National Competition Council

Assessment of State and Territory Progress with Implementing National Competition Policy and Related Reforms

30 June 1997

CONTENTS

ABBREVIATIONS AND DEFINITIONS

ACCC	Australian Competition and Consumer Commission
ACTEW	ACTEW Corporation, the Government owned electricity and water distribution corporation in the ACT
ACTION	The Government owned public transport authority in the ACT
ACTTAB	ACT Totalisator Agency Board, a Government owned corporation
AGL	Australian Gas Light Company
ANZMEC	Australian and New Zealand Minerals and Energy Council
COAG	Council of Australian Governments
CSO	Community service obligation
DBNGP	Dampier to Bunbury Natural Gas Pipeline in Western Australia
ETSA	Electricity Transmission South Australia, the Government owned power distribution and retail corporation in South Australia
FPF	Financial Management Framework in NSW
GASCOR	Government owned gas distribution and retail corporation in Victoria, trading as Gas and Fuel
GBD	Government Business Division, government business enterprise or activity under the Northern Territory *Financial Management Act 1995*
GBE	Government Business Enterprise
GBEC Act	*Government Business Enterprises (Competition) Act 1996* in Queensland
GFCV	Gas and Fuel Corporation of Victoria
GGE	General Government Enterprise
GOC	Government Owned Corporation, as under the Government Owned Corporations Act in Queensland
GPOC	Government Prices Oversight Commission in Tasmania
GRIG	Gas Reform Implementation Group
GTC	Gas Transmission Corporation in Victoria
GTSO	Gas Transmission System Operator, wholesale gas market manager in Victoria
HEC	Hydro-electric Corporation in Tasmania
IPART	Independent Prices and Regulatory Tribunal in New South Wales
MCRT	Ministerial Council on Road Transport
MNC	Multiple Network Corporation
NCP	National Competition Policy
NECA	National Electricity Code Administrator
NEM	National Electricity Market
NEM1	National Electricity Market phase 1
NEM2	National Electricity Market phase 2

NEMMCO	National Electricity Market Management Company
NGMC	National Grid Management Council
NRTC	National Road Transport Commission
OFM	Office of Financial Management, an element of the ACT Chief Minister's Department
PASA	Pipeline Authority of South Australia
PAWA	Power and Water Authority of the Northern Territory
PFE	Public Financial Enterprise, a classification of government budget activity by the Australian Bureau of Statistics for the purposes of preparing the Government Financial Statistics
PGT	Pacific Gas Transmission
PRRT	Petroleum Resource Rent Tax
PTE	Public Trading Enterprise, a classification of government budget activity by the Australian Bureau of Statistics for the purposes of preparing the Government Financial Statistics
QCA	Queensland Competition Authority
QEC	Queensland Electricity Commission
QLDTAB	Queensland Totalisator Agency Board
QMI	Queensland Manufacturing Institute
QR	Queensland Rail
QTSC	Queensland Transmission and Supply Corporation
RTCS	Road Transport Construction Service
SAGASCO	South Australian Gas Corporation, now defunct
SAGC	South Australian Generation Corporation
SECV	State Electricity Commission of Victoria
SECWA	State Energy Commission of Western Australia
SMA	Statutory marketing arrangements
TER	Tax Equivalent Regime
VPX	Victorian Power Exchange
WAMA	Western Australian Municipal Association

SUMMARY AND RECOMMENDATIONS

On 11 April 1995, the Commonwealth, State and Territory Governments signed three agreements underpinning the National Competition Policy (NCP). These agreements, together with sector specific agreements on electricity, gas, water and road transport, set a number of reform objectives for the period to the year 2000. For the first stage of the NCP – the period to June 1997 – the key objectives are:

- exposure of the unincorporated sector and State and local government businesses to the competitive conduct rules set out in the Trade Practices Act;
- development of a timetable for the review and where appropriate reform of all existing legislation restricting competition by the year 2000, and evidence of progress against the timetable;
- publication of a policy statement for applying competitive neutrality principles to significant State and local government business activities and evidence of progress against objectives, including the establishment of a mechanism for handling complaints about competitive neutrality matters;
- publication of a policy statement on extending the competition principles to local government and evidence of progress against that agenda;
- structural reform of public monopolies where competition is introduced or where a monopoly is privatised;
- progress towards freely operating national markets in electricity and gas; and
- implementation of early reforms to standardise road transport regulations across all States and Territories.

Governments assigned to the National Competition Council the task of assessing progress against these reform objectives. National Competition Policy payments are to be made by the Commonwealth to the States and Territories where the Council assesses progress to meet reform obligations. This report provides the Council's first stage assessment of progress.

Although the NCP is still at an early stage of implementation, there have been several significant advances. For example, the Council judges that there is now:

- good progress towards implementing the National Electricity Market in eastern and southern Australia, including commitments for interconnection by both Queensland and Tasmania;
- a well advanced framework for introducing free and fair trade in gas (already implemented in New South Wales);
- continued implementation of competitive neutrality policy principles in significant government business activities in line with governments' focus on the performance of their GBEs, and mechanisms for consideration of complaints;
- extensive legislation review programs in place and the potential for reduced costs to businesses through the repeal of redundant or unjustified legislation; and

- greater recognition of the importance of applying the reforms to local government businesses.

Nonetheless, there are areas where the Council has some concerns. These include the potential for delay in adoption of national gas regulation and for the adoption of arrangements which might inhibit the free and fair trade in gas, the failure by some governments to include all their anti-competitive regulation for review, and generally slower than anticipated application of competition principles to local government. The Council has recommended reassessment of reform performance in these areas prior to July 1998.

The Council considers that the decision by New South Wales to continue the current domestic vesting arrangements available to the NSW Rice Marketing Board does not meet the spirit of the Competition Principles Agreement. The decision was taken despite the recommendation of an independent review panel that deregulation of domestic arrangements, while leaving the export monopoly intact, would provide a net community benefit.

The Council recognises that this review was the first consideration of statutory marketing arrangements (SMAs) for rural producers, and that New South Wales is one of the leaders in competition policy reform, especially in moves towards competitive energy markets. The Council is tempted to overlook deficiencies in domestic rice reform on these grounds. But the Council considers its role is to assess each State and Territory against each NCP reform commitment, and make appropriate recommendations, rather than horse trade leading performances in some areas against poor performance in others. This is a general principle that the Council will apply throughout the assessment process. The Council considers that SMAs will be one of the most important areas of NCP reform, and worthy of thorough commitment by all governments.

The Council raised its concerns with the New South Wales Government, with the objective of ensuring that action taken on domestic rice marketing meets the spirit of the Competition Principles Agreement. In response, the New South Wales Government has indicated a preparedness to enter into meaningful discussions with the Council on the competition policy concerns with its domestic rice marketing arrangements. In considering its approach on this matter, and to deal with departures from NCP commitments more generally, the Council gave thought to recommending the imposition of a financial penalty on New South Wales. But recognising the preparedness of New South Wales to address the Council's concerns, and the fact that New South Wales rice marketing was one of the first major reviews of legislative restrictions on competition, the Council will not recommend a penalty at this time. The Council will reassess New South Wales' progress on legislation review matters prior to July 1998 for the purposes of the second part of the first tranche assessment and in future tranche assessments. The Council will take into account the discussions with New South Wales on rice marketing in these assessments.

The Council's recommendations are summarised in the table below.

Summary of Recommendations: First Tranche NCP Payments

State/Territory	Outstanding First Tranche Issues	Recommendations on Transfers
New South Wales	Review progress with legislation review and reform obligations re domestic arrangements for rice marketing for compliance with clause 5 of the Competition Principles Agreement prior to July 1998. Review progress with legislation review and reform obligations re casino control legislation for compliance with clause 5 prior to July 1998. Review progress with legislation review and reform obligations re legislation for the privatisation of the NSW TAB for compliance with clause 5(5) of the Competition Principles Agreement prior to July 1998. Review progress with application of competition principles to local government prior to July 1998.	Full payment of first part of first tranche payment due 1997-98. Payment due in 1998-99 dependent on evidence of clause 5 compliance for domestic rice marketing arrangements and casino control legislation, compliance with clause 5(5) for TAB privatisation legislation and progress with the application of competition principles to local government.
Victoria	Review progress with application of the uniform national gas access code prior to July 1998. Review progress with application of competition principles to local government prior to July 1998.	Full payment of first part of first tranche payment due 1997-98. Second part of payment due in 1998-99 dependent on satisfactory progress with application of the national gas access code and with the application of competition principles to local government.

State/Territory	Outstanding First Tranche Issues	Recommendations on Transfers
Queensland	Review progress with application of the uniform national gas access code prior to July 1998. Review progress with legislation review and reform obligations re casino agreement legislation for compliance with clause 5 prior to July 1998. Review progress with application of competition principles to local government prior to July 1998.	Full payment of first part of first tranche payment due 1997-98. Second part of payment due in 1998-99 dependent on satisfactory progress with application of the national gas access code, with clause 5 compliance for casino agreement legislation and progress with application of competition principles to local government.
Western Australia	Review progress with the national gas reform commitments re tender process for a second Dampier/Perth gas pipeline. Review progress with application of the uniform national gas access code prior to July 1998. Review progress with review and reform of agreement legislation prior to July 1998. Review progress with application of competition principles to local government prior to July 1998.	Full payment of first part of first tranche payment due 1997-98. Second part of payment due in 1998-99 dependent on commitment to implementation of the National Gas Access Code, satisfactory progress with national gas reform commitments in respect of removing regulatory barriers to free and fair trade in gas, and satisfactory progress with review of agreement legislation and application of the competition principles to local government.

State/Territory	Outstanding First Tranche Issues	Recommendations on Transfers
South Australia	Review progress with application of the uniform national gas access code prior to July 1998. Review progress with legislation review and reform obligations re casino control legislation for compliance with clause 5(5) prior to July 1998. Review progress with application of competition principles to local government prior to July 1998.	Full payment of first part of first tranche payment due 1997-98. Second part of payment due in 1998-99 dependent on satisfactory progress with application of the national gas access code, with evidence of clause 5(5) compliance for *Casino Act 1997* and progress with application of competition principles to local government.
Tasmania	Review progress with application of competition principles to local government prior to July 1998.	Full payment of first part of first tranche payment due 1997-98. Second part of payment due in 1998-99 dependent on satisfactory progress with application of competition principles to local government.
Australian Capital Territory	Review progress with application of the uniform national gas access code prior to July 1998.	Full payment of first part of first tranche payment due 1997-98. Second part of payment due in 1998-99 dependent on satisfactory progress with application of the national gas access code.

State/Territory	Outstanding First Tranche Issues	Recommendations on Transfers
Northern Territory	Review progress with application of the uniform national gas access code prior to July 1998.	Full payment of first part of first tranche payment due 1997-98. Second part of payment due in 1998-99 dependent on satisfactory progress with application of the national gas access code.

INTRODUCTION

Under the terms of the inter-governmental competition policy agreements, the National Competition Council has been asked to assess whether States and Territories have met the conditions for receipt of National Competition Policy (NCP) transfers from the Commonwealth that are provided under the Agreement to Implement the National Competition Policy and Related Reforms. Some $406 million is available for distribution (on a per capita basis) to States and Territories which are assessed as having satisfied reform obligations over the period to July 1997.[1]

This report provides the Council's assessment of State and Territory progress against reform obligations. The report takes into account governments' policy statements, the annual reports which governments provided to the Council in April 1997, information subsequently provided by States and Territories and relevant information available from other sources.

The report comprises three sections:

- Part 1 outlines the reform commitments set out in the relevant inter-governmental agreements;
- Part 2 discusses the Council's view of what constitutes satisfactory progress; and
- Part 3 provides the Council's assessment of the progress achieved by each jurisdiction against the first tranche obligations.

PART 1: REFORM COMMITMENTS

The NCP program is contained in three inter-governmental agreements signed by the Prime Minister, Premiers and Chief Ministers on 11 April 1995, together with inter-governmental agreements covering related areas of reform. The three competition policy agreements are the:

- Competition Principles Agreement;
- Conduct Code Agreement; and
- Agreement to Implement the National Competition Policy and Related Reforms.

The agreements set a range of reform obligations for each State and Territory, and also encompass reforms at local government level. In summary, the agreements provide for:

- consideration of the establishment of mechanisms providing for effective prices surveillance;
- introduction of competitive neutrality policies and principles, where appropriate, in respect to significant government business activities;
- structural reform of publicly owned monopolies prior to privatisation or the introduction of competition to the market traditionally supplied by the monopoly;
- review and, where appropriate, reform of all existing legislation which restricts competition;
- third party access to significant infrastructure facilities;

[1] Attachment A provides an estimate of the funds which could be available to each State and Territory in 1997-98.

- application of the competition principles to local government;[2]

- extension of the Competition Code within each State and Territory (Conduct Code Agreement); and

- implementation of related reforms in electricity, gas, water and road transport (Agreement to Implement the National Competition Policy and Related Reforms).

CONDITIONS FOR THE PAYMENT OF THE FIRST TRANCHE OF COMMONWEALTH TRANSFERS TO STATES AND TERRITORIES

The provision of certain financial transfers by the Commonwealth is conditional on the States and Territories making satisfactory progress with the implementation of the NCP and related reforms. The reform commitments for the first tranche transfers, starting in 1997-98, are specified in the Attachment to the Agreement to Implement the National Competition Policy and Related Reforms. Drawing from the Attachment, the commitments are that each State and Territory:

- has signed the Competition Principles Agreement and the Conduct Code Agreement at the COAG meeting in April 1995;

- in accordance with the Conduct Code Agreement, passed the required application legislation so that the Conduct Code was applied within that State or Territory jurisdiction by 12 months after the Commonwealth's Competition Policy Reform Bill received the Royal Assent;

- is a fully participating jurisdiction under the Competition Policy Reform Bill and a party to the Competition Principles Agreement at the time at which the payment is made (States and Territories must apply the Conduct Code as a law of the State without making significant modifications to the Code in its application to persons within their legislative competence and must remain a party to both Competition Policy Inter-Governmental Agreements);

- is meeting all its obligations under the Competition Principles Agreement, which include, but are not limited to:

    - when undertaking significant business activities or when corporatising their government business enterprises, having imposed on these activities or enterprises full government 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 the enterprise's private sector competitors;

    - having published a policy statement on competitive neutrality by June 1996 and published the required annual reports on the implementation of the competitive neutrality principles;

    - having developed a timetable by June 1996 for the review and, where appropriate, reform of all existing legislation which restricts competition by the year 2000;

[2] Local governments are not parties to the inter-governmental agreements. Each State and Territory is responsible for applying the principles to local government.

- having published by June 1996 a statement specifying the application of the principles in the Competition Principles Agreement to local government activities and functions (this statement to be prepared in consultation with local government); and

- (for relevant jurisdictions) taken all measures necessary to implement an interim competitive National Electricity Market, as agreed at the July 1991 special Premiers' Conference, and subsequent COAG agreements, from 1 July 1995 or on such other date as agreed by the parties, including signing any necessary Heads of Agreement and agreeing to subscribe to the National Electricity Market Management Company and National Electricity Code Administrator;

- (for relevant jurisdictions) has implemented any arrangements agreed between the parties as necessary to introduce free and fair trading in gas between and within the States by 1 July 1996 or such other date as agreed between the parties, in keeping with the February 1994 COAG agreement; and

- effective observance of the agreed package of road transport reforms.

First Tranche Reform Commitments Arising from the Conduct Code Agreement

The Conduct Code Agreement requires each State and Territory government to have passed the necessary application legislation such that the Competition Code operates within that government's jurisdiction within twelve months of 20 July 1995.

Interpretation: Each government must have applied the Competition Code as a law of the State without making significant modifications to the Code in its application to persons within the legislative competence of the State, with effect from 21 July 1996. The effect is to extend the application of the Trade Practices Act's conduct rules to both the unincorporated sector, including the professions, and State and local government business activities.

First Tranche Reform Commitments Arising From the Competition Principles Agreement

Rather than specifying particular reforms, the Competition Principles Agreement contains statements of broad principle aimed at enhancing the competitiveness of the Australian economy. For the first tranche assessment, jurisdictions are committed to achieving satisfactory progress in relation to competitive neutrality reform and the review and reform of legislation restricting competition, including in relation to local government. Governments are also committed to examining the structure and the commercial objectives of publicly owned monopolies operating in markets where the introduction of competition is proposed or before privatising the monopoly and to consider establishing independent sources of prices oversight advice where these do not exist.

The Council's primary focus in assessing governments' first tranche progress against Competition Principles Agreement reform objectives centred on the implementation of competitive neutrality policy and principles, the legislation review and reform program and the application of competition principles to local government.

Competitive Neutrality

With respect to significant Government Business Enterprises (GBEs) classified as Public Trading Enterprises and Public Financial Enterprises by the Australian Bureau of Statistics, clause 3(4) of the Competition Principles Agreement requires governments, where appropriate, to :

- adopt a corporatisation model; and
- impose on the enterprise 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 the government business's private sector competitors.

With respect to significant business activities undertaken as part of a broader range of a government agency's functions, the Competition Principles Agreement obliges governments to:

- adopt a corporatisation model and impose full taxes or tax equivalent systems, debt guarantee fees and equivalent private sector regulation; or
- ensure that the prices charged for goods and services take account, where appropriate, of the above items and reflect full cost attribution.

Governments are to have published a policy statement on their proposals for implementing competitive neutrality policy and principles to significant government businesses activities, including an implementation timetable and a complaints mechanism, by June 1996. Governments are also to have published an annual report covering their progress in implementing competitive neutrality policy and principles, and including allegations of non-compliance.

Interpretation: The Council's judgment that reform progress is satisfactory requires that governments have published a competitive neutrality policy statement for the application of competitive neutrality reforms across all significant government business activities where appropriate. Governments must also have provided evidence in their annual report to the Council of satisfactory progress with the reform, where appropriate, of significant government businesses consistent with clause 3 of the Competition Principles Agreement.

A competitive neutrality complaints mechanism should have been established and allegations of non-compliance with competitive neutrality policy should have been addressed objectively and promptly.

Legislation Review

The Competition Principles Agreement obliges governments to review, and where appropriate, reform legislation that restricts competition (both State and local government) over the period between 1996 and 2000. The guiding principle 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.

Governments must have developed a timetable for the review and, where appropriate, reform of all existing legislation restricting competition by June 1996, with the reviews, and where appropriate, reforms to be completed by the year 2000. All proposals for new legislation which restricts competition should have been accompanied by evidence that the legislation is consistent with the

guiding principle above. Governments must have produced an annual report for 1997, outlining their progress against the review timetable.

Interpretation: Governments must have:

- produced a comprehensive review program encompassing all legislation which restricts competition, with the objective of completing the review and reform process by the end of the year 2000; and
- an annual progress report for 1997.

Governments' performances against the first tranche legislation review obligations have been considered on the basis of four criteria.

First, all legislation restricting competition should have been programmed for review, such that the review process is able to be completed and resulting reforms in place by the end of the year 2000. Only in exceptional circumstances would a longer implementation period be justified. Satisfactory progress against this criterion involves governments having progressed their review programs in the first tranche assessment period consistent with their June 1996 undertakings. It may also require some recasting of State and Territory timetables to include reviews originally expected to proceed on a national basis where these national reviews do not proceed.

Second, consistent with the Competition Principles Agreement, reviews should be bona fide examinations of the effect of restrictions on competition and on the economy generally, and genuine assessments of the costs and benefits of the restriction. Alternative means of achieving the same outcome, including non-legislative means, should have been examined. Reviews should aim at genuine reform.

Third, reform implementation should have regard to review findings, with restrictions retained only where there is shown to be a net benefit to the community as a whole and where the objectives of the legislation can only be met by restricting competition.

Fourth, governments should have in place a process whereby proposals for new restrictive legislation are examined to ensure that the restriction provides a net community benefit, and that the objective can only be achieved by restricting competition. Any restrictive legislation enacted after April 1995 not so examined should have been programmed for review over the period to 2000.

Structural Reform of Public Monopolies

Before competition is introduced into a sector traditionally supplied by a public monopoly, the owner government must have removed and relocated any responsibilities for industry regulation so as to prevent the former monopolist from enjoying a regulatory advantage over its (existing and potential) rivals. Before a government introduces competition to a market traditionally supplied by a public monopoly, or privatises a public monopoly, the government must have reviewed the commercial objectives and operating arrangements of the public monopoly.

Interpretation: Satisfactory progress requires jurisdictions to have demonstrated that they have relocated responsibility for industry regulation where appropriate, and examined the structure and commercial objectives of public monopolies before introducing competition into a market supplied by that monopoly or before privatising a public monopoly.

The Council has relied on advice from jurisdictions that they have complied with the Competition Principles Agreement commitments on structural reform.

Application to Local Government

The Competition Principles Agreement obliges governments to apply the competition principles to local government. Governments are to have produced a policy statement, prepared in consultation with local government, which specifies the application of the principles to particular local government activities and functions.[3]

Interpretation: Governments should have published a policy statement outlining their proposals for applying the competition principles to local government. The competition principles with most relevance for local government are the application of competitive neutrality principles and the review of restrictive local government legislation. In assessing first tranche reform performance, the Council has focused on the adequacy of the local government reform agendas proposed by State and Territory governments in these two areas, and evidence of progress against these agendas.

First Tranche Reform Commitments Arising from the Inter-Governmental Agreements on Electricity Reform[4]

In May 1992, Heads of Government agreed to develop an interstate transmission network across the eastern and southern states. They also agreed that the National Grid Management Council (NGMC) should report on the precise nature and operating guidelines of the structure by the end of 1992. To achieve this, Heads of Government agreed to the principles of separate generation and transmission elements in the electricity sector.

Some States recorded qualifications. South Australia indicated that it wanted to look further at the implications for its system. Tasmania stated that its participation would be dependent on the development of a Basslink proposal. Western Australia, while not a part of the national grid, supported the agreed approach.

Interpretation: On the basis of this agreement, the Council considers New South Wales, Victoria, the ACT and Queensland to have committed to participation in a national electricity market. The Council considers that the agreement commits South Australia to participation in the national market on the basis that its concerns about the implications for its system arising from the separation of the generation and transmission elements can be satisfied.

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[3] The ACT does not have a local government sphere and is not required to provide a local government policy statement.

[4] The Heads of Government agreements on electricity reform relevant to the first tranche assessment of progress are reproduced in Attachment B.

At the COAG meeting in December 1992, the Prime Minister, the Premiers of New South Wales, Victoria, Queensland, South Australia, Tasmania and the Chief Minister of the ACT noted a report from the NGMC covering, in particular, the NGMC's oversight of the development of an interstate transmission network and its intention to meet the timetable set by the Heads of Government for a report on the nature and operating guidelines of the interstate network by the end of 1992. Relevant Heads of Government reaffirmed their commitment to the principle of separate generation and transmission elements in the electricity sector.

At the COAG meeting in June 1993, the Prime Minister, the Premiers of New South Wales, Victoria, Queensland, South Australia and the Chief Minister of the ACT gave a commitment to undertaking the necessary structural changes to allow a competitive electricity market to commence from 1 July 1995 as recommended by the NGMC.

The agreed structural changes included the establishment of an interstate electricity transmission network involving those States already inter-connected, together with Queensland. Jurisdictions also agreed to work towards the implementation, by 1 July 1995, of the Multiple Network Corporation (MNC) structural option outlined in the NGMC's report.

The MNC structure involved the separation of the transmission elements of the relevant, existing electricity utilities from generation and their placement in separate corporations. At the time, South Australia stated that it would consider a subsidiary structure pending the resolution of cost issues associated with separating transmission from its vertically integrated authority. Resolution of those issues would enable the adoption of the NGMC model. Tasmania reserved its position pending the outcome of its, then, current electricity industry review.

Interpretation: On the basis of this agreement, the Council considers New South Wales, Victoria, the ACT and Queensland to have made an unambiguous commitment to structural reform in the lead up to a national electricity market. The agreed date for the commencement of the interim market was July 1995.

South Australia's commitment to structural reform was qualified on 'the resolution of cost issues' associated with such reform. This matter has been examined by the Council in consultation with South Australia. The Council considers that South Australia's concerns about costs for their system are now resolved. As a result, the Council has treated South Australia's commitment to structural separation as now unqualified.

The structural reforms put in place are an important aspect of progress. The Council considers that, at a minimum, there must be complete separation of generation and transmission, as well as ring-fencing and separate accounting for the retail and network businesses within distribution, on the part of those jurisdictions participating in the national framework.

While recognising that the June 1993 COAG agreement on electricity does not oblige the non-participating jurisdictions to restructure their electricity systems in this way, the Council considers that complete separation of generation and transmission is critical to maximising the benefit to the community from electricity reform.

At the COAG meeting in August 1994, relevant Heads of Government noted the progress that had been made since the Council's February 1994 meeting and agreed to work to fulfil their commitment to have the necessary changes in place to allow the implementation of a competitive electricity market from 1 July 1995.

COAG also set out its main objectives for a fully competitive national market to operate from 1 July 1999 as:

- the ability for customers to choose which supplier, including generators, retailers and traders, they will trade with,
- non-discriminatory access to the interconnected transmission and distribution network,
- no discriminatory legislative or regulatory barriers to entry for new participants in generation or retail supply, and
- no discriminatory legislative or regulatory barriers to interstate and/or intrastate trade.

COAG agreed that transition arrangements would be developed on the basis of the earliest practicable achievement of each of the objectives for the fully competitive market.

Consistent with its February 1994 decision that the principles relating to the recovery of the fixed cost component of network pricing would encompass common asset valuation methodologies and rates of return as well as cost reflective and uniform pricing methodologies, the August 1994 meeting of COAG resolved that, in relation to the fixed cost component of network pricing, within distribution, the retail and network functions should be ring-fenced and accounted for separately.

Interpretation: The Council considers Heads of Government to have agreed that, while different jurisdictions will be at different stages of reform during the interim phase, transition arrangements were to have been developed on the basis of the earliest practicable achievement of each of the four principal objectives of the fully competitive market.

Moreover, the Council considers relevant jurisdictions to have agreed to make decisions by the end of 1994, or as soon as practicable thereafter, regarding reform of the Snowy system (Commonwealth, Victoria, New South Wales and the ACT) and the Interconnection Operating Agreement (Victoria, New South Wales and the ACT).

National Electricity Reform: Prime Minister's Letter to Premiers and Chief Ministers, 10 December 1996

On 10 December 1996, the Prime Minister wrote to all Heads of Government proposing a phased implementation timetable for national electricity reform. The implementation timetable, which is now agreed by all Heads of Government, sets out key reform dates, including:

- harmonisation of the New South Wales (including the ACT) and Victorian wholesale electricity markets (NEM Phase 1) by February 1997;
- authorisation of the National Electricity Code by the Australian Competition and Consumer Commission (ACCC) 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* by April/May 1997;
- further harmonisation of Victorian and New South Wales market arrangements (NEM Phase 2) by July 1997;
- passage of legislation to give effect to the National Electricity Law by participating jurisdictions by Autumn 1997; and

- full implementation of the market arrangements specified in the National Electricity Code by early 1998.

Interpretation: The Council considers that the framework implies that first tranche electricity commitments require implementation of NEM Phase 1 and evidence of progress towards NEM Phase 2.

