FIRST TRANCHE ASSESSMENT: SOUTH AUSTRALIA

SUMMARY

South Australia has prepared the groundwork for more competitive energy markets.

South Australia has instituted significant NCP reforms in the gas sector. There is no longer any public sector involvement in the industry. A third party access regime for transmission services has been introduced, as has retail competition. South Australia has agreed to apply the National Access Code to transmission and distribution services. The Council will reassess South Australia's progress with implementing the Code prior to July 1998.

As part of its NCP commitment to free and fair trade in gas, South Australia has brought forward from 1998 a review of gas production and marketing arrangements under the *Cooper Basin (Ratification) Act 1975*. The ongoing review is public and will consider the legislation in the light of South Australia's commitments under the COAG gas agreement and to reform, as appropriate, legislative restrictions on competition.

South Australia is the lead legislator for the National Electricity Market and will join the National Electricity Market in early 1998. The State's monopoly electricity producer, ETSA, has been restructured in line with the COAG electricity agreement. ETSA generation assets have been structurally separated to a new SA Generation Corporation. Electricity retailing will be ring-fenced from transmission and distribution activities. Some 30 per cent of South Australia's electricity needs are currently sourced from interstate.

South Australia has implemented substantial reforms in the water industry in line with the COAG water agreement. Prices have been restructured, SA Water corporatised and responsibility for water resource management transferred to the Department of Environment and Natural Resources. Water property rights have been clarified to facilitate trade in water allocations and the allocation of water to environmental uses has been made more explicit, to encourage more efficient use of water.

More recently, South Australia has made progress with the more general NCP reforms. Government businesses for competitive neutrality reform have been identified applying a relatively low threshold (albeit that most significant businesses are identified by description), and the regulation review program is on track. South Australia has begun a joint review of barley marketing arrangements with Victoria.

South Australia did not list its casino licensing legislation (the *Casino Act 1997*) for review, but gave an assurance that this legislation had been enacted in accordance with the principles inherent in the Competition Principles Agreement. The South Australian Government stated that it had examined the implications of the new legislation, and established that the restrictions on competition contained in it would provide a net benefit to the community. The Council anticipates that the evidence of a net community benefit from the restrictions contained in the Act will be available shortly, and will examine this evidence for compliance with clause 5(5) prior to July 1998.

The Council is not yet in a position to be satisfied that the State Government has met its first tranche reform commitments on local government. Early preparatory work has been undertaken, but progress has been delayed by local council elections. South Australia has indicated that its long term local government reform agenda is on track and accepts that progress over the next 12 months is likely to increase. The Council will reassess South Australia's progress with the application of the NCP reforms to local government prior to July 1998.

COMPETITION CODE

Reform commitment: **Enact legislation applying the Competition Code (the Schedule version of Part IV of the *Trade Practices Act 1974*) within South Australia, with effect by 20 July 1996.**

Implementation: The *Competition Policy Reform (South Australia) Act 1996* came into operation on 21 July 1996. A regulation under the Act ensuring that businesses in South Australia are not excluded from coverage by an existing authorisation under the Trade Practices Act solely as a result of the Commonwealth's lack of capacity under the Constitution to represent them came into operation at the same time.

Assessment

Complies with commitment.

COMPETITIVE NEUTRALITY

Reform commitment: **Provision of a policy statement detailing the implementation of competitive neutrality policy and principles in South Australia, including an implementation timetable and a complaints mechanism, and progress against undertakings in the policy statement.**

South Australia provided a competitive neutrality policy statement and an annual report in accordance with clauses 3(8) and 3(10) of the Competition Principles Agreement.

Issue: **Adequacy of the reform agenda: the scope and timing of intended competitive neutrality reform and progress to date.**

Assessment

In its policy statement, the South Australian Government undertook to progressively apply competitive neutrality policy and principles, where appropriate, to its significant business activities. South Australia's timetable indicated that, by 30 June 1997, all significant business activities of each agency and instrumentality will have been identified and the principles to apply to the larger business enterprises (defined to have annual revenue in excess of $2 million or employ assets of value in excess of $20 million) considered.

The policy statement indicated that, by June 1998, the application of competitive neutrality policy and principles to the larger activities will have been completed and decisions on the application of competitive neutrality reforms to South Australia's remaining business activities announced. The South Australian Government stated that it is aiming to ensure that all government business activities are subject to the same regulations as those applying to the private sector by June 2000.

