National Competition Council

Compendium of National Competition Policy Agreements

Second Edition

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Contents

Abbreviations

ACCC	Australian Competition and Consumer Commission
ACT	Australian Capital Territory
AGA	Australian Gas Association
ARMCANZ	Agriculture and Resource Management Council of Australia and New Zealand
ANZECC	Australian and New Zealand Environment and Conservation Council
ANZMEC	Australian and New Zealand Minerals and Energy Council
APIA	Australian Pipeline Industry Association
APPEA	Australian Petroleum Production and Exploration Association
ATAC	Australian Transport Advisory Council
ATC	Australian Transport Council
BCA	Business Council of Australia
CAB	Coverage Advisory Body
CDM	Coverage Decision Maker
COAG	Council of Australian Governments
CO_2	carbon dioxide
CPA	Competition Principles Agreement
DC	direct current
EHV	extra high voltage
FAG	Financial Assistance Grants
GRIG	Gas Reform Implementation Group
GTE	Government Trading Enterprise
IPART	Independent Pricing and Regulatory Tribunal (NSW)
IP&RC	Independent Pricing and Regulatory Commission (ACT)

kph	kilometres per hour
kW	kilowatt
MCRT	Ministerial Council for Road Transport
MNC	Multiple Network Corporation
MW	megawatt
NCC	National Competition Council
NCP	National Competition Policy
NECA	National Electricity Code Administrator
NEM	National Electricity Market
NEMMCO	National Electricity Market Management Company
NEVDIS	National Exchange of Vehicle and Driver Information System
NGMC	National Grid Management Company
NGPAC	National Gas Pipelines Advisory Committee
NRTC	National Road Transport Commission
NSW	New South Wales
NT	Northern Territory
ORG	Office of the Regulator General (Vic)
PRRT	Petroleum Resource Rent Tax
QCA	Queensland Competition Authority
QLD	Queensland
SA	South Australia
SPPs	Special Purpose Payments
TAS	Tasmania
TER	tax equivalent regime
TPA	Trade Practices Act 1974
VIC	Victoria
WA	Western Australia
WACC	weighted average cost of capital

Introduction

In April 1995, all Australian governments reached agreement on a National Competition Policy (NCP) for Australia. Three intergovernmental agreements underpin the NCP:

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

The three agreements outline the reforms which governments undertook to put in place under the NCP process. 'Related' reforms in the electricity, gas, water and road transport industries also form part of the NCP package. Reforms in these areas have been agreed at several recent meetings of the Council of Australian Governments (COAG) and of Heads of Governments and Premiers and Chief Ministers.[1] For some reform areas, agreements reached by interjurisdictional bodies such as Ministerial Councils are also relevant.

This document reproduces the three agreements and relevant extracts of agreements reached by COAG and other inter-jurisdictional bodies.

Some background - a national approach to microeconomic reform

Over the past decade, microeconomic reform issues have been at the forefront of the economic policy agendas of all spheres of government. Landmark decisions in the early 1980s to float the currency, deregulate financial markets and systematically reduce trade barriers helped to establish a more flexible and outward looking economy. These reforms in turn revealed other priorities, leading governments to focus on a range of matters including, for example, the performance of their business enterprises, the harmonisation of regulations among jurisdictions and the creation of competitive national energy markets.

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1 Outcomes of meetings are reported in Communiques, which are the public account of key discussions and agreements released following each meeting.

Increasingly, governments saw a benefit in adopting a nationally coordinated approach to reform, and the annual and biannual meetings of COAG became a key mechanism. The meetings of COAG and Heads of Governments since October 1990 are listed in the table below.