First Tranche Reform Commitments Arising from Inter-Governmental Agreements on Gas Reform[5]

In December 1992, COAG noted that there were barriers to trade in natural gas which could inhibit the development of the gas industry and discourage the exploration and commercial development of gas markets and their related infrastructure.

COAG asked the Australian and New Zealand Minerals and Energy Council (ANZMEC) to provide a report to the first COAG meeting in 1993. This report:

- identified and reviewed existing legislative or other government imposed impediments and barriers to free and fair trade in natural gas, within and between jurisdictions;
- recommended action to remove impediments and barriers to free and fair trade in natural gas, within and between jurisdictions;
- outlined the work required to move toward a more uniform pipeline approval process between States and Territories for pipeline development, including the recommended basis for third-party access to gas transmission pipelines; and
- outlined the actions required to achieve COAG's objective of free and fair trade in gas.

Following consideration of the ANZMEC report in June 1993, Heads of Government agreed to co-operate in the development of policies and arrangements covering the gas industry which are pro-competitive, facilitate the development of gas markets on commercial criteria and remove impediments to free and fair trade in gas. COAG called for a further report from officials, for its next meeting, on progress towards a pro-competitive framework for the natural gas industry, within and between jurisdictions.

At the February 1994 meeting, COAG received a report from the Working Group on Gas Reform entitled "Progress Toward a Pro-Competitive Framework for the Natural Gas Industry, Within and Between Jurisdictions". The report noted that the benefits of free and fair trade in gas would be facilitated by further developments aimed at stimulating a more competitive framework for the gas industry. COAG noted that the main features of a national framework characterised by free and fair trade would be:

- no legislative or regulatory barrier to both inter- and intra- jurisdictional trade in gas;
- third-party access rights to both inter- and intra- jurisdictional supply networks;
- uniform national pipeline construction standards;
- increased commercialisation of the operations of publicly-owned gas utilities;
- no restrictions on the uses of natural gas (eg. for electricity generation); and

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5 Relevant Heads of Government agreements are reproduced in Attachment C.

- gas franchise arrangements consistent with free and fair competition in gas markets and with third-party access.

It was accepted that there may be a need for some government oversight of retail gas prices in the absence of fully competitive gas markets. The need for transitional arrangements in some States was also acknowledged.

COAG agreed on a broad set of principles to ensure third-party access to pipelines and asked the Working Group on Gas Reform to report, by the next meeting of COAG, on the implementation of these principles in order to achieve free and fair trade in natural gas by 1 July 1996.

In relation to free and fair trade in gas COAG:

1. 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 (Heads of Government noted that Victoria's ability to commit to this timetable is contingent upon satisfactory and timely resolution of the PRRT [Petroleum Resource Rent Tax] issue);

2. 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 (Heads of Government noted that Victoria's ability to commit to this timetable is contingent upon satisfactory and timely resolution of the PRRT issue);

3. 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;

4. noted that Heads of Government were addressing the question of access to essential facilities in the context of their consideration of the Hilmer Report on National Competition Policy and that any legislation arising from decisions in this context would be able to cover gas pipelines;

5. agreed to adopt AS 2885 to achieve uniform national pipeline construction standards by the end of 1994 or earlier;

6. 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;

7. agreed that approaches to price control and maintenance in the gas industry be considered in the context of agreed national competition policy;

8. agreed to place their gas utilities on a commercial footing, through corporatisation, by 1 July 1996;

9. noted that contracts, between producers and consumers for the supply of gas, entered into prior to the enactment of gas reform legislation would not be overturned by that legislation;

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 (Heads of Government noted that Victoria's ability to commit to this timetable is contingent upon satisfactory and timely resolution of the PRRT issue);

11. agreed that reforms to the gas industry to promote free and fair trade be viewed as a package and that each government would move to implement the reforms by 1 July 1996; and

12. noted that Victoria has commissioned an independent study of the impact of PRRT on the Bass Strait gas industry.

In June 1996, COAG received a progress report on gas reform from the Chairman of the Gas Reform Task Force. The report noted:

1. substantial progress towards agreement of a uniform national access framework. The framework will apply Australia-wide and take the form of a code extrinsic to legislation. It will be supported in legislation by each jurisdiction in line with an Inter-Governmental Agreement to deal with the implementation and maintenance of the code;

2. agreement had been reached on some of the main access principles to underpin the code with further consideration being given to others such as asset valuation and other pricing principles, ring-fencing requirements, information requirements, secondary trade arrangements and the role of franchise agreements; and

3. the Task Force had agreed that the State regulator should be the regulatory institution for distribution systems.

COAG agreed that the national access framework should be finalised as follows:

1. 20 June 1996: Finalisation of the principles in the draft Access Code.

2. 30 June 1996: Release of the draft Access Code for a two month stakeholder consultation period.

3. 30 September 1996: Access Code and associated draft Inter-Governmental Agreement to be finalised and submitted to Heads of Government for endorsement.

COAG also agreed that:

1. the Access Code should apply to distribution systems as well as transmission pipelines;[6] and

2. 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.

National Third Party Access Code for Natural Gas Pipelines: Prime Minister's Letter to Premiers and Chief Ministers, 10 December 1996

On 10 December 1996, the Prime Minister wrote to all Heads of Government proposing amendments to the timeframe for the introduction of the National Access Code (the Code) and seeking agreement to the regulatory framework and implementation arrangements outlined. The Prime Minister proposed that, in relation to free and fair trade in natural gas, all jurisdictions agree:

1. to the substance of the National Third Party Access Code for Natural Gas Pipelines as prepared by the Gas Reform Task Force (noting that further refinements are to be made), and to apply the final Code uniformly to natural gas transmission and distribution systems in all jurisdictions;

2. that the Code would be an extrinsic document and given consistent legislative effect by jurisdictions by 1 July 1997, in accordance with arrangements detailed in an Inter-Governmental Agreement;

3. that any derogations from the Code and transitional arrangements would be identified in the Code, and that these would be fully transparent and have firm end dates;

4. that access will be provided to transmission and distribution pipelines for all industrial and commercial users with loads greater than 100 terajoules by 1 July 1997, and to all remaining industrial and commercial users by 1 July 1999; for residential users the phase in of access to take account of cross-subsidy and related issues would be completed by 1 July 2001;

5. that the Code will be given effect through legislation and jurisdictions will work towards common core clauses where that is necessary to provide uniform application and effect of the Code, with other mandatory clauses individually drafted by jurisdictions in a single part of the legislation;

6. that the ACCC would be the single national regulator for transmission pipelines, subject to the ACCC having a business plan acceptable to participating jurisdictions to enable it effectively to carry out this work;

7. that the National Competition Council would assess which future pipelines would be covered by the Code;

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[6] Western Australia and South Australia have indicated that they regard this statement as an incorrect reflection of the decision taken at the meeting. Western Australia considers that the June 1996 Communique is inaccurate on a range of matters, including the commitment to a uniform National Access Code. Both governments stated that the application of the National Access Code to distribution systems was not agreed at the June 1996 meeting.

8. that the Australian Competition Tribunal would be the single national appeals body for Determinations made under the Code by the national regulator, and a jurisdiction-based-appeals body would be the appeals body for Determinations made under the Code by a jurisdiction-based regulator for distribution pipeline networks;

9. that gas distribution pipelines will be regulated by independent regulators;

10. that the Gas Reform Task Force would finalise its activities by 15 December 1996, with an implementation group to be established by participating jurisdictions to finalise the Inter-Governmental Agreement and any outstanding issues on the Code for signature by Heads of Government, and to develop appropriate arrangements for administering the Code;

11. in-principle to an obligation on gas producers to provide unbundled gas prices ex-plant when requested;

12. that jurisdictions would not seek to make windfall gains from taxes and charges arising upon the transfer of assets by a pipeline owner or operator in complying with ring-fencing arrangements in the Code; and

13. that the Commonwealth would report to the COAG meeting in 1997 on whether the provisions for access to services in Part IIIA of the *Trade Practices Act 1974* fully reflect the principles and intent of the national competition policy as they affect gas processing and related facilities.

The Prime Minister's letter also noted COAG's agreement in February 1994 to the sanctity of contractual rights in pre-existing contracts between the producers and consumers for the supply of natural gas. In this respect, as provided for under Part IIIA of the *Trade Practices Act 1974*, contractual rights in contracts between producers, transporters and consumers existing prior to 30 March 1995 are to be protected and not overturned by the enactment of gas reform legislation.

It was also noted that Victoria is in the process of considering the restructuring of its natural gas distribution and retail sector to further enhance competition in the sector. The Prime Minister's letter noted that Victoria had agreed to the above timelines for access, but that Victoria's ability to introduce access for large industrial and commercial users by 1 July 1997 would depend on whether it proceeds to restructure its distribution and retail sector and on the timing of the restructuring.

Interpretation: The Council considers that all jurisdictions have agreed to implement the reform commitments outlined in the February 1994 and June 1996 COAG Communiques within the agreed timeframes.[7]

The Council is aware that all jurisdictions other than Western Australia have agreed to the proposals outlined in the Prime Minister's letter.[8] On this basis, the

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[7] Western Australia considers that the June 1996 Communique is inaccurate on a range of matters, including the commitment to a uniform National Access Code. South Australia believes the June 1996 Communique is inaccurate in respect to the decision on application of the National Access Code to distribution systems. Subsequently, in its response to the Prime Minister's letter of 10 December 1996, South Australia agreed that the National Access Code should apply to distribution pipelines as well as transmission pipelines.

[8] Western Australia does not support the specific proposals in the Prime Minister's 10 December 1996 letter, expressing particular concern with the pace of deregulation and the proposed national transmission regulator. Queensland's acceptance was qualified by its concerns in regard to the sanctity of pre-existing contracts, competitive tendering and the ACCC as national regulator for transmission. The Council understands that Queensland's concerns have now been resolved.

Council considers that the national regulatory framework and implementation arrangements proposed by the Prime Minister in his 10 December 1996 letter alter the implementation timetable agreed at the June 1996 meeting of COAG. The Council is aware that the timetable for implementation of the National Access Code proposed in the Prime Minister's letter will not be met and that the Gas Reform Implementation Group is currently developing a new timetable. This new timetable will be reflected in an Inter-governmental Agreement to be signed by all jurisdictions.

Apart from the actions to apply the National Access Code specified in the Prime Minister's letter, several other gas reform commitments are specified in the February 1994 COAG Communique (such as the removal of legislative and regulatory barriers to trade in gas by 1 July 1996). The Council has assessed jurisdictions' progress in accordance with the commitments in this Communique.

First Tranche Reform Commitments Arising from the Inter-Governmental Agreements on Road Transport

The Agreement to Implement the National Competition Policy and Related Reforms commits governments to the 'effective observance of road transport reforms' for the first tranche assessment of progress. The relevant road transport reforms are not specified in COAG agreements.

In October 1992, Transport Ministers endorsed an approach to road transport reform involving the development and implementation of six national reform modules covering:

- heavy vehicle charges;
- the transport by road of dangerous goods;
- vehicle operations;
- vehicle registration;
- driver licensing; and
- compliance and enforcement.

Noting the approach of the Transport Ministers, the advice from the National Road Transport Commission (NRTC) and comments from States and Territories, the Council considers road transport reform obligations over the three assessment tranches should involve the development and effective observance of heavy vehicle regulations, including heavy vehicle construction requirements, traffic codes, vehicle roadworthiness, inspection standards, driver licensing standards, codes of heavy vehicle practice (loading codes and permit conditions), enforcement levels, sanctions for breaches and aspects of operator controls (including freight and public vehicle licensing).

All jurisdictions have implemented the standard heavy vehicle charges and associated permit reforms.[9] On 14 February 1997, the Ministerial Council of Road Transport (MCRT) endorsed a

[9] The NRTC's first determination for heavy vehicle charges proposed that the existing concessions for primary producers not be maintained. However, most jurisdictions have maintained at least part of their existing concession regimes. The NRTC has indicated that it will develop a second heavy vehicle charges determination in the second half of 1998.

national implementation strategy with specified timeframes for implementing the remaining modules.[10] In summary, the MCRT agreed that:

- uniform arrangements for the transport of dangerous goods be implemented by all jurisdictions by no later than 1 January 1998;
- the Australian road rules regulations (part of the vehicle operations module) be implemented by no later than September 1998;
- a national driver licensing scheme be implemented by no later than 1 July 1998; and
- the remaining modules be implemented by no later than 1 July 1998 without waiting for enactment of Commonwealth legislation, provided that the result is uniform and consistent laws across jurisdictions.

Implementation: The Council considers "effective observance of road transport reforms" to constitute implementation of reform modules according to the MCRT timetable: to date the standard heavy vehicle charges and permit reforms. However, in view of the slippage in the road reform timetable to date, the Council considers that effective progress for the first tranche assessment should also involve a commitment to link the implementation of road transport reforms, according to the agenda agreed by the MCRT, to future competition transfers. In essence, this means that the MCRT reform timetable endorsed on 14 February 1997 becomes the framework for the Council's second and third tranche assessments. All jurisdictions have given at least in principle commitment to the MCRT agenda, although the ACT's commitment is necessarily qualified by its reliance on legislative action by the Commonwealth.

The Council recognises that the reform agenda has not been endorsed by COAG, and acknowledges that any change to the program agreed by COAG would necessarily supersede the current arrangement. The Council also acknowledges that future changes to the reform program agreed by the MCRT would also amend the assessment framework.

[10] The MCRT road reform timetable is reproduced in Attachment D.

PART 2: WHAT CONSTITUTES SATISFACTORY PROGRESS

The Agreement to Implement the National Competition Policy and Related Reforms (Implementation Agreement) establishes the framework which the Council has used to assess jurisdictions' compliance with first tranche NCP objectives.[11] For the electricity, gas and road transport reforms, the Implementation Agreement is augmented by agreements reached at various meetings of Heads of Governments and in correspondence between Heads of Government, and by the requirements of the Competition Principles Agreement. The Council has assessed progress against these reform frameworks, including examining the adequacy of reform agendas set out in policy statements and the progress achieved against the objectives set out in the policy statements.

Many of the NCP reforms are statements of principle rather than specific implementation benchmarks. This recognises the sovereignty of governments in determining the form of change which, in their judgment, best meets the needs of their communities. It means that different governments might adopt different policies and still achieve satisfactory progress against the agreements. This possibility is accentuated for the local government reform program where a further sphere of government, with potentially different objective sets, is involved in translating the principles into specific actions.

All of this means that, for a large part of the NCP agenda, there may be a variety of outcomes which satisfy the requirement for adequate progress against the objectives set out in the inter-governmental agreements, particularly in relation to the Competition Principles Agreement commitments. In effect, it means that in some areas jurisdictions are required to judge for themselves whether particular reform processes and outcomes satisfy the spirit and intent of the NCP program.

Inevitably, there have been occasions where jurisdictions have taken actions or adopted policies and processes which the Council does not regard as complying with the inter-governmental agreements. In these circumstances, the Council has assessed progress, for the purpose of recommending on the competition transfers, in terms of a demonstrated commitment to the NCP program, both in substance and spirit. This has involved judgments about whether governments have committed themselves to a genuine and comprehensive competition policy reform program, rather than to technical compliance with a preferred interpretation.

Together with the parties to the NCP agreements, the Council has a responsibility for ensuring that the scope and pace of reform is maintained. This means that the commitments specified in the Attachment to the Implementation Agreement, unless modified by formal agreement of the parties, must form the basis of the Council's assessment of progress. As a result, the Council is compelled to reject variations to the scope of the agenda and the implementation timetable, except where a formal agreement exists between all parties to vary the terms of the original agreements through COAG. In this respect, the Council notes that for the first tranche assessment:

- the scope and timing of the undertakings in the Conduct Code Agreement and the Competition Principles Agreement are unchanged;
- the reform objectives for electricity have been modified by the agreement of all parties;
- the framework for implementation of a National Access Code for gas pipelines is that set out by the Prime Minister on 10 December 1996; and

[11] The Attachment to the Agreement to Implement the National Competition Policy and Related Reforms is reproduced in the discussion in Part 1.

- the Council, in the absence of specific reform objectives established by Heads of Government, will assess compliance with road transport reforms in accordance with the program and timetable agreed by the MCRT on 14 February 1997.

LINKING PROGRESS AND THE NATIONAL COMPETITION POLICY PAYMENTS

The provision of NCP payments by the Commonwealth is conditional on States and Territories achieving satisfactory progress against the obligations under the Agreement to Implement the National Competition Policy and Related Reforms. First tranche NCP payments are to be provided by the Commonwealth to each State and Territory over two financial years commencing in 1997-98, on the recommendation by the Council that the State or Territory has achieved satisfactory progress.

The Council has looked for substantial compliance with the NCP obligations, both in terms of processes and reform outcomes. The Council has viewed failure to achieve substantial compliance as:

- a failure to implement significant agreed reforms such as participation in the national electricity market and arrangements to enable free and fair trade in gas;

- a series of flawed processes or inadequate reform outcomes, which, while not significant in themselves, together demonstrate a lack of commitment; or

- inadequate reform agendas for legislation review, competitive neutrality and local government reform (as tested against the Competition Principles Agreement) or a failure to sufficiently progress these agendas.

Part 3 of this report contains the Council's assessments of the progress achieved by each State and Territory government against first tranche reform obligations and the Council's consequent recommendations on the distribution of first tranche payments. The Council has identified three types of non-compliance with reform obligations below, and has made consequent recommendations for NCP payments. In doing so, it has taken account of the complexities associated with some reforms and the likely influence of factors beyond the direct control of individual jurisdictions.

Where there is a substantial lack of compliance or considerable delays in implementation against agreed timetables, but the Council judges that there are good prospects that the matter will be remedied within the next 12 months, the Council proposes that a jurisdiction receive all of the first part of the first tranche payment due in 1997-98, pending a further assessment of progress by the Council prior to July 1998. Where the matter is found to be satisfactorily progressed in this further assessment, the whole of the second part of the first tranche payment would become available in 1998-99. If the matter is unable to be resolved prior to the Council again reporting to the Treasurer, the Council would recommend to the Treasurer on whether part or all of the second part of the first tranche payment be retained by the Commonwealth.

Where the Council assesses there is substantial non-compliance with a first tranche obligation which cannot be remedied without a change in policy, but the relevant Government has indicated that it may reconsider the matter within the next 12 months, the Council recommends that the whole of the first tranche payment be suspended until it is able to advise the Commonwealth Treasurer that the change in policy has taken place.

Where there is a substantial failure, and the relevant Government has indicated that the matter will not be addressed, the Council has recommended a negative assessment. A negative assessment involving a recommendation of partial payment of the first tranche transfers may be appropriate in some cases.

PART 3: ASSESSMENT OF PROGRESS

The June 1996 policy statements, the 1997 annual reports, and the Council's discussions with States and Territories, indicate that, in general, the States and Territories have made significant progress against their first tranche NCP obligations. While the Council has not reported the full detail of the reforms achieved, it notes continued progress with the reform of government business activities, progress in reviewing restrictive legislation and the establishment of a national market in electricity as areas where advances have occurred.

The Council has also identified some areas where the reform agenda has not been adequately addressed. For example, some restrictive legislation has not been scheduled for review. The application of the competition principles to local government, while now underway, does not appear to have met jurisdictions' early objectives. And there are emerging competitive neutrality questions which will need to be addressed in the second and third tranche assessments of progress.

Compliance with first tranche electricity reform objectives is now well advanced, although it has proceeded according to a much later timeframe than originally set by COAG. Gas reform has been also considerably slower than originally anticipated, particularly in relation to the development of a national regulatory framework. The development and implementation of road transport reforms has also taken longer than originally envisaged, although some recent progress has been made. Given the importance of these reforms, the Council is concerned to see that there are no further slippages in implementation. The Council has placed substantial weight on the achievement of freely operating national markets in electricity and gas in assessing first tranche reform performance and intends to give high priority in the second and third tranche assessments to the timely implementation of agreed electricity, gas, water and road transport reforms.

This part of the report outlines the Council's general observations about progress with each element of the first tranche reform agenda, prior to reporting on each jurisdiction's progress and recommending on the distribution of first tranche NCP payments.

THE COMPETITION CODE

All governments have now enacted legislation introducing the Competition Code within their jurisdictions. The Council is satisfied that all States and Territories have met their reform commitments.

LEGISLATION REVIEW

Under the Competition Principles Agreement, governments have undertaken to review and reform all legislation which restricts competition such that legislation does 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 met by restricting competition.

The review program and resulting reform, where appropriate, is to be completed by the year 2000. In addition, all new legislation which restricts competition enacted after April 1995 must be examined at the time it is proposed to ensure the restriction provides a net community benefit, and that the objectives of the restriction can only be achieved by restricting competition.

All governments have developed a timetable for the review of restrictive legislation in accordance with the requirements of the Competition Principles Agreement, and have commenced their review

programs. Governments have also produced an annual report covering progress in implementation against their review programs as required under the Competition Principles Agreement.

For the first tranche assessment, the Council examined jurisdictions' timetables, with the objective of ensuring that all legislation imposing non-trivial restrictions on competition had been scheduled for review and that processes are in place to ensure that new legislation which restricts competition is examined. The Council also considered jurisdictions' early progress against the review objectives set out in their timetables, and examined the reforms arising from some completed reviews as part of the first tranche assessment.

The Council's examination of jurisdictions' programs focused on three broad considerations relevant to assessing the adequacy of jurisdictions' performances against their reform commitments:

- the adequacy of the review agenda;
- commitment to completion of the review program and implementation of appropriate reforms by the target date of the year 2000; and
- the quality of jurisdictions' review and reform processes.

Adequacy of the review agenda

While each government's timetable provides a generally comprehensive reform agenda, the Council is not certain that each has listed all anti-competitive legislation for review. The Council has so far identified three areas of concern:

- some jurisdictions have not scheduled for review laws pertaining to casino licensing;
- one jurisdiction has given insufficient consideration to its treatment of laws ratifying agreements between governments and private sector entities, where these contain provisions such as exclusive licensing arrangements; and
- two jurisdictions have enacted or proposed legislation likely to introduce a substantial restriction on competition and are still to demonstrate the associated net community benefit.

The Council considers that failure to review the anti-competitive elements of casino control legislation and related casino agreement acts (such as exclusive licensing arrangements) is inconsistent with the spirit of the Competition Principles Agreement. However, because the review of casino licensing laws is likely to involve some complex issues and potential costs, the Council does not consider that a negative assessment for jurisdictions which have not yet programmed casino control legislation for review is warranted in respect of the first part of the first tranche of payments (due in 1997-98). Nonetheless, for the Council to reach an assessment that the intent of the Competition Principles Agreement has been satisfied for the first tranche, jurisdictions will need to agree to examine this legislation. The Council proposes to report on this matter to the Commonwealth Treasurer prior to July 1998.

Similarly, agreement or ratification laws commonly include provisions which restrict competition through, for example, exclusive licensing arrangements. Where jurisdictions have excluded such legislation from review, the Council has sought to establish that the effect on competition is trivial or that the net community benefit from restricting competition has been demonstrated. One jurisdiction is still to complete its evaluation of its agreement legislation. The Council proposes to report on this matter to the Commonwealth Treasurer prior to July 1998.

The Council anticipates that there may be other laws which restrict competition which have not yet been scheduled for review. To help identify these, the Council issued a compendium in April 1997 listing all governments' legislation review programs with the objective of encouraging greater public scrutiny of this aspect of the NCP program. The Council will raise any legislation so identified with relevant jurisdictions. The Council will also take account of any community comment concerning

the scope of the legislation review and reform program in its second and third tranche assessments of reform progress.

Governments' legislation review processes should also ensure that new legislation which restricts competition is systematically examined at the time it is proposed to ensure that the restriction provides a net benefit to the community and that the objective of the legislation can only be met by restricting competition. All jurisdictions have in place formal mechanisms by which the competition policy implications of new legislation are examined. The Council is seeking assessments of the net community benefit associated with restrictive legislation from two jurisdictions. The Council proposes to report on this matter to the Commonwealth Treasurer prior to July 1998.

Completion of the review and reform program on time

The Council has consistently sought to ensure that governments are in no doubt that the review and reform process should be completed on time – by the end of the year 2000 – if they are to receive a positive assessment of reform performance.

All governments have stated that they intend to complete their review and reform programs on time 'where appropriate, in accordance with the intent of the Competition Principles Agreement', although some have indicated that there may be a need to phase reform implementation over a period extending beyond the year 2000. The Council accepts that there may be cases where phasing of reform is necessary, such that reform is not fully implemented by the end of the year 2000. However, phasing beyond 2000 should occur only in exceptional circumstances and would need a strong public interest justification. The Council would have little sympathy for phasing beyond 2000 where a jurisdiction schedules complex reviews, or reviews likely to recommend reforms with substantial phasing-in periods, late in the review period.

One indicator of governments' commitment to the year 2000 target is their early progress against the review objectives set out in their June 1996 timetables. The Council is satisfied that all jurisdictions have made reasonable progress against their published agendas.

Quality of review and reform processes

The quality of the review and reform processes adopted by governments is important. Reviews should be bona fide examinations of anti-competitive arrangements and should aim at genuine reform. The Council has received some complaints from external parties about the composition and method of operation of some jurisdiction's reviews, and about the scope and availability of review terms of reference. In addition, in one case considered by the Council, a government has chosen to retain an existing restriction on competition even though the review recommended that pro-competitive reform is likely to be in the public interest.

For jurisdictions to be assessed as having achieved satisfactory progress, the Council considers it essential that reviews genuinely countenance reform. Moreover, decisions to reform restrictive arrangements need to have regard to review findings. The Council considers that governments which elect to retain restrictions in the face of review recommendations to the contrary without providing a convincing community benefit case have failed to meet the spirit of the Competition Principles Agreement.

Given that the legislation review and reform program has only recently commenced, the Council has had little opportunity to date to examine the alleged breaches of review process. As a consequence, the Council has not placed great weight on matters of review process in its first tranche assessment. However, it is likely that the community will demand greater attention to arrangements for consultation and participation as the legislation review program proceeds. The Council sees

community participation in reviews as desirable, and will take account of the quality of review processes in its assessments of second and third tranche reform performance.

COMPETITIVE NEUTRALITY

All governments have published a policy statement covering the application of competitive neutrality policy and principles and an annual report covering the detail of reform performance in this area. To accord with the requirements of the Competition Principles Agreement, the policy statements included an implementation timetable and a complaints mechanism. The Council's assessment of the adequacy of first tranche progress focussed on the nature and scope of the reforms proposed and progress in implementation, and on the complaints handling mechanisms and the effectiveness with which complaints have been handled to date.

Nature of reforms

The Competition Principles Agreement obliges governments to identify their significant business activities and apply appropriate competitive neutrality reforms. Governments are to apply a corporatisation model to their significant trading and financial enterprises, where appropriate, and to ensure that prices of goods and services reflect full cost attribution in the case of significant business activities for which corporatisation is not appropriate.

