local councils
   - for extensive community participation in the preparation of water plans under the Act - the State Water Plan, catchment water management plans, water allocation plans and local water management plans prepared by local councils, and
   - civil remedies and appeal rights in certain circumstances.
2. The *Water Resources Act 1997* also requires the Minister to:
   - compile, maintain and update information on the water resources of the State; and
   - keep a publicly available register of all water licences and permits granted under the Act.
3. The community participated in the preparation of catchment water management plans for the Torrens and Patawalonga catchments under the *Catchment Water Management Act 1995*.

Further Actions Being Implemented or Proposed:

1. As required under the *Water Resources Act 1997*, the preparation of water allocation plans for prescribed resources has commenced, and as a result of the extensive community participation requirements of the Act, these plans will take approximately 18 months to two years to complete. These participation programs by necessity include appropriate community awareness and education initiatives (eg newsletters, public meetings, displays) to ensure adequate community knowledge and understanding of key issues and how to get involved. Preparation of comprehensive catchment water management plans under the *Water Resources Act 1997* for the Torrens and Patawalonga catchments, River Murray, Onkaparinga River, South East, and Northern Adelaide and Barossa catchments is under way or planned.

2. In 1996-97, the Department for Environment, Heritage and Aboriginal Affairs commenced the development a new *State Water Archive* which will bring together information on the location, quantity, quality, use, allocation and management of the water resources of South Australia and the associated infrastructure. The purpose of the archive is to make water information more readily available and targeted to the information needs of the Government, its agencies, the private sector, community groups and members of the public. The information will add value to decision making processes in policy development, water and other planning, economic development, water resources management and performance monitoring. It will also assist with education initiatives and, with increased community awareness, and add to public commitment to and participation in water management initiatives.
3. The State Water Archive project involves the development of:
   - *water licence and permits register*, which will make information on these available to the public;
   - *water information directory*, which provides references to information held on water resources quantity, quality, use and management;
   - *water web-site* which provides the public with ready access on the internet to a broad range of information on water and it's management, including the State Water Plan; and
   - *water resources information database*, which will enable integration of water information from its various sources across the Department and other agencies.
4. The concept of the State Water Archive is being pursued in the context of the reorganised structure of the Department. This has brought about a consolidation of water environmental information systems under the Environment Protection Agency, which is leading to their rationalisation and enhancement.
5. Supplementary funding is being negotiated from the National Land and Water Resources Audit under the Natural Heritage Trust to upgrade information to be presented on the Audit's water availability and catchment health themes. This will enhance the capacity of the State Water Archive to make information available to the public on the state, condition, use and management of South Australia's water resources.
6. Appropriate community consultation programs are being implemented for a number of key water resources initiatives including the development of the state-wide Water Allocation Policy for Unregulated Streams, the development of the Environment Protection (Water Quality) Policy, and the review of the State Water Plan.

5.2 Public Education

COAG Strategic Water Framework 1994, Sections 7(c), (d) and (e)

7. In relation to consultation and public education:

(c) that jurisdictions individually and jointly develop public education programs in relation to water use and the need for, and benefits from, reform,

(d) that responsible water agencies work with education authorities to develop a more extensive range of resource materials on water resources for use in schools, and

(e) that water agencies should develop, individually and jointly, public education programs illustrating the cause and effect relationship between infrastructure performance, standards of service and related costs, with a view to promoting levels of service that represent the best value for money to the community.

Implementation of the Water Reforms in South Australia

Achievements to Date in South Australia:

1. There is a range of important initiatives undertaken by State Government agencies and community-based bodies, including catchment water management boards, to raise community awareness on sustainable water resources management and use. A good example of collaborative effort is National Water Week which is held in October each year. National Water Week involves State Government, Local Government, water industry bodies, catchment water management boards, small businesses, organisations, associations, schools, community groups and individuals hosting or participating in a range of activities which promote the wise use and management of this State's precious water resources.

   The 1998 National Water Week was launched in South Australia with a seminar entitled *'The Value of Water to South Australia'*. The value of national reforms was one of the key themes of the seminar.

2. The devolution of a range of water management responsibilities to catchment water management boards, as established under the *Water Resources Act 1997,* has significantly enhanced the level of community awareness and education in relation to the water and waste water as a valuable resource.

3. Another exciting initiative is *Watercare - A Curriculum Resource for Schools*. This is a three stage project being undertaken by the Department for Environment, Heritage and Aboriginal Affairs and the Department of Education, Training and Employment to develop curriculum material for Reception through to Year 12. Stages 1 and 2, which produced curriculum material for Reception to Year 5 and Years 6-10 respectively, have been completed.

   Stage 3 of *Watercare*, an educational Internet site, has been designed as an information resource for secondary school students to encourage research on the principles of the hydrogeologic cycle, and on innovative and sustainable water resources management practices. Watercare III provides South Australian case studies of best practice management of water resources in this State. It includes information on wetlands,

groundwater resources, aquifer storage and recovery, stormwater, wastewater and sewage effluent, irrigation, water supply infrastructure, and water quality and quantity.

Watercare III was developed to meet curriculum requirements of selected South Australian Certificate of Education (SACE) subjects with water related components. It is

intended that Watercare III will not only be used as a curriculum resource but will also become a community resource with broader scope to address other water related issues.

3. Waterwatch is a national community water quality monitoring network, which provides opportunities for everyone in the community to learn about water quality, the sustainable use of water and catchment health. In March 1997, there were more than 50 000 people participating in Waterwatch programs in over 100 catchments throughout Australia.

   Waterwatch South Australia, which commenced in 1994, is funded through the Commonwealth Government's Natural Heritage Trust in partnership with State Government funding, and community funding and in-kind support. For 1997-98, Waterwatch South Australia had an annual budget of some $1.2 million.

   This funding has allowed the Waterwatch Regional Programs to increase in number (currently 13 regional programs) and to reach more community groups and students in South Australia's key catchments. Through increased resources and the formation of strong partnerships between regional programs and catchment water management boards, participation in the water quality monitoring program and educational activities has doubled to more than 300 community and school groups, or 6 000 individuals across the State.

   Key achievements of the Waterwatch program from 1994 to 1998 include, participation in the annual national SNAPSHOT event; involvement in Create-a-Creek, Create-a-Critter and Create-a-Critter II; the production of the Waterwatch South Australia Manual, Strategic Plan 1998-2000 and Management Plan; participation in Environment Protection Agency's Frog Census and National Murder Under the Microscope Internet Activity; the production of Waterwatch newsletters and the Waterwatch Year Book 1997; involvement in the National Kids' Congress for Catchment Care; and South East Waterwatch representing Australia at the Children's International Groundwater Summit, held in Grand Island, Nebraska, United States of America.

4. SA Water's Environmental Improvement Program is an example of the Government's commitment to public education programs on the trade-off between levels of service and cost.

Reform	REGISTRATION CHARGES REFORM MODULE
Status	Implemented in South Australia prior to first tranche assessment.
Reform	DANGEROUS GOODS MODULE (as agreed by Ministers 4 November 1996 and 20 June 1997)
Status	Implemented in SA in 1998 by amendment to the Dangerous Substances Act and Regulations.
Reform	VEHICLE OPERATIONS MODULE - VEHICLE OPERATIONS - MASS AND LOADING REGULATIONS (as agreed by Ministers 12 September 1996)
Status	Implemented in SA for oversize/overmass vehicles by means of permit and gazette conditions in 1996. Most other vehicles voluntarily complied with the Restraint of Loads Guidelines. Compliance by all vehicles will become mandatory on the commencement of legislation passed by Parliament in March 1999, following promulgation of necessary regulations.
Reform	VEHICLE OPERATIONS MODULE - VEHICLE OPERATIONS - OVERSIZE/OVERMASS (as agreed by Ministers 16 April 1995)
Status	Reflected pre-existing South Australian law and practice. No changes required to adopt the reform. On 1 January 1999 South Australia became the first jurisdiction to make available higher mass limits on the terms being considered for introduction on 1 July 1999.
Reform	VEHICLE OPERATIONS MODULE - VEHICLE OPERATIONS - RESTRICTED ACCESS VEHICLES (as agreed by Ministers 29 September 1995)
Status	Largely reflects pre-existing South Australian law and practice. There is an upper limit on the permits which can be granted under this reform. South Australia has not implemented this measure, and is asking the NRTC to review the limit for consistency with Council of Australian Governments Principles and Guidelines on National Standard Setting, and the requirements of clause 5 of the Competition Principles Agreement.
Reform	VEHICLE OPERATIONS MODULE - HEAVY VEHICLE STANDARDS (as agreed by Ministers 10 May 1993 and amended 26 May 1997 - superseded by vote on Combined Vehicle Standards)
Status	1993 and 1997 standards partially implemented. In March 1999 Parliament passed amendments to the Road Traffic Act which will permit the making of regulations for the adoption of the full Combined Standards (replacing the earlier Heavy Vehicle Standards) as approved by Ministers in December 1998. It is anticipated that these will be in operation in mid-1999.

Reform	VEHICLE OPERATIONS MODULE - TRUCK DRIVING HOURS (as agreed by Ministers 8 December 1995 and 9 January 1998 - superseded by Combined Bus and Truck Driving Hours vote 15 January 1999)
Status	Legislation was introduced into the Parliament in March 1999 to repeal the Commercial Vehicles (Hours of Driving) Act and permit the making of regulations under the Road Traffic Act which will mirror the Combined Bus and Truck Driving Hours package approved by Ministers in January 1999, superseding this earlier reform. Some elements of the reform, including use of the national log book and Transitional Fatigue Management, were not inconsistent with pre-existing South Australian legislation and were implemented on 4 January 1999.
Reform	VEHICLE OPERATIONS MODULE - BUS DRIVING HOURS (as agreed by Ministers 11 November 1994 and 4 July 1995 - superseded by Combined Bus and Truck Driving Hours vote 15 January 1999)
Status	As for Truck Driving Hours

RELATED MEASURES FROM THE FIRST AND SECOND HEAVY VEHICLES PACKAGES:

Reform	COMMON MASS AND LOADING RULES (as agreed by Ministers 12 September 1996)
Status	Significant implementation in advance of changes to legislation - see Mass and Loading, above.
Reform	IMPROVED NETWORK ACCESS (part of Oversize/Overmass and Restricted Access Vehicle Regulations)
Status	Implemented when first agreed, since no change to legislation was required.
Reform	COMMON ROADWORTHINESS STANDARDS (as agreed by Ministers 26 October 1994)
Status	Implemented for oversize and overmass vehicles, but could not be implemented more broadly prior to changes to the Road Traffic Act. This was delayed until Ministers approved the Combined Standards in December 1998.
Reform	ENHANCED SAFE CARRIAGE AND RESTRAINT OF LOADS (as agreed by Ministers 7 October 1994)
Status	Implemented by exception and custom. Full legislative implementation will occur upon the promulgation of regulations to be made under amendments to the Road Traffic Act passed by Parliament in March 1999.
Reform	ADOPTION OF NATIONAL BUS DRIVING HOURS (as agreed by Ministers 11 November 1994 - superseded by Combined Bus and Truck Driving Hours agreed by Ministers 15 January 1999)
Status	As for Truck Driving Hours above.

Reform	HEAVY VEHICLE REGISTRATION MODULE - NATIONAL HEAVY VEHICLE REGISTRATION SCHEME (as agreed by Ministers 9 October 1996)
Status	Substantially implemented by amendments to the Motor Vehicles Act and Regulations during 1997 and 1998. Necessary amendments for final elements of the reform, including changes to definitions of key terms, are contained in a Bill introduced to the Parliament in March 1999.

RELATED MEASURES FROM THE FIRST AND SECOND HEAVY VEHICLES PACKAGES:

Reform	COMMON PRE-REGISTRATION STANDARDS FOR HEAVY VEHICLES (as agreed by Ministers 14 October 1994)
Status	Implemented
Reform	SHORT TERM REGISTRATION (as agreed by Ministers 14 February 1997)
Status	Implemented
Reform	DRIVER LICENSING MODULE - NATIONAL DRIVER LICENSING SCHEME (as agreed by Ministers in the form of drafting instructions on 15 December 1997)
Status	Some elements introduced by amendments to the Motor Vehicles Act and Regulations during 1998. Most parts of the reform are contained in a Bill introduced into Parliament in March 1999.

RELATED MEASURES FROM THE FIRST AND SECOND HEAVY VEHICLES PACKAGES:

Reform	ONE DRIVER/ONE LICENCE (as agreed by Ministers 14 October 1994)
Status	Implemented
Reform	INTERSTATE CONVERSIONS OF DRIVER LICENCES (as agreed by Ministers 14 October 1994)
Status	Implemented
Reform	DRIVER OFFENCES/LICENCE STATUS (as agreed by Ministers 14 February 1997)
Status	Implemented
Reform	NEVDIS (NATIONAL EXCHANGE OF VEHICLE AND DRIVER INFORMATION SYSTEM) - STAGE 1 (as agreed by Ministers 7 June 1996)
Status	This computer system is related to both the Registration and the Licensing modules. South Australia has agreed to implement the NEVDIS package, as required for the first stage of the reform. At this stage it is anticipated that licensing matters will be fully incorporated into NEVDIS by January 2000 and registration matters by June 2000. It has become clear that a major upgrade to the South Australian DRIVERS system (the basis of the registration and licensing function) will be required to support the adoption of many future reforms. Budget provision has been made for this upgrade.

Reform	COMPLIANCE AND ENFORCEMENT MODULE
Status	This module is yet to be developed and approved by Ministers.

RELATED MEASURES FROM THE FIRST AND SECOND HEAVY VEHICLES PACKAGES:

Reform	ALTERNATIVE COMPLIANCE (as approved in principle by Ministers on 25 November 1994)
Status	South Australia endorsed this reform in principle, as required under the package. Some alternative compliance and accreditation schemes, consistent with nationally developed and trialed schemes, have been adopted in South Australia in the areas of mass, maintenance and fatigue management.

NATIONAL COMPETITION POLICY

Progress Report:

Implementing National Competition Policy in Western Australia

REPORT TO THE
NATIONAL COMPETITION COUNCIL

March 1999

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1. INTRODUCTION

Western Australia continues to be strongly committed to National Competition Policy (NCP) as an important part of its micro-economic reform program. In accordance with NCP agreements, the focus of Western Australia's NCP program, as with the State's micro-economic reform in general, is to increase competition where it is in the public interest to do so. Assessment of what is in the public interest must give full consideration to social, environmental and regional objectives as well as economic objectives.

NCP is essentially an extension of the earlier microeconomic reforms of the 1990s. Western Australia has benefited from these reforms and anticipates further benefits to flow from the implementation of NCP.

Significant progress has been made in implementing NCP over the past year. Major achievements in Western Australia's NCP program during this period include progress in developing free and fair trading in gas; further development of access arrangements; implementation of water reforms; and the completion of an additional fifty three legislation reviews, approximately half of which have generated reform outcomes in the public interest.

This report covers the annual reporting requirements under the Competition Principles Agreement, Conduct Code Agreement and the Agreement to Implement the National Competition Policy and Related Reforms. Achievements up to 31 December 1998 are included in this report. In the case of the legislation review program the report also includes reviews completed at that time and subsequently endorsed by Cabinet.

2. LEGISLATION REVIEW

Western Australia's legislation review and reform program continues to make strong progress in reviewing legislation restricting competition and is on track for completion by December 2000. All reviews are being undertaken in accordance with the Competition Principles Agreement, and Western Australia's Clause 5 Legislation Review Table and Legislation Review Guidelines.

A major outcome of the reviews is Western Australia's substantial and accelerating program to implement reform by removing those restrictions on competition found not to be in the public interest. Equally importantly, rigorous analysis has established that there are good public interest reasons for retaining many of the restrictions.

2.1 Progress of Review Program

Western Australia has made substantial progress in its legislation review program. Seventy-eight review reports have been completed and endorsed by State Cabinet. Two review reports have been completed but not yet endorsed by Cabinet and a further thirty-five reviews are underway. Fifty-three of the reviews have been completed and endorsed by Cabinet since January 1998.

Details of the review status of each review and outcomes from reviews endorsed by Cabinet are provided in Attachment 1.

2.2 Review Process

Western Australia's legislation review process has been conducted in accord with the State's Legislation Review Guidelines. The Guidelines are based on the Competition Principles Agreement and endorsed by the Western Australian Government. The Guidelines were published in early 1997 and have been widely circulated.

The Guidelines are designed to achieve robust reviews through a balanced and independent review process, which provides an opportunity for input from all interested parties and rigorous review procedures. However, the Guidelines also recognise that:

- materiality is important so that reviews likely to be of minor consequence should not be highly resource intensive; and
- Government Ministers need to be responsible for reviews in their portfolio, so that they have ownership of review outcomes.

Important aspects of the review process adopted in all Western Australian reviews which are derived from the State's Legislation Review Guidelines, include a requirement:

- for a terms of reference which includes at least clause 5(9) of the Competition Principles Agreement and may include other relevant specifications;
- for independent oversight of reviews where there are strongly held and divergent views in the community and where the agency which might otherwise conduct the reviews is perceived to be biased;
- that where a review panel is established and parties with a particular interest are on the panel, that a balance be achieved by including on the panel parties with different interests; and
- that where there are strongly held and divergent views in the community, that all interested parties should have the opportunity to make a submission or to consult with reviewers.

Awareness of the opportunity to input to reviews is generally achieved through newspaper advertisements, articles and/or seminars as well as direct contact with interested parties. To assist the community's understanding and awareness of the review program, an advertisement is placed in *The West Australian* early each year listing all NCP reviews for that year and encouraging interested parties to input to the reviews.

One development since the Guidelines were published, which enhances Western Australia's legislation review process is the release of issues papers by reviewers at an early stage in the review. This practice is a feature of important reviews, especially where there are strongly held and divergent views in the community.

Other action has been taken to improve the rate of progress and cost effectiveness of the review program, including:

- Cabinet approval for a National Competition Policy Omnibus Bill to efficiently implement amendments and repeals resulting from legislation review. This Bill will assist in ensuring that the significant challenge of implementing all amendments and repeals can be achieved before December 2000.
- rigorous prioritisation of reviews to help ensure that reviews are appropriately resourced. Clear identification of lower priority reviews where streamlining the process can be justified, and high priority reviews which warrant substantial input, is important.

2.3 Review Outcomes

The public interest case for retaining or removing restrictions on competition has been rigorously analysed in all of the completed reviews. More than half of the completed reviews recommend that one or more restrictions on competition should be removed in the public interest, although in total, more restrictions have been retained for public interest reasons than removed.

The review program to date has resulted in recommendations to remove restrictions, some of which will achieve significant reforms but there are also many small reforms which are worthwhile but will not have a major impact. Some of the more significant reforms to date are:

- The repeal of the *Bread Act 1982* will remove a number of onerous restrictions on competition. Reforms will include removal of:
  - licensing requirements for bake-houses;
  - restrictions on the time at which bread can be delivered; and
  - requirements for marking vehicles used for delivering bread.

- Exclusive licences to provide port services such as towage, pilotage and stevedoring can now only be granted by the responsible Minister who must, in making his decision, consider whether public benefits from exclusivity exceed public costs.

- Changes to the *Betting Control Act 1954* will enable bookmakers to compete with the Totalisator Agency Board on a more level footing with the removal of several restrictions on their activities.

- The review of the *Painters Registration Act 1961* found that the current system of mandatory licensing is too restrictive and should be removed. The review recommended that a certification scheme be developed to allow consumers to readily identify painters who possess particular skills. It is proposed that the certification be supported by a system of negative licensing allowing for the removal of persons who do not adhere to basic standards of commercial conduct from the industry. These changes will reduce business costs but will still enable some control of the industry and certainty for consumers.

- Changes to the *Licensed Surveyors Act 1909* will reduce the risk that the Board will restrict competition by unnecessarily refusing people entry to the surveying profession. The changes provide a clearer definition of what constitutes good fame and character, with particular regard to any previous criminal record including business fraud and/or dishonest business practices. It is accepted that being "of good fame and character" is an appropriate test for admission to the profession of surveyors, but it is undesirable that the expression is open to the Licensing Board's interpretation.

- The review of the *Chicken Meat Industry Act 1977* and associated Regulations has recommended that the legislation be amended to allow broiler growers to negotiate contracts with processors outside of the existing compulsory collective contract system. The amendments will allow for greater flexibility in the contracts struck between growers and chicken meat processors and promote competition within the industry. Retaining a voluntary collective contract arrangement is in the public interest because it offers some protection to broiler growers from the strong market position of the two large chicken meat processors in Western Australia.

- The review of the *Finance Brokers Control Act 1975* and associated Regulations has recommended that the Act be repealed on the grounds that a less restrictive code of conduct would be just as effective in protecting consumers as the current arrangements and would reduce compliance costs for finance brokers. It was also noted that the Act duplicated provisions contained within the Commonwealth *Trade Practices Act 1974* and the State *Fair Trading Act 1987.*

- Recommended reform to the *Sandalwood Act 1929* will reduce the barriers to entering the sandalwood industry. In particular it will remove an arbitrary constraint on harvesting from private land while retaining restrictions relating to sustainable rates of harvest.

- The review of the *Hire-Purchase Act 1959* has recommended the repeal of most of the Act, which will remove the arduous reporting and documentation requirements imposed on providers of hire purchase and make the requirements in Western Australia more consistent with other jurisdictions.

- Significant changes recommended to the *Explosives and Dangerous Goods Act 1961* will replace the current, prescriptive licensing systems for the manufacture, handling and storage of these goods with more performance based standards.

For instance, the licensing requirement for the manufacture of explosives is to be aligned with existing performance based controls for other chemicals and the licensing restrictions on the storage of explosives are to be replaced by an accreditation system.

It is as important to ensure that restrictions which are in the public interest are retained as it is to ensure that restrictions which are not in the public interest are removed.

The following provides examples of the public interest basis for retaining restrictions on competition in some laws:

- public health and safety concerns supported restrictions in the *Boxing Control Act 1987*, *Government Railways Act 1904* and Port Authorities Bill;
- social welfare issues justified pensioner concessions in the *Rates and Charges (Rebates and Deferment) Act 1992*;
- environmental protection restrictions limiting development and commercial exploitation in the *Rottnest Island Authority Act 1987* and constraints on business activities in the *Environmental Protection Act 1986* were soundly based;
- consumer protection underpinned restrictions governing the handling and labelling requirements of the *Fertilizers Act 1977* and the licensing and warranty requirements of the *Motor Vehicle Dealers Act 1973*; and
- provision of public goods was the basis of compulsory producer levies in acts including the *Plant Pests and Diseases (Eradication Fund) Act 1974* and the *Poultry Industry (Trust Fund) Act 1948*.

2.4 Support Programs

The Competition Policy Unit (CPU) of WA Treasury continues to be very active, assisting those conducting the reviews or overseeing consultants who are undertaking the reviews.

In addition to establishing Western Australia's legislation review process, the Legislation Review Guidelines have been designed to provide a very practical step-by-step guide on how to conduct legislation reviews, background information on National Competition Policy and information on hiring consultants for legislation reviews.

To complement the Guidelines the CPU has conducted general introductory workshops for Departments on legislation review, and workshops and several presentations covering particular areas of legislation review. The success of the introductory workshops and the experience being gained by reviewers has meant that fewer of these are needed now than in previous years, allowing CPU to provide more specialised assistance.

Reviewers have good access to CPU staff. Significantly, CPU input is provided prior to the review being conducted so that timely advice is provided on process and procedures. This early involvement helps to ensure that the appropriate review process is adopted, thereby contributing to independence and balance in the conduct of reviews.

One of the more important roles CPU performs is a quality control function with regard to review reports. CPU thoroughly reviews and analyses all draft reviews and provides advice on the review and draft report. This is a key step which is very effective in achieving high quality reports. It also provides an independent check on the rigour of the review process and report.

CPU staff also participate on review panels for some of the major and potentially controversial reviews. The purpose of this is also to achieve a review process and report which are of high quality.

This support, coupled with the increased experience reviewers are gaining, has improved the quality of reviews and shortened the time taken to undertake reviews. This has led to an increased rate of review completion in 1998/99 and it is anticipated that the progress will continue to accelerate (as many of the new reviews will involve experienced reviewers).

2.5 Changes to Legislation Review Schedule

Western Australia's Legislation Review Table is necessarily dynamic. Acts have now been added to the Table as a consequence of an on-going search for acts which may restrict competition but have in the past been overlooked.

Some reviews have been deferred, for instance where there is a need to co-ordinate reviews involving interdependent legislation or to co-ordinate legislation review with the conduct of a related competitive neutrality review.

Deferrals have also been allowed for existing legislation where new legislation covering the same subject matter is being developed. Reviews of new legislation will be picked up through standard procedures and in the main will obviate the need to review existing legislation.

The number of deferrals granted recently has been reduced, as it has been assessed that a later start on some reviews could put at risk completion of all reviews and implementation of reforms by December 2000.

3. COMPETITIVE NEUTRALITY

The principle of competitive neutrality is an integral component of the State's policy of reforming its government owned businesses in order to achieve greater organisational and economic efficiency in Western Australia. This policy was outlined in the State's Policy Statement on Competitive Neutrality (June 1996) which also included an Implementation Schedule for Significant Business Activities.

Western Australia's program of competitive neutrality is well advanced and on track for completion before December 2000. Substantial progress has been made in Western Australia towards meeting the requirements of the policy on competitive neutrality in accord with clause 3 of the Competition Principles Agreement.

The State's biggest government businesses have already been made subject to competitive neutrality. For example, Western Power, AlintaGas and the Water Corporation have been fully corporatised. Collectively these agencies account for more than 80 per cent of business revenues earned by Government.

While the remaining agencies account for less than 20 per cent of government business revenues some minor public benefits could arise from the implementation of competitive neutrality in these areas. While the economic benefits of further reform may be small, issues of good public policy are at stake. For example the application of competitive neutrality to smaller (but significant) government businesses is symbolic of the Government's desire to act fairly where it is in competition or has the potential to be in competition with the private sector.

More recently, Western Australia has begun to focus its review effort on agencies with smaller business revenues deemed to be significant on the basis of criteria in the State's Policy Statement on Competitive Neutrality.

In Western Australia the significance of government business activity is determined by assessing the extent of competition (or the potential for competition) between the public and private sectors and the significance to the Western Australian economy of the market in which government business activity takes place. A government business activity is also unlikely to be significant unless its annual revenue base or turnover is more than $10 million or it has an asset base with a value in excess of $10 million.

3.1 Progress of Reviews and Implementation

Progress on reviews of most significant Government businesses

- Western Australia's most significant government businesses have been subject to competitive neutrality through the process of corporatisation. These agencies include the Electricity Corporation (Western Power), Gas Corporation (AlintaGas) and the Water Corporation.

- Competitive neutrality has been applied to Western Australia's **Port Authorities** (Albany Port Authority; Bunbury Port Authority; Dampier Port Authority; Esperance Port Authority; Fremantle Port Authority; Geraldton Port Authority; and Port Hedland Port Authority).

  A competitive neutrality review of port authorities was completed in December 1997. Competitive neutrality reforms will be implemented with the passing of the Port Authorities Bill, which is currently before the Parliament. This Bill provides the statutory vehicle through which the port authorities are formally commercialised, in much the same way as Western Power, AlintaGas and the Water Corporation. The Bill has been reviewed in accordance with clause 5 of the CPA.

- A Ministerial review of **LandCorp** resulted in new legislation applying commercialisation principles to LandCorp. This has resulted in the removal of LandCorp's regulatory and policy functions; imposition of State taxes and local government rates through tax and rate equivalent payments; application of transparent community service obligation (CSO) payments; and establishment of an independent monitoring mechanism.

- The completion of the competitive neutrality review of the **Western Australian Treasury Corporation** (WATC) in February 1998 resulted in legislative amendments to implement competitive neutrality through commercialisation, while retaining the restriction that the WATC can service only State Government, semi-government and local authorities. The WATC's exemption from State duties and taxes and local government rates has been removed, and a requirement for the WATC to repatriate a required return on capital (dividend payment) to the Consolidated Fund has been imposed.

- The **Government Employees Superannuation Board**'s competitive neutrality review was completed in February 1998 and has been endorsed by Cabinet. It was concluded that, under the current structure and funding arrangements for public sector superannuation, its administration and funds

management activities hold no competitive advantages or disadvantages that needed to be reviewed as part of the competitive neutrality review process. These findings need to be seen in the context of the GESB's role as an administrative board, rather than a significant business.

The Government has endorsed this finding and as a consequence competitive neutrality will not be applied to the Board's activities.

- The **East Perth Redevelopment Authority and the Subiaco Redevelopment Authority** reviews were completed in August 1997 and October 1997 respectively. Both reports recommended that the "status quo" be maintained, which requires that the authorities remained subject to a tax equivalent regime (TER) and a loan guarantee charge. It was assessed that no net public benefit would be derived by further subjecting the authorities to the principles of competitive neutrality.

In addition to the above, a number of specific competitive neutrality issues have been addressed across a number of government agencies. In this regard, all government business activities (whether in the general government or Public Trading Enterprise (PTE) sectors) are currently subject to a loan guarantee charge, which was introduced in 1992-93. The majority of PTEs (including Westrail, the port authorities and LandCorp) entered the TER on 1 July 1996. In addition, a dividend policy was introduced for the ports and Westrail in 1996-97, and since then Westrail has received funding from the Consolidated Fund for Community Service Obligations (CSOs) that it performs.

3.2 Progress on Other Reviews and Changes to Review Schedule

Competitive neutrality reviews of several medium-sized and smaller government enterprises are still under way and significant reforms can be expected to flow from a number of them. Attachment 4 outlines the status of the competitive neutrality reviews that are currently outstanding and the program for review over the next 18 months. Changes to the review schedule have also been made (Attachment 4)

Although the business activities of these agencies have been classified as being significant in accord with Western Australia's Policy Statement on Competitive Neutrality, their impact on the Western Australian economy is generally small. However it is in the interests of good policy to review these agencies to determine whether principles of competitive neutrality should be applied.

Several business activities have been added to the 1996 Implementation Schedule after the Premier requested that all Ministers examine their portfolios to determine whether there were any other government agencies that met the criteria specified in the Policy Statement. This step was considered necessary to ensure that any new government business activities were considered and that no significant business was overlooked in the reform process.

Attachment 4 outlines the additions to this schedule as a consequence of this follow-up work and other consequential changes (eg following announcements of privatisation).

3.3 Competitive Neutrality Complaints Mechanism

In October 1998, the Cabinet Government Management Standing Committee (GMC) endorsed the Competitive Neutrality Complaints Mechanism that deals with allegations of non-compliance by public sector agencies with competitive neutrality in Western Australia.

Responsibility for handling complaints lies with GMC. A Competitive Neutrality Complaints Secretariat (the Complaints Secretariat) situated within Treasury provides administrative support to the GMC.

The complaints handling process involves complainants initially making contact with the agency alleged not to be complying with competitive neutrality to discuss (and, if possible, resolve) the allegation. If resolution of an allegation of non-compliance with competitive neutrality between the complainant and the relevant agency cannot be reached, complainants should then lodge a complaint in writing with the Complaints Secretariat. Allegations of non-compliance need to be accompanied by sufficient evidence to establish a prima facie case for investigating an agency's pricing strategy, cost structure and behaviour.

The Complaints Secretariat is responsible for the initial screening of the complaint. The Secretariat will determine whether the complaint falls within the scope of the complaints mechanism and warrants further investigation. Where a complaint is accepted the Complaints Secretariat will carry out consultation and investigation on behalf of the GMC. Once the investigation has concluded the Complaints Secretariat will report its findings to the GMC. The report will contain an assessment of whether the Government agency enjoys a competitive advantage by virtue of its ownership by Government, and whether the removal of this advantage is in the public interest.

- Where the Complaints Secretariat concludes there has been no breach of competitive neutrality and the GMC concurs with that recommendation, the Complaints Secretariat will advise the complainant in writing of this outcome. There is no appeal mechanism.

- Where the GMC concurs with a finding by the Complaints Secretariat that there is a breach of competitive neutrality then the GMC may determine that the competitive advantage should be removed.

The GMC will decide on a case by case basis what action should be taken if an allegation of non-compliance is proven, taking account of the seriousness and nature of the non-compliance. Monitoring implementation of any Government decision with respect to the removal of competitive advantages will subsequently be undertaken by the Treasury.

Since the establishment of the competitive neutrality complaints mechanism, the Secretariat has processed one allegation of non-compliance. The Secretariat established that the complaint fell outside of the competitive neutrality complaints process and no further action was required. The complainant has not pursued the matter further.

Local government

Significant progress has been made in the application of competitive neutrality to local government business activities. By 31 March 1999, 136 of the 142 local governments had fully met their review commitments. Of these, 97 local governments found they had no significant business activities and therefore did not need to conduct reviews.

In total, 129 local government businesses have been reviewed with competitive neutrality being implemented in over half of these businesses.

Details of the reviews conducted and the reforms associated with the reviews are reported in the local government section of this report.

4. STRUCTURAL REFORM

The Western Australian Government's program of structural reform in accordance with Clause 4 of the Competition Principles Agreement is continuing. The reform is building upon the major reforms of the mid 1990s in electricity and rail and the 1998 gas pipeline sale. Western Australia's progress with structural reform is proceeding as part of a package with third party access arrangements being developed, application of competitive neutrality and corporatisation or privatisation.

4.1 Electricity

The Western Australian Government is currently focusing its attention on further opening up the electricity sector to competition by:

- undertaking a power procurement process for regional areas of Western Australia which promotes private sector competitive involvement and is aimed at lowering electricity prices in these regions;
- opening up access to Western Power's networks in regional areas of Western Australia to customers using more than 300,000 kWh/year; and
- implementing a phased reduction in access levels to Western Power's electricity distribution system in the South West Interconnected System and North West Interconnected System, with the threshold level reduced to 1 MW by 1 January 2000.

This builds upon a significant base of structural reform in the power industry which includes:

- the 1995 restructuring of the State Energy Commission into Western Power, Alinta Gas and the Office of Energy. Responsibility for regulation of the electricity supply industry now lies with the Office of Energy, eliminating the potential for Western Power to face conflicts of interest between service provision and industry regulation;
- determination of appropriate commercial objectives for Western Power in the context of its corporatisation with effect from 1 January 1995. These objectives ensure that Western Power cannot systematically undercut prices charged by potential competitors as a result of it having sub-commercial objectives;
- effectively ring fencing Western Power's activities through the *Electricity Corporation Act 1994* which requires it to report annually on a segmented basis comprising:
  - the generation of electricity;
  - the transmission of electricity;

  - the interconnected distribution and sale of electricity in the State's south west;
  - the Pilbara interconnected system; and
  - the remote power systems;
- separate profit and loss accounts and balance sheets are to be prepared in respect of each of these segments;
- the access regimes put in place through the gazetting of the Electricity Transmission and Distribution Regulations, coupled with ring fencing arrangements, should prevent Western Power from taking advantage of its ownership of the transmission and distribution systems to the detriment of potential competitors;
- establishing from the outset in 1995 that the new entity, Western Power, be fully subjected to competitive neutrality so that it has no advantage through being Government owned; and
- establishing appropriate financial relationships between the Western Australian Government and Western Power, including:
  - a requirement for Western Power to pay tax equivalents to the Government that replicate Federal income and wholesale sales taxes;
  - a requirement for Western Power to be fully exposed to all State taxes;
  - a requirement for Western Power to pay dividends to the Government;
  - a requirement for Western Power to pay rate equivalents to the Government that replicate local government rates; and
  - the Government financing (through direct appropriation from the Consolidated Fund) the cost to Western Power of revenue foregone as a result of Western Power's community service obligation to provide a supply charge rebate to pensioners and seniors.

Losses incurred by Western Power on the sale of electricity to residential and small to medium sized business customers in regional locations outside of the interconnected system, due to the application of the Government's uniform tariff policy, have not been identified as a community service obligation. This policy is considered to be a condition of Western Power's exclusive distribution franchise in respect of these customer categories.

The pace of reform has been rapid and the Government will give further consideration to structural reform and related matters in the light of experience gained as the above stages are implemented.

4.2 Gas

The Western Australian Government is currently focusing its attention on opening up the gas industry to further competition by:

- committing to a process for the proposed sale of AlintaGas, and a Clause 4 structural reform review which will bring about further competition in the gas and electricity sectors;
- undertaking an Expressions of Interest process to provide for additional natural gas pipeline capacity between the North West and South West of the State; and
- having developed and submitted an access application to the National Competition Council for certification of Western Australia's gas access code and reaching an advanced stage in the drafting of an access arrangement under that code for AlintaGas' distribution system.

These reforms build on prior achievements, in particular the 1998 sale of AlintaGas' Dampier to Bunbury Natural Gas Pipeline. The privatisation of AlintaGas' transmission function represents a significant vertical disaggregation of its functions.

In view of the rapid pace of reform, the Government will give further consideration to structural reform and related matters in the light of experience gained as the above stages of reform are implemented.

4.3 Rail

On 30 July 1998, the Western Australian Government announced plans for the sale of the freight business of Westrail including rolling stock and the track network. However, the Government will retain ownership of the existing right-of-way land under the tracks. Prior to the announcement the Government commissioned an independent review of appropriate structural options to determine the best structure for a privatised Westrail.

The Government expects to pass legislation by 1 July 1999 to enable the sale to proceed.

The factors required to be reviewed under Clause 4 of the CPA have been considered with respect to Westrail, as part of a number of reviews over the past few years. The Rail Freight Sale Task Force is in the process of revisiting these findings to ensure the requirements of Clause 4 have been met.

Structural reforms already undertaken by the Government include:

- completely deregulating the freight transport market in Western Australia from 1 July 1995;
- implementation of financial reforms from 1 July 1996 that included:
  - Westrail entering the Government's income tax and wholesale sales tax equivalent regime;
  - the Government assuming responsibility for Westrail's unfunded superannuation liability;
  - the Government reimbursing Westrail for losses incurred on community service obligations (essentially Westrail's country passenger services) undertaken at the direction of Government; and
  - Westrail accelerating repayment of its General Loan Fund debt, with dividend payments to the Government to commence once this debt is fully extinguished;
- the enactment of the Government Railways (Access) Act 1998 on 30 November 1998 which, together with the Government Railways Access Code 1999, comprise a rail access regime covering the entire Westrail network. The Government has submitted this regime to the NCC seeking to have it certified as effective. Amendments will be made as appropriate to apply the regime to a private owner of the Westrail network; and
- the transfer (through the Rail Safety Act 1998 and the Government Railways (Access) Act 1998) of rail regulatory responsibilities from Westrail to the Department of Transport.

5. CONDUCT CODE COMPLIANCE

Following on from implementing the schedule version of the Competitive Conduct Code (the Code) through its enactment of the *Competition Policy Reform (Western Australia) Act 1996*, Western Australia has continued to meet its requirements to comply with the Conduct Code Agreement (the CCA):

- In accord with clause 2(1) of the CCA, Western Australia has identified and notified the Australian Competition and Consumer Commission (ACCC) of any statutory exceptions to the application of the Code which have been introduced by new Western Australian legislation.

- In accord with clause 2(3) of the CCA, Western Australia has identified and notified the ACCC of legislation which existed as of 11 April 1995 and sought statutory exception under the *Trade Practices Act* as in force at that date, but which under the new regime for statutory exceptions continues to provide exemption beyond 20 July 1998.

On 11 April 1995 Western Australia had one Act, the *North West Development (Woodside) Agreement Act 1979*, which contained statutory exceptions made in reliance on the Commonwealth *Trade Practices Act* as in force at that date, but which continue to be effective beyond 20 July 1998. These statutory exceptions are contained in subsections 42(a) and (b) of that Act and were implemented as part of the *North West Gas Development (Woodside) Amendment Act 1994*, which has been subject to a legislation review under clause 5 of the Competition Principles Agreement.

A further statutory exception was introduced into the *North West Development (Woodside) Agreement Act 1979* upon the enactment of the *North West Gas Development (Woodside) Agreement Amendment Act 1996* (the 1996 Amendment Act) on 15 July 1996. In accord with its commitment under clause 2(1) of the CCA, Western Australia notified the ACCC of this new statutory exception within 30 days of its enactment in the 1996 Amendment Act. The ACCC on 21 August 1996 acknowledged having received this notification.

Included in Attachment 2 is a brief summary of justification that this statutory exception satisfies the requirements of clause 5(5) of the Competition Principles Agreement.

6. ACCESS

The Government is committed to increasing the competitiveness of Western Australian business by encouraging access to services provided by significant infrastructure facilities. Significant progress has been made, including the recent enactment of the *Government Railways (Access) Act 1998*, the establishment of the Office of Gas Access Regulation in February 1999 (see Section 8.2) and further opening of access to Western Power's electricity transmission network.

6.1 Rail Access

Western Australia's Rail Access Regime is being developed in support of the Government's policy on competitive access to railway infrastructure and as part of the State's National Competition Policy obligations under clause 6 of the Competition Principles Agreement.

The Western Australia Rail Access Regime consists of a Code, the Government Railways Access Code 1999, and legislation, the *Government Railways (Access) Act 1998*, which gives legal force to the Code. The Code is subsidiary legislation that may be disallowed in whole or in part, but may not be amended by Parliament.

The *Government Railways (Access) Act 1998* received Royal Assent on 30 November 1998. The Act and Code were submitted to the National Competition Council for certification in February 1999.

The Western Australia Rail Access Regime will realise the benefits of on-rail competition to the major intrastate, as well as the interstate, government railways. Access to third party rail operators has been available on the interstate line since mid-1995 on the basis of commercially negotiated contracts between individual operators and the Western Australian Government Railways Commission (the Commission). The access regime will provide a uniform framework for the negotiation of access agreements, for both the interstate line and intrastate services.

The Act provides for the establishment of a Code governing the use of government railways for rail operations by persons other than the Commission, trading as Westrail. Should the Government decide to proceed with the sale of the Westrail freight business and associated track facilities, the Act and the Code will be amended to ensure that the new railway owner is also bound by the regime.

6.2 Energy Access

Access to Western Power's electricity transmission network is now open through the provisions of the *Electricity Corporation Act 1994*. A formal access regime, consistent with the Competition Principles Agreement, is also being developed.

The State is encouraging competition in the electricity generation market through co-generation arrangements and schemes allowing private generators to sell their excess capacity into the State grid, with substantial benefits to industry. Power generated by consumers (even down to the householder level) can be purchased by Western Power.

The State has in place a process for progressively opening access to the electricity distribution network, and since 1 July 1998 all customers with an average load of at least 5 MW at a single site have been able to choose their own supplier. From 1 January 2000 access will be extended to all customers with an average load of at least 1 MW (8760 MWhrs/yr) at a single site. An access regime is being developed for the distribution network.

In June 1998 the Western Australian Government announced a new policy for electricity supply in the 29 off-grid regional locations to bring more competition into the regional energy market. As of 1 January 1999 customers with electricity consumption above 300,000kWh annually have been able to choose their own supplier.

Western Australia is a signatory to the 1997 intergovernmental Natural Gas Pipelines Access Agreement, which commits the State to the application of the Gas Pipelines Access Law to all significant natural gas pipelines in Western Australia. The implementing legislation, passed by Parliament on 23 December 1998, establishes an Independent Gas Access Regulator, a Gas Review Board to hear appeals against the Regulator's decisions and an independent Gas Disputes Arbitrator.

7. LOCAL GOVERNMENT

Western Australia's local governments have been active in pursuing reforms through competitive neutrality reviews and the review of local laws to meet NCP obligations.

The Western Australian Government took the decision to devote a proportion of its Competition Payments to a Local Government Development Fund in the 1998/99 Budget, demonstrating its commitment to local government's implementation of NCP. The money is intended to provide an incentive for local governments to implement NCP and to enable them to share in the benefits of the reforms.

A total of $4.3 million (4.1 per cent of the State's Competition Payments) is to be provided to local governments. The State Government's commitment is dependent on it receiving its Competition Payment and local government meeting its obligations.

7.1 Progress with Competitive Neutrality Reviews and Reforms

Reviews

Most of the competitive neutrality review requirements have been met. By 31 March 1999, 136 of the 142 local governments had fully met their review commitments. Of these, 97 local governments found they had no significant business activities and therefore did not need to conduct reviews.

In total, 129 local government businesses have been reviewed with competitive neutrality being implemented for 71 of these. Western Australia considers this a significant number of proposed implementations, particularly in view of the minor and isolated nature of many of these business activities. Competitive neutrality is only to be implemented for those activities where the benefits of doing so outweigh the costs.

A summary of reviews conducted is provided in Attachment 5. This shows the nature of the business activities reviewed, as well as review outcomes.

Reform

The reviews conducted have recommended reforms, with more than half of the 129 reviews completed recommending the implementation of competitive neutrality.

The most common method being adopted for implementing competitive neutrality is full cost pricing. In some cases, competitive neutrality will be established through the removal of competitive advantages and disadvantages and for a small number of activities, a commercialisation model will be adopted.

The types of local government businesses for which competitive neutrality is being implemented include waste collection and disposal services, regional airports, recreation centres, aged care centres, child-care centres and golf courses. The scale of these activities is small compared to activities in some other jurisdictions.

7.2 Local Law Review

Local governments have begun reviewing local laws that restrict competition. It is expected that efforts in local law review will increase over the next six months, with most reviews completed by the end of the year.

Most local governments have provided details of their review programs in their Annual Reports. Timetables are being sought from those who have not yet provided them. Progress against their timetables is being monitored to ensure that local governments will meet their obligation to review and where necessary reform restrictions on competition by 31 December 2000.

7.3 Leading and Supporting NCP

Treasury's Competition Policy Unit, together with the Department of Local Government, the Western Australian Municipal Association and the Institute for Municipal Management, has played a leading role in the coordination and support for local government's implementation of NCP.

The Competition Policy Unit has had a lead role explaining NCP obligations, monitoring progress, providing feedback on progress and helping to coordinate and minimise unnecessary duplications for Western Australia's local governments.

Guidelines on conducting competitive neutrality reviews have been produced and circulated to explain competitive neutrality concepts and provide a practical reference to enable local governments to undertake reviews. A series of examples of competitive neutrality reviews of local government businesses have been developed to provide case studies for the more common local government business activities.

Support for local law review is also being provided through guidelines specifically developed for this purpose; case study reviews of a number of generic local laws (as well as a town planning scheme); and a stock-take of three local governments' local laws to provide guidance to all local governments on which local laws are likely to restrict competition and how they restrict competition.

8. RELATED REFORMS

8.1 Progress on Electricity Reform

Western Australia continues to pursue ongoing electricity reform despite not being able to participate in the national electricity market. The significance to Western Australian industry and the wider economy of lower electricity costs, is clearly recognised by the Western Australian Government.

Western Australia is encouraging competition through access to the transmission and distribution systems, promotion of co-generation projects, and provision of privately generated power in regional areas as part of its commitment to microeconomic reform.

As indicated in section 4, the Western Australian Government has announced a new policy for electricity supply in regional areas, covering the 29 Western Power off-grid regional locations. The new policy will encourage competition in the energy market. The policy has seen a lowering of the open access threshold level in regional areas, with customers in these areas with electricity consumption above 300,000 kWh annually now able to choose their own supplier.

In addition to reducing the access threshold in regional areas, the Government is also undertaking a regional power procurement process for the supply of electricity to Western Power in its regional networks as part of the new policy. Initially, the process will cover the West Kimberley, Mid West and Esperance regions. The outcome of this process is expected to be a number of long term commercial contracts for the supply of electricity to Western Power. Successful bidders in this process will also be in a position to sell electricity generated from any spare capacity to third parties as a result of the new access arrangements in place for regional networks.

8.2 Progress on Gas Reform

As a signatory to the Natural Gas Pipelines Access Agreement, Western Australia agreed to implement legislation to apply the Gas Pipelines Access Law to natural gas transmission and distribution pipelines within the State. Consequently, the Gas Pipelines Access (Western Australia) Bill 1998 was introduced to Parliament on 18 June 1998 and passed by Parliament on 23 December 1998. The Act was proclaimed on 27 January 1999 and took effect from 9 February 1999.

The Act is complementary legislation applying the Gas Pipelines Access Law and establishing independent State bodies for regulation and arbitration of disputes. The Independent Regulator and Arbitrator are supported by a small new Government agency, the Office of Gas Access Regulation (OffGAR), which commenced operation on 9 February 1999.

Western Australia's existing access regimes covering the Dampier to Bunbury Natural Gas Pipeline (DBNGP), the Goldfields Gas Pipeline and AlintaGas' distribution network have been deemed to comply with the National Gas Access Code until 31 December 1999 by way of derogation. The owners of these pipelines must have access arrangements under the Code approved by 1 January 2000.

In the interests of industry stability and to ensure a smooth transition to open access, Western Australia has in place a staged deregulation schedule for AlintaGas' distribution system, culminating in full access to householder level by 1 July 2002.

While AlintaGas is currently restricted from participating in the Pilbara gas market, this restriction was necessary to restructure the previous gas supply contract between SECWA and the North West Shelf Joint Venture participants and thereby allow for the introduction of competition in the Pilbara region. AlintaGas' restriction from participating in the Pilbara gas market expires in 2005.

The Western Australian Government has advanced the expressions of interest process for the private sector to build a second pipeline from the Pilbara to the South West. In order to test the market for additional gas pipeline capacity to the South West, the Western Australian Government nationally advertised an indicative registration of interest process in September 1998.

Eleven companies lodged a registration of interest, but none indicated a willingness to proceed immediately with construction. This demonstrated that there is no restriction preventing the building of a second pipeline and that companies are not interested in proceeding now based on their commercial judgements.

Nevertheless, it was decided to invite selected firms to indicate their interest in participating in an expression of interest process. Three firms were selected according to the performance of their registration of interest against six selection criteria, which were aimed at determining which would be best placed to develop a second pipeline. By the due date, the three firms had confirmed their willingness to participate in the expression of interest process. The Western Australian Government will continue to work with these respondents.

For the purpose of further enhancing competition in gas transmission pipelines from the Pilbara to the South West, the Government is taking steps to widen the DBNGP corridor. A wider corridor will allow the construction of more gas transmission pipelines (with looping), which would then compete with the DBNGP.

Due to safety considerations, some sections of the existing DBNGP corridor needed widening before a second pipeline could be built. The *Dampier to Bunbury Pipeline Act 1997* allowed for the expansion of the pipeline corridor from 30m to 100m to enable further pipelines to be built, and the vesting of the land in the DBNGP Land Access Minister.

Action has commenced to implement this expansion, which will involve resuming the expanded corridor, resulting in considerable negotiation with existing property holders and the resolution of Native Title issues. Concentrating gas pipeline construction within a single corridor is considered necessary to minimise environmental disruption.

In December 1998, the Government announced its intention to privatise the distribution, trading and retail businesses of AlintaGas. When the sale is completed, the Government will no longer own any gas industry assets.

8.3 Progress on Road Transport Reform

Western Australia is expecting to meet its obligations on road transport reform. It has implemented a number of agreed national reforms including the heavy vehicle uniform registration charges and a number of elements of the heavy vehicle reform package. Proposed Western Australian legislation is consistent with the national reform agenda with respect to heavy vehicle registration, national driver licensing, vehicle operations/standards and driving hours.

The April 1995 COAG competition policy agreements provided general guidelines but established no specific assessment milestones. Consequently jurisdictions made an 'in-principle' agreement to accept the implementation schedules agreed by the Australian Transport Council (ATC), with the NCC acknowledging that changes by ATC or COAG to the schedule, agreed by ATC in February 1999, would need to be respected.

An evaluation framework was agreed by ATC on 4 December 1998 for progress to COAG and it is understood the Commonwealth forwarded that proposal (after some amendments directed by ATC) to the Chair of ATC in mid February for forwarding, through the Prime Minister, to heads of Government.

Western Australia's report on progress is made against that framework.

Heavy vehicle charges module

This module was implemented on 1 July 1996.

Transportation of dangerous goods by road module

The evaluation framework requires implementation of the dangerous goods by road module in Western Australia within four months of the relevant Act coming into effect.

The *Dangerous Goods (Transport) Act 1998*, assented to in December 1998, includes the national dangerous goods module. The associated regulations are expected to be proclaimed around April/May 1999.

These regulations will provide for a uniform approach to the transport of dangerous goods by both road and rail (as being sought by ATC) to achieve a harmonised national regulatory framework for the land transport of dangerous goods. In the interim, the technical aspects of the national road regulatory framework have been given effect by allowing transport operators to work to the new national dangerous goods code agreed by ATC.

Heavy vehicle registration module

The evaluation framework targets July 1999 for implementation of the heavy vehicle registration module in Western Australia, subject to the passage of necessary legislation by Parliament.

This module requires changes to be made to Western Australia's *Road Traffic Act 1974* to allow full implementation. Legislative priority has been requested to allow amendments to be passed in the autumn session of 1999. Associated regulations are planned to be progressed simultaneously.

In the interim, Western Australia has adopted the nationally agreed administrative guidelines wherever possible to establish consistency with national outcomes without waiting for legislative changes to be effected.

Western Australia is participating fully in the National Road Transport Commission implementation group which is managing the implementation requirements of the module.

Western Australia will also apply the national heavy vehicle regulations to light vehicles to promote consistency of approach in these regulations.

National driver licensing module

The evaluation framework targets July 1999 for the implementation of this module in Western Australia, subject to Parliament passing necessary legislative amendments.

While Western Australia is applying its existing legislation to maximise consistency with the agreed national outcomes, full implementation requires amendments to the *Road Traffic Act 1974* (in particular for the outcome areas of consistent national demerit points, uniform heavy vehicle licence classifications and photographic licences). The necessary changes to the Act have been endorsed by Cabinet.

Western Australia is participating in the NRTC-led implementation group to ensure implementation can be effected immediately after legislative changes are made. Legislative priority has been requested to allow amendments to be passed in the autumn session of 1999. It is intended that changes to associated regulations will be progressed simultaneously.

Vehicle operations module

This module initially comprised a wide range of specific elements, including a number which the evaluation framework (agreed by ATC for endorsement by COAG) has identified under separate headings (eg. vehicle standards, Australian road rules and driving hours).

The evaluation framework identifies the areas of mass and loading, oversize/overmass and restricted access vehicle regulations under the heading Vehicle Operations and targets the implementation of these in Western Australia for six months after Ministers approve the combined vehicle standards.

The implementation of these regulations does not require any Act amendment and can proceed by regulation. However, the structure of State regulations covering these and vehicle standards regulations is such that it would be inefficient and confusing to proceed piecemeal, and consequently changes should be undertaken simultaneously. With recent Ministerial agreement on the Combined Vehicle Standards, Western Australia expects to have the necessary regulatory changes in place by September 1999.

There has been little or no adverse impact on interstate operators resulting from the delay in reaching this agreement as existing Western Australian regulations are in accord with the national standards. For example, the national mass limits for axles and the abolition of individual permits for standard mass operations are part of the Western Australian regulatory system already.

Vehicle standards

The evaluation framework distinguishes between heavy and combined vehicle standards (the latter incorporating both heavy and light vehicles). The framework indicates that heavy vehicle standards are assessable for second tranche assessments by the NCC but not so for combined standards (as they had yet to be approved by Ministers).

Western Australia is in favour of the approval of the Combined Vehicle Standards to allow both heavy and light vehicle standard regulations, together with those outlined above, to be progressed simultaneously. The combined vehicle standards were first put to Ministers in late 1996 (although initially scheduled by the NRTC considerably earlier), but disallowed on a majority vote.

Western Australia now expects to effect necessary regulatory changes by September 1999. However, the delay in formalising these changes has had little or no impact on interstate transporters as existing Western Australian standards are substantially in harmony with those agreed nationally. Where national standards have provided greater freedom than existing State standards these have been provided for by permit and mutual recognition arrangements put in place for interstate vehicles.

Driving hours regulations

Based on recommendations from the NRTC to Ministers, Western Australia has been specifically excluded from implementing national driver hours regulations for truck drivers and will not be applying national regulations for bus drivers.

However, Western Australia has introduced a Code of Practice linked to Occupational Health and Safety Legislation to manage fatigue in the road transport industry. This will provide a more flexible and cost effective management system to meet the particular needs of remote areas and does not create difficulties for interstate transport operators.

8.4 Progress on Water Reforms

Western Australia is committed to the effective implementation of all COAG agreements on the strategic framework and future processes as endorsed at the February 1994 COAG meeting and embodied in the February 1995 Report of the expert group on asset valuation methods and cost-recovery definitions.

In line with this commitment significant reform has been undertaken, including:

- implementation of pricing reform based on the principles of consumption-based pricing, full-cost recovery, and removal of cross-subsidies, with remaining subsidies made transparent;
- adoption of two-part tariffs for urban water where cost effective;
- implementation of a comprehensive system of water allocations, including allocations for the environment, backed by separation of water property rights from land title;
- introduction of arrangements for trading in water allocations or entitlements; and
- structural separation of the roles of service provision from water resource management, standard setting and regulatory enforcement.

Cost Reform and Pricing in Urban Water

Full cost recovery

Western Australia's three major urban providers are the:

- Water Corporation;
- Aqwest (formerly Bunbury Water Board); and
- Busselton Water Board.

All the providers are implementing full cost recovery. The annual reports of these organisations transparently detail the costs (operating costs, dividends, tax equivalents, and community service obligations) that have been used to determine water prices.

In relation to the Water Corporation, CSOs are subject to Ministerial and Cabinet approval through the budget process and are considered on a project-by-project basis. In 1997-98 the Water Corporation, the State's largest service provider, received CSO payments for infill sewerage, rebates and concessions to pensioners, seniors, and various exempt bodies on annual service charges,

water consumption charges and other fees and charges in the metropolitan area.

In relation to externalities, Western Australia has in place environmental mechanisms through the Waters and Rivers Commission to ensure that environmental demands are met first, before water is allocated for consumptive use.

Consumption based pricing (two part tariffs)

Western Australia's urban water service providers have used two part tariffs for a number of years. A fixed component and a volumetric charge is levied on the amount of water used.

Consumption based pricing has also been in place for commercial and industrial customers in wastewater since 1995-96. Major commercial and industrial customers have two-part tariffs with a fixed component based on the size of the connection and a pay-for-use component calculated on metered wastewater volumes and composition. Minor commercial and industrial customers have a service charge calculated on the basis of the number of fixtures and a pay-for-use charge based on metered water consumption adjusted for an average percentage returned to the sewer.

Residential wastewater charges are based on gross rental values of property. It is not practical to implement a two-part tariff regime for domestic consumers as there exists no practical way to determine consumption. Arbitrary rules such as assuming that 'water out' is a fixed percentage of 'water in' for residential sewerage is not adequate because this ratio differs markedly between residential water users.

Removal of cross-subsidies

For a number of years the Water Corporation has been implementing tariff reform measures aimed at reducing the level of cross-subsidisation between business and residential customers and ensuring that tariffs better reflect cost of service provision.

Tariff restructuring has resulted in real water costs for a medium sized, commercial business falling by almost 50 per cent, or around 10 per cent per year from 1992-93 to 1997-98.

Transparent community service obligations

The major Western Australian urban water provider, the Water Corporation, has explicitly identified the cross subsidies that were provided in the urban area and are now provided in the form of transparent CSO payments from the Consolidated Fund.

The State Government's CSO policy facilitates competition and encourages performance improvements by ensuring that CSOs are provided by the organisations that can do so in the most commercial manner. The policy also ensures that the Government reviews each CSO and deems the benefits of the service to outweigh the costs of delivery.

CSOs currently include items such as:

- pensioner and Senior's card concession rebates;
- concessions to non-rated property owners, such as charities, religious and sporting bodies and homes for the aged; and
- the infill sewerage program.

The infill sewerage program was undertaken to deep sewer areas of Perth that had previously relied on septic tanks. These tanks were having a negative environmental impact and it was the Government's decision that, as the whole community would benefit from their removal, the cost should be incurred as a CSO rather than paid directly by residents.

Real rate of return

All urban water service providers are attaining a positive real rate of return on the written down replacement cost of their assets. In 1997/98 the Water Corporation achieved a rate of return of 4.4%, Aqwest 3.9%, and Busselton Water Board 5.6%.

For the Water Corporation the Minister for Water Resources and Treasurer have agreed to the adoption of a real target rate of return of 4% for assets created before 1 January 1996 and 6% for assets created since 1 January 1996.

Rural Water Supply and Irrigation Services

Progress on full cost recovery and transparent subsidies for rural water supply and irrigation services

Given the large geographic area and the relatively low level of available water sources, the cost of providing water services in the country is considerably greater than the cost in the Perth metropolitan area. Because of the Government's strong commitment to regional development it maintains a uniform tariff policy requiring the prices charged for country water services to be similar to those charged in Perth. The outcome of the high rural water supply costs and the uniform tariff policy is that there is Government subsidisation of rural water schemes.

In relation to rural water supply Western Australia has one service provider – the Water Corporation. The Water Corporation has identified all subsidised services and these subsidies have been converted to transparent CSOs. In 1997/98 this CSO cost $135.7 million.

Compensation to the Water Corporation in the form of a CSO payment is calculated by comparing the revenue for each scheme with the long run avoidable costs. Calculations are made on a scheme by scheme basis and only loss-making rural schemes are included in the compensation claim. A listing of proposed, improved or new services is provided to the Minister for Water Resources to obtain his approval before changing the quality of existing CSOs or commencing new CSOs. Any changes are identified in the annual Strategic Development Plan (SDI) and Statement of Corporate Intent (SCI), both of which require the Treasurer's concurrence.

In relation to irrigation services Western Australia has four irrigation service providers:

- South West Irrigation Cooperative;
- Ord Irrigation Scheme;
- Preston Irrigation Scheme; and
- Carnarvon Irrigation Scheme.

These schemes purchase bulk water at less than full cost from the Water Corporation but charge full cost for the service of supplying bulk water to irrigation farmers. The Water Corporation receives a CSO for these schemes to cover the supplying of bulk water at less than full cost.

Independent appraisal processes to determine ecological sustainability and economic viability of rural schemes

In terms of environmental assessment, Western Australia's two environmental regulators, the Water and Rivers Commission and the Department of Environmental Protection, ensure environmental impact issues are dealt with prior to any new development or augmentation of an existing development.

Processes and procedures are yet to be put in place for the economic appraisal of proposals made by water service providers. However, any proposed developments that are not economically viable are scrutinised by the Minister for Water Resources and the Treasurer through the budget and annual SDP and SCI processes. If approval is given, the public provider is paid a transparent CSO from the Consolidated Fund.

Devolution of responsibility for irrigation areas to local bodies

Until 1994 each of the four irrigation schemes listed on the previous page was owned and operated by the Water Authority of Western Australia. In 1994 a decision was made to progressively increase the level of irrigator participation in the management and/or ownership of the schemes.

In the case of the South West Irrigation Scheme, operational responsibility was devolved to the interim committee of management. Responsibility for asset management and maintenance stayed with the Water Authority. The irrigators formed two Cooperatives, one to hold and maintain the assets, and one to undertake the management and operations of the irrigation services using those assets. The irrigation reticulation assets have been transferred to the Irrigator Cooperatives. Bulk water assets have been retained and are operated by the Water Corporation, which now supplies bulk water from its reservoirs to the Cooperatives.

In relation to the Ord River Irrigation Scheme, the Ord Irrigation Cooperative (a cooperative of irrigation farmers) has taken on the operation and maintenance of the Scheme under contract to the Water Authority. While this arrangement was in place, the irrigators and the Water Authority (and subsequently the Water Corporation) negotiated the conditions for the transfer of the irrigation distribution and reticulation assets to the irrigators. However, the transfer of assets to the Irrigation Cooperative has been delayed because of native title and environmental issues, and is now planned to occur in 2001.

Transfer of the Preston Irrigation Scheme to a farmer cooperative is at an advanced stage. Farmers have formed themselves into a cooperative and have obtained the necessary approvals and licences to run the scheme. By-laws giving the cooperative the powers necessary to run the scheme were authorised in January 1999 and the transfer of assets together with some refurbishment are almost complete.

The Carnarvon Scheme is a more complex arrangement than the other irrigation schemes, which makes its management more difficult. Water is drawn from borefields to provide a reticulated supply to farmers, many of whom have their own bores drawing from the same aquifer. The reticulated scheme acts as a supplementary supply for some farmers and is the sole supply for others who do not have direct access to the aquifer. The same borefields are the only water source for the town of Carnarvon. Of the four irrigation schemes in Western Australia this scheme has the most limited and fragile water resource, with careful management being essential to avoid further long-term damage (salt-water intrusion) to the ground water supply.

These complexities mean that the Carnarvon Irrigation Scheme requires a more comprehensive solution to future scheme management and will take some time to complete. The Water Corporation has established a joint management Board for the Scheme. The Chair of the Board is a member of the Water Corporation's Board. It has a majority of farmer members and also a representative from the town of Carnarvon.

Institutional Reform

Institutional role separation

In January 1995 the State Government appointed a Water Industry Restructure Implementation Group (WIRIG) to inquire into the operations and financing of the Western Australian Water Authority and the separation of policy and regulatory functions from the commercial functions of the Authority.

WIRIG developed recommendations and prepared draft legislation for a comprehensive overhaul of the water industry. WIRIG's efforts resulted in the formation of three new agencies on 1 January 1996. The Water Corporation took over the commercial functions of the Water Authority. The Water and Rivers Commission brought together a range of functions, previously conducted in four separate agencies, for the management and protection of the ground and surface water resources of the State. A third agency, the Office of Water Regulation, was created as a licensing authority for water services and to be a source of policy advice on the economic performance of the water industry.

Commercial focus of metropolitan service providers

The Water Corporation, the State's largest service provider was corporatised in 1996. The agency has an arm's length relationship between itself and the Minister for Water Resources through the constitution of an independent board of directors. The board takes responsibility for all aspects of the agency's operations, while the agency's strategic direction is negotiated between the board, the Minister and the Treasurer.