South Australia also stated that significant local government businesses would be identified by June 1997, although the Government later advised the Council that identification of significant local government businesses would be delayed by three months.

South Australia advised that the South Australian Water Corporation, the Ports Corporation of South Australia, the ETSA Corporation (and subsidiaries) and the SA Generation Corporation have all been corporatised. Each is subject to a debt guarantee fee, a tax equivalent regime (TER) and all significant private sector equivalent regulations.

The Government stated that, from July 1997, the State's TER would extend to 21 trading and financial enterprises and their subsidiaries, and to 16 business units of government departments. Each of these entities will be subject to Commonwealth income and wholesale sales tax equivalents and all State taxes and their equivalents. South Australia anticipates that a regime applying council rates or their equivalents will be introduced in 1997-98, initially covering all entities subject to the State's TER. Debt guarantee fees apply to some 36 business activities. The level of the fee is to be reviewed in 1997.

South Australia has not yet specified all the government businesses to which competitive neutrality principles are to apply. However, it has proclaimed an initial set of businesses (the four corporations above) and its competitive neutrality principles and timetable under *the Government Business Enterprises (Competition) Act 1996* (GBEC Act). The effect of this is, in essence, to extend the Government's proposals for competitive neutrality to significant businesses according to the timetable set out in the policy statement. In practice, it means that a complaint about the non-application of competitive neutrality arrangements in relation to significant business enterprises in accordance with the Government's published timetable can be brought before the independent Competition Commissioner operating under the GBEC Act.

The Council accepts that this represents de facto application of South Australia's policy proposals, although it believes there are considerable advantages in the more transparent application of the policy through the direct specification of all significant businesses by the Government. The Council anticipates that the set of businesses proclaimed under the Act would be expanded consistent with the Government's policy statement to encompass all identified significant business activities.

Noting the above qualification, the Council acknowledges that South Australia has achieved sufficient progress against its first tranche competitive neutrality reform obligations. Greater transparency, provided through the proclamation of significant State and local government businesses, will be a factor considered by the Council in subsequent assessments.

Issue: Adequacy of the reform agenda: competitive neutrality complaints mechanism.

Assessment

South Australia will establish a competitive neutrality complaints mechanism under the GBEC Act. Among other things, the Act enables complaints about the application of competitive neutrality principles by government businesses to be investigated by an independent Competition Commissioner. The principles given effect under the Act are: corporatisation, tax equivalent payments, debt guarantee fees, private sector regulation and cost reflective pricing principles. The jurisdiction of the complaints mechanism will be extended to cover local government businesses.

The South Australian Government has advised the Council that the complaints mechanism will be operational from 1 July 1997. As an interim measure, complaints have been investigated by the Department of Premier and Cabinet. The Department will act as the coordinating agency for responding to all competitive neutrality complaints, regardless of whether the complaints fall under the scope of the Act. The Government has undertaken to report annually on all non-frivolous complaints received about competitive neutrality matters

South Australia has received a number of complaints alleging non-compliance with competitive neutrality principles. These complaints have related to perceived advantages available to government businesses based on the alleged non-payment of various taxes and on-costs and to the alleged failure of an equipment loan service operated by a major public hospital to set prices fully reflective of costs. South Australia is investigating these matters. In addition, South Australia indicated that it is examining a range of matters raised informally by small business groups as part of the process of identifying significant businesses.

On the basis of the assurances provided by South Australia, the Council considers that South Australia has satisfied its first tranche reform obligations in relation to handling allegations of non-compliance with competitive neutrality policy.

STRUCTURAL REFORM OF PUBLIC MONOPOLIES

Reform commitment: **Before a party introduces competition to a sector traditionally supplied by a public monopoly, it will remove from the monopoly responsibilities for industry regulation to prevent the former monopolist from enjoying a regulatory advantage over its rivals. Before a party introduces competition into a market traditionally supplied by a public monopoly and before a party privatises a public monopoly, it will undertake a review of the structure and commercial objectives of the monopoly.**

Issue: Adequacy of progress against reform objectives

Assessment

South Australia reported that two matters relevant to the structural reform principle of the Competition Principles Agreement:

- the sale of the assets and haulage businesses of the Pipelines Authority of South Australia to Tenneco Australia (now Epic Energy) in June 1995; and
- the restructuring of the ETSA Corporation currently taking place as part of South Australia's preparation for the commencement of the National Electricity Market.