The proposed approach to corporatisation set out in the Competition Principles Agreement was developed in 1991 by an inter-governmental taskforce examining issues in the reform of Government Trading Enterprises. The corporatisation model developed by the taskforce contains seven key elements, including:

- a clear statement of objectives, with a clear commercial focus aimed at maximising the value of the owner government's investment in the enterprise;
- full responsibility and accountability for decisions affecting enterprise performance vested in a management board at arms' length from the owner government;
- independent and objective performance monitoring focussing primarily on commercial performance against clearly specified performance targets;
- effective rewards and sanctions pre-defined against agreed performance targets;
- competitive neutrality in input markets such that government enterprises do not face advantages or disadvantages in the cost of inputs relative to the private sector because of their public ownership;
- competitive neutrality in output markets, including the removal of any protective barriers which reduce the degree of competition faced by government enterprises and the application of the same legislative regulations facing equivalent private sector enterprises; and
- effective regulation of government enterprises such that natural monopoly powers cannot be abused.

Where corporatisation is not considered appropriate, jurisdictions are obliged to implement, where appropriate, pricing principles such that prices of goods and services reflect the full cost of production, including taxation or taxation equivalents and debt guarantee fees directed towards offsetting the competitive advantages provided by government guarantees. Regulations to which the private sector is normally subject, such as those relating to the protection of the environment and planning and approval processes, should also be imposed on government businesses on an equivalent basis to private sector competitors.

The Competition Principles Agreement extends the application of appropriate competitive neutrality reforms to significant local government business activities, where appropriate.

Implementation timetables

Each State and Territory government has set out a timetable for the application of competitive neutrality policy and principles to their significant business activities, although some governments are yet to specify these businesses or the particular reforms they intend to apply to them. The introduction of competitive neutrality arrangements to significant local government businesses has not advanced greatly, with most jurisdictions still to identify the businesses which will be subject to competitive neutrality reform. Jurisdictions have advised that they expect the pace of progress at local government level to increase from the second half of 1997.

Nonetheless, the Council acknowledges that useful progress has been achieved in establishing the environment for reform and developing a culture more accepting of change. State and Territory governments have been examining the performance of their business enterprises for some time now, and a number of larger businesses have already been corporatised or privatised. All jurisdictions have also been considering their approach to some of the more complex questions such as full cost attribution in the pricing of goods and services and the appropriate delivery of Community Service Obligations (CSOs). Each jurisdiction has produced guidelines for implementing competitive neutrality reform.

Acknowledging that reform involves some complex questions, the Council is satisfied with implementation progress to date. As the reform process continues, the Council will look in more detail at matters relevant to the effectiveness of jurisdictions' reform programs. This will encompass, in particular, consideration of the effectiveness of approaches to corporatisation including performance monitoring arrangements, application of full cost pricing principles and delivery of CSOs.

Competitive neutrality complaints

Apart from an implementation timetable, the Competition Principles Agreement requires that jurisdictions' policy statements include a complaints mechanism and that annual reports provide details of allegations of non-compliance with competitive neutrality policy.

All jurisdictions have introduced a mechanism for dealing with complaints about competitive neutrality matters. In most cases, the complaints handling mechanism is scheduled to commence formal operation on 1 July 1997 although all jurisdictions are operating an interim mechanism generally through their Treasury or NCP Unit. Four jurisdictions advised, either in their policy statement or subsequently, that they would operate an independent complaints mechanism established through legislation. The remaining four indicated that they would establish mechanisms within State Treasury portfolios. Similarly, the scope of complaints handling varies across jurisdictions, with some dealing with competitive neutrality complaints about all businesses and some confining consideration to complaints about businesses to which competitive neutrality principles are applied. In examining the effectiveness of competitive neutrality complaints handling arrangements, particularly in its future tranche assessments, the Council will take account of the degree of independence of the mechanism, the intended scope of coverage including the nature of complaints which can be lodged, the transparency of reporting of complaints and findings and the ease of access for complainants.

The Council has consistently advocated mechanisms that are independent of policy making bodies and, preferably, supported by legislation. While the Council accepts that complaints mechanisms operating within agencies which are also responsible for policy development are not inconsistent with the Competition Principles Agreement, it believes this aspect may need to be revisited in the

future if there is evidence that the complaints handling ability of internal mechanisms is compromised by their policy role. Annual reports will be a major factor as reported experience will demonstrate whether sufficient independence is provided by arrangements within policy areas of governments. Complaints, and action recommended by the complaints body, should be fully reported.

In relation to the scope of coverage, the Council views the handling and reporting of all non-trivial competitive neutrality complaints as important, rather than only those about businesses to which competitive neutrality principles are applied. Complainants should be able to question the basis of a policy or process, rather than merely whether that policy or process has been applied appropriately. In this respect, the Council supports the decision taken by some jurisdictions to deal with all complaints through the formal mechanism. Complaints provide a useful indicator of the effectiveness of the competitive neutrality policies adopted by jurisdictions and help identify areas for possible future reform. An effective complaints handling process is also likely to contribute to public confidence in a jurisdiction's competitive neutrality policy and in the NCP program more generally.

The Council accepts that it is too soon to come to final judgments on these matters, and will place considerable weight on the effectiveness of complaints handling in the second and third tranche NCP assessments.

An emerging competitive neutrality complaints issue is the appropriate treatment of complaints about businesses which are partially privatised. Given that the agreed objective of competitive neutrality reform is the 'elimination of resource allocation distortions arising out of the public ownership of entities engaged in significant business activities', the Council believes that complaints mechanisms need to address all complaints which arise as a result of a business's government ownership connections. This would include businesses which are part-owned by governments. The Council will examine jurisdictions' policy approaches to complaints about partially-privatised businesses as part of its subsequent tranche assessments of whether all obligations under the competition policy intergovernmental agreements are being met.

APPLICATION TO LOCAL GOVERNMENT

The Council is satisfied that all governments have made some progress towards implementing reform proposals in cooperation with local government, particularly in informing local government about processes for the application of NCP reforms. And it is probable that implementation of reform in some States is proceeding in accordance with objectives set out in their policy statements. While implementation as planned by those jurisdictions would mean that first tranche obligations are met, the Council does not as yet have sufficient evidence to be confident that that point has yet been reached.

The Council does not believe that the slower progress to date is the result of a lack of commitment by jurisdictions. Local government is diverse in respect of the size and nature of the businesses it conducts and the specialist skills available to it. In addition, there are a number of outstanding issues with respect to the taxation of Government Business Enterprises which have provided an impediment to reform, particularly for jurisdictions with large local government enterprises.

Nonetheless, to be satisfied that application of the competition principles to local government is progressing satisfactorily, the Council would need greater evidence of substantive progress. Accordingly, the Council proposes to re-assess progress with implementation at local government level before July 1998. Local government progress will also be important for the Council's second tranche assessment. The Council's recommendation that progress be re-examined reflects its view that the generally slower progress against first tranche reform commitments is in part attributable to the taxation matter and does not warrant a negative assessment.

RELATED REFORMS

Electricity

The National Electricity Market Phase 1 (NEM1)

The major focus of electricity reform has been the establishment of a competitive national market encompassing eastern and southern Australia. COAG had originally scheduled this for July 1995, but there has been some slippage in implementation. Following from the Prime Minister's 10 December 1996 letter, governments have agreed upon a new timeframe for implementation. The Governments of New South Wales, Victoria and the ACT have established an inter-state wholesale electricity market called NEM1, as an interim step in the transition to a fully established national electricity market. South Australia indicated in November 1996 that it will wait until the national electricity market is established in full before it elects to join the market.

The establishment of competitive electricity markets in New South Wales (including the ACT) and Victoria, and the NEM1 (which links these markets) incorporates a significant number of the proposed National Electricity Market initiatives. It is effectively the first phase of the introduction of the national market.

The first stage of NEM1 is characterised by:

- electricity flows in and between State markets based on competitive bid offers received in both markets;
- initial, non-technical limits on flows between markets (designed to ease the transition) being progressively removed;
- power system security responsibilities remaining with each State; and
- separate Snowy Traders in each State managing the bidding into each State.

The second stage of NEM1 will be characterised by:

- the removal of initial limits on interstate trading;
- power system security being managed on a national basis; and
- a single entity being responsible for Snowy participation in the market.

Although there has been slippage from the original commitments to electricity reform, particularly in relation to the commencement date for the interim competitive national electricity market, a timeframe for phasing in the competitive national market is now agreed by all governments. In addition, Queensland has recently confirmed its intention to interconnect with New South Wales and Tasmania has announced its intention to proceed with a link to Victoria (Basslink) within four years. Noting these factors, the Council considers that the progress achieved by all relevant jurisdictions against the first tranche assessment objectives has been satisfactory.

Gas

The agreed reforms on free and fair trade, as set out in the February 1994 COAG Communique, are broadly divisible into three categories:

- implementation of a uniform National Access Code for the services of gas transmission pipelines (subsequently amended in the June 1996 Communique to include distribution pipelines);[12]
- removal of all legislative and regulatory barriers to free and fair trade in gas between and within jurisdictions; and
- gas industry reforms to promote competition and free trade, including the structural reform of gas utilities and the adoption of uniform national pipeline construction standards.

Many reforms are tied to implementation dates which are now lapsed. In this respect, the Council believes that the introduction of free and fair trade in gas between and within jurisdictions has fallen considerably behind the original COAG agenda.

The Prime Minister's letter of 10 December 1996 outlined a process and new timetable for implementing the National Access Code. The Prime Minister's proposals have now been agreed by all jurisdictions, except Western Australia, and as a result form the basis of the Council's assessment of progress in implementing the National Access Code. The Council's assessment has taken into account that the timetable for implementation outlined in the Prime Minister's letter will not be met and that jurisdictions are developing a new timetable through the Gas Reform Implementation Group.

In addition to the National Access Code, the Council has assessed gas reform performance against the other reform commitments and timeframe set out in the February 1994 COAG Communique (for example, the commitment to remove legislative and regulatory barriers to the free trade of gas by 1 July 1996).

Road Transport

National road transport reform was originally envisaged to occur through a six module phased approach commencing in 1995. At this stage, progress has been slower than anticipated, with only one of the original six reform modules — relating to standard heavy vehicle charges — being developed by the NRTC and implemented by jurisdictions. And in most instances, implementation took place later than originally agreed.

All jurisdictions have endorsed the program for future reform agreed on 14 February 1997 by MCRT,[13] although some jurisdictions indicated that reform progress should not be assessed on the basis of the timetable until it is endorsed by Heads of Government and the ACT indicated its capacity to implement the MCRT program is dependent on action by the Commonwealth. Notwithstanding these qualifications, the Council is satisfied that all jurisdictions have met the first tranche assessment criteria. Jurisdictions' performance against the MCRT program and timetable (subject to any change agreed by Heads of Government) will provide the criteria for the Council's second and third assessments of road transport reform performance.[14]

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12 See Footnote 7.

13 A statement by Heads of Government on road transport reform would take precedence over the MCRT timetable and would become the basis for the Council's NCP assessment.

14 The Council notes that the ability of the ACT to implement the agreed MCRT reforms may be affected by the requirement that the Commonwealth legislate in this area on behalf of the ACT.

FIRST TRANCHE ASSESSMENT: NEW SOUTH WALES

SUMMARY

New South Wales has taken a leading role in achieving the COAG vision of free and fair trade in natural gas in Australia. The State has already implemented an effective framework for providing third party access for natural gas distribution within its boundaries and has been a prime mover in establishing consistent access arrangements at a national level. The New South Wales regime is consistent with the proposed national framework and will operate until the national regime comes into effect. New South Wales has endorsed the substance of the draft National Access Code and has agreed to implement it within the timeframe agreed by COAG.

A key outcome of the New South Wales reforms will be a significant reduction in the price of gas. This will flow from the Australian Gas Light Company's (AGL) proposal for providing third party access established in accordance with the New South Wales regime. The proposal sets out the company's undertaking on the terms and conditions for access to its gas distribution system. The draft determination on AGL's terms and conditions by the Independent Pricing and Regulatory Tribunal (IPART), the regulator in the New South Wales regime, provides for:

- a substantial reduction in the cost of transporting gas (New South Wales estimates this to be almost 30 per cent in real terms over the next three years); and

- elimination over three years of the cross-subsidy from business customers to households, while keeping price increases to households capped to well below the rate of increase in the Consumer Price Index.

New South Wales has been one of the leaders in reforming the electricity supply industry, operating a competitive market for trade in wholesale electricity since May 1996. The New South Wales market is now open to participation by any licensed electricity retailer, and the ability of customers to purchase electricity from any New South Wales supplier is gradually being extended. It is expected that any customer in New South Wales will be able to purchase electricity from any supplier by 1 July 1999.

New South Wales has also been to the forefront of moves to establish a fully competitive electricity market in Australia. On 4 May 1997, New South Wales, Victoria and the ACT established the first stage of an interim national market in advance of the fully competitive market. This was achieved through harmonisation of the arrangements in the New South Wales and Victorian electricity markets to enable electricity generators to compete to supply power to retailers in the three jurisdictions, and indirectly in South Australia. New South Wales has substantially restructured its electricity generation and distribution arrangements to provide for greater competition in electricity supply.

In addition, New South Wales has demonstrated a continuing strong commitment to examining the commercial focus of its government business activities, and to introducing competitive neutrality reforms such that significant government businesses have no special advantages over their private sector competitors as a result of their government ownership. The Government's policy statement places the onus on government businesses to implement competitive neutrality principles unless they can demonstrate that the economic and social costs of implementation outweigh the benefits. This is being done through the corporatisation of a large number of non-Budget sector businesses and wide application of the Government's Financial Policy Framework. At the same time, social justice objectives in relation to the non-commercial activities of Government Trading Enterprises are

addressed through direct transparent payments from the Consolidated Fund to businesses that have adopted competitive neutrality principles in accordance with the Competition Principles Agreement. New South Wales also recognises the possibility of competition between general government enterprises from different States and Territories and indicated its support for the development of nationally consistent guidelines for pricing and costing.

The proposal by New South Wales to establish an independent competitive neutrality complaints handling mechanism within IPART deserves support. Although the coverage of the proposed mechanism is at present confined to businesses to which competitive neutrality principles are applied, a mechanism which is independent of the Government's competitive neutrality policy-making body and able to recommend on means of resolving complaints, including changes in policy, is desirable.

New South Wales has also developed a generally comprehensive program of review of legislation restricting competition, although the Council has identified some deficiencies. At this stage, New South Wales does not propose to review legislation providing a monopoly licence for casino owners. In addition, the Council is still to establish the community benefit case in respect of intended legislation conferring a long term monopoly licence on the (proposed) privatised Totalizator Agency Board. The Council is also critical of New South Wales' decision to continue the current vesting arrangements for the domestic marketing of rice, and considers that the decision does not meet the spirit of the Competition Principles Agreement. This decision to continue the vesting arrangements was taken despite the recommendation of an independent review panel that deregulation of domestic arrangements, while leaving the export monopoly intact, would provide a net benefit to the community.

The New South Wales Government has indicated a preparedness to enter into meaningful discussions with the Council on the Council's competition policy concerns with its domestic rice marketing arrangements. Recognising this, and the fact that New South Wales rice marketing was one of the first major reviews of legislative restrictions on competition, the Council will reassess New South Wales' progress on legislation review matters prior to July 1998 for the purposes of the second part of the first tranche assessment and in future tranche assessments. The Council will take into account the discussions with New South Wales on rice marketing in these assessments, particularly given its view that consideration of SMAs will be one of the most important areas of the forthcoming NCP program.

New South Wales has made progress with applying the competition principles to local government, particularly in developing guidelines for implementation. However, the Council does not yet have sufficient evidence that reform progress satisfies New South Wales' first tranche obligations. Noting that advances are anticipated over the next 12 months, the Council will reassess progress 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 New South Wales, with effect by 20 July 1996.**

Implementation: The *Competition Policy Reform Act 1995* received the Royal Assent on 9 June 1995. The substantive provisions of the Act commenced on 21 July 1996.

Assessment

Complies with commitment.

COMPETITIVE NEUTRALITY

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

New South Wales 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

New South Wales is implementing competitive neutrality principles in both its GBEs and its general government enterprises (GGEs). The New South Wales Government indicated its support for competitive neutrality reform, stating that it has placed the onus on significant government businesses to implement competitive neutrality principles unless they can show that the economic and social costs of implementation outweigh the economic and social benefits. Accordingly, government businesses in New South Wales must complete a benefit cost analysis and demonstrate a net cost to the community if competitive neutrality principles are not to be introduced.

The legislative vehicles for corporatising GBEs in New South Wales are the *State Owned Corporations Act (NSW) 1989* and the *State Owned Corporation Amendment Act (NSW) 1995*. To date, 18 of the State's 65 GBEs subject to the *State Owned Corporations Act (NSW) 1989* have been corporatised or privatised. Most of these – some 14 – have been corporatised since the signing of the Competition Principles Agreement. A further 10 government business have been identified as candidates for future corporatisation or privatisation. Corporatised or privatised GBEs are involved in a range of areas including electricity, finance, gaming and recreation, and ports and waterways.

Corporatisation reforms under the Competition Principles Agreement are being progressed through the Government's Financial Policy Framework (FPF). All larger New South Wales Government businesses are already operating under the FPF and, by 1997-98, all significant government

businesses are expected to be subject to the FPF. Businesses operating under the FPF are committed to:

- the application of commercially based target rates of return, dividends and capital structures;
- regular performance monitoring;
- the payment of State taxes and Commonwealth tax equivalents;
- the payment of a risk related borrowing fee; and
- explicitly funded "Social Programs" or Community Service Obligations (CSOs).

To assist the application of competitive neutrality to GGEs, the New South Wales Government has developed general pricing and costing principles as part of the whole-of-government guidelines on pricing and costing. The principles are intended to ensure that GGEs undertaking significant business activities as part of a broader range of functions price their goods and services in a manner that reflects full cost attribution in the long run.

The New South Wales local government policy statement indicated that, from 1 July 1997, the Government intends to apply a corporatisation model to local council businesses with annual gross operating incomes above $2 million. Local government businesses with annual gross operating incomes of less than $2 million will be subject to full cost attribution as far as possible.

The Council is satisfied that the competitive neutrality reform agenda developed by New South Wales and the progress achieved against that agenda demonstrate satisfactory progress against New South Wales' first tranche competitive neutrality reform commitments in relation to State Government business activities.

Issue: Adequacy of the reform agenda: operation of the complaints mechanism

Assessment

New South Wales advised the Council in June 1997 that it intends to establish an independent competitive neutrality complaints function within IPART. At present, competitive neutrality complaints in New South Wales are, in the first instance, referred to the government business concerned. Complainants may also address their concerns to the Premier, whereupon the Cabinet Office would seek resolution of the issue in consultation with the business concerned. Complaints relating to tendering issues are dealt with separately by the State Contracts Control Board.

The New South Wales complaints process is available only in relation to complaints about government businesses to which competitive neutrality principles are formally applied. However, New South Wales indicated that it would consider extension of the jurisdiction of the complaints handling process to other government businesses after the Government has had an opportunity to consider the operation of the mechanism.

New South Wales reported three allegations of non-compliance with competitive neutrality policy. These related to:

- the manufacture and sale of artificial eyes by the Sydney Eye Hospital;
- the eradication of noxious weeds by the Upper Macquarie County Council; and
- the manufacture of products at Junee Prison.

In its annual report, the New South Wales Government noted that it is currently considering the application of competitive neutrality principles to the Sydney Eye Hospital as part of the general application of the NCP reforms. The Government considered that this will address the concerns raised in the complaint.

In the case of the Upper Macquarie County Council, the complainant alleged that it had been placed at a competitive disadvantage as a result of the county council selling chemicals for weed control at prices not reflecting full production costs. This complaint is being addressed through public consultation. The Government reported that the Minister of Agriculture met with the complainant and that a discussion paper addressing future arrangements for controlling noxious weeds and the role of county councils has been released for comment.

The complaint relating to the use of labour at Junee Prison was forwarded to the New South Wales Government by Victoria. New South Wales stated that a national code of practice is being developed to address issues relating to the application of competitive neutrality policy to prison-based industries on an inter-jurisdictional basis.

While full details of the proposed competitive neutrality complaints handling facility within IPART are yet to be provided, the Council supports the proposal for a mechanism within IPART, independent from the New South Wales Government agency with responsibility for development of competitive neutrality policy. The Council draws attention to its earlier comments concerning the coverage of the complaints handling mechanism. In particular, the Council encourages New South Wales to address competitive neutrality complaints about all government businesses through IPART rather than only those about businesses to which competitive neutrality reforms are applied.

There is no resolution as yet in relation to any of the allegations of non-compliance with competitive neutrality policy. However, the Council is satisfied that each is receiving appropriate consideration.

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

New South Wales has restructured the regulatory and operating sectors of its electricity industry, with the operating sector further divided into its natural monopoly (transmission and distribution) and potentially competitive components (generation and retail). The passage through the New South Wales Parliament of the *Electricity Supply (NSW) Act 1995* saw the establishment of a unified legislative framework for the industry and made provision for transmission and distribution

of network service provision, competitive retail electricity supply and the establishment and regulation of a wholesale electricity market.

The New South Wales Government has also made progress in reforming its gas monopolies. Its annual report pointed to a range of initiatives, including the:

- transfer of regulation of domestic gas tariff markets to IPART;
- implementation of a third party access regime for natural gas distribution;
- provision of the staged removal of cross subsidies; and
- amendment of legislative provisions and the review of CSOs to facilitate competitive neutrality between the gas and electricity sectors as part of a strategy to stimulate development of an overall energy market.

New South Wales also stated that it has undertaken action consistent with its structural reform obligations under clause 4 of the Competition Principles Agreement in a number of other areas including rail, the Lotteries Commission, the Murrumbidgee and Coleambally irrigation schemes, the Sydney Market Authority, the Valuer General and the Office of the Public Trustee.

The Council notes that New South Wales has prepared legislation for the privatisation of the Totalizator Agency Board and is considering the possibility of privatising its electricity sector. Structural reform action taken by New South Wales in both these areas will be important clause 4 matters for future tranche progress assessments if the privatisations proceed.

The Council considers that New South Wales has met first tranche obligations in relation to clause 4 structural reform matters.

LEGISLATION REVIEW

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

New South Wales 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 on progress under clause 5(10) of the Competition Principles Agreement.

Issue: Adequacy of the review program

Assessment

New South Wales reported that it has examined all State legislation to identify laws which restrict competitive behaviour and to determine whether the costs of the restrictions are known, unnecessarily high or not justified by the benefit to the community. More than 200 pieces of legislation were identified and have been listed in the June 1996 *NSW Government Policy Statement on Legislative Review,* for review and where appropriate, reform in the period to the end of the year 2000.

The review agenda incorporates the Licensing Review Program which to date has resulted in the review of some 250 licences. Of these, 34 have been nominated for repeal under the *Regulatory*

Reduction Act 1996 and seven removed by amending particular legislation or introducing new legislation. A further 44 licenses have been administratively repealed or simplified into one of three licence categories - fencing, general maintenance and cleaning.

New South Wales has stated its intention to complete its review and reform program by the year 2000 'where appropriate'. The Council is satisfied with New South Wales' stated commitment to the year 2000 target date. However, the Council draws attention to its earlier comments regarding the importance of completing the review and reform program by the year 2000. Only in exceptional circumstances would the Council consider a jurisdiction to have complied with the spirit and intent of the Competition Principles Agreement if reform implementation extended beyond the year 2000.

The Council is not convinced that the New South Wales program incorporates all anti-competitive legislation. In particular, the Council notes that New South Wales has not listed the *Casino Control Act 1992* in its review program.

The Council has considered the argument by the New South Wales Government that there is a strong public benefit case justifying retention of the current casino licensing arrangements without review, with benefits arising from the minimisation of the risk of criminal influence and exploitation of gambling outweighing the cost of restricting competition. New South Wales also argued that the restrictions on casino licensing contained in the legislation were arrived at following extensive debate within the Parliament and the community at a comparatively recent time.

The Council notes that the *Casino Control Act 1992* contains provisions relating to exclusive licensing entitlements and on this basis should be listed for review. The Council does not consider the case put by New South Wales provides sufficient justification for exclusion from review, particularly given that other States are proposing to review similar casino legislation.

The Council considers that the failure to include the *Casino Control Act 1992* in the Government's legislation review program is inconsistent with New South Wales' obligations under clause 5 of the Competition Principles Agreement. However, the Council anticipates that a process for considering the anti-competitive elements of casino legislation can be agreed with New South Wales over the next 12 months. In view of this, and noting that casino licensing involves consideration of some complex social questions, the Council recommends that the matter be reassessed prior to July 1998. The Council recommends that the first part of the first tranche of NCP payments available to New South Wales not be affected by the Council's assessment of this matter.

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

The Council notes the advice provided by New South Wales that it has examined all post-April 1995 legislation. This process has identified two pieces of legislation which contain anti-competitive elements – the *Waste Minimisation Act 1995* and the *Pawn Brokers and Second Hand Dealers Act 1996*. The Council has been advised that both pieces of legislation contain a provision requiring their review five years after the date of assent.

New South Wales stated that it has adopted a process whereby all new legislation is reviewed for consistency with the Competition Principles Agreement by the Cabinet Office. Any elements of legislation perceived to contain anti-competitive provisions are referred by the Cabinet Office to the responsible Minister for further consideration or brought to the attention of the Cabinet, where the anti-competitive elements must be formally approved by the Premier. Further, all New South Wales Government agencies are required to prepare Regulatory Impact Statements with respect to subordinate legislation.

New South Wales advised the Council in June 1997 that it is preparing new legislation for the privatisation of the Totalizator Agency Board. This legislation will include a monopoly licensing provision for the privatised entity of up to 15 years duration. Noting that the new legislation will introduce a restriction on competition, the Council is seeking advice from New South Wales that the evidence available to the Cabinet Office is consistent with a judgment that the new legislation provides a net benefit to the community as a whole, in line with the requirements of clause 5(5) of the Competition Principles Agreement.

Subject to the availability of evidence to support a net community benefit from the restrictive elements of the Totalizator Agency Board privatisation legislation, the Council is satisfied that New South Wales has met its first tranche obligations with respect to the consideration of the competition implications of new legislation. The Council proposes to reassess the New South Wales' compliance with clause 5(5) of the Competition Principles Agreement in relation to the new Totalizator Agency Board legislation prior to July 1998.

Issue: Adequacy of progress with legislation review and reform

Assessment

Some 52 reviews have been scheduled by New South Wales for 1995-96. New South Wales reported that 36 have been completed and a further 15 were under way as at 31 December 1996. From the 1996-97 program, five reviews have been completed, 47 are in progress, and three are yet to commence.

New South Wales claimed a number of benefits arising from completed reviews, including the reduction of administrative arrangements and compliance costs and the repeal of legislation. In some instances, restrictive arrangements — notably licensing arrangements — have been retained on the basis of public safety considerations. The recommendations from several reviews were still being considered by the New South Wales Government at the time of reporting to the Council.

The New South Wales annual report also stated that eight pieces of legislation are under consideration for national review.

The Council appreciates that New South Wales has scheduled a large number of reviews during the first two years of the review program, and is satisfied that New South Wales has sufficiently progressed its review program. The Council can see little evidence of slippage in the review program to date.

The Council has examined the review and reform process followed by New South Wales in relation to the State Government's examination of domestic rice marketing arrangements dependent on the *Marketing of Primary Products Act 1983*. In particular, the Council noted that the decision by the New South Wales Government to extend the current (anti-competitive) vesting arrangements

available to the NSW Rice Marketing Board was taken despite the review recommendation that deregulation of domestic marketing arrangements would provide a net community benefit.