Key features of the corporatisation model as it applies to Water Corporation include:

- a principal commercial objective (namely, to endeavour to make a profit consistent with maximising the Water Corporation's long term value). The cost of community service obligations, which the Government directs Water Corporation to undertake, is met from the Consolidated Fund to ensure this objective is not compromised;

- the Water Corporation's board and executive management are responsible for its day to day operation. The Government has input into the strategic direction of the agency through the annual negotiation of its statement of corporate intent and strategic development plan between the board, the Minister for Water Resources and the Treasurer. The Minister for Water Resources has the power to direct the agency to carry out activities – these directions must be tabled in parliament and published in the agency's annual report;

- the performance of the Water Corporation is monitored on a quarterly basis by the Office of Water Regulation (service standards) and Treasury (financial performance); and

- the Water Corporation is exposed to competitive neutrality (full Commonwealth and state taxes or tax equivalents, debt guarantee fees, regulatory neutrality with private sector such as regulations relating to the protection of the environment and planning and approval processes).

The other water service providers, namely Aqwest and Busselton Water Board, are not corporatised entities. Corporatisation was not seen as a cost-effective means of achieving competitive neutrality for these smaller agencies.

These agencies have been required to undertake a competitive neutrality review to assess whether they enjoy any net competitive advantages (or disadvantages) as a consequence of their government ownership. If they are found to have a competitive advantage (or disadvantage) and it is not demonstrably in the public interest for it to be retained, then the competitive advantage (or disadvantage) will be removed. The competitive neutrality review for each of these organisations is currently being finalised.

Allocation and Trading

System of water entitlements

Western Australia is undertaking major legislative reform to define water rights in a framework that allows trading of rights, protects the environment and ensures consultation with the community.

The Water and Rivers Commission is charged with administering the comprehensive system of water entitlements. The Commission is a single purpose natural resource management agency.

The Water and Rivers Commission is currently consulting over amending legislation it is proposing to introduce in June 1999. The amending legislation will allow local resource management rules to be framed to protect the economic, social and environmental values of the community.

The legislative reform will establish a statutory planning and policy framework that will require plans to:

- be approved by the Minister;
- be prepared under a statutory process that guarantees community review; and
- set the sustainable yield that may be taken within the environmental limits.

The rights and responsibilities relating to waters and the environment are set out in the *Rights in Water and Irrigation Act 1914* and the *Environmental Protection Act 1986*. The *Rights in Water and Irrigation Act 1914* (which is subject to the *Environmental Protection Act 1986*) is currently being amended to include statutory processes for the setting of environmental limits and the allocation of water.

The objects of the Act will require the Water and Rivers Commission to provide water for the environmental systems that depend on watercourse and groundwater systems. Environmental water requirements are defined and removed from the water available for allocation prior to allocation reaching levels that could damage the environment.

In August 1997 the Water and Rivers Commission embarked on a multistage consultation program (setting the principles, amending the law, implementing the changes) to amend the *Rights in Water and Irrigation Act 1914* and accomplish the allocation reforms.

The publication *Draft Environmental Water Provisions Policy For Western Australia* describes the methodology the Commission intends to use to balance the productive use of water with protecting water-dependent ecosystems. The policy statement explains the way the Commission will decide how much water should be made available to the environment when making decisions about sharing (allocating the rights to use) water in Western Australia. The statement describes the guiding principles to be followed when making such decisions and outlines a water allocation planning framework in which they are to be applied.

The allocation framework for natural water resources is consistent across the State. Common principles of allocation, trading and environmental protection will apply but local communities will have the opportunity, subject to the direction of the Water and Rivers Commission, to modify and circumscribe the statutory provisions to suit their own circumstances.

Trading in water entitlements

Under proposed amendments to the *Rights in Water and Irrigation Act 1914* licences to take water will be transferable. Rights that can sensibly be traded, that is licence allocations to take water from fully allocated natural resources, can be traded under rules developed in consultation with the community. The legislation will allow the social and environmental elements of water use to be enhanced.

The legislative power to transfer licences will not be available until later in 1999. In the interim water licence holders in fully allocated areas will be allowed to surrender their licences on the condition that replacement licences are issued to nominated parties. The Water and Rivers Commission will administer this defacto transfer scheme, which is possible under the existing legislation because the environmental water requirements are formally set under the *Environmental Protection Act 1986*.

The private South West Irrigation Cooperative which owns and operates the irrigation water distribution works in the Harvey, Collie and Waroona Irrigation Districts has established tradeable rights systems. Leasing of water entitlements has been in place since 1996 and permanent sale of shares was implemented in 1998.

Cross border trading is not possible. In the future water may be traded across the Western Australia – Northern Territory border if the Ord irrigation project is expanded into the Northern Territory. As the irrigation district that spans the border will be under common management the pricing and allocation rules for water traders will be identical, resulting in no restriction to trade.

Environmental water provision

Western Australia has established and maintained a balance between water uses and environmental water needs with no rivers or groundwater systems being stressed due to excessive allocation of water rights.

Seven rivers or river systems are regulated and five of these have environmental water provision determined at the regional level. Forty four groundwater systems are actively managed and twenty six of these have regional, subregional or management area environmental water provisions set or in preparation.

Where significant environmental damage may result from the Commission's allocation policies, the allocation of water is also subject to formal review under the *Environmental Protection Act 1986*. This process results in external and public review of the policy proposals and the setting of legally binding environmental criteria. As a result of this ongoing attention to protection of the environmental water requirement of water resource systems Western Australia has no river systems that are stressed as a result of the over allocation of water uses.

Environment and Water Quality

Integrated Resource Management Practices

Over the past three years, the State has been progressively implementing arrangements and actions to ensure that natural resource management is delivered in an integrated and coordinated manner that fully involves community groups, based on formal partnerships.

Integrated structures across government from the State to the regional level ensure coordination of State Government agency activities. Linkages and collaboration with the community have also been established at all levels. Legislative arrangements are continuing to evolve, especially in the area of water resources, but mechanisms are in place to ensure that agencies work cooperatively to identify and use the most appropriate legislative powers.

The State has recently released a draft Natural Resources Management (NRM) policy for Western Australia, with the following vision:

"To optimise sustainable management of the State's natural resources through efficient and effective partnership between all levels of government and the community."

The outcomes envisaged through implementation of the policy include:

- community ownership, commitment and involvement in natural resource management;
- improved partnership and understanding between Government and the community, of the roles, responsibilities and accountabilities to achieve sustainable natural resource management;
- better policy, priority setting and delivery on the ground due to a clearer sense of direction through regional strategies and partnership agreements;
- more effective allocation of limited resources through improved coordination between Government and community groups;
- stronger and improved coordination with State and regional planning, development and management at scales that are strongly related to natural systems; and
- greater coordination and efficiency of government agency initiatives and inputs.

When finalised, the policy will continue to guide the direction of NRM in Western Australia to achieve these outcomes which are consistent with the COAG requirements.

The document *Integrated Resource Management in Western Australia* outlines the State's compliance with the specific COAG requirements related to environment and water quality.

National Water Quality Management Strategy

Western Australia has made significant progress in the development and implementation of the National Water Quality Management Strategy (NWQMS).

Western Australia has actively participated in and supported the development of the NWQMS since the early1990s. The State has contributed to the development of the NWQMS policies and guidelines, and through representation on the Agricultural and Resource Management Council of Australia and New Zealand (ARMCANZ) Australian and New Zealand Environment and Conservation Council (ANZECC), and National Health and Medical Research Council (NHMRC).

A State Water Quality Management Strategy (SWQMS) which gives effect to the NWQMS is being progressively developed and implemented in Western Australia. This strategy has established a water quality management objective and a number of guiding principles and strategies based on sustainable development, the cornerstone of the NWQMS.

An action plan has also been prepared that requires the preparation of a State Water Quality Implementation Plan that will provide clear water quality management priorities and targets.

An implementation framework has been developed for the SWQMS that will put into place an administrative structure for water quality management. It facilitates the integration and continual improvement of water quality management processes conducted by Government agencies.

The production of the Jandakot Groundwater Protection Policy is a prime example of the integrated approach across Government. This Statement is the first to be jointly developed and endorsed by the Western Australian Planning Commission, the Environmental Protection Authority and the Water and Rivers Commission.

Another significant area where major changes are occurring is in the development of State water quality protection guidelines. The aim is to produce single "whole of Government" guidelines. This approach also provides stakeholders with a single document, which sets out the regulatory framework for protecting a public drinking water source and significant environmental features.

There has traditionally been a strong emphasis on the use of regulatory measures such as statutory policies to protect groundwater public water supplies and land use controls. This has been achieved through the planning approval process and conditions placed on existing and proposed sources of contamination through the environmental impact assessment and pollution control processes.

There has also been a marked increase in the development of other measures to complement the regulatory approach. Market-based approaches to waste management that have been introduced include:

- cost incentive measures that support recycling of waste materials and environmentally safe methods of waste disposal;
- a water discharge licensing system with a fee structure that will reward best management practices. Western Australia was the second State to introduce such a system;
- an incentive scheme which provides compensation for not being able to clear land to prevent salinisation;
- encouraging owners of degraded land to grow plantations to establish an economic use for land which is in keeping with water quality protection objectives; and
- a tiered user pays system that encourages efficient water consumption and reduces the volume of contaminated water discharges.

An extensive water quality monitoring program is in place in Western Australia. This program includes the collection of water quality data through:

- regional hydrological monitoring;
- detailed monitoring of public water supplies;
- monitoring campaigns in areas subject to significant contamination; and
- self-management and compliance monitoring by facilities that are significant or potentially significant sources of contamination.

It is recognised that good water quality is dependent on appropriate land uses and practices within river catchments. Catchment management plans are prepared to address land practices that may threaten or have led to the degradation of environmental values and beneficial uses of water resources. Integrated catchment management is widely encouraged through the catchment management planning process in Western Australia. Examples are:

- State release of the draft Natural Resources Management Policy for Western Australia;

- the State Salinity Action Plan released by the Western Australian Government in 1996; and
- Waterways WA the first comprehensive statewide waterways management policy.

The implementation of the NWQMS Urban Stormwater Management and Sewerage System and Effluent Management guidelines is at an advanced stage in Western Australia. The Urban Stormwater Management guidelines are applied through the preparation of stormwater management plans, contaminated site cleanup and the Stormwater Design manual.

The Sewerage System and Effluent Management Guidelines are given effect through State industrial waste by-laws, the Biosolids 2040 Strategy Report, studies, policies and agreements for effluent and biosolids re-use, and education of trade waste operators and stakeholders. In addition, the implementation of the guidelines has led to upgrading wastewater pumping stations and comprehensive monitoring of wastewater overflows.

Innovative methods for sewage disposal are also being developed to reduce the impacts on waterways and estuaries in Western Australia. For example, sewage effluent is used to irrigate a tree farm at Albany rather than discharging to the local creek system, as was previously the case.

The consultative negotiating systems are based on fostering a team approach with State Government agencies, local government and key industry and community councils. Consultation is now a major component in setting water quality objectives in Western Australia. For example, public consultation has been a major component in compiling the overview document on environmental values for the Busselton - Walpole Region.

The development of the Jandakot Policy included major community consultation. It focussed a wide range of community stakeholders, legislators, Government policy officers and politicians on the issue of protecting water quality.

Public Consultation and Education

Waters and Rivers Commission is the lead agency for public consultation and education, in so far as it mainly relates to trade in water entitlements.

Consultation on pricing for full cost recovery has occurred with respect to the major providers but not with the public in general. The Office of Water Regulation has given evidence to two parliamentary committees (the Public Accounts and Expenditure Review Committee and the Standing Committee on Uniform Legislation and Intergovernmental Agreements) on matters related to these issues.

Public consultation has also occurred on the separation of the industry in 1995, and on the NCP legislation reviews.

A Western Australian Water Education Steering Committee has been established to coordinate agency and service provider publication and information services.

School curriculum material has been developed on water resources including:

- TAFE Water Resource studies;
- working scientifically with Ribbons of Blue;
- Swan River Education Kit;
- Waterwise Schools Program;
- Water Facts pamphlet series; and
- Groundwater series of videos on metropolitan and rural groundwater management.

Education materials and services related to water services and reform include:

- two volumes of water law and reform conference and research papers published by UWA Press;
- Water Industry Reform Implementation Group education and consultation process;
- allocation and trading reform proposals, reports, newsletters and consultation;
- National Task Force publications on reform;
- the ombudsman role of the Office of Water Regulation;
- web sites of the Office of Water Regulation and Water and Rivers Commission; and
- process and customer service charters of service providers.

ATTACHMENT 1:

Summary of Legislation Reviews of Existing Legislation

Attachment 1(A):

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

ABORIGINAL AFFAIRS PLANNING AUTHORITY ACT 1972 AND REGULATIONS

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Due to the minor nature of the restriction on competition, consultation was considered unnecessary.

Composition of Review Body: Agency committee, with input from the Ministry of Maori Development, New Zealand; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that the restrictions on competition contained in the legislation are in the public interest and should be retained.

Implementation: Not applicable.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following minor restrictions for the same reasons outlined below:

Restriction 1: *Access to Aboriginal lands is restricted.*

Restriction 2: *Provision of finance for Aboriginal enterprises which enables finance to be provided to Aboriginal enterprises through the Aboriginal Trading Fund, which may have competitive advantages over private sector lenders.*

Both restrictions protect the residents of Aboriginal Lands and enable support for Aboriginal enterprises that could reduce reliance on welfare and other transfer payments. The costs are estimated to be minimal, but achieve significant public benefits.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

ABORIGINAL COMMUNITIES ACT 1979 AND BY-LAWS.

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Due to the minor nature of the restriction on competition, consultation was considered unnecessary.

Composition of Review Body: Agency committee, with input from the Ministry of Maori Development, New Zealand; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that the restrictions on competition contained in the legislation are in the public interest and should be retained.

Implementation: Not applicable.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restriction for reasons outlined below:

Restriction: *The Act empowers a community to which it applies to make by-laws relating to the community lands of that community for or with respect to:*

- *the prohibition or regulation of the admission of persons, vehicles and animals to the community lands or a part of the community lands; and*
- *the prohibition, restriction or regulation of the possession, use or supply of alcoholic liquor or deleterious substances.*

The review concluded that it is in the public interest to retain the powers of the communities to regulate access and the availability of deleterious substances on the grounds of public health and cultural preservation. The costs were estimated to be minimal.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

ABORIGINAL HERITAGE ACT AND REGULATIONS 1974

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Due to the minor nature of the restriction on competition, consultation was considered unnecessary.

Composition of Review Body: Agency committee, with input from the Ministry of Maori Development, New Zealand; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that the restrictions on competition contained in the legislation are in the public interest and should be retained.

Implementation: Not applicable.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restriction for reasons outlined below:

Restriction: *Access to Aboriginal lands containing protected sites is restricted*.

The restriction protects the cultural heritage of the State and ensures that sites of historical and cultural significance are not damaged or destroyed.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

ADMINISTRATION ACT 1903

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Submissions were invited directly from interested parties.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended:

1. Broadening the range of financial institutions covered by a provision that grants them protection to pay funds from a deceased estate, up to a maximum amount, for funeral or other authorised purposes prior to administration of the estate.

2. Making this maximum amount consistent with corresponding provisions of the *Financial Institutions Code (WA)*.

Implementation: The recommended amendment to the Act and new regulation are being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restriction for reasons outlined below:

Restriction: *The Act treats natural persons differently from other classes of administrators of intestate estates as regards a requirement to obtain surety.*

This restriction is retained because it has no costs but provides benefits by placing natural person administrators on a level playing field with other classes of administrators. It does so because others administrators are already subject to similar safeguards to protect deceased estates, by other means.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

ANGLO-PERSIAN OIL COMPANY LIMITED (PRIVATE) ACT 1919
BRITISH IMPERIAL OIL COMPANY LIMITED (PRIVATE) ACT 1925
COMMONWEALTH OIL REFINERIES LIMITED (PRIVATE) ACT 1940
SOUTH FREMANTLE OIL INSTALLATIONS PIPE LINE ACT 1948
TEXAS COMPANY (AUSTRALASIA) LIMITED (PRIVATE) ACT 1928

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Submissions were invited directly from interested parties.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that the restrictions on competition contained in the legislation are in the public interest and should be retained.

Implementation: Not applicable.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restriction for reasons outlined below:

Restriction: *The Acts define the relationships, rights and duties of oil companies, local government authorities and the Minister for Works in relation to the construction, operation and maintenance of pipelines on public lands. These duties and powers of the State and local governments constitute restrictions on the commercial activities of the oil companies.*

It was assessed that the restrictions do not impose significant costs on the oil companies. Nor do any differences between the Acts impose cost advantages or disadvantages on particular oil companies that are of sufficient magnitude to affect competition between the companies. The public benefits of these restrictions were assessed to be minor cost savings in management of municipal infrastructure; minimisation of public inconvenience during construction and maintenance activities; and ensuring proper restoration of municipal infrastructure where this has been disturbed by works of the oil companies.

In view of the potential public benefits arising from the provision of the Acts, and the absence of significant costs or effects on competition, it was concluded that the restrictions arising from the legislation are either in the public interest due to current or potential future benefits, or have no current or potential future impact.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

BETTING CONTROL ACT 1954 AND REGULATIONS
TOTALISATOR AGENCY BOARD (BETTING) ACT 1960 AND REGULATIONS

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Invitations to make submissions to the review were made by written advice to persons and organisations with a known interest in the betting and gambling industries. A public advertisement was also placed in The West Australian and the Sunday Times newspapers.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended:

1. Removing restrictions on individuals or organisations that can undertake betting activities.

2. Reducing costs on individuals or organisations engaged in betting activities.

3. Improving competitive neutrality between businesses engaged in different forms of betting, and between the betting industry and other gambling industries.

4. Removing commercial constraints on the TAB.

Implementation: The recommended amendment to the Act and new regulation are being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restrictions for reasons outlined below:

Restriction 1: A *person must hold a current bookmaker's licence to act as a bookmaker.*

Given the nature of the betting industry and the opportunities that exist for corrupt and dishonest operators, an effective system for licensing bookmakers is judged to be essential in regulating activities and avoiding adverse effects on the racing industry, punters and the wider community.

Restriction 2: *Bookmaking activities may generally only be carried on at racecourses or registered places of sporting events, and in areas of such premises specifically set aside for bookmaking purposes.*

Restrictions on the locations of bookmakers activities were assessed as providing substantial benefits through reduced costs of monitoring bookmaking activities and reducing adverse impacts in the community from off-course betting and access to credit betting. Despite the potentially substantial costs imposed on bookmakers from reduced business opportunities, it was considered that the restriction on locations at which bookmaking may occur provides a net public benefit.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

BOXING CONTROL ACT 1987 AND REGULATIONS

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Submissions were invited directly from interested parties.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that the restrictions on competition contained in the legislation are in the public interest and should be retained.

Implementation: Not applicable.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restriction for reasons outlined below:

Restriction: *Registration of boxers, trainers, promoters, and judges. This restriction limits who can practice as a boxer, promoter or manager of boxers and ensures that the health of boxers is satisfactory.*

The restriction may reduce the number of participants involved in the sport, earnings from the sport and spectator numbers. However benefits associated with this regulation include improved boxer health and lower mortality, reduced health care costs, fewer resources used in litigation over claims of fraud, decline in costs for promoters. On balance, the restriction is considered to be in the public interest.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

BREAD ACT 1982 AND REGULATIONS

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Submissions were invited from interested parties through advertisements in *The West Australian* newspaper on 11 and 15 April 1998.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended repeal of the entire act including:

1. Licensing of bakehouses cease.

Anyone wishing to operate a bakehouse, must have a licence for that bakehouse.

2. Restrictions on delivery time for bread be removed.

The Act makes it an offence for a person to deliver, authorise, permit or accept the delivery of bread for sale at anytime other than between 4am and 6pm Monday to Saturday or 5am and 9am on Sunday. The Minister is empowered to authorise changes to these times where they see fit.

3. Requirements for marking vehicles used for delivering bread be discontinued.

The Act requires vehicles used to deliver bread for sale to be plainly, conspicuously and permanently marked as prescribed.

Implementation: The recommended repeal of the Act is being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: No restrictions retained.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

BUSH FIRES ACT 1954 AND REGULATIONS

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Due to the minor nature of restrictions, it was felt that consultation was unnecessary.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that Government businesses be subject to fire control requirements.

Implementation: The recommended amendment to the Act is being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restriction for reasons outlined below:

Restriction 1: *Restriction on the lighting of fires and the requirement to maintain fire breaks. This restriction regulates the lighting of fires and requires the maintenance of fire breaks.*

This is a very minor restriction on competition. Bush fires can be extremely costly to society, destroying both life and property. This restriction is clearly in the public interest as it reduces the likelihood of fires.

Restriction 2: *Requirements on local governments. Local government is required to provide firefighting equipment and insure voluntary firefighters.*

Firefighting equipment is essential in combating bush fires and protecting the community. The extremely high potential cost of fire damage means local governments must be prepared. Volunteer firefighters are also essential in protecting communities from bush fires and therefore it is in the public interest for government to provide insurance to those who voluntarily risk their lives to protect the community.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

BUSINESS FRANCHISE (TOBACCO) ACT 1975

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Due to the minor nature of restrictions, it was felt that consultation was unnecessary.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that the restrictions on competition contained in the legislation are in the public interest and should be retained.

Implementation: Not applicable.

Net community benefit case supporting non-trivial restrictions: The review recommended retention of the following non-trivial restriction for reasons outlined below:

Restriction: *A licence is required by any person wholesaling tobacco or purchasing tobacco for retailing from someone who is not a licensed wholesaler unless purchase is exempt.*

Although this licensing regime restricts competition in the tobacco wholesaling industry and by doing so keeps prices artificially inflated, it thereby reduces consumption, and was found to be in the public interest on public health grounds.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

CARNARVON BANANA INDUSTRY (COMPENSATION TRUST FUND) ACT 1961

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Minor consultation was carried out in light of the trivial nature of the restrictions including interviews with an agricultural insurance broker and a representative from the Horticultural Produce Commission.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended repeal of the entire Act.

Implementation: The recommended repeal of the Act is being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: No restrictions retained.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

CATTLE INDUSTRY COMPENSATION ACT 1961

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for public comment: Consultation has been adequate given the minor nature of the restriction contained in the Act. Interviews were conducted with key stakeholders including the Chief Veterinary Officer, the Western Australian Farmers Federation and the Pastoralists and Graziers Association.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that the Act be amended to ensure that compensation is only paid for animals destroyed as a result of a control program which is of a "sufficiently public good nature" and that the Government's contribution reflects the benefits that accrue to the wider community. A situation in which there are benefits to the wider community could be for example, when a stock disease threatens the human population.

The report also recommends that the Act be repealed pending the enactment of the Agricultural Produce Commission Bill which would include the restrictions currently contained in this Act.

Implementation: The recommended amendments to the Act are being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial restrictions: The review recommended retention of the following non-trivial restrictions with minor modifications for reasons outlined below:

Restriction 1: *Powers to nominated persons to inspect and destroy cattle for the purposes of disease control.*

Restriction 2: *Provision to raise a levy on the sale of cattle.*

The Government has a role in facilitating the control of pests and diseases in the cattle industry.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

CHICKEN MEAT INDUSTRY ACT 1977

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Submissions were called in the West Australian in July 1996. Nine submissions were received. A public meeting conducted on Friday August 23 1996 for interested parties and 49 attendees made up of 43 growers, 1 fast food operator, 2 processors, 2 input suppliers and 1 government official.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury

Major Reform Outcomes: The review recommended:

1. Alter the powers of the Chicken Meat Industry Committee to allow individual negotiations of grower contracts where growers wish to opt out of the collective bargaining arrangements.

2. Remove restrictions on entry to the growing and the processing sector.

Implementation: The recommended amendments to the Act are being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restriction for reasons outlined below:

Restriction: *The Act gives the Chicken Meat Industry Committee powers to set a fee to apply to a contract between chicken growers and processors.*

The right to collective bargaining is to be retained but is to be reviewed in five years. This restriction is retained because it was considered that moving immediately to a free market situation would have been disruptive and lead to growers being vulnerable to the stronger market position of the two processing companies. However while the collective arrangements would be retained they would also become voluntary.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

DAIRY INDUSTRY ACT 1973

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: The review was widely advertised in December 1998 (*Countryman and Farm Weekly*) and in the *West Australian* in February 1998. Submissions were taken from a number of industry and consumer representatives. The reviewers also had input from an industry working party consisting of representatives from the Western Australian Farmers Federation, the Dairy Industry Authority and the Dairy Program Partnership Group of Agriculture Western Australia.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that the restrictions on competition contained in the legislation are in the public interest and should be retained.

Implementation: Not applicable.

Net community benefit case supporting non-trivial restrictions: The review recommended the retention of the following non-trivial restrictions for reasons outlined below:

Restriction 1: *The regulation of farm gate milk prices.*

The regulation of farm milk price is justified on the grounds that it corrects an imbalance in market power which is accentuated in Western Australia by the lack of competition in processing and retailing.

Restriction 2: *The vesting of all milk in the Dairy Industry Authority.*

The vesting of milk is justified on the grounds that it is a means for achieving regulation and provides a secure payment system and ensures that milk companies do not under state the volumes used as market milk.

Restriction 3: *The licensing powers of the Dairy Industry Authority.*

Licensing powers provide a public benefit on the grounds of ensuring health and quality standards are maintained.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

DRIED FRUITS ACT 1947

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Interviews or comments were conducted or received with a number of stakeholders which were from or represented: The Dried Fruits Board; Growers; Agriculture Western Australia; Swan Settlers Packing House; Australian Dried Fruits Association; Department of Primary Industry (Com); Crown Solicitors Office; WA Health Department; Ministry of Fair Trading; and Victorian Dept of Natural Resources and Environment.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended repeal of the entire Act.

Implementation: The recommended repeal of the Act is being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: No restrictions retained.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

EAST PERTH REDEVELOPMENT ACT 1991 AND REGULATIONS

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Submissions received from a Ministerial review of the legislation were used for the competition policy review. The Ministerial review involved consultation will all interested parties including State and local government bodies and peak bodies representing land developers, real estate agents and urban developers.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that restrictions on competition contained in the legislation are in the public interest and should be retained.

Implementation: Not applicable.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restriction for reasons outlined below:

Restriction: *The Authority has exclusive powers to control the area for redevelopment and for compulsory acquisition of land. The Authority receives subdivision approval from Minister rather than the WA Planning Commission.*

The powers of the Authority restrict competition by overriding the operation of the free market. Yet without this intervention the private sector would not clean up the existing environmental problems and achieve redevelopment in line with the community vision for this area. The restriction is retained in the public interest because the benefits of the cleaner environment were considered greater than the minor negative impact on the economy.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

EASTERN GOLDFIELDS TRANSPORT BOARD ACT 1984 AND REGULATIONS

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Nil, given that the public transport services are being contracted out to the private sector, and the relative minor nature of the issues.

Composition of Review Body: The Eastern Goldfields Transport Board members, which are considered representative of major stakeholders including the wider community, local government and the State Government; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended removal of competitive advantages conferred on the Board including its right to the status, immunities and privileges of the Crown, an exemption from some legislation and an implied government guarantee on borrowings.

Implementation: The recommended amendments to the Act are being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: No notable non-trivial restrictions retained.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

ELECTRICITY ACT 1945

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Representatives of the Chamber of Commerce and Industry of Western Australia, the Office of Energy, Western Power and AlintaGas were interviewed to obtain their views.

Composition of Review Body: Independent consultant; intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended removal of Western Power's exemption from seeking the Coordinator's approval to supply electricity to the public.

Implementation: The recommended amendment to the Act and new regulation are being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restriction for reasons outlined below:

Restriction 1: *Regulations concerning mandated supply.*

This restriction was retained because the public benefit of controlling the standards of electricity supply to the public (price and safety) and ensuring continuity of supply of an essential service to small use customers exceeds the costs of these minor restrictions.

Restriction 2: *Coordinator determines interconnection prices.*

This restriction was retained because the benefits of regulatory control over pricing in a monopoly environment outweigh the costs of administration and compliance.

Restriction 3: *Restriction on sale/hire of non-approved electrical appliances.*

The restriction was retained because the public benefit arising from the imposition of safety standards outweigh the possible cost involved in restricting consumer choice and the unavailability of cheap but potentially dangerous appliances.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

ELECTRICITY CORPORATION ACT 1994

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Representatives of the Chamber of Commerce and Industry of Western Australia, the Office of Energy, Western Power and AlintaGas were interviewed to obtain their views.

Composition of Review Body: Independent consultants conducted the review; intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended the following restrictions be removed or amended as indicated:

1. Exclusive franchise of Western Power.

The exclusive franchise of Western Power with respect to line capacity below 66kV and for users with an average load (at a single metered site) of less than 5MW protects its monopoly by preventing competition for small consumers such as householders.

The timetable for third party access and contestability has been accelerated as the public benefits of permitting competition in electricity supply to commercial customers are considered to exceed the costs of possible loss of Western Power's market share. From 1 January 2000, choice of supplier will be available to all customers consuming an average load of more than 1 MW at a single metered site (medium to large businesses).

2. Barrier to entry to generate electricity.

The requirement on Western Power to procure new generation capacity through an open tender process is limited to generation with capacity of at least three percent of installed capacity, restricting the entry of small generators.

As the total grid capacity grows, the threshold for open tendering of generation requirements rises.

The public benefits of encouraging the entry of new generators was found to exceed the costs associated with the tendering process when significant extra capacity is required.

3. Legislated vertical integration.

The legislation specifically allows Western Power to operate in the generation, transmission, distribution and electricity trading segments of the market.

The review recommended that ring fencing be implemented, particularly with respect to infrastructure access, to ensure that the public benefits of competition can be achieved in the context of the current structure of Western Power. The review also recommended that further review of the vertical integration model be done prior to consideration of full contestability or privatisation.

Implementation: The recommended amendment to the Act and new regulation are being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restriction for reasons outlined below:

Restriction: *Competitive neutrality restrictions.*

A number of minor restrictions were identified which could potentially put Western Power at a disadvantage. These included provisions related to Ministerial direction, approval and consultation, compliance with certain public sector legislation, and public sector borrowing limits.

The restrictions were retained because the benefits of public accountability of a government-owned business were found to outweigh the costs to the Corporation of compliance.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

ENERGY CORPORATIONS (POWERS) ACT 1995

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Representatives of the Chamber of Commerce and Industry of Western Australia, the Office of Energy, Western Power and AlintaGas were interviewed to obtain their views.

Composition of Review Body: Independent consultants conducted the review; intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended the restriction providing monopoly rights to LPG trading be removed.

The review found that the costs of the restriction on competition outweighed the benefits of tight control of the market. All restrictions on LPG trading have now been removed and LPG suppliers can now compete with the supply of natural gas.

Implementation: The recommended amendment to the Act and new regulation are being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restriction for reasons outlined below:

Restriction: *Competitive neutrality restrictions.*

The energy corporations have powers of compulsory land acquisition and disposal, powers of entry, and also certain planning approval and water rights and indemnity against compensation claims.

Retention of this restriction was assessed as being in the public interest because the benefits of facilitation of energy supply outweigh the costs to landowners and the possible disadvantages to proponents of other land uses. The review recommended retaining these provisions but extending the rights to all undertakings for the provision of public energy facilities.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

ENVIRONMENTAL PROTECTION ACT 1986

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Submissions were invited directly from interested parties.

Composition of Review Body: Review conducted by independent consultant; intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that the restrictions on competition contained in the legislation are in the public interest and should be retained.

Implementation: Not applicable.

Net community benefit case supporting non-trivial restrictions: For reasons outlined below, the review recommended retention of restrictions that prevent entry to an industry, constrain freedom of firms to make business decisions and discriminate between firms. Identified restrictions include:

Restriction 1: *The ability to require an environmental impact assessment.*

Restriction 2: *Licensing of occupiers of prescribed premises.*

Restriction 3: *Exempting certain firms from EPA licensing.*

Restriction 4: *Requirement for firms to comply with the environmental standards set.*

Restriction 5: *The power to prepare and publish environmental protection policies.*

Restriction 6: *Restricting the transport and disposal of liquid and organic waste.*

Restriction 7: *Restricting emissions of sulphur dioxide, atmospheric wastes and ozone substances.*

Restriction 8: *Restricting activities of land holders around the Peel Inlet and Swan Coastal Lakes.*

Restriction 9: *Restricting noise emissions.*

The costs of these restrictions include restricted output, higher prices, possible allocative inefficiencies and higher government regulatory costs, industry compliance costs and costs of production. The restrictions were retained in the public interest because their costs were assessed as being outweighed by the benefits they provide in protecting quality of life and reducing health risks by controlling activities with potentially large negative effects on the environment and maintaining the load on the environment at an appropriate (ie sustainable) level.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

EXOTIC DISEASES OF ANIMALS ACT 1993

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for public comment: Consultation has been adequate given the minor nature of the restriction contained in the Act. Advice on the public benefit of the restrictions was sought from technical experts.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that the restrictions on competition contained in the legislation are in the public interest and should be retained.

Implementation: Not applicable.

Net community benefit case supporting non-trivial restrictions: The review recommended retention of the following non-trivial restrictions for reasons outlined below:

Restriction 1*: Powers to inspect, demand assistance and issue local quarantine orders.*

Restriction 2: *Powers to seize and destroy infected stock.*

Restriction 3: *Powers to control the movement of stock.*

The restrictions in the Act provides a means for the community to control or eradicate outbreaks of exotic diseases in stock.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

EXPLOSIVES AND DANGEROUS GOODS ACT 1961

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Findings of national committees under the National Occupational Health and Safety Commission were used; views of stakeholders sought through industry committees. The review was advertised in *The West Australian*.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review concluded that all restrictions in the legislation should be amended or removed. Specifically, the review recommended that the following amendments be made:

1. The licensing requirement for the manufacture of explosives be aligned with existing performance based controls for other chemicals.
2. The licensing restrictions on the storage of explosives be amended to remove requirements for approval by inspectors and shift responsibility for safety to the industry.
3. The restrictions on the sale of explosives be administered by one agency (the Police Department) to improve administrative efficiency.
4. The requirement for a permit for each fire-works display be replaced by an accreditation system with an audit process.
5. The present advantage granted to certain persons in the issue of permits to use explosives be amended so that criteria are based on competency considerations.
6. The restriction requiring pre-inspection and licensing of vehicles used for the transport of explosives be removed and replaced with the system currently being implemented for other dangerous goods in the new national transport legislation.
7. The restriction requiring licences for the storage of dangerous goods be replaced by an industry based accreditation scheme.
8. The system of classification of dangerous goods and the authorisation criteria for explosives be amended to directly reference the United Nations criteria.

Implementation: New legislation is being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: No restrictions on competition were retained in their current form.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

FERTILISERS ACT 1977 AND REGULATIONS

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Interviews were conducted with the Registrar of Fertilisers, and the Manager of Chemical Standards, Victorian Dept of Natural Resources and Environment. This minimal level of consultation was considered appropriate given the trivial nature of the restrictions and the review outcome.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended:

Modify Act to apply only to those fertilisers that pose a risk to agriculture, (especially those containing heavy metals) and that less restrictive means are used to achieve the same objectives for other fertilisers.

Implementation: The recommended amendments to the Act are being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restriction for reasons outlined below:

Restriction*: The restriction requires retailers to clearly label fertilisers and handle them in such a way as to avoid contamination.*

This restriction is retained to protect consumers against the risk of fertiliser contamination which could potentially result in product damage, pose a health hazard and cause the loss of valuable export grain markets. These benefits outweigh the costs of administration in the case of high risk fertilisers such as those containing heavy metals.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

FINANCE BROKERS CONTROL ACT 1975

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Submissions were invited directly from interested parties. Broad consultation was carried out

Composition of Review Body: Industry reference group including representatives from: Australian Bankers Association, Australian Finance Conference, Consumer Credit Legal Service (WA) Inc, Consumer Representatives, Financial Counsellors Association of WA, Mortgage Industry Association of Australia, The Institute of Finance Brokers of WA and Ministry of Fair Trading; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended:

1. Repeal of the entire Act along with all restrictions pertaining to licensing and the management of the Finance Brokers Control Board.

2. Introduction of a Code of Practice under the Fair Trading Act 1987, to provide regulation of financial intermediaries who deal as private lenders, for three years until the industry develops a self-regulatory mechanism.

Implementation: The recommended repeal of the Act is being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: No restrictions retained.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

GAS CORPORATION ACT 1994

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Representatives of the Chamber of Commerce and Industry of Western Australia, the Office of Energy, Western Power and AlintaGas were interviewed to obtain their views.

Composition of Review Body: Independent consultants; intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended the following restrictions be removed or amended as indicated:

1. Exclusive franchise.

AlintaGas has an exclusive franchise with respect to small use customers, protecting its monopoly by preventing competition at the lower end of the market.

The benefits of competition in commercial and domestic gas supply outweigh the costs associated with the possible reduction in AlintaGas's market share. In accordance with the Natural Gas Pipelines Access Agreement (1997), the timetable for third party access and contestability will see full contestability for all users down to household level by 1 July 2002.

2. Legislated vertical integration.

The legislation specifically allows AlintaGas to operate in the generation, transmission, distribution and trading/retail segments of the gas market.

The review found that the legislated vertical integration of AlintaGas allowed the Corporation to exercise significant market power at the possible expense of new competitors. However, it was also found that under the appropriate regulatory and structural conditions, including ring fencing for access elements, the costs of vertical integration do not necessarily outweigh the benefits of economies of scale.

With the sale of the Dampier to Bunbury Natural Gas Pipeline, AlintaGas is no longer involved in the gas transmission part of the gas market. The review recommended that ring fencing be implemented, particularly with respect to infrastructure access, to ensure that the public benefits of competition can be achieved in the context of the current structure of AlintaGas. While there are no plans at present to separate the distribution and trading/retail arms of AlintaGas, full ring fencing of the distribution business under the National Gas Access Code will occur by 1 July 2002 when full access to the network will be available. Further review of the structure of AlintaGas is to be done prior to privatisation.

Implementation: The recommended amendment to the Act and new regulation are being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restrictions for reasons outlined below:

Restriction 1: *Competitive neutrality restrictions.*

A number of minor restrictions were identified which could potentially put AlintaGas at a disadvantage compared with its competitors. These included provisions related to Ministerial direction, approval and consultation, compliance with certain public sector legislation, and public sector borrowing limits.

The restrictions were retained because the benefits of public accountability of a government-owned business were found to outweigh the costs to the Corporation of compliance.

Restriction 2: *Obligation to provide additional distribution capacity.*

The Corporation is required to provide additional distribution capacity on request by access seekers if a reasonable commercial return is achievable.

The benefits of increasing competition, through access of third parties to the distribution network, were found to outweigh the possible higher costs for AlintaGas in providing additional capacity ahead of schedule.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

GOVERNMENT RAILWAYS ACT 1904

Terms of Reference:) Minimal review and brief report provided
Opportunities for Public Input:) but accepted because it recommended
Composition of Review Body:) removal of major restrictions on competition.

Major Reform Outcomes: The review recommended:

Amendments to remove the competitive advantages or disadvantages conferred on the Commission including:

- reducing its powers to determine who may seek access to rail;
- ensuring its assets are valued on a commercial basis;
- neutralising its advantages gained from government borrowings;
- imposing rates and taxes equivalent to other transport operators;
- removing its powers to:
  - set conditions for carriage of goods by other railway operators;
  - control persons employed by other parties;
  - fix charges for all persons providing railway related services; and
  - license taxis and other transport operators; and
- applying safety rules and standards on an equal basis.

Implementation: Some of the recommendations have been be addressed by the Government Railways (Access) Act 1998 and the Rail Safety Act 1998, and others may be overtaken by the freight sale enabling legislation.

Net community benefit case supporting non-trivial retained restrictions:
Providing the Commission with a statutory monopoly not reviewed here but being addressed in the context of considering Westrail privatisation.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

HIRE PURCHASE ACT 1959 AND REGULATIONS

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Submissions were invited from interested parties through an advertisement in *The West Australian* newspaper.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended the repeal of:

1. The provisions prescribing the formation and content of hire-purchase agreements.

2. The disclosure requirements which impose a duty on an owner or dealer to provide certain information in a prescribed form to the hirer. These duplicate requirements of the Consumer Credit Code and are more onerous than those imposed by other jurisdictions.

3. The requirements covering the repossession of goods were removed, except for the requirements in relation to farmers.

Implementation: The recommended repeal of sections of the Act is being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restriction for reasons outlined below:

Restriction 1: *Credit providers are required to refund any surplus amount (ie where the value of the goods at repossession exceeds the amount owing) following repossession of goods under hire-purchase transactions.*

Restriction 2: *The court has power to reopen a hire-purchase agreement which is "harsh or unconscionable".*

The retention of the first two restrictions is justified on the grounds of fairness and equity. The first ensures that credit providers do not receive an unjustified windfall when hirers default on loans and the second enables redress for those treated unjustly and who may otherwise suffer as a result of unequal bargaining power in the negotiation of such transactions.

Restriction 3: *The ability of credit providers to repossess farming goods is regulated.*

The retention of this restriction enables farmers to continue to apply to the court for an extension for making payments where seasonal variations have prevented them from paying and, they are likely to be able to pay in the near future.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

HORTICULTURAL PRODUCE COMMISSION ACT (1988)

Terms of Reference: As per clause 5(9) of Competition Principles Agreement

Opportunities for Public Comment: An adequate level of consultation has been carried out considering the scale and scope of the review. The reviewers consulted primarily with the Commission and technical experts within Agriculture Western Australia.

Composition of the Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major reform outcomes: The restriction giving power to the Horticultural Produce Commission to impose compulsory levies to growers is to be amended to ensure that the levies are used only to fund services that are of a sufficiently public good nature and have had a benefit cost assessment.

Implementation: The recommended amendments are being drafted for implementation by the year 2000.

Net community benefit case supporting non-trivial restrictions: The review recommended that the restriction which gives powers to the Horticultural Produce Commission to raise compulsory levies from growers be retained. This conclusion is on the grounds that the levy provides an appropriate mechanism for raising funds for services that are of a benefit to all of the horticultural industry (eg R&D, marketing advice, industry standards).

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

INDUSTRIAL RELATIONS ACT 1979

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Submissions made to a significant review of the legislation (the Fielding Review) formed the basis of the review. These submissions were sought through public advertisement as well as consultation with key stakeholders.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended the removal or amendment of the following restrictions:

1. Qualifications are required for Chief Commissioner and President and age limits are set for members of Western Australian Industrial Relations Commission (WAIRC). These are to be removed to enable the best person for the job to be eligible.

2. Individuals are not able to access the WAIRC. Individuals must join unions to be able to have unlimited access to the WAIRC.

3. Parties were not able to use legal practitioners in proceedings before the WAIRC unless both parties are in agreement.

4. The Gazette is currently required to be printed by the Government Printer. Alternatives to printing the Gazette are being considered, for example, producing the Gazette in CD-ROM format or allowing parties to access the Gazette via the internet.

5. Unions must have at least 200 members unless the WAIRC finds good reasons to allow smaller ones. A union cannot be formed if there are existing unions which the applicants could become a member of, unless there are good reasons. This limits the formation of enterprise unions.

6. Under the Act, employers in particular industries may be bound by an award even though they are not named as respondents to an award. This is to be amended so that any award made in the future would be binding only on those expressed to be parties to it and this would apply prospectively.

Implementation: The recommended amendments to the Act are being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restriction for reasons outlined below:

Restriction 1: *Access to WAIRC by parties to workplace agreements*.

This clause restricts competition by providing differential access to the WAIRC by parties to industrial agreements or awards in comparison to parties to workplace agreements. Parties to workplace agreements have restricted access to the WAIRC, only being able to refer questions on interpretation rather than industrial matters.

While parties to workplace agreements do not have full access to the WAIRC, they can use a private arbiter to have an equivalent independent third party dispute resolution process. The review found that this restriction complemented the separation of agreement streams and enabled both systems to work more efficiently. The timeliness of dispute resolution processes was improved in both systems through the restriction. Therefore the retention of the restriction can be justified on public benefit grounds.

Restriction 2: *Restrictions on the jurisdiction of WAIRC – public sector standards.*

The WAIRC is prevented from dealing with alleged breaches of public sector standards.

As a more appropriate body with the skills, experience and resources is available to deal with complaints, this restriction is retained on public benefit grounds.

Restriction 3: *Prohibition on use of membership funds for political expenditure.*

Sections of the Act restrict unions from using membership subscriptions or affiliation fees for payments to political parties or to election candidate(s). Unions are, however, able to set up separate funds for political expenditure which members can make donations into.

The restriction was retained on the grounds of protecting members funds from being used for political purposes against their wishes. Members have the ability to make political donations if they wish.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

INSURANCE COMMISSION OF WESTERN AUSTRALIA ACT 1986

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Due to the minor nature of restrictions, it was felt that consultation was unnecessary.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that the restrictions on competition contained in the legislation are in the public interest and should be retained.

Implementation: Not Applicable.

Net community benefit case supporting non-trivial restrictions: For reasons outlined below, and subject to being further considered under the Commission's Competitive Neutrality review, this review recommended retention of competitive neutrality restrictions that include:

Restriction 1: *The Commission being subject to requirements concerning Ministerial direction and oversight.*

Restriction 2: *Limits on investment and borrowing powers.*

Restriction 3: *Compliance with public sector legislation.*

Restriction 3: *Capacity to borrow from Treasury.*

Restriction 3: *Capacity to have a Treasury guarantee of its borrowing.*

The benefits that these restrictions provide arise from prudential oversight, accountability and compliance with public sector practices. It was concluded that the restrictions should be retained in the public interest because these benefits were assessed as outweighing the higher administration and compliance costs associated with the restrictions.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

LAW REPORTING ACT 1981

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Submissions were invited directly from interested parties.

Composition of Review Body: Review conducted by independent consultant; intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that:

1. The current system under which law reports cannot be published without prior written approval of the Attorney General be replaced with a negative licensing system that gives blanket authorisation to anyone to publish law reports while preserving the Attorney General's right to revoke, vary or withdraw authorisation. It also recommended adoption of a less restrictive tender process and contractual period for arrangements under which the series of Authorised Reports are published.

2. The current practice of selective invitation and awarding of a ten year contract for publication of the Authorised Reports be replaced with a widened tender process and a reduction of future contract periods to five years.

Implementation: The recommended amendments to the Act are being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: The benefits of a legislative restriction on the publication of law reports was found to arise through maintaining the integrity of judicial processes utilising published judgments. This was assessed as outweighing the small costs associated with potential reduced innovation and availability of law reports.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

LICENSED SURVEYORS ACT 1909
STRATA TITLES ACT 1985
STRATA TITLES AMENDMENT ACT 1996
STRATA TITLES AMENDMENT ACT 1995
STRATA TITLES GENERAL REGULATIONS 1996
STRATA TITLES GENERAL AMENDMENT REGULATIONS 1996
STRATA TITLES GENERAL (AMENDMENT) REGULATIONS 1997

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: A public notice was placed in The West Australian newspaper and submissions were invited directly from interested parties.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended:

1. The reconstitution of the Land Surveyors Licensing Board so that there are as many members of consumers/user groups as licensed surveyors.
2. A clearer definition of what constitutes good fame and character, with particular regard to any previous criminal record including business fraud and/or dishonest business practices.
3. A reduced minimum level of supervised field training for trainee surveyors.
4. Repeal of regulations relating to the number of graduates a licensed surveyor can employ under the terms of a Professional Training Agreement.
5. Repeal of the powers of the Board to regulate the approval of particular insurers.

Implementation: The recommended amendments to the Act and new regulations are being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restriction for reasons outlined below:

Restriction: *Licensing of surveyors creates a barrier to entry into the profession of cadastral surveying*

This restriction is retained even though it may reduce competition in the authorised market for surveyors because it ensures that only competent professionals are permitted to undertake authorised survey work reducing the risk of error in determining land and property boundaries.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

LOTTERIES COMMISSION ACT 1990 & ASSOCIATED GAME RULES

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Due to the minor nature of restrictions, it was felt that consultation was unnecessary.

Composition of Review Body: Independent consultant; intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that the restrictions on competition contained in the legislation are in the public interest and should be retained.

Implementation: Not Applicable.

Net community benefit case supporting non-trivial restrictions: For reasons outlined below, the review recommended retention of restrictions relating to market power, differential treatment, competitive neutrality and restrictions on reselling. Identified restrictions include:

Restriction 1: *allowing the Lotteries Commission (the Commission) to enter into agreements with other State lotteries agencies for the purpose of jointly conducting Lotto and Soccer Pools;*

Restriction 2: *allowing the Commission to use trading names and symbols;*

Restriction 3: *allowing the Commission to obtain permits directly from the Minister;*

Restriction 4: *making it an offence for a person, without approval of the Commission, to derive a fee or reward for promoting or forming a syndicate to purchase a ticket in a game conducted by the Commission; and*

Restriction 5: *allowing the Commission to enjoy the status, immunities and privileges of the Crown.*

The benefits of these restrictions can be categorised in terms of achieving economies of scale, pursuing social objectives, controlling risk of public harm and minimising regulatory costs. The restrictions were retained in the public interest because they were assessed as outweighing the costs associated with reductions in competition and choice of lottery products.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

MOTOR VEHICLE DEALERS ACT (1973)

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Consultation occurred between the Motor Vehicle Sales Industry Reference Group and market participants consumers.

Composition of Review Body: The Motor Vehicle Sales Industry Reference Group comprising representatives of Motor Trade Association – MTA, Motor Vehicle Dealers Licensing Board, independent motor vehicle dealers, Royal Automobile Club, Consumer Credit Legal Service, Financial Counsellors Association, WA Police Service, and Dept of Transport; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended:

1. Repeal the licensing restrictions on car market operators and salespersons.

2. Amending restrictions on yard managers.

3. Repeal the restriction giving power to the Motor Vehicle Dealers Licensing Board to set standards for premises.

Implementation: The recommended amendments to the Act are being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restriction for reasons outlined below:

Restriction 1: *This restriction makes it compulsory for motor vehicle dealers to be licensed.*

The restriction is retained because licensing of motor vehicle dealers helps exclude unscrupulous persons from the industry which in turn helps ensure that customers are treated fairly. Licensing requires that dealers are solvent and understand their obligations under the Act.

Restriction 2: *This restriction makes it compulsory for yard managers to be licensed.*

This restriction is retained because many yard managers assume the same responsibility as motor vehicle dealers. The cost of the restriction is minor because it only requires a four day course to be licensed, and the benefits to consumers outweigh these costs.

Restriction 3: *This restriction requires statutory warranties on used vehicles.*

Statutory warranties were introduced to provide better safeguards for consumers with respect to un-roadworthy and dangerous vehicles sold by dealers. The value of this warranty in protecting consumers from exploitation is considered to outweigh its costs, so that this restriction is to be retained.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

NORTH WEST GAS DEVELOPMENT (WOODSIDE) AGREEMENT AMENDMENT ACT 1994

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Submissions were invited directly from interested parties following release of an information paper.

Composition of Review Body: Review conducted by independent consultant; inter-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that the restrictions on competition contained in the legislation are in the public interest and should be retained.

Implementation: Not applicable.

Net community benefit case supporting non-trivial restrictions: The review recommended retention of the following non-trivial restrictions for the reasons outlined below:

Restriction: *Restrictions that arise from legislative authorisations given for anti-competitive elements associated with various contracts entered into by Woodside joint venture participants. These authorisations constitute section 51 exceptions from the Trade Practices Act 1974.*

The review concluded that it would be in the public interest for these restrictions to continue until their expiry in 2005 because the costs associated with any lessening of competition were outweighed by the following benefits:

- the long term stability provided for investment; and

- as a prerequisite to the deregulation that has occurred in Western Australian electricity and gas markets.

Moreover, their unilateral removal by Government would be seen as antagonistic by industry, with a long-term reduction in resource development investment in the State.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

PAINTERS REGISTRATION ACT 1961

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Submissions were invited directly from interested parties. The review was advertised and the review report was released for a period of public comment from 13 July 1998 to 7 August 1998.

Composition of Review Body: A review reference group was established with representatives from industry, consumers and the Ministry of Fair Trading. The groups represented were: Ministry of Fair Trading, Master Builders Association, Master Painters, Decorators and Signwriters Association, The Consumer Association, Painters Registration Board, WA Academy of Performing Arts, Housing Industry Association and WA Builders Labourers, Painters and Plasterers Union of Workers; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended:

1. Amend or repeal the Act to allow for the establishment of a less restrictive certification scheme in place of the current licensing arrangements.

2. A full review of the Act is to be completed by 30 June 1999.

Implementation: The recommended amendment or repeal of the Act is being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: No notable non-trivial restrictions retained.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

PIG INDUSTRY COMPENSATION ACT 1943

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Consultation was limited to industry representatives (eg growers association) which was sufficient in light of the trivial nature of the restrictions.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended:

Repeal the sections of the Act providing for compulsorily raised funds to be used for scientific research and at the Minister's discretion, and a proposed Agricultural Produce Commission Bill applying to all growers councils be enacted.

The changes would ensure that funds from compulsory levies are only used for services of a public good nature. The proposed Agricultural Produce Commission Act will be subjected to a review in accord with clause 5(5) of the Competition Principles Agreement.

Implementation: The recommended amendments to the Act are being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restriction for reasons outlined below:

Restriction: *The Act allows the Minister to raise levies from growers to fund services to the pig industry including compensation and disease control programs.*

This restriction is retained because it provides a service that benefits all growers and would not be provided for by the private sector in the absence of legislation. However the restriction is to be amended to ensure that these levies are used only to fund services where there is a case for government intervention on the grounds of market failure and that this service has been assessed to derive benefits that exceed costs.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

PLANT PESTS AND DISEASES (ERADICATION) FUND ACT 1996 (FORMERLY SKELETON WEED AND RESISTANT GRAIN INSECTS (ERADICATION FUNDS) ACT 1974)

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Consultation was limited to technical experts of Agriculture Western Australia. This level of consultation was justified considering the trivial nature of the restrictions.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended:

Amend the restriction giving power to the Minister to impose compulsory levies to growers through changes to the Agricultural Protection Board Act to ensure that these levies are used only to fund services that:

- are "of a sufficiently public good nature"; and

- have been assessed in accordance with benefit cost methodology approved by Treasury or Agriculture Western Australia.

Implementation: The recommended amendments to the Act are being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: No non-trivial restrictions retained.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

POLICE FORCE CANTEEN REGULATIONS 1988

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Due to the minor nature of the legislation it was felt that consultation was unnecessary.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended the exemption for police canteens from the Liquor Licensing Act 1988 should be removed. The exemption gives the canteen more flexibility in its operations than private sector liquor operators. Although the economic impact of this restriction is minimal from an economy wide perspective, there appears to be no public interest reason to discriminate in favour of the police canteen.

Implementation: The recommendation is to be implemented by the year 2000.

Net community benefit case supporting non-trivial retained restrictions: No restrictions were retained.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

POTATO GROWING INDUSTRY TRUST FUND ACT 1947

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Consultation has been adequate given the minor nature of the restriction contained in the Act. Meetings were held with industry representatives including representatives of the Potato Growers Association and the Potato Industry Trust Advisory Committee.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that the restrictions on competition contained in the legislation are in the public interest and should be retained.

Implementation: Not applicable.

Net community benefit case supporting non-trivial restrictions: The review recommended retention of the following non-trivial restriction for the reasons outlined below:

Restriction: *The power to raise a compulsory levy on the sale of potatoes for the purposes of disease control and providing compensation to growers in the event of a disease outbreak.*

This restriction is retained on the grounds that the Fund provides a means of overcoming market failure arising from a spreading pest or disease. However the report also recommends that the Act be repealed pending the enactment of the Agricultural Produce Commission Bill which would include the restrictions currently contained in this Act.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

POULTRY INDUSTRY (TRUST FUND) ACT 1948

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Consultation was limited to the trust fund management and staff of Agriculture Western Australia. This level of consultation was justified considering the trivial nature of the restrictions.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended:

1. Amend the levy raising powers of the Poultry Industry Trust Fund Committee ensure that those funds are used only to fund services (including disease control and compensation) that:

- are "of a sufficiently public good nature"; and

- have been assessed in accordance with benefit cost methodology approved by Treasury or Agriculture Western Australia.

2. The current arrangements of financial assistance of the Trust Fund to the Poultry Farmers Association be removed and funded by voluntary levy.

Implementation: The recommended amendments to the Act are being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restriction for reasons outlined below:

Restriction: *The power of the Poultry Industry Trust Fund Committee to impose a levy on the sale of eggs.*

This restriction was seen to be in the public interest as it addresses the issue of market failure which is associated with the control of diseases and pests in the agricultural sector.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

PROFESSIONAL STANDARDS ACT 1997

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Due to the minor nature of restrictions, it was felt that consultation was unnecessary.

Composition of Review Body: Independent consultant; intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that the restrictions on competition contained in the legislation are in the public interest and should be retained.

Implementation: Not applicable.

Net community benefit case supporting non-trivial restrictions: The review recommended retention of the following non-trivial restriction for reasons outlined below:

Restriction*: The restriction potentially arises through the legislation providing that a person who is a member of a professional or occupational association that has a scheme registered with the Professional Standards Council may secure limited liability with respect to occupational liability claims for damages made against them.*

The restriction was assessed as providing a net community benefit through contributing to a net reduction in risks incurred by consumers of the relevant services.

Although there may be some redistribution of financial risk to consumers who may at some time desire to make a claim for damages in excess of the relevant liability cap, this cost is largely compensated for by requirements on persons covered by the scheme to implement risk management strategies and hold insurance or business assets sufficient to meet any claims.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

PUBLIC WORKS ACT 1902

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: An independent consultant conducted the review through a targeted consultation process with both public sector and private organisations.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that the restrictions on competition contained in the legislation are in the public interest and should be retained.

Implementation: Not applicable.

Net community benefit case supporting non-trivial retained restrictions: No non-trivial restrictions retained.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

RATES AND CHARGES (REBATES AND DEFERMENTS) ACT 1992

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Consultation was limited to the State Revenue Department and Treasury because the legislation had minimal impact on competition.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that the restrictions on competition contained in the legislation are in the public interest and should be retained.

Implementation: Not applicable.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restriction for reasons outlined below:

Restriction: *The Act refers to the differential treatment afforded pensioners and other eligible persons with respect to certain amounts payable by way of rates and charges. The legislation, in effect, discriminates in favour of pensioners and other eligible persons.*

This restriction is retained because only a very small group of eligible persons could potentially obtain a competitive advantage from the differential treatment received, and where such advantage occurred it would be minor. On the other hand, the removal of pensioner rebates and deferments in respect of rates and charges would have a significant impact on the standard of living of pensioners and other eligible persons.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

ROTTNEST ISLAND AUTHORITY ACT 1987

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: The review was advertised in *The West Australian* newspaper.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that the restriction on the membership of the Authority be removed. This would enable the most suitable person for the job to be appointed.

Implementation: The recommended amendment to the Act is being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restriction, as well as a number of minor restrictions, for reasons outlined below:

Restriction 1: *The Authority has the power to grant leases and licences on the island*

This is the most significant restriction on competition in the Act. The lease system enables the Authority to determine which businesses operate on the Island and grant leases through a tender process. One of the benefits of this policy is to make certain a continuous supply of goods and services on the Island by ensuring the successful tenderer is financially sound. The lease system also enables the Authority to ensure that commercial interests do not compromise the Authority's other objectives. Also, the review found that the restrictions contained in the leases are comparable with the strategy of business selection practised by private operators in comparable situations (eg privately owned island on the Barrier Reef, shopping centre owners).

The following restrictions on competition were also retained on public interest grounds:

- Access to facilities on the island is limited.
- Prohibition of the Authority from selling any land on Rottnest.
- Prevention of the Authority allowing anyone to remove any flora, fauna, rock, stone or soil from the island for any commercial purposes.
- Limitation on development and provision of accommodation.
- Requirement for building work to be approved by the Authority.

These restrictions are applied where commercial activities may compromise the environmental and heritage objectives of the Authority.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

SANDALWOOD ACT 1929 AND REGULATIONS

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Submissions were invited by public advertisement and directly from interested parties following release of an information paper.

Composition of Review Body: Independent consultant; intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended removal of a legislative restriction that imposes an arbitrarily set proportional quota on harvesting sandalwood from private land (ten per cent of the total harvested).

Implementation: The recommended amendment to the Act is being prepared for implementation by year 2000.

Net community benefit case supporting non-trivial restrictions: The review recommended retention of the following non-trivial restriction for reasons outlined below:

Legislation restrictions whereby a licensing scheme is used to restrict participation in the industry and to restrict the total quantity of sandalwood harvested by the industry and the quantities harvested by individual licensees.

The costs of these restrictions include a reduction in the number of participants exploiting the resource, reduced production and increased prices in the short-term, and ongoing administration costs of regulation. These costs were assessed as being outweighed by benefits associated with the long-term sustainability of resource exploitation, which include securing a return to the State from use of the public resource and the preservation of the sandalwood species.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

STATE SUPPLY COMMISSION ACT 1991 AND SUBORDINATE LEGISLATION

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Submissions were invited directly from interested parties. In addition a public notice advertising the review and calling for submissions was placed in The West Australian newspaper.

Composition of Review Body: Independent consultant; intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that the restrictions on competition contained in the legislation are in the public interest and should be retained.

Implementation: Not applicable.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restrictions for reasons outlined below:

Restriction 1: *Restrictions on participation of potential suppliers/buyers in government trading;*

Restriction 2: *Discrimination between potential suppliers competing for government contracts; and*

Restriction 3: *Interference with fair and competitive pricing in government purchasing and disposal activities.*

These restrictions are retained because the benefits from regional development were considered to be greater than the costs to resource allocation efficiency when weighing the public benefits and costs of some supply policies.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

STATE TRADING CONCERNS ACT 1917

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Nil. Owing to the nature and operation of the legislation it was felt that consultation was unnecessary.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that the restrictions on competition contained in the legislation are in the public interest and should be retained.

Implementation: Not applicable.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restriction for reasons outlined below:

Restriction: *The Act prohibits the Government from entering into or establishing any trading concern, except where the entity has been established under specific enabling legislation; has been established as a "trading concern" under the Act; or is a department and has been authorised by the Treasurer under the Act to generate revenue from specified activities.*

This restriction is retained because while it restricts the freedom with which government agencies can enter markets for goods and services it also reduces the risk that Government will become involved in inappropriate commercial ventures.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

SUBIACO REDEVELOPMENT ACT 1994

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: The views of interested parties were sought directly.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that the restrictions on competition contained in the legislation are in the public interest and should be retained.

Implementation: Not applicable.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restriction for reasons outlined below:

Restriction: *The Authority has exclusive powers to control the area for redevelopment and for compulsory acquisition of land. The Authority receives subdivision approval from Minister rather than the WA Planning Commission.*

The powers of the Authority restrict competition by overriding the operation of the free market. Yet without this intervention the free market would not clean up the existing environmental problems and achieve redevelopment in line with the community vision for this area. The restriction is retained in the public interest because the benefits of the cleaner environment were considered greater than the minor negative impact on the economy.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

SUITORS FUND ACT 1964

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Due to the minor nature of restrictions, submissions were only invited directly from an interested party.

Composition of Review Body: Intra-agency committee and process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review identified one restriction that relates to differential treatment of large companies and Crown agencies. Under this restriction, all litigants are required to contribute to a fund which is used to defray legal costs where a court decision is reversed on a "point of law" appeal or where proceedings are aborted. However, companies with paid up capital of $200,000 or more and Crown agencies are barred from access to the Fund to recover such legal costs.

A Cabinet Submission to remove the differential treatment of these entities was approved in 1994 prior to the review. A draft Bill is being prepared. The review concluded that the proposed amendment should be enacted by the year 2000.

Implementation: The recommended amendment to the Act is being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial restrictions: No restrictions were retained.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

TRUSTEE COMPANIES ACT 1987

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Submissions were invited directly from interested parties.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended repeal of a barrier to entry on becoming a trustee company and its replacement with a less restrictive barrier.

At present, to become a trustee company requires the Governor's approval based on the company having demonstrated that it has adequate capital backing, professional expertise and otherwise satisfies criteria set out in publicly available guidelines.

This barrier was found to be in the public interest because of the benefit it provides in reducing risk of loss to beneficiaries from poor management and/or insolvency of the estate administrator. The review concluded however that greater net public benefit could be achieved by amending aspects of the guidelines and by replacing the present barrier with a requirement that trustee companies (or preferably their Directors) must lodge a proof of indemnity.

Implementation: The recommended amendment to the Act and changes to the guidelines are being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial restrictions: No restrictions were retained.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

UNIVERSITY ACTS:

- **MURDOCH UNIVERSITY ACT**
- **UNIVERSITY OF WESTERN AUSTRALIA ACT 1911**
- **CURTIN UNIVERSITY OF TECHNOLOGY ACT 1966**
- **EDITH COWAN UNIVERSITY ACT 1984**
- **UNIVERSITY OF NOTRE DAME AUSTRALIA ACT 1989**

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Submissions were invited directly from interested parties. General public consultation was not considered necessary given the nature of the restriction in the Acts.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that:

- The investment provisions of the Edith Cowan University Act 1984 be amended to be consistent with those of other universities.

- The issue of tax exemptions be addressed in the competitive neutrality review which is about to commence.