South Australian competition policy officials have indicated that the Government intends to meet its structural reform commitments prior to the commencement of the National Electricity Market. On the basis of this assurance, the Council is satisfied that South Australia has met its first tranche structural reform commitments.

LEGISLATION REVIEW

Reform commitment: **Provision of a timetable detailing the South Australian program for the review and reform of existing legislation restricting competition by the year 2000, and satisfactory progress against the timetable.**

South Australia provided a timetable for the review and reform of existing legislation which restricts competition in accordance with clause 5(3) of the Competition Principles Agreement and an annual report covering progress on implementation in accordance with clause 5(10) of the Competition Principles Agreement.

Issue: Adequacy of the review program

Assessment

South Australia's guidance to agencies charged with identifying legislative restrictions on competition indicated that restrictions which should be identified for review could have one or more of the following effects:

- create a monopoly;
- restrict entry by limiting the number of producers or the amount of product;
- restrict entry based on the qualifications or standards of providers of goods and services or on the quality or standard of the product;
- restrict entry of goods or services from interstate or overseas thus providing a competitive advantage to local producers;
- limit competitive conduct in a market by restricting ordinarily acceptable forms of competitive behaviour such as advertising, competition on the basis of price, use of efficient equipment or hours of operation;
- provide for administrative discretion such as favouring incumbents, treating public and private sector providers differently or setting technical standards only available from a single supplier.

South Australia's June 1996 timetable listed some 180 pieces of restrictive legislation for review. The timetable requires that all reviews be completed, and necessary reforms implemented, by the end of the year 2000.

In May 1997, South Australia issued an updated timetable which rescheduled several reviews, and included others which were originally envisaged to be conducted on a national basis. The revised timetable also included an additional four pieces of legislation following an examination by the Crown Solicitor's Office aimed at identifying restrictive legislation or regulation passed between April 1995 and March 1997.

Neither South Australia's June 1996 timetable nor its amended timetable includes legislation dealing with the licensing of casino operations. South Australia has since advised the Council that the *Casino Act 1983* has been repealed and replaced by a new Act, the *Casino Act 1997*. South Australia advised that the new legislation simplifies existing licensing arrangements relating to the Adelaide Casino preparatory to the planned sale of the Casino, the Hyatt Regency Hotel and the Riverside Centre. In correspondence to the Council dated 16 June 1997, South Australia stated that development of the new legislation had proceeded in accordance with the principles inherent in the Competition Principles Agreement.

The Council has taken South Australia's assurance in relation to the *Casino Act 1997* to mean that the Government has explicitly considered the competition implications of the new legislation through a Regulatory Impact Statement or similar process, and that the evidence supports the conclusion that restrictions on competition contained in the new legislation (if any) provide a net benefit to the community. In order to assess South Australia as fully meeting its obligations with respect to new legislation under clause 5(5) of the CPA, the Council would need evidence that any restrictions contained in the *Casino Act 1997* provide a net community benefit.

The Council proposes to examine this evidence prior to July 1998. The Council's recommendation on this matter should not affect the first part of the first tranche payments due in 1997-98.

The coverage of each jurisdiction's legislation review program will be an ongoing assessment issue. Any pieces of legislation which restrict competition subsequently found not to be on the timetable will need to be listed for review for jurisdictions to be assessed as continuing to meet the spirit of the Competition Principles Agreement.

Issue: The competition policy implications of new legislation are routinely examined

Assessment

South Australia revised its review timetable in May 1997 following an audit by the Crown Solicitor's Office to include four pieces of legislation enacted between April 1995 and March 1997.

South Australia has had a formal requirement since January 1991 that the costs and benefits of all proposals for legislation be identified, and recently committed itself to implement a formal Regulatory Impact Statement process to ensure the evidence of costs and benefits is considered by the Government at the time new legislation is proposed.

Subject to South Australia demonstrating the community benefit case in support of the *Casino Act 1997* discussed earlier, the Council considers that South Australia has taken the necessary action consistent with clause 5(5) to ensure that legislation thought likely to restrict competition enacted since April 1995 provides a net community benefit and that the objectives of the legislation can only be achieved by restricting competition.