The New South Wales Government addressed the matter of the domestic marketing of rice in its annual report following a request from the Council for a statement indicating the net community benefit arising from the decision to maintain the vesting arrangements. The New South Wales Government stated, in essence, that it believes the benefits from deregulation of domestic rice marketing arrangements are relatively small, and cited concern that deregulation 'posed a great risk not only to the substantial benefits to the State, but also to the national economy'. The Government also claimed that there is no feasible means of deregulating domestic marketing arrangements while maintaining the Rice Marketing Board's export monopoly, which it considered contributed an unambiguous benefit, and that vesting arrangements are to be reviewed again in 2002.

The Council is not convinced that the New South Wales Government's approach on this matter is consistent with its Competition Principles Agreement commitments to retain restrictive arrangements only where a net benefit to the community is demonstrated. The Council has raised its concerns with the New South Wales Government. In response, the Government has indicated a preparedness to enter into meaningful discussions with the Council on domestic rice marketing arrangements. Recognising this, and the fact that New South Wales rice marketing was one of the first major reviews of legislative restrictions on competition, the Council will reassess New South Wales' progress on legislation review matters prior to July 1998 for the purposes of the second part of the first tranche assessment and in future tranche assessments. The Council will take into account the discussions with New South Wales on rice marketing in these assessments.

APPLICATION TO LOCAL GOVERNMENT

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

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

Assessment

The Council notes the assurances provided by New South Wales that application of competitive neutrality policies and principles is intended to be comprehensive, with a threshold of $2 million in gross operating income initiating corporatisation. Below this threshold, as many local government businesses as practicable are to apply full cost attribution principles and set prices which reflect full costs. Guidelines for local government businesses on the application of competitive neutrality reforms are expected to be distributed very soon, with the reforms scheduled to apply from July 1997.

New South Wales has an interim process for dealing with complaints about local government business activities. Some 10 complaints have been considered by the Department of Local Government since May 1996. Five of these were generic complaints from industry groups. Of the balance, two were found to involve a breach of policy requiring corrective action.

New South Wales is currently reviewing its planning, land use and natural resource approvals systems and the Government has released a White Paper and draft exposure Bill for comment. The *Local Government Act 1993* is scheduled for review in 1997-98.

While the Council is satisfied that the approach to reform at local government level proposed by New South Wales meets the intent of the Competition Principles Agreement, the Council is not convinced on the basis of the available evidence that the objectives outlined in the New South Wales policy statement have been achieved, particularly in relation to competitive neutrality reform. The Council acknowledges that New South Wales has approached the task of implementing reform at local government level in good faith, and that important preparatory work has been undertaken. However, the Council would need evidence of application of reforms to local government businesses to be confident that New South Wales has fully met its first tranche obligations in this area.

Recognising that the complexities associated with local government reform and on the basis of the progress likely over the next 12 months, the Council considers that New South Wales should meet its first tranche obligations. The Council recommends that progress be reassessed prior to July 1998 and that the first part of New South Wales' first tranche NCP payments due in 1997-98 not be affected.

PROGRESS ON RELATED REFORMS

ELECTRICITY

Recent history of reform in New South Wales

In August 1991, the Electricity Commission of New South Wales was renamed Pacific Power. It was restructured into six semi-autonomous, commercially oriented business units — three generating groups, a pool trading unit, a grid business and a services unit.

The Heads of Government meeting in May 1992 saw New South Wales commit itself to participating in a national electricity market. Arising from the COAG meeting of June 1993, New South Wales made an unambiguous commitment to reform in the lead-up to establishing the competitive national market, and agreed that the target date for commencement of the interim market should be July 1995. At the Darwin COAG meeting in August 1994, relevant jurisdictions, including New South Wales, agreed to make decisions by the end of 1994 or as soon as practicable thereafter on Snowy reform and the Interconnection Operating Agreement.

In February 1995, the transmission activities of Pacific Power were separated to become the Electricity Transmission Authority (trading as Transgrid), with Pacific Power's activities confined to generation.

In early 1996, the 25 electricity distribution bodies were amalgamated to form six large, independent, government-owned distributors. Each distributor operates ring-fenced wires and energy trading operations.

Early 1996 also saw the separation of Pacific Power into three independent, government-owned generation businesses – Pacific Power, Delta Electricity and Macquarie Generation.

A competitive market for state-based trade in wholesale electricity commenced on 10 May 1996. Participation in this market was initially limited to New South Wales generators and distributors and

ACTEW (Corporation Ltd). However, from 1 October 1996, the market was opened to participation by any licensed retailer, irrespective of ownership or location.

New South Wales is progressively extending retail competition to include all customers by 1 July 1999. Stage 1 commenced on 1 October 1996, with the New South Wales market opened to customers who consume more than 40 GWh per year. By 1 July 1997, any customers who consume over 750 MWh are expected to become eligible to enter the market.

In November 1996, New South Wales signed a Heads of Agreement with Victoria and the ACT to introduce an interim market (NEM1) in the movement to the proposed National Electricity Market. On 4 May 1997, the first stage of NEM1 commenced, which involved the harmonisation of market rules in the New South Wales and Victorian electricity markets to enable generators to bid against each other to supply power to energy retailers in New South Wales, Victoria and the ACT, and indirectly South Australia.

Reform commitment:	**Agreement to implement an interim national electricity market by 1 July 1995, or on such other date as agreed between the parties.**
Implementation:	Subsequent agreement has been reached on the reform process proposed by the Prime Minister on 10 December 1996. The first stage of NEM1 (harmonisation of the Victorian and New South Wales electricity market rules) commenced on 4 May 1997. NEM1 is expected to be completed by 5 October 1997 with full implementation of the National Electricity Market expected to commence on 29 March 1998.

Assessment

New South Wales has shown strong commitment to implementing the agreed electricity reforms and has made significant progress towards the competitive national market. While concerned about the delays to date, the Council accepts that action by New South Wales has been in good faith.

The Council considers that any further slippage in the implementation of agreed electricity reforms would be unacceptable and will be according high priority to this area in conducting its second tranche assessments.

The Council considers that New South Wales has complied with its first tranche electricity reform commitments.

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

Assessment

Complies with commitment.

Reform commitment:	**Agreement to the structural separation of generation and transmission.**
Implementation:	Generation and transmission have been completely structurally separated.

Assessment

Complies with commitment.

Reform commitment: **Agreement to ring-fence the 'retail' and 'wires' businesses within distribution.**

Implementation: Ring-fencing is by the application of an accounting framework. IPART has developed an accounting separation code, which provides principles and guidelines for the accounting separation and financial reporting requirements for the network monopoly activities of distributors.

Assessment

Complies with commitment.

GAS

Recent history of reform in New South Wales

The only gas transmission pipeline in New South Wales – the Moomba-Sydney facility – was sold by the Commonwealth Government to East Australian Pipeline Limited (EAPL) in 1994. The sale legislation established a third party access regime with the ACCC as arbitrator.

AGL distributes most of the natural gas sold in New South Wales markets.[15] The *Gas Supply Act (NSW) 1996* established a third party access regime for natural gas distribution services, with IPART as the regulator. The regime was submitted to the Council for certification in 1996. The Council released a draft recommendation in January 1997 that the Regime be certified as an effective access regime under section 44M of the Trade Practices Act, subject to a number of amendments to the Regime. All required amendments were implemented by April 1997.

IPART issued a draft determination in May 1997 to approve the amended AGL Access Undertaking lodged under the New South Wales Regime. The reference tariffs subject to this determination will provide for a substantial reduction in average transportation charges in the gas distribution market, and be structured to phase out cross-subsidies from the industrial market to the retail market.

New South Wales has developed its access regime as an interim measure ahead of the implementation of a National Access Regime under the auspices of COAG. New South Wales has endorsed the substance of the draft National Access Code and has agreed to implement it within the timeframe agreed by COAG.

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.**

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15 The exceptions are Wagga Wagga (where the gas distribution utility was sold by the City Council to Great Southern Energy in 1997) and in the Albury region (where natural gas is distributed by the Albury Gas Company, a GASCOR subsidiary).

Reform commitment: N**oted 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:[16] 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

New South Wales has provided a clear commitment to implementing national access arrangements for the gas industry consistent with the process outlined in the Prime Minister's 10 December 1996 letter. New South Wales has endorsed the substance of the draft National Access Code for finalisation by the inter-jurisdictional implementation group and is contributing to the development of an inter-governmental agreement to implement the Code through nationally-based legislation. New South Wales has made progress in implementing the intent of agreed reforms in this area through the establishment of an access regime for the services of gas distribution pipelines in the State, closely modelled on the draft National Access Code.[17]

The Council judges New South Wales to have complied with its first tranche reform commitments in regard to the national regulation of access arrangements for the gas industry.

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 encompasses 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. 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

A report by officials to Heads of Government in August 1994, *Implementation of a Pro-Competitive Framework for the Natural Gas Industry, Within and Between Jurisdictions* (the

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16 See footnote 7.

17 While some important differences exist between the New South Wales Regime and the draft national code, New South Wales plans to adopt the national code once it has been given legislative effect by participating jurisdictions.

August 1994 Report) reported that there were no significant legislative barriers to free and fair trade in gas in New South Wales at that time.

The Council is satisfied that there are no remaining legislative or regulatory barriers to free and fair trade in gas in New South Wales and, accordingly, considers New South Wales has complied with its first tranche commitments in this area. However, the Council considers this matter to be an on-going commitment and will take into account in future assessments any legislative or regulatory barrier that is subsequently discovered.

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

Assessment

New South Wales reported that the SAA Pipeline Code AS2885 was implemented in 1987. Since its adoption the Code has been applied in respect to the construction of the major pipelines, including the Mobil aviation turbine pipeline at Botany and AGL's natural gas pipelines to Newcastle and Wollongong. All new pipelines are required to meet the Code as a minimum requirement for pipeline construction licensing purposes under the *Pipelines Act 1967*.

The Council considers that New South Wales 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

New South Wales has transferred responsibility for the regulation of domestic gas tariffs in New South Wales to IPART.

Further, New South Wales has implemented an access regime for the natural gas distribution system that is modelled on the National Access Code for Natural Gas.

The Council considers that New South Wales 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 New South Wales are operated by separate legal entities: EAPL (transmission), AGL (distribution), the Albury Gas Company (distribution) and Great Southern Energy (distribution). EAPL is 51 per cent owned by AGL. No company in NSW operates *both* transmission and distribution services.

The New South Wales Access Regime for gas distribution services provides for the ring-fencing of a gas haulage business from any other business. In the light of this reform, AGL is currently implementing a corporate restructure to separate its network operations from retail functions.

The Council is satisfied that New South Wales has met this commitment.

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

Assessment

Before March 1997, the Wagga Wagga City Council operated the only publicly-owned gas transportation business in New South Wales. In March 1997, the City Council sold its utility to Great Southern Energy. Great Southern Energy is one of the recently formed New South Wales Government-owned electricity distribution businesses, and operates on a commercial footing.

More generally, New South Wales is providing for the staged removal of cross-subsidies provided by industrial to domestic gas markets and has reviewed arrangements for dealing with Community Service Obligations to facilitate competitive neutrality between the gas and electricity sectors of the energy market.

The Council is satisfied that New South Wales has met this commitment.

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

New South Wales implemented the heavy vehicle charges and associated permit reforms by state legislation on 1 July 1996. The Council accepts that the requirement for New South Wales to first remove existing permit schemes relating to heavy vehicles operating at higher mass limits in order to introduce the charges may have contributed to the delay in implementation beyond the original reform timetable.

New South Wales confirmed that it agrees with the policy position proposed by the MCRT, subject to reviewing the draft legislation and the revised Heads of Government Agreements being endorsed by Heads of Government prior to introduction into the Commonwealth Parliament.

The Council considers New South Wales to have complied with its first tranche road transport reform commitments.

FIRST TRANCHE ASSESSMENT: VICTORIA

SUMMARY

Victoria has led the way in introducing competition into the electricity supply industry. Since December 1994, it has operated a competitive State-based market in wholesale electricity, with progressively reducing customer thresholds for participation. Electricity arrangements have been substantially restructured and privatised to promote competition in generation and distribution. The five restructured distribution businesses, each comprising a (progressively) competitive energy retailing arm and a regulated local geographic wires monopoly were privatised in the second half of 1995. Victoria has also privatised its three wholly-owned generation businesses and its share of the Loy Yang B generator. The Government is now seeking to sell its remaining generation and transmission utilities.

Victoria has also been to the forefront of the move to a fully competitive national electricity market. On 4 May 1997, Victoria, New South Wales and the ACT established the first stage of an interim national market in advance of the fully competitive market. This was achieved through harmonisation of the arrangements in the Victorian and New South Wales electricity markets to enable electricity generators to compete to supply power to retailers in the three jurisdictions, and indirectly in South Australia.

In addition to the electricity sector, Victoria has extensively restructured many of its other government businesses. The Public Transport Corporation has been separated into five distinct businesses. There has been extensive reform of Victorian ports, particularly to break up and regulate commercial shipping channels. Victoria has submitted a regime to provide third party access to its shipping channels for certification by the Council. Flowing from the Government's reforms, port authority charges at the Port of Melbourne have fallen considerably since December 1994.

Victoria has also taken significant steps to introduce competition into its gas sector, and has restructured its gas industry. Following resolution of the State's long-standing concerns regarding the Petroleum Resource Rent Tax (PRRT) in November 1996, the Government announced a series of reforms, expected to take effect in 1997, aimed at removing restrictions on competition in the gas sector. Esso and BHP will no longer be prevented from selling gas to consumers in Victoria. Restrictions on Esso, BHP and GASCOR selling gas interstate will be removed. GASCOR will no longer be obliged to take gas exclusively from Esso and BHP. Customers of GASCOR will be permitted to on-sell gas, and restrictions on Esso and BHP, which have prevented them from building pipelines in certain areas of Victoria, will be removed. The Government is also taking a logical next step in restructuring GASCOR and GTC in preparation for privatisation in 1998.

In addition, Victoria has recently signalled its intention to seek certification of its State access arrangements for gas pipeline systems as an effective third party access regime. The Government intends that its regime operate as a transitional measure prior to the introduction by all jurisdictions of the National Access Code. Victoria has endorsed the substance of the draft National Access Code and has agreed to implement it within the timeframe endorsed by COAG.

Victoria has also developed a comprehensive reform agenda based around all other aspects of the NCP reform program. It has an extensive program of legislation review and reform, and has made significant inroads in its review schedule for 1996-97. The Government has emphasised the importance of completing its review and reform program within the period set by COAG. Similarly, the evidence indicates that Victoria has significantly progressed its competitive neutrality reform

agenda. A competitive neutrality complaints unit within the Department of Treasury and Finance has operated since July 1996.

Victoria is leading the other jurisdictions in the applying the competition principles to local governments. It has corporatised or has proposed for corporatisation a number of local government business activities, and intends to apply commercialised pricing principles to all significant local government business activities from July 1997.

COMPETITION CODE

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

Implementation: The *Competition Policy Reform (Victoria) Act 1995* received the Royal Assent on 14 November 1995.

Assessment

Complies with the commitment.

COMPETITIVE NEUTRALITY

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

Victoria 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 the intended competitive neutrality reform and the progress to date.**

Assessment

The Victorian Government has two models for applying competitive neutrality principles to its significant business activities. The first, aimed primarily at full corporatisation of GBEs, involves:

- corporatisation, including commercial accounting and rate of return requirements;
- application of Commonwealth tax equivalent payments;
- application of State taxes or tax equivalent payments and State utility charges;
- application of local rate or rate equivalent payments;
- application of debt guarantee fees; and

- application of relevant regulations to which the private sector is normally subject.

Victoria's June 1996 policy statement reported that 21 of the State's 32 significant GBEs were already corporatised. A further seven GBEs were to be reviewed, with the objective of corporatisation.

The Victorian annual report updated progress in imposing the competitive neutrality arrangements required under the Competition Principles Agreement, including extension of the Commonwealth tax equivalent regime (TER) to the Melbourne Ports Corporation, Melbourne Ports Services, the Victorian Channels Authority and the Victorian Plantations Corporation, although the scheduled extension of the TER to the Victorian Financial Management Corporation has not yet occurred due to an organisational restructure. Victoria also stated that the State's commitment to increase the exposure of its GBEs to the Financial Accommodation Levy and to local rates and State taxes and charges is proceeding as planned.

Victoria has also examined relevant legislation to determine whether its GBEs are treated preferentially in comparison to private sector competitors. As a result of these reviews, the *Heritage Act 1995* was introduced to replace the *Historic Buildings Act*, and a proposal to amend the *Building Act 1993* has been introduced to the Autumn session of the Parliament.

Victoria's second model involves reforms designed to place the Government's significant business activities on a more commercial footing. It comprises:

- examination of the most appropriate on-going structural arrangements for the delivery of the business or service delivery activity, including commercialisation or the adoption of a Service Agency model; and
- adoption of pricing principles which take account of and reflect full cost attribution for the net competitive advantages conferred on the activity by public sector ownership.

Victoria is considering this approach for a range of government commercial and non-commercial activities, including general government businesses and GBEs for which the corporatisation model is not appropriate. There are 19 significant business activities proposed for reform in this way, operating in areas ranging from agriculture and natural resources to community services to sport and the arts.

A further 10 significant business activities are under review to determine whether application of competitive neutrality reforms are appropriate, and if so, whether corporatisation or commercialisation reforms should be applied.

The Victorian annual report also described progress in applying competitive neutrality reforms to local government. By June 1997, all councils will have reviewed their business activities to identify reform candidates and the appropriate competitive neutrality model. Where appropriate, full cost pricing arrangements will be in place from July 1997, while councils are expected to complete corporatisation reform by July 1998. Victoria has since advised the Council that it will achieve its objectives for the reform of local government businesses.

The Council is satisfied that the scope and progress of the competitive neutrality reform achieved by Victoria to date meets first tranche reform commitments.

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

Assessment

Victoria has established a competitive neutrality complaints handling mechanism within the Department of Treasury and Finance. The mechanism considers complaints about business enterprises or activities to which competitive neutrality reforms are applied. Guidelines on the function and processes of the Competitive Neutrality Complaints Unit are available.

Victoria indicated that its Complaints Unit has been operating since July 1996, and dealt with nine complaints in the review period. Complaints have been made in relation to:

- commercial waste disposal services at the City of Greater Bendigo;
- transportation of non-urgent patients by Ambulance Services Victoria;
- bidding for Medicare funded artificial limb work by hospital departments;
- the use of an internal database by the City of Greater Geelong childcare services to compile a mailing list;
- hospital laundry services;
- the production of table tennis tables by prison industries;
- the establishment of a new saleyard by Baw Baw Shire Council;
- statutory food analysis services provided to councils by the Melbourne Diagnostic Unit of the University of Melbourne; and
- provision of security instruction courses by TAFE colleges.

The Complaints Unit found no technical breach of competitive neutrality principles in any of the above cases. However, it reported that it would have found a breach of the Government's competitive neutrality policy for the first six of the above allegations, once the policy applies in July 1997. The findings of the Complaints Unit were sent to both the complainant and the target of the complaint.

The Council accepts that Victoria has established a mechanism for dealing with complaints consistent with the Competition Principles Agreement. However, the Council draws attention to its earlier comments concerning the desirability of an independent process separate from the agency that is formally responsible for developing and applying the State's competitive neutrality policy. The Council also believes there is value in using the Complaints Unit to also deal with complaints about government business activities which are not subject to the Government's competitive neutrality policy. Victoria's experience to date indicates the wide scope of potential competitive neutrality concerns, and the Government has recognised in its policy statement the scope for complaints to signal priorities for reform.

The Council is satisfied that Victoria's approach to competitive neutrality complaints handling meets first tranche reform commitments, noting the need to monitor the effectiveness of arrangements for complaints handling.

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

Clause 4 of the Competition Principles Agreement requires that, before competition is introduced to a sector traditionally supplied by a public monopoly, responsibility for industry regulation is removed from the monopoly. Before competition is introduced, and before a public monopoly is privatised, governments have undertaken to review the commercial operation of the monopoly.

Victoria has extensively privatised its electricity supply industry. In line with this, the State Electricity Commission of Victoria has been vertically and horizontally separated into five distributors, five generators, Power Net (the manager of the transmission assets), and the Victorian Power Exchange (the operator of the transmission network and the manager of the wholesale electricity market). Victoria has also restructured its gas industry in preparation for national trading in gas. Accordingly, the Gas and Fuel Corporation of Victoria has been structurally separated into the Gas Transmission Corporation (GTC) and a gas distributor, GASCOR. The Public Transport Corporation of Victoria has also been restructured and now comprises five separate businesses — V/line Passenger, V/line Freight, Met Trains, Met Tram and Met Bus.

There has also been structural reform of Victoria's ports. The monopoly element (shipping channels) has been broken up and regulated (along with prescribed services). The Port of Melbourne Authority's policy and environmental regulation functions have also been separated. Victoria pointed to the reductions in the port authority charges which have occurred in recent years, citing a 33 per cent overall reduction in charges at the Port of Melbourne since December 1994. Victoria submitted for certification by the Council its regime for third party access to commercial shipping channels in late 1996. The Council has provided its recommendation to the Commonwealth Treasurer and a decision is expected shortly.

The Council is satisfied that Victoria has met its first tranche structural reform obligations arising from clause 4 of the Competition Principles Agreement.

LEGISLATION REVIEW

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

Victoria 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

Victoria has an extensive legislation review schedule containing more than 400 pieces of legislation or regulation. The Council has not identified any Victorian legislation restricting competition which is not scheduled for review.

Victoria has indicated its intention to ensure that the review and reform agenda is completed by the end of 2000 on several occasions. Although six reviews are scheduled for completion in December 2000,[18] Victoria has assured the Council that there is sufficient time factored into the review and reform process such that the year 2000 target will be met.

The Council is satisfied that Victoria's legislation review and reform program has met first tranche legislation review obligations.

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

In January 1996, the Victorian Government provided its agencies with guidelines to assist their examination of the competition policy implications of all new legislation. This publication, entitled *Guidelines for the Application of the Competition Test to New Legislative Proposals,* requires that all new legislative proposals be assessed to ensure that anti-competitive elements of legislation provide a benefit to the community as a whole.

The Victorian Government also advised the Council that, since January 1996, new legislative proposals have been rigorously assessed to ensure that any anti-competitive provisions are justified on public interest grounds and that, in each instance, the Cabinet has been satisfied that the competition test was appropriately completed. Victoria undertook to provide details of all new legislative proposals as part of the State Government's annual reporting obligations.

The Council is satisfied that Victoria has met its first tranche obligations with respect to the consideration of the competition implications of new legislation.

[18] Specifically, the *Adoption Act 1984* (and regulations), the *Heritage Act 1995*, the *Mental Health Act 1986*, the *Transport Act 1983* - Part 6, Division 8 (Tow Trucks), the *Transport (Tow Truck) Regulations 1994* and *the National Rail Corporation (Victoria) Act 1991.*

Issue: Adequacy of progress with legislation review and reform

Assessment

In July 1996, Victoria released a publication entitled *"Guidelines for the Review of Legislative Restrictions on Competition"* which sets out administrative and methodological guidelines to ensure that reviews are undertaken in a manner consistent with NCP principles.

There have been 73 variations to the June 1996 Victorian legislation review timetable. Most of these appear to reflect the repeal and consolidation of legislation, the consolidation of review processes so that reviews sometimes encompass a number of pieces of related legislation and the earlier commencement of programmed reviews.

In its annual report, Victoria indicated that at April 1997 it had completed nine reviews. These reviews resulted in the removal of unjustified restrictions on competition in almost two dozen pieces of legislation through removal of particular anti-competitive provisions or repeal of entire laws. A further nine reviews were in progress, with seven deferred or still to commence.[19] At April 1997, Victoria had also completed or commenced more than two-thirds of the 70 review processes scheduled for completion by July 1997.

There appears to be some deferral and rescheduling of Victoria's early review program, although the Council acknowledges that Victoria has set itself an extensive review schedule for 1996 and 1997 and the evidence available to the Council suggests that reforms have been implemented quickly. The Council considers that Victoria's progress satisfies first tranche assessment requirements.

APPLICATION TO LOCAL GOVERNMENT

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

Victoria provided a policy statement in accordance with clause 7 of the Competition Principles Agreement.

Assessment

Victoria set out a range of competition policy objectives for local government in its policy statement. By June 1997, councils are to have reviewed the corporate structure of their business activities and determined appropriate competitive neutrality reforms. Full cost pricing principles are to apply where appropriate from July 1997, and businesses identified for corporatisation are to be corporatised by July 1998. Councils are to ensure that all new local laws comply with the competition principles from July 1997 and that existing local laws comply by June 1999. All councils have been subject to the Competition Code since July 1996.

Victoria's annual report and information subsequently provided indicate significant progress in application. For example, most local councils have undertaken audits of their compliance with the Competition Code and prepared strategies to ensure ongoing compliance. Two businesses have been corporatised - City Wide Service Solutions and Prahran Fruit Market - and a further two have

[19] This does not include legislation scheduled for review which relates to electricity and gas which are the subject of the COAG related reform agenda.

been approved for or are being considered for corporatisation. State Government guidelines on the preparation of new local laws are expected to ensure that laws enacted from July 1997 are consistent with competition principles. The Office of Local Government, in consultation with one metropolitan council, is reviewing that council's laws and developing draft local laws for public comment.

The Council considers that Victoria's local government policy statement provides a comprehensive framework, and believes Victoria has substantially met the first tranche reform requirements. The Council's assessments indicate that Victoria's progress on local government is in advance of other jurisdictions. However, a crucial element of the reforms is the application of competitive neutrality pricing principles from July 1997, which the Council will assess over the next 12 months.

Accordingly, the Council proposes to reassess Victoria's progress with the application of the competition principles to local government before July 1998. The Council anticipates being in a position to be satisfied that Victoria has clearly met its first tranche commitments at that time.

PROGRESS ON RELATED REFORMS

ELECTRICITY

Recent history of reform in Victoria

At the COAG meeting of May 1992, Victoria committed itself to participation in a national electricity market. Subsequently (COAG, June 1993), Victoria gave an unambiguous commitment to structurally reform its electricity arrangements in the lead up to the national market.

In October 1993, the Victorian Government reformed the State Electricity Commission of Victoria (SECV) into three separate businesses — Generation Victoria (generation), National Electricity (transmission) and Electricity Services Victoria (distribution).

National Electricity was separated into two businesses — the Victorian Power Exchange (to administer the market and oversee system control) and PowerNet Victoria (a transmission network company). Electricity Services Victoria was separated into five distribution businesses, each comprising a (progressively) competitive energy retailing arm and a regulated, local, geographic wires monopoly. Generation Victoria operated as an interim structure comprising five groups of power stations trading as independent, competing generators. During the second half of 1995, all five distribution businesses were sold to the private sector. Victoria now has privatised three wholly-owned generation businesses and its share of the Loy Yang B generator. The Victorian Government is seeking to sell its remaining generation and transmission utilities.

A competitive market for State-based trade in wholesale electricity has been operating since December 1994. Customer thresholds for participation in this market have been, and will continue to be, progressively reduced. On 1 July 1996, approximately 2000 customers with annual consumption each of at least 750 MWh became contestable.