Implementation: The recommended amendments to the Act are being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restrictions for reasons outlined below:

Restriction 1: *Empower the Minister to vest land in universities;*

Restriction 2: *Allow universities to hold land without paying State taxes or local government rates.*

The restriction empowering the Minister to vest land in universities is justified on the grounds that it:

- gives universities land at no cost which serves to help reduce the cost of education services providing a significant public benefit where these services are part of the core purpose of the universities; and

- provides Government with some flexibility in its land tenure arrangements.

These exemptions and vested land may not be appropriate where the university carries out business activities and therefore will be addressed in the competitive neutrality reviews of the universities.

University Acts:

- Murdoch University Act
- University of Western Australia Act 1911
- Curtin University of Technology Act 1966
- Edith Cowan University Act 1984
  University of Notre Dame Australia Act 1989

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

UNIVERSITY COLLEGES ACT 1926

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Public consultation was not considered as being necessary given the nature of the restrictions contained in the Act.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that the restrictions on competition contained in the legislation are in the public interest and should be retained.

The review recommended that the University Colleges be included in the competitive neutrality review of universities.

Implementation: Not applicable.

Net community benefit case supporting non-trivial retained restrictions: The review did not identify any non-trivial restrictions.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

VALUATION OF LAND ACT 1987

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Submissions were invited by public advertisement and directly from interested parties following release of an information paper.

Composition of Review Body: Independent consultant; intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that the following restrictions be amended in the public interest:

1. Restricted eligibility for the position of Valuer General.

This restriction requires that the Valuer General is to be qualified for membership of the Australian Property Institute (the Institute).

The review concluded that it is in the public interest for this restriction to be less narrowly defined to allow a wider range of people to contest the position. Consequently, the Valuer General will no longer need to be qualified for membership of the Institute.

2. Restricted eligibility for engagement as a valuer by rating and taxing authorities.

At present, any person making valuations for rating and taxing purposes must be licensed under the Land Valuers Licensing Act or qualified for membership of the Institute.

The costs and benefits of this restriction will be assessed by the review of that other Act. However, independent of the outcomes of that other review, it was considered that this restriction should be removed because it is redundant.

3. Valuer General's powers to obtain information.

The Valuer General's Office has power to obtain information for the purpose of making valuations that exceed the powers available to private valuers.

The review found that it is in the public interest for the Valuer General to have the information collecting powers however it is not in the public interest to have them exclusively. Thus for reasons of competitive neutrality the public interest from the Valuer General's information collecting powers would be greater if the information could be made publicly available to reduce the chances of the Valuer General's Office having competitive advantages over private valuers. It was concluded that these powers should be amended to enable a greater flow of information – where this is in the public interest.

Implementation: The recommended amendments to the Act are being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial restrictions: The review recommended retention of the following non-trivial restrictions for reasons outlined below:

Restriction 1: *Restricted eligibility for engagement as a valuer by the Valuer General.*

Any person employed by, or who is a member of, any rating and taxing authority cannot be engaged under contract as a valuer by the Valuer General.

The benefits of this restriction include the public confidence generated by the public perception that this restriction avoids conflicts of interests arising in valuation activities. The restriction was retained in the public interest because these benefits were assessed as outweighing the insignificant costs that arise from the Valuer General having to draw upon a reduced pool of expertise.

Restriction 2: *Restricted economic activities of persons engaged by the Valuer General.*

Any person employed in the administration of the Act is prohibited from engaging in any private valuation work without the written consent of the Valuer General.

The benefits of this restriction include the public confidence generated by the public perception that this restriction avoids conflicts of interests and unfair

competitive advantages arising for employees of the Valuer General. The restriction was retained in the public interest because these benefits were assessed as outweighing the costs associated with a reduction in economic freedom and potential income of the Valuer General's employees.

Restriction 3: *Restricted ability of rating and taxing authorities to undertake valuation activities.*

Approval from the Valuer General must be obtained by rating and taxing authorities to enable them to undertake valuation activities for rating and taxing purposes.

The benefits of this restriction include maintenance of technical standards and consistency in land valuation. The restriction was retained in the public interest because these benefits were assessed as outweighing the costs that arise from the inability of rating and taxing authorities to capture economic or financial benefits associated with their undertaking these activities themselves.

Restriction 4: *Statutory immunity for the activities of the Valuer General.*

This restriction was retained in the public interest because it was assessed as having negligible costs that are outweighed by the benefit it delivers by providing limited protection for statutory activities, in respect of which the Valuer General does not compete with private valuers.

Restriction 5: *The Valuer General may levy fees for valuation data.*

This restriction was retained in the public interest because it was assessed that the benefit of cost recovery to the Government outweighs the competitive advantages (if any) that may accrue to the Valuer General over private valuers as a result of the restriction.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

WA LAND AUTHORITY ACT 1992

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Submissions were invited directly from interested parties.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended:

1. Exempting surplus public sector land assets and urban renewal projects from the restriction on the Authority's retail activities in the higher end of the residential land market.

2. Allowing contracts to be agreed subject to Ministerial approval rather than seeking pre-approval.

3. Deleting from the legislation the power to compulsorily acquire land.

4. Requiring the Authority to be subject to a tax equivalent regime and pay to the Treasurer an amount equivalent to all rates and taxes imposed on private land developers that the Authority is currently not obliged to pay.

Implementation: The recommended amendment to the Act and new regulation are being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial retained restrictions: No notable non-trivial restrictions retained.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

WA TREASURY CORPORATION ACT 1987
WA TREASURY CORPORATION AMENDMENT BILL 1997

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Consultation was restricted to Western Australian Treasury Corporation and Treasury because the legislation had minimal impact on competition and was of little community interest.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended that the restrictions on competition contained in the legislation are in the public interest and should be retained.

Implementation: Not applicable.

Net community benefit case supporting non-trivial retained restrictions: The review recommended retention of the following non-trivial restriction for reasons outlined below:

Restriction: *The Act provides an exemption to the Corporation from State duties, imposts or taxes. The amendment Bill weakened this restriction by removing the Corporation's outright exemption, but allows the Treasurer to grant an exemption where it is considered to be in the public interest.*

The review found that the potential effects of the Treasurer using his discretion to exempt the Corporation from certain taxes, duties or imposts were minor. The Treasurer is only likely to grant an exemption if the securities issued by the Corporation are at an unfair competitive disadvantage to securities issued by the Commonwealth and other government borrowers. An unfair competitive disadvantage could arise where the securities issued by the Corporation are subject to duties that are not similarly imposed by other Australian jurisdictions on their securities.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

WATER AGENCIES RESTRUCTURE (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) ACT 1995

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: All major stakeholders were consulted during the review including the Water and Rivers Commission, Water Corporation, Aqwest, Busselton Water Board and the Western Australian Municipal Association; process overseen and report reviewed by Treasury.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review found there to be no restrictions on competition in the Act.

Implementation: Not applicable.

Net community benefit case supporting non-trivial retained restrictions: Not applicable.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

WATER SUPPLY, SEWERAGE AND DRAINAGE ACT 1912

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for Public Input: Submissions were invited directly from interested parties.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review found there to be no restrictions on competition in the Act.

Implementation: Not applicable.

Net community benefit case supporting non-trivial retained restrictions: Not applicable.

LEGISLATION REVIEW COMPLETED AND ENDORSED BY CABINET

WESTERN AUSTRALIAN MEAT INDUSTRY AUTHORITY ACT (1976) AND REGULATIONS

Terms of Reference: As per clause 5(9) of Competition Principles Agreement.

Opportunities for public comment: An adequate level of consultation has been carried out considering the scale and scope of the review. Parties consulted include the Meat Industry Authority (MIA), the Health Department and industry through Agriculture Western Australia's Meat Industry Program and its partnership group.

Composition of Review Body: Intra-agency committee; process overseen and report reviewed by Treasury.

Major Reform Outcomes: The review recommended the repeal of anti-competitive and redundant sections within the Act including:

1. Restriction controlling abattoir capacity control measures.

2. Restriction regulating saleyards which will become redundant when national standards of quality assurance are in place.

Implementation: The recommended repeals to the Act are being drafted for implementation by year 2000.

Net community benefit case supporting non-trivial restrictions: The review recommended retention of the following non-trivial restriction for reasons outlined below:

Restriction 1: *Provision for branding controls.*

This restriction is considered a necessary government function to maintain clear stock identification and therefore should be retained.

Restriction 2: *Provision for the regulation of abattoirs and processing works.*

This restriction is also in the public interest because of health and safety concerns and therefore should be retained.

Attachment 1(B):

LEGISLATION REVIEWS COMPLETED BUT NOT YET CONSIDERED BY CABINET

Review Item	Terms of Reference	Opportunities for public input	Review body
Racing Restrictions Act 1927	Based on clause 5(9) CPA.	None, due to the Agency's intention to repeal the Act.	Intra-agency committee, external consultant.
Racing Restrictions Act 1917	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Intra-agency committee, external consultant.

Attachment 1(C):

LEGISLATION REVIEWS COMMENCED BUT NOT YET COMPLETED

Review item	Expected completion	Terms of Reference	Opportunities for public input	Review body
Architects Act 1921 and Regulations	Dec-97 (Held to fit in with national review.)	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Intra-agency committee, external consultant.
Caravan Parks and Camping Grounds Act 1995	Jun-99	Based on clause 5(9) CPA.	Views of stakeholders sought.	Inter-agency committee, local government representatives, park operators represented.
Carnarvon Irrigation District Bylaws	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Intra-agency committee.
Casino Control Act 1984	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Intra-agency committee, external consultant.
Casino (Burswood Island) Agreement Act 1985	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Intra-agency committee, external consultant.
Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Intra-agency committee, external consultant.
Conservation and Land Management Act 1984 and Regulations	Dec-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Intra-agency committee, external consultant.
Country Areas Water Supply Act 1947	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Inter-agency committee, external consultant.
Country Areas Water Supply Bylaws 1957	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Inter-agency committee, external consultant.
Country Towns Sewerage Act 1948	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Inter-agency committee, external consultant.
Country Towns Sewerage Bylaws	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Inter-agency committee, external consultant.
Credit (Administration) Act 1984 and Regulations	Jun-99	Based on clause 5(9) CPA.	Stakeholders consulted and public comments sought.	Intra-agency committee.
Gaming Commission Act 1987	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Intra-agency committee, external consultant.
Gaming Commission Regulations 1988	Jun-99	Based on clause 5(9)	Submissions sought directly, advertisement	Intra-agency committee, external consultant.

LEGISLATION REVIEWS COMMENCED BUT NOT YET COMPLETED

Review item	Expected completion	Terms of Reference	Opportunities for public input	Review body
		CPA.	in The West Australian.	
Harvey, Waroona Collie River Irrigation Districts Bylaws 1975	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Intra-agency committee.
Land Drainage (Ratings Grades) Regulations 1986	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Inter-agency committee, external consultant.
Liquor Licensing Act 1988 and Regulations	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Intra-agency committee, external consultant.
Local Government Act 1995	Jun-99	Based on clause 5(9) CPA.	Views of stakeholders sought.	Agency representation, local government representatives of different peak bodies.
Marketing of Potatoes Act 1946	June 99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Intra-agency committee.
Marketing of Eggs Act 1945	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian	Intra-agency committee.
Metropolitan Water Authority (Miscellaneous) Bylaws 1982	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Inter-agency committee, external consultant.
Metropolitan Water Authority Act 1982	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Intra-agency committee.
Metropolitan Water Supply, Sewerage and Drainage Act 1909	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Inter-agency committee, external consultant.
Metropolitan Water Supply, Sewerage and Drainage Bylaws 1981	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Inter-agency committee, external consultant.
Mining Act 1978	May-99	Based on clause 5(9) CPA.	Views of stakeholders sought.	Inter-agency committee, representatives of different peak bodies including prospectors, Chamber of Minerals and Energy, mining associations.
Motor Vehicle (Third Party Insurance) Act 1943 and Regulations	May-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Intra-agency committee, external consultant.

LEGISLATION REVIEWS COMMENCED BUT NOT YET COMPLETED

Review item	Expected completion	Terms of Reference	Opportunities for public input	Review body
New Health Practitioner Legislation to replace the Chiropractors Act 1964 and Regulations; Dental Act 1939 and Regulations; Dental Prosthetists Act and Regulations; Nurses Act 1992; Occupational Therapists Registration Act 1980 and Regulations; Optical Dispensers Act 1966 and Regulations; Optometrists Act 1940 and Regulations; Osteopaths Act 1997; Physiotherapists Act 1950 and Regulations; Podiatrists Registration Act 1984 and Regulations; and Psychologists Registration Act 1976 and Regulations.	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian and release of discussion paper.	Inter-agency committee, external consultant.
Ord Irrigation District Bylaws	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Intra-agency committee.
Pawn Brokers and Second Hand Dealers Act 1994 and Regulations	Apr-99	Based on clause 5(9) CPA.	Public consultation from an earlier review inputed to the review.	Intra-agency committee.
Petroleum Pipelines Act 1969 and Regulations	May-99	Based on clause 5(9) CPA.	Views of stakeholders sought.	Intra-agency committee.
Preston Valley Irrigation District Bylaws	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Intra-agency committee.
Retail Trading Hours Act 1987 and Regulations	Jun-99	Based on clause 5(9) CPA.	Extensive public consultation. Public forum held. 1600 submissions received.	Inter-agency committee reporting to a community reference group comprising peak retail association bodies, unions, peak employer groups, consumer groups and peak tourism groups.
Rights in Water and Irrigation (Construction and Alteration of Wells)	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Intra-agency committee.

LEGISLATION REVIEWS COMMENCED BUT NOT YET COMPLETED

Review item	Expected completion	Terms of Reference	Opportunities for public input	Review body
egulations 1963				
ights in Water and rigation Act 1914	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian. Process of wide consultation with interest groups.	Inter-agency committee, external consultant.
ights in Water and rigation Regulations 941	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian. Process of wide consultation with interest groups.	Intra-agency committee.
tatutory Corporations Liability of Directors) ct 1996	Jun-99	Based on clause 5(9) CPA.	None, due to minor nature of review.	Intra-agency committee.
wan River Trust Act 988 and Regulations	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Intra-agency committee.
axi Act 1994 and egulations, and mendment Regulations 997	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian, broad consultation.	Intra-agency committee, external consultant.
ransport Coordination ct 1966 and egulations	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian, broad consultation, public meeting.	Intra-agency committee, external consultant.
VA Greyhound Racing ssociation Act 1981	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Intra-agency committee.
Vater (Dixvale Area and anmah Area) Licensing egulations 1974	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Intra-agency committee.
Vater Agencies Charges) Bylaws 1987	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Inter-agency committee, external consultant.
Vater Agencies (Entry Varrants) Regulations 985	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Inter-agency committee, external consultant.
Vater Agencies nfringement) egulations 1994	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Inter-agency committee, external consultant.
Vater Agencies (Powers) ct 1984	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Inter-agency committee, external consultant.

LEGISLATION REVIEWS COMMENCED BUT NOT YET COMPLETED

Review item	Expected completion	Terms of Reference	Opportunities for public input	Review body
Water and Rivers Commission Act 1995	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Intra-agency committee.
Water Boards Act 1904 and Bylaws	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Inter-agency committee, external consultant.
Water Corporation Act 1995	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Inter-agency committee, external consultant.
Water Services Coordination Act 1995	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Inter-agency committee, external consultant.
Waterways Conservation Act 1976 and Regulations	Jun-99	Based on clause 5(9) CPA.	Submissions sought directly, advertisement in The West Australian.	Intra-agency committee.
Workers' Compensation and Rehabilitation Act 1983	Jun-99	Based on clause 5(9) CPA.	Major stakeholders are represented on the Worker's Compensation and Rehabilitation Commission.	Intra-agency committee, external consultant may be sought.

Attachment 1(D):

CHANGES TO TIMING OF REVIEWS

Review Item	Original Due Date	Revised Due Date	Reason scheduled review has not been undertaken / completed
Agriculture Products Act 1926	Jun-98	Jun-00	Deferred on grounds that the Act will be repealed with the passing of the Agriculture Management Bill which will be reviewed in accord with clause 5 of the CPA.
Agriculture and Related Resources Protection Act 1976	Jun-98	Jun-00	Deferred on grounds that the Act will be repealed with the passing of the Agriculture Management Bill which will be reviewed in accord with clause 5 of the CPA.
Beekeepers Act 1963	Jun-98	Jun-00	Deferred on grounds that the Act will be repealed with the passing of the Agriculture Management Bill which will be reviewed in accord with clause 5 of the CPA.
Bulk Handling Act 1967	Jun-98	Dec-99	The reason for deferral of this Act is that the Minister received formal notification from the Chairman of Directors of Cooperative Bulk Handling that it intends to restructure itself. The Minister expects that a final decision on a new structure will be reached in the first half of 1999 so that the review of the Act should be able to be completed in 1999.
Chiropractors Act 1964 and Regulations	Dec-97	Jun-99	Replacement legislation developed and at present being reviewed, and when implemented will obviate need to review this existing legislation.
City of Perth Parking Facilities Act 1956 and Regulations	Dec-97	Not applicable	To be repealed by the Perth Parking Management (Consequential Provisions) Bill 1998 and replaced by the Perth Parking Management Bill 1998 for which a review has been completed (1998).
Country Slaughterhouse Regulations 1969	Dec-99	Jun-00	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review this existing legislation.
Dental Act 1939 and Regulations	Dec-97	Jun-99	Replacement legislation developed and at present being reviewed, and when implemented will obviate need to review this existing legislation.
Dental Prosthetists Act and Regulations	Dec-97	Jun-99	Replacement legislation developed and at present being reviewed, and when implemented will obviate need to review this existing legislation.
Friendly Societies Act 1894	Jun-97	Jun-99	Deferred whilst new replacement legislation is considered.
Health (Adoption of Food Standards Code) Regulations 1992	Dec-99	Jun-00	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
Health (Asbestos) Regulations 1992	Dec-99	Jun-00	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
Health (Cloth Materials) Regulations 1973	Dec-99	Jun-00	Replacement legislation to be developed and reviewed, and when implemented will obviate need

CHANGES TO TIMING OF REVIEWS

Review Item	Original Due Date	Revised Due Date	Reason scheduled review has not been undertaken / completed
			to review existing legislation.
Health (Construction Work) Regulations 1973	Dec-99	Jun-00	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
Health (Drugs and Allied Substances) Regulations 1961	Dec-99	Jun-00	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
Health (Food Hygiene) Regulations 1993	Dec-99	Jun-00	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
Health (Game Meat) Regulations 1992	Dec-99	Jun-00	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
Health (Meat Inspection and Branding) Regulations 1950	Dec-99	Jun-00	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
Health (Pesticides) Regulations 1956	Dec-99	Jun-00	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
Health (Pet Meat) Regulations 1990	Dec-99	Jun-00	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
Health (Public Buildings) Regulations 1992	Dec-99	Jun-00	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
Health (School Dental Therapists) Regulations 1974	Dec-99	Jun-00	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
Health (Treatment of Sewerage and Disposal of Effluent and Liquid Waste) Regulations	Dec-99	Jun-00	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
Health Act 1911	Dec-99	Jun-00	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review this existing legislation.
Health Laboratory Service (Fees) Regulations	Dec-99	Jun-00	Repealed.
Hospitals (Licensing and Conduct of Private Hospitals) Regulations 1987	Dec-98	Sep-99	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
Hospitals (Service Charges) Regulations 1984	Dec-98	Sep-99	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
Hospitals and Health Services Act 1927	Dec-98	Sep-99	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.

CHANGES TO TIMING OF REVIEWS

Review Item	Original Due Date	Revised Due Date	Reason scheduled review has not been undertaken / completed
Hospitals and Health Services Amendment Act 1996	Dec-98	Sep-99	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
Human Reproductive Technology Act 1991	Dec-99	Jun-00	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
Human Reproductive Technology Amendment Act 1996	Dec-99	Jun-00	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
Infectious Diseases (Inspection of Persons) Regulations	Dec-99	Jun-00	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
Jetties Act 1926 and Regulations	Dec-97	Dec-99	To be replaced by the Maritime Bill. If this Bill is not passed before 31-Dec-99 then a review of the existing legislation will take place.
Legal Aid Commission Act 1976 and Regulations	Jun-98	Jun-99	Deferred to enable review to consider proposed amendments.
Legal Practitioners Act 1893 and Rules.	Dec-96	Mar-00	Deferred whilst national review considered, but now re-scheduled to March 2000.
Lights (Navigation Protection) Act 1930	Dec-97	Dec-99	To be replaced by the Maritime Bill. If this Bill is not passed before 31-Dec-99 then a review of the existing legislation will take place.
Lotteries Commission Regulations 1991 Lotto Rules 1990 Instant Lottery Rules Instant Lottery (Telespin) Rules 1991	Jun-97	Repealed	Repealed and replaced in 1996 by game rules which have been reviewed in conjunction with the Lotteries Commission Act 1990 with which they are associated.
Marine and Harbours Act 1981 and Regulations	Dec-97	Dec-99	To be replaced by the Maritime Bill. If this Bill is not passed before 31-Dec-99 then a review of the existing legislation will take place.
Meat Transport Regulations 1969	Dec-99	Jun-00	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
Medical Act 1984 and Rules	Dec-97	Jun-99	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
Medical Amendment Act 1996	Dec-97	Jun-99	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
Mental Health (Consequential Provisions) Act 1996	Dec-97	Jun-99	Deferred, to tie in with a scheduled more general review on the operation of this legislation.
Mental Health (Transitional) Regulations 1997	Dec-97	Jun-99	Deferred, to tie in with a scheduled more general review on the operation of this legislation.
Mental Health Act 1996	Dec-97	Jun-99	Deferred, to tie in with a scheduled more general review on the operation of this legislation.

CHANGES TO TIMING OF REVIEWS

Review Item	Original Due Date	Revised Due Date	Reason scheduled review has not been undertaken / completed
Mental Health Regulations 1997	Dec-97	Jun-99	Deferred, to tie in with a scheduled more general review on the operation of this legislation.
Metropolitan (Perth) Passenger Transport Trust Act 1957 and Regulations	Dec-97	Dec-99	Deferred as MetroBus (the Trust) has been abolished, but the Act cannot be repealed because of ongoing legal liabilities for superannuation and workers compensation.
Motor Vehicle (Third Party Insurance) Act 1943	Jul-98	May-99	Deferred to enable additional consultation and to address issues raised therein.
Nurses Act 1992	Dec-97	Jun-99	Replacement legislation developed and at present being reviewed, and when implemented will obviate need to review this existing legislation.
Occupational Therapists Registration Act 1980 and Regulations	Dec-97	Jun-99	Replacement legislation developed and at present being reviewed, and when implemented will obviate need to review this existing legislation.
Offensive Trades (Fees) Regulations 1976	Dec-99	Jun-00	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
Optical Dispensers Act 1966 and Regulations	Dec-97	Jun-99	Replacement legislation developed and at present being reviewed, and when implemented will obviate need to review this existing legislation.
Optometrists Act 1940 and Regulations	Dec-97	Jun-99	Replacement legislation developed and at present being reviewed, and when implemented will obviate need to review this existing legislation.
Pharmacy Act 1964 and Regulations	Dec-97	Jun-99	Replacement legislation developed and at present being reviewed, and when implemented will obviate need to review this existing legislation as might also occur as a result of the proposed national review of pharmacy legislation.
Physiotherapists Act 1950 and Regulations	Dec-97	Jun-99	Replacement legislation developed and at present being reviewed, and when implemented will obviate need to review this existing legislation.
Piggeries Regulations 1952	Dec-99	Jun-00	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
Podiatrists Registration Act 1984 and Regulations	Dec-97	Jun-99	Replacement legislation developed and at present being reviewed, and when implemented will obviate need to review this existing legislation.
Poisons Act 1964 and Regulations	Dec-98	Jun-99	Deferred to accommodate and tie in with national review of aspects of this legislation.
Poisons Amendment Act 1996	Dec-98	Jun-99	Deferred to accommodate and tie in with national review of aspects of this legislation.
Poultry Processing Establishments Regulations 1973	Dec-99	Jun-00	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
Psychologists Registration Act 1976 and Regulations	Dec-97	Jun-99	Replacement legislation developed and at present being reviewed, and when implemented will obviate need to review this existing legislation.

CHANGES TO TIMING OF REVIEWS

Review Item	Original Due Date	Revised Due Date	Reason scheduled review has not been undertaken / completed
Queen Elizabeth II Medical Centre (Delegated Site) By-Laws 1986	Dec-98	Sep-99	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
Retail Trading Hours Act 1987 and Regulations	Dec-98	Jun-99	Deferred in response to community interest in the review. It was necessary to extend the consultation period and therefore the timing of the review had to be changed.
Shipping and Pilotage Act 1967 and Regulations	Dec-99	Dec-99	To be replaced by the Maritime Bill. If this Bill is not passed before 31-Dec-99 then a review of the existing legislation will take place.
Soil and Land Conservation Act 1945	Jun-98	Jun-00	Deferred on grounds that the Act will be repealed with the passing of the Agriculture Management Bill which will be reviewed in accord with clause 5 of the CPA.
Statutory Corporations (Liability of Directors) Act 1996	Jun-98	Mar-99	Deferred to enable review to consider proposed amendments and to enable additional consultation to occur.
Stipendiary Magistrates Act 1957	Dec-98	Jun-99	Deferred to enable review to consider proposed amendments.
Stock (Identification and Movement) Act 1970	Jun-99	Jun-00	Deferred on grounds that the Act will be repealed with the passing of the Agriculture Management Bill which will be reviewed in accord with clause 5 of the CPA.
University Medical School Teaching Hospitals Act 1955	Dec-98	Sep-99	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
WA Marine (Hire and Drive Vessels) Regulations 1983	Dec-99	Dec-99	To be replaced by the Maritime Bill. If this Bill is not passed before 31-Dec-99 then a review of the existing legislation will take place.
WA Marine Act 1982	Dec-99	Dec-99	To be replaced by the Maritime Bill. If this Bill is not passed before 31-Dec-99 then a review of the existing legislation will take place.
Western Australian Reproductive Technology Council (Nominating Bodies) Regulations 1992 and Directions	Dec-99	Jun-00	Replacement legislation to be developed and reviewed, and when implemented will obviate need to review existing legislation.
Wild Cattle Nuisance Act 1871	Jun-98	Jun-00	Deferred on grounds that the Act will be repealed with the passing of the Agriculture Management Bill which will be reviewed in accord with clause 5 of the CPA.

ATTACHMENT 2:

Summary of Legislation Reviews of Proposed New Legislation

LEGISLATION REVIEW OF NEW LEGISLATION COMPLETED AND ENDORSED BY CABINET

DAMPIER TO BUNBURY PIPELINE REGULATIONS

Net Community Benefit: The review recommended retention of the following restrictions for reasons outlined below:

Restriction 1: *Exemption from the Regulations is provided for contracts existing prior to the Regulations coming into force.*

The costs of the exemption are outweighed by the benefits it provides in avoiding issues of sovereign risk and litigation that might otherwise arise.

Restriction 2: *The pipeline owner is restricted from involvement in any related business.*

The costs of this restriction are outweighed by the benefits it provides in preventing vertical integration of the gas supply chain to avoid anti-competitive consequences.

Restriction 3: *Maximum transmission tariffs are prescribed for access to gas capacity.*

The costs of this restriction are outweighed by the benefits it provides in ensuring that the pipeline owner does not charge tariffs leading to monopoly rents and a reduction in investment activity.

Non - Restrictive Alternatives Considered:

The Regulations are a temporary measure during the transition to an alternative regime under a National Third Party Access Code.

LEGISLATION REVIEW OF NEW LEGISLATION COMPLETED AND ENDORSED BY CABINET

ENERGY COORDINATION AMENDMENT BILL 1997

Net Community Benefit: The review recommended retention of the following restrictions for reasons outlined below:

All restrictions identified relate to licensing: *1) Licence required to operate a natural gas distribution system or sell natural gas to small-use customers; 2) Power of the Governor to exempt a company from licensing requirements if exemption is in the public interest; 3) Disclosure requirements in applying for a licence; 4) Coordinator can amend or apply differential licence terms and conditions; 5) Licences may be of differing duration; 6) Licence fees; 7) Coordinator to approve transfer of licences; 8) Asset management and performance audit requirements; and 9) Power of Coordinator to impose CSOs on a licence holder without transparency of funding or a requirement that the non-commercial service is to be funded by the government.*

Licensing is necessary to ensure that operators have the technical capacity and financial standing to provide a safe and reliable service.

Non - Restrictive Alternatives Considered:

Alternative ways of achieving the legislative objectives were examined. However, it was concluded that the proposed provisions are the most cost-effective ways of protecting small-use gas customers. In many cases, the legislation prescribes that a public interest test must be applied before a power is exercised, which ensures that the power will only be exercised if there is a net public benefit. In the case of the imposition of community service obligations, the reviewer concluded that non-commercial services should be funded in a transparent way when a licence holder is required to provide them to meet government policy objectives.

LEGISLATION REVIEW OF NEW LEGISLATION COMPLETED AND ENDORSED BY CABINET

ENVIRONMENTAL PROTECTION AMENDMENT BILL 1997

Net Community Benefit: The review recommended retention of the following restrictions for reasons outlined below:

Restriction 1: *A discriminatory exemption arises because the government organisation to be created by the Amendment Bill, namely, Waste Management (WA), is exempt from the licensing requirements under the Environmental Protection Act 1986.*

This restriction was retained in the public interest primarily because any competitive advantage derived by Waste Management (WA) from its exemption from licensing requirements will be offset by its being subject to mandatory assessment procedures undertaken by the Environmental Protection Authority (which are not mandatory for other market participants). Furthermore, Waste Management (WA) will not be able to operate in a market where the private sector is able to operate an adequate service.

Restriction 2: *A barrier to entry arises because the Amendment Bill provides for Regulations to be made for the prohibition or regulation of solid fuel and solid fuel burning equipment.*

This restriction was retained in the public interest primarily because the higher government and industry costs which would arise from the regulatory imposition of standards for solid fuel and solid fuel burning equipment are outweighed by the associated benefit of reducing health risks in the community.

Non - Restrictive Alternatives Considered:

1. The discriminatory exemption is the most efficient and least costly way of avoiding the Chief Executive Officer of the Department of Environmental Protection (who constitutes Waste Management (WA)) from having to licence him or her self. Alternatives considered included the establishment of a separate independent body to administer the licensing processes involved, and the establishment of Waste Management (WA) as a body independent of the Department of Environmental Protection.

2. The proposed requirement for an industry to comply with standards is the only effective method of avoiding the health and environmental risks that might otherwise arise. Alternatives considered included promotion of industry self-regulation through adopting voluntary codes of conduct. However, there is no coordinating body recognised by the industry to effectively administer such codes and there remains the opportunity for renegade sellers to ignore such codes thus making this an ineffective alternative. It would also be possible to ban solid fuel heaters in the metropolitan area, but this would be a very restrictive and highly impractical alternative.

LEGISLATION REVIEW OF NEW LEGISLATION COMPLETED AND ENDORSED BY CABINET

ENVIRONMENTAL PROTECTION (LANDFILL) LEVY BILL 1997

Net Community Benefit: The review recommended retention of the following restriction for reasons outlined below:

Restriction: A *restriction that arises from the Bill providing for Regulations to be made which can discriminate between landfill sites at which a levy is payable and between the levy rates payable for different classes of waste.*

It was concluded that this restriction is in public interest primarily because the higher costs associated with the restriction are outweighed by its benefits which include a reduction in the risk of environmental damage from waste and ensuring that economic development and activity is ecologically sustainable in the long term.

Non - Restrictive Alternatives Considered:

It was concluded that this discriminatory restriction is the only way of achieving the objective of the legislation which is to reduce the depletion of metropolitan landfill sites and waste reduction.

LEGISLATION REVIEW OF NEW LEGISLATION COMPLETED AND ENDORSED BY CABINET

HEALTH PROFESSIONALS (SPECIAL EVENTS EXEMPTION) BILL 1999

Net Community Benefit: The review recommended retention of the following restrictions for reasons outlined below:

Restriction: *One minor discriminatory restriction on competition provides for health professionals visiting the State in connection with special events declared by the Minister to be exempted from local registration requirements under relevant health practitioner registration legislation.*

The review found that the Bill will have no impact on competition in the market for the provision of health services to residents of Australia. Although the Bill may make it less likely that local practitioners will be engaged by visiting teams to provide health care services, the costs associated with this will not be significant and will be more than outweighed by economic and social benefits associated with ensuring that Western Australia is well placed to compete on a national as well as an international basis to attract major sporting, cultural or other events.

Non - Restrictive Alternatives Considered:

The review found that exempting health practitioners visiting the State from local statutory registration requirements can only be achieved by legislative change and is less costly than requiring each visiting practitioner to seek individual exemption or temporary registration.

LEGISLATION REVIEW OF NEW LEGISLATION COMPLETED AND ENDORSED BY CABINET

NORTH WEST GAS DEVELOPMENT (WOODSIDE) AGREEMENT AMENDMENT BILL 1996

Net Community Benefit: The review recommended retention of the following restrictions for reasons outlined below:

This 1996 Amendment Bill inserted a new section 41A into the *North West Gas Development (Woodside) Agreement Act 1979*, by which section the State of Western Australia authorised, for the purposes of section 51(1)(b) of the Trade Practices Act, a gas contract between the North West Shelf "Domgas" Joint Venture Participants and BHP Direct Reduced Iron Pty Ltd (BHP DRI).

The gas contract is a high volume, long term (15 year) gas supply contract for a project that BHP DRI is constructing at Port Hedland for the production of direct reduced iron (the DRI project). The gas contract contains a take or pay provision for up to 130 tj/day with a requirement that further necessary gas up to an additional 20 tj/day (incremental gas) is purchased under the gas contract. At the time the contract was negotiated, the Joint Venturers were the only Western Australian gas supplier able to guarantee the necessary volumes at an acceptable price as tested by BHP through calls for offers from producers.

Aspects of the gas contract that were identified as possibly restricting competition are its volume and length which may prevent other gas suppliers from entering the market as well as the provision that the incremental gas must be taken from the contract gas supplier rather than from the open market. The question of whether these aspects are anti-competitive is open to debate. Without such a contract, energy intensive resource development projects would not be undertaken. The security of supply offered by contracts of this type is a major factor in obtaining Board approvals and project finance. If the security of such a contract is threatened, the project risk becomes high and the project would be unlikely to go ahead unless returns were exceptional to offset the increased risk.

The benefits of the exemption flow from the unhindered development of the project. In the absence of the exemption, authorisation for the gas contract might have been sought from the Australian Competition and Consumer Commission (ACCC), which would, at best, have delayed the project for two years at a cost of $304 million to Western Australia or $353 million nationally. The more realistic assessment however is that if the contract had not been exempted by the State, the market opportunity would have been missed and the DRI project would not have proceeded. This would mean the loss of all

prospective economic benefits, estimated to be $1,750 million to Western Australia or $2,043 million nationally, as well as causing damage to the perception that Western Australia is a secure investment destination for mineral processing. Other strategic benefits of the project going ahead include realisation of the Government's policy to add value to Western Australia's mineral wealth, future growth of the Pilbara region, and the promotion of Western Australia as a competitive investment destination.

While it is not possible to quantify decisively either public benefits or costs, it is likely that benefits of the extent enumerated significantly outweigh costs. It was concluded that beneficial impacts of the project proceeding as opposed to being postponed, or indeed, cancelled, are significant, and outweigh any costs associated with adverse environmental and social impacts, or adverse effects on the competitive market for gas in Western Australia.

Non - Restrictive Alternatives Considered:

An evaluation of changes that could be made to the contract to ensure that it does not restrict competition found that there are no valid alternatives to allowing the contract to remain as it is through a section 51 exemption from the Trade Practices Act.

The alternative of a shorter-term contract would not give enough security to a large resource development project to allow it to obtain finance. As well, gas sellers would have problems in raising capital or gaining Board approval for developing their reserves without the security of long term contracts. Therefore, neither buyers nor sellers could achieve their respective developments on the basis of short-term contracts.

Changes to the incremental gas clause would be impractical and commercially unacceptable. If the incremental gas amount were added to the take-or-pay provision, the buyer would have to take on an unacceptable burden.

The addition of a "first right of refusal" requirement to the contract whereby the seller must match any other competitor's bid would place the necessary volumes of incremental gas at risk. In the existing contract, the Joint Venture Participants have to hold that volume of gas available in reserve in the event that BHP DRI needs it. This is too large a volume of gas to hold available on an indefinite basis for sale at someone's lowest price. The "first right of refusal" requirement may also be judged to be anti-competitive.

It was concluded that there is no alternative to the existing gas contract, to achieve the stated end of allowing the DRI project to go ahead, without a similar restriction on competition.

LEGISLATION REVIEW OF NEW LEGISLATION COMPLETED AND ENDORSED BY CABINET

PERTH PARKING MANAGEMENT BILL 1998

Net Community Benefit: The review recommended retention of the following restrictions for reasons outlined below:

Restriction 1: *Parking facilities must be licensed and a licence fee may be charged.*

Restriction 2: *Placing limits on the number of tenant parking bays and the location of long term public parking facilities.*

These restriction are retained because the public interest benefits outweigh the costs, primarily on road network efficiency, air quality (environmental and health) and urban amenity grounds.

Non - Restrictive Alternatives Considered:

The review examines alternative means of limiting congestion in central city traffic that have been tested in other cities, but concludes that these are more difficult (and expensive) to implement and less equitable than the proposed legislation.

LEGISLATION REVIEW OF NEW LEGISLATION COMPLETED AND ENDORSED BY CABINET

PORT AUTHORITIES BILL 1998

Net Community Benefit: The review recommended retention of the following restrictions for reasons outlined below:

Restriction 1: *Exemption from planning and building requirements.*

Exemption from local government planning and building requirements limits the control exercised by local authorities over ports. This outcome is in the public interest because it prevents local authorities from responding to local or sectional interests that may hinder the strategic planning and operational activities of port authorities, to the detriment of the wider Western Australian community.

Restriction 2: *Pilotage and licensing provisions.*

Pilotage and licensing provisions create potential barriers to entry to port service operators, particularly where exclusive licences are issued. However, such provisions were deemed to be in the public interest for reasons of port safety and service continuity.

Non - Restrictive Alternatives Considered:

The objectives of the Port Authorities Bill are to achieve accountability and ownership controls, together with safety and public interest controls. None of these objectives can be readily achieved by alternative means other than through the licensing restrictions identified within this Bill.

LEGISLATION REVIEW OF NEW LEGISLATION COMPLETED AND ENDORSED BY CABINET

PROSTITUTION CONTROL BILL 1998

Net Community Benefit: The review recommended retention of the following restrictions for reasons outlined below:

Restriction 1: *Registration of owners, managers, drivers and premises.*

Restriction 2: *Registration of prostitutes with prohibition of persons with certain diseases and criminal convictions.*

Restriction 3: *Restriction of brothels to industrial zones.*

Restriction 4: *Restrictions on advertising through the electronic media.*

The restrictions lessen the existing situation of prohibition with containment. The new legislation will increase transparency and protect the health and safety of workers in the industry while maintaining community standards.

Non - Restrictive Alternatives Considered:

Two alternatives were considered: complete deregulation and self-regulation. Neither of these options were considered to be acceptable due to the problems with public health issues that have developed in other countries without regulation.

ATTACHMENT 3:

Response to NCC Request
on
Specific Legislation Reviews

RESPONSE TO NCC REQUEST ON SPECIFIC LEGISLATION REVIEWS

Architects Act 1921

NCC Request: outline arrangements for review to confirm a robust objective process

Response: The review was advertised widely and interested parties were invited to make submissions. The review is largely completed and will be finalised after the national review of the legislation is completed.

Bulk Handling Act 1967

NCC Request: *outline arrangements for review to confirm a robust objective process and reform outcomes consistent with CPA principles*

Response: This review is yet to commence. It has been deferred until December 1999 on the grounds that the Minister is currently reviewing the operations and organisational structure of Cooperative Bulk Handling and that a legislation review would be premature until this review was completed.

Government Employees Superannuation Act 1987

NCC request: scheduled for review in 2000, report any change to current status

Response: The scheduled completion date for this review was some time ago brought forward from December 2000 to June 2000. Consideration is expected to be given to bringing this review further forward, and the completion date may be set as early as June 1999.

Health (Smoking in Enclosed Public Places) Regulations 1998

NCC request: provide a progress report on these regulations

Response: Although the *Health (Smoking in Enclosed Public Places) Regulations 1998* will take effect on 29 March 1999, the Government has stated its intention not to initiate any prosecutions under the regulations until October 1999 [*Parliamentary Debates* (1998) 2nd Sess p.3855]. This intervening period will allow time to complete a rigorous review of the regulations and to make any necessary changes to the regulations based on the recommendations of the review.

In addition, section 42 of the *Interpretation Act 1984* provides that the Parliament of Western Australia has 14 sitting days to disallow the regulations after they have been tabled, and this 14 day period is not likely to expire until 6 May 1999. It is intended that Western Australia's review of the regulations will be completed prior to 6 May.

Legal Practitioners Act 1893, Legal Practitioners (Professional Indemnity Insurance) Regulations 1995

NCC request: *demonstrate that current arrangements for legal professional indemnity insurance meet CPA principles*

Response: The review of this legislation was originally scheduled for completion by June 1997, then deferred to a date to be set whilst consideration was being given to a national review. Following the decision not to conduct a national review, the review of this legislation was recently re-scheduled for completion by March 2000. When commenced the review will consider, amongst other things, whether current legislative arrangements for legal professional indemnity insurance meet CPA principles.

Liquor Licensing Act 1988

NCC Request: *confirm current schedule status for review commencing December 1998*

Response: The review of the Liquor Licensing Act has commenced. Treasury's Competition Policy Unit received a first draft of the review on 16 November 1998.

Marketing of Potatoes Act 1946

NCC Request: *outline arrangements for review to confirm a robust objective process, report progress with review and, if reform decisions are taken prior to 31 December 1998, demonstrate remaining restrictions meet CPA principles*

Response:

The reviewers undertook broad consultation by calling for submissions in advertisements placed in *The West Australian* on 13 December 1997 and in the *Farm Weekly* and *Countryman* on 18 December 1997. On 14 February 1998 the Treasury Department placed a further advertisement in *The West Australian to* notify the public of the review process and provide opportunity for public input.

The reviewers received 55 submissions from a range of stakeholders including consumers, growers, retailers and industry peak bodies. Agriculture Western Australia is conducting the review. The terms of reference are consistent with clause 5(9) of the CPA.

The review process is yet to be completed and the final report has not been considered by Cabinet.

Medical Act 1984* and Rules, *Medical Amendment Act 1996

NCC Request: *report on progress with development of replacement legislation*

Response: Replacement legislation is in the process of being developed. It is anticipated that a review of this replacement legislation will be completed by June 1999.

Motor Vehicle (Third Party Insurance) Act 1943

NCC Request: *provide review report and confirm that review process and reform outcomes are consistent with CPA principles*

Response: This review has yet to be completed, with delays having occurred as a result of an expanded consultation process.

Resource Development Agreement Acts

NCC Request: *agree to remove restrictions on competition which provide little or no benefit where there is mutual consent of the affected parties.*

Response: In relation to existing resource development Agreement Acts, Western Australia has agreed to consider removal of restrictions imposing a net community cost at the time each Agreement Act is reviewed or varied.

Retail Trading Hours Act 1987 and Regulations

NCC Request: *provide review report and confirm that review process and reform outcomes are consistent with CPA principles*

Response: The deadline for the completion of the review has been extended until June 1999. Progress with the review is well advanced, however, the draft report has not been completed yet.

A discussion paper for the review was released in May 1998. A public forum was held in June 1998 which explained the background to the review and the process to be followed. A video of the proceedings was made available to regional groups. Submissions were sought through advertisements in *The West Australian* Newspaper in June 1998. In response to the large number of submissions received (over 1,650), the closing date for the review was extended from August 1998 until September 1998.

A Community Reference Group has been convened to consider issues presented by the review team. The Group consists of a wide range of interested parties, including the Western Australian Council of Retail Associations, the Retail Trader's Association, the Chamber of Commerce, the Shop Distributive and Allied Employee Association, the Tourism Council of Australia and the Consumer's Association of Western Australia.

Workers Compensation and Rehabilitation Act 1981

NCC Request: *outline arrangements for review to confirm a robust objective process and reform outcomes consistent with CPA principles.*

The Competition Policy Unit has met with the agency responsible for reviewing the legislation and has raised the concerns expressed by the NCC. Expansion of the scope of the review process is currently being considered by reviewers.

ATTACHMENT 4:

Western Australia's Progress Against Clause 3 of the CPA

WESTERN AUSTRALIA'S PROGRESS AGAINST CLAUSE 3 OF THE CPA

4(1) Competitive neutrality applied	
Agency	**CN model applied**
-Albany Port Authority -Bunbury Port Authority -Dampier Port Authority -Esperance Port Authority -Fremantle Port Authority -Geraldton Port Authority -Port Hedland Port Authority	All recommendations have been incorporated into the draft Port Authorities Bill. The Bill will impose a commercialisation model upon the port authorities similar to that developed for Western Power, AlintaGas and the Water Corporation.
AlintaGas	Fully commercialised.
Water Corporation	Fully commercialised.
Western Power	Fully commercialised.

4(2) Reviews completed	
Review item	**Recommendations/Implementation**
-East Perth Redevelopment -Subiaco Redevelopment	Status quo maintained as no public interest case in support of removing advantages or disadvantages.
Government Employees Superannuation Board	Review concluded that there were no advantages or disadvantages that needed to be reviewed as part of the CN review process.
Western Australian Land Corporation	Fully commercial model to be applied and all regulatory functions to be removed.

4(3) Reviews in progress	
Review item	**Review status**
-Bunbury Water Board -Busselton Water Board	This review has commenced and is considering broader policy issues in relation to the Boards and ownership of property.
Coal Industry Superannuation Board	Awaiting changes to Commonwealth legislation regarding choice of Superannuation Funds.
Gold Corporation	The review has been finalised and has been presented to the Treasurer before consideration by the Cabinet Government Management Standing Committee (GMC).
Homeswest	Review is being finalised.
Insurance Commission of Western Australia	The review is currently being finalised by a consultant, and should be presented to the Minister in the near future.
State Housing Commission of Western Australia (Homeswest).	The review is expected to be finalised shortly, before presentation to the Minister for Housing.
Lotteries Commission	The review is being finalised and is expected to be presented to the Minister shortly.
Office of the Public Trustee	A draft of this review is expected to be finalised shortly.
Pathology Centre	A consultant completed a draft review report in December 1998. The review is still to be examined by the Board of the Pathology Centre and submitted to the Minister for finalisation with State Cabinet.
Rottnest Island Authority	Currently being considered by the Board of Rottnest Island Authority. Final submission likely by April.
Totaliser Agency Board	The TAB has commissioned a consultant to finalise its review by May 1999.
WA Fire and Emergency Services Superannuation Board	Awaiting changes to Commonwealth legislation regarding choice of Superannuation Funds.

4(4) Reviews yet to commence		
Review item	**Due date**	***Comments***
Agriculture Western Australia	Jun-00	New item on Implementation Schedule. Review will examine the agency's R&D business activity.
Dairy Industry Authority	Jun-00	Review has not commenced.
Forestry Operation of the Department of Conservation and Land Management	Jun-98	Awaiting completion of the legislation review. Seeking a consultant.
Government Employees Housing Authority	Jun-99	
Grain Corporation of Western Australia	Jun-99	Review commencement contingent on legislation review.
Grain Pool of Western Australia	Jun-00	Review commencement contingent on legislation review.
Metropolitan Cemeteries Board	Jun-97	Awaiting completion of legislation reviews of related legislation.
Perth Market Authority	Jun-98	Awaiting outcome of legislation review.
Recreation Camps and Reserves Board	Jun-00	Recent addition to table.
Rural Adjustment and Finance Corporation	Jun-00	Awaiting new *Agriculture Western Australia Bill*.
Technical and Further Education	Jun-00	Now listed as two reviews including TAFE Commercial operations and TAFE International.
- University of Western Australia - Murdoch University - Curtin University - Edith Cowan University	Dec-99	The Higher Education Taskforce of Ministerial Council for Education Employment and Training of Australia formed a working group of representatives from a range of universities to consider the commercial activities of universities from the perspective of competitive neutrality. The competitive neutrality review of universities is due in December 1999.

4(4) Reviews yet to commence - continued		
Review item	**Due date**	***Comments***
Valuer General's Office	Jun-99	Deferral granted by Cabinet. Legislation reviewed in 1998. A consultant has been engaged and review is about to commence.
Western Australian Egg Marketing Board	Jun-00	Awaiting outcome of review of *Marketing of Eggs Act 1945* and Regulations.
Western Australian Government Railways	Dec-96	Review suspended pending outcome of privatisation of Westrail.
Western Australian Meat Marketing Corporation (WAMMCO)	Jun-00	Government has approved a proposal to wind-up the operations of WAMMCO. Therefore the review will be unnecessary.
Western Australian Potato Marketing Authority	Jun-00	Awaiting outcome of legislation review of the *Marketing of Potatoes Act 1946* & Regulations.
Western Australian Sports Centre Trust	Due date to be advised	Recent addition to table.
Western Australian Tourism Commission	Jun-99	Review about to commence.

4(5) Reviews that have been delayed or terminated	
Review item	**Reason for delay or termination**
Metropolitan Passenger Transport Trust (trading as MetroBus)	The review is no longer required following the Government's decision to contract out all of Perth's bus and ferry services to private operators. MetroBus ceased operation in July 1998.
Office of the Public Trustee	The review has been suspended in order to wait for the outcome of the restructuring plans of the office.
Perth Market Authority	The review has been delayed in order to wait for the findings of the review of enabling legislation in accord with clause 5(9) of the CPA.
Western Australian Meat Marketing Corporation	The review is likely to be suspended because the Government plans to privatise the agency by July 1999.
Western Australian Government Railways Commission (trading as Westrail)	The review has been put on hold following the Government's decision to sell Westrail's freight business.

ATTACHMENT 5:

Competitive Neutrality Outcomes for Western Australia's Local Governments

COMPETITIVE NEUTRALITY
CATEGORY ONE COUNCILS

LOCAL GOVERNMENT	Activity	CN Impl	CN not Impl
ALBANY (T)	• Daycare Centre	✓	
	• Leisure & Aquatic Centre	✓	
	• Waste collection	✓	
	• Waste disposal		✓
ALBANY (S)	• Albany airport		
ARMADALE	• Armadale Aquatic Centre		✓
	• Waste collection	✓	
	• Waste disposal		✓
ASHBURTON	• Waste management		✓
AUGUSTA -MARGARET RIVER	• Waste management		
	• Turner Caravan Park Augusta		✓
	• Private works		✓
	• Margaret River Recreation & Aquatic Centre		✓
BASSENDEAN	No activity >$200 000		
BAYSWATER	• Bayswater golf course	✓	
	• Aged persons' home (2)		✓
	• Childcare centres (4)	✓	
BELMONT	• Belmont childcare Centre		✓
BROOME	All activities have been leased to private sector or are in process of being sold. Reviews not necessary.		
BUNBURY	Resolved to apply CN principles to all 14 activities without review.	✓	
BUSSELTON	• Domestic rubbish collection	✓	
	• Kookaburra Caravan Park	✓	
CAMBRIDGE	• Wembley Golf Course	✓	
	• Bold Park Aquatic Centre		✓
	• Works & maintenance functions		✓
	• Parks maintenance functions		✓
CANNING	• Waste disposal	✓	
	• Domestic rubbish collections		

LOCAL GOVERNMENT	Activity	CN Impl	CN not Impl
	• Commercial rubbish collection	✓	
	• Crossover/stormwater connections	✓	
	• Private works	✓	
	• Swimming Centre		
	• Golf course	✓	
	• Canning Lodge	✓	
	• Youth accommodation	✓	
		✓	
		✓	
CARNARVON	• Carnarvon airport	✓	
CLAREMONT	No activity >$ 200,000		
COCKBURN	• South Lake Leisure Centre		✓
	• Waste disposal service	✓	
	• Waste collection service		✓
COLLIE	• Waste management		✓
COTTESLOE	No activity >$200,000		
DERBY - WEST KIMBERLEY	• Waste management		
EAST PILBARA	• Newman Airport		✓
	• Parks & gardens maintenance		✓
	• Commercial rubbish collection		
ESPERANCE	• Esperance airport	✓	
FREMANTLE	• Development assessments		✓
	• Info & compliance		✓
	• Children's services		✓
	• Seniors services		✓
	• Fremantle Art Centre		✓
	• Properties		✓
	• Fremantle Leisure Centre		✓
	• Commercial parking	✓	
	• Domestic waste	✓	
	• Commercial waste	✓	
	• Construction	✓	
	• Street works	✓	
	• Fremantle Golf Course	✓	
GERALDTON	• Rubbish collection	✓	
	• Queens Park Theatre		✓
GINGIN	• Guilderton Caravan Park		✓
GOSNELLS	• Waste disposal		✓

LOCAL GOVERNMENT	Activity	CN Impl	CN not Impl
	• Refuse collection		✓
	• City of Gosnells Leisure World		✓
GREENOUGH	• Geraldton airport	✓	
HARVEY	No activity >$200,000		
JOONDALUP	• Sanitation household refuse	✓	
	• Domestic refuse carts collections	✓	
	• Commercial refuse collection	✓	
	• Craigie Leisure Centre		
	• Aquamotion - pool		
	• Ocean Ridge Community Centre		
	• Sorrento/Duncraig Rec Centre		
KALAMUNDA	No activity >$200,000		
KALGOORLIE -BOULDER	• Airport	✓	
	• Sewerage	✓	
KATANNING	• Katanning saleyard		✓
KWINANA	• Rec & Aquatic Centre		✓
	• Aged care facility		✓
MANDURAH	• Mandurah Aquatic & Rec Centre	✓	
MANJIMUP	No activity >$200,000		
MELVILLE	• Meals on wheels		✓
	• Recreation facilities	✓	
	• Point Walter Golf Course	✓	
	• Waste services	✓	
	• Re instatements	✓	
MERREDIN	No activity >$200,000		
MUNDARING	No activity >$200,000		
MURRAY	• Recreational Centre	✓	
NARROGIN (T)	No activity >$200,000		
NEDLANDS	No activity >$200,000		
NORTHAM (T)	No activity >$200,000		
PERTH	• Waste management	✓	
	• Citiplace Child Care Centre	✓	
	• Parking services		✓
PORT HEDLAND	• Airport	✓	
	• Refuse collection	✓	
	• Cultural Centre		✓
	• South Hedland Aquatic Rec Centre		✓
ROCKINGHAM	• Waste collection		✓
	• Millar Rd landfill site		✓

LOCAL GOVERNMENT	Activity	CN Impl	CN not Impl
	• Rockingham Day Care Centre		✓
ROEBOURNE	• Waste management • Airport • Airport restaurant		
SOUTH PERTH	• Collier Park Hostel • Collier Park Retirement Village • Collier Park Golf Course • Waste transfer station	 ✓	✓ ✓ ✓
STIRLING	• Domestic waste mgt • Commercial waste mgt • Bulk waste mgt • Hamersley Rec Centre • Herb Graham Rec Centre • Inglewood Pool • Meals on Wheels • Hamersley Golf Course • Maylands Golf Course	✓ ✓ ✓ ✓ ✓ ✓	 ✓ ✓ ✓
SUBIACO	• Meals on wheels • Parking • Waste management	 ✓ ✓	✓
SWAN	• Swan Child Care Centre • Waste collection • Swan Park Rec Centre • Altona Park Rec Centre	 ✓	✓ ✓ ✓
VICTORIA PARK	• Somerset Pool		✓
VINCENT	• Beatty Park • Waste management	 ✓	✓
WAGIN	No activity >$200,000		
WYNDHAM - EAST KIMBERLEY	• Kununurra airport	✓	
YORK	No activity >$200,000		

COMPETITIVE NEUTRALITY
CATEGORY TWO COUNCILS

LOCAL GOVERNMENT	Activity Reviewed	CN impl	CN not impl
BEVERLEY	No activity > $200 000		
BODDINGTON	No activity > $200 000		
BOYUP BROOK	No activity > $200 000		
BRIDGETOWN-GREENBUSHES	Private subdivision works		✓
BROOKTON	No activity > $200 000		
BROOMEHILL	No activity > $200 000		
BRUCE ROCK	No activity > $200 000		
CAPEL	No activity > $200 000		
CARNAMAH	No activity > $200 000		
CHAPMAN VALLEY			
CHITTERING	No activity > $200 000		
COOLGARDIE			
COOROW	No activity > $200 000		
CORRIGIN			
CRANBROOK	No activity > $200 000		
CUBALLING	No activity > $200 000		
CUE	No activity > $200 000		
CUNDERDIN	No activity > $200 000		
DALWALLINU	No activity > $200 000		
DANDARAGAN	No activity > $200 000		
DARDANUP	No activity > $200 000		
DENMARK	No activity > $200 000		
DONNYBROOK-BALLINGUP	Aged Hostel		✓
DOWERIN	No activity > $200 000		
DUMBLEYUNG	No activity > $200 000		
DUNDAS	No activity > $200 000		
EAST FREMANTLE	No activity > $200 000		
EXMOUTH	Exmouth Airport		✓
GNOWANGERUP	No activity >$200 000		
GOOMALLING	No activity > $200 000		
HALLS CREEK	No activity > $200 000		
IRWIN	No activity > $200 000		
JERRAMUNGUP			
KELLERBERRIN	No activity > $200 000		
KENT	No activity > $200 000		

LOCAL GOVERNMENT	Activity Reviewed	CN impl	CN not impl
KOJONUP	No activity > $200 000		
KONDININ	No activity > $200 000		
KOORDA	No activity > $200 000		
KULIN	No activity > $200 000		
LAKE GRACE	No activity > $200 000		
LAVERTON	No activity > $200 000		
LEONORA	No activity > $200 000		
MEEKATHARRA	No activity > $200 000		
MENZIES	No activity > $200 000		
MINGENEW	No activity > $200 000		
MOORA	No activity > $200 000		
MORAWA	No activity > $200 000		
MOSMAN PARK	Waste collection		✓
MT MAGNET	No activity > $200 000		
MT MARSHALL	No activity > $200 000		
MUKINBUDIN	No activity > $200 000		
MULLEWA	No activity > $200 000		
MURCHISON	No activity > $200 000		
NANNUP	No activity > $200 000		
NAREMBEEN	No activity > $200 000		
NARROGIN (S)	No activity > $200 000		
NGAANYATJARRAKU	No activity > $200 000		
NORTHAM (S)	No activity > $200 000		
NORTHAMPTON			
NUNGARIN	No activity > $200 000		
PEPPERMINT GROVE	No activity > $200 000		
PERENJORI	No activity > $200 000		
PINGELLY	No activity > $200 000		
PLANTAGENET	No activity > $200 000		
QUAIRADING	No activity > $200 000		
RAVENSTHORPE	No activity > $200 000		
SANDSTONE	No activity > $200 000		
SHARK BAY	No activity> $200 000		
SERPENTINE-JARRAHDALE			
TAMBELLUP	No activity > $200 000		
TAMMIN	No activity > $200 000		
THREE SPRINGS	No activity > $200 000		
TOODYAY	No activity > $200 000		
TRAYNING	No activity > $200 000		

LOCAL GOVERNMENT	Activity Reviewed	CN impl	CN not impl
UPPER GASCOYNE	No activity > $200 000		
VICTORIA PLAINS	No activity > $200 000		
WANDERING	No activity > $200 000		
WAROONA	No activity > $200 000		
WEST ARTHUR	No activity > $200 000		
WESTONIA			
WICKEPIN	No activity > $200 000		
WILLIAMS	No activity > $200 000		
WILUNA	No activity > $200 000		
WOODANILLING	No activity > $200 000		
WONGAN-BALLIDU	No activity > $200 000		
WYALKATCHEM	No activity > $200 000		
YALGOO	No activity > $200 000		
YILGARN	No activity > $200 000		

Tasmania

1999

National Competition Policy Progress Report

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Government of Tasmania

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WARNING

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GLOSSARY

AAV	Assessed annual value
ACCC	Australian Competition and Consumer Commission
ATC	Australian Transport Council
ARMCANZ	Agricultural Resource Management Council of Australia and New Zealand
ARR	Australian Road Rules
CCA	Conduct Code Agreement
COAG	Council of Australian Governments
CPA	Competition Principles Agreement
CSO	Community Service Obligation
CTP	Compulsory Third Party (Insurance)
DPIWE	Department of Primary Industries, Water and Environment
EMB	Egg Marketing Board
ESI	Electricity Supply Industry
EWA	Esk Water Authority
FAGs	Financial Assistance Grants
FCA	Full Cost Attribution
GBE	Government Business Enterprise
GPOC	Government Prices Oversight Commission
HEC	Hydro-Electric Corporation
HRWA	Hobart Regional Water Authority
LRP	Legislation Review Program
MAIB	Motor Accidents Insurance Board
MAST	Marine and Safety Authority of Tasmania
MCRT	Ministerial Council for Road Transport
NCC	National Competition Council
NCP	National Competition Policy
NEM	National Electricity Market
NEVDIS	National Exchange of Vehicle and Driver Information System
NRTC	National Road Transport Commission
NWQMS	National Water Quality Management Strategy
NWRWA	North West Regional Water Authority
PEVs	Protected Environmental Values
PFEs	Public Financial Enterprises
PTEs	Public Trading Enterprises
RIS	Regulatory Impact Statement
RMPS	Resource Management and Planning System
RRU	Regulation Review Unit
RWSC	Rivers and Water Supply Commission
SCOT	Standing Committee on Transport
TPA	*Trade Practices Act 1974* (Commonwealth)
TEC	Tasmanian Electricity Code
VFI	Vertical Fiscal Imbalance
WSAA	Water Services Association of Australia

EXECUTIVE SUMMARY

The Tasmanian Government is strongly committed to the principles contained in the National Competition Policy (NCP) Agreements signed by all Australian Governments in April 1995.

This is the third public NCP Progress Report released by the Tasmanian Government and details progress with the implementation of NCP and sector specific reforms in the areas of electricity, water, gas and transport. Specifically, this Report details the State's compliance to date with its second tranche obligations.

Through the Government's NCP program, the major reforms implemented by 31 December 1998, or later in cases where significant progress has been made, are listed below.

- A number of major reviews of legislation which restrict competition have been undertaken through the Tasmanian Government's Legislation Review Program (LRP) and a very large number of reviews are currently in progress. Acts recently reviewed include the *Traffic Act 1925*, the *Apple and Pear Industry (Crop Insurance) Act 1982*, the *Motor Accidents (Liabilities and Compensation) Act 1973*, the *Egg Industry Act 1988* and the *Apiaries Act 1978*. It is expected that all reviews will have been undertaken by the 31 December 2000 deadline.

- A number of new Acts have been assessed under the "gatekeeper" provisions of the LRP and subsequently introduced, resulting in significant reforms in a number of areas such as the health professions, which were previously highly regulated.

- The Government is continuing to apply the competitive neutrality principles to Government business activities in Tasmania, including all significant business activities undertaken by inner budget agencies.

- The *Government Prices Oversight Amendment Act 1997* was enacted which extended the coverage of the *Government Prices Oversight Act 1995* to local government monopoly services. The Act also provided for the Government Prices Oversight Commission (GPOC) to hear complaints regarding the application of NCP competitive neutrality principles to both State and local government business activities. A formal complaints mechanism has now been established.

- GPOC has completed investigations into the pricing policies of the Hydro-Electric Corporation, Metro Tasmania Pty Ltd, the Motor Accidents Insurance Board and, most recently, the three bulk water supply authorities.

- The Government is continuing to ensure that the principles contained in the Competition Principles Agreement (CPA) are applied to local government. These principles are being adopted at a faster pace than was initially envisaged under the previous Government's policy statement. This is demonstrated by the decision by 18 of the 29 councils to apply full cost attribution to all of their business activities (rather than just those regarded as "significant"). In July 1998, a revised implementation timetable for the application of NCP to local government was agreed between the State Government and the Local Government Association of Tasmania.

- While the National Competition Council has confirmed that Tasmania is not a "relevant jurisdiction" for the purposes of the Council of Australian Governments and NCP Agreements relating to electricity reform, the State has nevertheless made significant progress in implementing arrangements consistent with the national requirements. In addition, the State is meeting its obligations under clause 4 of the CPA in relation to structural reform of Tasmania's electricity supply industry.

- Tasmania has signed the national Natural Gas Pipeline Access Agreement. Through the Agreement, jurisdictions have agreed that certain principles are to apply to access negotiations and that the National Third Party Access Code for Natural Gas Pipelines will be given legal effect by a uniform Gas Pipelines Access Law. In early 1999, the Government approved the introduction of Tasmania's gas pipelines access legislation and the repeal of any conflicting legislation.

- The Government has progressed the efficient and sustainable water industry reforms required to meet its second tranche NCP obligations. Progress in this reform area includes:

  - a final round of public consultation in respect of a draft Water Management Bill to replace the *Water Act 1957* and associated water management legislation. The Bill is to be introduced into Parliament in late April 1999;

  - the development of a new method for licensing water users, including the Hydro-Electric Corporation;

  - the implementation of the Council of Australian Governments' bulk water pricing principles (including maximum revenues and two-part pricing) arising from an investigation into the pricing policies of the State's bulk water authorities by GPOC;

  - the progression of a GPOC study to assist local councils examine the cost-effectiveness of implementing two-part pricing; and

  - the development of a State Policy on Integrated Catchment Management under the *State Policies and Projects Act 1993*.