Meetings of Heads of Australian Governments since October 1990

Meeting	*Venue*	*Date*
Special Premiers' Conference	Brisbane	30-31 October 1990
Special Premiers' Conference	Sydney	30 July 1991
Premiers and Chief Ministers	Adelaide	21-22 November 1991
Heads of Government	Canberra	11 May 1992
Council of Australian Governments	Perth	7 December 1992
Council of Australian Governments	Melbourne	8-9 June 1993
Council of Australian Governments	Hobart	25 February 1994
Premiers and Chief Ministers	Sydney	29 July 1994
Council of Australian Governments	Darwin	19 August 1994
Premiers and Chief Ministers	Melbourne	25 November 1994
Leaders' Forum	Adelaide	24 February 1995
Council of Australian Governments	Canberra	11 April 1995
Leaders' Forum	Brisbane	3 November 1995
Leaders' Forum	Adelaide	12 April 1996
Council of Australian Governments	Canberra	14 June 1996
Leaders' Forum	Melbourne	27 September 1996
Council of Australian Governments	Canberra	17 November 1997

Governments created the vision for a national approach to competition policy reform in October 1992 when they established an independent Committee of Inquiry into a National Competition Policy for Australia. The Committee, which became known as the Hilmer Committee after its chairperson, made recommendations in six policy areas:

- extension of the reach of the Trade Practices Act 1974 (TPA) to unincorporated businesses and State and Territory government businesses;
- extension of prices surveillance to State and Territory government businesses to deal with those circumstances where all other competition policy reforms had proven inadequate;

- application of competitive neutrality principles so that government businesses do not enjoy a competitive advantage simply as a result of public sector ownership;
- restructuring of public sector monopoly businesses;
- reviewing all legislation which restricts competition; and
- providing for third party access to nationally significant infrastructure.

The three April 1995 competition policy agreements committed governments to reforms broadly in line with the Hilmer recommendations, and to changes in the electricity, gas, water and road transport industries which had been previously agreed by governments. These agreements are reproduced in Part 1.

Under the Implementation Agreement, the Commonwealth Government undertook to make on-going National Competition Policy payments (NCP payments) to each State and Territory over the period 1997-98 to 2005-06, subject to that State or Territory making satisfactory progress against their NCP and related reform obligations. NCP payments are to be made in three tranches: prior to July 1997, July 1999 and July 2001, the NCC assesses whether each State or Territory has met the conditions for the payments to commence. There are two components to the NCP payments: a guarantee to maintain the real per capita value of the Financial Assistance Grants (FAG) pool available to each State and Territory and an indexed competition payment.

In several areas, the reforms compiled in the April 1995 competition policy agreements have been augmented by subsequent COAG and Heads of Governments meetings. The Communiqués of these meetings provide the detail of the reform obligations against which the NCC assesses progress. Part 2 of this document reproduces extracts from Communiqués which are relevant to NCP and related reform matters. For completeness, Part 2 also provides details of decisions relevant to the overall NCP program taken by other inter-jurisdictional bodies such as Ministerial Councils. However, these do not form part of the formal assessment framework.

State and Territory policy statements

As a first step in the NCP reform process, all governments published two policy statements covering competitive neutrality reform and the application of the

competition principles to local government.[2] Each government also developed a timetable for the review and, where appropriate, reform of legislation that restricts competition by the year 2000.

All governments provided their policy statements and review timetables to the NCC in accordance with the competition policy agreements. All statements are publicly available documents and can be obtained from the relevant government. Contact details are provided at Appendix A.

Progress with implementing National Competition Policy and Related Reforms

The CPA requires each government to report annually to the NCC on progress with implementing their legislation review and competitive neutrality programs. State and Territory governments provided their first reports to the NCC in March 1997. These reports covered all aspects of their progress with NCP, including in relation to local government and the infrastructure reforms. The reports can be obtained from the relevant government.

Based primarily on governments' policy statements and annual reports, the NCC conducted an assessment of the progress achieved by each government, as required under the Implementation Agreement. On 30 June 1997, the NCC provided its assessment and the related recommendation on NCP payments to the Commonwealth Treasurer.

The NCC recommended that each State and Territory receive all of the first (1997-98) component of their initial tranche of NCP payments, but that the second (1998-99) component be subject to assessment by the NCC, prior to July 1998, of first tranche matters for each jurisdiction which the NCC had identified as unresolved in its June 1997 assessment. The Treasurer agreed with the Council's recommendation. Some $403 million in NCP payments was allocated to States and Territories in 1997-98, as shown in the table below.