In November 1996, Victoria executed a Heads of Agreement with New South Wales and the ACT to introduce an interim market (NEM1) in the movement to the proposed National Electricity Market. On 4 May 1997, the first stage of NEM1 commenced, which involved the harmonisation of market rules in the New South Wales and Victorian electricity markets to enable generators to bid against each other to supply power to energy retailers in New South Wales, Victoria and the ACT, and indirectly South Australia.

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: Subsequent agreement has been reached on the reform process proposed by the Prime Minister on 10 December 1996. The first stage of NEM1 (harmonisation of the Victorian and NSW electricity market rules) commenced on 4 May 1997. NEM1 is expected to be completed by 5 October 1997 with full implementation of the National Electricity Market expected to commence on 29 March 1998.

Assessment

Victoria has shown strong commitment to implementing the agreed reforms, and significant progress has been made. While concerned about the delays to date, the Council accepts that action to date by Victoria has been in good faith and has met its first tranche electricity reform commitments.

Noting earlier delays in the national reform program, the Council considers that any further slippage in the implementation of agreed electricity reforms would be unacceptable. It will be according high priority to this area in conducting its second tranche assessments.

Reform commitment: **Agreed to subscribe to NECA and NEMMCO.**

Implementation: Subscribed to NECA and NEMMCO.

Assessment

Complies with commitment.

Reform commitment: **Agreed to the structural separation of generation and transmission.**

Implementation: Generation and transmission have been completely structurally separated.

Assessment

Complies with commitment.

Reform commitment: **Agreed to the ring-fencing of the 'retail' and 'wires' businesses within distribution.**

Implementation: Ring-fencing is by the application of an accounting framework. The Office of the Regulator-General has issued regulatory information requirements for the electricity distribution businesses, which includes the disaggregation of the distributor's consolidated financial statements.

Assessment

Complies with commitment.

GAS

Recent history of reform in Victoria

The Gas Industry Act 1994 separated the transmission and distribution functions of the former Gas and Fuel Corporation of Victoria into two new state-owned utilities: the GTC and GASCOR (trading as Gas and Fuel).

Resolution of the PRRT issue in November 1996 was accompanied by the announcement of further reforms in the gas industry, including:

- removal of restrictions preventing Esso or BHP from selling gas to consumers in Victoria;
- removal of GASCOR's obligation to take gas exclusively from Esso/BHP;
- removal of any restrictions on the right of GASCOR, Esso and BHP to market gas freely interstate;
- removal of restrictions on customers of GASCOR from on-selling gas; and
- removal of restrictions on Esso or BHP which prevent them from building pipelines in certain areas of Victoria.

The Council understands that these reforms are expected to form part of a legislation package (also covering the establishment of a third party access regime and privatisation of gas utilities) to be implemented in 1997.

In March 1997, the Victorian Government announced the restructuring of GASCOR and GTC to prepare for privatisation of the industry in 1998:

- GASCOR is to be unbundled into three businesses, each comprising a separate retailer and distributor, operating in separate geographical areas; and
- GTC is to take on the additional role of the new Gas Transmission System Operator (GTSO) to manage the gas wholesale market. The GTSO would operate a pool mechanism in which net imbalances in the supply and demand for wholesale gas in the transmission system would be settled via adjustments to spot prices.

In April 1997, Victoria informed the Council that it would seek certification of its access regime for gas pipeline systems. The regime would operate as a transitional measure prior to the introduction by all jurisdictions of the National Access Code. Victoria has endorsed the substance of the draft National Code and has agreed to implement it within the timeframe agreed by COAG.

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:[20] 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 Victoria 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. The Council is also aware that the timetable for this process now envisages South Australia, as lead legislature, 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 Victoria 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 recognises that Victoria is proposing to move ahead of the national process, intending to introduce a transitional access regime by November 1997, and considers that Victoria will not have any difficulty in achieving the commitment. The Council proposes to reassess this matter for report to the Commonwealth Treasurer prior to July 1998.

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.**

[20] See footnote 7.

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. (Heads of Government noted that Victoria's ability to commit to this timetable is contingent upon satisfactory and timely resolution of the Petroleum Resources Rent Tax issue.)**

Assessment

A report by officials to Heads of Government in August 1994, *Implementation of a Pro-Competitive Framework for the Natural Gas Industry, Within and Between Jurisdictions* (the August 1994 Report) reported that the *Gas and Fuel Corporation Act 1958* would need to be reviewed and amended to provide for:

- structural separation of gas transmission and distribution functions of the Gas and Fuel Corporation of Victoria (GFCV);

This reform has since occurred under the *Gas Industry Act 1994*, which separated the GFCV into the GTC and GASCOR.

- removal of the exclusive franchise provisions under which the GTC and GASCOR have exclusive rights to convey gas in Victoria through transmission and distribution networks respectively.

Significant reforms were announced in this area to accompany resolution of the PRRT dispute:

- removal of restrictions which prevent Esso or BHP from selling gas to consumers in Victoria;
- removal of GASCOR's obligation to take gas exclusively from Esso/BHP;
- removal of any restrictions on the right of GASCOR, Esso and BHP to market gas freely interstate;
- removal of restrictions on customers of GASCOR from on-selling gas; and
- removal of restrictions on Esso or BHP which prevent them from building pipelines in certain areas of Victoria.

The August 1994 Report also noted that the *Pipelines Act 1967* would require reform to permit third party access.[21]

The Council understands that these reforms are expected to form part of a legislation package (also covering privatisation of gas utilities and a third party access regime) to be implemented in late 1997.

The Council is satisfied that Victoria has either removed, or is in the process of removing, the remaining legislative or regulatory barriers to free and fair trade in gas and considers that Victoria has met its first tranche commitments in this area. However, the Council considers this matter an on-going commitment and will take into account any legislative or regulatory barrier that is subsequently discovered, in future assessments.

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

Assessment

The Victorian *Pipelines Act 1967* requires all pipelines to be constructed in accordance with prescribed standards. The Specification Schedule in each licence requires construction to be in accordance with AS 2885.

The Council is satisfied that Victoria complies 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

Reforms currently underway in Victoria will adopt the provisions of the draft National Access Code, including the requirement for approval of access arrangements by independent regulators bound by competition objectives.

Under the proposed industry restructure, gas prices will be capped below the cost of inflation until the year 2001, with the service and pricing of the three distributors and retailers being regulated by the Office of Regulator General under a general tariff order.

All new legislative proposals in Victoria (including those impacting on price control and maintenance) are subject to a comprehensive review against competition principles.

The Council considers that Victoria has met 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,**

[21] Third party access reforms are addressed earlier in this section.

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 PRRT issue.)

Assessment

Victoria's GFCV was structurally separated under the *Gas Industry Act 1994* into two new, publicly-owned organisations – the GTC (transmission services) and GASCOR (distribution and retail services). Technical and regulatory functions have been transferred from the former GFCV to a separate agency responsible to the Minister for Energy and Minerals.

In December 1996 (shortly after resolution of the PRRT dispute), the Victorian Government announced plans to privatise its gas transmission, distribution and retail businesses. In preparation, GASCOR is expected to be disaggregated into three businesses comprising a separate retailer and distributor, operating in separate geographical areas. The first privatisation is expected to take place in the second half of 1997[22].

The Council is satisfied that Victoria complies with its first tranche commitment in this area.

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

Assessment

GTC and GASCOR are corporatised entities.

The Council is satisfied that Victoria complies 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

Victoria implemented the heavy vehicles charges and associated permit reforms on 1 January 1996. The Council notes some delay from the originally agreed implementation timetable due to the need for Victoria to first remove existing permit schemes relating to heavy vehicles operating at higher mass limits in order to introduce the charges.

Victoria has confirmed its commitment to implementing the reform agenda agreed at the meeting of the MCRT on 14 February 1997.

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[22] The Australian 11-12-96

The Council considers Victoria has complied with its first tranche road transport reform commitments.

FIRST TRANCHE ASSESSMENT: QUEENSLAND

SUMMARY

Queensland is committed to implementing the reforms to its energy sector required under the NCP program. It has extensively restructured its electricity generation and distribution arrangements. As part of the package of electricity reforms, an interim Queensland market will be introduced in several stages, commencing in the last quarter of 1997, to provide a transition to a fully competitive State market (in which all customers are contestable) by January 2001. The Queensland Government has confirmed its support for the establishment of the National Electricity Market, and has reaffirmed its commitment to interconnect with New South Wales by the year 2000-01.

Similarly, the Queensland Government has recognised the benefits of greater competition in gas supply. Amendments to the *Petroleum Act 1923* in April 1995 provided for the introduction of a third party access regime for licensed gas pipelines in Queensland and ring fenced vertically integrated utilities to prevent a gas pipeline owner from trading in gas. The former State Gas Pipeline, linking Wallumbilla with Gladstone and Rockhampton, was sold to Pacific Gas Transmission (PGT) after a competitive tendering process in 1996.

Queensland has been an active participant in the process of developing the National Access Regime, where its key concern has been the inclusion of a competitive tendering process within the Code. A competitive tendering process was adopted in developing new pipelines in the south-west of Queensland and the proposed Chevron transmission pipeline from Papua New Guinea to Gladstone. All jurisdictions have now agreed to include competitive tendering principles in the National Code. Queensland has also granted a number of new distribution franchises on the understanding that they will be subject to open access provisions upon the introduction of the National Access Code.

Queensland has continued its focus on the efficiency of operation of its government businesses in addressing its NCP reform obligations. The Queensland competitive neutrality policy statement listed 13 significant business activities that have been or are being corporatised and a further six that have been or are being commercialised. The Government identified a further 21 significant businesses where reviews are planned in order to determine whether reform is appropriate.

An independent competitive neutrality complaints handling mechanism is to operate within the new Queensland Competition Authority (QCA) from 1 July 1997. This mechanism, which will be independent of the Government's competitive neutrality policy making entity, will investigate and recommend on complaints about government businesses to which competitive neutrality principles are applied. Queensland has undertaken to consider extension of the coverage of the QCA process in the future.

Queensland has established a comprehensive legislation review schedule, although it has not listed its various casino agreement Acts. These Acts are, in effect, licensing arrangements protecting monopoly operations and should therefore be examined as part of the NCP program. Queensland has undertaken to provide the Council with advice on the nature of the competitive restrictions in the casino Agreement Acts and to discuss options for review. The Council will reassess progress on this matter prior to July 1998.

Application of competitive neutrality principles to local government is important in Queensland given the significant role played by some councils in the provision of services. Queensland has to date focused its reform effort on the largest 17 councils. These councils are required by legislation to identify significant business activities for reform subject to a public benefit test. The Council

supports this prioritisation on the basis that Queensland develops a workable strategy for extending reform to smaller local governments. In this respect, the Council notes the voluntary Code of Competitive Conduct intended for application to the business activities of smaller councils.

COMPETITION CODE

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

Implementation: The *Competition Policy Reform (QLD) Act 1996* was enacted on 10 July 1996 and received the Royal Assent on 17 July 1996.

Assessment

Complies with commitment.

COMPETITIVE NEUTRALITY

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

Queensland 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

Queensland is implementing competitive neutrality principles through corporatisation, commercialisation and full cost pricing.

Corporatisation in Queensland is undertaken in accordance with the Government's White Paper *Corporatisation in Queensland, Policy Guidelines* and has the legislative backing of the *Government Owned Corporations Act*. Significant business activities in Queensland are commercialised in accordance with *Commercialisation of Government Service Functions in Queensland Policy Framework* and have the legislative backing in the *Financial Administration and Audit Act (Public Finance Standard 350).* Guidelines for the application of full cost pricing have also been developed and have been included in an amendment to the State's Financial Management Standards which are to be considered by the Queensland Parliament in the near future.

Queensland has identified significant businesses on the basis of their scale of operation, their impact on the market(s) in which the business operates and the impact on the Queensland economy. In the

initial stages of competitive neutrality reform, Queensland has targeted businesses whose size of operation is greater than $10 million per year. Queensland has indicated, however, that the expenditure threshold is a guide only and does not preclude business activities which do not meet the threshold, including those operated by local governments, from consideration for reform. The Government stated that its intention is to progressively consider smaller government activities for review and potential reform.

The Queensland Government's policy statement listed 13 significant business activities that either had been or were being corporatised and a further six that had been or were being commercialised. These businesses are operating in a range of portfolios including: mining and energy, primary industries, public works and housing, and treasury and the arts.

Queensland identified a further 21 possible candidates for reform but, at June 1996, had still to determine the net benefit to the community from their reform. The significant business activities considered to be potential reform candidates are involved in areas such as education, health, tourism, primary industries and justice services. Queensland's annual report indicated some recent reform activity, including:

- the corporatisation of the Queensland Corrective Services Commission;
- establishment of Workcover as a statutory authority as a first step towards corporatisation;
- removing gaming machine rental from the Office of Gaming Regulation and placing it with alternative providers such as the Golden Casket Office (which is in the process of being corporatised);
- merger of Queensland Industry Development Corporation, Metway Bank and Suncorp; and
- divestment strategy for the Queensland Abattoir Corporation.

Application of competitive neutrality principles to local government is particularly important in Queensland given the significant role played by some councils in the provision of services such as water and sewage. In introducing competitive neutrality to local government, Queensland has to date focused on the largest 17 councils. These councils are required, under legislation, to review their significant business activities to establish candidates for reform subject to a public benefit test. A voluntary Code of Competitive Conduct has been developed for application to the business activities of smaller councils and includes guidelines for the application of full cost pricing.

Noting Queensland's undertaking to use business size as an indicator of the significance of government businesses (and not to exclude businesses with expenditure less than the threshold size), and the expectation that consideration of reform will be extended to smaller government businesses (including beyond the larger 17 local councils), the Council is satisfied that the competitive neutrality reform agenda developed by Queensland and progress to date satisfies the State's first tranche commitments. The Council will examine the scope of application of competitive neutrality reform in its second and third tranche assessments.

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

Assessment

Queensland intends to establish the QCA to provide, among other things, a competitive neutrality complaints handling mechanism to operate from July 1997. In the interim, the Queensland Treasury is coordinating the Government's responses to complaints about competitive neutrality.

The QCA complaints handling mechanism is intended to operate independently of the Government's policy making arms, receiving complaints from competitors of the Government's significant business activities, investigating those complaints and reporting to Ministers responsible. Queensland advised that the QCA's report will also make recommendations on possible remedial action.

The Queensland Government has indicated that it will limit the jurisdiction of the complaints mechanism to significant business activities which are subject to competitive neutrality reform and which are prescribed by gazette notice. The Government has, however, indicated that there is some potential for the mechanism to apply to a broader range of businesses at some time in the future. The Government pointed to a need to limit jurisdiction initially in order that experience is gained in administering the complaints process.

The Queensland annual report indicated that three complaints had been received. In two cases, the basis of the complaint was that publicly owned businesses were allegedly using government subsidies to price their production at less than full cost. The complaints received to date are:

- the failure of the Queensland Manufacturing Institute (QMI) to price prototypes it produces at full cost because of the availability of a government subsidy;
- an alleged unfair advantage in road construction and maintenance obtained by Road Transport Construction Service (RTCS) due to their pricing practices and an information advantage in the tendering process arising from insufficient separation of the purchase and provider roles of government; and
- the use of a government subsidy by Queensland Rail (QR) to reduce the price of its Brisbane to Gold Coast service and so obtain an unfair advantage over its competitors.

The Queensland Government reported that it had taken action on each complaint. In relation to the complaint against QMI, the Under Treasurer requested the Director General of the Department of Tourism, Small Business and Industry to establish whether QMI tender prices reflect full costs.

Queensland responded to the allegation against RTCS by employing a consultant to identify any instance of non-compliance with competitive neutrality principles in awarding tenders to RTCS. It was also reported that Main Roads Department has been engaging in extensive dialogue with the complainant, the Civil Contractor's Federation.

In relation to the allegation against QR, the complainant was advised by the interim complaints mechanism that the provision of Community Service Obligations (CSOs) is consistent with the Government's NCP obligations, but that matter would be raised by the Treasurer with the Minister for Transport as a priority. The complainant was also advised to resubmit the allegation of non-compliance to the QCA after its establishment on 1 July.

The company raising the complaint against QR has since advised the Council that it believes there are deficiencies in regard to the specification and funding of the CSO available to QR. While the Council is unable to comment on the specific claims raised by the complainant in this case, it believes that the matter indicates the potential deficiencies which might arise where complaints mechanisms have insufficient independence from the relevant policy making agency. The provision of clearly identified and transparently funded CSOs is consistent with governments' NCP commitments. However, in this case, the interim complaints mechanism appears to have determined only that provision of CSOs is consistent with the Government's NCP obligations, rather than examine the substance of the allegations about CSO provision and delivery. The Council understands that the QCA will be able to examine the substantive complaint and make recommendations for resolving the matter as appropriate.

The Council supports the decision of Queensland to introduce a mechanism which is independent of the Government agency responsible for developing and implementing competitive neutrality policy. However, the Council would expect to see some movement towards extending the coverage of the mechanism to all government business activities and annual (transparent) reporting of all competitive neutrality complaints and recommendations for action. With these qualifications, and noting that evidence of effective handling of competitive neutrality complaints will be an important consideration in future tranche assessments, the Council accepts that Queensland's approach to competitive neutrality complaints handling complies with first tranche reform obligations.

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

Apart from reforms to electricity authorities undertaken to reflect national electricity commitments (see below), the Queensland Government advised that no public monopolies have been privatised since the commencement of the NCP program.

The Government is currently considering the sale of QLDTAB. Were this to proceed, the provisions of clause 4 would need to be satisfied.

The Council considers that Queensland has met first tranche obligations in relation to clause 4 structural reform matters.

LEGISLATION REVIEW

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

Queensland 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

Queensland has developed guidelines to assist agencies in identifying restrictive legislation for review including, for example, legislation which prohibited or restricted activity by way of licensing arrangements, quantitative entitlements (eg quotas), technical standards, or price controls. Queensland advised in its July 1996 *Queensland Legislation Review Timetable*, that it had identified and scheduled some 125 pieces of legislation for review by the end of the year 2000.

The Council notes that Queensland has indicated that it may be to the benefit of the community to phase reforms over a period extending beyond the year 2000. While noting that Queensland has only one review set for 1999-2000, and that this is the State's last scheduled review, the Council draws attention to its general comments on this matter contained earlier in Part 3 of this report. Phased reform beyond 2000 as suggested by Queensland would require a strong public interest justification for the Council to consider that the spirit of the Competition Principles Agreement had been met.

The Council is concerned by Queensland's failure to list various casino agreement Acts for review. In relation to this, Queensland has advised that the *Casino Control Act 1982* and the *Casino Control Regulation 1984* will be reviewed in 1998-99, but that the Brisbane, Jupiters, Cairns, and Breakwater Island Casino Agreement Acts will not be reviewed on the ground that the Acts legitimate existing contracts.

The view of the Council is that these Acts are, in effect, licensing arrangements protecting monopoly operations and should therefore be subject to review. As a result, the Council is not satisfied that Queensland's review program incorporates all restrictive legislation as required by the Competition Principles Agreement. However, Queensland has undertaken to provide the Council with advice on the nature of the competitive restrictions in the agreement Acts and to discuss options for review. As a consequence, the Council judges that it is likely that the deficiency identified by the Council can be remedied within a short period. The Council recommends that it reassess this matter prior to July 1998.

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

The Council notes the advice provided by Queensland that its examination of all post-1995 legislation had identified some 14 Acts, regulations and by-laws containing anti-competitive elements. All appear to have been scheduled for review in Queensland's June 1996 timetable, or to be considered by Queensland to be potential candidates for review on a national basis.

Queensland advised that, as of 1 April 1997, it has had in place a formal procedure by which the competition policy implications of all new legislation are routinely examined. The process requires all proposals for new or amending legislation to be examined to determine whether they raise any competition issues. Further, new legislative proposals are subject to a Public Benefit Test, the results of which are to accompany any proposal to Cabinet. The Public Benefit Test requires an analysis of the incidence, and where possible the magnitude, of competitive restrictions, as well as examining regulatory alternatives.

The Council is satisfied that Queensland meets its first tranche obligations in relation to legislation restricting competition enacted after April 1995.

Issue: Adequacy of progress with legislation review and reform

Assessment

Queensland has scheduled 36 reviews for commencement and/or completion during 1996-97.

Queensland stated that it has completed two of the reviews scheduled during 1996/97 — the reviews of the sugar industry regulatory arrangements (jointly with the Commonwealth) and the Keno Act. At 31 December 1996, Queensland had 14 reviews in progress, with five other reviews yet to commence or deferred. A further five were being considered for review on a national basis. Of the remaining nine reviews scheduled for 1996-97 Queensland advised that two are being considered in the context of the gas and electricity reform agendas, with the remaining seven currently being examined by Queensland outside the NCP review program. The Council has some concerns that these early deferrals of programmed reviews may lead to cumulative slippage in the Queensland program closer to the year 2000.

The Council is also concerned at the reform outcomes indicated by the Commonwealth and Queensland Government responses to the review of regulatory arrangements pertaining to the Queensland sugar industry.[23] In particular, the Council is not convinced about the strength of the evidence that continuation of the domestic monopoly is necessarily in the community interest, and as a consequence, that there is justification for a 10 year moratorium on the further review of marketing arrangements. In response to these concerns, Queensland has undertaken to reconsider the 10 year moratorium should changes in market conditions suggest that current arrangements are no longer in the community interest.

The Council accepts that the endorsement of recommended reforms to sugar industry regulation announced by the Queensland and the Commonwealth Governments is consistent with the

[23] Queensland's annual report advises that both the Commonwealth and Queensland Governments have endorsed the recommendations of the review and will advise the Council of any legislative changes necessary to implement the review recommendations.

recommendations of the review panel. On this basis, and given Queensland's commitment to consider an earlier review of marketing arrangements should changes in market conditions suggest that current arrangements are no longer in the community interest, the Council is satisfied Queensland has sufficiently progressed its first tranche review program. However, the Council intends to continue discussions with Queensland and will consider this matter in the context of the second tranche assessment.

APPLICATION TO LOCAL GOVERNMENT

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

Assessment

The Council considers the major reform issues for local government for the first tranche assessment to be the application of competitive neutrality principles and the review of legislation restricting competition. In the case of Queensland, the relative size of the local government sector means that comprehensive application of the NCP agenda to local government is particularly important in assessing Queensland's progress against its reform obligations.

The Queensland approach to reform at local government level involves prioritisation of initial reform effort to the 17 larger local governments. The Council considers this prioritisation to be acceptable on the basis that Queensland has in place a workable strategy for extending reform beyond the larger local governments within a reasonable time period. The Council accepts that the proposed voluntary Code of Competitive Behaviour issues paper released on 19 March 1997 represents a suitable framework for the introduction of competitive neutrality principles to the smaller local government businesses.

The Council is satisfied that Queensland's approach to the application of competition principles at local government level meets the intent of the Competition Principles Agreement. However, there is as yet little evidence available to the Council that Queensland's progress with implementation sufficiently meets first tranche obligations. The Council acknowledges that Queensland has approached the task of implementing competitive neutrality reform at local government level in good faith, consulting with local governments and providing material to assist reform implementation. The Council is also cognisant that reform implementation in Queensland has been impeded by uncertainties relating to the taxation of Government Business Enterprises.

Recognising the complexities associated with local government reform and the progress likely over the next 12 months, the Council recommends that this matter be reassessed prior to July 1998. The Council recommends that the first part of Queensland's first tranche NCP payments due in 1997-98 not be affected.

PROGRESS ON RELATED REFORMS

ELECTRICITY

Recent history of reform in Queensland

At meetings of COAG in May 1992 and June 1993, Queensland committed to participation in a national electricity market and to the structural reform of its electricity arrangements in the lead up to the national market.

In January 1995, the Queensland Government divided the Queensland Electricity Commission (QEC), which has historically been responsible for electricity generation and transmission (with multiple regional-based distributors), into the Queensland Generation Corporation (trading as Austa Electric) and the Queensland Transmission and Supply Corporation (QTSC). QTSC operates as a holding company for eight subsidiaries, comprising the existing seven regionally-based electricity boards and the Queensland Electricity Transmission Corporation (trading as Powerlink Queensland). QTSC on-sells all energy to its seven subsidiary electricity corporations, which are also responsible for distribution within their franchise supply areas.

In December 1996, the Queensland Government announced a series of reforms to the electricity industry in Queensland. With respect to generation, the Government announced it would split AUSTA Electric into three independent and competing government-owned generating companies, plus an engineering company. With respect to retail supply, the Government is to establish three new trading corporations which will buy and sell electricity in competition with the existing seven distribution businesses. As part of the reform package, an interim Queensland electricity market will be introduced in stages commencing in the last quarter of 1997 to provide a transition to a fully competitive market (in which all customers are contestable) by January 2001.

The Queensland Government has confirmed its support for the establishment of the National Electricity Market according to the timetable set out in the Prime Minister's 10 December 1996 letter. It reaffirmed its commitment to interconnect with New South Wales by the year 2000-01.

Reform commitment:	**Under the COAG electricity agreements, Queensland is committed to establishing an interconnection with New South Wales, after which it is to become a participant in the national market.**
Implementation:	Queensland is working with New South Wales identifying a route for the interconnection and an independent analysis of the interconnection's economic costs is being conducted. The interconnection with New South Wales is scheduled for 2000-01.

Assessment

The Council accepts that Queensland, in committing to interconnection, has complied with its reform obligations for the first tranche transfers.

The Council regards interconnection as a critical element in establishing the fully competitive National Electricity Market, and will be looking closely at progress with interconnection for purposes of Queensland's subsequent assessments. Interconnection should be of sufficient capacity such that large consumers of electricity are able to implement commercial judgments to source energy requirements from interstate.

Failure by Queensland to progress interconnection such that the interconnector is of insufficient capacity and/or the year 2000-01 timetable is not met would be regarded by the Council as a lack of compliance with a central NCP commitment.

Reform commitment:	**Agreed to the structural separation of generation and transmission.**
Implementation:	Structural separation of generation and transmission occurred in January 1995.

Assessment

Complies with commitment.

Reform commitment:	**Agreed to the ring-fencing of the 'retail' and 'wires' businesses within distribution.**
Implementation:	The businesses have been ring-fenced, currently as accounting entities within existing distribution corporations. On 1 July 1997, the existing distribution corporations are to become independent corporations and three new independent retail corporations are to be established.

Assessment

Complies with commitment.

GAS

Recent history of reform in Queensland

Amendments to the *Petroleum Act 1923* in April 1995 provided for:

- the introduction of a third party access regime for licensed gas pipelines in Queensland; and
- ring fencing of vertically integrated utilities; in particular, a gas pipeline owner may not engage in gas trading.

The former State Gas Pipeline, linking Wallumbilla with Gladstone and Rockhampton, was sold to PGT after a competitive tendering process in 1996.

Queensland has been an active participant in the development of a National Access Regime under the auspices of COAG. Queensland's key concern was the inclusion of a competitive tendering process within the National Code. This approach was recently applied to the development of new pipelines in the south-west of Queensland (with open access as a requirement) and the proposed Chevron transmission pipeline from Papua New Guinea to Gladstone. All jurisdictions have now agreed to the inclusion of competitive tendering principles in the Code.