- In November 1997, Parliament passed new, pro-competitive passenger transport legislation to replace the existing restrictive public vehicle licensing system contained in Part III of the *Traffic Act 1925*. Proclamation of the new suite of passenger transport legislation was deferred as a consequence of the August 1998 State election. However, the new Government has since developed and signed a Memorandum of Understanding with transport industry associations which commits the parties to finalise the details of the legislation necessary to replace the public vehicle licensing system.

- The Government is implementing the NCP road transport reforms developed by the Standing Committee on Transport Working Group, which will form part of the second tranche assessment. A significant component of these reforms is the development of legislation to introduce nationally consistent vehicle registration and driver licensing systems as part of the National Road Transport Commission road transport reforms.

Despite the August 1998 State election and the unsuccessful council amalgamation program, Tasmania has made major progress in key areas, especially water reform, and has demonstrated its on-going commitment to NCP.

1. INTRODUCTION

At its April 1995 meeting, the Council of Australian Governments (COAG) signed a number of Agreements designed to boost the competitiveness and growth prospects of the national economy into the future. The Agreements give effect to a package of micro-economic reform measures that represent the National Competition Policy (NCP).

Under the Competition Principles Agreement (CPA), the Tasmanian Government is required to publish an annual report on its progress in implementing the competitive neutrality and legislation review principles. The NCP Progress Reports also outline progress with the remaining NCP reform principles and NCP sector specific reforms relating to electricity, water, gas and transport.

The Tasmanian Government's first public Progress Report was released in August 1997, along with the handing down of the 1997-98 State Budget. That report covered the period from 11 April 1995 to 31 July 1997. The second public Progress Report was released in November 1998. It outlined the Government's progress in implementing NCP and related reforms in Tasmania from 1 August 1997 to 31 August 1998.

This Report outlines the Government's continued progress in implementing NCP reforms to 31 December 1998, or later in cases where significant progress has been made. The history of reform achievements has been included, where appropriate, to demonstrate Tasmania's compliance to date with its second tranche obligations.

2. THE NATIONAL COMPETITION COUNCIL'S ASSESSMENT OF TASMANIA'S IMPLEMENTATION OF NCP AND RELATED REFORMS

As outlined in the previous NCP Progress Report, Tasmania received a positive assessment in June 1997 in the National Competition Council's (NCC) recommendations to the Commonwealth Treasurer on whether the State has successfully qualified for the first tranche of NCP payments, which were payable in 1997-98. The Commonwealth Treasurer confirmed in early July 1997 that Tasmania would receive first tranche payments. These totalled $12.3 million in 1997-98. Payments were received on a quarterly basis commencing in July 1997.

As also reported previously, the NCC deferred consideration of the 1998-99 component of Tasmania's first tranche assessment (along with those of all other jurisdictions), pending greater evidence that Tasmania was on target with the application of the competitive neutrality principles to local government. The background to this decision is provided in detail in section 5 of this Report.

Based on the previous Tasmanian Government's commitment in May 1998 to seek the agreement of councils to reinvigorate the application of NCP to local government, the NCC recommended to the Commonwealth Treasurer that Tasmania receive the 1998-99 component of the first tranche assessment (worth approximately $20 million). This was subsequently confirmed by the Treasurer. However, the NCC noted that progress in line with the timetable Tasmania has set itself will be important for the second tranche assessment.

2.1 SECOND TRANCHE OBLIGATIONS

In order to qualify for its share of the second tranche payments in 1999-2000, Tasmania must:

- meet all its obligations under the CPA and the Conduct Code Agreement (CCA);
- demonstrate progress in line with the revised timetable for the application of NCP to local government;
- take steps, where relevant, to complete the transition to a fully competitive National Electricity Market by 1 July 1999;
  - At this stage, Tasmania is not a "relevant jurisdiction" for the purposes of these reforms to the electricity supply industry, due to the absence of any physical interconnection with the national electricity grid. Tasmania's commitment is limited to participating in the national electricity market in the event that Basslink is constructed.
- continue with the effective implementation of all COAG agreements on the national framework for free and fair trade in gas;
  - As with the electricity reforms, Tasmania is currently exempt from having to comply with COAG gas industry reforms due to the absence of an established natural gas industry and therefore any gas infrastructure to which third party access is to be provided.
- implement the strategic framework for the efficient and sustainable reform of the Australian water industry, as endorsed at the February 1994 COAG meeting; and
- demonstrate continued effective observance of the agreed package of road transport reforms.

3. REFORMS UNDER THE COMPETITION PRINCIPLES AGREEMENT

3.1 LEGISLATION REVIEW

In June 1996, the Tasmanian Government published, in accordance with the CPA requirements, a policy statement entitled *Legislation Review Program: 1996-2000 – Tasmanian Timetable for the Review of Legislation that Restricts Competition,* which established the Legislation Review Program (LRP). The LRP provides impetus to the Government's regulatory reform agenda and demonstrates its commitment to reducing the regulatory burden which, in many cases, needlessly restricts the operation of the Tasmanian economy.

Specifically, the LRP will see the review, by the year 2000, of all State legislation that restricts competition to ensure that the Government only retains those restrictions that are fully justified in the public benefit. Many existing legislative restrictions on competition impose substantial costs on consumers and society, through either cross subsidies, barriers to market entry by new businesses, unnecessary business costs or reduced incentives for firms to innovate and improve their efficiency.

3.1.1 Review Processes

In assessing a jurisdiction's performance for the second tranche of competition payments, the NCC has indicated that it will place considerable emphasis on review processes and the timely implementation of reforms which have regard to review recommendations. In particular, the NCC expects legislation review processes to:

- have terms of reference that address the competition issues, supported by publicly available documentation;
- ensure independence of the review process and objective consideration of the evidence;
- have in place processes for public participation;
- identify all costs and benefits of existing restrictions on competition and those contained in any proposals for reform, clearly demonstrating that there is a net public benefit associated with the retention of restrictions on competition; and
- make the final report and recommendations publicly available.

The review processes for the LRP are outlined in detail in the document, *Legislation Review Program: 1996-2000 – Tasmanian Timetable for the Review of Legislation that Restricts Competition.* A key feature of these processes is the determination of whether an identified restriction is classified as a major or minor restriction on competition. The resulting review process is then tailored to the level of the restriction on competition in the relevant legislation. Where legislation

contains major restrictions on competition (those that have economy-wide implications or significantly affect a sector of the economy), the need to have an independent, open, rigorous and transparent justification process is a paramount consideration when establishing the review. To date, there has been a public consultation process in all reviews of this type.

3.1.2 Progress with the LRP Timetable

Since the development of the LRP timetable in 1996, a significant number of reviews have commenced in line with the review timetable.

The initial timetable, however, has been regularly updated to reflect changes in the legislation review priorities or legislative programs of agencies. There has also been a rescheduling of a large number of reviews due to the failure of other jurisdictions to support national reviews of legislation. As previously reported, the rescheduling of legislation originally nominated for national review has resulted in a large number of reviews being scheduled in the latter half of the timetable. It is considered, however, that a significant number of these reviews will be of a minor nature or the legislation will be repealed or replaced with new legislation, which will obviate the need for a LRP review. In the latter case any new legislation will be assessed through the LRP "gatekeeper" arrangements which are discussed in section 3.1.5 of this Report.

It is expected that all reviews will have been undertaken by the 31 December 2000 deadline. If, subsequently, it is anticipated that a review may extend past this deadline, the NCC's early advice will be sought. In some cases, review groups have recommended that implementation of reforms extend beyond the 31 December 2000 deadline and have justified this in the public benefit. For example, this was the case for the review of the *Financial Management and Audit Act 1990*.

A revised timetable, complete with the status of any reviews that have been undertaken, is outlined in Appendix A. This Appendix also highlights where restrictions contained in an Act have been justified in the public benefit and retained.

Progress with the LRP Review Timetable as at 31 December 1998

Status of Reviews	1996	1997	1998	1999
Acts repealed or expected to be repealed	25	30	21	31*
Acts removed from the LRP timetable	2	0	2	0
Reviews deferred	0	0	9	0
Reviews in progress	0	4	29	3
Reviews not yet commenced	0	0	5	37
National Reviews	0	0	0	9
Reviews completed	0	5	12	1

Total	**27**	**39**	**78**	**81**

* Includes Acts originally proposed for national review

The majority of reviews commenced in 1996, 1997 and 1998 are nearing completion and are either in the process of being implemented, considered by the Government or involve legislative changes which are pending.

During 1998, major reviews were commenced and/or significant review progress was made for the following Acts:

- *Dairy Industry Act 1994;*
- *Egg Industry Act 1988;*
- *Environmental Management and Pollution Control Act 1994;*
- *Hospitals Act 1918;*
- *Inland Fisheries Act 1995;*
- *Land Surveyors Act 1909;*
- *Meat Hygiene Act 1985;* and
- *Plumbers and Gasfitters Act 1951.*

The Department of Treasury and Finance's Regulation Review Unit (RRU) is continuing to work with relevant agencies to ensure that the remaining reviews are undertaken in accordance with the timeframes established by those agencies. In February 1999, the RRU conducted Regulatory Impact Statement (RIS) training for all agencies (delivered by Dr David Cousins of the Competition Policy Group within KPMG Consulting) to assist them in the timely preparation of high quality review papers.

Major reviews of the following Acts (and their associated subordinate legislation) are scheduled to commence in 1999:

- *Land Use Planning and Approvals Act 1993;*
- *Building and Construction Industry Training Fund Act 1990;*
- *Education Act 1994;*
- *Electricity Supply Industry Act 1995;*
- *Liquor and Accommodation Act 1990;*
- *Living Marine Resources Management Act 1995;*
- *Mineral Resources Development Act 1995;*
- *Racing and Gaming Act 1952* in so far as it relates to totalizator betting;
- *Shop Trading Hours Act 1984;*

- *Taxi Industry Act 1995;* and
- *Vocational Education and Training Act 1994.*

3.1.3 Major Reviews Conducted

As mentioned previously, a review of existing legislation is considered to be major where it has economy-wide implications, or where it significantly affects a sector of the economy (including consumers). Details of a number of these major reviews are listed below.

3.1.3.1 Traffic Act 1925

The *Traffic Act 1925* contains two major components. Part III of the Traffic Act regulates vehicles used to carry goods or passengers for reward through the public vehicle licensing system. The balance of the Act provides for the registration of vehicles, the regulation of drivers, vehicle standards and the operation of vehicles.

In October 1995, the Tasmanian Government established an independent committee of review into Tasmania's public vehicle licensing. The Committee, chaired by Mr David Burton, undertook a comprehensive investigation (the "Burton Review") into the need for transport reform, which included widespread consultation, before handing its report to the then Minister for Transport in October 1996.

This investigation incorporated a substantial review of the restrictive provisions of Part III of the Traffic Act. The review found that there was a need to overhaul the archaic controls imposed on the transport industry by Part III of the Traffic Act, which are the most onerous in Australia. The restrictive, anti-competitive and protectionist nature of these controls was found to stifle innovation and increase costs to consumers.

The current Government had indicated, while in opposition prior to the State election in August 1998, that it generally supported the legislative package that had been developed but was concerned about the adequacy of measures to guarantee minimum quality standards within the transport industry. As part of its election platform, the current Government indicated that it would proceed to adopt the reform of the public vehicle licensing system subject to the introduction of an appropriate operator accreditation system, similar to those existing in other States.

Since the election, the Government has developed and signed a Memorandum of Understanding with transport industry associations which commits the parties to finalise the details of the legislation necessary to replace the public vehicle licensing system. A joint industry-Government working group has been established to recommend these legislative changes, consistent with the Government's commitments.

Priority attention is now being given to completing the review of the remainder of the Traffic Act as well as the *Motor Vehicles Taxation Act 1981*, the *Transport Act 1981* and their associated regulations. To this end, new traffic and vehicle legislation will be developed during 1999 based on national road transport laws (other than dangerous goods) from the National Road Transport Commission process.

3.1.3.2 Apple and Pear Industry (Crop Insurance) Act 1982

In early 1997, an independent review group was established to examine the restriction on competition imposed by the *Apple and Pear Industry (Crop Insurance) Act 1982*. The Act requires that all apple and pear growers in the State that market more than 20 tonnes of fruit are obliged to insure their crop with the Fruit Crop Insurance Board (FCIB). Participation is compulsory, with the FCIB being able to recover the amount of the premium if the grower fails to apply for an insurance policy, or fails to pay or tender payment of a premium. This has the effect of putting in place what is, in essence, a statutory monopoly. It also restricts the ability of Tasmanian apple and pear growers to manage their crop-related business risks independently.

Following its assessment of the costs and benefits to the community as a whole from this restriction on competition, the review group concluded that the continuation of the Act and its compulsory powers cannot be justified in the public benefit. The reasons for this conclusion included:

- no other stone fruit industry or general crop industry in Tasmania is subject to compulsory membership of an insurance scheme of the nature imposed by the FCIB on apple and pear growers in the State;
- other States do not legislate to provide for compulsory insurance of their apple and pear industries and it is difficult to argue that Tasmania's apple and pear industry is significantly different or subject to any additional risk to warrant the need for a compulsory insurance scheme;
- the diversity of approaches taken in relation to insurance by growers in other industries with similar risk profiles suggests that mandatory insurance is not necessary for the apple and pear industry to operate efficiently and effectively; and
- the review group considered that insurance choice should be a market decision and growers in the apple and pear industry should be able to manage their risks associated with potential crop damage in a manner they consider optimal.

In December 1998, the Government accepted the recommendations of this review and:

- authorised the preparation of a repeal Bill, under which the Fruit Crop Insurance Scheme should operate for one further season (1998-99), with no claims to be accepted beyond 30 June 1999; and

- agreed that the distribution of any remaining assets of the FCIB is to be decided by the Government following appropriate industry consultation.

3.1.3.3 Motor Accidents (Liabilities and Compensation) Act 1973

As reported previously, this review was undertaken during 1997 and focussed on the impact of the monopoly role of the Motor Accidents Insurance Board (MAIB) on the delivery of compulsory third party personal (CTP) insurance and assessed the net community benefit associated with retaining the monopoly delivery of such insurance. The review group found that:

- the statutory monopoly for the provision of CTP insurance is justified in the public benefit and therefore should be maintained; and
- the power of the Board to enter into arrangements or agreements with other insurers is not justified and should be replaced with a provision which only provides the Board with a power to reinsure.

Reasons for the finding to retain a monopoly provider of CTP insurance included:

- premia were expected to be higher under a competitive model due to new costs to be faced by participants, such as expenditure on marketing and a requirement to fund an industry regulator and a scheme which covers uninsured or unidentified motor vehicles;
- a comparison of the cost of claims processed by the MAIB and by participants in the New South Wales market did not provide support to suggestions that competition in the Tasmanian market would lead to increased efficiency and lower premia;
- while higher premia as a result of competition may be acceptable if there is also product innovation, this is not possible in this situation as the product in question is defined by statute; and
- both New South Wales and Queensland recognise that economies of scale exist in the provision of CTP insurance and the minimum market size would only allow for two participants in the Tasmanian market, which could lead to potentially undesirable oligopolistic pricing outcomes.

Furthermore, under a competitive model, the current market would be split between the MAIB and new service providers. The review group anticipated that this would result in an increase in operational costs for all service providers and ultimately increased premia.

The recommendations of this review were accepted by the Government in December 1998 and a minor legislative change, in relation to the reinsurance powers, will be made during 1999 to put these recommendations into effect.

Some concern has been raised about the outcomes of this review and that the review group was not sufficiently independent. The inclusion of a representative

of the MAIB on this review is clearly contrary to the NCC's view that review groups should not include industry members. However, the terms of reference for the review and the composition of the review body were approved in February 1997 – prior to the NCC notifying jurisdictions of its views on the membership of review groups.

Further, the review was conducted in accordance with the LRP guidelines with a number of opportunities for public consultation. The review involved the release of an issues paper for public comment in May 1997, in addition to the RIS which was released in October 1997. The review group also utilised data provided by GPOC which was concurrently conducting an investigation into the pricing policies of the MAIB.

Stakeholders were given a number of opportunities to participate in the review. In early May 1997, the review group visited Brisbane and Sydney to investigate the operation of competitive CTP markets and undertake discussions with market participants. The review group met with the Insurance Council of Australia in both Brisbane and Sydney, providing them with an overview of the purpose of the review and the issues to be addressed. In mid-May 1997, the review group released an issues paper which was sent to key stakeholders and advertised in Tasmanian newspapers. Similarly, a copy of the RIS was sent to stakeholders. Submissions were still being received some months after the closing date.

The consultation opportunities provided to stakeholders were in excess of those required under the LRP and it appears that some failed to take full advantage of these opportunities. Some submissions provided to the review group:

- focussed on the advantages of a competitive CTP market in New South Wales, a number of which did not translate to Tasmania;
- recommended that the type of CTP scheme offered in Tasmania be changed when this was beyond the scope of the review;
- discussed the MAIB being privatised or becoming the industry regulator when both issues were beyond the scope of the review; and
- failed to justify the benefits of competition in the Tasmanian market beyond stating that "competition is good and premia will fall" or counter the claims in the RIS that competition would deliver higher premia.

On all occasions, the review group attempted to outline the scope of the review and asked stakeholders who preferred the MAIB's monopoly role to cease to provide justification for any claims of the benefits of a competitive market. This latter point was stressed as the RIS contained considerable evidence that a competitive market could not be justified in the public benefit.

It should be noted that the review group looked very carefully at the issue of the impact of competition on costs. However, evidence gathered by the review group on relative claims processing efficiency of the MAIB as well as the likely increase

in regulatory costs under a competitive environment indicated that the introduction of competition would increase costs and therefore premia. The review group concluded that increased premia for a statutory defined product was not justified in the public benefit.

3.1.3.4 Egg Industry Act 1988

In August 1998, an independent review group was established to examine the restrictions on competition imposed by the *Egg Industry Act 1988* and its subordinate legislation. The Egg Industry Act imposes restrictions on competition through:

- a licensing/quota system for egg producers;
- a vesting/exemption system entered into between the Egg Marketing Board (EMB) and licensed egg producers; and
- the prohibition on the sale of eggs from unlicensed producers which have not been assessed as suitable by the EMB.

Following an assessment of the costs and benefits to the community as a whole from these restrictions on competition, the review group concluded that these restrictions cannot be justified in the public benefit. Accordingly, it recommended that:

- the legislative arrangements for the licensing/quota system for egg producers be abolished;
- the legislative arrangements for the vesting/exemption system entered into between the EMB and licensed egg producers be abolished; and
- the legislative arrangements for the prohibition on the sale of eggs from unlicensed producers who have not been assessed as suitable by the EMB be abolished.

As part of its investigations, the review group released an issues paper and a RIS. It is currently preparing a Final Review Report to present its recommendations to the Government.

3.1.3.5 Apiaries Act 1978

A minor review of the *Apiaries Act 1978* was conducted under the LRP during 1997. The Act requires the registration of beekeepers and prevents the introduction of certain bee species into reserves areas in order to protect other species of scientific value.

The review group concluded that certain anti-competitive aspects of the Apiaries Act could not be justified in the public benefit and that many other parts of the Act were superseded by the *Animal Health Act 1995*.

Notwithstanding this, the review group noted that certain conditions relating to bee hive construction and identification, the registration of bee keepers and the preservation of the State's black bee population are important issues. The review group recognised, however, that these issues can be appropriately addressed through a number of mechanisms outside the Apiaries Act.

The review group therefore concluded that the regulatory provisions of the Apiaries Act are no longer required in their present form.

In February 1999, the Government agreed to the review group's recommendations which require that the Act be repealed following amendment to the regulations under the Animal Health Act to fully incorporate necessary disease prevention mechanisms.

3.1.4 National Reviews

Clause 5 of the CPA specifies that where legislation has a national dimension or effect on competition (or both), consideration may be given to conducting a national review. If a national review is determined to be appropriate, the Tasmanian Government is required to consult with other jurisdictions that have an interest in the matter before determining terms of reference or appropriate review bodies.

As noted in previous Progress Reports, Tasmania initially scheduled a large number of Acts for national or joint jurisdictional review. This legislation generally fell within the following three areas:

- uniform, complementary, application, template or mirror legislation (including national codes and standards);
- State legislation where reforms have "spillover" effects to other jurisdictions; and
- legislation where a joint or national approach to the review would be beneficial to all relevant jurisdictions.

However, several other jurisdictions did not support national or joint jurisdictional reviews for a large number of these Acts.

Accordingly, the majority of the Acts originally scheduled for national review have now been listed for State-based review. This has resulted in the number of Acts listed for review in the latter half of the timetable being considerably greater than originally proposed.

Notwithstanding this, national reviews are currently being progressed, or are scheduled, in the following areas:

- Agricultural, veterinary and industrial chemicals;
- Air navigation;

- Architects;
- Drugs, poisons and controlled substances;
- Financial legislation (companies, securities, futures and consumer credit);
- Food standards;
- Legal profession (including an assessment of the requirements for legal professional indemnity insurance);
- Pharmacy;
- Trade measurement;
- Travel agents; and
- Trustee companies.

3.1.5 LRP Gatekeeper Arrangements

Over 270 legislative proposals have been assessed under the "gatekeeper" provisions of the LRP since its inception in June 1996. Several new Acts introduced have resulted in significant reform in areas which have previously been highly regulated.

There is a number of proposals to repeal existing Acts and replace them with new legislation to be assessed under the LRP "gatekeeper" requirements. A example is the *Weights and Measures Act 1934* which the Government intends to repeal and replace with new State-based nationally uniform trade measurement legislation during 1999.

The objective of this legislation is to ensure fair market place practices in relation to the sale of goods by reference to measurement (ie, quantity). Amongst other things, it will introduce a new practice of service companies certifying that measuring instruments comply with legislative requirements (currently this can only be done by Government inspectors) and will require these companies to be licensed. It will also remove the current requirement for individual operators of public weighbridges to be licensed and instead require only owners of weighbridges to be licensed. The RIS was released for public consultation in January 1999 and the new legislation is expected to be considered by the Tasmanian Government later this year. This legislation is also listed for national review.

A further example is in the area of water management. The *Water Management Bill 1999,* which will repeal and replace the *Water Act 1957* and some 10 other Acts covering the allocation of water resources in the State, will be introduced in the Autumn 1999 session of Parliament. The new legislation will reform the manner in which access to, and use of, the State's water resources are regulated to provide for long-term sustainability while implementing a number of the State's

COAG water requirements. The RIS was recently released for public comment. The State's progress in implementing the agreed water industry reforms is provided in section 6.3 of this Report.

Other proposals for existing Acts to be repealed and replaced with new legislation assessed under the LRP "gatekeeper" requirements include the childcare provisions of the *Child Welfare Act 1960* and the *Auctioneers and Real Estate Agents Act 1991*.

The regulation of the health professions is an area which has seen significant reforms in recent years through the introduction of new Acts regulating these professions. As reported in the last Progress Report, a major legislative program has been undertaken by the Department of Health and Human Services which has resulted in the reform of legislation governing the practice of the majority of the health professions. In each case, the new legislation is based on a template established by the *Optometrists Registration Act 1994*. A number of improvements have been made to this template over time, such as removing the restrictions on advertising historically included in legislation regulating the health professions.

The major restrictions in the health professions relate to the protection of title and a requirement for professional indemnity insurance. These restrictions have been demonstrated to be in the public benefit to ensure that public health and safety is not compromised in areas which generally involve high levels of information asymmetry between the professionals and their patients. The consequences of any misuse or misrepresentation are considered to be too great to either remove the restriction or rely on other forms of regulation such as negative licensing.

3.2 COMPETITIVE NEUTRALITY

The primary objective of the competitive neutrality principles is to promote the efficient use of resources in public sector business activities. In particular, the competitive neutrality principles aim to eliminate resource allocation distortions arising out of the public ownership of entities engaged in significant business activities. That is, government businesses should not enjoy any net competitive advantage simply as a result of their public ownership and should compete on fair and equal terms with private sector businesses.

In applying the competitive neutrality principles, the CPA places Government businesses in two categories:

- significant Government Business Enterprises (GBEs), which are classified as Public Trading Enterprises (PTEs) and Public Financial Enterprises (PFEs) under the Australian Bureau of Statistics' (ABS) Government Financial Statistics Classification; and

- significant business activities undertaken by a Government agency (other than an agency classified as a PTE or PFE above) as part of a broader range of functions.

In June 1996, the previous Tasmanian Government published a policy statement and implementation timetable in accordance with the CPA requirements, entitled *Application of the Competitive Neutrality Principles under National Competition Policy*. This statement outlined the manner in which the competitive neutrality principles were to be applied to State Government business activities in Tasmania and set out an implementation timetable. The principal components of the policy statement and progress with its implementation are outlined below.

The application of the competitive neutrality principles to local government business activities in Tasmania is discussed in section 5.1.

3.2.1 Government Business Enterprises

The CPA competitive neutrality principles are entirely consistent with the reform directions which were already in place in Tasmania in relation to GBEs. These directions are embodied in the *Government Business Enterprises Act 1995* (GBE Act). This Act places GBEs on a more competitive footing through the processes of both commercialisation and corporatisation. The Act fulfils Tasmania's competitive neutrality commitments in relation to significant GBEs by subjecting them to:

- tax equivalent regimes;
- debt guarantee fees directed at offsetting the advantage of Government guarantees on borrowings;
- dividend requirements; and
- all regulations normally applying to the private sector.

Since 1 July 1997, all Tasmanian GBEs have been subject to the full tax equivalent regime, dividend regime and guarantee fees through the *Government Business Enterprises (Amendment of Act's Schedules) Order 1997*. The only exception to this arrangement is the Port Arthur Historic Site Management Authority (PAHSMA), reasons for which were fully detailed in the previous Progress Report.

In line with the Government's policy of community consultation, a discussion paper on the future of Port Arthur has been released for public comment. The outcome of this consultation process, which is still underway, will then be taken into account in the future plans for the PAHSMA.

3.2.1.1 Community Service Obligations

The implementation of the Government's Community Service Obligation (CSO) policy is integral to the enhanced performance and accountability of GBEs under the GBE Act. GBEs are expected to improve performance by focusing on commercial goals. Non-commercial activities can be recognised by the Government as CSOs, providing strict criteria are met. These are:

- a specific directive from the Government must exist;
- there is a net cost to the GBE from providing the function, service or concession; and
- the function, service or concession must be one which would not be performed under normal commercial circumstances.

CSOs are purchased by the Government from the GBE so that the provision of CSOs by the GBE will no longer compromise the achievement of the commercial objectives of the GBE. Accordingly, non-commercial activities and functions, not all of which may qualify as CSOs, are clearly identified, justified, and separately accounted for.

The CSO policy ensures that the Government's social and other objectives are achieved without impacting on the commercial performance of a GBE. It also improves the transparency, equity and efficiency of the delivery of non-commercial activities.

Since July 1997, CSO contracts detailing funding for the provision of non-commercial activities to an agreed level have been signed with the Hydro-Electric Corporation (HEC), Metro Tasmania Pty Ltd (Metro Tasmania), the Public Trustee and Aurora Energy Pty Ltd.

3.2.2 Recent Reforms to GBEs

The Tasmanian Government has reviewed and reformed a number of government businesses since the signing of the CPA. These reforms are detailed below.

3.2.2.1 Bulk water suppliers

As outlined in previous Progress Reports, in late 1996 the Hobart Regional Water Board was transferred to local government and re-established as a joint authority under the *Local Government Act 1993*. The joint authority services the southern region and has been subject to a full tax equivalent and guarantee fee regime since 1 January 1997.

In July 1997, the State Government's North Esk Regional and West Tamar Water Supply Schemes were transferred to local government and, together with Launceston City Council's water supply scheme, re-established under the Local

Government Act as a joint authority entitled the Esk Water Authority (EWA). This joint authority services the greater Launceston area and is subject to a full tax equivalent and guarantee fee regime.

In 1998, the *North West Water Amendment Act 1998* was passed by Parliament. This Act enables the transfer of the North West Regional Water Authority (NWRWA) to a local government joint authority. However, this legislation has not yet been proclaimed. Consequently, the transfer has not yet taken place and is expected to occur during 1999.

Once the transfer of the bulk water schemes to local government is successfully complete, future arrangements for the Rivers and Water Supply Commission (RWSC) will be considered. The RWSC is responsible for the management of the Prosser River Bulk Water Supply Scheme, various irrigation and drainage schemes throughout the State and ensuring the management of Tasmania's water resources is conducted on a sustainable and ecologically sound basis, whilst recognising the needs of industry, agriculture and the Tasmanian community.

3.2.2.2 Port Reform

Competitive transport costs utilising Tasmania's ports is vital for Tasmania's overall prosperity. Corporatisation of the port authorities, with a view to improving their commercial performance, was completed in July 1997 with the commencement of the *Port Companies Act 1997,* which established four wholly State-owned companies and two subsidiary companies under the Corporations Law. The new companies commenced operations on 30 July 1997.

In addition, from 30 July 1997 the GBE Act tax equivalent and guarantee fee regimes replaced the partial competitive neutrality regimes which previously applied to the port authorities. The port companies are also expected to make dividend payments to the Government as shareholder, in accordance with the requirements of the Corporations Law.

The Marine and Safety Authority of Tasmania (MAST) was also established on 30 July 1997. In addition to performing the regulatory and non-commercial functions previously undertaken by the port authorities, MAST undertakes the functions of the former Navigation and Survey Authority of Tasmania and is responsible for the safe operation of vessels within Tasmanian waters.

3.2.2.3 Metro Tasmania

Metro Tasmania provides public urban road transport services in the metropolitan areas of Hobart, Launceston and Burnie. As indicated in the previous Progress Report, on 14 January 1998 the *Metro Tasmania Act 1997* and the *Metro Tasmania (Transitional and Consequential Provisions) Act 1997* received Royal Assent, thereby effecting the transition of the former GBE, the Metropolitan Transport Trust (MTT), to a State-owned company. As a result,

Metro Tasmania is subject to Corporations Law obligations as well as the full tax equivalent and dividend regimes and guarantee fee obligations.

3.2.2.4 Housing Division of the Department of Health and Human Services (DHHS)

As previously reported, in November 1996 the former Government agreed to commence the commercialisation of the Housing Division of DHHS, with a view to its eventual corporatisation at some future time. The commercialisation process commenced with the establishment of a separate advisory board and the identification and separation of housing assets and liabilities from the rest of the Department.

However, since the appointment of the advisory board, the commercialisation focus has been more on benchmarking services and seeking other opportunities for efficiency gains through process improvements. Where appropriate, competitive tendering and contracting are also being undertaken.

3.2.3 Other Significant Government Business Activities

The Government's policy statement on the implementation of competitive neutrality principles required all significant business activities undertaken by budget sector agencies to be identified by 30 June 1997. At the same time, each agency was required to submit to the Department of Treasury and Finance a timetable for the application of the competitive neutrality principles to these activities. Each agency is required to report to Treasury at six-monthly intervals on progress in implementing the competitive neutrality principles. A table detailing the current status of implementation of competitive neutrality principles across agencies is included in Appendix B.

In supporting Government agencies in the implementation of the competitive neutrality reforms, a number of guidelines have been published including:

- *The Application of Competitive Neutrality Principles to the State Government Sector* (July 1996);
- *Guidelines for Considering the Public Benefit under the National Competition Policy* (March 1997); and
- *Guidelines for Implementing Full Cost Attribution Principles in Government Agencie*s (September 1997).

A draft paper entitled *Commercialisation and Corporatisation Principles for Government Agencies* has been prepared with the intention of forwarding it to agencies for comment in the near future.

In addition, a seminar was conducted by the Department of Treasury and Finance in December 1997 for State Government agencies to facilitate a better understanding of the concepts of competitive neutrality and full cost attribution.

Since the seminar, individual meetings between agencies and Treasury officers have provided an additional forum for the clarification of the competitive neutrality principles, where required, to ensure that the implementation of reforms progresses on a timely basis and is consistent with NCP requirements.

3.2.4 Competitive Neutrality Complaints Mechanism

Clause 3(8) of the CPA requires the State Government to implement a complaints mechanism in relation to competitive neutrality matters.

As reported previously, in its policy statement on competitive neutrality, the Government indicated that it will be utilising the Government Prices Oversight Commission (GPOC) to receive and investigate complaints against State and local government business activities in relation to the application of the competitive neutrality principles. The role of GPOC has been outlined in previous Progress Reports and is also addressed in section 3.4 of this Report.

The *Government Prices Oversight Amendment Act 1997* was enacted in September 1997. The Act extends the role of GPOC to include the investigation of complaints against the failure of a Government body to comply with the competitive neutrality principles and associated implementation guidelines.

In 1998, the *Government Prices Oversight Regulations 1998* were made which provide for the making, investigation and determination of complaints to GPOC in respect of a contravention of any competitive neutrality principles.

Under the *Government Prices Oversight Act 1995* (GPOC Act) and regulations, complaints may be lodged against a Government body when an individual believes that the Government body has contravened any of the principles and considers that he or she is adversely affected by such a contravention. The individual must have first attempted to resolve the matter with the Government body informally, prior to lodging a formal complaint. The scope of the complaints mechanism includes Government agencies, local government businesses, statutory authorities, Government Business Enterprises and State-owned companies.

Prior to the formal commencement of the GPOC complaints mechanism, an informal mechanism was put in place to ensure that any complaints received appropriate attention. Three informal complaints against the application of the competitive neutrality principles at both State and local government level were received by the Department of Treasury and Finance in late 1997. These were referred to GPOC for its consideration and action.

GPOC wrote to the complainants offering advice and assistance in relation to the matters raised. However, the complainants chose not to proceed with their complaints at that stage. No further matters have been raised informally with either GPOC or Treasury since these initial matters were raised and as at March 1999, GPOC had received no formal complaints in relation to the application of the competitive neutrality principles.

In early 1999, GPOC issued guidelines, entitled *National Competition Policy Competitive Neutrality Principles Complaints Mechanism*, which outline the processes and procedures required to be followed under the regulations as well as each party's obligations in the event of a complaint being received. These guidelines and an information brochure have been distributed to all major stakeholders to raise the awareness of the complaints mechanism policy and procedures. A media statement was also issued to raise the wider community's awareness of the mechanism. An article was also published in April 1999 in the *Tasmanian Business Reporter,* the Tasmanian Chamber of Commerce and Industry's publication

3.3 STRUCTURAL REFORM OF PUBLIC MONOPOLIES

In October 1997, the previous Tasmanian Government initiated a structural review of the HEC's distribution and retailing businesses, given its intention, at that time, to privatise these businesses. In March 1999, the Government commenced a structural review of the HEC's generation activities and the system control function in light of the competition that will arise in Tasmania's electricity generation sector when Tasmania enters the National Electricity Market (NEM) with the commissioning of Basslink. These matters are discussed in detail in section 6.1.

3.4 MONOPOLY PRICES OVERSIGHT

The CPA requires the State to consider establishing an independent source of prices oversight advice in relation to monopoly, or near monopoly, suppliers of goods and services. Such a mechanism is necessary to ensure that monopoly providers charge prices that are "fair and reasonable" and which do not result in the exercise of monopoly market power to the detriment of consumers and businesses.

To meet this requirement, the Tasmanian Government introduced the GPOC Act which came into effect on 1 January 1996. The GPOC Act established GPOC as an independent body charged with the responsibility of conducting investigations into, and reporting on, the pricing policies of both GBEs and Government agencies that are monopoly, or near monopoly, suppliers of goods and services in Tasmania. The *Government Prices Oversight Amendment Act 1997* further extended the coverage of the GPOC Act to enable GPOC to conduct investigations into local government monopoly services.

The GPOC Act provides for the prices and pricing policies of the most significant public sector monopolies in Tasmania to be investigated at least once in every three years. Five GBEs were originally scheduled in the Act (the HEC, MTT, MAIB, Hobart Regional Water Authority (HRWA) and NWRWA). In addition, the Act provides a mechanism under which other monopoly services can be declared and therefore subject to a GPOC inquiry.

GPOC has completed investigations into the pricing policies of the HEC, the MTT, the MAIB, and, most recently, the three bulk water supply authorities (HRWA, NWRWA and the EWA). Details of the bulk water prices investigation and the revised prices oversight arrangements for the electricity supply industry are provided below.

3.4.1 Bulk Water Prices Investigation

The State's obligations under the *Strategic Framework for the Efficient and Sustainable Reform of the Australian Water Industry* (Strategic Framework) require metropolitan bulk water suppliers to charge on a volumetric basis to recover all costs. Metropolitan bulk water suppliers are to also earn a positive real rate of return on the written-down replacement cost of their assets.

Against this background, in January 1998 GPOC was requested to undertake an investigation into the pricing policies associated with the provision of bulk water by the HRWA, the NWRWA and the EWA. In doing so, GPOC was to have regard to the COAG water reform principles, as embodied within the Strategic Framework.

As part of its investigation requirements, GPOC released a Pricing Principles Paper in late September 1998 followed by a Draft Report in November 1998 and its Final Report in late December 1998.

In its Final Report, GPOC recommended maximum prices (in the form of maximum revenues and pricing principles) to be charged by each of the State's three bulk water authorities for a three year period commencing from 1 July 1999. In particular, GPOC has specified maximum revenues to be charged by each of the State's three bulk water authorities over the three year regulatory period. Additional pricing principles in the Final Report included:

- the use of optimised deprival value methodology for asset valuation in the Tasmanian bulk water supply industry;
- implementation of a number of programs in support of the renewals annuity approach by January 2001;
- all activities which are performed as community service obligations be separately costed and these activities and costs be made transparent in the financial reporting of each bulk water authority;

- all cross subsidies which occur in the commercial operations of each bulk water authority be made transparent in its financial reports; and
- where a bulk water authority is not already applying a two-part tariff structure, that it has a two-part tariff structure in place as soon as practicable, but not later than for the application for the 2001-02 financial year. This pricing structure is based upon a volumetric component which reflects long-run marginal costs with any revenue shortfall being recovered in a fixed component.

The Government has endorsed GPOC's pricing principles for bulk water.

3.4.2 Price Regulation of the Electricity Supply Industry

As noted above, GPOC completed an investigation into the pricing policies of the HEC in 1996. Following the completion of this investigation, the Government set maximum price paths for retail tariffs in the *Government Prices Oversight (Electricity Prices) Order 1996* for the period January 1997 to December 1999.

Since the Order was passed, substantial reform has taken place in the Tasmanian electricity supply industry (see Section 6.1). A key feature of the reform program is the enhancement of the regulatory framework applying to the industry. To ensure that the regulatory framework is transparent, independent of Government and coordinated within a single regulatory body, responsibility for the regulation of electricity prices has been transferred to the Electricity Regulator under amendments to the *Electricity Supply Industry Act 1995* (ESI Act). As a consequence, the GPOC Act has been amended to remove all references to the HEC and electricity.

Under section 5 of the ESI Act, which came into effect on 1 July 1998, the Government Prices Oversight Commissioner was appointed as the Electricity Regulator. The ESI Act provides the Regulator with the power to 'declare' services where an electricity entity has substantial market power in the provision of such services and to impose maximum prices for such services for periods of three to five years. This contrasts with the previous arrangements where GPOC made recommendations to Government on maximum prices.

The *Electricity Supply Industry (Price Control) Regulations 1998* (Price Control Regulations) establish the procedural framework to be followed by the Regulator in conducting pricing investigations and resembles, to a large extent, the framework contained within the GPOC Act.

In April 1998, the Government initiated a second GPOC investigation into the pricing policies of the HEC. This investigation was transferred to the Electricity Regulator under the Price Control Regulations on 1 July 1998. However, the investigation was suspended following the calling of the State election in August 1998. New terms of reference for the investigation are due to be issued in April 1999. The investigation is due to be completed by 30 September 1999 and will

determine bundled tariffs for retail customers together with price controls for transmission and distribution network services and system control functions for the period 1 January 2000 to 31 December 2002.

3.5 THIRD PARTY ACCESS

As a central element of the reform process in the electricity supply industry, the Government introduced the *Tasmanian Electricity Code* (TEC) from 1 July 1998. This Code provides for third party access to the Tasmanian transmission and distribution network in a similar way in which the *National Electricity Code* (NEC) provides for the access regime in the NEM. In December 1998 Transend Networks Pty Ltd was issued with a transmission licence and Aurora Energy Pty Ltd was issued with a distribution licence under the ESI Act. It is a condition of both licences that the network businesses comply with the TEC and its third party access provisions.

4. REFORMS UNDER THE CONDUCT CODE AGREEMENT

4.1 EXTENSION OF PART IV OF THE TRADE PRACTICES ACT 1974

The CCA sets out the agreed basis for extending the coverage of Part IV of the Commonwealth's *Trade Practices Act 1974* (TPA) to all businesses, regardless of their form of ownership.

This extended coverage arises by virtue of the Commonwealth's *Competition Policy Reform Act 1995* and Tasmania's *Competition Policy Reform (Tasmania) Act 1996*. This latter Act, which was enacted in July 1996, extends the coverage of Part IV of the TPA to all business activities in Tasmania, whether they are incorporated or unincorporated, or publicly or privately owned.

4.2 REPORTING OBLIGATIONS UNDER THE CCA

Under the CCA, the Commonwealth, States and Territories are required to report to the Australian Competition and Consumer Commission (ACCC) on legislation reliant on section 51(1) of the TPA. These obligations are:

- to notify the ACCC of legislation that relies on section 51(1) within 30 days of the legislation being enacted or made (clause 2(1)); and
- to have notified the ACCC by 20 July 1998 of legislation relying on the version of section 51(1) in force at 11 April 1995 that will continue pursuant to the current section 51(1) (clause 2(3)).

In accordance with clause 2(1) of the CCA, the Tasmanian Government has notified the Commonwealth Government and the ACCC regarding new legislation

(within 30 days of being enacted) which relied on section 51(1) of the TPA. These Acts and their relevant sections are outlined below:

Act	Relevant Section
Electricity Supply Industry Act 1995	section 44
Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995	section 7
Electricity Supply Industry Amendment Act 1998	section 49F(2)

Notice of the section 51(1) references contained in the Electricity Supply Industry Act and the Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act was provided to the Commonwealth Treasurer in late 1996, in accordance with the CCA. This was because the ACCC had not been established at the time the legislative reform package was passed. The Commonwealth has accepted these exemptions by not exercising its option of over-riding them by regulations under the TPA in accordance with the agreed timeframe and procedures set out in the CCA. The Electricity Supply Industry Amendment Act was proclaimed on 19 June 1998. Notification in respect of this Act was provided to the Commonwealth Treasurer and the ACCC on 16 July 1998.

The Electricity Supply Industry Act is scheduled for review in 1999 under Tasmania's LRP and the Electricity Supply Industry Amendment Act will be reviewed in conjunction with the review of this Act. The Electricity Supply Industry Restructuring (Savings and Transitional Provisions) is currently being reviewed as part of the implementation of the COAG reform agenda for the Australian water industry.

In June 1998, in accordance with clause 2(3) of the CCA, the Tasmanian Government advised the ACCC that Tasmania had no legislation which relied on exemptions which were in operation prior to 11 April 1995 and which fell within the terms of section 51(1)(b) of the TPA as that provision stood prior to amendment by the Commonwealth's Competition Policy Reform Act.

5. LOCAL GOVERNMENT AND NCP REFORMS

In June 1996, the Tasmanian Government published a policy statement, entitled *Application of the National Competition Policy to Local Government* (the Application Statement), on the application of the CPA principles to particular local government activities and functions. This statement was developed in close consultation with local government and there is ongoing consultation with local government regarding its implementation.

Progress in relation to the application of competitive neutrality, legislation review and monopoly prices oversight since the previous NCP Progress Report is outlined below.

5.1 COMPETITIVE NEUTRALITY

As outlined in the previous NCP Progress Report, application of the competitive neutrality principles to local government was temporarily suspended in May 1997 pending the outcome of the former Government's proposed council amalgamations. It was recognised that there was little benefit to local government in proceeding with the timetable until the proposed new structure for Tasmanian councils was finalised, given that many of the NCP issues would have been different following the proposed amalgamation exercise.

As a result of this action, the NCC deferred consideration of the 1998-99 component of Tasmania's first tranche assessment, pending greater evidence that Tasmania was on target with the application of the competitive neutrality principles to local government.

In May 1998, Tasmania reported to the NCC that it would negotiate with local government to seek the agreement of the new councils to reinvigorate the application of NCP to local government. Based on this commitment, the NCC recommended to the Commonwealth Treasurer that Tasmania receive the 1998-99 component of the first tranche assessment (worth approximately $20 million). This was subsequently confirmed by the Treasurer. However, the NCC noted that progress in line with the timetable Tasmania has set itself will be important for the second tranche assessment.

The Department of Treasury and Finance recommenced negotiations with local government in mid-1998 in relation to an updated agreement on the application of NCP to local government, incorporating a revised implementation timetable pending the finalisation of the proposed council amalgamations. A revised timetable was approved by the Local Government Association of Tasmania General Management Committee in July 1998. A copy of this agreement, which replaces the timetable in the Application Statement, is included in Appendix C.

Notwithstanding the current Government's decision not to proceed with the council amalgamations process, the revised timetable is still appropriate, especially in relation to the assessment of the corporatisation of PTEs.

In accordance with the Application Statement, councils are required to:

- undertake public benefit assessments of the corporatisation of those business activities which are classified as PTEs under the ABS Government Financial Statistics Classification as outlined in the Application Statement (generally water and sewerage); and

- corporatise those PTEs where a public benefit assessment indicates that the benefits outweigh the costs of doing so.

Councils have been advised that they may consider business activities other than PTEs for corporatisation, such as waste collection and disposal and road maintenance, if they choose. Also, where a council has already identified that it wishes to corporatise a business activity, whether or not it is classified as a PTE, the corporatisation process may start immediately without the need for a public benefit assessment.

For other significant business activities, councils are required to implement full cost attribution by 1 January 1999. As previously reported, 18 of the 29 councils decided in 1997 to apply full cost attribution to all their business activities, rather than just those regarded as "significant". Progress with the application of full cost attribution is summarised in the following table.

Progress with the application of full cost attribution (FCA) to local government as at 31 December 1998

	Significant Business Activities (SBA)			**All Business Activities (BA)**			
Council	FCA applied	FCA partially applied (to be backdated)	FCA not applied	FCA applied	FCA partially applied (to be backdated)	FCA not applied	Total
Large	1	0	0	4	1	0	6
Medium	4	3	0	1	1	2	11
Small	4	3	3*	2	0	0	12
Total	**9**	**6**	**3***	**7**	**2**	**2**	**29**

* Includes two councils where FCA has been partially applied.

Generally, the larger councils have applied the full cost attribution principles to their significant business activities, as required by the Application Statement. In a number of cases, it is proposed to finalise full cost attribution before 30 June 1999 and backdate the application of these principles to 1 January 1999. Where councils have not applied full cost attribution, Treasury will work with these councils to ensure compliance once the outcome of the public benefit tests for corporatisation have been finalised.

As set out in the revised implementation timetable, public benefit assessments of the corporatisation of PTEs are to be finalised by 30 March 1999. If the public benefit assessment indicates that corporatisation is not in the public interest, councils will be required to submit these assessments to a peer group for review. This process will be similar to that undertaken in 1997 in relation to the list of councils' significant business activities. Where a public benefit assessment is to

be undertaken and corporatisation is ultimately found to be in the public benefit implementation of the corporatisation process is to commence by 1 July 1999, with these entities to be fully corporatised by 1 July 2000.

Where a council has previously decided to corporatise a PTE without undertaking a public benefit assessment, councils were required to commence the corporatisation process in late 1998 with full corporatisation to be effected by 1 July 1999. It is understood that no councils intend to adopt this approach.

To assist councils in undertaking those public benefit tests, the Department of Treasury and Finance prepared two documents, entitled *The Public Benefit Test for the Corporatisation of Local Government Public Trading Enterprises* and *Corporatisation Principles for Local Government Business Activities.* In December 1998, a one day workshop was conducted by KPMG Consulting to assist councils in undertaking public benefit assessments. All local government councils were represented at this seminar. It is understood that KPMG Consulting is continuing to assist a large number of councils in undertaking their public benefit assessments.

As reported in the *National Competition Policy Progress Report April 1995 to 31 July 1997*, a general review of the Local Government Act has been undertaken. This review considered the legislative framework within which local government will apply the competitive neutrality principles to its business operations. At that time, it was envisaged that the legislative changes would be in place during 1997 to allow the application of the corporatisation model to all types of local government activities. However, the introduction of amending legislation was deferred, pending the outcome of the previous Government's proposed amalgamations.

Legislation has now been drafted and was recently circulated to all councils for their comment. It is expected that the *Local Government Amendment Bill 1999* will be introduced during the forthcoming session of Parliament to ensure that it is in place prior to the 1 July 1999 deadline that applies to councils that have already decided to corporatise their PTEs.

As noted in section 3.2.4 of this Report, the Government Prices Oversight Regulations were made in 1998. These regulations detail the procedures for handling competitive neutrality complaints and are applicable to local government. The majority of Tasmanian councils have mechanisms in place to address any complaints in relation to this issue.

5.2 PRICES OVERSIGHT

As outlined in previous Progress Reports, the Government Prices Oversight Amendment Act, which commenced on 3 September 1997, extended the coverage of the Government Prices Oversight Act to include local government monopoly

services. The Application Statement states that local government monopoly providers were to be brought under the prices oversight jurisdiction of GPOC.

GPOC was requested to undertake an investigation into the pricing policies associated with the provision of bulk water by the HRWA, the NWRWA and the EWA, as discussed above.

5.3 TREATMENT OF LOCAL GOVERNMENT BY-LAWS UNDER THE LRP

As outlined in the previous Progress Report, all by-laws made under the former *Local Government Act 1962* remained in force under the current Local Government Act (to the extent that they are consistent with the new Act) for a period of 5 years, expiring on 17 January 1999. As there is no provision to amend these existing by-laws, changes made to by-laws under the former Act can only be made by making new by-laws under the current Local Government Act.

A proposal to obtain local government's agreement to not adopt any by-laws made under the former Local Government Act as part of the proposed restructuring of local government was outlined in the previous Progress Report. However, with the Government's decision not to proceed with amalgamations, a significant number of councils were not prepared for the statutory expiry of all these by-laws on 17 January 1999. In December 1998, the Government therefore introduced the *Local Government (Savings and Transitional) Amendment Act 1998* to extend the expiry date until 31 March 1999. This will result in the automatic expiry of approximately 600 by-laws made under the 1962 Act at the end of March 1999.

All of the 93 new by-laws gazetted under the current Local Government Act since the commencement of that Act in January 1994 have been subjected to the legislation review processes. Councils are carefully now considering the subject matter which they wish to deal with through by-laws, such that new by-laws are generally made to deal solely with matters of broad governance rather than relating to commercial operations.

6. SECTOR SPECIFIC REFORMS

6.1 ELECTRICITY INDUSTRY REFORMS

The Tasmanian electricity supply industry (ESI) has undergone significant reform since August 1997. In implementing these reforms, the Tasmanian Government has worked to ensure that it has complied with all the relevant NCP requirements. It should be noted that the NCC has confirmed that before Tasmania is interconnected with the national grid, it is not regarded as a "relevant jurisdiction" for the purposes of the COAG and NCP Agreements relating to the development of the NEM.

6.1.1 Basslink

Basslink is a key plank of the Tasmanian Government's energy strategy and is a critical factor in the State's future economic development. The Basslink Development Board has been appointed to facilitate Basslink as a commercial opportunity in the NEM. The Board is acting as the notional proponent to progress key issues prior to the selection of a preferred proponent in February 2000. Two key issues are the NEC rules for non-regulated interconnectors and the environmental and developmental approvals process. The Government's objective is to have Basslink commissioned in around October 2002.

In facilitating Basslink, the goals of the Government include:

- improving the security of electricity supply and reducing the exposure to drought conditions in Tasmania;
- providing Tasmania with access to electricity at prices determined competitively in the NEM;
- providing a means by which electricity generated in Tasmania can be sold into the NEM and providing a new source of peak generating capacity in the NEM; and
- ensuring that through a competitive selection process the cost of Basslink to users in minimised.

While Basslink is a commercial build, own and operate project, the Government has set a minimum link capacity of 200 MW. Other issues, such as the route and whether the link is to be developed as a regulated, non-regulated or hybrid interconnector under the NEC, are to be determined by proponents.

In considering Tasmania's entry to the national market, the Government has made it clear to Basslink proponents and other jurisdictions that it will only do so on an appropriate basis. Over the coming months, the Government will be working with other jurisdictions and the NEM regulatory bodies to progress a number of market structural and regulatory issues, including derogations and/or changes to the NEC associated with the State's entry to the NEM.

Nevertheless, as a demonstration of the Government's commitment to join the NEM, the *Electricity - National Scheme (Tasmania) Act 1999* has been enacted. This Act is the legislative vehicle for the adoption of National Electricity Law in Tasmania (a precondition for Tasmania's entry to the NEM). The Government will proclaim this legislation once the arrangements required for Tasmania's entry to the NEM are finalised.

Further information regarding the project is available from the Basslink internet site at http://www.basslink.tas.gov.au.

6.1.2 Structural Reform in Tasmania's Electricity Supply Industry

Until July 1998, Tasmanian's ESI consisted of a single vertically integrated public utility - the HEC. On 1 July 1998, the HEC was structurally separated into three businesses:

- the HEC, which remains a GBE with responsibility for electricity generation and system control (ring fenced) on mainland Tasmania as well as generation, distribution and retailing on the Bass Strait islands;
- Transend Networks Pty Ltd (Transend), a State-owned company operating under Corporations Law with responsibility for electricity transmission through the extra high voltage transmission network; and
- Aurora Energy Pty Ltd (Aurora), a State-owned company operating under Corporations Law with responsibility for electricity distribution through the lower voltage networks and for retailing. Aurora currently has an exclusive retail licence for all of Tasmania, excluding the Bass Strait Islands.

The structural separation of the HEC meets two of the major requirements of the COAG Agreements of electricity reform, namely the full separation of generation and transmission and the ring-fencing and separate accounting for distribution and retailing for integrated distribution/retail businesses.

6.1.2.1 Structural Review of the Distribution/Retail Business

Prior to the establishment of Aurora, a structural review of the HEC's distribution/retail business was undertaken pursuant to clause 4 of the CPA, as the previous Government intended to privatise this part of the HEC.

The review was undertaken by a Committee consisting of Mr Andrew Reeves (Government Prices Oversight Commissioner) and Mr Paul Breslin (Director, ACIL Economics). The Committee's report, submitted in December 1997, contained recommendations relating to:

- the form of separation of distribution and retail businesses (including recommendations regarding ring-fencing);
- the nature of pricing and third-party access regulation required for the distribution business;
- the powers of the pricing regulator;
- the consolidation of regulatory functions relating to the Tasmanian ESI;
- the regulation of retail prices; and
- the payment of CSOs.

The majority of the recommendations of the review were accepted, particularly in relation to establishing appropriate regulatory arrangements for the distribution/retail business. These are now reflected in the ESI Act, the regulations under that Act and in the TEC.

In relation to structural issues, the review concluded that prior to the introduction of a fully competitive electricity market in Tasmania, the distribution business could be conducted as a ring-fenced business within an integrated distribution/retail business. The review further recommended that following the introduction of competition, distribution and retail should be carried out by separate legal entities.

The central issue with respect to the latter recommendation relates to the controls that are required to ensure that the existence of an integrated distribution/retail business does not inhibit the establishment of new retailers in Tasmania.

After careful consideration, the former Government decided not to accept the latter recommendation and, as noted above, Aurora was established as a single distribution/retail business.

The then Government formed the view that, on balance, it was not necessary to require the distribution and retail businesses to be legally separated once competition is introduced. Specifically:

- the separation of distribution and retail businesses was not consistent with the structure in other States. The major foundation members of the NEM had not required such separation, yet there is clear evidence of a high degree of retail competition emerging in the NEM (within the context of the contestability timetables);
- the current local and national requirements relating to the ring-fencing of distribution and retail activities within combined electricity business, together with the open access regime for transmission and distribution networks, were considered sufficient to ensure that other retailers are able to effectively compete with integrated distribution/retail businesses;
- separation would have resulted in the initial individual distribution and retail businesses in Tasmania being comparatively small relative to the firms against which they would have to compete, leaving them at a competitive disadvantage in the NEM;
- even if the distribution and retail businesses were disaggregated, there would be nothing to stop the distribution business, in the longer term, from seeking a retail licence in another NEM jurisdiction and then operating that retail business in Tasmania in conjunction with its distribution business; and
- the recommended separation would have imposed additional costs, which, in the context of the privatisation policy, was expected to lead to a lower sale price for the distribution and retail businesses.

It should be noted that the independent Electricity Regulator has responsibility for the ring-fencing arrangements under the TEC. One of the Regulator's key objectives under the ESI Act is to promote efficiency and competition in the ESI. The Regulator therefore has strong obligations to ensure that the ring-fencing arrangements are effective in facilitating competition.

Nevertheless, the then Government recognised that it is possible that a nationally agreed change could be made to the NEC requiring the legal separation of the distribution and retail businesses, similar to the requirements in the natural gas industry under COAG's gas reforms. If this were the case, the Government would need to ensure that Aurora is restructured to comply with such a requirement when Tasmania joins the NEM.

The NCC has previously expressed the view that the Government needs to establish a net public benefit case in instances where it does not follow the recommendations of a structural review. However, there is no such requirement in clause 4 of the CPA. Rather, the structural review principles outlined in clause 4 require the Government to consider, among other things, the merits of implementing particular reforms to public monopolies when they are either privatised or opened up to competition. In this case, the Government's decision not to require legal separation when competition is introduced was made after assessing the full range of advantages and disadvantages of separation. The Government is firmly of the view that this decision represents sound public policy and that it has completely fulfilled its obligations under clause 4 of the CPA.

6.1.2.2 Structural Review of the HEC's generation activities and the system control function

The prospective development of Basslink and the State's entry to the NEM will facilitate the introduction of competition to what is currently the HEC's monopoly generation business. This provides a trigger under clause 4 of the CPA for a review of the HEC's generation activities and the system control function.

The review commenced in March 1999 and the Review Team is led by Mr Peter Garlick, a nationally recognised expert in the electricity supply industry and also includes Mr Ross Kelly, a well respected Tasmanian consultant with experience in the electricity sector. The Review Team released an Issues Paper on 29 March 1999 and is required to report to the Government by 30 April 1999.

6.2 GAS INDUSTRY REFORMS

Under the NCP gas reform arrangements, relevant jurisdictions are required to establish a national framework for fair and free trade in natural gas. In particular, the gas reforms require the establishment of third party access arrangements that apply to specified natural gas pipelines.

The National Third Party Access Code for Natural Gas Pipelines was finalised in late 1997. Although Tasmania does not have an established natural gas industry, it signed the Natural Gas Pipelines Access Agreement along with all other jurisdictions at the COAG meeting of 7 November 1997.

In the absence of any natural gas pipeline infrastructure in this State to which third party access can be provided, Tasmania has been treated as a special case within the Natural Gas Pipelines Access Agreement. In particular, Tasmania has been exempted from having to comply with the obligations of the Agreement until approval for the first natural gas pipeline in the State is granted or before a competitive tendering process for a natural gas pipeline in the State commences.

The NCC has acknowledged Tasmania's unique position under the Agreement and has indicated that it does not intend to assess Tasmania's progress in implementing gas reform arrangements for the purpose of competition payments until the advent of a natural gas industry in the State.

To facilitate the development of a natural gas industry in the State, the previous Tasmanian Government selected Duke Energy as it preferred gas developer in May 1998. Under this agreement, Duke Energy was to undertake a feasibility study of the potential to develop a natural gas industry in the State and to report back to the State Government in early 1999. In association with this initiative, the previous Tasmanian Government intended to introduce its third party access legislation ahead of its commitments under the Natural Gas Pipelines Access Agreement.

While the Tasmanian Government had not announced its position on this issue by 31 December 1998, a separate initiative relating to the introduction of natural gas in Tasmania has altered the situation. In late 1998, the Government was presented with a firm proposal to construct a magnesium smelter in northern Tasmania. Due to the large energy and gas requirements of the proposed magnesium plant, the development of a natural gas industry in Tasmania became linked to the magnesium smelter proposal.

These initiatives could result in natural gas being brought to Tasmania by the year 2002. If that occurred, Tasmania would need to comply with the obligations of the Natural Gas Pipelines Agreement before that date.

In early 1999, the Government approved the introduction of Tasmania's gas pipelines access legislation and the repeal of any conflicting legislation. The Government's intention is to introduce this legislation during the 1999 Autumn Session of Parliament.

6.3 WATER INDUSTRY REFORMS

The Tasmanian Government is fully committed to implementing efficient and sustainable water industry reforms, agreed at the February 1994 COAG meeting

and subsequently included in the package of NCP and related reforms agreed at the April 1995 meeting of COAG.

The COAG water reforms are embodied within the Strategic Framework and principally require the implementation of pricing reforms, with greater emphasis on user pays and cost recovery principles, clearer definition of water entitlements (including the allocation of water for the environment) and the development of trading in these entitlements. The Tasmanian Government recognises that the benefits of these reforms will extend beyond those derived from competition policy, with significant positive impacts on community welfare and the environment expected in the longer term.

While the State did not have to meet any specific requirements in relation to water reforms under NCP in order to qualify for the first tranche of NCP payments, a number of water reforms must be completed or, in some cases, substantially progressed in order to qualify for second and third tranche payments.

Two groups have been established to oversee and progress the State's water reform obligations required for the receipt of second tranche NCP payments. These are:

- the Ministerial Water Policy Committee: consisting of the Minister for Primary Industries, Water and Environment, the Minister for Infrastructure, Energy and Resources and the Treasurer. This Committee has been established to oversee the development of the new water management legislation and approve its public release; and
- the Inter-departmental Water Policy Committee: comprising representatives from the Department of Premier and Cabinet (Chair), the Department of Primary Industries, Water and Environment (DPIWE), Treasury and Finance and the Office of Local Government.

In June 1998, the Tasmanian Government accepted an invitation from the former SCARM Task Force on COAG Water Reform to undergo a "mock review" of the State's progress in implementing required water reforms. The six member review panel included representation from the NCC.

The review panel recognised Tasmania's progress in institutional separation of urban water service provision, its methodology for establishing environmental water allocations in consultation with catchment communities and its strong inter-agency co-operation. However, the review panel also acknowledged that full achievement of the COAG water reforms was greatly dependent on the implementation of the State's new water management legislation.

6.3.1 New Water Management Legislation

The Tasmanian Government has drafted new water management legislation, which will be introduced in the Autumn session of Parliament to replace the existing

Water Act and some 10 other Acts covering the allocation of water resources in the State.

The new water management legislation will reform the manner in which access to, and use of, the State's water resources are regulated to provide for long-term sustainability while implementing a number of the State's COAG water requirements.

In particular, the new water management legislation, comprising the *Water Management Bill 1999:*

- establishes new institutional arrangements for water management in Tasmania;
- provides for water licensing arrangements, including the establishment of special licences for large generators of electricity, such as the HEC;
- requires the development of water management plans and a State Water Plan;
- facilitates trading in water entitlements;
- provides for formal allocations of water for the environment;
- requires permits for activities that will affect water; and
- creates water districts.

Delays in progressing the new water management legislation have occurred as a result of the August 1998 State election, the unsuccessful local council amalgamation program and resolution of all the sovereign risk issues associated with Basslink.

The Tasmanian Government signed off on all matters necessary to comply with the COAG water reform commitments prior to the end of 1998 and is committed to the priority introduction of the new water management legislation in the Autumn 1999 session of Parliament.

6.3.2 Progress in Implementing the COAG Water Reforms to 31 December 1998

The following information details Tasmania's progress to 31 December 1998 (including proposed future work where relevant) in its implementation of the COAG water reforms. It should be noted that some of the reported progress relates to the Water Management Bill which has been drafted and has recently been subject to a public consultation program that closed on 9 April 1999. The Bill will be introduced into Parliament in late April 1999.

6.3.2.1 Water Pricing

6.3.2.1.1 Urban water services

In Tasmania, all urban retail water services are provided by local government. For historical and other reasons, the current water prices set by many councils do not include separate access and volumetric components. The absence of full water metering in many municipalities precludes the immediate introduction of volumetric pricing in the form of two-part tariffs.

Currently, only Brighton Council applies two-part pricing for all urban water services, with two other councils imposing a two-part pricing regime for the major urban centres in their municipalities, namely Devonport (with 95 per cent of properties being metered) and Break O'Day (with the St Helens township being metered). At least five councils, including Derwent Valley, Launceston, Northern Midlands, Flinders Island and the Break O'Day councils, are considering proposals to move towards full two-part pricing across their municipalities.

Nineteen of the State's 29 councils have some coverage of water metering. Of these, ten councils are fully metered (including Brighton, Sorell, Southern Midlands, West Tamar, George Town, Circular Head, Central Coast, Latrobe, Kentish and Flinders Island). A further five councils located on the North-West Coast are more than 90 per cent metered.

Several councils are less than 30 per cent metered. Of these, five are in the Hobart area (including the Hobart council, Kingborough, Glenorchy, Derwent Valley and Glamorgan/Spring Bay councils). A study for the Hobart Regional Water Board[1] in 1995 recommended against universal metering on cost grounds. Currently, those five councils meter and apply excess water charges only to certain commercial and industrial users. However, all except one council require meters on new installations (although these are not read at present).

In summary, almost 60 per cent of Tasmanian water installations are metered, with relatively low levels of metering in the three largest councils in the Hobart area.

Where councils are not imposing a two-part pricing policy, there is a tendency to use a rating system for water charges based on assessed annual value (AAV), with a minimum applying in most of these cases. Generally, those councils with low metering coverage use the AAV system. Ten councils use fixed charges (not based on AAV) together with a metered excess charge. At present, around $10.6 million is raised from excess or volumetric water charges in Tasmania, being around 17 per cent of total water revenues of $61.5 million. This may be compared with the fully operative two-part tariffs, for which volume charges account for 50 per cent of revenue (Brighton) and 91 per cent (Devonport).