2 Local government policy statements are not required from the Commonwealth and ACT Governments as these jurisdictions have no local government sphere.

Payments to States and Territories under the National Competition Policy, 1997- 98 ($million)

	Real per capita growth in FAGs pool	Competition payment	Total
New South Wales	56.4	72.3	128.7
Victoria	41.4	53.0	94.3
Queensland	36.4	39.4	75.8
Western Australia	18.4	20.8	39.2
South Australia	18.0	17.0	35.0
Tasmania	7.5	5.4	12.9
ACT	2.8	3.6	6.4
Northern Territory	9.4	2.2	11.6
Total	**190.3**	**213.6**	**403.0**

Source: Commonwealth Treasury

As a party to the NCP agreements, the Commonwealth Government must also provide annual reports on progress with legislation review and competitive neutrality, although there are no NCP payments linked to the Commonwealth's performance.

The NCC will make its second tranche assessment of progress with implementation and recommendations on NCP payments prior to July 1999, and the third tranche assessment prior to July 2001.

PART 1

COMPETITION POLICY AGREEMENTS

National Agenda For Microeconomic Reform

At the 25 February 1994 COAG meeting, all Australian governments agreed on the need to accelerate the microeconomic reform process, recognising the benefits from sustained economic and employment growth. Governments agreed to the principles for a national competition policy as outlined in the Hilmer Report. An extract from the COAG Communique from its 25 February 1994 meeting detailing governments' agreement to progress microeconomic reform is reproduced below.

"The Council agreed on the need to accelerate and broaden progress on microeconomic reform to support higher economic and employment growth on a sustainable basis. Accordingly, it has agreed to pursue a more extensive microeconomic reform agenda and to establish a standing committee of senior officials to manage this continuing agenda of microeconomic reform.

This Working Group has been asked to report to the next Council meeting with detailed proposals for further reform.

The Council agreed to the principles of the competition policy articulated in the Hilmer Report.

The Council agreed:

1. any recommendation or legislation arising from the Hilmer Report being applicable to all bodies, including Commonwealth and State government agencies and authorities;

2. that the Trade Practices Commission and the Prices Surveillance Authority be merged to form the basis for the Australian Competition Commission.[3] The Australian Competition Commission would also have new powers. Commonwealth, State and Territory Governments are to develop the detailed arrangements for the establishment of this body, including the process for State and Territory participation in the appointments process;

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3 The new merged entity became the Australian Competition and Consumer Commission.

3. State, Territory and Commonwealth Governments will also commence work jointly on the new legislation with the aim of considering it in August;

4. State, Territory and Commonwealth Governments will establish by report to the next Council meeting, the practicalities of applying the Hilmer Report;

5. the Commonwealth will consider assistance to the States and Territories for loss of monopoly rents and the process for managing adjustment; and

6. it was recognised that the broadened application of the Act will require changes to some existing State and Territory regulatory arrangements and business practices. A two-year transitional period has been recommended by the Hilmer Report, and officials will explore how to provide the States and Territories with a capacity beyond this period to authorise or exempt, temporarily, particular conduct, practices or arrangements on a case by case basis."

These principles form the basis of the April 1995 intergovernmental agreements which establish Australia's National Competition Policy.

Competition Principles Agreement – 11 April 1995

WHEREAS the Council of Australian Governments at its meeting in Hobart on 25 February 1994 agreed to the principles of competition policy articulated in the report of the *National Competition Policy Review*;

AND WHEREAS the Parties intend to achieve and maintain constant and complementary competition laws and policies which will apply to all businesses in Australia regardless of ownership;

THE COMMONWEALTH OF AUSTRALIA

THE STATE OF NEW SOUTH WALES

THE STATE OF VICTORIA

THE STATE OF QUEENSLAND

THE STATE OF WESTERN AUSTRALIA

THE STATE OF SOUTH AUSTRALIA

THE STATE OF TASMANIA

THE AUSTRALIAN CAPITAL TERRITORY, AND

THE NORTHERN TERRITORY OF AUSTRALIA agree as follows:

Interpretation

1.(1) In this Agreement, unless the context indicates otherwise:

"Commission" means the Australian Competition and Consumer Commission established by the Trade Practices Act;

"Commonwealth Minister" means the Commonwealth Minister responsible for competition policy;

"constitutional trade or commerce" means:

(a) trade or commerce among the States;

(b) trade or commerce between a State and a Territory or between two Territories; or

(c) trade or commerce between Australia and a place outside Australia;

"Council" means the National Competition Council established by the Trade Practices Act;

"jurisdiction" means the Commonwealth, a State, the Australian Capital Territory or the Northern Territory of Australia;

"Party" means a jurisdiction that has executed, and has not withdrawn from, this Agreement;

"Trade Practices Act" means the *Trade Practices Act 1974*.

(2) Where this Agreement refers to a provision in legislation which has not been enacted at the date of commencement of this Agreement, or to an entity which has not been established at the date of commencement of this Agreement, this Agreement will apply in respect of the provision or entity from the date when the provision or entity commences operation.

(3) Without limiting the matters that may be taken into account, where this Agreement calls:

(a) for the benefits of a particular policy or course of action to be balanced against the costs of the policy or course of action; or

(b) for the merits or appropriateness of a particular policy or course of action to be determined; or

(c) for an assessment of the most effective means of achieving a policy objective;

the following matters shall, where relevant, be taken into account:

(d) government legislation and policies relating to ecologically sustainable development;

(e) social welfare and equity considerations, including community service obligations;

(f) government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;

(g) economic and regional development, including employment and investment growth;

(h) the interests of consumers generally or of a class of consumers;

(i) the competitiveness of Australian businesses; and

(j) the efficient allocation of resources.

(4) It is not intended that the matters set out in subclause (3) should affect the interpretation of "public benefit" for the purposes of authorisations under the Trade Practices Act.

(5) This Agreement is neutral with respect to the nature and form of ownership of business enterprises. It is not intended to promote public or private ownership.

Prices Oversight of Government Business Enterprises

2.(1) Prices oversight of State and Territory government business enterprises is primarily the responsibility of the State or Territory that owns the enterprise.

(2) The Parties will work cooperatively to examine issues associated with prices oversight of government business enterprises and may seek assistance in this regard from the Council. The Council may provide such assistance in accordance with the Council's work program.

(3) In accordance with these principles, State and Territory Parties will consider establishing independent sources of price oversight where these do not exist.

(4) An independent source of price oversight advice should have the following characteristics:

(a) it should be independent from the government business enterprise whose prices are being assessed;

(b) its prime objective should be one of efficient resource allocation, but with regard to any explicitly identified and defined community service obligations imposed on a business enterprise by the government or legislature of the jurisdiction that owns the enterprise;

(c) it should apply to all significant government business enterprises that are monopoly, or near monopoly, suppliers of goods or services (or both);

(d) it should permit submissions by interested persons; and

(e) its pricing recommendations, and the reasons for them, should be published.

(5) A Party may generally or on a case-by-case basis:

(a) with the agreement of the Commonwealth, subject its government business enterprises to a prices oversight mechanism administered by the Commission; or

(b) with the agreement of another jurisdiction, subject its government business enterprises to the pricing oversight process of that jurisdiction.

(6) In the absence of the consent of the Party that owns the enterprise, a State or Territory government business enterprise will only be subject to a prices oversight mechanism administered by the Commission if:

(a) the enterprise is not already subject to a source of price oversight advice which is independent in terms of the principles set out in subclause (4);

(b) a jurisdiction which considers that it is adversely affected by the lack of price oversight (an "affected jurisdiction") has consulted the Party that owns the enterprise, and the matter is not resolved to the satisfaction of the affected jurisdiction;

(c) the affected jurisdiction has then brought the matter to the attention of the Council and the Council has decided:

(i) that the condition in paragraph (a) exists; and

(ii) that the pricing of the enterprise has a significant direct or indirect impact on constitutional trade or commerce;

(d) the Council has recommended that the Commonwealth Minister declare the enterprise for price surveillance by the Commission; and

(e) the Commonwealth Minister has consulted the Party that owns the enterprise.