Approvals to develop a number of new distribution franchises have recently been granted on the understanding that they will be subject to open access provisions upon the introduction of the National Access Regime.

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:[24] 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 Queensland is committed to implementing the National Access Code and is contributing to the development of an inter-governmental agreement to implement the Code through nationally-based legislation. The Council is also aware that the timetable for this process now envisages South Australia, as lead legislature, 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 Queensland 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.

[24] 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

Queensland advised that one legislative barrier to free trade in gas – section 43 of the *Gas Act 1965* – has been identified and is in the process of being repealed.

The Council is satisfied that there are no remaining legislative or regulatory barriers to free and fair trade in gas in Queensland and, accordingly, considers that Queensland 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 future assessments any legislative or regulatory barrier that is subsequently discovered.

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

Assessment

AS 2885 is called up in the *Queensland Petroleum Regulation (Land) Regulation 237.*

The Council is satisfied that Queensland complies 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

Under the *Gas Act*, the Minister has the capacity to establish a gas tribunal which has the authority to investigate the prices of delivered gas. Any tribunal established will take account of NCP principles.

The Council is satisfied that Queensland complies 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

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 that are privately owned. Major gas industry participants are aware that transmission and distribution assets will need to conform with ring-fencing provisions of the National Access Code.

The Council is satisfied that Queensland complies 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

There are no State Government-owned gas utilities in Queensland. The two publicly-owned gas utilities are owned by Dalby Town Council and Roma Town Council. Both these utilities fall well below the threshold levels detailed in the statement on implementation of competitive neutrality to local government businesses. Local governments will be encouraged, through a range of incentives, to implement competitive neutrality reforms through the adoption of a Code of Competitive Conduct.

The Council is satisfied that Queensland complies 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

Queensland implemented the heavy vehicle charges module by template legislation on 1 July 1995. Accordingly, Queensland has complied with this aspect of road transport reform.

Queensland provided a commitment in its annual report to the MCRT agenda and timetable for future road transport reforms.

The Council considers Queensland has complied with its first tranche road transport reform commitments.

FIRST TRANCHE ASSESSMENT: WESTERN AUSTRALIA

SUMMARY

Western Australia is committed to NCP reform in the energy sector.

Western Australia has already applied a number of NCP reforms to the gas industry. Reforms to date in production and marketing arrangements (including the disaggregation of the North-West Shelf gas contract) and the introduction of third party access arrangements in transmission and distribution services have delivered lower gas prices. The continued development and refinement of these arrangements will enhance competition further and mean even lower gas prices. Uniquely at present, Western Australia has the prospect of the duplication of one of its major gas transmission systems which would significantly increase competition in related gas markets.

Western Australia is not a party to the COAG agreement on electricity reform, but is committed to applying competition policy in this sector, including by the introduction of third party access arrangements. The Council anticipates that Western Australia will seek certification of its electricity transmission and distribution systems access regime, and considers that the reform process is likely to be enhanced by structural separation of electricity generation assets.

Western Australia has also introduced important reforms in the water, rail freight and urban transport sectors consistent with the Government's focus on the efficiency of its businesses and its NCP commitment to introduce competitive neutrality reforms.

The Water Corporation (formerly the commercial arm of the Water Authority) has been corporatised and is subject to loan guarantee charges, dividend requirements, all government imposts (or equivalents) and relevant regulation. Community Service Obligations (CSOs) are funded on-budget. The high cost of conventional water supplies in Western Australia means that alternative sources (such as ground water and desalination plants) are more viable, and the Office of Water Regulation oversees water pricing and the allocation of water supply licences using principles of microeconomic reform which are consistent with the NCP. The Water and Rivers Commission has responsibility for assessing, allocating and conserving the State's water resources in line with the COAG agreement on water reform.

Westrail has been commercialised (although not yet subject to full competitive neutrality reforms) with CSOs funded on-budget and changes made to put its capital structure on a more commercial footing. The Council anticipates that Western Australia will submit a third party access regime for rail services for certification in the near future.

Western Australia is introducing a reform program to provide for contestable public transport services in the Perth metropolitan area. Since 1995, nine metropolitan bus services have been opened to competitive tender, with six won by private operators. Approximately 50 per cent of metropolitan bus services are now provided by private sector operators.

Western Australia has committed to the review and, where appropriate, reform of legislation restricting competition by the end of the year 2000. Western Australia has indicated that it will repeal redundant agreement Acts and will gauge the implications for competition and public benefit of a sample of resource development agreement Acts. The Council will reassess progress with Western Australia's consideration of its 84 agreements Acts by July 1998.

The Council will reassess Western Australia's approach to implementing the national uniform gas access framework and the licensing of a second Dampier/Perth gas pipeline prior to July 1998.

Western Australia is approaching its commitment to apply the competition principles to local government in good faith, but as yet there is little evidence of reform progress. Noting that advances consistent with first stage NCP obligations are anticipated over the next 12 months, the Council will reassess progress with local government reform 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 Western Australia, with effect by 20 July 1996.**

Implementation: The *Competition Policy Reform Act 1996* received the Royal Assent on 31 October 1996 and has operated retrospectively from 21 July 1996.

Assessment

The Council considers Western Australia has complied with the Competition Code commitment.

COMPETITIVE NEUTRALITY

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

Western 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 the intended competitive neutrality reform and the progress to date.**

Assessment

Western Australia's 1996 policy statement on competitive neutrality provided a timetable for the review of 38 significant business activities by the year 2000, with the Government's objective being the full implementation of competitive neutrality to its business enterprises and other significant business activities as appropriate given the associated benefits and costs.

Three entities are already corporatised. Western Power, AlintaGas and the Water Corporation are each subject to the Government's income and wholesale sales tax equivalent regime (TER), the same laws as the private sector, all State taxes and local government rate equivalents. They are also subject to the loan guarantee charge, required to achieve a target rate of return on assets and must

recommend dividends to the appropriate Minister to be paid out of after tax profits. CSOs are identified and separately funded.

Westrail, the Fremantle Port Authority and the Bunbury Port Authority have been commercialised. However, State taxes, local government rate equivalents and equivalent private sector regulations have not yet been applied to these entities, pending further review. The State's annual report also noted that the TER has been applied to the Bunbury Water Board, the Busselton Water Board, MetroBus, LandCorp, the East Perth Redevelopment Authority and the Subiaco Redevelopment Authority, and that since 1 July 1992 a loan guarantee charge of 0.2 per cent has been paid by all government agencies on new and existing borrowings.

While the most appropriate mechanism for introducing competitive neutrality principles is evaluated on a case by case basis, the Western Australian Government advised that its preferred approach is for:

- corporatisation or commercialisation of the largest Public Trading Enterprises (PTEs);
- specific reform of smaller or less significant PTEs to address material net competitive advantages; and
- a requirement that commercial business units within general government and in-house bids from general government agencies competing with external tenders in a formal tendering process price their services on a fully commercial basis.

In introducing competitive neutrality to local government, Western Australia has to date focused on larger local government business activities. These are required to identify target areas for competitive neutrality by 1 June 1997. While most larger local governments have initiated this process, Western Australia reported that local government was having difficulty applying the concept of public benefit tests.

Western Australia has taken a number of actions to progress its reform agenda, including workshops designed to assist agencies assess the costs and benefits of implementing competitive neutrality reform and the production of a discussion paper addressing the process for assessing the benefits and costs of applying competitive neutrality reforms. Western Australia has also published guidelines for applying full cost pricing to in-house bids in formal tender processes, and stated that it is investigating the development of a budgetary and accounting framework for general government activities reflecting full cost attribution.

The Council is satisfied that the competitive neutrality reform agenda and progress to date against this agenda meet Western Australia's first tranche reform obligations in relation to State Government business activities.

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

Assessment

Complaints about competitive neutrality matters are considered by the Cabinet Government Management Standing Committee. To date no complaints have been received.

The Western Australian mechanism considers complaints only about public sector businesses which are required to implement competitive neutrality principles and in-house bids which are part of a

formal tender process. Complaints relating to businesses which fall outside the scope of the NCP are considered by the relevant Minister who is encouraged to forward them for consideration by the Cabinet Government Management Standing Committee.

The Council has previously commented about the desirability of an independent mechanism with coverage of all government business activities. It would like to see Western Australia adopt such an approach. Notwithstanding these qualifications about Western Australia's complaints mechanism, the Council regards the Western Australian approach as meeting the requirements of the Competition Principles Agreement. Consistent with its earlier comments about the preferred scope of operation of complaints mechanisms, the Council will look for evidence of effective handling of competitive neutrality complaints in its future assessments of Western Australia's reform performance.

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

Western Australia has restructured its electricity authority, SECWA in accordance with the State's national electricity reform commitments. Western Australia has established separate regulatory, production and distribution functions. The Office of Energy has a regulatory role, and Western Power and AlintaGas provide the production and distribution functions for electricity and gas respectively. Western Power and AlintaGas are subject to the full range of competitive neutrality principles.

Western Australia has also restructured its water and public transport authorities to separate their regulatory and production functions. Public transport reform has included removing responsibility for transport service coordination from Transperth and placing it with the Department of Transport. This was done to facilitate the introduction of competitive tendering and area franchises and thus expose the public transport system to greater competition.

The Council considers that Western Australia has met first tranche obligations in relation to clause 4 structural reform matters.

LEGISLATIVE REVIEW PROGRAM

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

Western 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

Western Australia identified more than 240 pieces of legislation for review and reform by the year 2000 in its June 1996 *Clause 5 Legislation Review Timetable*. The timetable was developed in accordance with guidelines provided to all Ministers to assist in identifying Acts or provisions within Acts which could have anti-competitive effects.

The Western Australian Government has committed itself to completing its legislation review program and implementing review outcomes by 31 December 2000. Western Australia's *Legislation Review Guidelines* released in April 1997 emphasised the need to implement reform outcomes by the end of the year 2000.

Western Australia listed three agreement Acts in its review timetable. Information provided by the Western Australia to the Council indicated that the State has 84 agreement Acts in place, including 64 agreement Acts which are the responsibility of the Minister for Resources Development.

Western Australia has since indicated it intends to repeal all non-operational agreement Acts. Western Australia argued that operational agreement legislation serves to ratify contractual arrangements between the Government and private sector companies, and is a basis for considerable economic activity. While agreeing that no class of regulation should be exempt from review, the Government considers that the potential uncertainty for investors introduced by listing agreement legislation for review would be contrary to the public interest.

The Council has examined Western Australia's current agreement legislation. The Council acknowledges that some agreement Acts may have only a limited impact on competition, and that there is a benefit in ensuring certainty in contractual arrangements. However, agreement legislation commonly includes exclusive licensing provisions and so may operate to restrict competition. In addition, several of Western Australia's agreement Acts appear to be non-operational. Because of this, the Council sought a commitment from Western Australia to examine a small sample of its resource development agreement legislation over the next 12 months and ascertain the degree to which competition is restricted. Where non-trivial restrictions imposing a net cost to the community (taking into account the costs arising from a listing for review, for example arising from uncertainty), are identified, the Council would expect the relevant legislation, and other Acts similar in effect, to be examined in more detail.

With the exception of the treatment of agreement Acts, the Council is satisfied that Western Australia's review program satisfies the intent of the Competition Principles Agreement. The

Council believes that an approach to the review of agreement legislation consistent with Western Australia's NCP obligations can be implemented within 12 months. Accordingly, the Council proposes to reassess Western Australia's progress in examining its agreement legislation prior to July 1998. The Council recommends that the first part of Western Australia's first tranche NCP payments due in 1997-98 not be affected.

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

Western Australia stated that all post-April 1995 legislation which might potentially require review has now been identified. The Government is currently considering whether any of the legislation contains restrictive provisions and has undertaken to include any such legislation in its review program.

Western Australia stated that it has a formalised process by which all proposals for new legislation are examined for consistency with NCP objectives. The process, which is outlined in the State's *Legislation Review Guidelines*, requires proposed new legislation which may potentially restrict competition to be reviewed for compliance with clause 5(5) of the Competition Principles Agreement to ensure there is a public interest justification for any anti-competitive elements. Western Australia stated that the outcome of the review must be included in Cabinet documentation and must be referred to in the Second Reading Speech when the Bill is introduced into the Parliament.

The Council is satisfied that Western Australia has met its first tranche Competition Principles Agreement obligations with respect to the requirements of clause 5(5), including legislation restricting competition enacted after April 1995.

Issue: Adequacy of progress with legislation review and reform

Assessment

Western Australia scheduled 73 reviews for the 1996-97 financial year. It has subsequently advised 20 amendments to its review program.

At 31 December 1996, 25 reviews were in progress, 32 were yet to commence or had been deferred and one was being considered for review on a national basis. Western Australia advised that several pieces of legislation had been repealed following examination, and that as a result many of the reviews listed in the State's timetable have not been necessary. The Western Australian annual report indicated that 13 pieces of legislation scheduled for review in 1996-97 had been repealed, and two pieces scheduled for repeal. Western Australia has undertaken to schedule any replacement legislation for review.

The Council is cognisant that Western Australia's annual report covers review activity only for the period to December 1996, and that there has been good progress since January. The Council also notes the likelihood that further repeal of legislation will mean that other scheduled reviews do not proceed. Nonetheless, given the number of scheduled reviews still to commence at 31 December 1996, the Council has some concern about the possibility of slippage in the early part of Western Australia's program. However, noting the extent to which redundant and otherwise unjustified legislation has been repealed, the Council considers that Western Australia has satisfactorily progressed its legislation review program against its first tranche assessment obligations.

APPLICATION TO LOCAL GOVERNMENT

Reform commitment:	**Provision of a policy statement detailing the implementation of competition principles to local government in Western Australia, and progress against undertakings in the policy statement.**
Implementation:	Western Australia has provided a policy statement in accordance with clause 7 of the Competition Principles Agreement.

Assessment

The Western Australian Government has developed a strategy for applying the competition principles to local government in conjunction with the Western Australian Municipal Association (WAMA). The early part of this strategy focused on increasing awareness about the implications of the NCP for local government. This was done primarily through the WAMA publication *Competing Councils: National Competition Policy*, a number of supporting presentations and a workshop.

Western Australia advised that, more recently, the Minister for Local Government has written to all local councils to indicate the Government's concern about the need for greater progress with the application of competition principles to local government. To assist implementation, the Government is developing guidelines for local governments on issues such as conducting public benefit tests and reviews of legislation. Workshops on the application of these guidelines have also been scheduled.

The Council is satisfied that the approach to reform at local government level proposed by Western Australia meets the intent of the Competition Principles Agreement. However, there is little evidence that implementation of the NCP program has advanced greatly, particularly in relation to competitive neutrality. Accordingly, the Council is not yet in a position to be satisfied that Western Australia has met its first tranche local government reform commitments.

The Council accepts that Western Australia has approached the task of implementing reform at local government level in good faith, and acknowledges the importance of the preparatory work being undertaken. The Council also recognises that reform may take time, particularly given the diversity of Western Australia and the need for some local governments to increase their familiarity with the NCP program. In view of this, the Council recommends that Western Australia's progress with the application of the NCP reforms to local government be reassessed prior to July 1998. Noting the potential for greater progress over the next 12 months, the Council recommends that the first part of Western Australia's first tranche payments due in 1997-98 not be affected by the Council's recommendation for reassessment.

PROGRESS ON RELATED REFORMS

ELECTRICITY

Recent history of reform in Western Australia

Western Australia, while not part of the proposed National Electricity Market, has indicated support for the national market.

In January 1995, the Government separated the State Energy Commission of Western Australia into two corporatised authorities - Western Power (electricity) and AlintaGas (gas). Western Power continues to operate as a vertically integrated monopoly in electricity.

Western Australia is developing its own State-based competitive market in electricity and has introduced a third party access system to both the high voltage transmission system and distribution network.

Reform commitment: None.

The first tranche electricity reform obligations are not applicable to Western Australia.

However, the Council emphasises that it is important for electricity generation and transmission functions to be structurally separate in order to ensure the anticipated benefits from a more competitive electricity market are achieved. The Council considers that ring-fencing is insufficient.

Western Australia considers that, while it remains outside the national market, it is under no obligation to restructure its electricity arrangements to separate generation and transmission.

GAS

Recent history of reform in Western Australia

Western Australia was one of the first jurisdictions to introduce third party access regimes for gas transportation services. There are currently access regimes for the Dampier to Bunbury Natural Gas Pipeline, the Goldfields Gas Pipeline and the AlintaGas distribution network in the south west of Western Australia.

An area of work that has been vital to progressing reform in the gas market was the disaggregation of the North West Shelf gas contract. This has been a considerable achievement, and required commitment and goodwill from the Government and the joint venture partners.

Western Australia has reaped considerable benefits from the deregulation of the gas market achieved to date, with the deregulation of the gas market in the Pilbara precipitating a 50 per cent reduction in gas prices at the source.

The Western Australian Government has recently announced the sale of the Dampier to Bunbury Natural Gas Pipeline (DBNGP). Sale of the pipeline will result in the complete separation of the gas transmission and distribution activities currently performed by AlintaGas. The sale is expected to be finalised before the end of 1997.

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:[25] 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

The Council is aware that Western Australia does not regard the 1996 Communique as accurately reflecting the agreements reached between jurisdictions and that the State has not seen itself as bound by that Communique. However, it is the Council's view that all jurisdictions have committed to the development of a national framework for gas access and the process of developing that framework has lead to the National Code. The Council considers that all jurisdictions are required to implement the National Code as developed through the Gas Reform Task Force, initially, and subsequently the Gas Reform Implementation Group. The Council is aware that Western Australia has been an active participant in the development process throughout.

While Western Australia has not agreed to the proposals outlined in the Prime Minister's letter of 10 December 1996, the Government has indicated an intention to achieve consistency with National Gas Access Code by the year 2000. Western Australia has indicated that it will consider how consistency might be achieved once the Code is finalised. Following discussions with the Premier and Minister for Energy, the Council expects that Western Australia will be in a position to implement the National Gas Access Code.

The Council recommends that, for Western Australia to be assessed as having satisfied its first tranche commitments in respect of implementation of a uniform national framework for access to gas transportation services, it will need to have committed to adoption of the National Code and have a timetable for implementation. The Council proposes to reassess this matter for report to the Commonwealth Treasurer prior to July 1998.

[25] 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

A significant legislative barrier to free trade in gas in Western Australia has been the protection enjoyed by AlintaGas, a State-owned gas utility, with respect to the supply of gas from the North West Shelf to the south-west markets (including Perth). These arrangements are currently being phased out. By January 2000, the exclusive franchise of AlintaGas will be limited to domestic and small business customers using less than 100 TJ per year. The effect of this will be to open some 96 per cent of the State's gas market to competition.

The Council understands that other markets, including the Pilbara and Eastern Goldfields, have been deregulated. AlintaGas is currently restricted from participating in the Pilbara market but this restriction will expire in 2005. Western Australia maintains this restriction is necessary to allow for the introduction of competition in the Pilbara region.

The Council considers the commitment to the removal of legislative and regulatory barriers to be ongoing and will take into account in its future assessments any legislative or regulatory barriers that are subsequently discovered.

The Council considers that the restriction on licensing an alternative gas pipeline to the south-west constitutes a regulatory barrier to free and fair trade in gas within Western Australia. The Western Australian Government has announced that expressions of interest for the construction of a second pipeline will be sought before the middle of 1998.

The Council is aware that the Western Australian Government has expressed an intention that the deregulation of the gas market in Western Australia proceed in an orderly and staged manner. The separation of the processes of privatisation of the DBNGP and seeking of expression of interests for the construction of a second pipeline is part of this staged deregulation. The Council is concerned to

see that the separation of these two processes does not result in the new operator of the DBNGP being given an unfair competitive advantage over other prospective pipeline builders by having an exclusive right to expand capacity for an unnecessarily long period of time. The Council is expecting the Western Australian Government to deal with the processes of privatisation and construction licences in an appropriate way, so as to ensure the market will be given maximum opportunity to develop in a competitive manner.

The Council recommends that, for Western Australia to be assessed as having satisfied its first tranche commitments in respect of removing all legislative and regulatory barriers to free and fair trade in gas, it will need to have progressed an appropriate 'expressions of interest' process for the construction of the second pipeline prior to 30 June 1998. The Council proposes to reassess this matter for report to the Commonwealth Treasurer prior to July 1998.

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

Assessment

Western Australia has adopted this standard.

The Council is satisfied that Western Australian complies 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

Currently, prices are established through negotiation of the business plans for the respective businesses with the Minister and the Treasurer. Western Australia notes that the issue of industry regulation, including prices, is currently under consideration and will take account of NCP requirements for such regulation.

The Council is satisfied that Western Australian complies 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

AlintaGas owns and operates Western Australia's largest transmission pipeline (Dampier-Bunbury) as well as gas distribution networks in Perth and other centres. Current legislation ring fences the AlintaGas transmission and distribution businesses from the corporation's other activities.

Western Australia notes that it is 'in the process of preparing' the AlintaGas DBNGP for privatisation, which would effectively separate it from the other business elements of AlintaGas.

The Council is satisfied that Western Australia complies 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

AlintaGas was corporatised on 1 January 1995.

The Council is satisfied that Western Australia complies 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

Western Australia implemented the heavy vehicle charges by state legislation with a number of amendments to the Commonwealth template on 1 July 1996.

Western Australia stated in its annual report that it had agreed at the meeting of the MCRT on 14 February 1997 to commit to implementation of future road transport reforms in line with the road transport implementation strategy agreed by the MCRT.

The Council considers Western Australia to have complied with its first tranche road transport reform commitments.

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.

FIRST TRANCHE ASSESSMENT: TASMANIA

SUMMARY

Tasmania has given strong commitment to the NCP reform process, developing comprehensive programs for the application of competitive neutrality policies and the review and reform of anti-competitive legislation. It has introduced competitive neutrality principles in all of its significant government business enterprises and has gone further than most other governments in stating that it will extend application of competitive neutrality reform to all business enterprises, regardless of their size, and to significant government business activities.

Tasmania has legislation in the Parliament to establish an independent competitive neutrality complaints handling mechanism under its *Government Prices Oversight Act 1995*. The mechanism will operate from as soon as possible after 1 July 1997 (due to delays in the Legislative Council), and will investigate and report on complaints about all Tasmanian Government businesses including those not formally subject to competitive neutrality policy. The Council strongly supports Tasmania's approach.

Tasmania is adopting a comprehensive legislation review process, and has listed more than 240 pieces of legislation for review. Many of these have been programmed for early in the review period, giving confidence that the State can complete the review and reform process by the year 2000. The Tasmanian Government confirmed that it intends to complete all reviews and implement appropriate reforms by the year 2000, but has noted that the review process might indicate a net community benefit in phasing implementation beyond 2000 in some cases.

Tasmania has given strong support to COAG's vision for a more competitive energy sector. It has introduced a framework for increased competition in electricity by removing the Hydro-Electric Corporation's (HEC) statutory monopoly on generation. In addition, the *Electricity Supply Industry Act 1995* enables non-discriminatory access by third parties to Tasmania's electricity grid, and introduces an independent regulator to the industry.

In April this year, Tasmania announced its commitment to participation in the National Electricity Market through interconnection with Victoria, setting an objective of interconnecting (through Basslink) within four years. Some early action to progress participation in the national market has been commenced. In particular, Tasmania is working towards establishing an interim State-based competitive electricity market and has set up a steering group to oversee the sale of the HEC's transmission and distribution/retail components. Tasmania has also put in place ring-fenced accounting arrangements within the HEC, but will need to structurally separate the HEC's generation and transmission functions prior to the State's entry into the national market.

Tasmania is supporting the national gas reform process. Although it has no natural gas industry as yet, Tasmania has endorsed the substance of the draft National Access Code and is contributing to the development of an inter-governmental agreement to implement the Code through nationally-based legislation.

Tasmania is approaching its commitment to apply the competition principles to local government in good faith, but as yet there is little evidence of reform progress. Extensive preparatory work has been undertaken, but the Government has temporarily postponed the next stage of the local government reform program pending consideration of the Local Government Board's recommendation on council amalgamations. Noting that advances consistent with first stage NCP

obligations are anticipated over the next 12 months, the Council will reassess progress with local government reform 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 Tasmania, with effect by 20 July 1996.**

Implementation: The *Competition Policy Reform (Tasmania) Act 1996* received the Royal Assent on 10 July 1996.

Assessment

Complies with commitment.

COMPETITIVE NEUTRALITY

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

Tasmania 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 the intended competitive neutrality reform and the progress to date.**

Assessment

Tasmania is adopting a comprehensive competitive neutrality reform program. Tasmania's *Government Business Enterprises Act 1995* commits the Government, through corporatisation and commercialisation, to subject its significant GBEs to:

- tax equivalent regimes;
- debt guarantee fees directed at offsetting the advantage of government guarantees on borrowings; and
- all regulations normally applying to the private sector.

Tasmania has so far corporatised several larger business enterprises, including the HEC, the Forestry Corporation, the Metropolitan Transport Trust, and the Tasmanian Public Finance Corporation.

Tasmania also reported that steps are being taken to extend the coverage of the *Government Business Enterprises Act 1995* to include all GBEs regardless of their size.[27]

While reform to date has focused on GBEs, Tasmania's annual report indicated that a timetable for introducing competitive neutrality principles to the Government's remaining significant business activities is to be finalised by 30 June 1997. The Government stated that it will review progress against the timetable every six months.

To assist competitive neutrality reform, the Tasmanian Government advised that it is developing policy guidelines on, corporatisation, public benefit assessments, and the delivery of CSOs. Policy guidelines on full cost pricing are also being developed to assist reform at the local government level. The Government has already issued guidelines for competitive tendering and contracting out.

The Council is satisfied that the competitive neutrality reform agenda developed by Tasmania and the progress achieved against that agenda demonstrate satisfactory progress against Tasmania's first tranche competitive neutrality reform commitments in relation to government businesses.

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

Assessment

Tasmania has legislation in the Parliament to establish an independent competitive neutrality complaints handling mechanism under its *Government Prices Oversight Act 1995*. The mechanism will operate from as soon as possible after 1 July 1997 (due to delays in the Legislative Council), and will investigate and report on complaints about all Tasmanian Government businesses including those not formally subject to competitive neutrality policy. The Government stated that it sees consideration of all complaints as valuable in helping to identify future areas for reform.

Tasmania has operated an interim mechanism through the National Competition Policy Unit located within the Ministry of Finance. As at 31 December 1996, Tasmania had received no complaints relating to competitive neutrality issues.

The Council strongly supports Tasmania's approach to competitive neutrality complaints handling. The Council is satisfied that Tasmania has met its first tranche obligations on this matter.

[27] The Housing Division of the Department of Community and Health Services will be excluded from the coverage of the Act but will be commercialised as a separate process.

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

Tasmania has advised the Council that while it strongly supports the Competition Principles Agreement obligations in relation to the structural reform of public monopolies, it has not had cause to apply the principles to date.

LEGISLATION REVIEW

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

Tasmania 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

Tasmania is adopting a rigorous review process. Where an Act is considered to contain a major competitive restriction, the review must involve the preparation of a Regulatory Impact Statement to assist in identifying the costs and benefits associated with the legislation and the conduct of a public consultation process.