In accordance with Strategic Framework requirements, to assess the cost-effectiveness of introducing two-part tariffs, the State Government initiated a

[1] *Investigation of the Benefits and Costs of Universal Water Metering*, CMPS&F Pty Ltd, May 1995.

review of this matter in December 1998. The review is being undertaken by GPOC.

This review, entitled "*Investigation into the Cost-Effectiveness of Local Councils Implementing Two-Part Pricing for Urban Water Services and the Implementation of Other Local Government Urban Water Reforms Required Under the COAG Water Reform Agenda",* requires GPOC to develop a set of guidelines to establish measurable criteria which will assist each local council to assess whether the implementation of a two-part pricing structure for water in its jurisdiction is cost-effective. Without limiting the scope of the consultancy, these criteria may include issues such as:

- the extent of excess capacity of urban water schemes;
- the extent to which metering is currently in place;
- the quality of water;
- the charging arrangements applicable at the bulk water end (including the extent to which volumetric charging is imposed); and
- the projected future demand for urban water schemes.

Once the set of guidelines has been established, local councils will be required to rigorously apply them for each water supply scheme to assess whether it is cost-effective to implement two-part pricing. The application of these guidelines by local councils will be independently assessed by a joint local and State Government review group.

The Government has indicated to councils that implementation of a two-part tariff regime will be mandatory where an assessment reveals that this is cost-effective.

In addition, GPOC is required to establish a set of principles to ensure that local councils successfully meet the asset renewal and asset maintenance requirements of the ARMCANZ Water Pricing Guidelines. Currently, only five councils have demand forecasts covering 10 years or more.

Local councils will then be required to rigorously apply these principles to ensure that they are meeting the asset renewal and asset maintenance requirements, as specified in the Strategic Framework. The application of these principles by local councils will be independently assessed.

It is expected that the above guidelines and principles will be available for implementation in April 1999.

6.3.2.1.2 Metropolitan bulk-water suppliers

As noted above, the Tasmanian Government referred the prices charged by the three major Tasmanian regional water authorities to GPOC for investigation under the GPOC Act.

The State Government has endorsed GPOC's maximum prices (in the form of maximum revenues) and other pricing principles. An Order (for NWRWA) and a Determination (for HRWA and EWA) were issued at the end of February 1999 implementing GPOC's pricing principles.

The maximum revenues will apply for a three year regulatory period commencing from 1 July 1999.

In addition to maximum revenue recommendations, GPOC also recommends in relation to water pricing that:

- uniform pricing principles are applied for the three bulk water authorities;
- where an authority is not already applying a two-part tariff structure, that it has a two-part tariff structure in place by the 2001-02 financial year; and
- within this two-part tariff structure, the volumetric component reflects the long-run marginal costs of the authority, with any revenue shortfall to be recovered in the fixed component.

6.3.2.1.3 Rural water supply

Water Pricing for the Government Irrigation Schemes

Less than 10 per cent of irrigation water used in Tasmania is sourced from publicly-owned infrastructure. The vast majority of irrigation water is sourced from unregulated streams or private on-farm storages.

The three Government irrigation schemes, namely the Cressy-Longford, South-East and the Winnaleah schemes, are managed by the RWSC. As a GBE, the RWSC is required to include the payment of tax equivalents and a loan guarantee fee in the determination of its costs for operating its trading enterprise. Water pricing for the irrigation schemes is set through the business plans for each scheme which form part of the RWSC's Corporate Plan.

Water prices cover operational, management, maintenance, depreciation and finance costs. All schemes receive a subsidy from the Government to cover the costs of repayments and interest on loans which were established to provide the capital funding for construction of the schemes. These subsidies appear as separate, fully transparent items in the RWSC's annual financial statements for each scheme. These statements are tabled in Parliament and are public documents.

Current revenue from water sales for two of the schemes does not fully cover the other operating costs, although the water prices are cost-reflective to the greatest

extent possible. The RWSC's business plan proposes that the schemes meet these costs by 2001-02, requiring 12-13 per cent annual increases in water prices.

In January 1998, the RWSC commissioned a consultancy through Stanton Associates/GHD Joint Venture to:

- provide a cost for asset consumption for each scheme to be used as a renewals annuity in setting water prices; and
- recommend strategies for reducing scheme operating costs, including a consideration of alternative management structures.

Due to the complexity of some of the issues involved, the consultancy has taken longer than anticipated and is expected to be completed in April 1999.

The RWSC will consult with scheme users on the recommendations of this report in reviewing scheme water prices for 1999-2000. A possible switch from the current mechanism of recouping asset consumption costs (straight line depreciation) to a renewals annuity approach is a major part of this review.

Raw Water Pricing

Current pricing for "raw water" (water taken directly from rivers, lakes and aquifers by commercial water users) varies widely, from a nil cost to $26 per megalitre.

The RWSC collects fees for Commissional Water Rights under the Water Act from around 2,400 users. However, the fees are not reflective of the direct costs, including licensing, monitoring and bailiffing incurred by the RWSC, and the RWSC does not recover a high proportion of these costs. Water users with other rights to take water generally do not contribute to the bailiffing and monitoring costs, although they generally benefit from these services.

In December 1998, the Government reconfirmed its commitment to introduce a new user-pays pricing policy within the new water management legislation.

To this end, the Water Management Bill provides that water licence fees can vary with the quantity of water taken, the source of water, the use to which the water will be put, when the water is taken, the degree of certainty of the water supply being available and the method by which the water is taken. This provides for a flexible pricing system for dealing with the wide variety of types of water takes throughout the State, from the Hydro-Electric Corporation's licensed take of around 25 million megalitres to a take of 1 megalitre by landholders into a farm dam.

The proposed pricing structure for raw water taken from unregulated streams, lakes and groundwater will provide for:

a) clear separation of public and private costs incurred in water management;

b) the setting of licence fees to reflect the direct costs attributable to licensees (a standard 'administrative fee' to cover licence issue and a variable 'management fee' to cover bailiffing, compliance auditing, water quality monitoring etc.);

c) the creation of seven different pricing regions to reflect the variations in the cost of servicing users in different water management regions of the State;

d) a broader base for revenue collection to ensure that all beneficiaries contribute to the costs of the services provided;

e) a different pricing structure for different types of licences, for example, water taken into storage during winter compared to water taken directly from rivers during summer; and

f) opportunities for licensees to reduce their costs by changing the level of service received from the Government.

The new fee structure will be implemented on proclamation of the Water Management Act, anticipated in mid-1999, and will lead to significant licence fee increases relative to the current fees. Where appropriate, the increases will be phased in over several years.

The Government has also agreed to undertake an independent audit of the DPIWE's proposed fee structure.

6.3.2.1.4 Groundwater

Groundwater resource assessment work by Mineral Resources Tasmania indicates that current consumption of groundwater is around 20,000 ML per annum, compared to a sustainable yield of 500,000 ML per annum. Long-term monitoring indicates that current usage is having no adverse impact on groundwater quantity or quality.

Currently, the only significant Government activity in relation to groundwater management is in monitoring the impact of use. This is undertaken as a public good activity with no charge being directly levied on groundwater users.

Groundwater management is an integral part of freshwater management, to be undertaken by the DPIWE under the Water Management Bill. The Bill provides that the costs of groundwater management services may be recouped from users where the services are provided as a direct result of the users' activities.

6.3.2.2 Water allocations and entitlements, including environmental requirements

6.3.2.2.1 Rights to take water

Under current legislation, water users have access rights to water through a wide range of statutory provisions, for example:

- owners of riparian tenements may take water for stock and domestic purposes under common law but the daily take is capped under regulations under the Water Act;
- the vast majority of commercial water users (around 2,400) are licensed under the Water Act;
- other specific groups (eg. holders of prescriptive rights and rights in fee and the HEC) have entitlements under separate provisions of the Water Act;
- water users in formal irrigation schemes have licences under the *Irrigation Clauses Act 1972*;
- other surface water users have rights under several specific pieces of legislation; and
- groundwater users may be licensed under the *Groundwater Act 1957*.

The new Water Management Bill provides that:

(i) All rights to surface and groundwater are vested in the State.

(ii) Specified people may take water without needing a licence; riparian or 'quasi-riparian' land owners, as well as casual users of land may take water from watercourses and lakes for human consumption, domestic purposes, stock watering and firefighting. In addition, electricity generation for private use is also permitted where this does not adversely affect other users or the environment. Occupiers of land may also take surface water (water not flowing in a watercourse) and groundwater from that land for any purpose. Common law rights to naturally occurring water are abolished and all water uses other than those outlined above are required to be licensed.

(iii) These entitlements to take water without a licence are subject to the taking of water not leading to material or serious environmental harm or being contrary to the provisions of an applicable water management plan. In addition, no-one may take water in excess of their reasonable requirements for the above purposes and maximum takes may be prescribed by regulation.

(iv) The Minister may deem it necessary to licence water users who would otherwise have a right to take water under (ii) above in order to ensure the equitable sharing of water or to avoid environmental harm.

(v) The Minister may grant a water licence to a person to take water from a water resource. Licensees are required to take water for a purpose, or in a manner, other than that listed above under paragraph (ii).

(vi) The details that must be specified in a water licence include the name of the water resource, the surety with which the water allocation can be expected to be available, the quantity of water that can be taken, the date on which the water licence expires and any special conditions.

(vii) A water licence is separate to a land title and is the property of the licensee.

(viii) A licence or all or part of the water allocation on a licence may be transferred to another water user.

The changeover arrangements from the current licensing system to the new system provide that existing legal entitlements to water will be preserved where they are sustainable. The DPIWE believes that the vast majority of current entitlements are sustainable but the Bill allows the Minister to vary the conditions or reduce the allocation of a licence as necessary to meet environmental requirements.

6.3.2.2.2 Environmental allocations

The *State Policy on Water Quality Management 1997* (State Water Policy) establishes the framework for the development and implementation of environmental water allocations.

Under the State Water Policy, environmental flows for specific water resources are determined in relation to the "Protected Environmental Values" (PEVs) and water quality objectives established for the resource. In effect, the environmental flow is the streamflow regime required to ensure that the agreed PEVs and water objectives are not compromised.

DPIWE is developing statutory Water Management Plans which integrate the PEVs and water objectives with other water values established through community consultation. These water values cover ecosystem values, consumptive and non-consumptive use values, recreation values, aesthetic values and physical landscape values.

Under this process, the identification of water values in terms of water quantity is integrated with the process to identify values for water quality being undertaken by the Environment and Planning Division of DPIWE as part of the implementation of the State Water Policy.

Progress in the identification of water values by the community

To date, specific community water values have been identified for the Meander, Mersey, Great Forester, Little Forester, Ringarooma, North Esk, Saint Patricks

Mountain, Clyde and George River catchments. It is intended to hold community workshops to establish values for a further 10 priority catchments in mid to late 1999.

The workshops involve representation from different community groups (recreational fisheries, farming, irrigation, environmental etc) from within each catchment. These representatives are sent information prior to the workshop explaining the value setting approach and detailed description of specific water values. The water values identified through the workshop are then prioritised in each category.

The outcomes of these workshops will then be communicated to the wider community at a public meeting for each catchment in the form of a draft "Water Management Plan" required under the Water Management Bill.

Ecological values identified by the community are combined with those identified by State agencies as noted below.

Identification of values by State Agencies

A State Working Group was established in 1997 to oversee the development of Water Management Plans in conjunction with the implementation of the State Water Policy.

The Group is responsible for:

(a) setting priorities for the development of Water Management Plans (under an agreed process for quantitatively defining catchment priorities according to the stresses placed on their waters, or other special management requirements); and

(b) identifying water values for catchments from a technical and scientific perspective, including the non-negotiable environmental values which are implicit in various local, national and international agreements and legislation.

Environmental flow assessment - current and future work

The Group has established a list of priority river systems for environmental flow assessment. Considerable work on the determination of water requirements for river ecosystems has already been completed for some of Tasmania's major river basins.

A number of techniques for assessing environmental flow requirements have been developed to suit Tasmanian conditions. The assessment of each catchment for environmental flow requirements uses the most appropriate technique to address the ecosystem requirements of the particular river system.

Determination of environmental flow requirements for river ecosystems commenced in December 1997 and will be extended to up to 10 river systems annually for the next four years. This work involves the development of hydrological regionalisation models, expansion of the state biological database on habitat requirements of fauna and flora, and the development of additional monitoring tools to assess the long term environmental benefit of revised flow regimes in rivers.

DPIWE has adopted a regional approach for a suite of activities to address the flow requirements of rivers. Currently, the agency is involved in assessing environmental flow requirements for river systems in the northeastern, midland, and southern regions of the State using detailed methodologies for stressed river systems and rapid assessment desktop methodologies for lower priority systems.

In the northeastern areas, detailed environmental flow assessment is largely completed for the Little Forester, Great Forester, Lower Ringarooma, Georges, North Esk, Saint Patrick's and George Rivers. Desktop approaches are being used for the Ansons Rivulet, Boobyalla River, Little Musselroe and Great Musselroe river systems.

In the midland and southern areas, environmental flow assessment is proceeding for the Elizabeth, Macquarie, Tooms, Coal, Clyde, North West Bay, Mountain, Browns, Ouse, Lake and Jordan Rivers. A variety of techniques is being adopted for this assessment.

It is expected that environmental flow assessment and recommendations on appropriate flow regimes for streams for the northeastern, midland and most southern streams will be completed by the middle of 1999. Work on the Ouse and Lake River is expected to be ongoing into the year 2000. These recommendations will then form the basis of further community consultation and negotiation of broader water values.

In addition to ongoing work for the Ouse and Lake Rivers, the work will focus on rivers in the State's northwest in 1999-2000 and tackle the remainder of rivers in the State in 2001-02. The southwestern regional rivers are largely pristine and in the World Heritage Area. The majority of these rivers are subject to no abstraction of water and are of the lowest priority for environmental flow assessment.

As noted above, once environmental flow requirements have been established, they are incorporated into statutory Water Management Plans. The Act requires that the Plans are reviewed at least at five yearly intervals.

Biological Monitoring of Environmental flows

The Australian River Assessment System (AUSRIVAS) model of river health (based on aquatic macroinvertebrates) has been adopted as the principal biological

protocol for assessment of the environmental benefit under new flow regimes. It has been developed by DPIWE under the National River Health Program.

AUSRIVAS models have been established for the northern and western areas of the State and models are currently being developed under the first National Assessment of River Health for the eastern, southeastern and midland regions.

The Victorian index of river condition is being used to assess catchments in the northeastern region. Elements of this index will be used for monitoring the benefit of environmental flows in this area.

6.3.2.2.3 Appropriate assessment of future water harvesting proposals

Water allocations

The RWSC imposed a moratorium on the issue of new water entitlements in 1995. The moratorium principally applies to applications for direct taking of water during summer. The moratorium has been lifted on particular water resources only when appropriate environmental flow regimes have been established. Only three rivers have been investigated sufficiently for allocation procedures to be established: Derwent, Huon and Leven Rivers.

The RWSC has provided temporary allocations to applicants for water rights on some streams where it expects the environmental flow requirements to be readily met within the current regime of licensed water entitlements. These temporary allocations apply for one season only and may be withdrawn if the streamflow reaches environmental risk levels at any time.

Under the draft Bill, in areas where a Water Management Plan does not exist, the Minister will be able to approve applications for new water allocations (including water taken into dams) only where he or she can do so in accordance with the objectives of the Bill. The principal objectives of the Bill in this regard are those in Tasmania's Resource Management and Planning System (RMPS), which establishes principles for sustainable development in the State.

Dams

The Tasmanian RMPS provides a mechanism for ensuring that appropriate environmental impact assessments are completed prior to approving the construction of dams.

Under the current Water Act, the RWSC is the principal body responsible for assessing applications for the construction of dams. The RWSC must consult with relevant agencies before considering applications.

This is carried out through the Interdepartmental "Farm Dam Working Group" which represents the Resource Management, Environment and Planning, and Conservation and Land Management Divisions of DPIWE and the Inland

Fisheries Commission. The Group provides expert advice on water resource, environmental and cultural impact assessment requirements for applicants.

Proposals to construct dams which may have a significant impact at regional level are assessed by the Board of Environmental Management and Pollution Control, established under the *Environmental Management and Pollution Control Act 1994*, in accordance with the environmental impact assessment principles set down in that Act.

Local Government can also have a role in assessing applications for dam construction under the *Land Use Planning and Approval Act 1993.* Local government has a statutory obligation to further the sustainable development objectives of the RMPS in any such assessments.

6.3.2.3 Trading arrangements for water allocations or entitlements

6.3.2.3.1 Unregulated water resources

Under current legislation, the majority of water entitlements, known as commissional water rights, are legally attached to land titles and hence are not transferable separately from the land.

The Water Management Bill establishes a new water entitlements system whereby water licences are not legally attached to land titles and are transferable.

The Bill provides that:

- A licensee may transfer all or part of the water allocation on that licensee's water licence to another person. The transfer may be absolute (ie. permanent sale of the water) or for a limited period (ie. temporary lease of the water).
- The transfer must be in accordance with any relevant Water Management Plan or, where there is no relevant Water Management Plan, in accordance with the objectives of the Bill.
- The Minister may modify or refuse to approve a proposed transfer if the transfer would have a significant adverse impact on other water users or the environment, or if, after the transfer, the quantity of water available to the transferee would be in excess of the quantity that could be sustainably used.
- The Minister may require an applicant for a transfer to pay for an assessment of the effect of granting that transfer.
- A transfer of an allocation on a licence can only be approved with the consent of any person noted on the register of water licences as having an interest in the licence (eg. a mortgagee).

It is expected that this system for the trade of water entitlements will come into effect on proclamation of the legislation.

6.3.2.3.2 Irrigation Schemes

A system of water rights trading has been operating in the Government-owned irrigation schemes since the 1994-95 season. Under these arrangements, owners of irrigation rights not wishing to use those rights in a particular season were, with the approval of the RWSC, able to transfer them to other users.

Recent amendments to legislation provide a more robust and "free-market" mechanism for transfers.

The *Irrigation Clauses Amendment Act 1997* provides that irrigation rights (entitlements to take water from the irrigation scheme) are separated from land titles and are transferable within the irrigation district, subject to any conditions imposed by the Minister. Rights can be leased or sold.

The transfer of irrigation rights commenced on the proclamation of the Act in December 1998, after the RWSC established transfer rules in consultation with scheme users. The transfer rules cover the physical restrictions imposed by scheme infrastructure, rights of third parties with an interest in the rights and environmental sustainability factors.

Twelve transfers were approved in the two months after transfers were permitted.

6.3.2.4 Integrated approach to natural resource management

Tasmania's RMPS, established in 1993, provides an integrated policy and a statutory and administrative framework for the pursuit of sustainable development in the State. Supported by a suite of complementary legislation (including the Water Management Bill), the system establishes a "whole of government, industry and community approach" to resource management and planning. The system is concerned with the use, development, conservation and protection of land, water and air.

Under the RMPS, strategic planning is to occur in an integrated way at State, regional and local levels. The system is designed to simplify and streamline the approvals process, create surety for land managers, users and owners, and improve the quality of resource management and planning decisions. Public involvement in resource management and planning is encouraged and the system includes opportunities for public consultation and participation.

The objectives of the RMPS are to:

a) promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity;

b) provide for the fair, orderly and sustainable use and development of air, land and water;

c) encourage public involvement in resource management and planning;

d) facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c); and

e) promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.

Under the RMPS, "sustainable development" means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while -

a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations;

b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and

c) avoiding, remedying or mitigating any adverse effects of activities on the environment.

Within the RMPS Framework, the *State Policies and Projects Act 1993* provides for the making of State Policies. A State Policy is binding on any person and on State Government agencies, public authorities and planning authorities.

The State Water Policy was proclaimed in 1997. This provides that water managers must take account of the PEVs and water quality objectives established under the Policy. These parameters are to be used as the basis for establishing environmental flow regimes and environmental values for the Water Management Plans established under the new water management legislation. Further details of this policy are provided below in section 6.3.3.11.1.

A *State Policy on Integrated Catchment Management* is currently being developed. This Policy is expected to be proclaimed in 1999 and will establish statutory principles for catchment planning. Catchment planning will involve the setting of vegetation, land and water objectives for catchments, with catchment plans also providing strategies for achieving the objectives. Water Management Plans will provide statutory backing for the water management strategies needed to achieve the water quality objectives.

Catchment management plans are being developed in several areas of the State, largely through the independent work of community-based stakeholder groups, for example, the Meander Catchment Co-ordinating Group, the Huon Healthy Rivers Project Committee, and the Orielton/Pittwater Catchment Committee. These plans may become statutory plans under the proposed State Policy on Integrated Catchment Management.

6.3.2.5 Institutional arrangements

Currently in Tasmania, the Minister for Primary Industries, Water and Environment is formally responsible for both the regulation and the provision of water services. However, there is sufficient institutional separation to ensure that this does not lead to inefficient outcomes. The following sections set out these institutional arrangements.

6.3.2.5.1 Water management

Under current legislation, there are several public and private bodies managing water resources in the State, for example, the RWSC, the HEC, Mineral Resources Tasmania, councils and private companies. Almost all of these bodies also have responsibilities for the provision of water services.

Under the Water Management Bill, the responsibility for management of all of the State's freshwater resources is vested in the Minister for Primary Industries, Water and Environment with DPIWE being responsible for the implementation of the provisions of the Act. All service providers, including the RWSC, councils and the HEC, will require licences to take water.

Service providers will be able to manage water resources as part of their licence conditions, in situations where an approved Water Management Plan is in place. In these situations, DPIWE will still be accountable to ensure that the agreed water management requirements of the Plan are met.

6.3.2.5.2 Service Provision

Under the new legislation, DPIWE will not have a role in the delivery of water services.

As indicated above, ownership and governance responsibility of the State Government's Hobart Regional Water Board and the North Esk and West Tamar Supply Schemes were transferred to local government through the establishment of the HRWA on 1 January 1997 and the EWA on 1 July 1997 under the Local Government Act.

Legislation to provide for a similar transfer of the State Government's NWRWA to local government was passed by Parliament in 1998 and is awaiting proclamation.

The proclamation of this legislation will leave the Prosser Water Supply Scheme, serving several small towns on the East Coast, as the only State Government owned urban water supply scheme. This Scheme is currently operated by Spring Bay/Glamorgan Council under contract to the RWSC.

6.3.2.5.3 Environmental regulation

Under current legislation, there is no mechanism through which water managers are directly accountable to an environmental regulator.

In undertaking its water management responsibilities under the new legislation, DPIWE will be required to maintain agreed environmental flows, to not compromise PEVs established under the State Water Policy, to abide by environmental protection measures and monitor the environmental impacts of its activities.

To facilitate the implementation and operation of this regulatory regime, an appropriate system of environmental regulation has been established, utilising the current arrangements under the Environmental Management and Pollution Control Act.

The Board of Environmental Management and Pollution Control established under the Act determines (i) a set of broad PEVs in consultation with stakeholders; and (ii) water quality objectives, in accordance with the State Water Policy. DPIWE will then prepare Water Management Plans based, as a minimum, on these PEVs and water quality objectives, including a process for monitoring, audit and review of each Plan. These Plans will then be approved by DPIWE's Director of Environmental Management before being approved under the provisions of the Water Management Bill.

In areas where there is no Water Management Plan, the Director of Environmental Management may issue an Environment Protection Notice under the Act to ensure protected environmental values and environmental objectives are met by DPIWE.

6.3.2.6 Efficient delivery of water services

In accordance with the GBE Act, the Department of Treasury and Finance, on behalf of the Government, continues to monitor the quarterly financial performance of GBEs (including the NWRWA and the RWSC) against planned performance targets.

To enhance public accountability, the published annual reports of GBEs include a Statement of Corporate Intent which details:

- the business definition, which outlines the core business, any major undertakings, key limitations and any CSOs required to be delivered;
- strategic directions, including the business directions for the GBE, the major goals, expected outcomes and key factors affecting the operating environment;
- business performance targets, which provide a public commitment to performance in key areas of the business; and
- any other major issues, including significant changes in any areas, for example, pricing issues, employee relations and subsidiaries.

Performance comparison criteria have been developed for the three major Tasmanian regional water authorities. The Government is utilising the strategic and operational plan requirements of the Local Government Act to require councils to incorporate these principles within their 5 year strategic plans and to give effect to them in their annual operational plans which must be reported upon in Annual Reports and at Council Annual General Meetings.

In addition, Tasmania's largest metropolitan bulk water authority, the HRWA, is participating in national benchmarking and performance monitoring through the Water Services Association of Australia (WSAA).

Given that the minimum size for a water authority to participate in the WSAA program is 50 000 connections, the EWA and NWRWA are necessarily excluded from this program. However, the Standing Committee on Agriculture and Resource Management (SCARM) is currently developing a national approach to establishing a performance monitoring program for "non-major urban water authorities" (around 10 000 to 50 000 connections) based on the WSAA model. It is expected that the EWA and the NWRWA will participate in this program when it is established.

The RWSC is participating in the national performance monitoring program for irrigation schemes currently being developed by SCARM.

6.3.2.7 Commercial focus for water services

The establishment of the HRWA and the EWA as joint authorities was based on the following principles:

- all of the major councils within the region must be involved;
- the bulk supply joint authority must function at arms length from the councils involved, in a proper commercial manner; and
- appointments to the joint authority board must be on the basis of skills and experience to manage a bulk water supply, as distinct from representative experience.

These transfers of the bulk water authorities from the State Government to local government are also conditional upon assurances from local government that the bulk water operations will be conducted in a manner that enables the State to meet its obligations under the National Competition Policy agreements. This means that joint authorities are subject to tax equivalent, dividend and guarantee fee regimes.

The establishment of the HRWA and the EWA (and shortly, the NWRWA) as joint authorities of local government is fully consistent with the recommendation of London Economics in its Final Report entitled *"Water Sewerage and Drainage Review - Tasmanian Roles and Functions Committee*" in September 1995.

In this Report, London Economics clearly recommended a corporatisation model, with State or local government owned organisations operating according to sound commercial practice. In this manner, London Economics considers that the best practices of the commercial sector are brought into the industry and that there is appropriate accountability for performance and for meeting standards.

The establishment of the RWSC as a GBE in 1995 has led to a greater commercial focus for the operation of Government-owned irrigation water supply, river improvement and drainage schemes. In particular, in accordance with section 7 of the GBE Act, the RWSC as a GBE is to:

> "perform its functions and exercise its powers so as to be a successful business by -
>
> (i) operating in accordance with sound commercial practice and as efficiently as possible; and
>
> (ii) maximising the sustainable return to the State in accordance with its corporate plan and having regard to the economic and social objectives of the State."

6.3.2.8 Management of irrigation schemes

The RWSC manages the three Government owned irrigation schemes in Tasmania. Under the new water management legislation, the RWSC will no longer have any direct water management responsibilities and its activities will be restricted to service provision. Under this arrangement, the management of the irrigation schemes will be effectively corporatised.

The RWSC has established separate management committees for each of the schemes. The committees have a majority membership of elected irrigator representatives. While the committees are only "advisory", the RWSC seeks their advice on all significant matters affecting scheme operations.

In early 1998, the Commission appointed Stanton Associates/GHD Joint Venture to undertake an investigation of alternative management options for the schemes,

including commercialisation, individual corporatisation or privatisation. The complexity of the issues has delayed finalisation of the work and the consultants are now expected to provide a final report by the end of April 1999.

Scheme users have been actively involved in establishing the guidelines for the investigation and in directing the work as it has progressed. The final outcome of the investigation will be presented by the consultants to general meetings of users in each of the schemes and form the basis of a report to the Government by the RWSC on the future management of the schemes.

6.3.2.9 Public consultation on water issues

DPIWE conducted a major consultation program from November 1997 to January 1998 to provide initial information and take input on the proposed review of water management legislation. This involved:

- the direct distribution of around 3,000 information brochures and 350 full information packages;
- 16 public meetings and 25 meetings with specific stakeholder groups and individuals;
- the receipt of 82 written submissions; and
- the receipt of around 50 phonecalls and email messages.

A further round of consultation on the Water Management Bill was conducted in late May-early June 1998 with public meetings attracting around 700 people.

A third period of public consultation on the draft legislation has recently been conducted to finalise the provisions of the Bill prior to its introduction into Parliament.

For urban water services, the Government utilises the strategic and operational plan requirements of the Local Government Act to require councils to undertake public consultation processes in relation to water service delivery issues, including pricing issues.

6.3.2.10 Public education

6.3.2.10.1 Schools program

Tasmania's formal water education program is principally conducted through Waterwatch, which is a school education unit prepared by DPIWE. A *Waterwatch Field Handbook* was developed in 1996 for use by all schools involved in the Waterwatch Program. It contains summary information about each physical, chemical and biological parameter used in monitoring waterways and detailed instructions for testing and using field equipment.

A 25-hour framework syllabus ["*Waterwatch" (Syllabus code SC 069*)] has also been developed for use by teachers of grade 9/10 students. It includes objectives, content and criteria to be used in assessing the students' progress in this unit. It has been in use since 1995 by approximately 30-40 high schools (approximately 3,000 students).

Environmental Science Pre-tertiary syllabus

Tasmanian educators developed this syllabus in 1993 before Waterwatch started. It has been extensively used by secondary colleges since. It contains guidelines on concepts to be taught - eg. ecosystems, physical, chemical and biological parameters affecting aquatic ecosystems, impacts of pollution and management. It lists criteria by which students should be assessed.

This course is taken by grade 12 students (about 17 years old) and is counted towards University entrance scores. The Water Unit (40 hours work over 7-8 weeks) has had a big impact on students, particularly following the field work. It is taught in most colleges and schools in Tasmania as a grade 12 subject.

Professional development

Waterwatch funds professional development of teachers involved in the schools programs. In 1998, Waterwatch spent about $20,000 to enable teachers to attend training workshops and planning seminars. Professional development includes water monitoring techniques to use with students, sampling protocols, water safety, interpretation of data, reporting of data, data management, sharing results with the broader community and so on. Around 75 teachers have been trained over the last three years.

6.3.2.10.2 Adult education

Waterwatch Technical Reference Manual (1998 field test draft) for coordinators

DPIWE was contracted by Waterwatch Australia to produce a Waterwatch Technical Manual for Australia. A field test draft of this manual (430 pages) became available in 1998 and is being used for training Waterwatch coordinators (11 located around the State). They, in turn, work with teachers and Landcare group members to increase awareness of water issues, for training in the use of equipment, and to use the data to raise awareness of issues in their catchment plan monitoring programs and obtain information on local issues eg. land use impacts and point source pollution problems. Data collected by the groups are passed on to DPIWE water management officers.

"State of Rivers Reports"

The results of DPIWE water quality and environmental monitoring programs are made publicly available. This information gives local communities a snapshot of the condition of their water resources, including the outcome of any water quality

and river improvement works through a comparison with previous data for the same resources.

6.3.2.10.3 Education programs for water services

The Local Government Act provides a mechanism for public education and consultation through the strategic and operational plan requirements. Councils use this mechanism as appropriate to establish service delivery standards and related costs.

The RWSC meets with users of the Government irrigation schemes regularly to discuss aspects of scheme operation, including water pricing. Changed levels of service delivery at Cressy-Longford Irrigation Scheme and South East Irrigation Scheme resulted from the implementation of consultants' reports on the scheme commissioned in 1995-96. The new levels of service were negotiated with irrigators prior to implementation.

6.3.2.11 Water quality management

6.3.2.11.1 State Policy on Water Quality Management

The State Water Policy is a statutory policy which applies to both surface and groundwaters in Tasmania.

The Policy was specifically designed to implement the National Water Quality Management Strategy (NWQMS) in Tasmania. It will achieve this in the following ways:

- the purpose of the Policy was drawn from, and is comparable to, the objective of the NWQMS in Tasmania;
- the structure and functioning of the Policy closely follows the model set out in *Policies and Principles*, which is the key document in the National Water Quality Management Strategy. The Policy specifically refers to developing water quality objectives through a consultative approach;
- the policy for dealing with point source pollution is based firmly on the model in the *Policies and Principles* document;
- the Policy sets out strategies to deal with major sources of diffuse pollution in accordance with the approach recommended in the NWQMS;
- the Policy adopts the waste minimisation hierarchy promulgated in the NWQMS;
- the Policy deals with groundwaters in accordance with the guidance set out in the NWQMS document "*Guidelines for Groundwater Protection in Australia*"; and

- where appropriate and available at the time that the Policy was finalised, it adopts or refers to guidelines produced as part of the NWQMS - eg. the *Australian Water Quality Guidelines*, and *Guidelines for Urban Stormwater Management*. Other NWQMS guidelines are expected to be applied in implementing other components of the Policy.

6.3.2.11.2 Water quality monitoring

DPIWE is developing a network of continuous monitoring stations linked to stream gauging stations at 10 sites around the State. The stations monitor conductivity, temperature and turbidity.

DPIWE prepares and publishes catchment-based strategic "State of Rivers" reports to provide a snapshot of water quality in important river basins. To date, two reports have been publicly released: South Esk Basin (1996) and Huon Catchment (1998), while four further reports are in preparation. These and other recently published water quality reports are also being made available to the public through the DPIWE website and public seminars.

DPIWE has also developed a "State Algal Management Strategy" which outlines procedures for monitoring and managing blue-green algal blooms in freshwater storages. Linkages between this Strategy and national protocols are presently being formulated.

6.3.2.11.3 Catchment Management

Tasmania has a number of current programs to support and facilitate catchment management within the State. These include publication of a guide for community groups, entitled "*Integrated catchment management - what it is and how to do it*". There are currently around 12 catchment management groups operating in Tasmania. Significant achievements have included the completion of catchment management plans for the Huon, Meander, Coal and Mersey Rivers.

While the work to date has been successful in facilitating the adoption of catchment management in Tasmania, as evidenced by the number of groups which have been formed, the Government is committed to further promoting catchment management through the preparation of formalised arrangements, utilising the proposed State Policy on Integrated Catchment Management under the *State Policies and Projects Act 1993*.

6.3.2.11.4 Landcare practices

The State Water Policy contains provisions for dealing with the control of erosion and stormwater runoff from land disturbance, agricultural runoff and forestry operations amongst a number of other provisions to control diffuse runoff. These provisions are aimed at promoting landcare practices which will protect rivers and streams.

The Policy refers to the use of the planning system and the development of a code of practice to reduce the effect of development activities on waterways. Action is underway to ensure that the appropriate provisions are contained in planning schemes.

In relation to agricultural runoff, the Policy requires the development of a code of practice or guidelines to reduce the impact of stormwater from agricultural land on water quality. Appropriate guidelines are currently being developed.

In the case of forestry operations, Tasmania already has in place a legally enforceable Forest Practices Code which will facilitate the achievement of the requirements in regard to private and public forestry land.

6.3.2.11.5 Wastewater discharge

There are several measures in place in Tasmania, including the State Water Policy, to actively promote the re-use of wastewater. There are also several projects presently underway to remove existing discharges from waterways, with the greatest emphasis on inland waters.

Sewage treatment lagoons are the most common method for sewage treatment in Tasmania. Discharges from lagoons are among the principal sources of point source pollution for inland rivers.

A major research project was conducted in 1993-95 to investigate design parameters for increasing the efficiency of lagoons under Tasmanian conditions. The work was a joint project of the then Departments of Environment and Land Management, and Primary Industries and Fisheries, and the Local Government Association of Tasmania, with financial support from the National Landcare Program. The main project output was a manual, "Design and Management of Tasmanian Sewage Lagoon Systems", for engineers and lagoon operators.

Subsequently, for the period 1998-2001, funding through the Natural Heritage Fund has been procured to provide for design and capital works for the upgrading of sewage treatment lagoons throughout the State. The project is managed by the DPIWE and is aimed at enhancing treatment to a standard where lagoon effluent is suitable for direct reuse for irrigation, or where this is not feasible, disposal to rivers with insignificant environmental impact.

6.4 TRANSPORT INDUSTRY REFORMS

The national road transport reforms have been developed under a process which has its genesis in the Heavy Vehicles Agreement and the Light Vehicles Agreement signed by Heads of Government in 1991 and 1992 respectively.

In 1991, Commonwealth, State and Territory governments agreed to develop uniform national regulatory arrangements for vehicles over 4.5 tonnes gross vehicle mass (known as the Heavy Vehicles Agreement). The Heavy Vehicles Agreement also established the National Road Transport Commission (NRTC) and the Ministerial Council of Road Transport (MCRT) which was set up to oversee the implementation of transport reform and the operation of the NRTC.

In 1992, all governments agreed that national regulatory arrangements should also be developed to cover light vehicles (Light Vehicles Agreement). These national road transport reforms were subsequently included as part of the package of NCP and related reforms agreed at the April 1995 meeting of COAG.

In developing the national road transport legislation package, the NRTC adopted a modular approach covering the following six key reform areas:

- heavy vehicle charges;
- the road transport of dangerous goods;
- vehicle operations;
- vehicle registration;
- driver licensing; and
- compliance and enforcement.

The NRTC reforms aim to introduce consistency and uniformity to the rules governing road transport in Australia. This, in turn, will facilitate the development of a competitive national market in road transport services. The NRTC reforms will provide benefits to Tasmanians through improved road safety and transport efficiency, as well as enabling the Tasmanian Government to administer road transport in a more cost-effective manner.

The *Agreement to Implement the National Competition Policy and Related Reforms* commits Governments to the "effective observance of the agreed package of road transport reforms". The Agreement does not, however, detail specific road transport reforms or an assessment framework.

The Standing Committee on Transport (SCOT) Working Group was formed in October 1998 and commenced work on a draft assessment framework for NCP road transport reforms.

The SCOT Working Group was established to:

- consider whether particular road transport reforms were under development or available for implementation;
- make recommendations on which reforms from the initial six reform modules and the First and Second Heavy Vehicle Reform Packages should be considered "assessable" by the NCC under the second tranche;

- consider the process for future amendment of the assessment framework;
- state the purpose of each of the road transport reform elements;
- recommend success criteria for assessable reforms, by which the NCC could judge effective implementation; and
- recommend timetables with progress reports for assessable reforms.

A matrix of national road transport reforms, considered assessable for the second tranche assessment, was finalised by the SCOT Working Group in late November 1998 and submitted to the Australian Transport Council (ATC) meeting on 4 December 1998. The framework is in the process of being submitted to COAG for approval to be used by the NCC as part of its second tranche assessment process.

The road transport reforms recommended to be assessable by the SCOT Working Group for the second tranche assessment consist of the following reforms:

1. Dangerous Goods;
2. National Heavy Vehicle Registration Scheme;
3. National Driver Licensing Scheme;
4. Vehicle Operations;
5. Heavy Vehicle Standards;
6. Truck Driving Hours;
7. Bus Driving Hours;
8. Common Mass and Loading Rules;
9. One Driver/One Licence;
10. Improved Network Access;
11. Common Pre-Registration Standards (for Heavy Vehicles);
12. Common Roadworthiness Standards;
13. Enhanced Safe Carriage and Restraint of Loads;
14. Adoption of National Bus Driving Hours;
15. Interstate Conversion of Driver Licence;
16. Alternative Compliance;
17. Short Term Registration;
18. Driver Offences/Licence Status; and
19. National Exchange of Vehicle and Driver Information System (NEVDIS) Stage 1.

6.4.1 Transport reforms in the areas recommended by the SCOT Working Group

A significant number of NCP road transport reforms have been implemented through a legislative package which was passed by the Tasmanian Government in August 1996 and came into effect on 1 October 1996. To date, considerable input has been provided to the NRTC on a number of national reform modules now available for adoption, or submitted to MCRT for approval, and a further number still under development. In addition to this ongoing work, the development of the NCP Assessment Framework by the SCOT Working Group has been a significant achievement.

Tasmania's progress in relation to the implementation of reforms considered assessable for the second tranche is detailed below.

Dangerous Goods

This reform element establishes a national framework for the carriage of dangerous goods by road. In Tasmania, the Dangerous Goods module has been implemented via the *Dangerous Goods Act 1998* and the *Dangerous Good (Road and Rail Transport) Regulations 1998.* This legislation commenced on 1 January 1999 and mirrors Commonwealth legislation relating to the road transport of dangerous goods.

National Heavy Vehicle Registration Scheme

The main aims of this reform are to ensure that, so far as is reasonable and practicable, the procedures and requirements for heavy vehicle registration are uniform or consistent throughout Australia. In the interests of administrative simplicity, a number of heavy vehicle registration policy proposals will be extended in Tasmania to cover all classes of vehicles.

A Tasmanian *Vehicle and Traffic Bill 1999* is currently being prepared which will include the policy content of the Commonwealth's Road Transport Reform (Heavy Vehicles Registration) Bill and regulations. Due to limited availability of legislative drafting resources in Tasmania, the development of this legislation has required the contracting of a Parliamentary Counsel from South Australia. The Vehicle and Traffic Bill has received in-principle approval under Tasmania's LRP and is expected to be submitted to Parliament by mid-1999. A major redevelopment of Tasmania's existing motor registry computer system is currently being undertaken to implement this reform project and the national driver licensing scheme, to be completed by December 1999.

National Driver Licensing Scheme

This scheme will establish uniform requirements for key driver licensing transactions including issue, renewal, suspension and cancellation (excluding learner and novice drivers). Nationally agreed driver licence classifications were

introduced in Tasmania on 1 June 1997 by amendment to the *Traffic (Miscellaneous) Regulations 1968*. Legislation consistent with the National Driver Licensing Scheme is being incorporated into the Tasmanian Vehicle and Traffic Bill.

Vehicle Operations

Vehicle operations consist of: the NRTC's Mass & Loading Regulations (Commonwealth) which impose mass limits for vehicles and combinations including loads; the Oversize/Overmass Regulations (Commonwealth), which allow road authorities to exempt vehicles and combinations from the mass and dimension limits in the Heavy Vehicle Standards Regulations (Commonwealth) and the Mass and Loading Regulations (Commonwealth) and the Restricted Access Vehicles Regulations (Commonwealth), which set basic operating standards for B-Doubles, car carriers, special purpose vehicles and so on.

The NRTC does not propose amalgamation of these regulations in the near future. However amalgamated vehicle operations regulations are being drafted locally for introduction during 1999. Key elements of these regulations were introduced in the legislative package of October 1996 which amended the *Traffic (Vehicle and Loads Dimensions) Regulations 1975* and the *Traffic (General and Local) Regulations 1956*. The balance of the policy content of these regulations was adopted administratively through permits.

Heavy Vehicle Standards

The heavy vehicle standards provide uniform in-service design and construction standards for heavy vehicles and trailers. These standards (including amendments) have been superseded by the combined vehicle standards (which include light vehicles) which have recently been approved by the MCRT and will be implemented during 1999.

In Tasmania, the initial heavy vehicle standards reforms were introduced in the legislative package of October 1996 which amended the Traffic (General and Local) Regulations and the Traffic (Miscellaneous) Regulations accordingly. Amendments to the initial heavy vehicle standards package were adopted by administrative guidelines and vehicle information bulletins. Most light vehicle standards are already in place via the Traffic (General and Local) Regulations and the Traffic (Miscellaneous) Regulations. It is envisaged that combined vehicle operations regulations will be drafted for introduction prior to July 1999.

Truck Driving Hours

The national truck driving hours reform package provides a legal and administrative framework for managing truck driver fatigue in the transport industry. The Truck Driving Hours Regulations (Commonwealth) have been superseded by the Driving Hours Regulations (Commonwealth), which combine truck and bus driving hours.

Prescribed hours of driving were introduced in Tasmania by amendment to the Traffic (General and Local) Regulations via the legislative package of October 1996. Slight changes which have occurred in the national policy since October 1996 will be included in the Tasmanian combined vehicle operations regulations. Tasmania has not prescribed the mandatory use of driver logbooks. However, provision exists to direct a driver or operator to carry a logbook upon request. The national driver logbook is available to Tasmanian operators travelling interstate.

Bus Driving Hours

Regulation of bus driving hours provides a nationally consistent basis for the management of fatigue amongst drivers of the larger commercially operated buses. The Commonwealth's Bus Driving Hours Regulations have been superseded by the Driving Hours Regulations.

In Tasmania, prescribed hours of driving were introduced by amendment to the Traffic (General and Local) Regulations in October 1996. As with Truck Driving Hours, slight changes in the national policy since October 1996 will be included in the Tasmanian combined regulations. There is also provision to direct a driver or operator to carry a logbook upon request and the national driver logbook is available to Tasmanian operators travelling interstate.

Common Mass and Loading Rules

National mass and dimension limits will improve productivity for heavy vehicles while protecting roads and bridges. National mass and dimension limits were introduced in Tasmania in October 1996 by amendment to the Traffic (Vehicle Loads and Dimensions) Regulations.

One Driver/One Licence

Common and simplified licence categories and improved processes to eliminate multiple licences will improve road transport management and road safety throughout Australia. Common licence categories were introduced in Tasmania on 1 June 1997 by amendment to the Traffic (Miscellaneous) Regulations. Improved internal procedures and processes to eliminate multiple licences were introduced at the same time to support the regulatory amendments.

Improved Network Access

Expanding access to permit new routes for B-Doubles and other approved large vehicles will reduce freight and administration costs. The NRTC's Restricted Access Vehicles Regulations, which set basic operating standards for B-Doubles, car carriers, special purpose vehicles etc, were introduced in October 1996 by amendments to the Traffic (Vehicle Loads and Dimensions) Regulations and the Traffic (General and Local) Regulations. The introduction of a general permit in

June 1998 successfully completed the implementation of this reform. However, network assessment and expansion is ongoing.

Common Pre-Registration Standards (for Heavy Vehicles)

Nationwide acceptance of common pre-registration standards for heavy vehicles will make it easier for heavy vehicles to travel or be sold anywhere in Australia. Common pre-registration standards were introduced in October 1996 by amendments to the Traffic (General and Local) Regulations and the Traffic (Miscellaneous) Regulations. Administrative guidelines and vehicle information bulletins support the legislation.

Common Roadworthiness Standards

Mutual recognition of roadworthiness standards and consistent enforcement ensure fairness of treatment and enable drivers to clear defect notices anywhere in Australia. These standards were introduced in Tasmania in October 1996. Administrative mechanisms are in place to enable the clearance of defect notices anywhere in Australia.

Enhanced Safe Carriage and Restraint of Loads

Standards regulations and a practical guide for the securing of loads throughout Australia will improve safety by ensuring better loading practices. In October 1996, Tasmania amended the Traffic (Vehicle Loads and Dimensions) Regulations to comply with national standards and the Traffic (General and Local) Regulations to adopt the use of the Load Restraints Guide.

Adoption of National Bus Driving Hours

This reform has been superseded by the Driving Hours Regulations, which combines truck and bus driving hours. Prescribed hours of driving were introduced in Tasmania in October 1996 by amending the Traffic (General and Local Regulations).

Interstate Conversion of Driver Licence

Simplified, cost-free conversions of driver licences will save regulatory authorities, operators' and drivers' time and money. Cost-free conversion of drivers licences was introduced in Tasmania on 1 July 1998 by amendment to the Traffic (Miscellaneous) Regulations.

Alternative Compliance

This reform relates to the support of alternative compliance regimes. All jurisdictions have formally agreed to support alternative compliance schemes. Tasmania passed the *Traffic Amendment (Accreditation and Miscellaneous) Act 1997* to formally pave the way for implementation of alternative compliance schemes in relation to mass, maintenance and fatigue management. This Act, which also encompasses public vehicle licensing, received Royal Assent on 22 December 1997 but is yet to be proclaimed. It is expected to be proclaimed in September 1999 together with the new public vehicle licensing legislation.

Short Term Registration

The availability of options for 3 and 6 month registration provides operators with significant budgetary and operational flexibility. The Traffic (Miscellaneous) Regulations were amended in October 1996 to provide for 3 and 6 month registration options for specific classes of heavy vehicles in Tasmania. Extension of these registration options to all heavy vehicles is currently being progressed with proposed implementation prior to July 1999.

Driver Offence/Licence Status

This reform allows for employers to obtain limited information about an employee's driver licence status, with employee consent. Tasmania currently complies with the NTRC's Administrative Guidelines on the Release of Information, which provides employers with access to this information.

NEVDIS

This reform relates to the agreement to link State/Territory databases to enable automatic exchange of vehicle and driver information. Stage 1 of this reform required the signing of all necessary contracts, memoranda of understanding and services agreements relating to NEVDIS. Tasmania and all other participating jurisdictions complied with the Stage 1 requirements in early 1999.

6.4.2 Progress with additional reform elements

In addition to the implementation of reforms for compliance with the second tranche assessment, considerable progress has been made in the development of the following reforms:

Australian Road Rules

The Australian Road Rules (ARR) will provide national road rules to be followed by all road users including drivers and passengers, pedestrians, riders of motor cycles, bicycles and people in charge of animals. The aim is to ensure the safe and efficient use of the roads and to cover standards of conduct, speed limits, signs, road markings, safety equipment and parking. As these regulations will have a

wide-ranging effect on the general public of Australia, the development stage took longer than anticipated. The ARR were recently submitted for MCRT approval. Jurisdictions have agreed it would be desirable to have a common implementation timetable. The proposed implementation date for stage 1 of the ARR is 1 December 1999.

Compliance and Enforcement

The compliance and enforcement module is seen as being essential to the ongoing administration of the final Road Transport Law package. This module deals with a range of matters which are necessary to secure compliance with the requirements and standards being developed in many of the other modules. The package is currently in the development stage with submission to MCRT for consideration anticipated in mid to late-1999. Tasmania is actively participating with the NRTC and other jurisdictions in the development of this module.

Combined Vehicle Standards

The combined vehicle standards will provide uniform in-service design and construction standards for all vehicles. The aim is to promote the safe and efficient use of vehicles and ensure that they harmonise with the environment. Development of the combined vehicle standards has been completed and they have recently been submitted to MCRT for approval.

Combined Bus and Truck Driving Hours

This reform will provide a nationally consistent basis for the management of fatigue amongst drivers of trucks over 12 tonnes gross and the larger commercially operated buses. Truck drivers operating under systems which manage fatigue may be exempted from some of the regulations. Regulations covering Combined Bus and Truck Driving Hours were recently submitted to MCRT for approval.

Consistent On-Road Enforcement for Road Worthiness

This reform provides high-level guidelines for the assessment of vehicle defects by enforcement officers, taking into account a vehicle's condition and its operating environment. Three levels of sanctions are proposed: formal written warning; minor defect notice; and major defect notice. The road worthiness guidelines were recently submitted to MCRT for approval.

7. CONCLUSION

The Tasmanian Government considers that the reform principles encapsulated in the NCP Agreements are fully in line with the reform directions that Tasmania was already taking prior to the NCP Agreements being signed in April 1995. For this reason, Tasmania is continuing to use NCP and the processes that have been consequently established, including the emphasis on consultation and assessment of the public benefit as a basis for policy development.

Delays have been caused by the August 1998 State election and the failure of the local government amalgamation process of the previous Government. Nonetheless, Tasmania remains strongly committed to implementing NCP reforms.

The information in this Report sets out how the new Government has embraced the reform principles in the NCP Agreements and had committed, by 1998, to all the reforms necessary to comply with NCP, particularly where legislative change has been required. As the Report explains, further progress in some key areas is scheduled up to June 1999.

8. CONTACTS AND PUBLICATIONS

The Tasmanian Government has produced a number of policy statements, public information papers and reference manuals in relation to the implementation and operation of NCP and related reforms in Tasmania.

Policy Statements

Application of the National Competition Policy to Local Government, Government of Tasmania, June 1996.

Application of the Competitive Neutrality Principles under National Competition Policy, Government of Tasmania, June 1996.

Legislation Review Program: 1996 - 2000 - Tasmanian Timetable for the Review of Legislation that Restricts Competition, Government of Tasmania, June 1996.

Agreement between the State and Local Government Association of Tasmania on the Application of National Competition Policy and related matters to local government, July 1998.

Public Information Papers

National Competition Policy Progress Report, April 1995 to 31 July 1997, Government of Tasmania, August 1997.

Tasmania's Reform Obligations and the New Financial Arrangements, Department of Treasury and Finance, August 1995.

Monopoly Prices Oversight and the Tasmanian Government Prices Oversight Commission, Department of Treasury and Finance, January 1996.

Reviews of Legislation that Restrict Competition, Department of Treasury and Finance, July 1996.

Extension of Part IV of the Trade Practices Act to all Businesses in Tasmania, Department of Treasury and Finance, July 1996.

The Application of Competitive Neutrality Principles to the State Government Sector, Department of Treasury and Finance, July 1996.

Guidelines for Considering the Public Benefit Under the National Competition Policy, Department of Treasury and Finance, March 1997.

Full Cost Attribution Principles for Local Government, Department of Treasury and Finance, June 1997.

Guidelines for Implementing Full Cost Attribution Principles in Government Agencies, Department of Treasury and Finance, September 1997.

The Public Benefit Test for the Corporatisation of Local Government Public Trading Enterprises, Department of Treasury and Finance, December 1998.

Corporatisation Principles for Local Government Business Activities, Department of Treasury and Finance, December 1998.

National Competition Policy Competitive Neutrality Principles Complaints Mechanims, Government Prices Oversight Commission, February 1999.

Reference Manuals

Legislation Review Program: 1996 - 2000 - Procedures and Guidelines Manual, Department of Treasury and Finance, June 1996.

Copies of these publications may be obtained by contacting:

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APPENDIX A

LEGISLATION REVIEW PROGRAM - PROGRESS REPORT AS AT 31 DECEMBER 1998

This Attachment deals with the status of all legislation listed for review under the Government's Legislation Review Program (LRP). Acts that have been repealed or that are expected to be repealed are included, but have been listed separately.

Where there are no comments in the status column, no progress had been made on that review by 31 December 1998. It should be noted that a review is considered to have commenced once the Terms of Reference have been approved by the Treasurer and the relevant Portfolio Minister.

Primary Act	Administering Agency	Original Review Date	Current Review Date	Status
Building and Construction Industry Training Fund Act 1990	DE	1997	1998	Terms of Reference for the review have been drafted. One anti-competitive provision, an exemption for the Government from paying the Building and Construction Industry Training Fund Levy on Government work, was repealed by the *Legislation Review Act 1998.*
Christ College Act 1926	DE	1999	1999	
Education Act 1994	DE	1999	1999	
Education Providers Registration (Overseas Students) Act 1991	DE	NAT	1999	A State-based review of this Act will commence in 1999.
Hutchins School Act 1911	DE	1999	1999	
Universities Registration Act 1995	DE	NAT	1998	A minor review of this Act has been completed and the restrictive provisions have been justified as being in the public benefit. The restrictions relate to the registration and accreditation of private universities.
Vocational Education and Training Act 1994	DE	NAT	1999	Preliminary work is underway for this review.
Adoption Act 1988	DHHS	1998	1998	A minor review of this Act has been completed and the restrictive provisions have been justified as being in the public benefit. Licensing restrictions were retained in order to protect against trafficking in children.
Ambulance Service Act 1982	DHHS	1997	1997	A minor review of this Act has been completed and the restrictive provisions have been justified as being in the public benefit. The restrictions relate to the requirement to obtain approval to operate a private ambulance service and the level of fees that may be charged by 'approved' ambulance services.
Dental Act 1982	DHHS	NAT	1999	The review of this Act has been deferred to 1999 in order to utilise the recently developed CRR guidelines on reviews of legislation regulating professions. The review will incorporate a review of the *School Dental Therapy Service Act 1965.*
HIV/AIDS Preventative Measures Act 1993	DHHS	1998	1998	A minor review of this Act has been completed and the restrictive provisions have been justified as being in the public benefit. The restrictions relate to the licensing/approvals involved in areas associated with testing, counselling and treatment of AIDS sufferers.
Hospitals Act 1918	DHHS	1996	1997	The review of the *Hospitals Act 1918* commenced in 1997 and is being progressed as two separate reviews. These will cover broader issues than would be required by the LRP.

Primary Act	Administering Agency	Original Review Date	Current Review Date	Status
Medical Practitioners Registration Act 1996	DHHS	NAT	1999	A review of this Act has been deferred to 1999.
Mental Health Act 1996	DHHS	1999	1999	
Nursing Act 1995	DHHS	NAT	1998	The review of this Act is nearing completion.
Optometrists Registration Act 1994	DHHS	NAT	1999	A review of this Act has been deferred to 1999 in order to utilise the recently developed CRR guidelines on reviews of legislation regulating professions.
Podiatrists Registration Act 1995	DHHS	NAT	1998	The review of this Act is nearing completion.
Poisons Act 1971	DHHS	NAT	NAT	Draft Terms of Reference for a national review of this Act have been prepared. The Department of Health and Human Services is drafting legislation to replace the *Poisons Act 1971* with two separate Bills dealing with licit drug use and illicit drug use. These Bills are being progressed under the LRP gatekeeper requirements.
Sale of Condoms Act 1987	DHHS	1998	1998	A minor review of this Act has been completed. The majority of the restrictive provisions will be removed from the Act. The remaining restrictive provisions have been justified as being in the public benefit, pending the development of new Therapeutic Goods legislation. The restrictions relate to controls for the storage and handling of condoms.
School Dental Therapy Service Act 1965	DHHS	1997	1999	This Act will be considered in the context of the review of the *Dental Act 1982,* which has been deferred until 1999.
Air Navigation Act 1937	DIER	NAT	NAT	The anti-competitive elements of this Act will be considered as part of the Industry Commission's review of the International Air Services Agreement.
Burnie to Waratah Railway Act 1939	DIER	1997	1998	Review of this Act has been deferred pending proclamation of the *Rail Safety Act 1997.* It is considered that the safety and access provisions in this Bill will negate the need for this legislation.
Construction Industry (Long Service) Act 1997	DIER	1999	1999	This Act, which contains an anti-competitive provision, was passed without complying with the LRP. As a result, it will be reviewed during 1999.
Don River Tramway Act 1974	DIER	1997	1998	Review of this Act has been deferred pending proclamation of the *Rail Safety Act 1997.* It is considered that the safety and access provisions in this Bill will negate the need for this legislation.
Electricity Industry Safety and Administration Act 1997	DIER	1998	1999	
Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995	DIER	1997	1998	This Act is being reviewed as part of the implementation of the COAG reform agenda for the Australian water industry. A Bill to replace the *Water Act 1957* and associated legislation is currently being drafted. This legislation is being assessed under the LRP gatekeeper requirements.
Emu Bay Railway Act 1976	DIER	1997	1998	Review of this Act has been deferred pending proclamation of the *Rail Safety Act 1997.* It is considered that the safety and access provisions in this Bill will negate the need for this legislation.
Groundwater Act 1985	DIER	1997	1998	This Act is being reviewed as part of the implementation of the COAG reform agenda for the Australian water industry. A Bill to replace the *Water Act 1957* and associated legislation is currently being drafted. This legislation is being assessed under the LRP gatekeeper requirements.
Hairdressers' Registration Act 1975	DIER	1997	1998	Preliminary work is underway for this review.
Iron Ore (Savage River) Agreement Act 1965	DIER	EXC	EXC	
Iron Ore (Savage River) Deed of Variation Act 1990	DIER	EXC	EXC	
Mineral Resources Development Act 1995	DIER	1996	1998	Terms of Reference for this review have been drafted.
Plumbers and Gas-fitters Registration Act 1951	DIER	1997	1997	The review of this Act is nearing completion. A final review report is being prepared.

Primary Act	Administering Agency	Original Review Date	Current Review Date	Status
Racing Act 1983	DIER	NAT	1999	The review of this Act has been deferred until 1999 following the completion of the minor review of the State's gaming legislation. The Act will be reviewed in conjunction with the review of the racing components of the *Racing and Gaming Act 1952.*
Racing and Gaming Act 1952 (except in relation to totalisator betting and minor gaming)	DIER	1997	1998	The review of the racing components of the Act has been deferred until 1999 following the completion of the minor review of the State's gaming legislation. The racing components will be reviewed in conjunction with the *Racing Act 1983.*
Railways Clauses Consolidation Act 1901	DIER	1996	1998	Review of this Act has been deferred pending proclamation of the *Rail Safety Act 1997.* It is considered that the safety and access provisions in this Bill will negate the need for this legislation.
Roads and Jetties Act 1935	DIER	1998	1998	Preliminary work is underway for this review.
Shop Trading Hours Act 1984	DIER	1998	1999	The review of this Act was deferred to 1999 to coincide with Government commitments made in relation to shop trading hours.
Taxi Industry Act 1995	DIER	NAT	1998	Terms of Reference for this review have been drafted for review in 1999.
Traffic Act 1925	DIER	1996	1996	This Act has been substantially reviewed in terms of the restrictive provisions of Part III, by the independent Committee of Review into Public Vehicle Licensing in Tasmania, chaired by Mr David Burton (the "Burton Review"). The anti-competitive provisions in Part III will be replaced by the *Passenger Transport Act 1997,* the *Passenger Transport (Consequential and Transitional) Act 1997* and the *Traffic Amendment (Accreditation and Miscellaneous) Act 1997.* A Bill which will replace the remainder of the Traffic Act will be progressed under the LRP gatekeeper requirements during 1999.
Van Dieman's Land Company's Waratah and Zeehan Railway Act 1895	DIER	1997	1998	Review of this Act has been deferred pending proclamation of the *Rail Safety Act 1997.* It is considered that the safety and access provisions in this Bill will negate the need for this legislation.
Van Dieman's Land Company's Waratah and Zeehan Railway Act 1896	DIER	1997	1998	Review of this Act has been deferred pending proclamation of the *Rail Safety Act 1997.* It is considered that the safety and access provisions in this Bill will negate the need for this legislation.
Van Dieman's Land Company's Waratah and Zeehan Railway Act 1948	DIER	1997	1998	Review of this Act has been deferred pending proclamation of the *Rail Safety Act 1997.* It is considered that the safety and access provisions in this Bill will negate the need for this legislation.
Wee Georgie Wood Steam Railway Act 1977	DIER	1997	1998	Review of this Act has been deferred pending proclamation of the *Rail Safety Act 1997.* It is considered that the safety and access provisions in this Bill will negate the need for this legislation.
Workers' (Occupational Diseases) Relief Fund Act 1954	DIER	1996	REM	This Act was initially assessed as imposing a restriction on competition as at 1 July 1996. The restriction on competition initially identified was repealed by the *Workers' Compensation Legislation Amendment Act 1993* on 1 February 1994.
Workers' Rehabilitation and Compensation Act 1988	DIER	1996	1998	The Tasmanian Parliament established a Joint Select Committee (JSC) to examine the further reform of this legislation. The Committee submitted its final report in May 1998. In addition, Heads of Government have agreed to consider the development of nationally consistent workers' compensation arrangements. The Labour Ministers' Council is responsible for co-ordinating this task. It is considered that the Act may be amended in light of the JSC recommendations .
Workplace Health and Safety Act 1995	DIER	1998	NAT	The Labour Ministers' Council has undertaken a review of the National Occupational Health and Safety Commission (NOHSC). On 30 May 1997, the Labour Ministers' Council agreed on a new direction for the NOHSC and a new role for the Council in approving any new occupational health and safety standards. Review options will be developed following an appraisal of the reforms to NOHSC.
Business Names Act 1962	DOJIR	NAT	1998	A minor review of this Act has been completed and the restrictive provisions have been justified as being in the public benefit. The restrictive provisions relate to the registration of business names; this requirement is uniform across Australia.
Companies (Acquisition of Shares) (Application of Laws) Act 1981	DOJIR	NAT	REM	This Act will not be subject to review under the LRP as it does not restrict competition *per se*. This Act currently has no effect except in relation to breaches that occurred prior to the introduction of the *Corporations (Tasmania) Act 1990.*

Primary Act	Administering Agency	Original Review Date	Current Review Date	Status
Companies (Acquisition of Shares) (Tasmania) Code	DOJIR	NAT	REM	This Act will not be subject to review under the LRP as it does not restrict competition *per se*. This Act currently has no effect except in relation to breaches that occurred prior to the introduction of the *Corporations (Tasmania) Act 1990*.
Companies (Application of Laws) Act 1982	DOJIR	NAT	REM	This Act will not be subject to review under the LRP as it does not restrict competition *per se*. This Act currently has no effect except in relation to breaches that occurred prior to the introduction of the *Corporations (Tasmania) Act 1990*.
Companies (Tasmania) Code	DOJIR	NAT	REM	This Act will not be subject to review under the LRP as it does not restrict competition *per se*. This Act currently has no effect except in relation to breaches that occurred prior to the introduction of the *Corporations (Tasmania) Act 1990*.
Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981	DOJIR	NAT	REM	This Act will not be subject to review under the LRP as it does not restrict competition *per se*. This Act currently has no effect except in relation to breaches that occurred prior to the introduction of the *Corporations (Tasmania) Act 1990*.
Companies and Securities (Interpretation and Miscellaneous Provisions) (Tasmania) Code	DOJIR	NAT	REM	This Act will not be subject to review under the LRP as it does not restrict competition *per se*. This Act currently has no effect except in relation to breaches that occurred prior to the introduction of the *Corporations (Tasmania) Act 1990*.
Companies and Securities (Miscellaneous Amendments) Act (No. 2) 1982	DOJIR	NAT	REM	This Act will not be subject to review under the LRP as it does not restrict competition *per se*. This Act currently has no effect except in relation to breaches that occurred prior to the introduction of the *Corporations (Tasmania) Act 1990*.
Companies and Securities Legislation (Miscellaneous Amendments) Act 1982	DOJIR	NAT	REM	This Act will not be subject to review under the LRP as it does not restrict competition *per se*. This Act currently has no effect except in relation to breaches that occurred prior to the introduction of the *Corporations (Tasmania) Act 1990*.
Companies Auditors and Liquidators Disciplinary Board Act 1982	DOJIR	NAT	REM	This Act will not be subject to review under the LRP as it does not restrict competition *per se*. This Act currently has no effect except in relation to breaches that occurred prior to the introduction of the *Corporations (Tasmania) Act 1990*.
Corporations (Tasmania) Act 1990	DOJIR	NAT	NAT	A review of all areas of corporations law is being undertaken by a Commonwealth review body. New legislation will replace this Act.
Futures Industry (Application of Laws) Act 1987	DOJIR	NAT	REM	This Act will not be subject to review under the LRP as it does not restrict competition *per se*. This Act currently has no effect except in relation to breaches that occurred prior to the introduction of the *Corporations (Tasmania) Act 1990*.
Futures Industry (Tasmania) Code	DOJIR	NAT	REM	This Act will not be subject to review under the LRP as it does not restrict competition *per se*. This Act currently has no effect except in relation to breaches that occurred prior to the introduction of the *Corporations (Tasmania) Act 1990*.
Legal Profession Act 1993	DOJIR	NAT	NAT	The three references recommended by COAG's Legal Profession Reform Working Group are with the Commonwealth Treasurer awaiting referral to an appropriate review body. Other issues are being progressed at State level. There have been some delays to progress at the national level, such that States are considering progressing their own reviews. NSW is likely to initiate this process.
Partnership Act 1891	DOJIR	1998	1998	A minor review of this Act has been completed and the restrictive provisions have been justified as being in the public benefit. The restrictive provisions relate to the ability of partners to compete with their partnership.
Securities Industry (Application of Laws) Act 1981	DOJIR	NAT	REM	This Act will not be subject to review under the LRP as it does not restrict competition *per se*. This Act currently has no effect except in relation to breaches that occurred prior to the introduction of the *Corporations (Tasmania) Act 1990*.
Securities Industry (Tasmania) Code	DOJIR	NAT	REM	This Act will not be subject to review under the LRP as it does not restrict competition *per se*. This Act currently has no effect except in relation to breaches that occurred prior to the introduction of the *Corporations (Tasmania) Act 1990*.
Auctioneers and Real Estate Agents Act 1991	DOJIR - OCA	NAT	1999	A general review of the Act has commenced which will address the LRP requirements.
Classification (Publications, Films and Computer Games) Enforcement Act 1995	DOJIR - OCA	NAT	1999	A minor review of this Act has been completed and the restrictive provisions have been justified as being in the public benefit. This Act is national legislation which prohibits the sale, hire, exhibition and production of certain materials and introduces a classification system for certain materials.
Commercial and Inquiry Agents Act 1974	DOJIR - OCA	NAT	1999	A general review of the Act has commenced which will address the LRP requirements.