Competitive Neutrality Policy and Principles

3.(1) The objective of competitive neutrality policy is the elimination of resource allocation distortions arising out of the public ownership of entities engaged in significant business activities: Government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership. These principles only apply to the business activities of publicly owned entities, not to the non-business, non-profit activities of these entities.

(2) Each Party is free to determine its own agenda for the implementation of competitive neutrality principles.

(3) A Party may seek assistance with the implementation of competitive neutrality principles from the Council. The Council may provide such assistance in accordance with the Council's work program.

(4) Subject to subclause (6), for significant government business enterprises which are classified as "Public Trading Enterprises" and "Public Financial Enterprises" under the Government Financial Statistics Classification:

(a) the Parties will, where appropriate, adopt a corporatisation model for these government business enterprises (noting that a possible approach to corporatisation is the model developed by the inter-governmental committee responsible for GTE National Performance Monitoring; and

(b) the Parties will impose on the Government business enterprise:

(i) full Commonwealth, State and Territory taxes or tax equivalent systems;

(ii) debt guarantee fees directed towards offsetting the competitive advantages provided by government guarantees; and

(iii) those regulations to which private sector businesses are normally subject, such as those relating to the protection of the environment, and planning and approval processes, on an equivalent basis to private sector competitors.

(5) Subject to subclause (6), where an agency (other than an agency covered by subclause (4)) undertakes significant business activities as part of a broader range of functions, the Parties will, in respect of the business activities:

(a) where appropriate, implement the principles outlined in subclause (4); or

(b) ensure that the prices charged for goods and services will take account, where appropriate, of the items listed in paragraph 4(b), and reflect full cost attribution for these activities.

(6) Subclauses (4) and (5) only require the Parties to implement the principles specified in those subclauses to the extent that the benefits to be realised from implementation outweigh the costs.

(7) Subparagraph (4)(b)(iii) shall not be interpreted to require the removal of regulation which applies to a Government business enterprise or agency (but which does not apply to the private sector) where the Party responsible for the regulation considers the regulation to be appropriate.

(8) Each Party will publish a policy statement on competitive neutrality by June 1996. The policy statement will include an implementation timetable and a complaints mechanism.

(9) Where a State or Territory becomes a Party at a date later than December 1995, that Party will publish its policy statement within six months of becoming a Party.

(10) Each Party will publish an annual report on the implementation of the principles set out in subclauses (1), (4) and (5), including allegations of non-compliance.

Structural Reform of Public Monopolies

4.(1) Each Party is free to determine its own agenda for the reform of public monopolies.

(2) Before a Party introduces competition to a sector traditionally supplied by a public monopoly, it will remove from the public monopoly any responsibilities for industry regulation. The Party will re-locate industry regulation functions so as to prevent the former monopolist enjoying a regulatory advantage over its (existing and potential) rivals.

(3) Before a Party introduces competition to a market traditionally supplied by a public monopoly, and before a Party privatises a public monopoly, it will undertake a review into:

(a) the appropriate commercial objectives for the public monopoly;

(b) the merits of separating any natural monopoly elements from potentially competitive elements of the public monopoly;

(c) the merits of separating potentially competitive elements of the public monopoly;

(d) the most effective means of separating regulatory functions from commercial functions of the public monopoly;

(e) the most effective means of implementing the competitive neutrality principles set out in this Agreement;

(f) the merits of any community service obligations undertaken by the public monopoly and the best means of funding and delivering any mandated community service obligations;

(g) the price and service regulations to be applied to the industry; and

(h) the appropriate financial relationships between the owner of the public monopoly and the public monopoly, including the rate of return targets, dividends and capital structure.

(4) A Party may seek assistance with such a review from the Council. The Council may provide such assistance in accordance with the Council's work program.

Legislation Review

5.(1) The guiding principle is that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:

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

(b) the objectives of the legislation can only be achieved by restricting competition.

(2) Subject to subclause (3), each Party is free to determine its own agenda for the reform of legislation that restricts competition.

(3) Subject to subclause (4) each Party will develop a timetable by June 1996 for the review, and where appropriate, reform of all existing legislation that restricts competition by the year 2000.