Issue: Adequacy of progress with legislation review and reform

Assessment

South Australia has scheduled 12 reviews for completion during 1996. Of these, nine have been completed and three are still in progress. Some 26 reviews were scheduled to commence in 1997. At the time of South Australia's annual report (March 1997), some 13 of the reviews scheduled for 1997 were in progress, 10 were yet to commence, two had been completed and one was being considered within the context of the COAG gas reform agenda. The completed reviews have led to the repeal and amendment of a number of Acts and regulations, including the introduction of new legislation to the Parliament to partially deregulate liquor licensing arrangements. To assist in the conduct of these reviews, South Australia has developed *Guidelines to Ministers on the Review of Legislation which Restricts Competition*.

Following agreement with the Council to bring forward the review of the *Cooper Basin (Ratification) Act 1975*, South Australia has developed a terms of reference and appointed an independent investigator to conduct the review, who is expected to report to the South Australian Government by the end of 1997.

South Australia also reported that a review of the *Barley Marketing Act 1993* is being established in conjunction with Victoria. South Australia advised that, at the time of the annual report, terms of reference for the review had been prepared and processes were underway to engage independent consultants to conduct the review which is due to be completed by the end of 1997.

The Council notes that some reviews scheduled for 1997 are yet to commence. However, the Council is satisfied that South Australia's progress to date has been sufficient to meet the State's first tranche obligations.

APPLICATION TO LOCAL GOVERNMENT

Reform commitment: Provision of a policy statement detailing the implementation of competition principles to local government in South Australia, and progress against undertakings in the policy statement.

South Australia has provided a policy statement in accordance with clause 7 of the Competition Principles Agreement.

Issue: Adequacy of the local government reform program.

South Australia's local government policy statement set out the Government's proposals for applying the competition principles to local government. In relation to competitive neutrality policy, the policy statement called for identification of significant local government businesses by June 1997 and consideration of the reform principles to apply to these businesses by June 1998. By June 2000, local government are to have ensured that all local government businesses are subject to the same local government regulatory environment as are private sector firms, unless the community benefit suggests otherwise.

South Australia is reviewing the *Local Government Act 1934* during 1997, with the objective of establishing a modern, user-friendly legislative framework for local government. Draft Bills are

under consideration by the Government in consultation with the Local Government Association. The policy statement commits local government authorities to identifying existing by-laws which restrict competition by 1 June 1997, at which time local governments were to have advised the State Government of their review and reform timetable.

In May 1997, the South Australian Government agreed to a request from the Local Government Association to extend the period available to local governments for identifying businesses for reform by three months to 30 September 1997. South Australia stated that this delay would not affect the overall reform timetable originally set for completion of local government reforms. South Australia has since advised the Council that it has proclaimed the modified local government competitive neutrality timetable under the GBEC Act, thus providing a competitive neutrality complaints mechanism for local government. South Australia indicated that it is encouraging local government authorities to establish their own complaints handling mechanisms as a first step to resolving complaints, with resort to the State process where an issue cannot be resolved at the local level.

The Council is concerned that the application of competitive neutrality principles to local government businesses in South Australia may be overly drawn out. On the other hand, the Council recognises that the application of some competition principles – particularly competitive neutrality arrangements – at local government level is likely to take time, reflecting the need for local governments to increase their familiarity with the agreed reform commitments.

The Council believes that South Australia has approached its reform task in relation to local government in good faith. On balance, however, there is a need for South Australia to demonstrate greater progress in relation to local government in respect of the first tranche reform requirements under the Competition Principles Agreement. Specifically, the Council would like to see South Australia identify the local government businesses to which competitive neutrality principles are to be applied.

Recognising the advances that have occurred and that factors such as local government amalgamations and elections have delayed first tranche progress, the Council recommends that progress be reassessed prior to July 1998. The first part of the first tranche of payments due in 1997-98 should be unaffected by this recommendation.

PROGRESS ON RELATED REFORMS

ELECTRICITY

Recent history of reform in South Australia

South Australia committed to participation in a national market and to associated structural change in its electricity arrangements subject to the resolution of cost issues associated with reform.

In 1995, the Government corporatised its electricity authority, the Electricity Trust of South Australia, and established generation, transmission and distribution subsidiary businesses under a holding company structure (ETSA Corporation).