Primary Act	Administering Agency	Original Review Date	Current Review Date	Status
Door to Door Trading Act 1986	DOJIR - OCA	1999	1999	
Fair Trading Act 1990	DOJIR - OCA	1997	1998	A minor review of this Act has been completed and the restrictive provisions, namely the requirement for manufacturers to provide warranties for motor vehicles and to establish a system for dealing with customer complaints, have been justified as being in the public benefit.
Flammable Clothing Act 1973	DOJIR - OCA	NAT	1998	A minor review of this Act has been completed and the restrictive provision, the requirement to mark or label prescribed clothing (children's nightwear) with the flammability of the garment, has been justified as being in the public benefit.
Goods (Trade Descriptions) Act 1971	DOJIR - OCA	NAT	1998	A minor review of this Act is nearing completion. The key restrictive provision, the requirement for manufacturers to disclose the materials from which textile products are made, has been justified as being in the public benefit. The other restrictive provision is being further assessed.
Sale of Hazardous Goods Act 1977	DOJIR - OCA	NAT	1999	A State-based review of this Act will commence in 1999.
Second-hand Dealers and Pawnbrokers Act 1994	DOJIR - OCA	1999	1999	
Travel Agents Act 1987	DOJIR - OCA	NAT	NAT	The Terms of Reference for a national review have been approved by the Ministerial Council on Consumer Affairs and the review is underway.
Trustee Act 1898	DOJIR/T&F	1998	1998	The restrictive provision, regulation of trustee investments, was repealed and replaced in 1997 with a 'prudent person' approach to trustee investments. This provision was progressed through the LRP gatekeeper requirements and assessed as not restricting competition or impacting on business.
Firearms Act 1996	DOP	1999	1999	
Petroleum Products Emergency Act 1994	DOP	1998	REM	This Act has been removed from the LRP timetable. The legislation requires that any restrictions must be justified in the public benefit, therefore no further justification was considered necessary.
Agricultural and Veterinary Chemicals (Control of Use) Act 1995	DPIWE	NAT	NAT	A national review has commenced.
Agricultural and Veterinary Chemicals (Tasmania) Act 1994	DPIWE	NAT	NAT	A national review has commenced.
Animal (Brands and Movement) Act 1984	DPIWE	NAT	1999	A State-based review will commence in 1999.
Animal Farming (Registration) Act 1994	DPIWE	1998	1998	A minor review of this Act has commenced.
Animal Health Act 1995	DPIWE	NAT	1999	A State-based review of this Act will commence in 1999.
Animal Welfare Act 1993	DPIWE	1999	1999	
Ben Lomond Skifield Management Authority Act 1995	DPIWE	1998	1999	The review of this Act has been deferred until 1999 to coincide with the completion of the review of the *National Parks and Wildlife Act 1970.*
Biological Control Act 1986	DPIWE	NAT	REM	This Act has been removed from the LRP timetable. Advice from the National Competition Council, dated 28 July 1997, states that this Act does not contain restrictions on competition and therefore does not need to be reviewed.
Botanical Gardens Act 1950	DPIWE	1996	REM	This Act has been removed from the LRP timetable. The restrictive provisions were contained in the by-laws. The by-laws have now been rescinded and replaced with new by-laws which do not contain restrictions on competition. The Act has been removed from the timetable as it no longer contained any restrictions on competition.
Environmental Management and Pollution Control Act 1994	DPIWE	1998	1998	A major review of this Act is nearing completion. A final review report is being prepared for consideration by the Government.

Primary Act	Administering Agency	Original Review Date	Current Review Date	Status
Fertilizers Act 1993	DPIWE	NAT	1999	A State-based review of this Act will commence in 1999.
Historic Cultural Heritage Act 1995	DPIWE	1998	1999	The review of this Act has been deferred until 1999 to allow it to be reviewed in conjunction with, or subsequent to, the review of the *Land Use Planning and Approvals Act 1993*.
Irrigation Clauses Act 1973	DPIWE	1999	1998	This Act is being reviewed as part of the implementation of the COAG reform agenda for the Australian water industry. A Bill to replace the *Water Act 1957* and associated legislation is currently being drafted. This legislation is being assessed under the LRP gatekeeper requirements.
Land Surveyors Act 1909	DPIWE	NAT	1998	A major review of this Act has commenced.
Land Use Planning and Approvals Act 1993	DPIWE	1999	1999	
Land Valuation Act 1971	DPIWE	1997	1997	A major review of this Act has been completed and the recommendations will soon be provided to the Government. The review was undertaken in conjunction with a LRP review of the *Valuers Registration Act 1974*.
Living Marine Resources Management Act 1995	DPIWE	1999	1999	
Local Government (Building and Miscellaneous Provisions) Act 1993 - (Part III)	DPIWE	NAT	1999	A State-based review of Part III of the Act will take place in 1999.
Marine Farming Planning Act 1995	DPIWE	NAT	1999	A State-based review will commence in 1999.
Meat Hygiene Act 1985	DPIWE	1996	1998	A major review of this Act has commenced.
National Parks and Wildlife Act 1970	DPIWE	1997	1997	A minor review of this Act has commenced.
Primary Industry Activities Protection Act 1995	DPIWE	1999	1999	
Seeds Act 1985	DPIWE	NAT	1999	A State-based review will commence in 1999.
Sewers and Drains Act 1954	DPIWE	1998	1998	This Act is being reviewed as part of the implementation of the COAG reform agenda for the Australian water industry. A Bill to replace the *Water Act 1957* and associated legislation is currently being drafted. This legislation is being assessed under the LRP gatekeeper requirements.
Thomas Owen and Co. (Australia) Limited Act 1948	DPIWE	1998	1998	This Act is being reviewed as part of the implementation of the COAG reform agenda for the Australian water industry. A Bill to replace the *Water Act 1957* and associated legislation is currently being drafted. This legislation is being assessed under the LRP gatekeeper requirements.
Threatened Species Protection Act 1995	DPIWE	1999	1999	
Valuers Registration Act 1974	DPIWE	NAT	1997	A major review of this Act has been completed and the recommendations will soon be provided to the Government. The review has been undertaken in conjunction with a LRP review of the *Land Valuation Act 1971*.
Vermin Destruction Act 1950	DPIWE	NAT	1999	A State-based review will commence in 1999.
Veterinary Surgeons Act 1987	DPIWE	NAT	1999	A State-based review will commence in 1999.
Water Act 1957	DPIWE	1996	1998	This Act is being reviewed as part of the implementation of the COAG reform agenda for the Australian water industry. A Bill to replace the *Water Act 1957* and associated legislation is currently being drafted. This legislation is being assessed under the LRP gatekeeper requirements.
Waterworks Clauses Act 1952	DPIWE	1996	1998	This Act is being reviewed as part of the implementation of the COAG reform agenda for the Australian water industry. A Bill to replace the *Water Act 1957* and associated legislation is currently being drafted. This legislation is being assessed under the LRP gatekeeper requirements.

Primary Act	Administering Agency	Original Review Date	Current Review Date	Status
Wellington Park Act 1993	DPIWE	1998	1999	The review of this Act has been deferred until 1999 to coincide with the completion of the review of the *National Parks and Wildlife Act 1970*.
Whales Protection Act 1988	DPIWE	NAT	1998	Preliminary work is underway for a minor review of this Act.
Egg Industry Act 1988	DPIWE - EMB	NAT	1998	A major review of this Act is nearing completion. A final review report is being prepared.
Inland Fisheries Act 1995	DPIWE - IFC	1996	1997	A major review of this Act is underway.
Grain Reserve Act 1950	DPIWE - TGEB	1997	1998	Preliminary work for this review has commenced.
Copper Mines of Tasmania Pty Ltd (Agreement) Act 1994	DSD	EXC	EXC	
Goldamere Pty Ltd (Agreement) Act 1996	DSD	EXC	EXC	
Iron Ore (Savage River) Arrangements Act 1996	DSD	EXC	EXC	
Forest Practices Act 1985	FPB	NAT	1998	A minor review of this Act has been completed and the restrictive provisions have been justified as being in the public benefit. The restrictions relate to the Forest Practices Code, Timber Harvesting Plans, Private Timber Reserves and Forest Practices Officers.
Florentine Valley Paper Industry Act 1935	FT	1997	1998	This Act is being reviewed as part of the implementation of the COAG reform agenda for the Australian water industry. A Bill to replace the *Water Act 1957* and associated legislation is currently being drafted. This legislation is being assessed under the LRP gatekeeper requirements.
Forestry Act 1920	FT	1997	1998	A minor review of this Act has been completed and the majority of the restrictions on competition are to be removed from the Act. The remaining restriction, relating to minimum supply requirements for eucalypt veneer logs and sawlogs to the veneer industry and sawmilling industries, was reviewed and justified as being in the public benefit during the Regional Forestry Agreement process.
Wesley Vale Pulp and Paper Industry Act 1961	FT	1997	1998	This Act is being reviewed as part of the implementation of the COAG reform agenda for the Australian water industry. A Bill to replace the *Water Act 1957* and associated legislation is currently being drafted. This legislation is being assessed under the LRP gatekeeper requirements.
Motor Accidents (Liabilities and Compensation) Act 1973	MAIB	1997	1997	A major review of this Act has been completed and the Government has agreed to the recommendations of the review body.
Architects Act 1929	P&C - LGO	NAT	NAT	A national review of Architects legislation is scheduled to commence in 1999.
Dog Control Act 1987	P&C - LGO	1996	1997	A minor review of this Act has been completed and the restrictive provisions have been justified as being in the public benefit. The restrictions relate to the registration of dogs and kennel licensing.
Local Government (Highways) Act 1982	P&C - LGO	1997	1998	A minor review of this Act has commenced.
Local Government Act 1993	P&C - LGO	1996	1998	A review of this Act was delayed pending the outcome of the Government's intention to pursue council amalgamations. Preliminary work is now underway for this review.
Port Arthur Historic Site Management Authority Act 1987	PAHSMA	1997	1998	Preliminary work is underway for this review. Its commencement had been delayed after considerable changes to the management of the Authority following the Port Arthur tragedy.
Casino Company Control Act 1973	T&F	1998	1998	A minor review of this Act has commenced as part of a review of the State's gaming legislation.
Co-operative Housing Societies Act 1963	T&F	1998	REM	This Act will not be subject to review under the LRP as it does not restrict competition *per se*. It currently has no effect except in relation to existing loans under the Act and will be repealed following expiry of these loans.

Primary Act	Administering Agency	Original Review Date	Current Review Date	Status
Debits Tax Transfer Act 1990	T&F	EXC	EXC	
Electricity Supply Industry Act 1995	T&F	1999	1999	
Financial Institutions Duty Act 1986	T&F	EXC	EXC	
Gaming Control Act 1993	T&F	1998	1998	A minor review of this Act has commenced as part of a review of the State's gaming legislation.
Land and Income Taxation Act 1910	T&F	EXC	EXC	
Land Tax Act 1995	T&F	EXC	EXC	
Pay-roll Tax Act 1971	T&F	EXC	EXC	
Petroleum Products Business Franchise Licences Act 1981	T&F	EXC	EXC	
Racing and Gaming Act 1952 (in so far as it relates to minor gaming)	T&F	1997	1999	A minor review of this Act has commenced as part of a review of the State's gaming legislation.
Stamp Duties Act 1931	T&F	EXC	EXC	
Tasmanian Public Finance Corporation Act 1985	T&F	1997	1998	A minor review of this Act is underway.
The Hellyer Mine Agreement Ratification Act 1987	T&F	EXC	EXC	
Tobacco Business Franchise Licences Act 1980	T&F	EXC	EXC	
Trustee Banks Act 1985	T&F	1998	1998	A minor review of this Act has been completed and the restrictive provisions have been justified as being in the public benefit. The restrictions relate to the establishment and operation of trustee banks.
TT-Line Gaming Act 1993	T&F	1998	1998	A minor review of this Act has commenced as part of a review of the State's gaming legislation.
Liquor and Accommodation Act 1990	T&F - LC	1996	1999	This Act will be reviewed during 1999.
Racing and Gaming Act 1952 (in so far as it relates to totalisator betting)	T&F/DPIWE-TRA	1997	1999	The totalisator betting components will be reviewed following completion of a minor review of the State's gaming legislation.
Financial Management and Audit Act 1990	TAO	1997	1998	A minor review of this Act has been completed and the recommendations of the review body will soon be provided to the Government.
Dairy Industry Act 1994	TDIA	NAT	1998	A major review of this Act is underway and is close to completion.
Fire Service Act 1979	TFS	1998	1998	A minor review of this Act is underway.

REPEALS AND EXPECTED REPEALS AT 31 DECEMBER 1998

Primary Act	Administering Agency	Original Review Date	Current Review Date	Status
Child Welfare Act 1960	DHHS	1996	1997	The Children, Young Persons and Their Families Bill was passed by Parliament in 1997 but has not yet been proclaimed. The Bill deals with assistance and intervention in relation to children at risk of abuse or neglect which were previously contained in the Child Welfare Act. The existing child care provisions of the Child Welfare Act are now administered by the Department of Education and will be transferred to new child care legislation.
Chiropractors Registration Act 1982	DHHS	NAT	REP	This Act was repealed and replaced by the *Chiropractors and Osteopaths Registration Act 1997*. It was assessed under the LRP gatekeeper requirements as imposing a minor restriction on competition (relating to registration) which was justified as being in the public benefit.
Local Government (Building and Miscellaneous Provisions) Act 1993 - (in so far as it relates to health issues)	DHHS	1996	REP	The relevant sections of this Act are expected to be repealed. The repealing legislation will be assessed under the LRP gatekeeper requirements.
Medical Act 1959	DHHS	NAT	REP	This Act was repealed on 21 August 1996. The repealing Act, the *Medical Practitioners Registration Act 1996,* is included on the LRP timetable in place of a review of this Act.
Mental Health Act 1963	DHHS	1996	REP	This Act will be repealed when the *Mental Health Act 1996* is proclaimed.
Nursing Act 1987	DHHS	NAT	REP	This Act was repealed on 1 July 1996. The repealing Act, the *Nursing Act 1995,* is included on the LRP timetable in place of a review of this Act.
Pharmacy Act 1908	DHHS	NAT	REP	The Commonwealth has proposed a national review, in conjunction with a review of the Commonwealth's Community Pharmacy Agreement, to be undertaken in 1999. A State-based review was completed in January 1998. This review did not encompass the ownership issues to be considered as part of the national review. It is expected that this Act will be replaced by new legislation which will be assessed under the LRP gatekeeper requirements.
Physiotherapists Registration Act 1951	DHHS	NAT	1997	New physiotherapists registration legislation is currently being drafted which is intended to replace the existing Act. The new legislation is being progressed under the LRP gatekeeper requirements.
Podiatrists Registration Act 1974	DHHS	NAT	REP	This Act was repealed on 1 July 1996. The repealing Act, the *Podiatrists Registration Act 1995*, is included on the LRP timetable in place of a review of this Act.
Psychologists Registration Act 1976	DHHS	NAT	REP	New psychologists registration legislation has been drafted to replace the existing Act and is being progressed under the LRP gatekeeper requirements.
Public Health Act 1962	DHHS	NAT	REP	This Act has been repealed and replaced by the *Public Health Act 1997* and the *Food Act 1998* which were assessed under the LRP gatekeeper requirements. The Commonwealth is consulting with the States on national reviews relating to food regulation, including a review of the Australia and New Zealand Food Authority Council Act and the Model Food Act.
Radiation Control Act 1977	DHHS	1996	REP	New radiation control legislation is currently being drafted and will be assessed under the LRP gatekeeper requirements.
Radiographers Registration Act 1971	DHHS	NAT	REP	New radiographers registration legislation (radiation technologists) is proposed to replace the existing Act and is being progressed under the LRP gatekeeper requirements.
Substandard Housing Control Act 1973	DHHS	1996	REP	This Act is expected to be repealed. The repealing Acts will be assessed under the LRP gatekeeper provisions.
Therapeutic Goods and Cosmetics Act 1976	DHHS	NAT	REP	This Act is expected to be replaced by a new Therapeutic Goods Bill which will be progressed through Parliament in 1999 and will complement the existing Commonwealth Act relating to this matter. The new Bill will be assessed under the LRP gatekeeper requirements.

Primary Act	Administering Agency	Original Review Date	Current Review Date	Status
Tobacco Products (Labelling) Act 1987	DHHS	1998	REP	This Act was repealed by the *Public Health Act 1997*.
Australian Titan Products Act 1945	DIER	1997	REP	This Act was repealed by the *Legislation Repeal Act 1998*.
Bank Holidays Act 1919	DIER	1997	REP	This Act is expected to be repealed and replaced with new public holidays legislation, which will be assessed under the LRP gatekeeper requirements
Dangerous Goods Act 1976	DIER	NAT	REP	This Act is to be repealed and replaced by new dangerous goods legislation. The new legislation is based on the National Road Transport Commission's legislative model for transport of dangerous goods by road, which has been expanded to include the use, storage and handling of dangerous goods. The new legislation has been assessed under the LRP gatekeeper requirements.
Devonport Airport (Special Provisions) Act 1980	DIER	1998	REP	This Act was repealed by the *Port Companies Act 1997*.
Gas Franchises Act 1973	DIER	1996	REP	This Act is expected to be repealed by new gas legislation. The new legislation will be assessed under the LRP gatekeeper requirements.
Hobart Bridge Act 1958	DIER	1996	REP	This Act was repealed by the *Legislation Repeal Act 1996*.
Local Government (Building and Miscellaneous Provisions) Act 1993 - (except in relation to health issues and Part III (subdivisions))	DIER	NAT	REP	New building legislation will replace the building provisions of the existing *Local Government (Building and Miscellaneous Provisions) Act 1993*. The new legislation will be assessed under the LRP gatekeeper requirements. Other provisions of the Act will be progressively removed and placed into specific-purpose Acts.
Marine Act 1976	DIER	NAT	REP	This Act was repealed on 30 July 1997 and has been replaced by the *Marine and Safety Authority Act 1997*, the *Port Companies Act 1997* and the *Marine (Consequential Amendments) Act 1997*. These Acts have been assessed under the LRP gatekeeper requirements.
Merchant Seamen Act 1935	DIER	NAT	REP	This Act was repealed by the *Legislation Repeal Act 1998*.
Metropolitan Transport Act 1954	DIER	1998	REP	This Act has been replaced by the *Metro Tasmania Act 1997* and *Metro Tasmania (Transitional and Consequential Provisions) Act 1997*. The new legislation has been assessed under the LRP gatekeeper requirements.
Mining Act 1929	DIER	1997	REP	This Act was repealed on 1 July 1996. The repealing Act, the *Mineral Resources Development Act 1995*, has been included on the LRP timetable in place of a review of this Act.
Mount Cameron Water Race Act 1926	DIER	-	REP	This Act contained a legislated restriction on competition, but was not originally listed on the LRP timetable. The Act provides, *inter alia*, for water rights to the Rushy Lagoon property. It was repealed by the *Legislation Repeal Act 1998*.
Mount Dundas and Zeehan Railway Act 1890	DIER	1997	REP	This Act was repealed by the *Legislation Repeal Act 1998*.
Mount Dundas and Zeehan Railway Act 1891	DIER	1997	REP	This Act was repealed by the *Legislation Repeal Act 1998*.
Mount Lyell and Strahan Railway Act 1892	DIER	1996	REP	This Act was repealed by the *Legislation Repeal Act 1996*.
Mount Lyell and Strahan Railway Act 1893	DIER	1996	REP	This Act was repealed by the *Legislation Repeal Act 1996*.
Mount Lyell and Strahan Railway Act 1896	DIER	1996	REP	This Act was repealed by the *Legislation Repeal Act 1996*.
Mount Lyell and Strahan Railway Act 1898	DIER	1996	REP	This Act was repealed by the *Legislation Repeal Act 1996*.
Mount Lyell and Strahan Railway Act 1900	DIER	1996	REP	This Act was repealed by the *Legislation Repeal Act 1996*.
Mount Read and Rosebery Mines Limited Leases Act 1916	DIER	1998	REP	It is likely that this Act will be repealed.

Primary Act	Administering Agency	Original Review Date	Current Review Date	Status
North Mount Lyell and Macquarie Harbour Railway Act 1897	DIER	1996	REP	This Act was repealed by the *Legislation Repeal Act 1996*.
North Mount Lyell Mining and Railway Act 1901	DIER	1996	REP	This Act was repealed by the *Legislation Repeal Act 1996*.
Petroleum (Submerged Lands) Act 1982	DIER	NAT	REP	This Act will be repealed and replaced by new nationally uniform legislation that is being developed by the Commonwealth. It will be assessed under the LRP gatekeeper requirements.
Railway Management Act 1935	DIER	1997	REP	This Act is awaiting repeal following proclamation of the *Rail Safety Bill 1997*. It relates to the control and management of Government owned and operated railways. Since the Government no longer owns or operates any railways, this Act has become redundant.
Railways (Transfer to Commonwealth) Act 1975	DIER	1997	REP	This Act was repealed by the *Legislation Repeal Act 1998*. It has become redundant following the sale of Tasrail to the Commonwealth and the return to State ownership of railway land in accordance with the Railways Agreement between the Commonwealth and State Government.
Sunday Observance Act 1968	DIER	1997	REP	This Act was repealed by the *Sunday Observance Act (Repeal*) Act *1997*.
Wynyard Airport (Special Provisions) Act 1982	DIER	1998	REP	This Act was repealed by the *Port Companies Act 1997*.
Australia and New Zealand Banking Group Act 1970	DOJIR	1998	REP	This Act does not restrict competition *per se*. It deals with mergers and the rights of stakeholders and will eventually be repealed.
Bank of Adelaide (Merger) Act 1980	DOJIR	1998	REP	This Act does not restrict competition *per se*. It deals with mergers and the rights of stakeholders and will eventually be repealed.
Commercial Bank of Australia Limited (Merger) Act 1982	DOJIR	1998	REP	This Act does not restrict competition *per se*. It deals with mergers and the rights of stakeholders and will eventually be repealed.
Commercial Banking Company of Sydney Limited (Merger) Act 1982	DOJIR	1998	REP	This Act does not restrict competition *per se*. It deals with mergers and the rights of stakeholders and will eventually be repealed.
Co-operative Industrial Societies Act 1928	DOJIR	1998	REP	New co-operatives legislation will repeal and replace this Act. The repealing legislation will be based on a model Bill agreed by the Standing Committee of Attorneys-General in 1996 and will be assessed under the LRP gatekeeper requirements.
Evidence Act 1910	DOJIR	1997	REP	This Act will be repealed and replaced by new legislation. The Bill will be assessed under the LRP gatekeeper requirements.
Hobart Town Gas Company's Act 1854	DOJIR	1997	REP	This Act is expected to be repealed following the wind-up of the company.
Hobart Town Gas Company's Act 1857	DOJIR	1997	REP	This Act is expected to be repealed following the wind-up of the company.
Launceston Gas Company Act 1982	DOJIR	1997	REP	This Act is likely to be repealed.
Launceston Savings Investment and Building Society Act 1955	DOJIR	1996	REP	This Act was repealed by the *Legislation Repeal Act 1996*.
Pawnbrokers Act 1857	DOJIR	1999	REP	This Act was repealed on 1 June 1996. The repealing Act, the *Second-hand Dealers and Pawnbrokers Act 1994*, has been included on the LRP timetable in place of a review of this Act.
Printers and Newspapers Act 1911	DOJIR	1997	REP	This Act was repealed by the *Legislation Repeal Act 1998*.

Primary Act	Administering Agency	Original Review Date	Current Review Date	Status
Rules Publication Act 1953	DOJIR	1997	REP	The restrictive provisions in this Act were repealed by the *Legislation Publication Act 1996* which was proclaimed in early 1998. The repealing legislation was assessed under the gatekeeper requirements as not restricting competition or impacting on business.
Second-hand Dealers Act 1905	DOJIR	1999	REP	This Act was repealed on 1 June 1996. The repealing Act, the *Second-hand Dealers and Pawnbrokers Act 1994*, was included on the LRP timetable in place of a review of this Act.
Stock, Wool, and Crop Mortgages Act 1930	DOJIR	1998	REP	This Act is being considered in accordance with a general review of the *Bill of Sales Act 1930*. It is likely that the Act will be repealed and replaced by new legislation that will be assessed under the LRP gatekeeper requirements.
Trustee Companies Act 1953	DOJIR	NAT	REP	This Act will be repealed and replaced by new uniform trustee companies legislation which is being drafted by the Commonwealth. The new legislation will be assessed under the LRP gatekeeper requirements.
Hire-Purchase Act 1959	DOJIR - OCA	1998	REP	This Act does not restrict competition *per se*. It has been replaced by the Consumer Credit Code and only relates to hire purchase contracts taken out prior to the introduction of the Code. It will eventually be repealed.
Housing Indemnity Act 1992	DOJIR - OCA	1998	REP	This Act is likely to be repealed and replaced by new building legislation which will be assessed under the LRP gatekeeper requirements.
Lending of Money Act 1915	DOJIR - OCA	1998	REP	This Act does not restrict competition *per se*. It has been replaced by the Consumer Credit Code and only relates to money lending contracts taken out prior to the introduction of the Code. It will eventually be repealed.
Mock Auctions Act 1973	DOJIR - OCA	1998	REP	This Act will be repealed by the forthcoming *Legislation Repeal Bill 1999.*
Weights and Measures Act 1934	DOJIR - OCA	NAT	REP	This Act will be repealed and replaced by State-based uniform trade measurement legislation. This legislation has been assessed under the LRP gatekeeper requirements.
Guns Act 1991	DOP	1998	REP	This Act was repealed on 13 November 1996. The repealing Act, the *Firearms Act 1996*, has been included on the LRP timetable in place of a review of this Act.
Police Offences Act 1935	DOP	1997	REP	New legislation is to be developed to replace this Act. It will be assessed under the LRP gatekeeper requirements.
Apiaries Act 1978	DPIWE	1996	REP	A review of this Act has been completed and the Act is to be repealed.
Apple and Pear Industry (Crop Insurance) Act 1982	DPIWE	1996	REP	A review of this Act has been completed and the recommendations of the review have been presented to the Government. The Government has agreed that compulsory insurance for the apple and pear industry should be abolished and the Act repealed. An Act to provide for the repeal of this Act and the winding up of the scheme is being prepared.
Clyde Water Act 1898	DPIWE	1996	REP	This Act will be repealed by the *Water Management Bill 1999,* which will be assessed under the LRP gatekeeper requirements.
Environment Protection (Sea Dumping) Act 1987	DPIWE	NAT	REP	It is expected that this Act will be repealed following amendments to the *Environmental Management and Pollution Control Act 1994* arising from the LRP review of that Act.
Hobart Regional Water Act 1984	DPIWE	1996	REP	This Act was repealed on 1 January 1997. The repealing Act, the *Hobart Regional Water (Arrangements) Act 1996,* has been assessed under the LRP gatekeeper requirements.
Ida Bay Railway Act 1977	DPIWE	1997	REP	This Act will be repealed following the proclamation of the *Railway Management Act (Repeal) Act 1997*, which repeals the *Railway Management Act 1935.*
North Esk Regional Water Act 1960	DPIWE	1996	REP	This Act was repealed by the *Northern Regional Water (Arrangements) Act 1997*.
North West Regional Water Act 1987	DPIWE	NAT	REP	This Act will be repealed by the *North West Regional Water (Arrangements) Act 1997*, which is due to commence in 1999. This Act was assessed under the LRP gatekeeper requirements.

Primary Act	Administering Agency	Original Review Date	Current Review Date	Status
Noxious Insects and Molluscs Act 1951	DPIWE	NAT	REP	This Act was repealed and replaced by the *Plant Quarantine Act 1997* which was assessed under the LRP gatekeeper requirements.
Noxious Weeds Act 1964	DPIWE	NAT	REP	The *Noxious Weeds Act 1964* is expected to be repealed and replaced by a dedicated Act which is currently being developed and will be progressed under the LRP gatekeeper requirements.
Pesticides Act 1968	DPIWE	NAT	REP	This Act was repealed on 1 January 1997. The repealing Act, the *Agricultural and Veterinary Chemicals (Control of Use) Act 1995*, was included on the LRP timetable in place of a review of this Act.
Plant Diseases Act 1930	DPIWE	NAT	REP	This Act was repealed and replaced by the *Plant Quarantine Act 1997* which was assessed under the LRP gatekeeper requirements.
Plant Protection Act 1994	DPIWE	NAT	REP	The *Plant Protection Act 1994* was passed by Parliament in 1994, but not proclaimed due to inadequacies which later came to light. The Act is expected to be repealed and replaced by new legislation which will be progressed under the LRP gatekeeper requirements.
Renison Limited (Zeehan Lands) Act 1970	DPIWE	1997	REP	This Act was repealed by the *Legislation Repeal Act 1998.*
Rossarden Water Act 1954	DPIWE	1996	REP	This Act will be repealed by the *Water Management Bill 1999,* which will be assessed under the LRP gatekeeper requirements.
Salt-water Salmonid Culture (Supplementary Agreements Validation) Act 1992	DPIWE	1998	REP	This Act was repealed by the *Legislation Repeal Act 1998.*
Salt-water Salmonid Culture Act 1985	DPIWE	1998	REP	This Act was repealed by the *Legislation Repeal Act 1998.*
Stock Act 1932	DPIWE	NAT	REP	This Act was repealed on 1 September 1996 and replaced with the *Animal Health Act 1995,* which has been included on the LRP timetable in place of a review of this Act.
Survey Co-ordination Act 1944	DPIWE	1997	REP	The restrictive provisions of the Act are to be repealed following the review of the *Land Surveyors Act* 1909.
Veterinary Medicines Act 1987	DPIWE	NAT	REP	This Act was repealed on 1 January 1997. The repealing Act, the *Agricultural and Veterinary Chemicals (Control of Use) Act 1995*, was included on the LRP timetable in place of a review of this Act.
Tasmanian Harness Racing Board Act 1976	DPIWE - TRA	NAT	REP	This Act has been repealed and replaced by the *Racing Amendment Act 1997*, which resulted from the recent Racing Industry Review. This legislation was assessed under the LRP gatekeeper requirements as not restricting competition or impacting on business.
Fisheries Act 1959	DPIWE - IFC	1996	REP	This Act was repealed on 31 May 1996. The repealing Acts, the *Inland Fisheries Act 1995*, *Living Marine Resources Management Act 1995* and the *Marine Farming Planning Act 1995,* were included on the LRP timetable in place of this Act.
United Milk Products Ltd (Amalgamation) Act 1981	DSD	1998	REP	This Act was repealed by the *Legislation Repeal Act 1998.*
Henry Jones Limited (Huon Pine) Agreement Act 1978	FT	1998	REP	This Act was repealed by the *Legislation Repeal Act 1998.*
Huon Valley Pulp and Paper Industry Act 1959	FT	1997	REP	This Act was repealed by the *Legislation Repeal Act 1996.*
Pulpwood Products Industry (Eastern and Central Tasmania) Act 1968	FT	1996	REP	This Act was repealed by the *Legislation Repeal Act 1995.*
Hydro-Electric Commission (Doubts Removal) Act 1972	HEC	1997	REP	This Act was repealed on 6 November 1996. The repealing Acts were included on the LRP timetable in place of a review of these Acts. The repealing Acts consist of the *Electricity Supply Industry Act 1995* and the *Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995*.

Primary Act	Administering Agency	Original Review Date	Current Review Date	Status
Hydro-Electric Commission (Doubts Removal) Act 1982	HEC	1997	REP	This Act was repealed on 6 November 1996. The repealing Acts were included on the LRP timetable in place of a review of these Acts. The repealing Acts consist of the *Electricity Supply Industry Act 1995* and the *Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995*.
Hydro-Electric Commission Act 1944	HEC	1997	REP	This Act was repealed on 6 November 1996. The repealing Acts were included on the LRP timetable in place of a review of these Acts. The repealing Acts consist of the *Electricity Supply Industry Act 1995* and the *Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995*.
Loan (Hydro-Electric Commission) Act 1957	HEC	1997	REP	This Act was repealed on 6 November 1996. The repealing Acts were included on the LRP timetable in place of a review of these Acts. The repealing Acts consist of the *Electricity Supply Industry Act 1995* and the *Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995*.
Cremation Act 1934	P&C - LGO	1997	REP	Following the commencement of a minor review, a decision was made to repeal and replace this Act with new legislation to include matters related to burial. This new legislation has been assessed under the LRP gatekeeper requirements.
Aluminium Industry Act 1960	T&F	1997	REP	This Act was repealed by the *Legislation Repeal Act 1998*.
Electricity Consumption Levy Act 1986	T&F	EXC	REP	This Act was repealed by the *Hydro-Electric Corporation (Consequential and Miscellaneous Provisions) Act 1996*.
Friendly Societies Act 1888	T&F	NAT	REP	New friendly societies legislation will be introduced that will be consistent with a national legislative model. This legislation will be assessed under the LRP gatekeeper requirements.
Port Huon Wharf Act 1955	T&F	-	REP	This Act contained a legislated restriction on competition, but was not listed on the LRP timetable. The Act was to be added to the LRP timetable, but was repealed on 30 July 1997.
Tasmanian Government Insurance Act 1919	T&F	1997	REP	This Act is expected to be repealed once the transitional issues associated with the sale of the TGIO's business are completed. This is expected to occur after 1 July 1999.
The Mount Lyell Mining and Railway Company Limited (Continuation of Operations) Act 1985	T&F	1996	REP	This Act was repealed by the *Legislation Repeal Act 1996*.
The Mount Lyell Mining and Railway Company Limited (Continuation of Operations) Act 1987	T&F	1996	REP	This Act was repealed by the *Legislation Repeal Act 1996*.
The Mount Lyell Mining and Railway Company Limited (Continuation of Operations) Act 1992	T&F	1997	REP	This Act was repealed by the *Legislation Repeal Act 1998*.
Trustee (Insured Housing Loans) Act 1970	T&F	1997	REP	This Act was repealed by the *Trustee Amendment (Investment Powers) Act 1997*.

Appendix B

Status of implementation of competitive neutrality principles across Government agencies as at 31 December 1998

Agency	Significant Business Activity (SBA)	Status of implementation of competitive neutrality principles
Department of Infrastructure, Energy and Resources	***Land Transport Safety***	
	Road Safety	
	- conducting safety audits	• The Department continues to tender out most of this work and applies the Full Cost Attribution Model (FCA) to the remainder of the work carried out internally.
	Vehicle Standards and Compliance	
	- light vehicle inspections	• Fully outsourced.
	Motor Registry Policy	
	- drivers licences and registration	• Fully outsourced to *Service* Tasmania.
	- motor cycle rider training and testing	• Fully outsourced.
	Motor Registry Services	
	- sale of customised number plates	• The manufacture of plates is fully outsourced. A proposal to call for tenders for the marketing and sale of plates is currently being considered. Subject to approval of the proposal, a tender call is anticipated to occur in mid-May 1999.
	Roads and Public Transport	
	Delivery of Roads Program	• All construction and maintenance activity is outsourced, as is consultancy services.
	Collection of Asset Information for Roads	• Fully outsourced.
	Collection of Asset Information for Traffic and Bridges	• Bridge data collection is outsourced. Traffic data are collected in-house, with FCA applied.
	Bruny Island Ferry Service	• The service is operated by a private sector operator in accordance with an operating and management agreement.
	Workplace Standards	
	Inspection of Hazardous Plant in workplaces	• Fees are calculated on a FCA basis. All work is currently being undertaken by the private sector market.
Department of Primary Industries, Water and Environment	Research Stations and Laboratory Facilities	• The application of FCA has commenced. However, completion of implementation has been delayed as a result of Departmental amalgamations and a review regarding responsibilities for the SBAs. This is expected to be resolved by May 1999. Thereafter, implementation of FCA can be progressed and finalised.
	Environmental Laboratory	• An independent review, conducted during 1998, concluded that the laboratory was operating in accordance with National Competition Policy principles.
	Valuation Services	• To date, some land valuation work has been subject to competitive tendering and contracting using competitive neutrality principles.
Department of Education	Hire of School Facilities	• Business activities in this area are limited. In most cases, levies charged for the hire of facilities reflect commercial rates.
	School Child Care Services	• A limited number of schools and colleges are operating school-based child care services on a full-time basis. Each school and college is responsible for operating its own facilities. The need for adherence to competitive neutrality principles in the conduct of business activities has been restated to schools and colleges at a Departmental level.
	Teachers' Residences	• Rental rates for departmental employees are set by the State Government Rental Committee in accordance with the Government Employee Housing Rental Agreement.
Tasmanian Audit Office	Financial Audits	• Competitive neutrality principles have been fully implemented since 1 July 1997.
Workplace Standards Authority	Inspection of Hazardous Plant in Workplaces	• Fees are calculated on a FCA basis. The private sector

Agency	Significant Business Activity (SBA)	Status of implementation of competitive neutrality principles
		is currently undertaking all available work in this market.
Department of Premier and Cabinet	Telecommunications Management Division and Computing Services	• This business activity operates on a full cost recovery basis consistent with FCA under the competitive neutrality principles.
	Service Tasmania	• Competitive neutrality principles will be implemented by undertaking a FCA exercise when cost information for *Service* Tasmania shops becomes available at the end of the 1998-99 financial year. In the meantime, a market-based pricing approach is being applied to external organisations where their services are delivered through *Service* Tasmania shops.
Department of State Development	***Tourism Tasmania***	
	Tasmanian-based retail and information activities	• All Tasmanian-based retail and information activities are contracted out. These are no longer classified as a SBA.
	Interstate-based retail and information activities	• A review of activities was completed and considered by the Tourism Tasmania Board in September 1997. After consultation with the local tourism industry, the Board recommended the activities continue for a 3-year period. The Government has accepted the recommendation.
	Tasmanian-based travel wholesaling operation for interstate travel agents	• FCA has been partially implemented. A review of similar activities in mainland States has been undertaken and a report was prepared and submitted to the Board in March 1999. It is likely that there will be a review of the Tasmanian operations and full implementation of FCA is pending the outcome of this review.
Department of Justice and Industrial Relations	Correctional Enterprises	• Correctional Enterprises is operated in accordance with the prison industries competition and service policy. This policy is consistent with the National Code of Practice for the operation of prison industries. The policy requires, amongst other things, that new initiatives in prison industries at least meet identifiable capital and recurrent costs of production and where possible return a dividend, avoid competing in the public retail market in circumstances where they may dominate or disadvantage private enterprise operations.
	Legal Services	• Currently legal services are provided as part of Crown Law. Crown Law provides services exclusively to State Government agencies and does not compete for work outside Government. However, Crown Law does operate on a commercial basis and has applied charging to inner-Budget agencies since 1 July 1997. After 1 July 1999, inner-Budget agencies will not be tied to the Government's legal practices for the delivery of commercial, conveyancing and civil litigation legal services.
Department of Health and Human Services	***Public Housing***	
	Commercialise public housing operations	• Following initial work in 1998-99, a comprehensive review is scheduled for completion by May 1999, which includes benchmarking with other authorities. A Strategic Asset Management Plan has been prepared and a comprehensive financial review commissioned. Options for procurement of maintenance and property services, and delivery of services through *Service* Tasmania, are being investigated and finalised. External call centres for telephony and data transfer management are being considered as part of a general review of service delivery.
Department of Health and Human Services	***Hospital Services - Non Clinical***	
	Building Services - Energy provision and engineering maintenance services at the Royal Hobart Hospital and Launceston General Hospital	• Services were let under competitive tender mechanisms consistent with competitive neutrality principles in January 1998.

Agency	Significant Business Activity (SBA)	Status of implementation of competitive neutrality principles
	"Hotel" services - laundry, cleaning etc	• Benchmarking agreements commenced in July 1997 for a period of three years relating to medical orderlies and cleaning services. • Cleaning services staffing levels are based on industry "best practice" standards. Regular quality inspections of ward and unit levels indicate the service provided is satisfactory. • Medical orderlies services are operating at industry benchmark standards. • Continuous improvement in food services production and service delivery has resulted in a reduction in meal costs and ratio of staff per meal production. • The adoption of benchmarking agreements in each area provides a firm base for moving toward full competitive neutrality.
	Stores management at Royal Hobart Hospital	• Warehousing, distribution and inventory management service was outsourced on 1 July 1998.
	Hospital Services - Clinical Nuclear medicine	• Service is provided by a private sector supplier.
	Pharmacy	• Pharmacy services are currently undergoing redesign, aiming to achieve best practice cost structures.
	Radiology, Pathology and Health Professional services	• Three Business Units have been established at the Royal Hobart Hospital since 1 July 1998. Financial strategies to be adopted by each Business Unit will move them progressively towards full competitive neutrality.
	Private Sector Co-location in the Royal Hobart Hospital	• An open tender process, consistent with competitive neutrality principles, has resulted in the Government entering into a contract with the private sector for the operation of a co-located private facility at the Royal Hobart Hospital. In February 1999 this was extended to include the Queen Alexandra building.
	Psycho-Geriatric Nursing	• Tenders for the provision of a private sector facility has been let, with work expected to be completed in April 1999.
	Allied Health Breast Cancer Screening Dental Services	• Services have been contracted to BreastScreen Tasmania.
	Home and Community Care	• Fees were introduced on 1 July 1998.
	Ambulances	• Fees were introduced in 1997. The level and scope of fees charged are being reviewed. • The Government has decided not to pursue the introduction of ambulance fees for the general public.
	Royal Derwent Hospital/Willow Court Centre facilities	• Tenders for these services will be called in March 1999. Partial completion is anticipated during 2000.
	Energy provision and maintenance at North East Soldiers Memorial Hospital Service delivery at St Mary's District Hospital	• Services have been contracted to the private sector. • The call for Expressions of Interest have been deferred for the 1998-99 financial year.
Department of Treasury and Finance	Government Car Fleet	• In May 1998, following a competitive tender process, the management of the Government's light passenger vehicle fleet was contracted to a private sector business.
	Purchasing and Sales Division	• In September 1997, following a competitive tender process, the supply and warehouse functions of State Purchasing and Sales were sold to a private sector operator.

Appendix C

AGREEMENT BETWEEN THE STATE AND LOCAL GOVERNMENT ASSOCIATION OF TASMANIA ON THE APPLICATION OF NATIONAL COMPETITION POLICY AND RELATED MATTERS TO LOCAL GOVERNMENT

This Agreement reflects the State Government's policy in respect of the application of National Competition Policy, as set out in the document *Application of the National Competition Policy to Local Government*, dated June 1996.

COMPETITIVE NEUTRALITY

Full Cost Attribution

Full cost attribution is to be applied by councils to all significant business activities.

Corporatisation

In accordance with the procedures set out in the *Application of the National Competition Policy to Local Government* (the Application Statement), councils will:

- undertake public benefit assessments of the corporatisation of those business activities which are classified as Public trading Enterprises (PTEs) under the Australian Bureau of Statistics' (ABS) Government Financial Statistics Classification; and
- corporatise those business activities where a public benefit assessment indicates that the benefits outweigh the costs of doing so.

Councils may consider business activities other then PTEs for corporatisation if they wish.

Where a council has already identified that it wishes to corporatise a business activity, it is not necessary to undertake a public benefit assessment.

The State Government will review and amend the *Local Government Act 1993* as appropriate to ensure that councils have adequate powers to incorporate business activities.

State-Local Government Reciprocal Taxation and Charging

State and local government agree that, where appropriate, each shall be subject to the other's taxes and charges. These reforms will be implemented on a revenue neutral basis between the State and local government.

Commonwealth Taxes

In the period before the commencement of the National Tax Equivalents Regime (NTER), significant council businesses which are corporatised will be subject to the tax equivalent regime (TER) established under the *Government Business Enterprises Act 1995* (GBE Act).

With regard to income tax the NTER will, on establishment, apply to significant council businesses which are corporatised. The TER established under the GBE Act will continue to apply to Commonwealth indirect taxes until full reciprocal taxation between the Commonwealth and local government is in place. The latter will be a matter for the Commonwealth to progress with local government through the Australian Local Government Association.

NTER and TER revenue will be retained by the owner of the business activity.

Guarantee Fees

Councils will impose on their corporatised business activities guarantee fees which reflect the benefit, in terms of lower interest rates, which the trading activity derives from the guarantee which is, implicitly or explicitly, provided by the council.

Private Sector Equivalent Regulation

By-laws which contain exemptions for council businesses from regulations to which private businesses are normally subject will be amended to remove the exemption.

Complaints

Councils agree to put in place an internal complaints handling mechanism.

Complaints which are not able to be resolved internally will be referred to the Government Prices Oversight Commission (GPOC).

LEGISLATION REVIEW

Councils will follow the procedure for making by-laws as set out in the *By-law Making Procedures Manual* dated August 1997, prepared by the Local Government Office.

REVIEW OF THE STRUCTURE OF PUBLIC MONOPOLIES

If a council considers privatising a monopoly or introducing competition into a market previously supplied by a public monopoly, it will remove any regulatory functions and conduct a public review in accordance with clause 4 of the Competition Principles Agreement. It will make any review publicly accessible and report on the outcome of the review in its annual report.

REPORTING

Councils will report on the following matters in their annual report:

- progress in implementing the competitive neutrality principles;
- the outcome of any public benefit assessments undertaken;

- any complaints received and the outcome of investigation of those complaints;
- progress in reviewing council by-laws; and
- the outcome of any review of the structure of a council monopoly.

In addition, councils will report to the State Government as necessary to enable the State Government to report to the NCC on local governments' progress with implementing the NCP reforms.

TIMETABLE

Councils are free to apply the competitive neutrality principles more quickly than suggested in the timetable below if they wish.

As soon as possible but by no later than 1 January 1999

Full cost attribution is to apply to significant business activities as soon as possible or by no later than 1 January 1999.

It is noted that full cost attribution may be applied retrospectively.

From 1 November 1998

Councils to commence public benefit assessments of the corporatisation of PTEs.

Where a decision has already been made to corporatise a PTE, implementation of corporatisation to commence.

By 30 March 1999

Councils submit public benefit assessments to peer group for review.

By 31 May 1999

Peer group review of public benefit assessments completed and advice provided to Treasurer.

By 30 June 1999

Treasurer advises decision on public benefit assessments.

From 1 July 1999

PTEs for which no public benefit assessment was undertaken are fully corporatised.

Implementation of the corporatisation process in respect of selected business activities.

From 1 July 2000

PTEs for which a public benefit assessment has been undertaken are fully corporatised.

Appendix D

THE NATIONAL COMPETITION POLICY AGREEMENTS

In October 1992, following the agreement of all Australian governments, the Prime Minister established a Committee of Inquiry to investigate and report on a recommended course of action to achieve consistent competition rules across Australia. The Committee was chaired by Professor Fred Hilmer and its final Report was released in August 1993.

The Hilmer Report recommended that a number of steps be taken to achieve universal application of Part IV of the Commonwealth's *Trade Practices Act 1974* (TPA) to both private and public business enterprises and that a series of "additional policy elements" be implemented by governments. These additional policy elements covered areas such as:

- the structural reform of public monopolies;
- the application of competitive neutrality principles to public sector businesses;
- processes for reviewing anti-competitive legislation;
- the establishment of State-based prices oversight regimes to apply to public sector monopolies; and
- guaranteed third party access to the services provided by essential infrastructure facilities.

The Report also recommended the establishment of two new national bodies to oversee the administration of the national competition policy framework - namely, the Australian Competition and Consumer Commission (ACCC) and the National Competition Council (NCC).

The recommendations contained in the Hilmer Report were the subject of discussion and negotiation between Commonwealth, State and Territory governments for nearly two years. Finally, at the COAG meeting on 11 April 1995, the parties agreed on the elements of a National Competition Policy (NCP) which are to be progressively implemented over time in order to boost the competitiveness and growth prospects of the national economy.

Three inter-governmental Agreements were signed at the April 1995 COAG meeting. These were

- the *Conduct Code Agreement* (relating to the TPA extension);
- the *Competition Principles Agreement* (relating to the "additional policy elements"); and

- the *Agreement to Implement the National Competition Policy and Related Reforms* (relating to the sharing of the financial benefits expected to flow from the implementation of NCP).

The NCP Agreements entered into by Heads of Government are summarised below.

THE CONDUCT CODE AGREEMENT (CCA)

The CCA provides for:

- the wider application of the restrictive trade practice provisions of Part IV of the Commonwealth's *Trade Practices Act 1974* (TPA) to encompass all private and public sector business activities. This included the removal of the 'Shield of the Crown' protection for certain State business activities, which previously did not have to comply with the requirements of Part IV of the TPA; and
- the establishment of the Australian Competition and Consumer Commission (ACCC), which is charged with administering the TPA and the *Prices Surveillance Act 1983*.

THE COMPETITION PRINCIPLES AGREEMENT (CPA)

The CPA effectively commits all Australian governments to progressing, over the next few years, micro-economic reforms in a wide range of areas in accordance with a set of well-defined principles.

The principles included in the Agreement require:

Monopoly Prices Oversight

- consideration to be given to the introduction of a regime to oversee the prices charged by GBEs that are monopoly, or near monopoly, suppliers of goods or services;

Competitive Neutrality

- government businesses to operate such that they do not enjoy any net competitive advantage simply as a result of their public ownership;

Reform of Public Monopolies

- the conduct of an independent review before either privatising, or introducing competition to, a traditional monopoly;

Legislation Review

- the review and, where governments consider it appropriate, the reform of all legislation that restricts competition by the year 2000; and

- consideration to be given to introducing a legislated right for third parties to negotiate access to services provided by means of significant infrastructure facilities.

The CPA also makes all Australian governments responsible for the application of these principles to local government, establishes the National Competition Council (NCC) and sets out the consultative processes to be followed in relation to appointments to the NCC and the establishment of its work program.

THE AGREEMENT TO IMPLEMENT THE NATIONAL COMPETITION POLICY AND RELATED REFORMS

This Agreement provides for a sharing of the financial benefits flowing to the Commonwealth as a result of the States and Territories implementing the proposed reforms. It also requires each State and Territory to effectively implement COAG and other Agreements on:

- the establishment of a competitive national electricity market (for relevant jurisdictions);
- the establishment of a national framework for free and fair trade in gas (for relevant jurisdictions);
- a strategic framework for the efficient and sustainable reform of the Australian water industry; and
- an agreed package of road transport reforms.

This Agreement provides that the NCC is responsible for assessing Tasmania's progress in implementing NCP and related reforms for the purpose of recommending to the Commonwealth Treasurer whether the conditions for each tranche of NCP payments have been met.

Under the Agreement, the Commonwealth will firstly maintain the real per capita guarantee on Financial Assistance Grants (FAGs) on a rolling three year basis. This means that each year, the guarantee will be extended for a further year, providing the States and Territories with a continuous, guaranteed FAG pool for three years ahead. The real per capita guarantee was introduced at the 1994 Premiers' Conference and, under the terms of the Agreement, was also to apply to Commonwealth general purpose payments to local government.

In addition to this guarantee, the Agreement provides for additional 'competition' payments to be made to the States and Territories. These will be provided in three 'tranches' which, together with the per capita guarantee component of the FAG pool, will be dependent on the States and Territories implementing the agreed reforms. If a State or Territory has not undertaken the required action

within the specified time frame, [v] its share of the per capita guarantee on FAGs and of the NCP payments will be forfeited to the Commonwealth.

Each of the three NCP payment tranches is a cumulative, annual indexed payment of approximately $200 million to the States and Territories (in 1994-95 prices) and will be distributed between the States and Territories on a per capita basis. The first tranche payments commenced in 1997-98, the second in 1999-2000 and the third in 2001-2002. After the third tranche is paid, the annual value to Tasmania of the NCP 'competition' payments component will be approximately $15.7 million (in 1999-00 prices). However, the exact size of Tasmania's payment in each year will depend on Tasmania's share of the national population over time.

NATIONAL COMPETITION POLICY PAYMENTS

Real terms $1999-00

	Per Capita FAG Guarantee		Competition Payments		
Year	National Total $m	Tasmanian Share $m	National Total $m	Tasmanian Share $m	Cumulative Total Payments to Tasmania $m
1997-98 actual (1)	175.5	6.9	213.0	5.4	12.3
1998-99 estimate (1)	377.5	14.6	216.1	5.4	20.0
1999-00	580.9	23.0	443.3	10.9	34.0
2000-01	773.3	30.2	443.3	10.8	41.0
2001-02	962.8	37.1	665.0	15.9	53.0
2002-03	1 150.1	43.6	665.0	15.7	59.3
2003-04	1 330.1	50.5	665.0	15.7	66.1
2004-05	1 508.1	57.2	665.0	15.7	72.9
2005-06	1 684.3	63.9	665.0	15.7	79.6
2006-07	1 858.8	70.5	665.0	15.7	86.2

Note:

(1) These figures only are shown in nominal terms.

(2) The national totals and State shares are based on the following assumptions: a continuation of current national and State population growth rates; and Tasmania receiving its equalisation share of the FAG pool based on the Commonwealth Grants Commission's relativities.

(3) The per capita guarantee component represents what the Commonwealth will pay the States in additional FAGs for a given year, over what would have been received had CPI indexation alone continued since 1996-97.

It is important to note that the competition payments arising from the State's adherence to its NCP obligations do not represent 'compensation' to the States or Territories for the costs involved in undertaking reforms. Rather, they represent a sharing of the anticipated benefits arising from the implementation of NCP reforms. The structure of the payments to the States and Territories is based on the existence of vertical fiscal imbalance (VFI) regarding the revenue raising

capacity and spending [i] responsibilities of the Commonwealth and State and Territory Governments.

Specifically, VFI relates to the fact that, under the framework imposed by the Australian Constitution, the Commonwealth has the majority of the revenue raising responsibilities and the States and Territories have the bulk of the expenditure responsibilities. Consequently, the Commonwealth is expected to gain extra taxation revenue from the increased economic activity that accompanies NCP reforms. The NCP payments structure is designed to hand a proportion of this revenue gain back to the States and Territories.

AUSTRALIAN CAPITAL TERRITORY

ANNUAL PROGRESS REPORT ON IMPLEMENTING NATIONAL COMPETITION POLICY REFORMS IN THE AUSTRALIAN CAPITAL TERRITORY FOR THE PERIOD TO 31 DECEMBER 1998.

May 1999

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ANNUAL REPORT OF PROGRESS ON IMPLEMENTING NATIONAL COMPETITION POLICY REFORMS IN THE AUSTRALIAN CAPITAL TERRITORY (ACT)

FOR THE PERIOD TO 31 DECEMBER 1998.

Background

The Annual Reporting requirement

The Competition Principles Agreement signed by the Commonwealth, States and Territories in April 1995 obliges the parties to report annually on the implementation of clauses 3 and 5 of the Agreement, addressing competitive neutrality and legislation review. In addition, there is an annual reporting requirement in respect to implementation of the related reforms in electricity, gas, water and road transport, according to the COAG reform framework or its agreed modifications.

The ACT, together with the other parties to the agreements, have twice reported to the National Competition Council (NCC). The initial report in 1997 referred to the period ending 31 December 1996 and was the basis for the assessment of the first tranche of competition payments that commenced in July 1997. In 1999 the annual report to 31 December 1998 will form the basis of the assessment of the second tranche of competition payments, which are due to commence from 1 July 1999.

Matters for consideration in the third annual report

The ACT met its commitments in the first tranche, with the exception of several minor matters that have subsequently been addressed. Those matters have been signed off in the second annual report, but they will be the subject of brief comments in the body of this report. The report will also deal with other matters addressed in the National Competition Policy Agreements and the related energy and transport reforms:

- the application of the *Trade Practices Act 1974*;
- restructuring monopolies, or near monopolies;
- competitive neutrality including allegation of non-compliance;
- legislation review;
- access to infrastructure;
- prices oversight and the regulatory role in general; and
- energy market and road transport reform.

Requirements of the second tranche assessments

The second tranche of competition payments is to be assessed on the basis of the conditions laid out in the *Agreement to Implement the National Competition Policy and Related Reforms*. The agreement states that:

> *"Payments under the second tranche of the Competition Payments will commence in 1999-2000 and be made to each participating State as at the date of the payment and depending upon:*
>
> *(i) that State continuing to give effect to the Competition Policy Intergovernmental Agreements including meeting all deadlines;*
>
> *(ii) effective implementation of all COAG agreements on:*
>
> ⇒ *the establishment of a competitive national electricity market,*
>
> ⇒ *the national framework for free and fair trade in gas, and*
>
> ⇒ *the strategic framework for the efficient and sustainable reform of the Australian water industry; and*
>
> *(iii) effective observance of road transport reforms."*

In the attachment to the Agreement, the conditions for the payment of the second tranche was augmented as follows:

> *"Payments under the second tranche will commence in 1999-2000, and be made each year thereafter to the States and Territories that have undertaken the following specific reforms by July 1999 in so far as they apply to them:*
>
> - *(for relevant jurisdictions) completion of the transition to a fully competitive National Electricity Market by 1 July 1999;*
> - *(for relevant jurisdictions) full implementation of free and fair trading in gas between and within the States including the phasing out of transitional arrangements in accordance with the schedule to be agreed between the parties;*
> - *implementation of the strategic framework for the efficient and sustainable reform of the Australian water industry and the future processes as endorsed at the February 1994 COAG meeting and embodied in the Report of the Expert Group on Asset Valuation Methods and Cost-Recovery Definitions, February 1995;*
> - *continuing observance of the agreed package of road transport reforms; and*
> - *meeting all obligations under the Competition Policy Intergovernmental Agreements."*

Second tranche assessment issues raised by the National Competition Council

In November 1998, the NCC circulated a paper to jurisdictions providing guidance on the matters that the NCC would consider in the course of the assessments, including issues considered by the NCC to be outstanding from the previous assessment. The paper 'Framework for the National Competition Policy Second Tranche Assessment: June 1999' identified the following first tranche issues as ones which the ACT should address in the context of the second tranche assessment:

- Legislation reviews: provide information on the *Animal Welfare Act 1992*, *Casino Control Act*, *Gaming Machine Act*, *Legal Practitioners (Amendment) (No 3) Act 1997*, and *Milk Authority Act 1971* to confirm that amendments satisfy the requirements of clause 5 of the Competition Principles Agreement (CPA);

- Structural reform; confirm that the review of ACTTAB and the proposed sale of ACTEW have appropriately addressed the obligations of clause 4 of the CPA; and

- Competition Code issues: identify all legislation falling under clause 2(3) of the Competition Code Agreement and confirm that notification was provided to the Australian Competition and Consumer Commission (ACCC) in relation to that legislation.

The related reforms in electricity, gas, water and road transport had no outstanding issues, but there are a number of reform objectives that have to be met to show satisfactory progress in respect to the related reforms. Information on those matters is provided in the text.

Issues outstanding from the first tranche assessments

Trade Practices Act compliance

In accordance with the obligation in the Conduct Code Agreement, the ACT passed the *Competition Policy Reform Act 1996*. The Act required that all businesses in the ACT, including government businesses, be subject to the *Trade Practices Act 1974* (TPA). The Conduct Code Agreement also required that the parties review legislation to identify instances where the exemptions under s51 of the TPA might be required. s51 provides for exemptions from the provisions of the TPA for government activities that would, other than for the application of the exemption, contravene the TPA.

Agencies have reviewed all legislation and have advised that with one exception there are no instances where behaviour is authorised that would contravene the TPA, and therefore would require an exemption under s51. The exception is the *Milk Authority Act 1971*, which authorised exclusive arrangements in respect to the home vending and wholesale distribution of milk, and price control by a government business entity. Specific legislative recognition was given to these arrangements in June 1998, with effect for six months, pending the outcome of the recommendations of the review of the Milk Authority Act. The exemption was advised to the ACCC by July 1998 as

required by the Agreement. An extension to the exemption, for home vending only, was agreed by the ACT Legislative Assembly early in 1999, recognising the continued need for transitional protection of the home vending arrangements until they expire in June 2000. All agencies continue to examine new legislation to identify TPA issues, and to provide specific legislative relief where appropriate.

Structural reform of monopolies

The Competition Principles Agreement requires that before monopolies are restructured that they are reviewed to ensure that there is separation of service and regulatory functions, clear management and accountability frameworks, identification of subsidies and appropriate treatment of community service obligations. During 1998, two monopolies, ACTEW and ACTTAB, were reviewed preparatory to the government considering the benefits of their privatisation. Scoping studies were commissioned in respect to each business. These were to determine the public benefit to a sale and to make recommendations both as to the most appropriate structure of the business leading into a possible sale, and what approach to sale would maximise the return to the community from a restructuring of the businesses, including whole or partial sale of the assets.

Although the ACTEW sale proposal eventually failed to gain the support of the Legislative Assembly a number of issues were raised in the course of the scoping study which remain unaffected by the rejection of the government's recommendations on the sale and franchising arrangements for ACTEW. The principal benefit to arise from the process is a major review of the regulatory arrangements for utilities in the ACT. As part of the scoping study, the Government published a statement of regulatory intent for utilities in the ACT.

Following considerable debate and consultation in both the Legislative Assembly and the community, the government authorised the bringing forward of legislative amendments which will restructure the regulation of utilities services. While the original intention of the regulatory changes was to focus on the provision of electricity and water services, including sewerage services, the scope for the framework has broadened to include the provision of gas services. Concomitantly, the legislative amendments for utility services will encompass other amendments aimed at broadening the regulatory powers of the independent pricing and access regulator, the Independent Pricing and Regulatory Commission (IPARC). The amendments to IPARC designed to achieve a broader regulatory focus in the ACT are addressed separately later in this report.

Legislation reviews

Animal Welfare Act 1992

The Legislative Assembly passed amendments to the *Animal Welfare Act 1992* and the *Food Act 1992*, in September 1997. The amendments were intended to prohibit the sale in the ACT of eggs produced under the battery cage system, and amendments to

the provision relating to labelling such that consumers would be aware that eggs for sale were produced under the battery cage system. However, to be effective the legislation required an exemption under the *Mutual Recognition Act 1992* (MRA).

The granting of an exemption from the effect of the MRA, by including battery eggs in the schedule of exempt goods under the MRA, requires that all other jurisdictions unanimously agree to the exemption and that there be a demonstrable net benefit to the exemption. The Government commissioned the Productivity Commission to undertake a public benefit test, the results of which indicated an inconclusive preponderance of benefit over cost. Subsequently, the government approached the other jurisdictions seeking approval of an exemption, for which unanimous agreement was not obtained. The legislation is therefore devoid of effect, although it remains on the statute book.

The labelling issue is not subject to the same tests and would not apply equally to suppliers outside the ACT and the sole domestic egg supplier. Mutual recognition would ensure that 'foreign' producers would not be required to undertake additional labelling to satisfy ACT laws. The ACT producer may be subject to labelling regulations requiring disclosure of the production of the eggs by the battery cage method, consumers would then be in a position to make an informed decision about purchasing. This arrangement is consistent with the competition policy.