Tasmania's Legislation Review Program involves the review of more than 240 pieces of legislation before the year 2000. Of these:

- 141 are for general review involving identification and assessment of any anti-competitive elements;
- 79 have been nominated for national review; and
- 20 have been classified as community standards where some restriction of competition may be required to achieve social objectives.

Tasmania indicated that it intends to complete its review program by the year 2000. The Government also stated that it is aiming to complete implementation of reforms arising from its review program by the year 2000, but that the review process might in some cases indicate a net community benefit in phasing implementation beyond 2000.

The Council acknowledges that the potential for reform implementation to extend beyond the end of the year 2000 has been reduced because Tasmania has scheduled many of its major reviews early in its review timetable. However, the Council draws attention to its earlier comments concerning the timing of reform implementation. Specifically, phased implementation beyond 2000 would require a strong public interest justification for the Council to consider that Tasmania had met the spirit of the Competition Principles Agreement.

The Council is satisfied that Tasmania's legislation review schedule complies with Tasmania's first tranche commitments.

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

A Tasmanian Government audit of all legislation introduced since April 1995 revealed that 44 of the 173 Acts enacted between April 1995 and December 1996 contained some anti-competitive elements. These Acts are now scheduled for review under the Legislation Review Program.

Tasmania indicated that all new legislative proposals are required to include an assessment of the impact and magnitude of any anti-competitive elements, in order to ensure that new legislation restricts competition only where the benefits outweigh the costs. Further, Tasmania advised that all new subordinate legislation must conform with the requirements of the *Subordinate Legislation Amendment Act 1994* which reflect the clause 5 principles of the Competition Principles Agreement.

The Council is satisfied that Tasmania has met its first tranche Competition Principles Agreement obligations with respect to the consideration of the competition implications of new legislation.

Issue: Adequacy of progress with legislation review and reform

Assessment

Tasmania scheduled 40 Acts for review during 1996. At the time of its annual report to the Council, reviews of 18 pieces of legislation were in progress and seven reviews had been deferred. A further 14 Acts had been repealed and one review deleted from the program.

Tasmania has also repealed another eight pieces of legislation which had been originally scheduled for review between 1997 and 1999. In addition, another four pieces of legislation are now being proposed for consideration as part of a national process.

Tasmania identified six pieces of legislation, scheduled for review in 1996, as potentially having a major impact on the State economy:

- *Traffic Act 1925;*
- *Apple and Pear Industry (Crop Insurance) Act 1982;*
- *Local Government Act 1993;*
- *Liquor and Accommodation Act 1990;*
- *Hospitals Act 1918;* and
- *Inland Fisheries Act 1995.*

The Council is satisfied that Tasmania's progress with its legislation review program has been sufficient to meet the first tranche obligations.

APPLICATION TO LOCAL GOVERNMENT

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

Issue: **Adequacy of the reform agenda: application of the competitive neutrality principles to local government activities should provide for a level of reform consistent with the intent of the Competition Principles Agreement.**

Assessment

The Council had initial concerns that the scope and timing of reform proposed for local government in Tasmania would be insufficient to meet the State's National Competition Policy reform obligations. For example, Tasmania's policy statement on the application of the competition principles to local government set a target date of July 2000 for the corporatisation of significant local government businesses. Tasmania has also suspended its early timetable for the application of competitive neutrality principles to local government, citing the need to first complete a round of local government amalgamations.[28]

While anticipated local government amalgamations have delayed the timetable for the application of competitive neutrality principles to local government businesses, the Council is satisfied that the State Government, in cooperation with local government, is approaching the task of applying the competition principles to local government in good faith. Guidelines for corporatisation are expected to be available for local government by late 1997, with application to significant businesses as appropriate expected well before 2000. The Council understands that 18 of 29 local councils have agreed to introduce full cost attribution in pricing for all their business activities. The State Government indicated that it believes the amalgamations have the potential to speed the application of the NCP competitive neutrality reforms.

[28] Tasmania advised the Council that its Local Government Board has been asked to recommend new boundaries, with a view to reducing the existing 29 local councils by at least half and creating single councils for the Hobart and Launceston metropolitan areas. The Local Government Board has been asked to report to the State Government by the end of October 1997.

Tasmania's local government legislation review program is now underway. The review of the *Local Government Act 1993* initiated in 1996 is continuing. All by-laws pursuant to the Act are also being reviewed with procedures to introduce new by-laws being modified to better reflect National Competition Policy principles. Tasmania is also taking action to extend the coverage of the *Government Prices Oversight Act 1995* to include prices oversight of local government monopolies. The Government has consulted widely with local government and has an amending Bill in the Parliament.

Notwithstanding Tasmania's actions to date, the Council is not yet in a position to be satisfied that the State Government has met its first tranche reform commitments. The Council does recognise the importance of the early preparatory work, and accepts that progress over the next 12 months is likely to increase as the amalgamation program proceeds. In view of this, the Council recommends that Tasmania's progress with the application of the NCP reforms to local government be reassessed prior to July 1998. The Council recommends that the first part of Tasmania's first tranche payments due in 1997-98 not be affected.

PROGRESS ON RELATED REFORMS

ELECTRICITY

Recent history of reform in Tasmania

Tasmania's electricity authority, the HEC, is a vertically integrated monopoly, operating a predominantly hydro system.

Legislative reforms introduced a framework for increased competition in Tasmania's electricity supply industry by removing the HEC's statutory monopoly on electricity generation. The *Electricity Supply Industry Act 1995* provides for non-discriminatory access by other participants to the grid and the licensing of participants in the Tasmanian electricity market, and introduces an independent Regulator to the industry.

Ring-fencing of accounts is being developed, and regulatory functions have been separated from the utility. A separate pricing tribunal has been established to recommend on maximum HEC power prices, and the independent Regulator will control network access rates.

Tasmania has stated that it is committed to participating in the National Electricity Market on the basis that it proceeds with an interconnection with the mainland (the proposed Basslink project). The Tasmanian Premier has set the objective of implementing Basslink within four years (Directions Statement, 10 April 1997).

Reform commitment: None.

While noting Tasmania's public commitment to proceed with Basslink, the Council accepts that, for the purpose of the first tranche assessment, Tasmania is a non-participating jurisdiction.

Nonetheless, the Council considers that it is essential that electricity generation and transmission functions are structurally separated to ensure that the anticipated benefits from a more competitive electricity market are achieved. The Council's strong view is that ring-fencing these operations is insufficient. Tasmania's entry into the National Electricity Market will require the State to implement structural reforms.

The Tasmanian Premier has informed the Council that, since the Directions Statement, two committees have been established to progress reform. The Basslink Development Steering Committee will oversee, among other things, the implementation of an interim electricity market in Tasmania to operate prior to the completion of Basslink, and the HEC Equity Withdrawal Steering Committee will oversee the sale of the HEC's transmission and distribution/retail components to the private sector.

GAS

Recent history of reform in Tasmania

While there is currently no natural gas industry in Tasmania, the State has actively participated with other jurisdictions in the development of a National Access Regime for gas pipelines. The draft Intergovernmental Agreement on Natural Gas provides that Tasmania is only required to introduce legislation to promote free and fair trade in gas once a proposal for a natural gas pipeline in the State has been approved.

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;[29] 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

Tasmania has provided a clear commitment to implementing national access arrangements for the gas industry consistent with the process outlined in the Prime Minister's 10 December 1996 letter, once a proposal for a natural gas pipeline in the State has been approved. Tasmania has endorsed the substance of the draft National Access Code for finalisation by the inter-jurisdictional implementation group and is contributing to the development of an intergovernmental agreement to implement the Code through nationally-based legislation.

The Council considers that Tasmania has complied with its first tranche reform commitments in regard to the national regulation of access arrangements for the gas industry.

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[29] 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

The Council is not aware of any matters that are relevant to Tasmania in respect of this reform commitment.

The Council is satisfied that Tasmania meets this commitment.

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

Assessment

The Council is not aware of any matters that are relevant to Tasmania in respect of this reform commitment.

The Council is satisfied that Tasmania meets this commitment.

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 Council is not aware of any matters that are relevant to Tasmania in respect of this reform commitment.

The Council is satisfied that Tasmania meets this commitment.

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

The Council is not aware of any matters that are relevant to Tasmania in respect of this reform commitment.

The Council is satisfied that Tasmania meets this commitment.

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

Assessment

The Council is not aware of any matters that are relevant to Tasmania in respect of this reform commitment.

The Council is satisfied that Tasmania meets this commitment.

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

Tasmania implemented the heavy vehicle charges and associated permit reforms by state legislation with a number of amendments to the Commonwealth model on 1 October 1996. The Council notes Tasmania's requirement to first remove existing permit schemes relating to heavy vehicles operating at higher mass limits in order to introduce the charges had the effect of delaying implementation beyond the original timetable.

Tasmania stated in its annual report that it is committed to implementation of future road transport reforms in line with the road transport implementation strategy agreed by the MCRT. Tasmania noted that this commitment is subject to the availability of the required NRTC legislative modules. In short, the Government undertook to meet the MCRT timetable provided the modules are available in good time.

Tasmania is currently engaged in the process of simplifying the State's public vehicle licensing system through reform of the *Traffic Act 1925*. The Government stated that it has accepted in principle the recommendations of the Independent Committee of Review into Public Vehicle Licensing in Tasmania, and that it will introduce legislation simplifying licensing arrangements into the Parliament by October 1997. Tasmania stated in its annual report to the Council that the Committee's recommendations would be implemented through gazettal of (interim) regulations under the Traffic Act pending enactment of the new legislation.

The Tasmanian Government has since advised the Council (8 May 1997) that the interim regulations have been disallowed by the Legislative Council. While acknowledging the Government's commitment to devote effort to ensuring that the new legislation is accepted by the Tasmanian Parliament, the Council emphasises that full and on time implementation of the recommended changes to the Traffic Act is an important element of assessing Tasmania's reform progress. The Council will continue to monitor the progress of Tasmania's transport reforms.

With the above qualification, the Council considers Tasmania to have complied with its first tranche road transport reform commitments.

FIRST TRANCHE ASSESSMENT: THE AUSTRALIAN CAPITAL TERRITORY

SUMMARY

The ACT has demonstrated a strong early commitment to both the competitive neutrality reform and legislation review processes. The Government stated that it intended to review all of its business activities to ensure that their structure, operational requirements and financial incentives promote efficient practices. It expects to corporatise all significant government business activities that are able to be self funding, and to commercialise or at least impose competitive neutrality pricing reforms where corporatisation is not appropriate.

To date, the ACT has corporatised Totalcare (1992), ACTEW (1995), and ACTTAB (1996). Significant businesses now being commercialised, or being considered for commercialisation, include ACTION, City Services, INTACT and CityScape Services.

The Government's recent changes to financial management systems have been a significant contributor to its ability to implement NCP reforms. These reforms provide, among other things, for full accrual accounting for all departments from the reporting year 1995-96 and purchase and ownership agreements detailing agreed performance targets.

Development of a permanent competitive neutrality complaints handling body in the ACT appears to be at an early stage. The ACT had originally proposed that competitive neutrality complaints would be handled by an independent authority from 1 July 1997. The mechanism was to apply broadly in respect of all government businesses and activities, whether or not these are regarded as significant. The ACT has not yet achieved this objective, noting in its annual report that it is considering the mechanisms operating in other jurisdictions prior to finalising the nature and scope of its own process. A complaints mechanism is operating through the Office of Financial Management (OFM).

The ACT has a comprehensive legislation review schedule, with some 376 pieces of legislation programmed for review as part of its NCP commitment. All reviews are scheduled to commence by the end of 1997. Apart from the NCP commitments, the ACT is also reviewing regulation with significant impacts on business and legislation enacted prior to 1980. The ACT indicated that it has so far repealed 75 pieces of pre-1980 legislation and has identified a further 650 Acts for possible repeal in the future. The relatively early scheduling of reviews gives the Council confidence that COAG's year 2000 target for completion of the review and reform process will be met.

During 1996, the ACT Government introduced new legislation which had the effect of imposing a more restricted trading hours environment on shops located in town centres. Following an approach from the Council, the ACT Government agreed to monitor the impact of the legislation, prior to the scheduled review of the *Trading Hours Act* in 1998. In May 1997, after considering the early survey results, the ACT repealed the new legislation. The approach adopted by the ACT on trading hours – independent assessment of the costs and benefits to the overall community associated with the restriction on competition and removal of the restriction where it does not provide a net benefit – is consistent with the obligations placed on the ACT by the Competition Principles Agreement and is strongly endorsed by the Council.

The ACT is a strong supporter of the national reforms aimed at creating freely operating markets in electricity and gas. On 4 May 1997, the ACT, together with New South Wales and Victoria,

established the first stage of an interim national market in advance of the fully competitive market. The ACT has also endorsed the substance of the draft National Access Code for gas. The Council will reassess the progress achieved by the ACT in implementing the National Access Code 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 the ACT, with effect by 20 July 1996.**

Implementation: The *Competition Policy Reform Act 1996* was enacted on 22 May 1996.

Assessment

Complies with commitment.

COMPETITIVE NEUTRALITY

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

The ACT 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 the intended competitive neutrality reform and the progress to date.**

Assessment

The ACT annual report stated that the Government will review all of its business activities to ensure that their structure, operational requirements and financial incentives promote efficient practices. The Government expects to corporatise all activities of significant size that are able to be self funding. Other business are to be commercialised, or at least required to price at full cost.

The framework for corporatising significant GBEs in the ACT is provided by the *Territory Owned Corporations Act (1990).* To date, the ACT Government has corporatised Totalcare (1992), ACTEW (1995), and ACTTAB (1996). The ACT's corporatisation model subjects GBEs to:

- target rates of return at levels equivalent to private sector counterparts or interstate Government businesses;
- dividend payments usually based on a benchmark of 50 per cent of after tax profits or 70 per cent of before tax profits;

- full payment of Territory taxes and Commonwealth income and sales tax equivalents;
- payment of loan guarantee fees;
- independent monitoring of performance against targets detailed in each GBE's Statement of Corporate Intent;
- the same regulations as private enterprises and separation of regulatory and provider functions; and
- identification and explicit funding of Community Service Obligations.

The ACT has created several statutory corporations, including the Gungahlin Development Authority, the Tourism Corporation and the Australian International Hotel School. Statutory corporations are subject to tax equivalent regimes, debt guarantee fees and equivalent regulations to those imposed on the private sector.

Where corporatisation is not appropriate, the ACT adopts a commercialisation approach. Commercialised activities may operate as statutory authorities under their own legislation or as semi-autonomous business units. Significant businesses now being commercialised, or being considered for commercialisation, include ACTION, City Services, INTACT and CityScape Services.

A significant contributor to the ACT's commercialisation effort has been the Government's financial management reforms. These reforms include:

- moving the ACT budget to both an accrual and outputs basis;
- the introduction of a distributed cash management system with incentives to improve cash management;
- the implementation in each agency of a new financial management ledger system;
- full accrual reporting for all agency departments from the reporting year 1995-96;
- development of purchase and ownership agreements which detail agreed performance targets at both a service delivery level and a strategic interest level;
- coordination and management of a comprehensive program of targeted training and development courses; and
- whole of Government financial statement reporting on a full accrual basis commencing for the reporting year 1995-96.

The Council is satisfied that the scope and the progress achieved by the ACT satisfies its first tranche obligations under clause 3 of the Competition Principles Agreement.

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

Assessment

The ACT policy statement detailed a proposed arrangement for handling competitive neutrality complaints by way of an independent authority. The mechanism would apply broadly to

government businesses and activities, whether or not these are regarded as significant. Minor complaints would be handled by the OFM. The OFM is currently operating as the interim ACT complaints mechanism.

Although the ACT policy statement nominated a start date of 1 July 1997 for its complaints mechanism, the ACT annual report indicates that the mechanism is "still at the developmental stage". The ACT stated that it will examine mechanisms in other jurisdictions before committing to a particular model.

The Council notes that the ACT policy statement indicated that an independent complaints handling mechanism supported by legislation would be established. However, there appears to have been little, if any, progress towards this goal. While accepting that the OFM process is consistent with the Competition Principles Agreement requirement for a complaints mechanism, the Council draws attention to its earlier discussion regarding the desirability of an independent mechanism.

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

The ACT advised that ACTEW was restructured prior to corporatisation to separate regulatory and commercial functions. Electricity generation, distribution and retail functions have also been separated.

Statutory corporations such as Canberra Tourism and the Australian International Hotel School have also been restructured to separate their regulatory and commercial functions. The ACT Government indicated that monopoly businesses, such as ACTION, are currently under review.

The Council is satisfied that the ACT has met its first tranche clause 4 obligations.

LEGISLATION REVIEW

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

The ACT 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

The ACT has identified and scheduled some 376 pieces of legislation for NCP review. The ACT's Regulation Review Program commits the Government to commence the review of all anti-competitive legislation by the end of 1997. The timetable for achieving this integrates not only the ACT's requirements under the National Competition Policy but also provides for:

- a systematic review of regulation impacting on business;
- a review of pre-1980 legislation; and
- agency-specific legislative reviews.

The ACT Government noted that other priorities may lead to a particular review or the implementation of reform being extended beyond the year 2000. However, the ACT also assured that Council that it will make every effort to complete all reviews and implement their associated reforms by the year 2000.

The Council is satisfied that the legislation review and reform program meets the first tranche legislation review obligations.

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

The ACT stated that it implements a process whereby the OFM examines all new legislative proposals for competition policy implications, impact on small business and the justification for the imposition of new regulation. The process is formalised in reports forming part of each Cabinet submission. All legislative proposals involving competitive restrictions are required to be justified on public benefit grounds.

The ACT has recently conducted a Government-wide audit to ensure that all legislation which restricts competition enacted since 11 April 1995 is justified on community benefit grounds. Over

140 pieces of legislation were enacted over this period, and 18 were found to restrict competition. In most cases, the legislation has subsequently been reviewed or scheduled for review.

The Council is satisfied that the ACT has met its first tranche Competition Principle Agreement obligations with respect to the consideration of the competition implications of new legislation.

Issue: Adequacy of progress with legislation review and reform

Assessment

The ACT scheduled reviews of 43 reviews, encompassing some 61 pieces of legislation, to commence during 1996. The ACT's annual report indicated that of these reviews, 19 are completed, 20 were in progress, two were being considered for national review and two were yet to commence as at December 1996**.**

Where completed, reviews have resulted in the repeal of legislation or the removal of specific provisions within Acts, and in some instances the development of replacement legislation which conforms with the clause 5 principles of the Competition Principles Agreement.

The ACT Government is also considering whether to commence the review of several Acts rather than wait for agreement to proceed on a national process. For example, reviews of the *Hawkers Act 1936,* the *Milk Authority Act 1971* and regulations affecting health professionals have begun or are expected to begin in 1997.

During 1996, the ACT Government introduced new legislation which had the effect of imposing a more restricted trading hours environment on shops located in town centres. Following an approach from the Council, the ACT Government agreed to monitor the impact of the legislation over a period of eighteen months to February 1998 and have the Australian Bureau of Statistics survey the impact on the community. This work was intended to augment the review of the *Trading Hours Act* scheduled for 1998.

The ACT Government advised the Council that, having undertaken the first part of its survey of the community impact, it was apparent that the evidence did not support the restriction. In its Annual Report, the Government stated that "it was evident from the survey results that, ultimately, the public benefit of the [trading hour] restrictions did not outweigh the cost [of the restrictions]". The Government repealed the 1996 legislation in May 1997.

The approach adopted by the ACT in this case – independent assessment of the costs and benefits to the overall community associated with the restriction on competition and removal of the restriction where it does not provide a net benefit – is consistent with the obligations placed on the ACT by the Competition Principles Agreement. The Council strongly endorses the approach taken by the ACT on this matter.

The Council is satisfied that the ACT has sufficiently progressed its legislation review program for the purposes of the first tranche assessment.

APPLICATION TO LOCAL GOVERNMENT

There is no distinction between State and local government functions in the ACT.

The ACT Government stated that it is committed to the uniform application of NCP reforms to all functions regardless of the sphere in which the functions might elsewhere be classified.

PROGRESS ON RELATED REFORMS

ELECTRICITY

Recent history of reform

At the June 1993 meeting of COAG, the ACT gave an unambiguous commitment to structural reform in the lead up to the National Electricity Market.

The ACT Government corporatised its electricity authority, ACTEW, in 1995. ACTEW (Corporation Limited) is a distribution-only, government-owned enterprise that is also responsible for water and sewerage services. ACTEW purchases most of its power from New South Wales and receives the Commonwealth's fixed allocation from the Snowy scheme.

The ACT is progressively extending retail competition to include all customers by 1 July 1999. On 5 October 1997, customers who consume more than 20 GWh per year will become eligible to enter the market. Customers who consume over 160 MWh (comprising 41 per cent of the market) are expected to become eligible to enter the market on 1 July 1998.

In November 1996, the ACT signed a Heads of Agreement with New South Wales and Victoria to introduce an interim market (NEM1) in the movement to the National Electricity Market. On 4 May 1997, the first stage of NEM1 commenced, which involved the harmonisation of market rules in the New South Wales and Victorian electricity markets to enable generators to bid against each other to supply power to energy retailers in New South Wales, Victoria and the ACT, and indirectly South Australia.

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:	Subsequent agreement has been reached on the reform process proposed by the Prime Minister on 10 December 1996. The first stage of NEM1 (harmonisation of the Victorian and NSW electricity market rules) commenced on 4 May 1997. NEM1 is expected to be completed by 5 October 1997 with full implementation of the National Electricity Market expected to commence on 29 March 1998.

Assessment

Complies with commitment.

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 ring-fencing of the 'retail' and 'wires' businesses within distribution.**
Implementation:	The ACT established the ACT Energy and Water Charges Commission to inquire into ACTEW's charges for electricity, water and sewerage, including the adequacy of ACTEW's ring-fencing arrangements.

Assessment

The Council notes the ACT Energy and Water Charges Commission found that, while ACTEW's ring-fencing arrangements might satisfy ACTEW's internal requirements, there are inadequacies in the current approach.

The Council understands that the ACT Government is developing legislation to overcome the identified deficiency. On this basis, the Council considers that the ACT complies with its commitments in this area.

GAS

Recent history of reform in the ACT

The transmission pipeline which supplies gas to the ACT from the Cooper Basin was sold by the Commonwealth Government to East Australian Pipeline Limited (EAPL) in 1994. The sale legislation established a third party access regime with the ACCC as arbitrator.

Natural gas is reticulated in the ACT by the Australian Gas Light Company. Existing ACT legislation provides that the ACT Government may require a gas distributor to provide access to third parties. However, the ACT Government has not invoked this condition due to the process of coordinated national gas reform under the auspices of COAG. The ACT Government supports the substance of the draft National Access Framework and is an active participant on the Gas Reform Implementation Group's current process to finalise the arrangements.

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:[30] 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 the ACT 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. The Council is also aware that the timetable for this process now envisages South Australia, as lead legislature, 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 the ACT 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.

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

[30] See footnote 7.

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

The ACT Government has not identified any legislative or regulatory barriers to free and fair trade in gas.

The Council is satisfied that there are no remaining legislative or regulatory barriers to free and fair trade in gas in the ACT and accordingly, considers that the ACT 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 any legislative or regulatory barrier that is subsequently discovered, in future assessments.

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

Assessment

ACT has adopted AS2885 in the Dangerous Goods Act 1984, applying the NSW Dangerous Goods Regulations 1975 to the ACT.

The Council is satisfied that the ACT 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 ACT reported that the Authorisation document (Gazette S243, 21.12.92) for AGL to operate in the ACT stipulates a price control formula (CPI - X) as a condition of authorisation. Adoption of the national access code for natural gas pipelines will include pricing principles for uniform national application.

The Council is satisfied that the ACT 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

The Council is not aware of any issues that are relevant to the ACT in respect of this reform commitment. There are no publicly owned transmission or distribution activities in the ACT. In respect of the private sector activities, the transmission and distribution functions are conducted by separate companies.

The Council is satisfied that the ACT 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

The Council is not aware of any issues that are relevant to the ACT in respect of this reform commitment.

The Council is satisfied that the ACT 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

The heavy vehicle charges module was implemented in the ACT by template legislation on 1 July 1995. The ACT has confirmed that it is committed to the MCRT timetable, noting the resolution of legal issues with the Commonwealth which are specific to the ACT.

The Council acknowledges that the current position of the ACT as host jurisdiction for road transport template legislation enacted by the Commonwealth means that the ACT's ability to implement the module reforms according to the MCRT timetable is currently contingent upon the development and timing of Commonwealth legislation. The Council recognises that the ACT could face difficulty in implementing reforms according to the MCRT timetable if the necessary Commonwealth legislation is not available. The Council will not assess the ACT as having failed to meet its future reform commitments if such failure is attributable to failure by the Commonwealth to enact necessary template legislation.

The Council is satisfied that the ACT has met its first tranche road transport reform commitments.

FIRST TRANCHE ASSESSMENT: THE NORTHERN TERRITORY

SUMMARY

The Northern Territory has pursued a vigorous program of reforming its government businesses in recent years. The Territory is continuing this program in delivering its competitive neutrality obligations under the NCP. All businesses designated in the *Financial Management Act 1995* as Government Business Divisions (GBDs) have been reformed, or are programmed for review. Corporatisation and commercialisation (including through the application of full cost pricing and adoption of commercial accounting practices) are the primary mechanisms for applying competitive neutrality principles in the Northern Territory. To date, three GBDs have been corporatised and action to commercialise a further ten smaller GBDs has been commenced. The Northern Territory has established a competitive neutrality complaints handling mechanism within the Treasury.

The Northern Territory is also proceeding quickly with the delivery of its legislation review and reform commitments. It has set up a program for the review of 81 pieces of legislation, and is establishing an automated process for monitoring progress. Most reviews are scheduled for completion by 1998. The Territory's approach gives the Council confidence that it can complete all reviews and implement recommended reforms by the year 2000 target date set by COAG.

There is clear recognition in the Northern Territory of the benefits likely to flow from increased competition in the energy sectors. Third party access to privately owned gas pipelines is already available through the *Energy Pipelines Act 1981*. The Territory has endorsed the substance of the draft National Access Code for gas pipelines and is contributing to the finalisation of an inter-governmental agreement to implement the Code through nationally-based legislation. In addition, the Northern Territory Government indicated that it has reviewed all legislation pertaining to gas exploitation, development and transportation and has found no legislative or regulatory impediments to the sale of gas. The Council will reassess the progress achieved by the Northern Territory in implementing the National Access Code 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 the Northern Territory, with effect by 20 July 1996.**

Implementation: The *Competition Policy Reform (Northern Territory) Act 1996* received the Royal Assent on 28 June 1996.

Assessment

Complies with commitment.

COMPETITIVE NEUTRALITY

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

The Northern Territory 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 the intended competitive neutrality reform and the progress to date.**

Assessment

The Northern Territory stated that it has reformed, or intends to review, all significant businesses, designated in the *Financial Management Act 1995* as GBDs. Included among the Territory's GBDs are entities such as NCOM, NT Fleet, Northern Territory Construction Agency and Government Printing Office, all of which provide services exclusively to government. Also included are entities such as the Darwin Bus Service, the Territory Wildlife Park and the Northern Territory Housing Commission which provide services to the wider community.