Following a review of the structure of the South Australian electricity industry, the *Electricity Corporations (General Corporation) Amendment Act 1996* provided for the separation of electricity generation activities from ETSA Corporation. On 1 January 1997, the South Australian Government announced the establishment of the South Australian Generation Company (SAGC).

South Australia has reviewed the ETSA Corporation's contractual arrangements for gas supplies as part of the process of restructuring its electricity arrangements.

South Australia is committed to participating in the national electricity market and took the role of lead legislator in relation to the legislation required to establish the National Electricity Market and apply the National Electricity Code in participating jurisdictions. However, South Australia is not expected to participate until the full establishment of the National Electricity Market (expected 29 March 1998).

Reform commitment:	**Agreed to implement an interim national electricity market by 1 July 1995 or on such other date as agreed between the parties.**
Implementation:	South Australia is committed to joining the National Electricity Market when full implementation of the market arrangements as specified in the National Electricity Code is possible (a fully established market is expected to commence on 29 March 1998).

Assessment

There has been considerable slippage by all parties from the original COAG electricity reform commitments, particularly in relation to the commencement date for the interim competitive national electricity market. This is a collective responsibility of all jurisdictions involved in developing the national electricity market. For South Australia, the slippage in the date for commencement of the national market is even greater because it does not intend to participate in the NEM1.

Nonetheless, the Council recognises South Australia's commitment to join the national market once the National Electricity Market is fully established and considers that South Australia has complied with its first tranche electricity reform commitment in this regard.

The Council would, however, consider any further slippage in the implementation of agreed electricity reforms to be unacceptable. Progress according to the timetable set out by the Prime Minister will be a significant issue for the Council in its second tranche assessments.

Reform commitment:	**Agreed to subscribe to NECA and NEMMCO.**
Implementation:	Subscribed to NECA and NEMMCO. Both organisations have been established.

Assessment

Complies with commitment.

Reform commitment:	**Agreed to the structural separation of generation and transmission.**
Implementation:	Generation and transmission have been structurally separated. South Australia has reviewed the ETSA Corporation's contractual arrangements for gas supply and has transferred all major gas supply contracts relating to electricity generation from ETSA Corporation to SAGC, with the exception of the gas contracts relating to the Osborne co-generation project.

Assessment

Complies with commitment.

Reform commitment:	**Agreed to the ring-fencing of the 'retail' and 'wires' businesses within distribution.**
Implementation:	The South Australian Government is committed to ensuring appropriate separation of activities associated with retailing from those associated with distribution. The Technology Regulator appointed under the *Electricity Act 1996* may require, as a condition of licensing, that a person's affairs in relation to the operation of transmission be kept separate from the person's affairs in relation to retailing. The methodology for accounting for the ring-fencing applied by ETSA Power will be considered in accordance with the relevant requirements of the *Electricity Act 1996*.

Assessment

The Council notes that South Australia has yet to implement accounting separation in relation to ring-fencing arrangements for ETSA Power's 'wires' and 'retail' functions. However, the Council acknowledges that South Australia is only required to have implemented this commitment at the time it joins the fully established National Electricity Market, which is expected to commence on 29 March 1998. The Council will assess South Australia's compliance with this commitment before 30 June 1998.

GAS

Recent history of reform in South Australia

South Australia privatised the State's gas transmission and distribution utilities earlier in the decade:

- in 1993, the gas distribution network, SAGASCO, was sold to Boral Limited and now trades as The Gas Company.
- in 1995, the State-owned transmission pipelines, operated by the Pipelines Authority of South Australia (PASA), were sold to Tenneco (as the majority shareholder) and local investors.

In 1995, South Australia introduced the *Natural Gas Pipelines Access Act 1995* to provide for third party access to the services of gas transmission pipelines. The Act also requires legal separation of haulage services from other gas related activities, such as the retailing of gas.

South Australia is presently working with other jurisdictions to finalise a National Access Regime for gas pipelines and endorses the substance of the draft arrangements. The State has agreed to take on the role of lead legislator in an applications of law model for the National Access Regime.

The Government has embarked on an extensive review of legislation and regulation affecting the gas industry. As part of this process, the Government repealed in 1996 parts of the *Natural Gas (Interim Supply) Act 1985* to remove elements which restricted competition. The *Gas Act 1988* was repealed and replaced in March 1997 by the *Gas Act 1997*. The new Act continues the provisions of the previous Act in not establishing exclusive franchises for the supply of gas.