(4) Where a State or Territory becomes a Party at a date later than December 1995, that Party will develop its timetable within six months of becoming a Party.

(5) Each Party will require proposals for new legislation that restricts competition to be accompanied by evidence that the legislation is consistent with the principle set out in subclause (1).

(6) Once a Party has reviewed legislation that restricts competition under the principles set out in subclauses (3) and (5), the Party will systematically review the legislation at least once every ten years.

(7) Where a review issue has a national dimension or effect on competition (or both), the Party responsible for the review will consider whether the review should be a national review. If the Party determines a national review is appropriate, before determining the terms of reference for, and the appropriate body to conduct the national review, it will consult Parties that may have an interest in those matters.

(8) Where a Party determines a review should be a national review, the Party may request the Council to undertake the review. The Council may undertake the review in accordance with the Council's work program.

(9) Without limiting the terms of reference of a review, a review should:

(a) clarify the objectives of the legislation;

(b) identify the nature of the restriction on competition;

(c) analyse the likely effect of the restriction on competition and on the economy generally;

(d) assess and balance the costs and benefits of the restriction; and

(e) consider alternative means for achieving the same result including non-legislative approaches.

(10) Each Party will publish an annual report on its progress towards achieving the objective set out in subclause (3). The Council will publish an annual report consolidating the reports of each Party.

Access to Services Provided by Means of Significant Infrastructure Facilities

6.(1) Subject to subclause (2), the Commonwealth will put forward legislation to establish a regime for third party access to services provided by means of significant infrastructure facilities where:

(a) it would not be economically feasible to duplicate the facility;

(b) access to the service is necessary in order to permit effective competition in a downstream or upstream market;

(c) the facility is of national significance having regard to the size of the facility, its importance to constitutional trade or commerce or its importance to the national economy; and

(d) the safe use of the facility by the person seeking access can be ensured at an economically feasible cost and, if there is a safety requirement, appropriate regulatory arrangements exist.

(2) The regime to be established by Commonwealth legislation is not intended to cover a service provided by means of a facility where the State or Territory Party in whose jurisdiction the facility is situated has in place an access regime which covers the facility and conforms to the principles set out in this clause unless:

(a) the Council determines that the regime is ineffective having regard to the influence of the facility beyond the jurisdictional boundary of the State or Territory; or

(b) substantial difficulties arise from the facility being situated in more than one jurisdiction.

(3) For a State or Territory access regime to conform to the principles set out in this clause, it should:

(a) apply to services provided by means of significant infrastructure facilities where:

(i) it would not be economically feasible to duplicate the facility;

(ii) access to the service is necessary in order to permit effective competition in a downstream or upstream market; and

(iii) the safe use of the facility by the person seeking access can be ensured at an economically feasible cost and, if there is a safety requirement, appropriate regulatory arrangements exist; and

(b) incorporate the principles referred to in subclause (4).

(4) A State or Territory access regime should incorporate the following principles:

(a) Wherever possible third party access to a service provided by means of a facility should be on the basis of terms and conditions agreed between the owner of the facility and the person seeking access.

(b) Where such agreement cannot be reached, Governments should establish a right for persons to negotiate access to a service provided by means of a facility.

(c) Any right to negotiate access should provide for an enforcement process.

(d) Any right to negotiate access should include a date after which the right would lapse unless reviewed and subsequently extended; however, existing contractual rights and obligations should not be automatically revoked.

(e) The owner of a facility that is used to provide a service should use all reasonable endeavours to accommodate the requirements of persons seeking access.

(f) Access to a service for persons seeking access need not be on exactly the same terms and conditions.

(g) Where the owner and a person seeking access cannot agree on terms and conditions for access to the service, they should be required to appoint and fund an independent body to resolve the dispute, if they have not already done so.

(h) The decisions of the dispute resolution body should bind the parties; however, rights of appeal under existing legislative provisions should be preserved.