Review of Casino Legislation

In the first tranche assessment the NCC indicated an interest in legislation in the states that provided monopoly licenses for private sector operators of casinos. The Council did not consider the issue of casino licenses as part of the satisfactory compliance with the requirements of the first tranche. It is assumed this was partly, because the states had clearly indicated that casino licenses in their view represented a net benefit in terms of the control of gambling in their jurisdictions. Casino licenses also represent a significant issue for the states for other reasons. Principally that they involve considerable revenue for government. As a consequence unravelling established legislative contractual arrangements would represent a significant risk of compensation and loss of commercial reliability that would put future government dealings at risk.

In the ACT, the 20-year monopoly casino license arrangement was reviewed in the context of the review of gambling legislation, with no recommendation that they be reconsidered. While the control of gambling has been the subject of reform, with the development of the more comprehensive gambling authority, the license arrangements have not been re-evaluated. It is clear from a reading of the report of the Legislative Assembly Select Committee on Gambling that growth in the number of casino facilities, or the creation of a more accessible and less regulated gambling market in the ACT, would be undesirable until there is greater certainty about the social impacts of gambling in the community. It is also unlikely that, given the size of the ACT market, new participants would seek access to the market.

The ACT considers itself to reflect views common among the states in respect to the maintenance of monopoly licensing arrangements for casinos, and in relation to the

assessment of net public benefits inherent in restricted market entry. On the question of assessing the public benefit to maintaining restrictions on market entry, the public processes undertaken by the Legislative Assembly Select Committee, and the review processes undertaken independently by government, provide a satisfactory public benefit test about the disbenefits of a more open market for casino gambling in the Territory.

Gaming Control Act, Gaming Machine Act

Allen Consulting Group was contracted in April 1998 to review legislation relating to the gambling in the ACT, with a specific focus on gaming machines. The terms of reference for the review drew attention to the requirements of subclauses 5(1) and 5(4) of the CPA. The legislation specifically mentioned in the context of the review were:

- *Casino Control Act 1988*;
- *Games Wagers and Betting-Houses Act 1901 (New South Wales)* (in its application in the Territory);
- *Gaming and Betting Act 1906 (New South Wales)* (in its application in the Territory;
- Gaming Machine Act 1987);
- *Lotteries Act 1964*;
- *Pool Betting Act 1964*; and
- *Unlawful Games Act 1984.*

The reviewer was asked specifically to address:

- the social and economic impact of gambling in the ACT community;
- the streamlining of gambling regulation in the Territory, and the enforcement of such legislation;
- options for the most appropriate regulatory structure for the industry; and
- the effect on the Territory's revenue of any proposed changes.

It was clear that while the review was to consider gambling in a social and economic sense its focus was on gaming machines, as the largest share of the gambling market in the ACT. In the review process a wide spectrum of gambling facilities operators were consulted, including ACTTAB and the racing industry. However, as indicated, the review recommendations concentrated on the gaming machine sector. It is also important to recognise that the review was undertaken in the context of a concern in the Legislative Assembly about the extent and social impact of gambling in the community. The Assembly enacted legislation to place a cap on the distribution of additional gaming machines in the Territory, pending the outcome of a review by a Select Committee of the Legislative Assembly.

The final report was delivered in July 1998 and referred, by the Government, to the Select Committee for consideration. The Select Committee has reported, with recommendations affecting the recommendations of the Allen Consulting Group report. The Government is considering its response to the Allen Consulting Group report in the context of the Select Committee's views on gaming machine regulation. The Government's response is not a subject of this report. It will be reported in the annual report for the period to 31 December 1999. A separate advice on the issues raised will be provided when the Legislative Assembly has had an opportunity to debate the Government's proposals.

The Select Committee and the Government are also aware that the Commonwealth, through the Productivity Commission, is reviewing the social impacts of gambling. That review may generate recommendations about the benefits of competition in the gaming industry that the Government may wish to have regard to. The combination of the recommendations of the Select Committee, the Allen Consulting Group report and the Commonwealth review may also address the difficult issues about whether access to gaming machines should be more freely available through hotels and not restricted to licensed clubs.

While the bulk of the Allen Consulting Group's recommendations are yet to be determined by Government, Government has agreed to establish a new regulatory body for the gambling industry. The report recommended that the new independent regulator subsume the existing Casino Surveillance Authority. The regulator would have responsibility for the collection of gambling tax revenue, licensing of gambling facilities, operators and employees, and facilitation, monitoring and enforcement of a voluntary industry code of practice for gambling.

The review of the gambling legislation is seen as complying with the requirements of clause 5 of the CPA. It meets the commonly held standards for legislation reviews in relation to the independence of the reviewer, the robustness of the process including extensive public consultation and the potential for the reform process to implement the recommendations of the report.

Legal Practitioners (Amendment) (No 3) Act 1995:

The NCC has asked for information on several aspects of reform of the legal profession in the ACT, and similarly of other jurisdictions. In particular the NCC sought information on the professional indemnity insurance arrangements in the ACT for the legal profession. The issue of legal indemnity insurance is complex, involving a balancing of the potential price benefits of introducing competition and the impacts on high risk areas of legal practice. The review of structural and disciplinary arrangements for practitioners commenced in 1998 and is the subject of a paper to be released shortly. The review of other aspects of the profession, including professional indemnity insurance will be commenced in 1999.

In the meantime the ACT has taken the opportunity afforded by minor amendments to the Legal Practitioners Act to increase competitiveness in this market. The ACT has a second approved insurance provider and premiums have reduced as a result. The

degree of competition in the provision of indemnity insurance for the legal profession in the ACT compares favourably with the level of competition in other jurisdictions.

The legislation providing for these amendments was intended as an interim measure pending a full competition policy review of the legal profession, which has commenced in the ACT. The review will be undertaken in stages. Structural and disciplinary arrangements for practitioners were reviewed in 1998, and other aspects will be reviewed in 1999, including professional indemnity insurance.

Milk Authority Act 1971

The *Milk Authority Act* was reviewed in 1998. The review was conducted by the Department of Urban Services using a reviewer external from the Department although not external to Government. The review made recommendations on reform of the milk industry that considered the costs and benefits of reform to the community as a whole. The review outcomes paralleled external changes in the market before being implemented.

National Foods Milk Limited entered the retail milk market in competition with Capitol Chilled Foods (Australia) Pty Limited, using milk processed outside the ACT. National Food's entry to the market effectively deregulated the retail market, which has seen little long term impact after an initial period of marketing competition. Competition in the market has not impacted adversely on consumers, who are paying similar prices for retail milk. There is greater choice in products for consumers.

Implementation of reforms arising from the *Milk Authority Act* review began late in 1998. The Government agreed to reforms which aimed at:

- maintaining regulation of the wholesale and retail prices for milk;
- separating the regulatory and commercial functions of the Milk Authority; and
- reforming the home vending arrangements.

Home vendors are licensed with exclusive access to geographic franchises. The reforms aim to rationalise zones and expand business opportunities for home delivery services to consumers.. The reforms are to be phased over the period to 30 June 2000. At present, the Milk Authority is responsible for the purchasing and sale contracts for raw milk. The Authority has no regulatory functions in respect to the market and its management of purchase contracts will expire in June 2000.

The Government, through the Milk Authority, will retain its interest in the marketing asset, the brand name 'Canberra Milk', which has significant market penetration and customer loyalty. The licence was leased to Capitol Chilled Foods (Australia) Pty Ltd in 1999.

Further reform is anticipated during 1999, as contracts wind up and vendors move to a more independent distribution role, facilitated by changes to public health legislation to permit carriage of products other than milk and dairy products.

The Government considers that the review has been effective in delivering reforms, and encouraging change in the delivery of milk to consumers. Future changes are anticipated to have distribution of dairy products combined with a wider variety of compatible products. Prices for retail milk will be regulated for several years, pending the operation of a robust market. The price regulation function will be transferred to the Independent Pricing and Regulatory Commission (IPARC). Wholesale prices will also be considered by IPARC. By 2000 the ACT milk market should be fully deregulated.

Second tranche assessment issues

Trade Practices compliance

Most agencies have prepared TPA compliance manuals and instituted TPA awareness training for officers and management. The Practices and Procedures Manual, a whole-of-government policy paper prepared by the Legal policy Division of the general's Department sets out the need and elements of a TPA compliance Program.

As recommended by the manual, most Departments have implemented the following elements of their departmental trade practices compliance program:

- an identified Trade Practices Compliance Officer;
- a liaison network of compliance officers;
- reference material;
- training; and
- ongoing monitoring of activities and legislation.

For example, the Chief Minister's Department and the Department of Urban Services have used external consultants for training programs for staff, and to assist in the preparation of the agencies' manuals. The Chief Minister's Department training program to date has involved eight sessions and a total of 126 people. Within the Department of Urban Services, seventy officers have attended half-day training sessions including a number of senior executives. Similarly, the Department of Education and Community Services has completed its manual and instituted a training program for staff and management, and is addressing specific compliance issues in their businesses including the Canberra Institute of Technology, the Erindale Leisure Centre and the International Education Unit. The Departments of Justice and Community Safety and the Department of Health are currently co-ordinating their TPA training programs.

Competitive neutrality

Competitive neutrality is being applied in all commercial transactions where there is competition between a government business and another market participant. Taxation equivalents (TERs)continue to be applied to large scale businesses and progressively introduced to a wider range of businesses. Territory Owned Corporations pay income

or wholesale sales tax or TERs and Territory taxes and charges. Many larger authorities are now also subject to TERs. The application of TERs to small businesses that are embedded in Departments is more difficult to accomplish, but is to be pursued over the next twelve months. The Government's policy, announced in the competitive neutrality statement in 1996, clearly sees benefits in subjecting all businesses to market disciplines and reflecting the full cost of service provision.

Debt guarantee fees were imposed on all businesses under the Government's competitive neutrality policy. While fees have been levied since 1996, they have been levied on a generally notional basis. In April 1999, Government agreed to greater definition of the debt guarantee levy arrangements that will be implemented in the ACT. A credit rating system for government businesses has been agreed that underpins a more rational and consistent application of the fees. The new levy arrangements will apply to all Territory Owned Corporations from April 1999, and to all other businesses from 1 July 2000. The Risk Estimation Model that will be used to derive the credit ratings for smaller businesses is currently being developed.

In addition to the application of competitive neutrality principles to government businesses, more government activities are being market tested to determine whether there is a net benefit to introducing competition for the supply of those services. For example, horticultural maintenance and cleaning services in the Woden-Weston area have been subject to open tender following a process of market testing begun in 1998. The tender process featured an unsuccessful in-house bidder, with a competitively neutral bid independently and externally audited. The success of the first contestability arrangement is being followed in of 1999-2000 with market testing of horticultural services in other areas of Canberra. Other services, such as the domestic animal service, elements of information and planning services and parking management (including enforcement, revenue collection and maintenance of parking control devices), are to be tested during 1999-2000.

In conjunction with the development of the service purchasing arrangements between ACT agencies and Ministers, many activities are being subjected to market testing to establish benchmark costings for services. For example, Planning and Land Management contracted Ernst & Young to undertake a benchmarking study in respect to its pricing for major outputs including Territory planning, development management, license and regulation and administration. Service purchasing arrangements in the ACT have been established since 1996, as part of the financial management reforms introduced in that year which included accrual accounting, budgeting and reporting in addition to the purchaser-provider and ownership arrangements between Government and agencies.

A range of other services are being placed on a commercial basis. Most of the services being commercialised fall within the Urban Service portfolio and include the following:

- ACT Government Shopfronts have been divided into two separate roles, financial transactions and 'face of government' functions. Agencies using the shopfronts will be billed for financial services on the basis of benchmarked prices in 1999-

2000, while the cost of the 'face of government' functions will be separated and remain directly funded;

- Public library services were reviewed in 1996 and purchaser-provider arrangements established. Services and costs are benchmarked against other states and comparative prices will be further developed in 1999-2000;

- Legislative Assembly library services are currently being considered as part of the Review of Governance (Pettit Report), which was completed in 1998;

- Services provided by the Women's Information and Referral Centre were reviewed during 1998-99, with the delivery of courses to be contracted out;

- Publishing services formerly fully provided from within government have been divided into separate services. The provision of services to government as a whole, such as the Government Gazette , Staff Bulletin and Legislation, will not be made contestable. However, other publishing activities are subject to price benchmarking and service purchasing arrangements with agencies; and

- Urban Services corporate services has been reviewed in 1998 with a transition to fee-for-service arrangements in 1999-2000. Some aspects of corporate services may be outsourced, where cost efficiencies can be demonstrated.

During 1998 draft guidelines for the application of full-cost attribution to commercial activities were prepared. These will be presented to Government for consideration before the end of June 1999. The draft guidelines were tested in the development of the pricing of services to be supplied to the private hospital service provider resident in the Canberra Hospital campus.

In addition, the guidelines for competitive tendering and contracting that have been under development during 1998 are expected to be submitted to Government before the end of the financial year. The paper is being modified to accommodate changes in the regulatory environment, particularly to direct managers to consider the impact of the GST arrangements on government businesses and the assessment of business cases.

A paper on risk management is also in preparation, that promotes the recognition and costing of risk and the development of appropriate risk management/minimisation strategies as part of business planning. Further information on this project will be included in the annual report for 1999.

Competitive neutrality complaints

In the period under review only one complaint was raised with the Competitive Neutrality Complaints Unit, relating to the provision of long day childcare. While this complaint is being considered, it is not clear that the issue directly involves competitive neutrality. The matter is expected to be resolved before June.

The proposed Belconnen swimming pool was an issue for the 1997 report, the complaint having been resolved by recommending that a feasibility study be undertaken that addressed financial and competition issues. The feasibility study has been completed and advice is being prepared for consideration by Government. While the feasibility study and the current process are not the subject of the resolved complaint, advice will be provided to the Council as the process is completed.

Legislation Review

Review of racing codes in the ACT

Separate to the consideration of gambling related legislation, the government commissioned a competition policy review of the legislation relating to the racing industry in the ACT. The review, carried out by Allen Consulting Group, recommended amendments to the draft racing legislation to ensure that the racing codes, while administering their own forms of racing (thoroughbred, pacing and greyhounds), could not exclude persons from market entry or accessing racing infrastructure.

The Government supported the recommendations of the review, which ensured competition in the racing market is not unreasonably obstructed while permitting the industry to develop as part of the national industry. The Legislative Assembly passed the legislation in 1998.

Surveyors' Act 1967

A review of the *Surveyor's Act 1967* began in November 1998. The Review was carried out by an external consultant, liaising with a departmental steering committee. The final report was delivered in December 1998 and was released for public consultation in April 1999. The Government's response to the recommendations of the review will be developed following the closing date for the submissions.

Nature Conservation Act 1980

A targeted public review of the *Nature Conservation Act 1980* commenced in December 1998, with a consultation paper released in January 1999. The review is being conducted by an independent consultant expert in environmental matters. An advisory committee, established within the Department of Urban Services, is to act as a reference group for the reviewer. The review is still in progress.

Motor Traffic Act 1936

The size and complexity of this legislation is such that it is being reviewed in a number of manageable components;

- A review of the compulsory third party insurance provisions of the Act commenced in March 1999.

- Arrangements for a full public enquiry into the taxi and hire car industries regulated by the Act has been agreed and will commence in June following engagement of an independent reviewer.

Cemeteries Act 1933 and the Cremation Act 1966

A combined review of these Acts and their regulations commenced in March 1999 with agreement of the terms of reference and the review arrangements. The review will be conducted by an external independent consultant, selected by an open tender process. These Acts have been the subject of several recent reviews, which have involved a gradual movement toward increasing commercialisation. There is no intention at this time to privatise or corporate cemeteries given the small scale of these businesses.

Other legislation review activity

Chief Minister's Department has completed an audit of legislation for which it is responsible to identify restrictions on competition and trade practices issues, the legislation reviewed is as follows:

- *Bookmakers Act 1985*
- *Territory Owned Corporations Act 1990*
- *Energy & Water Act 1988 (Parts I and VII)*
- *Sewerage Rates Act 1968*
- *Water Rates Act 1959*
- *Canberra Tourism & Events Corporation Act 1997*
- *Cultural Facilities Corporation Act 1997*
- *Hotel School Act 1996*
- *National Exhibition Centre Trust Act 1976*
- *Bank Mergers Act 1997*
- *Financial Institutions (Removal of Discrimination) Act 1997*
- *Companies (Commonwealth Brickworks (Canberra) Limited) Act 1979.*

Of these laws only the *Bookmakers Act 1985* and the *Territory Owned Corporations Act 1990* were assessed as restricting competition or containing any provisions that might require attention under the TPA. The *Bookmakers Act 1985* is currently the subject of a process to consider the public benefits of the restrictions on competition and the advisability of the structure for granting licenses.

S18 of the *Territory Owned Corporations Act 1990* restricts government owned corporations to engaging the ACT Auditor-General as their auditor. This is currently viewed as a measure consistent with the treatment of government agencies and the requirements of the financial management legislation. It is not intended at this stage to conduct a public benefit test on s18, on the assumption that the cost of the test would be greater than the benefit to be gained from reform to that particular provision. It is

not intended that a minor review in this area should open debate about making the Auditor-General subject to competition, as it is noted that the Auditor-General already contracts out significant amounts of auditing work to private sector suppliers.

The *Betting (ACTTAB Limited) Act 1964* is currently being reviewed. Tenders are being called for terms of reference agreed in March 1999. The independent review is anticipated to take three months, with a final report expected by June 1999. The Act will draw on the scoping study undertaken in 1998, as well as considering the monopoly arrangements relating to parimutuel betting in the ACT.

During 1998, the Department of Urban Service undertook a detailed audit of legislation for which it is responsible to identify potential restrictions on competition including potential inconsistencies with the TPA and prepared a revised review program based the findings of the audit. In addition to those identified above, the following reviews have commenced in the Department of Urban Services:

- *Animal Diseases Act 1993*, *Pounds Act 1928* and the *Stock Act 1991*. These laws are being reviewed concurrently, the reviews commenced in December 1998.
- *Clinical Waste act 1990*. The review commenced in December 1998.
- Cotter River Act 1914. The review commenced in November 1998.
- *Plant Diseases Act 1934* and the pest plant provisions of the *Land(Planning and Environment) Act 1991*. This combined review commenced in December 1998.

Terms of reference have been issued by Justice and Community Safety for minor reviews of the following legislation:

- Anglican Church of Australia Trust Property Act 1917
- Anglican Church of Australia Trust Property Act 1928
- Crown Proceedings Act 1992
- Fair Trading (Fuel Prices) Act 1993
- Fertilisers Act 1904
- Legislation (Republican) Act 1996
- Listening Devices Act 1992
- Periodic Detention Act 1995
- Perpetuities and Accumulations Act 1985
- Presbyterian Church Trust Property Act 1971
- Registration of Deeds Act 1957
- Roman Catholic Church Property Trust Act 1937
- Salvation Army Property Trust Act 1934
- Subordinate Laws Act 1989

- Substitute Parent Agreements Act 1994
- Supervision of Offenders (Community Service Orders) Act 1985
- Unclaimed Moneys Act 1950
- Uniting Church in Australia Act 1977.

The Department of Health and Community Care is progressing with the review of health legislation. In the past year new regulations on entry to the family day-care market have been introduced that are directed toward reducing the risk of child abuse that might occur in an unregulated industry. Reviews of health profession legislation , including osteopaths, chiropractors, and veterinary surgeons, has commenced. A discussion paper seeking views on the review was agreed by Government on 10 May 1999.

Access to infrastructure

Access to infrastructure is regulated under the *Independent Pricing and Regulatory Commission Act 1997* (the IPARC Act). During 1998 there were no access disputes notified to IPARC. Gas is transported to the ACT by EAPL and distributed within the Territory by AGL. A submission from AGL on an access undertaking was received by IPARC and is being considered. The access inquiry has been extended by IPARC to provide AGL with time to provide additional data to the inquiry. A determination is expected from IPARC before June 1999.

A complicating factor in the determination of an access and distribution pricing regime for gas in the ACT is that the pipeline serves not only the ACT but also Queanbeyan and Yarrowlumla Shire. IPARC is the jurisdictional regulator for the whole of the distribution pipeline, subject to an agreement between the governments of the ACT and New South Wales. Co-ordination of the access and pricing arrangements is facilitated by the close co-operation between IPARC in the ACT and the Independent Pricing and Regulatory Tribunal (IPART) in New South Wales. IPART is contracted by IPARC to provide investigative and analytical services in this inquiry.

In addition to the access inquiry being undertaken by IPARC the ACT has submitted an application to the NCC for certification of the Territory's access regime. To date that inquiry has not concluded, although early indications are that the regime has not attracted significant comment from other parties and that consequently it is expected to be certified before June 1999.

Prices Surveillance

Regulation of prices is undertaken under the IPARC Act, for industries that are declared 'regulated' by a Minister. Industries that are subject to price regulation to date include electricity, water, public transport (buses and taxis) and gas. IPARC received references for inquiries into ACTEW electricity, water and sewerage pricing for the period 1999-2004, ACTION bus pricing and taxi pricing in 1998. For the ACTEW five year price path inquiry IPARC published an issues paper before

December 1998, with the draft determination published in February and public hearings undertaken in March 1999. The price determination was delivered on 3 May, for implementation from 1 July 1999. Similarly, IPARC published an issues paper for the ACTION bus price inquiry and engaged in public hearings in the first quarter of 1999, the final determination was delivered on 30 April 1999. The expected taxi price inquiry reference has been delayed until a number of critical issues have been settled.

Gas and milk pricing inquiries will be undertaken during 1999. The terms of reference for the milk price inquiry are expected to be issued within weeks. The process will involve advice from IPARC, to assist the government determine where and at what level prices for milk should be regulated, in the transitional period leading up to 1 July 2000.

Progress on the COAG related reform in Electricity Reform

The National Electricity Market

Program and Timetable Proposed in PM's letter of 10 December 1996

The timetable and program proposed in the Prime Minister's letter envisaged a number of major milestones including:

- harmonisation of the Victorian and the NSW wholesale markets;
- ACCC agreement to the National Electricity Code for the purposes of Part IV of the Trade Practices Act and acceptance of the code as an industry access code for the purposes of Part IIIA of the Trade Practices Act;
- legislation in jurisdictions to give effect to the National Electricity Law; and
- full implementation of the market arrangements as specified in the National Electricity Code.

It is noted that the NCC's comments in relation to the achievement of the timetable were made in November 1998 prior to the commencement of the NEM. The view of the ACT, consistent with that of the other participating jurisdictions, is that the slippage to the start date of the NEM, while regrettable, was necessary to provide the right level of assurance to governments, parliaments, the electricity industry and ultimately to end use customers that the NEM arrangements were robust, rigorously tested, and that concerns and problems were adequately addressed. The Commonwealth, which was well aware of the constraints, assisted jurisdictions and industry to resolve these matters and assure a timely market start. It is also worth noting that delaying the NEM start-up for these reasons has been vindicated with the market now operating since December 1998 without any major disruption.

Arrangements for the NEM must be in place

The National Electricity Market commenced on 13 December 1998. The relevant ACT legislation to give effect to the National Electricity Law, the *Electricity (National Scheme) Act 1997* was commenced prior to the start of the National Electricity Market.

Assumption by NEMMCO and NECA of Full Operational Responsibilities

With the start of the National Electricity Market, NEMMCO and NECA assumed the full range of responsibilities, operational and otherwise, envisaged under the National Electricity Code.

Acceptance of the Code by the ACCC

The ACCC has indicated its agreement to the National Electricity Code for the purposes of Part IV of the Trade Practices Act and acceptance of the code as an industry access code for the purposes of Part IIIA of the Trade Practices Act. Such agreement was a necessary precondition for the start of the Market.

Hindrance or Frustration of Effective Operation of the NEM

The ACT has worked with other jurisdictions to facilitate effective operation of the NEM. No allegations of hindrance or frustration have been made or could be made in relation to actions of the ACT.

The Structure of the Electricity Sector

In its paper of November 1998, the NCC stated that it considered that the national electricity agreements and Clause 4 of the CPA establish obligations relating to the structure of the electricity sector.

Structural Separation of Generation and Transmission

In relation to national agreements, the NCC noted that jurisdictions are committed to structurally separate generation from transmission and to ring fence the retail and distribution businesses.

There is at present no generation relevant to the NEM in the ACT.

Ringfencing of electricity retail and distribution businesses in the ACT is a requirement under operating licenses issues under the Electricity Supply Act. In addition, the adequacy of ringfencing is a matter examined and tested by IPARC in the context of its present and past pricing references.

Public Monopoly Reform of ACTEW

Clause 4 of the CPA provides that prior to introducing competition into a market: governments are to remove from the public monopoly any responsibilities for industry regulation and that governments are to review of structural and competitive arrangements in the industry.

Clause 4(2) of the CPA requires that, before a Party introduces competition to a sector traditionally supplied by a public sector monopoly, it will remove from the pubic monopoly any responsibilities for industry regulation. The Party will relocate industry regulation functions so as to prevent the former monopolist enjoying a regulatory advantage over its existing and potential rivals.

It should be noted that at the time of corporatisation of ACTEW in 1995, regulatory functions traditionally performed by that public sector monopoly (eg. the Electricians' Licensing Board) transferred to the Department of Urban Services.

Clause 4 further requires that before a Party introduces competition into a market traditionally supplied by a public monopoly it will undertake a review into:

- the appropriate commercial objectives for the public monopoly
- the merits of separating any natural monopoly elements from potentially competitive elements of the public monopoly;
- the merits of separating potentially competitive elements of the public monopoly ;
- the most effective means of separating regulatory functions from commercial functions of the public monopoly;
- the most effective means of implementing the competitive neutrality principles set out in the Agreement
- the merits of any CSOs undertaken by the public monopoly and the best means of funding and delivering any mandated CSOs
- the price and service regulations to be applied to the industry; and
- the appropriate financial relationships between the owner of public monopoly and the public monopoly including the rate of return targets, dividends and capital structure.

The NCC, in its second tranche assessment paper, commented on two major reviews of ACTEW (Fay, Richwhite and ABN AMRO/DGJ Projects) on structural, commercial and ownership matters. While the NCC's comments were couched in terms of the Government's previous plans to privatise major parts of ACTEW's business, the question of whether these reviews address the ACT's Clause 4 obligations is still relevant. The Government is satisfied that the current arrangements meet the obligations in the clause, and that these provisions will be strengthened with the introduction of the utilities regulations anticipated in the second half of the year.

It is also relevant that the *Electricity Supply Act 1997*, in facilitating the introduction of competition in electricity retailing in the ACT, formalised separate licensing requirements for distribution and retailing.

Retail Suppliers' Licence Holders

The ACT's June 1998 Annual Report to the NCC set out progress in relation to competition in electricity retailing. An update of this information is provided below.

(a) Retail suppliers' licenses taken to be held under section 4 of the *Electricity Supply (Consequential and Transitional Provisions) Act 1997*:

1. ACTEW Corporation Ltd
2. ACTEW Energy Ltd

3. Great Southern Energy (in respect of its existing customers)

(b) Licenses granted by the Minister for Urban Services under section 24 and clauses 4 and 6 of the Schedule to the *Electricity Supply Act 1997:*

1. Integral Energy Australia - 7 January 1998
2. ETSA Power Corporation - 7 January 1998
3. NorthPower - 15 January 1998
4. PowerCor Australia Ltd - 15 January 1998
5. EnergyAustralia - 3 February 1998
6. QTSC (Victoria) (trading as Ergon Energy) - 3 February 1998
7. Eastern Energy - 3 February 1998
8. Great Southern Energy - 18 February 1998
9. Southern Electricity Retail Corporation Pty Ltd (trading as Energex) - 19 April 1998
10. Ferrier Hodgson Electricity - 19 April 1998
11. Energy 21 Pty Ltd - 30 April 1998
12. Boral Energy Electricity Ltd - 30 April 1998
13. Citipower Pty - 28 May 1998
14. Advance Energy - 28 May 1998
15. United Energy Limited - 18 June 1998
16. AGL Electricity (formerly Solaris Power) - 10 July 1998

(c) Licenses granted by the Minister and subsequently cancelled at holders' request:

1. AGL Wholesale Energy - granted 3 February 1998, cancelled 29 January 1999.

Timetable for the Introduction of Retail Competition in the ACT

As was noted in the 1997 report to the NCC, all customers with annual usage of more than 160 MWh at a single site are now entitled to choose their own licensed electricity retailer. The last stage of this process was achieved on 28 June 1998 when a Ministerial order under the Electricity Supply Act covering customers using more than 160 MWh but less than 750 MWh per annum took effect.

The next stage of retail competition in the ACT is scheduled for 1 January 2001 which will mark the start of a transition process under which retail competition will be extended to customers using less than 160 MWh pa. The timetable notes that implementation of this date will be subject to further consultation with jurisdictions.

The full timetable is set out at http://www.act.gov.au/electricity.

Progress on the COAG related reform in Gas

Effective Implementation of the National Gas Access Code

In November 1997, the Act commenced the implementation of an access regime for natural gas in accordance with the Natural Gas Pipelines Access Agreement (the National Agreement) signed by Heads of Government.

The *Gas Pipelines Access Act 1998* passed by the ACT Legislative Assembly on 30 June 1998 gave the National Third Party Access Code for Natural Gas Pipelines (the National Code) legal effect in the ACT.

The National Code contains the detailed access principles that are to apply under the ACT Access Regime and specifically establishes:

- A mechanism by which natural gas pipelines in the ACT become subject to the National Code (called 'Covered Pipelines' or 'Code Pipelines'). The owners/operators of all pipelines are specified as 'covered' from the commencement of the ACT Access Regime.
- A requirement that the service provider of a Covered Pipeline in the ACT submit to the Independent Pricing and Regulatory Commission an Access Arrangement setting out the terms on which access will be given to certain services provided by the Covered pipeline, including the Reference Tariffs for such services. The content of an Access Arrangement, and the principles which must be applied in setting the Reference Tariffs are also to be specified.
- A right to arbitration where a service provider of a Covered Pipeline and a prospective user cannot agree on the terms of access to a service. The arbitrator is obliged in any such arbitration to apply the terms of the Access Arrangement established with the Independent Pricing and Regulatory Commission.
- Obligations on service providers of Covered Pipelines to ring fence their operations.
- Obligations on service providers and users to disclose information.
- A requirement that the service provider of a Covered Pipeline not enter into contracts with associates without first obtaining the approval of the Independent Pricing and Regulatory Commission.

The Canberra/Queanbeyan/Yarrowlumla Shire natural gas distribution system, operated by AGL Gas Networks, that serves gas consumers in Canberra and the surrounding area in NSW is listed as a Covered Pipeline in Schedule A of the National Agreement. An agreement has been reached between the ACT and NSW that, in accordance with criteria under the National Code, all of the distribution system including the part located in NSW will be regulated under the ACT Access Arrangement.

In December 1998, AGL Gas Networks submitted an Access Arrangement for the Canberra/Queanbeyan/Yarrowlumla Shire Natural Gas Distribution System to the

ACT Independent Pricing and Regulatory Commission in accordance with the requirements of the Code. The Independent Regulator should hand down a decision towards the end of 1999 following an extensive public consultation and review process.

An application has been submitted to the NCC for a recommendation on the effectiveness of the ACT Third Party Access Regime For Natural Gas Pipelines. The NCC is withholding a final decision on certification until the introduction of amendments to the Independent Pricing and Regulatory Commission Act 1997 later in 1999, which are intended to address the independent arbitration of disputes on access matters where the Commissioner is a party to the dispute.

Removal of Legislative and Regulatory Barriers to Free and Fair Trade

The distribution of natural gas to ACT consumers commenced in 1982. In 1992, AGL was issued with an authorisation for both the distribution and supply (retail) of natural gas under the *Gas Act 1992*. AGL, a publicly listed company, is currently the only gas utility operating in the ACT.

The *Gas Act 1992* was repealed in 1998 and replaced with the *Gas Supply Act 1998* in order to remove barriers to free and fair trade in natural gas. The *Gas Supply Act 1998* introduces a new gas authorisation framework that effectively separates the distribution and supply (retail) functions to ensure that the ringfencing requirements under the National Natural Gas Pipelines Access Code are met. Separate authorisations will be issued to AGL's distribution and retail entities as well as to any new applicants subject to meeting prudential, technical and National Code requirements. The *Gas Supply Act 1998* will be supported by regulations covering gasfitting standards, consumer metering testing, and safety and operating plans.

Structural Reform of Gas Utilities

AGL is currently restructuring its corporate entities in the ACT to separate distribution and retail activities and put in place operating procedures and reporting mechanisms to meet the requirements of the Code and authorisation conditions.

Progress on the COAG related reform in Water

Cost Reform and Pricing

The water reform agenda requires that jurisdictions move as quickly as possible to achieve efficient pricing for water use. In the pricing inquiries in 1997 and 1998, IPARC increased water prices to assist in achieving efficient prices. With the passage of the *Water Resources Act 1998* the adjustment processes has been facilitated. IPARC has increased prices for water in the medium term price path for the period from 1 July 1999 to 30 June 2004 to reflect the cost of ACTEW's capital investment in infrastructure maintenance. At the same time, and as part of the adjustment process, the existing Environmental Works Charge will cease. In addition to that increase in ACTEW's revenue the Government will be introducing, during the course

of 1999, a water allocation system and a water abstraction charge. The latter reflects the cost of catchment and environmental management and the scarcity value of water. Other initiatives in the Act, including the determination of sustainable environmental flows for ACT rivers, will have not only an indirect cost but also an environmental benefit.

The Price path for electricity, water and sewerage services was announced on 3 May 1999. The final consumer prices should be gazetted for implementation from 1 July 1999.

Institutional Reform

Institutional Role Separation

As noted in relation to electricity reforms, ACT Electricity and Water Authority (now ACTEW Corporation) was corporatised on 1 July 1995 at which time all remaining regulatory and water resource management responsibilities were transferred to the appropriate government agency. To achieve full commercialisation, ACTEW is charged tax equivalents and is subject to debt guarantee fees.

In September 1996, the ACT Energy and Water Charges Commission was established to provide independent advice to the Government on the appropriate level of charges associated with the monopoly provision of energy, water and sewerage services. This Commission was superseded in September 1997 by the Independent Pricing and Regulatory Commission (IPARC), which now has responsibility for the regulation of monopoly (including water) pricing. IPARC was established under the *Independent Pricing and Regulatory Commission Act (1997).*

While the ACT already meets the requirements for this milestone, the revised utilities regulatory framework currently being prepared (the 'Utilities Review') will further clarify the separate roles of service provider, regulator and manager. This review will include a thorough examination of existing regulations and the development of new policies and legislation. It is anticipated that this will provide for broad competition policy requirements such as:

- appropriate licensing regime for industry participants;
- identification of the respective roles and responsibilities of government and utility;
- necessary reporting arrangements not covered by existing legislation including those matters required for performance monitoring and benchmarking; and
- a formalised and transparent process for the treatment of community service obligations.

Performance Monitoring and Best Practice

ACTEW provides information, input and involvement in WSAA *Facts* where necessary. The main day-to-day involvement of ACTEW Corporation with Water Services Association of Australia involves technical support of national WAS

initiatives and formal WAS representation on the Board of the CRC for Water Quality and Treatment.

Allocation and Trading

Comprehensive Allocation System

Under the *Water Resources Act 1998,* the right to the use, flow and control of all water of the Territory, other than groundwater under existing leases, is vested in the Territory and exercisable by the Minister. All new uses of water in the ACT will be subject to an allocation which is separated from property rights. An allocation is the right to certain water and can be traded as an asset. Each allocation will specify the quantity, the timing and the manner in which water may be taken. For water to be physically taken at a particular place, a licence accompanied by a set of rules is needed to ensure that no environmental harm is likely to occur. Licenses specify the location at which water can be taken and they cannot be traded.

The Water Resources Act will be implemented through the Water Resource Management Plan. The Plan will describe the water resources expected to be available for allocation over the next ten years, how and when they may be made available and where they can be extracted. No new allocation will be made unless it is provided for in the Plan and is environmentally safe to do so.

In the ACT, groundwater and surface water are understood to be linked on a catchment basis and all allocations will, therefore, be considered together. The available allocations and an accompanying set of rules will be determined for each sub-catchment on a reach-by-reach basis. The Water Resources Management Plan will be a disallowable instrument under the Water Resources Act and will be available for community consultation.

Water Trading

The Water Resources Act provides the necessary legislative framework for water trading to take place. Currently, no water trading takes place in the ACT but this will change in the future as demand grows. Trading can occur within the ACT as users reach the limits of their allocation and look for a means of supplementing their available water or new users enter the market. The allocation system made possible through the Water Resource Act opens the way for trading to occur. However a regulatory mechanism will have to be developed before it can actually be implemented.

Environmental Flows Guidelines

The Environmental Flows Guidelines specify flow regimes which must be maintained in order to meet the assigned environmental values of each waterway in the ACT. The Guidelines ensure that a proportion of the natural flow of rivers and streams must be left at all times to protect their health and water quality. The Guidelines are a disallowable instrument under the Water Resources Act.

Allocations for the environment in the ACT have been made in the light of the best scientific information available at the time, but it is recognised that they may not be

accurate. In addition, changes in climate may occur and have an effect on the requirements of the environment. There is provision in the legislation for allocations to the environment to be increased if it is judged that harm is occurring to the ACT's water resources.

As per previous correspondence, the ACT does not have any stressed rivers.

Environment and Water Quality

Integrated Resource Management

All ACT Government areas with responsibilities for water and other natural resource management are located within the Department of Urban Services. Co-ordination mechanisms between the different areas are in place. Existing planning arrangements specifically promote integrated resource management across the ACT (whether urban or rural) at the broad planning level and they are supported by significant monitoring of water quality and quantity. Requirements for community consultation are built into the planning process and in ongoing water and land management activities there is an emphasis on community liaison and participation particularly through Waterwatch and Landcare activities.

Environment ACT (within the Department of Urban Services) has a strong commitment to the continuation of the integration of government and community activities relating to the use and protection of water, land and other environmental resources with the emphasis being on partnership type arrangements. This is an on-going activity and largely relates to the focus and style of activities conducted through Waterwatch and Landcare.

All planning in the ACT, including that pertaining to water resources, is guided by the Territory Plan, empowered by the *Land (Planning and Environment) Act 1991.*

The Plan has a strong catchment emphasis and its goals include:

- to promote conservation of natural resources; and
- to promote ecologically sustainable development.

Linkages with planning legislation are addressed in the *Environment Protection Act (1997)* and the Water Resources Act.

The ACT has been involved in integrated catchment management on a regional level through providing input into the development of both the Murrumbidgee Catchment Action Plan and the Murrumbidgee Catchment Strategy. The ACT Integrated Catchment Strategy, currently being developed, will provide a sound basis for exercising statutory obligations, and direction and guidance for integrated decision making processes about natural resource and environment management in the ACT.

National Water Quality Management Strategy

The ACT participates in the development of National Water Quality Management Strategy guidelines as appropriate. As they are finalised they are examined to ensure ACT water resource management and environmental controls are consistent with them. The ACT Water Quality Standards either meet or exceed NWQMS Guidelines.

The Environment Protection Act sets water quality standards legislatively, including the implementation of polluter pays charging arrangements. ACT is committed to implementing polluter-pays charges for environmental authorisations when NSW introduces its system.

- *Drinking Water Quality*

  While the current drinking water quality is relatively good and the drinking water guidelines are the standard reference, no formalised "standard of service" currently exists. Necessary arrangements are being considered within the context of the current review of the regulatory structure governing utility operations in the ACT.

- *Trade Waste Management and Sewer Overflows*

  Necessary arrangements are being investigated and these may lead to inclusion in Environment Authorisations for the treatment of sewage as well as other initiatives.

- *Reuse of Biosolids*

  While all solids arising from sewage treatment are currently recycled, arrangements are under review to ensure that they are the most appropriate.

Public Consultation & Education

Public Consultation

Public consultation in the implementation and adoption of all significant new initiatives is an ACT Government Policy requirement.

- *Pricing Reforms*

  The 'ACT Future Waters Supply Strategy' was used to consult and educate the public about water pricing issues and has resulted in reduced water use.

  The Independent Pricing and Regulatory Commission (IPARC) releases a draft version of the ACTEW's Price direction for public comment in February of each year. As an instrument which implements many of the reforms, public consultation on this paper is essential.

- *Water Allocations and Trading*

  Public consultation was key element in the preparation of the Water Resources Act, and the Water Resources Management Plan which will implement the Act,

will also be subjected to comprehensive consultation. This will give the public the opportunity to have input into the way in which water will be allocated in every sub-catchment in the ACT.

The community was also consulted in the development of the Environment Protection Act which has implications in relation to the National Water Quality Management Strategy.

- *Public/School Education Concerning Water Use & the Benefits of Water Reform*

Public information material in regard to water use and water resource management and protection is available from ACTEW Corporation, Waterwatch and Environment ACT. ACTEW have used education and awareness, pricing, regulation and innovation as the primary methods of managing demand. The effectiveness of the various demand management initiatives undertaken are monitored through their effect on water consumption and the results reported back regularly to the community.

ACTEW's activities in regard to its demonstration houses and xeriscape gardens are particularly notable as are the co-operative arrangements between Lake Tuggeranong College, Waterwatch, ACTEW and CSIRO in running Aquafest, which aims to increase community awareness through experiential learning.

While ACTEW has a good track record in providing public education material, its responsibility to provide a guaranteed level of activity in this regard is being considered during the current review of the regulatory structure governing utility operations in the ACT.

While other government programs will be maintained, particularly Waterwatch, specific education programs including that highlighting the need for and benefits from reform will be undertaken when specific opportunities arise. Possible occasions may arise when revising urban water and sewerage service prices and in the consultation phase for the implementation of water allocation and licensing arrangements.

Progress on the COAG related reforms in road transport

The Agreement to Implement the National Competition Policy and Related Reforms provides the base framework for assessing road transport performance. For the second tranche assessment, jurisdictions must demonstrate the continued observance of the agreed package of road transport reforms.

Development work towards full implementation of Road Transport Reform in line with COAG and the Government's timetables is continuing. Principally, work has been focused on the amendments of the *Motor Vehicle Act 1936* to incorporate national driver licensing initiatives and agreed national vehicle registration policies..

National road transport reforms are developed under a process which has its genesis in the Heavy Vehicle Agreement signed by the Heads of Government in 1991 and the Light Vehicles Agreement signed in 1992. Those Agreements have recently been revised but their main features are unchanged.

The process for implementing reforms has been improved significantly through the resolution of legal issues related to the situation of the ACT being the template host for agreed reforms. A proposed Collateral Agreement between the ACT Government and the Commonwealth to support national road transport reform is being finalised.

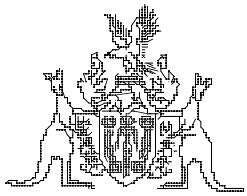
The agreed national implementation timeframes are currently being met. Amending bills are being produced to reflect the national driver licensing and vehicle registration reforms.

Most agreed reforms will be implemented through legislative means with other being implemented through administrative processes within the current ACT legal framework. For second tranche assessment, 17 reform projects are defined. Progress by the ACT towards these is shown in the following table:

NATIONAL REFORM PROJECT	*REQUIREMENT FOR SECOND TRANCHE*	*ACT STATUS*	*REQUIRED END DATE*
1. National Heavy Vehicle Registration Scheme.	Jurisdictions to have in place and are applying legislation consistent with the national model.; Aim is to ensure uniform national procedures.	**In progress:** proposed date July 1999 (subject to clearance of legal issues arising from Commonwealth template law)	December 1999
2. National Driver Licensing Scheme	The scheme will establish uniform requirements for key driver licensing transactions (issue / renewal / suspension/ cancellation) Jurisdictions to have in place and applying legislation consistent with the national principles.	**In progress:** proposed date July 1999	December 1999
3. Vehicle Operations	Jurisdictions to have in place and applying legislation consistent with the national model for : • *Mass and Loading Regulations;* • *Oversize / Overmass;* • *Restricted Access Vehicles(RAV) Regulations*.	**Mass and Loading Regulations: Implemented** **Oversize/Overmass and RAVs: Implemented** (Components incorporated in legislation. Some notice types not high priority in ACT and are outstanding at this time as no demand exists)	June 1999
4. Heavy Vehicle Standards.	Jurisdictions have in place and are applying legislation consistent with national model. Aim is to provide uniform in-service design and standards for heavy vehicles and trailers.	**Implemented** (some legal issues arise because of Template situation)	Superseded due to Combined Vehicles Reforms which is under development.

NATIONAL REFORM PROJECT	*REQUIREMENT FOR SECOND TRANCHE*	*ACT STATUS*	*REQUIRED END DATE*
5/6. Truck and Bus Driving Hours	Jurisdictions have in place and are applying legislation consistent with national model. Aim is to provide for legal and admin. framework for managing truck and bus driver fatigue.	**Not applicable in the ACT as agreed by ATC.**	N/A
7. Common Mass and Loading Rules	Jurisdictions have in place and are applying legislation consistent with national model. National standards to improve productivity for heavy vehicles while protecting roads and bridges.	**Implemented**	Not specified
8. One Driver/One Licence.	Jurisdictions have in place and are applying legislation consistent with national model. aim is to have common and simplified licence categories - eliminate multiple licences.	**In progress:** proposed date ; July 1999 (in conjunction with licensing module)	July 1999
9. Improved Network Access	Aim is to expand as of right access through routes for B-Doubles and other already approved large vehicles.	**Implemented**	March 1999
10/11. Common Pre-registration Standards for Heavy Vehicles and Common Roadworthiness standards.	Jurisdictions have in place and are applying legislation consistent with the national model.	**Implemented**	Not specified
12. Enhanced Safe carriage and Restraint of Loads.	Purpose is to improve safety through standard regulations and a practical guide for securing loads.	**Implemented**	July 1999
13. Adoption of National Bus Driving Hours	Adoption of new regulations for buses including two-up driving hours.	**Not applicable in the ACT as agreed by ATC.**	N/A

NATIONAL REFORM PROJECT	*REQUIREMENT FOR SECOND TRANCHE*	*ACT STATUS*	*REQUIRED END DATE*
14. Interstate Conversion of Driver Licenses	Jurisdictions have in place and are applying legislation consistent with national principles to afford simplified, no cost interstate conversions of driver licenses.	**Implemented**	July 1999
15. Alternative Compliance	Agreement to support development of alternative compliance regimes.	**Implemented**	Not specified
16. Short-term Registration	To enable options for 3 and 6 month registration for heavy vehicles.	**Implemented**	Not specified
17. Driver Offences/Licence Status.	Jurisdictions have in place and are applying legislation consistent with national model. Purpose is to allow employers to obtain limited information about employees' licence status.	**Implemented**	With licensing module.



NORTHERN TERRITORY OF AUSTRALIA

NORTHERN TERRITORY 1998 ANNUAL REPORT

ON THE

IMPLEMENTATION OF NATIONAL COMPETITION POLICY

CONTENTS

NORTHERN TERRITORY 1998 ANNUAL REPORT IMPLEMENTATION OF NATIONAL COMPETITION POLICY

INTRODUCTION

In April 1995 all State and Territory governments, with the Commonwealth, signed three inter-governmental agreements which together form the National Competition Policy:

- the Competition Principles Agreement;
- the Conduct Code Agreement; and
- the Agreement to Implement the National Competition Policy and Related Reforms.

Under clauses 3 (10) and 5 (10) of the Competition Principles Agreement (CPA) all Parties are required to report annually on progress towards fulfilling the competitive neutrality and legislative review requirements of the Agreement.

In addition, the Northern Territory has agreed to provide details on progress in implementing a number of related reforms which have been drawn under the National Competition Policy umbrella and which are to be included in the assessment for the second tranche competition payments.

This report outlines the Northern Territory's progress in implementing the processes to satisfy the requirements for second tranche payments under the National Competition Policy and related Agreements.

PART 1:
THE COMPETITION PRINCIPLES AGREEMENT REFORMS

1.1 LEGISLATION REVIEW: CLAUSE 5 OF THE CPA

REFORM COMMITMENT

Clause 5 of the CPA obliges governments to review and, where appropriate, reform all existing legislation which restricts competition by the year 2000.

STATUS OF LEGISLATION REVIEW IMPLEMENTATION

The following tables describe progress made by agencies of the NT Government in reviewing legislation identified as containing provisions which may be anti-competitive.

Name of Legislation	Description of Legislation/restriction	Review Outcome	Current Position
1. Where Review is completed and reform outcomes announced.			
Building Societies Act and Regulations	• Registration of a Building Society (s.14(1)) • Registration of Building Societies (Reg 2) • Licensing issues.	Repeal the Act entirely to negate anti-competitive provisions.	Repealed 27 May 1998. Building Societies are currently registered under the *Financial Institutions (NT) Code* as part of a national scheme of legislation.
Abattoirs and Slaughtering Act/Regs	Establishes licensing regime and standards for premises etc • Slaughter of Buffalo (Reg 7) • Abattoir Licence (Reg 5)	Consultation with the meat industry undertaken to review proposals to incorporate the Act into the *Meat Industries Act*. Resulting recommendation to repeal the Act with the commencement of the *Meat Industries Act.*	Repealed and replaced with *Meat Industries Act* which commenced 10 December 1997.
Business Franchise Act	Licence to sell Tobacco or Petroleum Products (s.14)	Licensing and registration requirements are considered necessary features of revenue legislation. Licensing creates no barriers to entry, or additional rights for licensees or registered persons. The fees paid operate as a cost of doing business, and therefore do not restrict competition.	Recommendation endorsed by Cabinet in July 1998. Operation of this Act is suspended on commencement of *Business Franchise Act (Suspension of Operation) Act*. Commencement subject to *Fuel Subsidy Act* (assented to December 1998).
Energy Resource Consumption Levy Act	Part 2: Energy Resource Consumption Levy. Requirement for any bulk consumer of levy oil to register under the Act (s.7)	The Act/Registration arrangement is an administrative procedure designed to facilitate the collection of the Energy Resource Consumption Levy only. It does not operate in any way to restrict competition. No evidence of restriction on competition in the Act.	Recommendation endorsed by Cabinet in July 1998.
Financial Institutions Duty Act	• Registration as a Financial Institution for FID (s.12) • Certification as a Short Term Dealer (s.14)	Licensing and registration requirements are considered necessary features of revenue legislation. Licensing creates no barriers to entry, or additional rights for licensees or registered persons. The fees paid operate as a cost of doing business, and therefore do not restrict competition. No evidence of restriction on competition in the Act.	Recommendation endorsed by Cabinet in July 1998.

Name of Legislation	Description of Legislation/restriction	Review Outcome	Current Position
Financial Management Act	Part 5: Funds Management: • Requirement to open the Northern Territory Government Account at a Bank (s.27) Treasurer's Direction Part 1, Section 2 further defines a Bank to include *"any organisation providing financial services and includes banks, credit unions, building societies and similar organisations"*. The legal effect of the definition of a bank, as it applies to the *Financial Management Act* needs to be clarified. • Requirements for determining suitable financial institutions and instruments for investing Government funds (s.29(2)). Requirement for deposits to be made with a financial institution with a suitable published credit rating would exclude financial institutions without a published credit rating.	Anti-competitive effect of s.27 removed by the passage of the *Financial Institutions (Miscellaneous Amendments) Act 1997*.* S.29 of the Act constitutes a restriction on the investment of government funds (s.29 defines institutions/instruments that Territory funds can be invested in). This is arguably distorting the competitive conduct of firms in the financial sector. However, the benefits that accrue to both Government and the taxpayer, in terms of accountability, outweigh the relatively minor costs associated with the investment guidelines. This public benefit is ground for justification under clause 5(1) of the CPA.	Recommendation endorsed by Cabinet in July 1998.
Grain Marketing Act	Establishes Board	Dissolution of the Grain Marketing Board will remove unfair competitive advantage in Australian Industry. The dissolution of the Grain Marketing Board will allow market forces to prevail and encourage rationalisation of the Northern Territory grain industry.	Recommendation endorsed by Cabinet. Act repealed 5 February 1997. Dissolution of Grain Marketing Board.
Pay-Roll Tax Act	Pay-Roll Tax Register (s.12)	Licensing and registration requirements are considered necessary features of revenue legislation. Licensing creates no barriers to entry, or additional rights for licensees or registered persons. The fees paid operate as a cost of doing business, and therefore do not restrict competition. No evidence of restriction on competition in the Act.	Recommendation endorsed by Cabinet in July 1998.

Name of Legislation	Description of Legislation/restriction	Review Outcome	Current Position
Territory Parks and Wildlife Conservation Act	Establishes parks and reserves and protects/conserves wildlife etc • Licence to conduct scientific research or investigation (s.111) • Permit to Trade in Live Vertebrate Wildlife (s.33) • Permit to Take a Live Protected Animal (s.29) • Importing/Exporting of Vertebrate Wildlife of the Northern Territory (s.34)	Appear to be no anti-competitive restrictions in this Act.	Review results considered by Cabinet in November 1998. Cabinet endorsed outcome of Review.
Pet Meat Act	Licensing of slaughtering processing and storage of pet meat, standard of premises etc. • Slaughter for Pet Meat (s.14) • Process of Pet Meat (s.18)	Consultation with the meat industry undertaken to review proposals to incorporate the Act into the *Meat Industries Act*. Resulting recommendation to repeal the Act with the commencement of the *Meat Industries Act*.	Repealed with commencement of *Meat Industries Act* on 10 December 1997.
Petroleum (Prospecting and Mining) Act	Regulates exploration and recovery of petroleum in NT. Grants exclusive rights, technical and financial prescriptions. Possible Part IV concerns	Legislation review subsumed into wider review process.	*Petroleum (Prospecting and Mining) Act* repealed. Replaced by *Petroleum Act*.
Taxation (Administration) Act	• Registration as an Accommodation House (s.80c) • Registration as a Lender (Div 13, s.72) • Registration of a Financial Institution for Electronic Debit Transaction Duty (s.29M) • Registration of Insurers (Div 6, s.40) • Registration of Life Insurers (Div 7, s.46)	Licensing and registration requirements are considered necessary features of revenue legislation. Licensing creates no barriers to entry, or additional rights for licensees or registered persons. The fees paid operate as a cost of doing business, and therefore do not restrict competition. No evidence of restriction on competition in the Act.	Recommendation endorsed by Cabinet in July 1998.
Mental Health Act	Provides for the care and treatment of the mentally ill.	General review undertaken. Resulting recommendation to repeal and replace with *Mental Health and Related Services Act*. (NCP Review was included in wider review of the Act)	Act to be repealed and replaced by *Mental Health and Related Services Act*. The new Act will apply equally to private and government sectors, and take account of the need to meet national standards and accreditation requirements but will not restrict innovation or entry of goods and services provided standards are met.

Name of Legislation	Description of Legislation/restriction	Review Outcome	Current Position
Pawnbrokers Act	Pawnbroker's Licence (s.18)	Legislation review subsumed into wider review process.	Act repealed on 1 July 1998 and license provisions included in Pawnbrokers and Secondhand Dealers provisions of the *Consumer Affairs and Fair Trading Act.* Licensing provisions for Pawnbrokers and Secondhand Dealers have commenced.
Ozone Protection Act and Regulations	Environmental controls • Licence to Buy/Sell a Controlled Substance (s.15)	Review concluded that licensing requirement does not create any restrictions on the issuing of licenses to sell or purchase ozone depleting substances. Administratively licences are issued to anyone who has access to the equipment necessary to recover and recycle ozone depleting substances and employs at least one person who has undertaken the appropriate ozone awareness training. These requirements are imposed as a basic standard necessary to ensure protection of the ozone layer. Licenses cost $10 for up to 5 years and therefore imposition has no impact on the price of ozone depleting substances or the services offered by licences, creates no barriers to entry and therefore does not restrict competition.	Conclusion of review endorsed. Consequent decision to repeal Act. Ozone Protection Provisions to be incorporated into regulations under the *Waste Management and Pollution Control Act* .
Stock (Artificial Breeding) Act/Regs	• Use of imported semen (Reg 6) • Inseminator's Licence (Reg 17) • Unlicensed semen (Reg 20) • Semen collection/distribution (Reg 7) • Approved sires (s.5)	Act could be seen as having anti-competitive provisions. Industry agrees with repeal of Act.	Act repealed by *Stock (Artificial Breeding) Repeal Act.*

Name of Legislation	Description of Legislation/restriction	Review Outcome	Current Position

1a. Review completed, reform outcome announced and yet to commence.

Dangerous Goods Act and Regulations	Sets requirements for the transport, storage and handling of dangerous goods. Business licences to manufacture, store, convey, sell, import or possess prescribed dangerous goods. (s.15-21) Operators licences for: • drivers of dangerous goods vehicles (Reg 56) • shotfirers (Reg 132) • gas fitters (Reg 172) • autogas fitters (Reg 202)	Legislation review subsumed into wider review process.	Act repealed and replaced by new *Dangerous Goods Act* assented to 30 March 1998. Cabinet approved drafting of new Regulations - September 1998. Draft regulations are being prepared and are expected to be tabled in April 1999.

Name of Legislation	Description of Legislation/restriction	Review Outcome	Current Position

2. Where the Review is completed and recommendations still being considered.

Architects Act	• Architect's Registration • Certifying Architects Registration (Part 3)	Review completed. Review report has not been passed to Cabinet pending national review.	NT has agreed to participate in national review of legislation regulating Architects.
Cemeteries Act and Regulations	Provides for the establishment (s.6), maintenance and control of cemeteries. Approval for establishment of cemeteries by the Administrator. No clear guidelines on approvals - could be applied anti-competitively.	Review undertaken. Recommendations will include an amendment to the Act to enable crematoriums to be established outside public cemeteries.	Review results are being progressed for Cabinet approval.
Local Government Act, Regulations and By-Laws	Provides for constitution of municipalities and community government areas, the election of self-governing authorities to control municipalities and community government areas and provides for a similarity of power and function between self-governing authorities.	General review undertaken. Review of Councils By-laws completed.	Review results being progressed for cabinet approval.
Meat Industries Act	*Meat Industries Act* commenced 10 December 1997. Implements national standards and reforms	Review coincided with national food industry standards review.	Review results being progressed for Cabinet perusal.
Fisheries Act	Permits and special permits s.16, 17	Reviewed in tandem with national initiatives. A preliminary review was conducted in liaison with other jurisdictions at the beginning of 1998. Desliens Consultants commissioned to undertake a review which has now been completed. The result is now being considered within the Department of Primary Industry and Fisheries.	Review results being progressed for Cabinet perusal.
Oil Refinery Agreement Ratification Act	Provides legislative basis for arrangements between Government and Mereenie. Contains possible restrictions on third parties.	Review completed. No impediments to competition identified.	Review results being progressed for Cabinet perusal.

Name of Legislation	Description of Legislation/restriction	Review Outcome	Current Position
Fisheries Regulations	Licensing and management of fisheries. • Commercial Fishing Proposal Part 6: Div 2 • Aquarium Licence Part 3: Div 12 • Fish Traders Licence Various • Aquaculture Licence re: Waste Disposal s.171(f) • Licence to Process Fish s.59, 144 • Permit to Import Fish or Aquatic Life s.26 • Aquaculture Licence Part 10: Div 2 • Commercial Fishing Licence Part 7: Div 1 • Coastal Line Fishery Licence Part 8: Div 1; Coastal Net Fishery Licence Div 2; Bait Net Fishery Licence Div 3; Spanish Mackerel Fishery Licence Div 4; Shark Fishery Licence Div 5; Demersal Fishery Licence Div 6; Barramundi Fishery Licence Div 7; Mud Crab Fishery Licence Div 8; Mollusc Fishery Licence Div 9; Pearl Oyster Fishery Licence Div 10; Fixed Trap Fishery Licence Div 11; Aquarium Fishing/Display Div 12 Fishery Licence; Trepang Fishery Licence Div 13; Development Licence Div 14 • Fish Trader/Processor Part 9: Div 2; Fish Retailer Div 3; Fish Broker Div 4 • Aquaculture Licence Part 10: Div 2; Pearl Oyster Culture Industry Licence Div 3 • Aboriginal Coastal Licence Part 11: Div 2; Fishing Tour Operator Licence Div 3; Aquarium Trader Licence Div 4; Net Licence Div 5 • Timor Reef Fishery Licence Part 8: Div 15; Finfish Trawl Fishery Licence Div 16; Jigging Fishery Licence Div 17	Reviewed in tandem with national initiatives. A preliminary review was conducted in liaison with other jurisdictions at the beginning of 1998. Desliens Consultants commissioned to undertake a review which has now been completed. The result is now being considered within the Department of Primary Industry and Fisheries.	Review results being progressed for Cabinet perusal.

Name of Legislation	Description of Legislation/restriction	Review Outcome	Current Position
Work Health Act and Occupational Health and Safety Regulations	Establishes Authority and sets requirements for occupational health and safety. Registration of the design of designated plant; pressure equipment, cranes and hoists, lifts, escalators and moving walks, amusement structures and scaffolding (Reg 93) Licensing of operators: pressure equipment operation, crane and hoist operators, industrial truck operation, scaffolding, rigging and asbestos removal (Reg 15)	Review finalised. Existing plant registration and operator licensing provisions were nationally considered and are to be retained.	Review results being progressed Cabinet perusal.

Name of Legislation	Description of Legislation/restriction	Review Process Objective	Current Position

3. Where Review is commenced but not completed.

Classification of Publications, Films and Computer Games Act	Review of prohibition concerning the manufacture of 'X' style videos in NT	**Stage 1** by 30 June 1997 **Stage 2** by 30 June 1998 **Stage 3** by 30 June 1999	Proposed for Cabinet consideration mid 1999.
Commercial and Private Agents Licensing Act	• Commercial Agent's Licence (s.5(a)) • Process Server Licence (s.5(c)) • Inquiry Agent's Licence (s.5(b)) • Private Bailiff Licence (s.5(d))	**Stage 1** by 30 June 1997 **Stage 2** by 30 June 1998 **Stage 3** by 30 June 1999	Draft NCP review completed. However, a comprehensive review of the Act is scheduled to commence February 1999 which will revisit NCP issues. NCP issues will be presented to Cabinet by June 1999.
Prostitution Regulation Act	The Act obliges escort agents to be licensed and to comply with a wide range of conditions that may be imposed by the licensing authority. Additionally sex workers who provide sex services under agency agreements with escort agents must have an appropriate certificate from the Commissioner of Police. Brothels are illegal.	**Stage 1** by 30 June 1997 **Stage 2** by 30 June 1998 **Stage 3** by 30 June 1999	There is a general review of the Act under-way and NCP issues will be addressed as part of the review. NCP issues are scheduled to be presented to Cabinet by June 1999.
Veterinarians Act	Establishes registration board. Registration as a veterinarian (Part 3, Div 2, s.13)	To be finalised by 30 June 1998	Review process initiated . An amendment bill has been prepared but further amendments are likely to be required because of recent restructuring within Department of Primary Industry and Fisheries.
Agricultural and Veterinary Chemicals (NT) Act	To apply certain laws of the Commonwealth relating to agricultural and veterinary chemical products as laws of the Northern Territory	National Review	The Northern Territory is party to a national review of the Act and complementary legislation in other jurisdictions. The report was to be released in December 1998. It appears that it has some formal steps yet to pass and should be released in February 1999.
Trade Development Zone Act	Licence to Operate in the Trade Development Zone (s.21,28)	To be finalised by 30 June 1997	Focus of the Trade Development Zone has been reviewed and significant changes implemented. The review process will therefore be recommenced. Review results scheduled for Cabinet in March 1999.

Name of Legislation	Description of Legislation/restriction	Review Process Objective	Current Position
Commercial Passenger (Road) Act	Tourist Vehicle Licence (s 52) Accreditation of commercial passenger operator (Part 3) Taxi Licensing (Part 4): • taxi licence (Div 1) • substitute taxi licence (Div 2) • supplementary taxi licence (Div 3) • private hire car licence (s 32) Motor Omnibus Licence (Part 6): • pioneer routes (s.46) • urban service areas (s.47) • prohibiting a restricting service (s.49) Tourist Vehicle Licence (s.52) Special Passenger Vehicle Licence (s.58)	To be finalised by 30 June 1998	NCP legislation review issues subsumed into a wider review of this legislation. Competition matters have been addressed in the Commercial Passenger (Road) Transport Amendment Act 1998 (commenced 01.01.99)
Marine Act Regulations (Pilotage) (Hire-and-Drive) (Examinations and Certificates)	• Licensing of certain commercial operations (part V) • Certificate of Survey (s.79(a)) • Permit for operation of Hire-and Drive Vessel (s.4) • Certificate of Competency (Coxswain) (Schedule 3) • Certificate of Competency (masterclass - all) (Reg 9)	To be finalised by 30 June 1997	Draft report under consideration.
Motor Vehicles Act	• Motor omnibus licence (s.10(2)) • Pastoral Vehicle Permit (s.137B) • Driving Instructor's Licence (25B) • Commercial passenger vehicle licence	To be finalised by 30 June 1997	Draft reports under consideration.

Name of Legislation	Description of Legislation/restriction	Review Process Objective	Current Position
Electrical Workers and Contractors Act	Establishes Licensing Board • Electrical Worker Licence • Electrical Contractor Licence • Electrical Fitter Licence • Electrical Linesman Licence • Electrical Cable Joiner Licence • Refrigeration Mechanic Licence • Instrument Fitter Licence • Registration of Apprentices • Permits for Electrical Work (Part 3 various divisions)	To be finalised by 30 June 1997	In progress. Public submissions invited/closed - NCP review to be subsumed into a comprehensive general review of the Act to be conducted in 1999. Note: Responsibility relocated from the Department of Lands, Planning and Environment to the Department of Industries and Business on 8/12/98.
Plumbers and Drainers Licensing Act	Advanced Tradesman's Licence (s.23) Journeyman Registration (s.22)	To be finalised by 30 June 1997	In progress. Public submissions invited/closed. NCP review to be subsumed into a comprehensive general review of the Act to be conducted in 1999. Note: Functional responsibility transferred from Dept. of Lands, Planning & Environment to Dept. of Industries and Business in March 1999.
Building Act	Provides for the establishment of technical standards for buildings, the registration of building practitioners and certifiers, the regulation of building matters (including the registration of building products) and granting of permits and establishes appeals processes.	To be finalised by 30 June 1997	Review process initiated.
Licensed Surveyors Act	Surveyors licensing	To be finalised by 30 June 1997.	Review process initiated.