In 1997, the South Australian Government announced a public review of the *Cooper Basin (Ratification) Act 1975* to determine what provisions of the Act might constitute a barrier to free and fair trade in gas. The review will also seek to identify potentially anti-competitive restrictions as required by the Competition Principles Agreement.

Reform Commitments in Relation to Implementation of a National Framework for Access to Gas Transmission Lines

Reform commitment: **Agreed to implement complementary legislation so that a uniform national framework applies to third-party access to all gas transmission pipelines both between and within jurisdictions by 1 July 1996.**

Reform commitment: **Noted that legislation to promote free and fair trade in gas, through third-party access to pipelines, should be developed co-operatively between jurisdictions and be based on the following principles:**

- pipeline owners and/or operators should provide access to spare pipeline capacity for all market participants on individually negotiated non-discriminatory terms and conditions;

- information on haulage charges, and underlying terms and conditions, to be available to all prospective market participants on demand;

- if negotiations for pipeline access fail, provision be made for the owner/operator to participate in compulsory arbitration with the arbitration based upon a clear and agreed set of principles;

- pipeline owners and/or operators maintain separate accounting and management control of transmission of gas;

- provision be made for access by a relevant authority to financial statements and other information necessary to monitor gas haulage charges; and

- access to pipelines would be provided either by Commonwealth or State/Territory legislation based on these principles by 1 July 1996.

Reform commitment: **Noted that open-ended exclusive franchises are inconsistent with the principles of open access expounded in points 1, 2 and 3 above:**

- agreed not to issue any further open-ended exclusive franchises; and

- agreed to develop plans by 1 July 1996 to implement more competitive franchise arrangements.

The above agreed reforms were subsequently amended at the COAG meeting of 14 June 1996 and should be read in conjunction with the following commitments:

Reform commitment: **Agreed that the national access framework would be finalised as follows:**

20 June 1996	**Finalisation of the principles in the draft Access Code.**
30 June 1996	**Release of the draft Access Code for a two month stakeholder consultation period.**
30 September 1996	**Access Code and associated draft Inter-Governmental Agreement to be finalised and submitted to Heads of Government for endorsement.**

Reform commitment: **Agreed:**

(a) the Access Code should apply to distribution systems as well as transmission pipelines:[26] and

(b) the Commonwealth Minister for Resources and Energy would convene a meeting of State and Territory Energy Ministers to settle on a mode of regulation that would maximise competition and facilitate investment in the gas industry.

Assessment

As accepted by the Council, the Prime Minister's letter of 10 December 1996 amended the previous timeframes flowing from the 1994 and 1996 Communiques. In accepting the Prime Minister's proposals, jurisdictions agreed to give legislative effect to the National Access Code by 1 July 1997. This will not be achieved.

The Council acknowledges that South Australia is committed to implementing the National Access Code and is contributing to the development of an intergovernmental agreement to implement the Code through nationally-based legislation for which it will be the lead legislature. The Council is also aware that the timetable for this process now envisages South Australia passing the legislation in October/November 1997, with other jurisdictions following later that year or in early 1998. This timetable has not yet been the subject of formal agreement between the jurisdictions.

There has been considerable slippage from the original timetables in the 1994 and 1996 Communiques and from the timetable outlined in the Prime Minister's letter. The Council is concerned that jurisdictions meet the timetable now being developed through the Gas Reform Implementation Group and to be provided in the Intergovernmental Agreement.

The Council recommends that, for South Australia to be assessed as having satisfied its first tranche commitments in respect of implementation of the National Access Code, it will need to have implemented the Code in accordance with the timetable to be agreed in the Intergovernmental Agreement. The Council proposes to reassess this matter for report to the Commonwealth Treasurer prior to July 1998.

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[26] See footnote 7.

Reform Commitments in Relation to Issues Other than a National Framework for Access

Arising from the February 1994 and June 1996 meetings of COAG, all jurisdictions undertook to put in place a range of reforms designed to permit the free and fair trade in gas between and within jurisdictions.