The Northern Territory's annual report stated that corporatisation and commercialisation will be the primary mechanisms for applying competitive neutrality principles. To date, there have been three corporatisaions: the Power and Water Authority (PAWA), the Darwin Port Authority and the Territory Insurance Office.

Action to 'commercialise' a further ten smaller GBDs has also been commenced. Commercialised GBDs are required to:

- base pricing policies on the costs of resources used;
- pay the full cost of financing, including debt guarantee fees;
- pay tax equivalents in accordance with the Northern Territory Tax Equivalents Regime Manual;
- identify and separately cost all Community Service Obligations;
- adopt commercial accounting practices including accrual valuation and deprival valuation of non-current physical assets;
- pay the cost of the resources used in service provision including all employee, rental, insurance, legal and auditing costs; and
- report annually to the Northern Territory Government on their performance.

The Council is satisfied that the Territory's policy statement and progress to date meet the requirements of the first tranche of Commonwealth competition payments.

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

Assessment

The Northern Territory has established a complaints mechanism within the Northern Territory Treasury, such that the Treasury assesses complaints and recommends to the Government on future action that might be taken. Details of all complaints will be reported in Treasury Annual Reports.

No allegations of non-compliance were received up to 31 December 1996.

The Council accepts that the Northern Territory has established a mechanism for dealing with complaints consistent with the requirements of the Competition Principles Agreement. However, the Council draws attention to its earlier comments regarding the desirability of an independent complaints handling mechanism. The Council will monitor the effectiveness of complaints handling by the Northern Territory.

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 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

The Northern Territory stated that it has not introduced competition to a market supplied by a public monopoly nor privatised a public monopoly in the reporting period.

LEGISLATION REVIEW

Reform commitment: Provision of a timetable detailing the Northern Territory's program for the review and reform of existing legislation restricting competition by the year 2000, and satisfactory progress against the timetable.

The Northern Territory 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

The Northern Territory regulation review timetable is such that the majority of the 81 reviews scheduled will be completed by 1998, with all reviews completed by mid-1999. Its annual report states that "the scheduling reflects the Northern Territory's commitment to the review and reform process".

The Northern Territory Government expects to have commissioned a Northern Territory legislation review data base by June 1997. It is anticipated that this will provide the basis for monitoring progress against the review timetable. The Government has undertaken to publish amendments or changes to the review timetable each year in July.

Although the Northern Territory did not provide an explicit commitment to complete reform implementation arising from its program by the year 2000, the Council is satisfied that the process according to the published timetable is likely to achieve this goal and that the Northern Territory annual report demonstrates a commitment to achieving this goal.

The Council is satisfied that the review and reform program meets the Northern Territory's first tranche legislation review obligations.

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

The Northern Territory stated that it requires all Cabinet Submissions dealing with new or amended legislation to address NCP requirements. Where anti-competitive elements are identified, the legislation must be accompanied by an impact statement which addresses, among other things, the principles in clause 5 of the Competition Principles Agreement.

The Northern Territory advised the Council that it has completed an audit of post-April 1995 legislation. The audit identified five pieces of legislation as restricting competition. Two of these – the *Grain Marketing Act Repeal 1996* and the *Gaming Machine Bill (No 2) 1995* – had already been scheduled for review. The remaining three – *the Retirement Villages Bill 1994*, *the Private Security Act 1995* and the *Meat Industries Bill 1996* – have been included on the review program.

The Council is satisfied that the Northern Territory has met its first tranche Competition Principles Agreement obligations with respect to the requirements of clause 5(5), including legislation restricting competition enacted after April 1995.

Issue: Adequacy of progress with legislation review and reform

Assessment

The Northern Territory scheduled five reviews for completion by 31 December 1996 in its June 1996 review timetable. Three were completed on schedule, while one was still in progress as at 31 December 1996 and another is under consideration for a national review.

Of the 40 reviews scheduled for completion by 30 June 1997, seven were completed at the time of issue of the Northern Territory's Annual Report on 9 May 1997, 29 were under way and four had been deferred. In most cases, reviews have resulted in the repeal of legislation.

While the Council is satisfied with the first tranche progress achieved by the Northern Territory, it is seeking greater detail of the reforms arising from the review process for future assessments.

APPLICATION TO LOCAL GOVERNMENT

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

The Northern Territory provided a policy statement in accordance with the requirements of clause 7 of the Competition Principles Agreement.

Assessment

The Northern Territory stated that there are no businesses operated by local government within the Northern Territory. The Northern Territory has included local government by-laws in its legislation review program.

Given the size of local government in the Northern Territory, the Council considers that competitive neutrality reform is unlikely to be relevant.

The Council considers that the Northern Territory has complied with its first tranche commitments in relation to local government reform.

PROGRESS ON RELATED REFORMS

ELECTRICITY

Recent history of reform in the Northern Territory

The Northern Territory will not be a participant in the national electricity market.

The PAWA is a vertically integrated monopoly which also delivers water and sewerage services throughout the Territory. The PAWA has been corporatised and structurally reformed to remove its regulatory functions from water and sewerage activities. It retains regulatory control for electricity services.

Reform commitment: None.

GAS

Recent history of reform in the Northern Territory

Third party access to privately owned gas pipelines is provided for under the *Energy Pipelines Act 1981*.

In 1997, the Northern Territory endorsed the substance of the draft National Access Code for gas pipelines and is contributing to the finalisation of an Intergovernmental Agreement to implement the Code through nationally-based legislation.

The Northern Territory Government reported that it has reviewed all its legislation pertaining to gas exploitation, development and transportation and that there are no legislative or regulatory impediments to the sale of gas.

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:[31] 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 has 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 the Northern Territory 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. The Council is also aware that the timetable for this process now envisages South Australia, as lead legislature, passing the legislation

[31] See footnote 7.

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 the Northern Territory 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.

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 encompasses all 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

The Northern Territory Government reported that it has reviewed all its legislation pertaining to gas exploitation, development and transportation and that there are no legislative or regulatory impediments to the sale of gas.

The Council is satisfied that there are no remaining legislative or regulatory barriers to free and fair trade in gas in the Northern Territory. Accordingly, the Council considers that the Northern Territory 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 future assessments any legislative or regulatory barrier that is subsequently discovered.

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

Assessment

The Northern Territory has adopted AS2885 in accordance with the timetable.

The Council considers that the Northern Territory 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 Northern Territory reports that it places no control on pricing in the gas industry.

The Council considers that the Northern Territory 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

There are no publicly-owned distribution activities in the Northern Territory.

The only publicly-owned transmission infrastructure is the Daly Waters to Macarthur River pipeline which is owned by the PAWA but operated by NT Gas Pty Ltd (a subsidiary of AGL) under a 20 year agreement. NT Gas Pty Ltd is not involved in gas distribution.

The Council considers that the Northern Territory 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

The Northern Territory's only publicly-owned facility is operated by a private company under a 20 year agreement. The Council considers that the Northern Territory 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

The Northern Territory implemented the heavy vehicle charges through the *Road Transport Charges (Northern Territory) Act 1995*.

The Northern Territory stated in its annual report that it is committed to implementing the reform agenda agreed at the meeting of the MCRT on 14 February 1997.

The Council considers the Northern Territory to have complied with its first tranche road transport reform commitments.

ATTACHMENT A

PAYMENTS TO STATES AND TERRITORIES UNDER THE NATIONAL COMPETITION POLICY FOR 1997-98

Under the Agreement to Implement the National Competition Policy and Related Reforms, the Commonwealth is to provide payments to States and Territories that make satisfactory progress with the implementation of National Competition Policy and the related reforms in electricity, gas , water and road transport.

There are two components to the payments. The per capita growth in the Financial Assistance Grants (FAGs) pool available to each State and Territory is an indexed amount based on weighted population shares as determined by the per capita relativities recommended by the Commonwealth Grants Commission. The other component is the Competition Payment. This is to be paid annually in three tranches, commencing in 1997-98, 1999-2000 and 2001-02. The annual Competition Payment under each tranche will be $200 million, $400 million and $600 million (in 1994-95 prices) respectively. The Competition Payment will be indexed annually to maintain its real value over time.

Total payments available to States and Territories in 1997-98 for satisfactorily progressing competition reform obligations are estimated to be around $406 million, comprising a per capita growth in FAGs element of some $191 million and Competition Payments of almost $215 million. The estimated maximum amount which could be received by each State and Territory is shown below.

MAXIMUM PAYMENTS TO STATES AND TERRITORIES UNDER THE NATIONAL COMPETITION POLICY, 1997-98 ($ MILLION)

	Per capita growth in FAGs pool	Competition payment	Total
New South Wales	56.7	72.6	129.4
Victoria	41.6	53.2	94.8
Queensland	36.6	39.6	76.2
Western Australia	18.5	20.9	39.4
South Australia	18.1	17.1	35.2
Tasmania	7.5	5.5	13.0
ACT	2.8	3.6	6.4
Northern Territory	9.5	2.2	11.6
Total	191.3	214.7	406.0

Source: Commonwealth Treasury

ATTACHMENT B

INTER-GOVERNMENTAL AGREEMENTS ON ELECTRICITY REFORM RELEVANT TO THE FIRST TRANCHE ASSESSMENT

The inter-governmental agreements which the Council considers are relevant to the first tranche assessment are reproduced in this Attachment.

Heads of Government, Canberra, May 1992

'It was agreed to develop an interstate transmission network across the eastern and southern States and that the National Grid Management Council would report on the precise nature and operating guidelines of the structure by the end of 1992. To achieve this, Heads of Government agreed to the principles of separate generation and transmission elements in the electricity sector.

Western Australia, while not a part of the national grid, supports the above. South Australia wishes to look further at the implications for its system. Tasmania's participation in a national grid will be dependent on the development of a Basslink proposal.'

Council of Australian Governments, Perth, December 1992

'The Prime Minister, the Premiers of New South Wales, Victoria, Queensland, South Australia and Tasmania and the Chief Minister of the Australian Capital Territory noted the content of a report they had received from the Chairman of the National Grid Management Council (NGMC) on the Council's work over the past 12 months. In particular, they noted the work the NGMC has been overseeing on the development of an interstate transmission network and the NGMC's intention to meet the timetable set by the Heads of Government last May for a report on the precise nature and operating guidelines for the structure by the end of 1992. The relevant Heads of Government reaffirmed their commitment to the principle of separate generation and transmission elements in the electricity sector and agreed to give early consideration to the report.'

COAG, Melbourne, June 1993

'The Prime Minister, the Premiers of New South Wales, Victoria, Queensland and South Australia and the Chief Minister of the Australian Capital Territory agreed to have the necessary structural changes put in place to allow a competitive electricity market to commence as recommended by the NGMC from 1 July 1995.

These structural changes will include the establishment of an interstate electricity transmission network with those States which are already inter-connected, together with Queensland, working towards implementation by 1 July 1995 of the Multiple Network Corporation (MNC) structural option outlined in the NGMC's report. Under this proposal, the transmission elements of the relevant existing electricity utilities are to be separated out from generation and placed in separate corporations. South Australia is considering the use of a subsidiary structure pending the resolution of cost issues associated with separating transmission from its vertically integrated authority. Resolution of those issues would enable the adoption of the NGMC model.

Tasmania reserves its position pending the outcome of its current electricity industry review.'

ATTACHMENT A

'In relation to reform of the electricity industry relevant Heads of Government:

1. Announced a firm commitment to have the necessary structural changes in place to allow implementation of a competitive electricity market from 1 July 1995.

2. Confirmed their commitment to the establishment of an interstate transmission network, separate from generation and distribution interests, noting that the achievement of this will require the settling of important and sensitive issues, including:

   - market trading, grid pricing and regulatory arrangements;
   - the budgetary impact on the States;
   - the resolution of tax compensation issues; and
   - resolution of reform arrangements for the Snowy Mountains Scheme.

3. Agreed that establishment of the interstate transmission network be through adoption of the Multiple Network Corporation model outlined in the NGMC report.

4. Agreed that jurisdictions in southern and eastern Australia will work to have the Multiple Network Corporation structure in place by 1 July 1995, consistent with the NGMC timetable for the introduction of a competitive electricity market

   (in relation to 1, 3 and 4 Tasmania indicated that it is reviewing the appropriate structure of its electricity supply industry and will report to COAG once a decision has been made)

   (in relation to 3 and 4, South Australia indicated it is considering the use of a subsidiary structure pending the resolution of cost issues associated with separating transmission from its vertically integrated authority. Resolution of those issues would enable the adoption of the Multiple Network Corporation model.)'

COAG, Darwin, August 1994

'Relevant Heads of Government noted the progress that had been made since the Council's February 1994 meeting, and agreed to the need for further work to fulfil their commitment to have the necessary changes in place to allow the implementation of a competitive electricity market from 1 July 1995. The Council's detailed decision in relation to the electricity supply industry are attached.'

'In relation to the reform of the electricity industry, relevant Heads of Government:

...

2. Agreed in response to an NGMC Report on progress in the development of market arrangements that:-

   (a) the interim market trading and pool arrangements from 1 July 1995 within and between States should be consistent and standardised to the extent necessary to ensure that retailers and eligible customers can freely trade with generators throughout the interconnected system, but recognising the different stages of reform which may exist in each jurisdiction at that time,

   (b) the main objectives of the fully competitive national market operating from 1 July 1999 are:-

      (i) the ability for customers to choose which supplier, including generators, retailers and traders, they will trade with,

(ii) non-discriminatory access to the interconnected transmission and distribution network,

(iii) no discriminatory legislative or regulatory barriers to entry for new participants in generation or retail supply, and

(iv) no discriminatory legislative or regulatory barriers to interstate and/or intrastate trade;

(c) transition arrangements are to be developed on the basis of the earliest practicable achievement of each of the objectives of the fully competitive market

...

3. Consistent with the agreement at Council's February 1994 meeting that the principles relating to recovery of the fixed cost component of network pricing would encompass common asset valuation methodologies and rates of return as well as cost reflective and uniform pricing methodologies, agreed:-

(a) in relation to the fixed cost component of network pricing that:

...

(vi) within distribution, the retail and network functions should be ring-fenced and separately accounted for'

...

National Electricity Reform: Prime Minister's Letter to Premiers and Chief Ministers, 10 December 1996

The Prime Minister wrote to all Premiers and Chief Ministers on 10 December 1996 proposing a phased implementation timetable for national electricity reform and noted that the transfer of national electricity market implementation functions from the National Grid Management Council to the National Electricity Market Management Company will be completed in February 1997.

The implementation timetable is reproduced below.

October 1996 The New South Wales electricity market opened up to retail competition on 1 October for customers who consume more than 40 Gwh per annum. In Victoria, approximately 2 000 customers (750 Mwh) became contestable on 1 July 1996.

New South Wales and Victoria are currently reviewing the electricity market in each State to harmonise the retail and wholesale arrangements. This harmonised market, designated NEM, will be implemented in two phases.

February 1997 NEM (Phase 1) — Harmonisation of the Victorian and New South Wales (including ACT) wholesale electricity markets which will involve:

- progressive introduction of interstate trade in electricity;
- system security under the control of Transgrid in New South Wales (and the ACT) and VPX in Victoria;
- trading of existing Snowy entitlements through a single New South Wales/Victorian energy trader; and

- enhancing interstate retail competition.

April/May 1997 ACCC authorisation of 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 1974*.

July 1997 NEM (Phase 2) — Further harmonisation of Victorian and New South Wales market arrangements involving:

- full interstate trade in electricity (including provision of inter-regional hedges);
- system security jointly administered by Transgrid and VPX; and
- trading of energy from the Snowy Scheme as a single corporatised entity.

Implementation of these arrangements will provide a framework for accommodating most of the matters dealt with in the National Electricity Code and will simplify transition to the Code.

By Autumn 1997 Participating jurisdictions have passed legislation to give effect to the National Electricity Law.

Early 1998 Full implementation of the market arrangements specified in the National Electricity Code. This will require:

- NEMMCO to have successfully installed and tested the information technology systems currently under development by the Transgrid/VPX joint venture;
- promulgation of the National Electricity Law and its application in each jurisdiction; and
- NEMMCO and NECA assuming full operational responsibilities for the national market.

ATTACHMENT C

INTER-GOVERNMENTAL AGREEMENTS ON GAS REFORM RELEVANT TO THE FIRST TRANCHE ASSESSMENT

The inter-governmental agreements on gas reform which the Council considers are relevant to the first tranche assessment are as follows.

COAG, Hobart, 25 February 1994

COAG received a report from the Working Group on Gas Reform on Progress Toward a Pro-Competitive Framework for the Natural Gas Industry, Within and Between Jurisdictions. The report noted that the benefits of free and fair trade in gas would be facilitated by further developments aimed at stimulating a more competitive framework for the gas industry.

Such an approach would allow gas consumers and producers in any State or Territory to buy or sell in any other State or Territory on normal commercial terms. The report concludes that the arrangements would lead to the best possible use of Australia's gas resources and the lowest possible prices for gas consumers. The report also concludes that a consistent, national approach characterised by free trade will also stimulate the gas industry by increasing the market area into which gas can be sold, facilitate exploration and facilitate the development of production, transmission and distribution facilities.

COAG noted that the main features of a national framework characterised by free and fair trade would be:

- no legislative or regulatory barrier to both inter- and intra- jurisdictional trade in gas;
- third-party access rights to both inter- and intra- jurisdictional supply networks;
- uniform national pipeline construction standards;
- increased commercialisation of the operations of publicly-owned gas utilities;
- no restrictions on the uses of natural gas (eg. for electricity generation); and
- gas franchise arrangements consistent with free and fair competition in gas markets and third-party access.

It was accepted that there may be a need for some government oversight of retail gas prices in the absence of fully competitive markets in gas. The need for transitional arrangements in some States was also acknowledged.

COAG noted that existing contractual and regulatory regimes in the gas industry arose from past industry, regional development and market objectives. COAG also noted that many of these contracts will expire within the next 10 years and, given the nature of the industry, negotiations will begin shortly for the next round of contracts. COAG noted that contracts entered into prior to the enactment of any complementary gas industry legislation would, for the duration of those contracts, not be subject to that legislation. COAG considered, however, that it was necessary to define the competitive and regulatory environment in which future contracts would operate, so that participants in the gas industry could ensure that all future contracts between producers and

consumers for the supply of gas were consistent with the framework agreed for free and fair trade in gas.

COAG agreed that future arrangements for the gas industry, while not necessarily taking full effect for several years, need to be settled within the next two years. Such a timetable is compatible with the scheduled introduction of the national competitive electricity market from 1 July 1995.

COAG agreed on a broad set of principles to ensure third-party access to pipelines and asked the Working Group on Gas Reform to report, by the next Council meeting, on the implementation of these principles in order to achieve free and fair trade in natural gas by 1 July 1996.

COAG's detailed decisions in relation to free and fair trade in natural gas are contained in the following attachment.

Attachment

Free and fair trade in gas

In relation to free and fair trade in gas COAG:

1. 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 (Heads of Government noted that Victoria's ability to commit to this timetable is contingent upon satisfactory and timely resolution of the PRRT issue);

2. 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 (Heads of Government noted that Victoria's ability to commit to this timetable is contingent upon satisfactory and timely resolution of the PRRT issue);

3. 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;

4. noted that Heads of Government were addressing the question of access to essential facilities in the context of their consideration of the Hilmer Report on National Competition Policy and that any legislation arising from decisions in this context would be able to cover gas pipelines;

5. agreed to adopt AS 2885 to achieve uniform national pipeline construction standards by the end of 1994 or earlier;

6. 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;

7. agreed that approaches to price control and maintenance in the gas industry be considered in the context of agreed national competition policy;

8. agreed to place their gas utilities on a commercial footing, through corporatisation, by 1 July 1996;

9. noted that contracts, between producers and consumers for the supply of gas, entered into prior to the enactment of gas reform legislation would not be overturned by that legislation;

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 (Heads of Government noted that Victoria's ability to commit to this timetable is contingent upon satisfactory and timely resolution of the PRRT issue.);

11. 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; and

12. noted that Victoria has commissioned an independent study of the impact of PRRT on the Bass Strait gas industry.

In addition, COAG asked the Working Group on Gas Reform to report, by its meeting, on the implementation details necessary to achieve free and fair trade in natural gas by 1 July 1996.

COAG, Canberra, 14 June 1996

COAG noted a progress report on gas reform from the Chairman of the Gas Reform Task Force. Jurisdictions and the Gas Reform Task Force have made significant progress towards meeting the commitments for gas reform set at COAG's February 1994 meeting, although there are several outstanding issues. Full legislative implementation of the framework for free and fair trade in gas is unlikely to be completed before December 1996.

The report noted:

1. substantial progress towards agreement of a uniform national access framework. The framework will apply Australia-wide and take the form of a Code extrinsic to legislation. It will be supported in legislation by each jurisdiction in line with an Inter-Governmental Agreement to deal with the implementation and maintenance of the Code;

2. agreement had been reached on some of the main access principles to underpin the Code with further consideration being given to others such as asset valuation and other pricing principles, ring-fencing requirements, information requirements, secondary trade arrangements and the role of franchise agreements; and

3. the Task Force had agreed that the State regulator should be the regulatory institution for distribution systems.

COAG 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.

COAG also agreed that:

(a) the Access Code should apply to distribution systems as well as transmission pipelines;[32] 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.

PRIME MINISTER'S LETTER OF 10 DECEMBER 1996

Further to these agreements, the Prime Minister wrote to all jurisdictions on 10 December 1996 outlining a number of proposed amendments to the previous agreements and seeking all jurisdictions' agreement to the proposals he outlined. At the time of writing, the Council is aware that not all jurisdictions have agreed to the Prime Minister's proposals. The Council is of the view that the proposals will not amend the earlier agreements until there is unanimous agreement. The relevant extracts of the letter appear below:

> "We are at an important point in the development of a national regulatory framework for the natural gas industry. As you are aware, the Gas Reform Task Force has provided jurisdictions with a substantially complete access Code for pipelines and the makings of an associated Inter-Governmental Agreement (IGA), the formal under-pinnings for free and fair trade in gas. Given the importance of avoiding further delay in the start of the competitive gas market - a reform of very considerable economic and environmental benefit - I propose that jurisdictions satisfied with the substance of the recommendations of the Task Force agree now to the regulatory framework and implementation arrangements detailed at Attachment A. I also seek your agreement to public release of the draft Code.

Attachment A

In relation to free and fair trade in natural gas, agree:

1. to the substance of the National Third Party Access Code for Natural Gas Pipelines as prepared by the Gas Reform Task Force (noting that further refinements are to be made), and to apply the final Code uniformly to natural gas transmission and distribution systems in all jurisdictions;

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[32] See Footnotes 7.

2. that the Code would be an extrinsic document and given consistent legislative effect by jurisdictions by 1 July 1997, in accordance with arrangements detailed in an Inter-governmental Agreement;

3. that any derogations from the Code and transitional arrangements would be identified in the Code, and that these would be fully transparent and have firm end dates;

4. that access will be provided to transmission and distribution pipelines for all industrial and commercial users with loads greater than 100 terajoules by 1 July 1997, and to all remaining industrial and commercial users by 1 July 1999; for residential users the phase in of access to take account of cross-subsidy and related issues would be completed by 1 July 2001;

5. that the Code will be given effect through legislation and jurisdictions will work towards common core clauses where that is necessary to provide uniform application and effect of the Code, with other mandatory clauses individually drafted by jurisdictions in a single Part of the legislation;

6. that the Australian Competition and Consumer Commission (ACCC) would be the single national regulator for transmission pipelines, subject to the ACCC having a business plan acceptable to participating jurisdictions to enable it effectively to carry out this work;

7. that the National Competition Council would assess which future pipelines would be covered by the Code;

8. that the Australian Competition Tribunal would be the single national appeals body for Determinations made under the Code by the national regulator, and a jurisdiction-based-appeals body would be the appeals body for Determinations made under the Code by a jurisdiction-based regulator for distribution pipeline networks;

9. that gas distribution pipelines will be regulated by independent regulators;

10. that the Gas Reform Task Force would finalise its activities by 15 December 1996, with an implementation group to be established by participating jurisdictions to finalise the Inter-Governmental Agreement and any outstanding issues on the Code for signature by Heads of Government, and to develop appropriate arrangements for administering the Code;

11. in-principle to an obligation on gas producers to provide unbundled gas prices ex-plant when requested;

12. that jurisdictions would not seek to make windfall gains from taxes and charges arising upon the transfer of assets by a pipeline owner or operator in complying with 'ring fencing' arrangements in the Code; and

13. that the Commonwealth would report to the COAG meeting in 1997 on whether the provisions for access to services in Part IIIA of the *Trade Practices Act 1974* fully reflect the principles and intent of the national competition policy as they affect gas processing and related facilities.

COAG agreed in February 1994 to the sanctity of contractual rights in pre-existing contracts between the producers and consumers for the supply of natural gas. In this respect, agree that, as provided for under Part IIIA of the *Trade Practices Act 1974*, contractual rights in contracts between producers, transporters and consumers existing prior to 30 March 1995 would be protected and not overturned by the enactment of gas reform legislation.

Note that Victoria is in the process of considering the restructuring of its natural gas distribution and retail sector, to further enhance competition in the sector, Victoria agrees to the above time lines for access, but notes its ability to introduce access for large industrial and commercial users by 1 July 1997 will depend on whether it proceeds to restructure its distribution and retail sector, and the timing of the restructuring."

ATTACHMENT D

MINISTERIAL COUNCIL FOR ROAD TRANSPORT: ROAD TRANSPORT REFORM PROGRAM AND TIMETABLE

Transport Ministers from the Commonwealth, State and Territory Governments met on 14 February 1997. The Ministers endorsed a strategy for implementing the current national transport reform program and approved a second heavy vehicle reform package.

The endorsed reforms and completion dates for the national road transport implementation strategy are detailed in Table D1 below.

TABLE D1: ROAD TRANSPORT REFORM IMPLEMENTATION STRATEGY

REFORM	TIMING
Uniform arrangements for dangerous goods transport	1 January 1998
National heavy vehicle registration scheme	1 July 1998
National driver licensing scheme	1 September 1998
Vehicle operations reforms covering: • restricted access vehicles • mass and loading laws, and • oversize and overmass vehicles	1 October 1997
National vehicle standards	1 October 1997
National truck driving hours laws (excluding WA and NT)	1 July 1997
National bus driving hours laws (may not apply in WA or NT)	1 July 1997
Consistent compliance and enforcement	To be determined
Second charges determination including fixing anomalies in current charges	Not before July 1998
Australian Road Rules	Phase 1 by September 1998

Ministers also approved a second heavy vehicle reform package comprising 10 key national reforms to road safety, industry productivity, administration and enforcement. The endorsed reforms and their implementation dates are outlined in Table D2 below.

TABLE D2: SECOND HEAVY VEHICLE REFORM PACKAGE	
REFORM	**TIMING**
Fatigue management for truck drivers	November 1997
Management of speeding vehicles policy	August 1998
Information on driver offences and licence status	September 1997
NEVDIS (first stage)	May 1998
Mass limits review	To be determined
Truck/trailer mass ratios	September 1997
Axle mass spacing for vehicles above 42.5 tonne	November 1997
Short term registration	December 1997
Consistent on-road enforcement for roadworthiness	October 1997
Reduction in truck noise	December 1997