Name of Legislation	Description of Legislation/restriction	Review Process Objective	Current Position
Electricity Act	An Act to control the generation and safe use of electricity Control over reselling of electricity - s.14(5) Part IV conflicts. Sale, resale prohibited without licence - s.27 affects competition, restricts entry. Prohibits certain uses of electricity - s.29 Part IV concerns. Price fixing in relation to licensee - s.30 Part IV concerns and possibly reduces contestability. Liability limitation (s.32) - possible competitive neutrality. Act binds the Crown (s.38). Regulation making powers (s.39). **Licensing elements:** • Authorisation of electrical inspectors (s.19); • electrical equipment controls; • appointment of licensees; and • By-laws for regulating standards and electrical supply s.21- 26.	To be finalised by 30 June 1997	Preliminary review completed. Power and Water Authority (PAWA) currently being reviewed. Following a briefing from PAWA, the Chief Minister has written to the NCC advising of the review and potential new legislation which is expected to be introduced in 1999.

Name of Legislation	Description of Legislation/restriction	Review Process Objective	Current Position
Power and Water Authority Act	Establishes the Power and Water Authority and prescribes powers and responsibilities etc. Functions and powers of the Authority - **gives control of provision and supply etc of electricity in the Territory.** Exemption from rates - **competitive neutrality issue.** Price fixing regarding the Authority's agents - **possible pt IV conflict.** Regulation making powers - **statutory power.** Exemption from charges - **competitive neutrality issue** (s.14, 15, 19, 25(b) and 33)	To be finalised by 30 June 1997	Power and Water Authority (PAWA) currently being reviewed. Following a briefing from PAWA, the Chief Minister has written to the NCC advising of the review and potential new legislation which is expected to be introduced in 1999.
Darwin Port Authority Act	Establishes the Darwin Port Authority. Prescribes functions and powers. Monopoly powers. Licensing arrangements and Fees Issue of stevedoring licence. Charge for issue of renewal (Part II, s.17(p)(q)) Control of shipping movements in port. (Part III, s.29) Application for stevedoring licence (s.38) Cancellation or suspension of stevedoring licence by Minister (s.39) Exemption from local government charges (Part IV, s.45)	To be finalised by 30 June 1998	Review process initiated. Resolution of outstanding issues delaying completion.

Name of Legislation	Description of Legislation/restriction	Review Process Objective	Current Position
Port By-Laws	Port management and control provisions. Prescribe changes for services Compulsory services and fees. Licensing issues. Compulsory pilotage for majority of vessels (Chapter V By-law 28) Fee for pilotage exemption certificates (By-law 36) Fee for renewal of pilotage exemption certificate (By-law 36 (c)) Fees for operating with exempt pilot (By-law 36 (f)) Pilotage Fees (By-law 52) Port dues (Navigation aids levy) (By-law 53)	To be finalised by 30 June 1998	Resolution of outstanding issues delaying completion.

Name of Legislation	Description of Legislation/restriction	Review Process Objective	Current Position
Water Supply and Sewerage Act	Relates to the provision of sewerage and water services and associated matters. Liability waivers (s.9) - **statutory powers above pt IV.** Declaration of sewered, water supply and water supply extension areas. (s.12/s.13) - **statutory powers above pt IV.** Power to assess consumption (s.32) - **statutory powers above pt IV.** Price fixing within declared area (s.33) - **pt IV concerns, reducing contestability.** Appointment of inspectors at large (s.42) - **licensing issue.** Regulation of various matters (s.38, 53, 57, 58, 59, 62, 64, 66 and 68) - **regulatory systems which may reduce contestability.** Regulation making powers (s 76).	To be finalised by 30 June 1997	Power and Water Authority (PAWA) currently being reviewed. Following a briefing from PAWA, the Chief Minister has written to the NCC advising of the review and potential new legislation which is expected to be introduced in 1999.
Gaming Machine Act 1995	Provides for licensing of gaming machines in community venues - establishes limits and controls on numbers of machines and locations.	To be finalised by 30 June 1998. Initiation of National Review of Gaming Industry noted.	Alder Report received mid December 1998. Public comment to be sought with outcomes known by March 1999. Review results to Cabinet by June 1999.

Name of Legislation	Description of Legislation/restriction	Review Process Objective	Current Position
Agent's Licensing Act	• Real Estate Agent's Licence (s.11) • Agent's Representative Registration (s.12) • Conveyancing Agent's Licence	**Stage 1** by 30 June 1997 **Stage 2** by 30 June 1998 **Stage 3** by 30 June 1999	NCP reviews of the *Agents Licensing Act*, initiated by the Attorney-General's Department have been conducted. Further review to be carried out, in particular with respect to de-regulation of agents representative registrations. Determination to be made as to whether public/industry consultation is necessary.
Auctioneer's Act	• Auctioneer's Licence (s.4) • Auctioneer's Clerk Licence (s.8E)	**Stage 1** by 30 June 1997 **Stage 2** by 30 June 1998 **Stage 3** by 30 June 1999	Attorney-General's Department review of the current Auctioneers Act has been completed. A decision has been made at Ministerial level for the *Auctioneers Act* to be fully reviewed. NCP review will be tied into this process.
Consumer Affairs and Fair Trading Act (NT Regs) and Amendment Act 1996	Sundry fair play provisions re regulation of advertising, banning of potentially unsafe goods etc. • Travel Agent's Licence (Schedule 1) • Credit Providers Licence • Pawnbrokers and Second Hand Dealers Licence • Motor Vehicle Dealers Licence tow truck code	**Stage 1** by 30 June 1997 **Stage 2** by 30 June 1998 **Stage 3** by 30 June 1999	Travel Agent's license provision subsumed into national review of legislation regulating travel agents. Review of other provisions initiated.
Motor Vehicle Dealers Regulations	Motor Vehicles Dealers Licence Part X, Div 3, Sub Div A, s.132	**Stage 1** by 30 June 1997 **Stage 2** by 30 June 1998 **Stage 3** by 30 June 1999	In progress.
Prices Regulation Act	**Provides for the appointment of Controller of Prices who can declare maximum prices for services and goods prescribed by the Administrator.**	**Stage 1** by 30 June 1997 **Stage 2** by 30 June 1998 **Stage 3** by 30 June 1999	In progress.

Name of Legislation	Description of Legislation/restriction	Review Process Objective	Current Position
Mine Management Act	Regulation of Occupational Health and Safety in Mining	To be finalised by 30 June 1997	Review not completed. Revised completion date of July 1999 when a report to Cabinet will be submitted. A full-scale internal review of this legislation is currently being conducted that may result in a recommendation to Government to repeal existing legislation and replace with a new Act. Delays in the completion of the general review have been experienced.
Petroleum (Submerged Lands) Act	Regulates exploration and recovery of petroleum in NT territorial seas. Grants exclusive rights, technical and financial prescriptions.	To be finalised by 30 June 1999	Review results to Cabinet in last quarter 1999. General review of legislation to be conducted during 1998/99.
Uranium Mining (Environmental Control) Act	Controls uranium mining in the Alligator Rivers Region. Imposes restrictions, conditions, requirements that could discourage innovation, add to costs etc.	To be finalised by 30 June 1998	Internal review has commenced. Revised date of July 1999 for reporting to Cabinet. Delay due to the conduct of other competition reviews taking longer than originally indicated on the timetable.
Firearms Act	• Armourer's Licence (s.20) • Dealers Licence (s.17) • Shooters Licence- Security Firms (s.28, 29) • Shooting Gallery Licence (s.31)	To be finalised in December 1998	Review results to Cabinet in February 1999.
Food Act	Provides standards for preparation and sale of food etc. Registration of a Food Vending Machine (s.13(6), 13(7))	To be finalised 30 December 1997	A national model for food legislation is being developed. Completion is expected by December 1999.
Medical Services Act	Provides rules for the conduct of medical services in public hospitals and nursing homes Entry conditions, pricing	To be finalised 30 December 1997	Review in progress.
Pharmacy Act	Establishes Registration Board Registration as a Pharmacist (s.19)	To be finalised 30 December 1997	Review deferred. National review proceeding in conjunction with review of Pharmaceutical Benefits Scheme. Completion expected 30 June 1999.

Name of Legislation	Description of Legislation/restriction	Review Process Objective	Current Position
Nursing Act	Establishes Registration Board Registration as a: • General Nurse • Child Welfare Nurse • Psychiatric Nurse • Mental Deficiency Nurse Enrolment as a: • Enrolled Nurse • Mothercraft Nurse Application for Enrolment	To be finalised by 30 December 1996	Act to be repealed and replaced with Nursing Act 1999. Potentially anti-competitive provisions of registration to be considered in subsequent review.
Health Practitioners and Allied Professionals Registration Act	Registration as a: • Aboriginal Health Worker (s.24) • Chiropractor (s.35) • Occupational Therapist (s.38) • Osteopath (s.39) • Physiotherapist (s.40) • Psychologist (s.41)	To be finalised 30 December 1997	Act to be repealed. Framework for new legislation to be prepared taking into account NCP issues, Mutual Recognition and Trans-Tasman Mutual Recognition implications. Completion now expected June 1999.
Poisons and Dangerous Drugs Act	Sets out controls for manufacture, wholesale, retail sales. Principally licensing issues: • Possession of Medical Kit • Drugs (s.42) • Registration of a Pesticide(s.52A) • Pest Control Operator (s.55) • Registration as a Poisons Wholesaler (s.17) • Registration as a Poison's Retailer (s.23) Possession of Poisons (Part 4, s.27)	To be finalised by 30 June 1997	A national review has commenced with completion targeted for June 1999. The national review is particularly considering: • certificate of competency for pest controllers • prescribing of drugs by health professionals other than medical practitioners, eg, optometrists.

Name of Legislation	Description of Legislation/restriction	Review Process Objective	Current Position
Dental Act	Establishes Registration Board and registration requirements Registration as a: • Dental Hygienist • Dental Specialist • Dental therapist • Dentist (s.14 (a) to (d))	To be finalised 30 December 1997	Framework for new legislation to be prepared taking into account NCP issues, Mutual Recognition and Trans-Tasman Mutual Recognition implications. Completion now expected June 1999.
Optometrists Act	Establishes Registration Board • Registration as an Optometrist (s.29)	To be finalised 30 December 1997	Issues of regulation of optical dispensers and prescription of drugs by optometrists to be considered. Completion now expected 30 June 1999.
Radiographers Act	Establishes Registration Board • Registration as a Radiographer (s.11)	To be finalised 30 December 1997	Reassessment of need for registration board and the present mechanism for issue of permits to other health professionals to undertake radiographic procedures to be considered. Expected completion date September 1999.
Medical Act	Establishes Medical Registration Board. • Licence to be a Medical Practitioner (s.31)	To be finalised 30 December 1997	Act reviewed. Issues of regulation of advertising and ownership of medical companies also to be resolved. Completion date in December 1999.
Community Welfare Act	Provides for the protection and welfare of children etc. Licensing of Child Care Centres (Div 2)	To be finalised by 30 December 1998	Review in progress. Completion date December 1999.
Radiation (Safety Control) Act	Registration of Irradiating Apparatus (s.29)	To be finalised by 30 December 1998	Review in progress. Completion date December 1999.
Public Health (Barbers' Shops) Regulations	Registration of a Barbers Shop (s.5)	To be finalised by 30 December 1998	Review in progress. Completion date December 1999.
Public Health (Shops, Eating-Houses, Boarding Houses, Hotels and Hostels) Regulations	• Registration of a Boarding House (s.35, 36) • Registration of an Eating House (s.12,13)	To be finalised by 30 December 1998	Review in progress. Completion date December 1999.

Name of Legislation	Description of Legislation/restriction	Review Process Objective	Current Position
Hawkers Act	Provides for the licensing of hawkers (s.4)	To be finalised by 30 June 1998	Review results scheduled to go to Cabinet in February 1999. The Department of Housing and Local Government considers there are probably sufficient safeguards in recent consumer and fair trading legislation to enable repeal of this Act.
Places of Public Entertainment Act	Controls places of public entertainment - Public Entertainment Licence (s.6)	To be finalised by 30 June 1998	Review results scheduled to go to Cabinet in February 1999.
Housing Act	Establishes Housing Commission and provides for letting and sale of dwellings.	To be finalised in December 1998	Review results scheduled to go to Cabinet in February 1999.
Caravan Parks Act	Regulates caravan parks. Only applies to some parts of the Northern Territory. May create anti-competitive effects between controlled and uncontrolled areas.	To be finalised in July 1997	Review results to Cabinet in September 1999. The Department of Housing and Local Government is considering repeal of the Act in view of stronger sanctions existing pursuant to Power/Water, Planning, Fire and Health legislation for caravan parks. The NT Tourist Commission is now also conducting a review.
Private Hospitals and Nursing Homes Act	Provides for licensing of private hospitals and nursing homes.	To be finalised by 30 December 1998	Review in progress. Completion date December 1999.
Motor Accidents (Compensation) Act	Establishes a no-fault compensation scheme, prescribes rates of benefit, abolishes certain common law rights	To be finalised by 30 June 1997	An internal review of legislation governing Territory Insurance Office (TIO) which may be viewed as restricting competition in terms of NCP had been completed. However, following criticism by Economic Insights Pty Ltd of similar reviews conducted by TIO's counterparts in WA and Tasmania, TIO and NT Treasury are jointly considering an external review. The extent of such an external review will be determined once advice sought by NT Treasury from the Attorney-General's Department is received.

Name of Legislation	Description of Legislation/restriction	Review Process Objective	Current Position
Territory Insurance Office Act	Establishes Territory Insurance Office to carry out certain insurance and related business and provide financial, business and other services. Confers monopoly on motor vehicle accident insurance, acts as the insurer of Territory assets and liabilities. Ministerial discretion on extent of financial activity (s.30) Government guarantee.	To be finalised by 30 June 1997	As above
Work Health Act and the Occupational Health and Safety Regulations	Workers Compensation claims management.	To be finalised by 30 June 1998	Territory Insurance Office is subject to provisions in this Act, although Act is administered by Work Health Authority (now Department of Industries and Business). Review process initiated.
Petroleum Act	Regulates exploration and recovery of petroleum in NT. Grants exclusive rights, technical and financial prescriptions. Possible Part IV concerns	To be finalised by 30 June 1998	*Petroleum Act* review to be completed February 1999. External review conducted by a consultant. Revised date of July 1999 for reporting to Cabinet.
Racing and Betting Act	Licensing issues • Sports Bookmakers Licence (s.70, 89) • Racing Venue (s.37) • Registration of Race Clubs (s.46) • Registration of Trotting Clubs (s.53) • Registration of Greyhounds (s.58) • Totalisator Licence (s.111)	To be finalised by 30 June 1998	Review delayed as a result of major organisational restructuring involving Racing, Gaming, Liquor and Real Estate Agent's Licensing activities. Enabling amendments to bring these functions within the control of the Department of Industries and Business are being prepared and will include changes in the manner in which the various Commissions associated with these activities are established and operate. Review process initiated.
Racing and Betting Regulations	Regulates sports betting and bookmakers. • Bookmaker's Clerk Registration (Div.6) • Bookmaker's Registration (s.102(2)(b)(ii))	To be finalised by 30 June 1998	As above.
Totalisator Administration and Betting Act	Grants sole rights to this form of betting.	To be finalised by 30 June 1998	As above.

Name of Legislation	Description of Legislation/restriction	Review Process Objective	Current Position
Gaming Control Act and Regulations	Provides for regulation and control of gaming: • Trade Lotteries (s.39 and Regs) • Approved Associations (s.38(2)) • Foreign Lottery approval (s.40(2)) • Casino Licence (s.16) • Use and Possession of a Gaming Machine in a Club or Hotel (s.49 (1)(a)) • Supply and Lease of a Gaming Machine (s.49(1)(b)) • Assembly and Repair of a Gaming Machine (s.49(1)(c)) • Novelty Gaming Machine (Regs, Various) • Casino operatives licence (Part III Div 1, 2)	To be finalised by 30 June 1997	As above.
Liquor Act	Provides for the regulation of the sale of alcohol. • Licence for the Sale of Liquor (s.24) • Special Licences (s.57) • Wholesalers of Liquor (s.113A)	To be finalised by 30 June 1998.	As above.

Name of Legislation	Description of Legislation/restriction	Review Process Objective	Current Position

4. When the timing of the Review is changed.

Mining Act	Creates a regime for the valid grant of mining tenure in the NT, together with ongoing regulation • Miner's Right (s.9) • Exploration Licence (Div 2, s.16) • Exploration Retention Licence (s.38) • Mineral Leases (Part VI) • Mineral Claims (Part VII) • Extractive Mineral Lease (Part VIII) • Extractive Mineral Permit (Part VIII)	To be finalised by 30 June 1997	Review not commenced. Revised date July 1999 for completion. At that time a report to Cabinet will be prepared. A full-scale review of this legislation is proposed but commencement has been delayed pending the outcome of the Native Title amendments, which have been a priority issue. Competition review will now be conducted separately due to time constraints.
Water Act	Provides for the investigation, use, control, protection, management and administration of water resources, and for related purposes. • Grant of Drilling Licence (s.49) • Underground Waste Disposal Licence. (s.63) • Wastage Discharge Licence (s.74)	To be finalised by 30 June 1997	To be rescheduled. As part of the reform of Government Business Divisions, administrative responsibility for the *Water Act* has been transferred from the Power and Water Authority to the Department of Lands, Planning and Environment. Review to be rescheduled to fit the Department of Lands, Planning and Environment review work program and linked to COAG Water Reform agenda.
Water Regulations	• Water Investigation Permit (s.5) • Permit to Construct or Alter Water Works (s.6) • Bore Construction Permit (s.7) • Licence to Take/Use Surface Water (s.8) • Licence to Take Ground Water (s.9)	To be finalised by 30 June 1997	As above

1.1.1 NORTHERN TERRITORY-SPECIFIC ISSUES IDENTIFIED IN THE "FRAMEWORK FOR SECOND TRANCHE ASSESSMENT" (NOVEMBER 1998)

Legal Practitioners Act: *demonstrate that current arrangements for legal professional indemnity insurance meet CPA principles.*

STATUS OF REFORM IMPLEMENTATION

The Legal Practitioners Act is to be added to the list of Acts that are to be subject to National Competition Policy reviews. The bulk of that review is expected to occur as part of the development of the national legal services market. However, the review of issues relating to indemnity insurance is likely to be a separate exercise which will be completed by the end of 2000.

SUPERANNUATION - LEGISLATION REVIEW

Superannuation Act 1986*: not listed on legislation review schedule, advise whether it contains restrictions on competition.*

STATUS OF REFORM IMPLEMENTATION

The *Superannuation Act 1986* establishes the Northern Territory Government and Public Authorities Superannuation Scheme (NTGPASS). NTGPASS provides current employees of the Northern Territory Government with a defined superannuation benefit. The actuarial estimate of this benefit is 13.2 per cent of salary. The benefits are significantly higher than the statutory minimum of 7 per cent of salary (rising to 9 per cent from 1 July 2002).

The Territory Government reviewed the NTGPASS in 1998 as part of its Planning for Growth initiative. As a result, NTGPASS is to be closed from 1 July 1999. All new employees will be free to choose any complying private superannuation fund into which the Territory will pay employer contributions.

1.2 COMPETITIVE NEUTRALITY: CLAUSE 3 OF THE CPA

REFORM COMMITMENT

Clause 3 of the CPA obliges governments to introduce competitive neutrality principles, where appropriate, for significant government business activities. Clause 7 of the CPA extends the obligation to apply competitive neutrality policy and principles to significant local government business activities.

STATUS OF REFORM IMPLEMENTATION

In accordance with its 1st tranche commitments, the Northern Territory Government published its Statement on Competitive Neutrality in Budget Paper No. 5, 1996-97.

Implementation of competitive neutrality in the Northern Territory has principally been delivered through the commercialisation of Government Business Divisions (GBDs). This has been a two-stage process.

Stage 1 was completed by 1 July 1997. It included the development of the Territory Government's policy statement on competitive neutrality, the identification and classification of significant business activities as GBDs, and the application of competitive neutrality and commercial principles to GBDs. In summary, GBDs are required to:

- pay tax equivalents under the *Northern Territory Tax Equivalents Regime*;
- pay the cost of all resources used in service provision;
- pay debt costs including debt guarantee fees to the Northern Territory Treasury Corporation;
- identify and cost Community Service Obligations (CSOs);
- ensure prices charged fully reflect costs; and
- report annually to Cabinet on performance.

The list of GBDs operating in the Territory as at 1 April 1999 was:

1. Darwin Port Authority
2. Power and Water Authority
3. TAB
4. Darwin Bus Service
5. NT Housing
6. Government Printing Office
7. NT Fleet
8. NT Construction Agency
9. International Project Management Unit
10. Information Technology Management Services
11. Territory Wildlife Park

In 1998, as part of its Planning for Growth reform initiative, the Territory Government announced the commencement of Stage 2 of GBD reform. In addition, a major review of the Power and Water Authority, the Territory's most significant GBD, was initiated during 1998 (refer to section on Structural Reform).

Stage 2 of GBD reform focuses on three key areas:

- community service obligations;
- capital structures and dividends; and
- performance monitoring.

The Territory Government's CSO policy has been tightened and made more transparent to ensure that Government is getting value for money and that GBDs are compensated for the CSOs they are directed to provide. This has been achieved by establishing a process for:

- each CSO to be negotiated between a purchasing Agency and GBD provider and, wherever possible, funded on an agreed unit price basis; and
- as part of the Budget, annually reviewing the amounts of each CSO being purchased to determine value for money and to justify the outlays against competing alternatives.

A transparent CSO policy ensures government business activities are not financially disadvantaged relative to private sector competitors. In addition, by identifying and costing CSOs, non-commercial functions of GBDs can be separated from commercial functions.

The Government's dividend policy for GBDs has been refined. Ordinary dividends are to be based on a benchmark of 50 per cent of after-tax profit, but with scope for a higher or lower figure depending on factors such as the liquidity and capital requirements of the GBD. There is also provision for the payment of special dividends in certain circumstances.

To tie in with the revised dividend arrangements, it is expected that the appropriateness of the existing capital structures of GBDs will be reviewed during 1999. The intention is to ensure GBD's capital structures broadly reflect structures observed in private sector firms delivering similar services. This should facilitate both competition and comparisons with like businesses interstate or in the private sector.

In addition, changes to the performance monitoring regime for GBDs are currently being implemented. A key element of the revised regime will be an annual GBD performance report to be prepared by Treasury and submitted to the Government. The report will include a time series of relevant economic, financial and non-financial performance indicators, and analysis and interpretation of the indicators. The indicators reported will include several measures that are more market based (such as economic rate of return and shareholder value added). Consistent reporting on GBD performance by Treasury will enable GBDs to have autonomy in deciding which performance indicators to include in their own annual reports.

The Territory Government is pro-active in dealing with competitive neutrality issues. The Northern Territory Tourist Commission is establishing a tourism wholesaling operation known as Territory Discoveries, aimed at increasing tourism activity in the Territory. The wholesale operations are regarded as a significant business activity that would be in competition with private sector providers. Accordingly, the Territory Government is establishing Territory Discoveries as a GBD to ensure it complies with competitive neutrality and is not unfairly advantaged in competing with the private sector.

The Territory Insurance Office is a Territory Government owned statutory corporation supplying insurance and financial services. While not a GBD, the TIO is corporatised and is subject to the Territory Government's policy statement on competitive neutrality.

COMPLAINTS HANDLING AND IMPLEMENTATION OF RECOMMENDATION OF COMPLAINTS MECHANISMS

The Northern Territory Treasury currently handles all complaints regarding breaches of the Territory's competitive neutrality policies. As at 31 December 1998 Treasury had received no complaints.

However, on 22 March 1999, a formal competitive neutrality complaint was received from the Australian Council of Tour Wholesalers. The complaint relates to the business operations of the Northern Territory Tourist Commission (NTTC). As noted in the previous section, to address competitive neutrality issues, the Government is establishing the NTTC's business operations as a GBD. The complaint is currently being considered.

1.3 STRUCTURAL REFORM: CLAUSE 4 OF THE CPA

REFORM COMMITMENT

Clause 4 of the CPA requires that where competition is to be introduced into a sector traditionally supplied by a public monopoly, each party must remove from the public monopoly any responsibilities for industry regulation. If the monopoly is to be privatised or competition to be introduced, a review must be undertaken into the appropriate structural form and commercial objectives for the organisation in the new environment.

COMPETITION PRINCIPLES AGREEMENT 1995

4. (1) Each Party is free to determine its own agenda for the reform of public monopolies.

(2) Before a Party introduces competition to a sector traditionally supplied by a public monopoly, it will remove from the public monopoly any responsibilities for industry regulation. The Party will re-locate industry regulation functions so as to prevent the former monopolist enjoying a regulatory advantage over its (existing and potential) rivals.

(3) Before a Party introduces competition to a market traditionally supplied by a public monopoly, and before a Party privatises a public monopoly, it will undertake a review into:

(a) the appropriate commercial objectives for the public monopoly;

(b) the merits of separating any natural monopoly elements from potentially competitive elements of the public monopoly;

(c) the merits of separating potentially competitive elements of the public monopoly;

(d) the most effective means of separating regulatory functions from commercial functions of the public monopoly;

(e) the most effective means of implementing the competitive neutrality principles set out in this Agreement;

(f) the merits of any community service obligations undertaken by the public monopoly and the best means of funding and delivering any mandated community service obligations;

(g) the price and service regulations to be applied to the industry; and

(h) the appropriate financial relationships between the owner of the public monopoly and the public monopoly, including the rate of return targets, dividends and capital structure.

STATUS OF REFORM IMPLEMENTATION

Clause 4 of the Competition Principles Agreement, structural reform, is relevant to the Power and Water Authority (PAWA). PAWA is a public monopoly established by the Power and Water Authority Act to provide electricity, water and sewerage services in the Northern Territory. PAWA is also a Government Business Division (GBD) and is therefore subject to the Northern Territory's competitive neutrality regime.

In 1998 the Territory Government commenced a comprehensive review of PAWA. The review covered all aspects of PAWA including: its future direction; structure; operations; governance arrangements; the separation of regulatory and commercial functions; and development of appropriate regulatory arrangements, including an electricity network access regime.

As part of the review, consultants Merrill Lynch and Fay, Richwhite (MLFR) were contracted to identify and evaluate potential options for improving PAWA's performance. In October 1998, MLFR reported that the Government would best achieve its objectives by privatising PAWA, involving sale of some assets and management outsourcing of other functions. However, MLFR also identified significant improvements that could be achieved under continuing Government ownership.

MLFR considered that the most effective competition model for PAWA was a regulated core business with a competitive periphery. The competitive periphery was considered to involve the establishment of arrangements to provide competing electricity generators with access to customers and competitive tendering for inputs and significant system augmentation.

Given the small size of the Territory market, MLFR found no compelling commercial or economic argument for PAWA to relinquish its ability to benefit from economies of scale or scope. In particular, MLFR considered there was merit in PAWA's electricity, water and sewerage network and retailing businesses remaining integrated. The consultants also found that it would be inappropriate to disaggregate PAWA along geographical lines.

The Government's initial response to the MLFR report was announced on 1 December 1998. The Government has decided to give PAWA the opportunity to achieve significant efficiency improvements under government ownership. The aim is to achieve a financial improvement amounting to $30 million per annum after three years. However, if the efficiency improvements are not achieved, privatisation will be revisited.

In response to the review of PAWA, reforms are proceeding in several areas.

- The consultant's findings in relation to opportunities to improve efficiency are being implemented.
- Electricity tariffs for commercial customers are to become progressively cost reflective over the next three years. The reductions commenced in April 1999.
- Territory-based arrangements are being developed to progressively open the electricity generation and retail markets to competition, commencing in 2000.
- There is to be greater private sector involvement in service delivery by PAWA. In addition, competitive bids are to be sought whenever PAWA's electricity, water and sewerage systems require significant augmentation. This process has already commenced.
- Regulatory functions performed by PAWA are to be transferred to relevant government agencies. The process has commenced with, for example, electrical inspectors and associated staff currently being transferred to the Department of Industries and Business. The functions of water resource management and regulation were transferred to the Department of Lands, Planning and Environment in 1996.
- An interdepartmental committee headed by NT Treasury has been established to consider the extent and form of economic regulation of electricity, water and sewerage services that would be appropriate in the Territory. The regulatory arrangements will

include a Territory-based access regime to enable third parties to access electricity transmission and distribution networks in order to permit competition.

- On 1 March 1999, PAWA's business was reorganised along product lines comprising: power generation; transmission and distribution networks; retail services; water and sewerage services; Aboriginal essential services, and internal support services. Within PAWA, this effectively separates the natural monopoly elements of transmission and distribution from the contestable elements of power generation and retail services. The reorganisation will add to transparency in costs and is an essential prerequisite for the introduction of competition.
- PAWA's current management advisory board structure is to be given greater commercial focus by establishing it as an executive board.
- As a GBD, PAWA is also subject to the full range of reforms under Stage 2 of GBD reform (refer to Competitive Neutrality section). These reforms focus on refining community service obligations (CSOs), dividend policy, capital structures and performance monitoring. From 1999-00, PAWA's CSOs will be fully funded from the Budget.

It is anticipated that completion of the reform program will take two to three years.

1.3.1 NORTHERN TERRITORY - SPECIFIC ISSUES IDENTIFIED IN THE "FRAMEWORK FOR THE SECOND TRANCHE ASSESSMENT" NCC, (NOVEMBER 1998)

Electricity: Demonstrate that CPA clause 4 obligations are met (see Part 3).

STATUS OF REFORM IMPLEMENTATION

The foregoing section on Structural Reform of PAWA is intended to address this matter.

1.4 PRICES OVERSIGHT: CLAUSE 2 OF THE CPA

REFORM COMMITMENT

Clause 2 of the CPA requires State and Territory Governments to consider establishing independent sources of price oversight advice of State and Territory Government Business Enterprises where these do not already exist.

STATUS OF REFORM IMPLEMENTATION

The Northern Territory has no prices oversight arrangements in place. However, as discussed in section 1.3, the extent and form of economic regulation of electricity, water and sewerage services that would be appropriate in the Territory is currently being considered.

PART 2:
THE CONDUCT CODE OBLIGATIONS

REFORM COMMITMENT

Under the Conduct Code Agreement, the Commonwealth, States and Territories have reporting obligations to the Australian Competition and Consumer Commission (ACCC) relating to legislation reliant on section 51 (1) of the *Trade Practices Act 1974.* The reporting obligations are:

- to notify the ACCC of legislation that relies on section 51 (1) within 30 days of the legislation being enacted or made (clause 2 (1)); and

- to have notified the ACCC by 20 July 1998 of legislation relying on the version of section 51 (1) in force at 11 April 1995 that will continue pursuant to the current section 51 (1) (clause 2 (3)).

STATUS OF REFORM IMPLEMENTATION

The Northern Territory Attorney-General's Department has conducted a survey of all NT Government Departments and Agencies to identify legislative provisions which may be reliant upon S.51 of the *Trade Practices Act 1994* - as described above.

Survey responses indicated that no NT legislation contained provisions reliant upon S.51 of the *Trade Practices Act 1974* - as described above. The Northern Territory has advised the ACCC of the findings of the survey.

2.1.1 NORTHERN TERRITORY - SPECIFIC ISSUES IDENTIFIED IN THE "FRAMEWORK FOR SECOND TRANCHE ASSESSMENT" (NCC, NOVEMBER 1998)

REFORM COMMITMENT

Commitment under clause 2(1)

No information available to the Council to date.

Further action required to demonstrate compliance

Identify any new legislation reliant on section 51(1) and confirm notification to the ACCC in accordance with clause 2(1). Notifications should be to the satisfaction of the ACCC. Demonstrate that any such legislation meets CPA clause 5(5).

Commitment under clause 2 (3)

No information available to the Council to date.

Further action required to demonstrate compliance

Identify all legislation, if any, falling under clause 2(3) and confirm it was notified to the ACCC by 20 July 1998. Notification should be to satisfaction of the ACCC.

STATUS OF REFORM IMPLEMENTATION

- implemented (see previous page)

PART 3:
THE INFRASTRUCTURE REFORMS
ELECTRICITY, GAS, WATER AND ROAD TRANSPORT

The *Agreement to Implement the National Competition Policy and Related Reforms* specifies that satisfactory progress against reform outcomes agreed by COAG and Heads of Governments for the electricity, gas, water and road transport industries be a condition for continuing receipt of NCP payments.

3.1 ELECTRICITY

REFORM COMMITMENT

Under the *Agreement to Implement the National Competition Policy and Related Reforms,* the second tranche obligation is for 'relevant jurisdictions' (New South Wales, Victoria, South Australia and the ACT) to complete the transition to a 'fully competitive national electricity market' by 1 July 1999. Queensland is committed to participating in the national market interconnection with New South Wales in 2000-01.

STATUS OF REFORM IMPLEMENTATION

As the NT is not part of the National Electricity Market, there are no electricity reform obligations arising under Part 3 of the assessment framework for the NT.

3.2 GAS

REFORM COMMITMENT: THE NATIONAL GAS ACCESS CODE

The full implementation of free and fair trading in gas between and within the States including the phasing out of transitional arrangements in accordance with the schedule to be agreed between the parties.

The Territory has introduced the national framework for third party access to natural gas pipelines. This occurred through the *Gas Pipelines Access (Northern Territory) Act,* which was passed in April 1998 and commenced on 2 September 1998. In addition, consequential amendments were required to the *Energy Pipelines Act* and *Petroleum (Submerged Lands) Act*. The amendments to the legislation were included in the *Statute Law Revision Act.* The Act was passed during November 1998, while the consequential amendments commenced on 13 January 1999.

The Northern Territory will seek endorsement for its Third Party Access Regime via a written application to the National Competition Council. The application is in its final stages of preparation, before being formally submitted.

In addition, the Territory is in the process of refining its regulatory regime. In particular, negotiations are continuing on the terms of agreement for the appointment of the Australian Competition and Consumer Commission ("ACCC") as the Northern Territory regulator for the local gas distribution system. The ACCC is already the regulator of the transmission system. It is anticipated that the appointment of the ACCC as the NT Regulator of the distribution system will commence on 1 July 1999.

REFORM COMMITMENT: COAG AGREEMENT ON FREE AND FAIR TRADE IN GAS – CLAUSE 10

Agreed that where publicly-owned transmission and distribution activities are at present vertically integrated, they be separated, and legislation introduced to 'ring fence' transmission and distribution activities in the private sector by 1 July 1996 [date subsequently varied].

The NCC has sought information regarding the Territory's compliance with clause 10 of the 1994 COAG Agreement on free and fair trade in gas.

As advised in the Northern Territory's 1996 Annual Report on the Implementation of NCP, there are no publicly owned natural gas distribution systems in the Territory.

In addition, with respect to private sector natural gas systems, the National Gas Access Code requires separation or ring fencing of transmission and distribution activities. As noted above, the Territory has implemented the Code through the *Gas Pipelines Access (Northern Territory) Act*.

3.2.1 NORTHERN TERRITORY - SPECIFIC ISSUES IDENTIFIED IN THE "FRAMEWORK FOR SECOND TRANCE ASSESSMENT (NCC, NOVEMBER 1998)

Privatisation and structural reform activity has seen full separation of most vertically integrated transmission and distribution activities in the public sector, in accordance with the commitments set out in the 1994 COAG agreement on gas reform. Ring fencing of gas transmission and distribution activities in the private sector has been completed in most jurisdictions.

The Council is aware of two exceptions in South Australia and the Northern Territory. South Australia's Riverland Pipeline System (transmission) is owned by Envestra Ltd and operated by Epic Energy Ltd. Envestra Ltd also owns and operates the State's gas distribution networks. In the Northern Territory, NT Gas Pty Ltd (AGL owned) operates both gas transmission services and gas distribution services to Darwin. The company's gas distribution role commenced in 1996.

The Council seeks information from South Australia and the Northern Territory with the objective of determining whether the pipeline systems in those jurisdictions satisfy COAG commitments on structural reform.

STATUS OF REFORM IMPLEMENTATION

- see previous page

3.3 WATER

REFORM COMMITMENT

The Agreement to Implement the National Competition Policy and Related Reforms sets out the framework of water reform. By June 1999, jurisdictions must have implemented the requirements specified in the strategic framework for the efficient and sustainable reform of the Australian water industry and the future processes as endorsed at the February 1994 COAG meeting and embodied in the Report of the Expert Group on Asset Valuation Methods and Cost Recovery Definitions, February 1995.

STATUS OF REFORM IMPLEMENTATION

The specific obligations arising from the NCP agreements on water reform have been the subject of considerable discussion between the Council and all governments, principally through the SCARM Water Reform Taskforce. The agreed commitments for the June 1999 assessment, together with the outcomes which the Council will look for to determine that obligations have been met, are outlined in the following tables.

	ELEMENT OF STRATEGIC FRAMEWORK FOR WATER REFORM	NORTHERN TERRITORY POSITION
3	**In relation to pricing:-**	
(a)	In general:-	
(i)	The adoption of pricing regimes based on the principles of consumption-based pricing, full-cost recovery and desirably the removal of cross-subsidies which are not consistent with efficient and effective service, use and provision. Where cross-subsidies continue to exist, they must be made transparent.	• Since 1995, the Power & Water Authority has significantly increased the volumetric charges for water; by 15% for government customers and 30% for non-government customers. • Marsden-Jacob cross subsidy report is being examined for application in the Northern Territory.
(ii)	That where service deliverers are required to provide water services to classes of customer at less than full cost, the cost of this be fully disclosed and ideally be paid to the service deliverer as a community service obligation.	• Community service obligations for combined water supply, sewerage and electricity operations are disclosed in the annual reports of the Power & Water Authority to be $47.1M in 1997; rising to $51.4M in 1998 (Annual Report 1997-98, p. 43).
(b)	Urban water services:-	
(i)	The adoption by no later than 1998 of charging arrangements for water services comprising an access or connection component together with an additional component or components to reflect usage where this is cost-effective.	• The Power & Water Authority introduced two-part tariffs for water supply with effect from 1 July 1998. (*NT Government Gazette No G25 of 1 July 1998)*
(ii)	That in order to assist jurisdictions to adopt the aforementioned pricing arrangements, an expert group, on which all jurisdictions are to be represented, report to COAG at its first meeting in 1995 on asset valuation methods and cost-recovery methods and cost-recovery definitions, *and*	• The Power & Water Authority contributed to the report of the expert group.

	ELEMENT OF STRATEGIC FRAMEWORK FOR WATER REFORM	NORTHERN TERRITORY POSITION
(b)	Urban water services continued:-	
(iii)	that supplying organisations, where they are publicly owned, aiming to earn a real rate of return on the written-down replacement cost of their assets, commensurate with the equity arrangements of their public ownership.	• The Power & Water Authority asset valuation project is expected to be completed by the end of April 1999. • With the introduction of two-part tariffs for water supply, the Power & Water Authority is moving to a position of obtaining a positive Rate of Return. • WSAA Facts show an increasing Rate of Return for combined water and sewerage operations.
(c)	Metropolitan bulk-water suppliers :-	
(i)	To charge on a volumetric basis to recover all costs and earn a positive real rate of return on the written-down replacement cost of their assets.	• Metropolitan bulk-water suppliers do not operate in the Northern Territory.
(d)	Rural water supply:-	
(i)	That where charges do not currently fully cover the costs of supplying water to users, agree that charges and costs be progressively reviewed so that no later than 2001 they comply with the principles of full-cost recovery with any subsidies made transparent consistent with 3(a)(ii) above.	• In 2001 it is expected that there will be continued funding and transparent reporting of community service obligations for provision of Aboriginal Essential Services, comprising in 1998: water supply to 85 rural and remote communities, water supply support to 400 outstations.
(ii)	To achieve positive real rates of return on the written-down replacement costs of assets in rural water supply by 2001, wherever practicable.	• The test of practicability may limit the achievement of positive real rates of return for the majority of rural community water supplies which are supported as community service obligations.
(iii)	That future investment in new schemes or extensions to existing schemes be undertaken only after appraisal indicates it is economically viable and ecologically sustainable.	• Economic viability for the majority of cases will remain dependent on community service obligation funding. • Ecological sustainability is assessed for all water supply developments and extensions.

	ELEMENT OF STRATEGIC FRAMEWORK FOR WATER REFORM	NORTHERN TERRITORY POSITION
(d)	Rural water supply continued:-	
(iv)	Where trading in water could occur across State borders, that pricing and asset valuation arrangements be consistent.	• No instances of cross-border trading are envisaged.
(v)	Where it is not currently the case, to the setting aside of funds for future asset refurbishment and/or upgrading of government-supplied water infrastructure, *and*	• Established process of 3 year forward budgeting for Capital Works Programming suits the type and scale of public water infrastructure in the Northern Territory.
(vi)	In the case of the Murray-Darling Basin Commission, to the Murray-Darling Basin Ministerial Council putting in place arrangements so that out of charges for water funds for the future maintenance, refurbishment and/or upgrading of the headworks and other structures under the Commission's control be provided.	• Not applicable.
(e)	G**roundwater**	
	That management arrangements relating to groundwater be considered by ARMCANZ by early 1995 and advice from such consideration be provided to individual jurisdictions and the report provided to COAG.	• Assistance was given to preparation of the report to ARMCANZ and work continues through the National Groundwater Committee to develop implementation strategies for groundwater management.

ELEMENT OF STRATEGIC FRAMEWORK FOR WATER REFORM	NORTHERN TERRITORY POSITION
4 In relation to water allocations or entitlements:-	
(a) The State government members of the Council would implement comprehensive systems of water allocations or entitlements backed by separation of water property rights from land title and clear specification of entitlements in terms of ownership, volume, reliability, transferability and, if appropriate, quality.	• Water allocation systems are provided at regional scale in the form of declared allocation (or share) of assessed water resources to sectors of beneficial use - with beneficial use sectors being identical to the environmental value categories currently used in the National Water Quality Management Strategy. • Regional water allocation plans have been in place for the greater Darwin region, Katherine local area and Ti Tree Basin since the early 1990s. • Review of the Ti Tree Basin allocation plan will be completed in May 1999; review of the greater Darwin regional plan will be completed in 1999; extension of Katherine local area plan to wider regional scale will be completed in 1999; allocation planning for the Alice Springs region will be completed in 2000. • Entitlements are provided in the form of licences under the Water Act to take surface water or groundwater. • All (non riparian right) surface water extraction must be licensed; all bore extractions exceeding 15 L/sec must be licensed and all bores in declared groundwater management areas must be licensed. • Surface water and groundwater extraction licences are granted within assessed sustainable yield of water resources as set by regional allocation plans. • All licences specify ownership and limits to extraction volume but do not separate entitlement from land nor specify reliability, transferability or quality. • Amendments to Regulations under the Water Act are under consideration to allow trading of licences.

	ELEMENT OF STRATEGIC FRAMEWORK FOR WATER REFORM	NORTHERN TERRITORY POSITION
4	**In relation to water allocations or entitlements continued:-**	
(b)	Where they have not already done so, States would give priority to formally determining allocations or entitlements to water, including allocations to the environment as a legitimate user of water.	• The Water Act is expected to be amended later in 1999 to allow formal declaration of regional water allocation plans. • The administrative arrangements and consultative processes to support formal declaration of water allocations have been trialed successfully in the Ti Tree Basin. • Trials will continue during 1999 in the Darwin and Katherine areas, leading to formal declaration of water allocations.
(c)	In allocating water to the environment, member governments would have regard to the work undertaken by ARMCANZ and ANZECC in this area.	• The Northern Territory was heavily involved in the work initially undertaken by ARMCANZ and ANZECC and is working to implement the National Principles for Providing Water for Aquatic Ecosystems; both through the formulation of regional water allocation plans and in research to establish scientific methods to determine environmental water requirements.
(d)	That the environmental requirements, wherever possible, will be determined on the best scientific information available and have regard to the inter-temporal and inter-spatial water needs required to maintain the health and viability of river systems and groundwater basins. In cases where river systems have been over-allocated, or are deemed to be stressed, arrangements will be instituted and substantial progress made by 1998 to provide a better balance in water resource use including appropriate allocations to the environment in order to enhance/restore the health of river systems.	• Scientific information based on Northern Territory conditions is not currently available. However, research has commenced and is expected to expand significantly in the next 5 years. • There are no over-allocated or stressed systems - rivers and groundwaters - in the Northern Territory. However, the areas of most likely future (5-10 years) development pressure are the research targets.

	ELEMENT OF STRATEGIC FRAMEWORK FOR WATER REFORM	NORTHERN TERRITORY POSITION
4	**In relation to water allocations or entitlements continued:-**	
(e)	In undertaking this work, jurisdictions would consider establishing environmental contingency allocations which provide for a review of the allocations 5 years after they have been determined.	• The water allocation planning trial nearing completion in the Ti Tree Basin sets aside 20% of assessed water resources as an environmental contingency allocation, within a 10 year plan, matched by capped licensing, to be reviewed after 5 years. • Reviews of the greater Darwin regional plan and extension of the Katherine area plan in 1999 will incorporate environmental contingency allocations in a similar manner to that trialed in the Ti Tree Basin.
(f)	Where significant future irrigation activity or dam construction is contemplated, appropriate assessments would be undertaken to, inter alia, allow natural resource managers to satisfy themselves that the environmental requirements of the river systems would be adequately met before any harvesting of the water resource occurs.	• The principle of adequately meeting environmental water requirements of river systems is accepted but will be subject to the outcomes of consultatively based regional water allocation planning which may result in environmental water provisions not always meeting environmental water requirements. • Significant future irrigation with Ord Stage 2 carries no environmental water allocation issues for Northern Territory rivers. • The only planned significant dam construction may occur in 2025 for Darwin water supply; the appropriate assessments for environmental water requirements will be undertaken as part of ongoing regional water allocation planning.

	ELEMENT OF STRATEGIC FRAMEWORK FOR WATER REFORM	NORTHERN TERRITORY POSITION
5	**In relation to trading in water allocations or entitlements:-**	
(a)	That water be used to maximise its contribution to national income and welfare, within the social, physical and ecological constraints of catchments.	• The central planning and management vehicles are regional water resource strategies (e.g. Ti Tree) which are completely in keeping with the principles of ESD.
(b)	Where it is not already the case, trading arrangements in water allocations or entitlements be instituted once the entitlement arrangements have been settled. This should occur no later than 1998.	• Water allocations will not be tradable in the Northern Territory since they will take the form of formally declared regional plans. • Trading arrangements for licences (entitlements) are currently being developed in consultation with water users and, following minor changes to Regulations under the Water Act expected in 1999, will result in trade being possible. • There are, however, very limited markets in the Northern Territory for trading in water licences, with no competition for access to water due to widely dispersed, small scale, privately owned and operated irrigation developments, the vast majority of which draw on groundwater and all of which are licensed within sustainable yield limits of the water resource. • There is no need for trading in the Northern Territory from a water resource management perspective, since no systems are over-allocated.
(c)	Where cross-border trading is possible, that the trading arrangements be consistent and facilitate cross-border sales where this is socially, physically and ecologically sustainable.	• No cross-border developments exist. • Ord Stage 2 should establish a totally privately operated cross-border irrigation scheme after year 2000 - work is in progress with the Western Australian Government to ensure consistent arrangements.

	ELEMENT OF STRATEGIC FRAMEWORK FOR WATER REFORM	NORTHERN TERRITORY POSITION
5	**In relation to trading in water allocations or entitlements:-**	
(d)	That individual jurisdictions would develop, where they do not already exist, the necessary institutional arrangements, from a natural resource management perspective, to facilitate trade in water, with the proviso that in the Murray-Darling Basin the MDBC be satisfied as to the sustainability of proposed trading transactions.	• All aspects of water resource management are provided through a single statute - the Water Act - which is administered solely by the Natural Resources Division of the Department of Lands, Planning & Environment. • Amendments expected in 1999 to Regulations under the Water Act for surface water and groundwater extraction licences will facilitate trade in water.
6	**In relation to institutional reform:-**	
(a)	That where they have not already done so, governments would develop administrative arrangements and decision-making processes to ensure an integrated approach to natural resource management.	• Natural Resources Division of the Department of Lands, Planning and Environment was established in 1998 to ensure an integrated approach to natural resource management for sustainable development. • Land Resources Coordination Group at CEO level integrates planning between the Department of Lands, Planning & Environment, Department of Primary Industry & Fisheries and the Parks & Wildlife Commission of the Northern Territory. • Regional Natural Resource Strategies (e.g. Ti Tree) and Integrated Catchment Management Plans (e.g. Mary River) are developed and implemented with full landholder and government agency participation.
(b)	To the adoption, where this is not already practised, of an integrated catchment approach to water resource management and set in place arrangements to consult with the representatives of local government and the wider community in individual catchments.	• Mary River ICM Plan and Ti Tree Regional Water Resource Strategy are best practice approaches. • Advisory Committees representative of catchment community and industry oversight the development, implementation and review of plans and strategies.

	ELEMENT OF STRATEGIC FRAMEWORK FOR WATER REFORM	NORTHERN TERRITORY POSITION
6	**In relation to institutional reform:-**	
(c)	To the principle that, as far as possible, the roles of water resource management, standard setting and regulatory enforcement and service provision be separated institutionally.	• Power & Water Authority is the sole service provider; the Department of Lands, Planning & Environment is the resource manager and regulator; there is Ministerial separation between the agencies. • Some further regulatory functions may be established with the possible introduction of a new Regulator for pricing, competition, standards, etc.
(d)	That this occur, where appropriate, as soon as practicable, but certainly no later than 1998.	• Separation of resource manager/regulator and service provider has been in place since 1997.
(e)	The need for water services to be delivered as efficiently as possible and that ARMCANZ, in conjunction with the Steering Committee on National Performance Monitoring of Government Trading Enterprises, further develop its comparisons of inter-agency performance, with service providers seeking to achieve international best practice.	• Power & Water Authority uses WSAA Facts as a performance measure for Darwin-based metropolitan services. • This will be extended to include Alice Springs non-metropolitan services.
(f)	That the arrangements in respect of service delivery organisations in metropolitan areas in particular should have a commercial focus, and whether achieved by contracting-out, corporatised entities or privatised bodies this be a matter for each jurisdiction to determine in the light of its own circumstances.	• Power & Water Authority has set targets over the next three years based on the recent Scoping Study by Merrill Lynch Fay Richwhite which highlighted the issues for commercial focus. • Reform Implementation Working Group now in place with the specific objective of improving working practices to achieve efficiencies.
(g)	To the principle that constituents be given a greater degree of responsibility in the management of irrigation areas, for example, through operational responsibility being devolved to local bodies, subject to appropriate regulatory frameworks being established.	• There are no (publicly funded/operated) irrigation areas in the Northern Territory and none are likely in the foreseeable future. • Private investment is expected to continue as the sole agent of irrigation development.

	ELEMENT OF STRATEGIC FRAMEWORK FOR WATER REFORM	NORTHERN TERRITORY POSITION
7	**In relation to consultation and public education:-**	
(a)	To the principle of public consultation by government agencies and service deliverers where change and/or new initiatives are contemplated involving water resources.	• The principle is positively accepted and acted upon through direct consultation by Department of Lands, Planning & Environment with industry groups such as NT Horticulture Association, NT Irrigation, Grain & Fodder Growers Association as well as through public meetings in Katherine and Ti Tree.
(b)	That where public consultation processes are not already in train in relation to recommendations (3)(b), (3)(d), (4) and (5) in particular, such processes will be embarked upon.	• Alice Springs Water Committee, a community-based environmental consultative group, on which the Power & Water Authority is a member, has been active in water conservation and demand management for over 5 years.
(c)	That jurisdictions individually and jointly develop public education programs in relation to water use and the need for, and benefits from, reform.	• Power & Water Authority is active in setting curricula in relation to water issues for primary and junior secondary students.
(d)	That responsible water agencies work with education authorities to develop a more extensive range of resource materials on water resources for use in schools.	• The annual focus of effort for the Department of Lands, Planning & Environment has been National Waterweek for the past 5 years.
(e)	That water agencies should develop, individually and jointly, public education programs illustrating the cause and effect relationship between infrastructure performance, standards of service and related costs, with a view to promoting levels of service that represent the best value for money to the community.	• Power & Water Authority participates in the annual Rural Shows circuit (Alice Springs, Katherine, Darwin) with displays and information regarding water use.

	ELEMENT OF STRATEGIC FRAMEWORK FOR WATER REFORM	NORTHERN TERRITORY POSITION
8	**In relation to the environment:-**	
(a)	That ARMCANZ, ANZECC and the Ministerial Council for Planning, Housing & Local Government examine the management and ramifications of making greater use of wastewater in urban areas and strategies for handling stormwater, including its use, and report to the first Council of Australian Government meeting in 1995 on progress.	• Northern Territory participated in the ARMCANZ review of the CSIRO wastewater and stormwater management report. • Watching brief maintained on the more detailed work now in train with CSIRO on urban water cycle.
(b)	To support ARMCANZ and ANZECC in their development of the National Water Quality Management Strategy, through the adoption of a package of market-based and regulatory measures including the establishment of appropriate water quality monitoring and catchment management policies and community consultation and awareness.	• Beneficial Use Declarations Program continues under the Water Act in accordance with the National Water Quality Management Strategy. • Extensive community involvement is central to the Beneficial Use declaration program. • Waste discharge licensing, monitoring programs and development of catchment management strategies proceed from Beneficial Use declarations.
(c)	To support consideration being given to establishment of landcare practices that protect areas of river which have high environmental value or are sensitive for other reasons.	• Landcare and Waterwatch groups are expanding throughout the Northern Territory and are associated in many cases with river and stream protection.
(d)	To request ARMCANZ and ANZECC, in their development of the National Water Quality Management Strategy, to undertake an early review of current approaches to town wastewater and sewage disposal to sensitive environments, noting that action is underway to reduce accessions to water courses from key centres on the Darling River system.	• No comment.

	ELEMENT OF STRATEGIC FRAMEWORK FOR WATER REFORM	NORTHERN TERRITORY POSITION
9	**In relation to water and related research, member governments would:-**	
(a)	Give higher priority to the research necessary to progress implementation of the strategic framework, including consistent methodologies for determining environmental flow requirements.	• 11 research proposals for the Daly River Catchment are currently under development for commencement in 1999 - increasing agricultural development is expected in this catchment over the next 5 to 10 years. • 5 research proposals for the Darwin Rural Area are under development for commencement in 1999 - this area is under increasing development pressure for horticulture and rural residential use, all based on private bore supplies with potential in aggregate to impact on groundwater sustained ecosystems in the next 5 to 10 years.
(b)	To greater coordination and liaison between research agencies to more effectively utilise the expertise of bodies such as LWRDC, MDBC and other State and Commonwealth organisations.	• Effective research links have been established with local research agencies including the Environmental Research Institute of the Supervising Scientist and the CRC for Tropical Savannas.

3.4 ROAD TRANSPORT

REFORM COMMITMENT

At present the COAG road reform program comprises six modules, which are to be implemented and operational by June 2001. Delays in the road reform implementation program have led to a suggestion that COAG agree to a revised reform program and timetable. COAG has not yet done so.

STATUS OF REFORM IMPLEMENTATION

The following tables describe Northern Territory progress in the implementation of road transport reform.

No	Reforms	National Target	Reform Criteria	Northern Territory progress at 31 December 1998
First Tranche Assessment				
1	**Uniform Registration Charges**	-	Jurisdictions have in place and are applying legislation consistent with the national model.	National charges applied following commencement of the Northern Territory (NT) *Road Transport Charges Act* 1 July 1996. **NT implemented reform.**
Second Tranche Assessment				
1	**Dangerous Goods**	March 99	Jurisdictions have in place and are applying legislation consistent with the national model. • Adoption of the Australian Dangerous Goods Code and adoption of regulatory framework. • Licensing • Enforcement mechanisms	NT adopted Australian Dangerous Goods Code (ADG6) by notice in *Northern Territory Gazette* on 30 September 1998. NT Dangerous Goods Regulations amendment to be drafted by April 1999. **NT implemented reform.**
2	**National Heavy Vehicle Registration Scheme**	Dec 99	Jurisdictions have in place and are applying legislation consistent with the national model. Key element is introduction of nationally uniform procedures for registering Heavy Vehicles.	NT *Motor Vehicles Amendment Act* commenced 9 Feb 1999. **NT implemented reform.**

No	Reforms	National Target	Reform Criteria	Northern Territory progress at 31 December 1998
3	**Driver Licensing**	Dec 99	Jurisdictions have in place and are applying legislation consistent with the national model. Key elements include: • uniform practices for the issue, renewal of driver licences; • introduce uniform practices for the mutual recognition of licences and offences; • introduce uniform driver licence classes; • introduce nationally agreed medical guidelines for light and heavy vehicle drivers; • internal and external review of decisions made by the licensing authority; • uniform exemptions to allow international and interstate visitors to drive on their overseas and interstate licences; • introduce core demerit points.	Northern Territory *Motor Vehicles Amendment Act* commenced 9 Feb 1999. **NT implemented reform.** Note: The NT is yet to introduce a national demerit points scheme. The Government will assess the introduction of the scheme at a later time (refer Eighth Assembly, First Session, 6 October 1998, Parliamentary Record No 10: 2nd reading speech by Hon B Coulter on amendments to *Motor Vehicle Act*). The administrative guidelines for management, use and release of vehicle registration and driver licensing information and formalisation of an internal review process scheduled for implementation by 3 May 1999.
4	**Vehicle Operations**	June 99	Jurisdictions have in place and are applying legislation consistent with the national model. Key elements include: • Mass & Loading Regulations; • Oversize/Overmass (OSOM); • Restricted Access Vehicles Regulations (RAV).	Amendments to Road Transport Reform (Mass and Loading) Regulations – Approved by Ministerial Council for Road Transport on 12 Sept 1996. NT commenced NRTC regulation requirements on 16 August 1995 via Northern Territory *Motor Vehicles Act* (gazettals) and amendments to the NT *Motor Vehicles (Standards) Regulations* for the permit fees. Oversize & Overmass Vehicles and Restricted Access Vehicles Regulations – progressive implementation via existing discretionary powers under *Motor Vehicles Act.* Oversize and Overmass Permit Guidelines published in August 1998. **NT implemented reform.**

No	Reforms	National Target	Reform Criteria	Northern Territory progress at 31 December 1998
5	**Heavy Vehicle Standards**	-	Jurisdictions have in place and are applying legislation consistent with the national model. • Dimensions • Ratings • Mutual Recognition	NT is applying via variations by gazettal using discretionary powers under Northern Territory *Motor Vehicles Act. Motor Vehicles (Standards) Regulations* amendments gazetted on 5 May 1993. Will be formalised as part of combined Heavy and Light Vehicles Standards. **NT implemented reform.**
6	**Truck Driving Hrs**	-	Jurisdictions have in place and are applying legislation consistent with the national model. • Introduce standard driving hours; • Introduce Transitional Fatigue Management Scheme; • Introduce national driver log book [All drivers of trucks over 12 tonnes gross, except those operating in NT and WA will need to comply with new laws]	Ministerial Council for Road Transport (MCRT) has agreed the driving hours regulations do not apply to operations solely within WA or the NT. The Northern Territory adopted a Fatigue Management Code of Practice, under the Northern Territory *Work Health Act,* by notice in the *Northern Territory Gazette* on 30 September 1998. National Road Transport Commission supported the Northern Territory approach to fatigue management in a press release on 1 October 1998. **NT implemented reform.**
7	**Bus Driving Hrs**	-	Jurisdictions have in place and are applying legislation consistent with the national model. • Introduce standard driving hours; • Introduce two-up driving hours; • Apply to buses with a seating capacity of more than 12 people.	MCRT has agreed the driving hours regulations do not apply to operations solely within WA or the NT. The Northern Territory adopted a Fatigue Management Code of Practice, under the *Northern Territory Work Health Act,* by notice in the *Northern Territory Gazette* on 30 September 1998. National Road Transport Commission supported the Northern Territory approach to fatigue management in a press release on 1 October 1998. **NT implemented reform.**

No	Reforms	National Target	Reform Criteria	Northern Territory progress at 31 December 1998
8	**Common Mass and Loading Rules**	-	Jurisdictions have in place and are applying legislation consistent with the national model. Key reforms include: • National rules for mass limits; • Axle mass spacing schedule up to 42.5 tonne GVM; • Tri-Tri B-Doubles.	NT commenced NRTC regulation requirements on 16 August 1995 via gazettal of variations using discretionary powers under Northern Territory *Motor Vehicles Act*. NT *Motor Vehicles (Standards) Regulations* change gazetted 16 August 1995. **NT implemented reform.**
9	**One Driver/One Licence**	July 99	Jurisdictions have in place and are applying legislation consistent with the national model. Key reforms include: • Introduce National Driver Licence Checking System; • Introduce Multiple Licence Advice Tracking System (MLATS); • Introduce Demerit Points Exchange Scheme (DPX); • National driver licence classes.	NT implemented by changes to policies and procedures and MOVERS computer system via existing *Motor Vehicles Act*: • National Driver Licence Checking System – November 1996 • Multiple Licence Advice Tracking System (MLATS) – snapshots 1996, 1997 and 1998 • Demerit Points Exchange Scheme (DPX) – 17 August 1993. • National driver licence classes – 1 July 1997 **NT implemented reform**
10	**Improved Network Access**	Mar 99	Jurisdictions have in place and are applying legislation consistent with the national model. Key reforms include: • Increasing access and simplifying process through use of route gazettal along lines of RAV Regulations.	Road Train Routes in Northern Territory updated August 1998. In place by agreement with Industry. No legislation required. **NT implemented reform.**
11	**Common Pre-Registration Standards**	-	Jurisdictions have in place and are applying legislation consistent with the national model. Key reforms include: • Mutual recognition of interstate vehicles; • Adoption of National Heavy Vehicle Standards.	NT requirements consistent with national standards. **NT implemented reform.** Consolidation of standards is currently being finalised in consultation with industry.
12	**Common Roadworthiness Standards**	-	Jurisdictions have in place and are applying legislation consistent with the national model. Key reforms include: • Adopt roadworthiness standards & guidelines; • Mutual recognition of defect clearance.	NT standards consistent with national standards. **NT implemented reform.** NT accepting other jurisdictions' clearance of defective vehicles and also clearing vehicles on behalf of other jurisdictions since 1990.

No	Reforms	National Target	Reform Criteria	Northern Territory progress at 31 December 1998
13	**Enhanced Safe Carriage and Restraint of Loads**	July 99	Jurisdictions have in place and are applying legislation consistent with the national model. Key reforms include: • Adopt regulations and usage of Load Restraint Guide	National Load Restraint Guide adopted in the NT *Traffic Regulations (129)* as in force 1 August 1995. **NT implemented reform.**
14	**Adoption of National Bus Driving Hrs**	-	Adopt new regulations for buses including two-up driving hours.	MCRT has agreed the driving hours regulations not apply to operations solely within WA or the NT. The Northern Territory adopted a Fatigue Management Code of Practice, under the *Northern Territory Work Health Act,* by notice in the *Northern Territory Gazette* on 30 September 1998. **NT implemented reform.**
15	**Interstate Conversions of Drivers Licence**	July 99	Jurisdictions have in place and are applying legislation consistent with the national model. Key reforms include: • Introduce reciprocal conversion arrangements for licence holders who move interstate (no testing; no licence fee)	Implemented in NT using discretionary powers under existing NT *Motor Vehicles Act.* Policy and procedures in place and commenced on 1 July 1997. NT allows credits of unexpired portion of interstate driver's licences. **NT implemented reform.**
16	**Alternative Compliance**	-	Agreement to support development of alternative compliance regimes.	Alternative compliance package was endorsed in Australian Transport Council (ATC) 8th meeting, 14 November 1997. See ATC8/19. **NT supports** and has applied these principles in NT Mass Management Scheme on 12 Nov 1996 and NT Maintenance Management Scheme for buses on 4 Oct 1995. National Mass Management Scheme also available in NT.
17	**Short Term Registration**	-	Only for National Heavy Vehicle Registration Scheme. Key reforms include: • Availability of 3 and 6 month registration.	Policies and procedures in place and commenced on 1 July 1996. **NT implemented reform.**

No	Reforms	National Target	Reform Criteria	Northern Territory progress at 31 December 1998
18	**Driver Offences/Licence Status**	-	Jurisdictions have in place and are applying legislation consistent with the national model. Key reforms include: • To the extent consistent with Commonwealth Privacy Principles to check licence class of the person, its status and number of demerit points.	Information (with driver's consent) available on application. Form and procedure for easier application being developed. **NT implemented reform.** Note: The administrative guidelines for management, use and release of vehicle registration and driver licensing information scheduled for implementation by 3 May 99.
19	**NEVDIS**	-	• MOU between Austroads and each jurisdiction • Service Access Agreement between ISSC • NEVDIS Service Access Agreement between Austroads and each jurisdiction • Inter-jurisdictional MOU • Complete initial phase of NEVDIS	Service Access Agreement between IBM Gobal Services Australia and the Territory signed on 2 Aug 1996. NEVDIS Service Access Agreement between Austroads and Territory signed on 15 October 1998. Inter-jurisdictional MOU 14 October 1998. NEVDIS on line in the NT for driver licences on 5 November 1998. **NT implemented reform.**