Reform commitment: **Agreed that reforms to the gas industry to promote free and fair trade be viewed as a package, that each government would move to implement the reforms by 1 July 1996.**

Assessment

The Council sees this as a general statement that would encompass all the agreed reform commitments in relation to both the commitments in respect of a national framework for access to gas pipelines and the other gas reforms detailed below. The Council sees the 1 July 1996 deadline as binding unless it has been amended by subsequent unanimous agreement between the parties.

Reform commitment: **Agreed to remove all remaining legislative and regulatory barriers to the free trade of gas both within and across their boundaries by 1 July 1996.**

Assessment

South Australia has identified the following legislative and regulatory barriers to free and fair trade in gas:

- The *Natural Gas (Interim Supply Act) 1985* impedes the export of gas from South Australia. This Act was reviewed in 1996 and it was recommended that substantial parts of the Act should be repealed. Amendments to the Act were assented to in August 1996 repealing ss6, 8, 9, 10 and 11. The amendments also provided for the repeal of the remainder of the Act by proclamation. The timing of the proclamation is currently under review.
- Regulation 244 of the *Petroleum Act 1940* requires Ministerial approval for the use of gas other than for fuel or heating purposes. This regulation was repealed in January 1996.
- Elements of the *Gas Act 1988*. This Act was repealed and replaced in March 1997 by the *Gas Act 1997*, so that businesses (other than the incumbent) can apply for a licence to provide natural gas and are able to construct pipelines and supply natural gas to consumers.
- *Cooper Basin (Ratification) Act 1975*. A public review of the Act has commenced to determine what provisions of the Act might constitute a barrier to free and fair trade in gas. The Council notes that the review will also be examining the Act to identify potentially anti-competitive restrictions as required by the Competition Principles Agreement.
- Section 80L of the *Petroleum Act 1940*. This Act is currently being reviewed.

South Australia has identified work undertaken by the Gas Reform Working Group of COAG Officials in 1994 and from the ACCC's review of the AGL authorisation in 1995 as the processes adopted to identify legislative and regulatory barriers. South Australia is unaware of additional barriers, but will monitor the matter through its legislation review program.

The Council is satisfied that South Australia is appropriately addressing the remaining legislative or regulatory barriers to free and fair trade in gas. As a consequence, the Council considers that South Australia has complied with its first tranche commitments in this area. However, the Council considers this matter an on-going commitment and will take into account, in its future assessments, any legislative or regulatory barriers that are subsequently discovered.

Reform commitment: **Agreed to adopt AS 2885 to achieve uniform national pipeline construction standards by the end of 1994 or earlier.**

Assessment

This standard is reflected in the *Petroleum Act* 1940 regulations covering approval and licensing of pipelines.

The Council considers that South Australia has complied with its first tranche commitments in this area.

Reform commitment: **Agreed that approaches to price control and maintenance in the gas industry be considered in the context of agreed national competition policy.**

Assessment

The *Gas Act 1997* provides for prices to non-contestable customers to be regulated as a transitional arrangement until all customers are contestable. The only current supplier, The Gas Company, is a private entity. Currently both upstream and transmission haulage prices are subject to commercial contracts, and not under price control.

The Council considers that South Australia has complied with its first tranche commitments in this area.

Reform commitment: **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.**

Assessment

Transmission and distribution services in South Australia are operated by separate legal entities.

All transmission pipelines are privately owned. They include the Moomba to Queensland border pipeline (owned by EAPL) and pipelines owned by Tenneco (formerly owned by the state-owned Pipeline Authority of South Australia).

The gas distribution network is owned and operated by The Gas Company (formerly the State-owned SAGASCO) which is owned and operated by Boral.

The Council considers that South Australia has complied with its first tranche commitments in this area.

Reform commitment: **Agreed to place their gas utilities on a commercial footing, through corporatisation by 1 July 1996.**

Assessment

All gas utilities in South Australia are privately owned.

The Council considers that South Australia has complied with its first tranche commitments in this area.

ROAD TRANSPORT

Reform commitment: **Adopt the first reform module (heavy vehicle charges) with effect from 1 July 1995. Commit to the MCRT timetable for future road transport reforms.**

Assessment

South Australia implemented the heavy vehicle charges by state legislation on 1 July 1996 and has committed to the implementation of future road transport reforms according to the agenda agreed by the MCRT.

The Council considers that South Australia has complied with its first tranche road transport reform commitments.