(i) In deciding on the terms and conditions for access, the dispute resolution body should take into account:

  (i) the owner's legitimate business interests and investment in the facility;

  (ii) the costs to the owner of providing access, including any costs of extending the facility but not costs associated with losses arising from increased competition in upstream or downstream markets;

  (iii) the economic value to the owner of any additional investment that the person seeking access or the owner has agreed to undertake;

  (iv) the interests of all persons holding contracts for use of the facility;

  (v) firm and binding contractual obligations of the owner or other persons (or both) already using the facility;

(vi) the operational and technical requirements necessary for the safe and reliable operation of the facility;

(vii) the eonomically efficient operation of the facility; and

(viii) the benefit to the public from having competitive markets.

(j) The owner may be required to extend, or to permit extension of, the facility that is used to provide a service if necessary but this would be subject to:

(i) such extension being technically and economically feasible and consistent with the safe and reliable operation of the facility;

(ii) the owner's legitimate business interests in the facility being protected; and

(iii) the terms of access for the third party taking into account the costs borne by the parties for the extension and the economic benefits to the parties resulting from the extension.

(k) If there has been a material change in circumstances, the parties should be able to apply for a revocation or modification of the access arrangement which was made at the conclusion of the dispute resolution process.

(l) The dispute resolution body should only impede the existing right of a person to use a facility where the dispute resolution body has considered whether there is a case for compensation of that person and, if appropriate, determined such compensation.

(m) The owner or user of a service shall not engage in conduct for the purpose of hindering access to that service by another person.

(n) Separate accounting arrangements should be required for the elements of a business which are covered by the access regime.

(o) The dispute resolution body, or relevant authority where provided for under specific legislation, should have access to financial statements and other accounting information pertaining to a service.

(p) Where more than one State or Territory regime applies to a service, those regimes should be consistent and, by means of vested jurisdiction or other cooperative legislative scheme,provide for a single process for

persons to seek access to the service, a single body to resolve disputes about any aspect of access and a single forum for enforcement of access arrangements.

Application of the Principles to Local Government

7.(1) The principles set out in this Agreement will apply to local government, even though local governments are not Parties to this Agreement. Each State and Territory Party is responsible for applying those principles to local government.

(2) Subject to subclause (3), where clauses 3, 4 and 5 permit each Party to determine its own agenda for the implementation of the principles set out in those clauses, each State and Territory Party will publish a statement by June 1996:

(a) which is prepared in consultation with local government; and

(b) which specifies the application of the principles to particular local government activities and functions.

(3) Where a State or Territory becomes a Party at a date later than December 1995, that Party will publish its statement within six months of becoming a Party.

Funding of the Council

8. The Commonwealth will be responsible for funding the Council.

Appointments to the Council

9.(1) When the Commonwealth proposes that a vacancy in the office of Council President or Councillor of the Council be filled, it will send written notice to the States and Territories that are Parties inviting suggestions as to suitable persons to fill the vacancy. The Commonwealth will allow those Parties a period of thirty five days from the date on which the notice was sent to make suggestions before sending a notice of the type referred to in subclause (2).

(2) The Commonwealth will send to the States and Territories that are Parties written notice of persons whom it desires to put forward to the Governor-General for appointment as Council President or Councillor of the Council.

(3) Within thirty five days from the date on which the Commonwealth sends a notice of the type referred to in subclause (2), the Party to whom the

Commonwealth sends a notice will notify the Commonwealth Minister in writing as to whether the Party supports the proposed appointment. If the Party does not notify the Commonwealth Minister in writing within that period, the Party will be taken to support the proposed appointment.

(4) The Commonwealth will not put forward to the Governor-General a person for appointment as a Council President or Councillor of the Council unless a majority of the States and Territories that are Parties support, or pursuant to this clause are taken to support, the appointment.

Work Program of the Council, and Referral of Matters to the Council

10.(1) The work of the Council (other than work relating to a function under Part IIIA of the Trade Practices Act or under the *Prices Surveillance Act 1983)* will be the subject of a work program which is determined by the Parties.

(2) Each Party will refer proposals for the Council to undertake work (other than work relating to a function under Part IIIA of the *Trade Practices Act* or under the *Prices Surveillance Act 1983)* to the Parties for possible inclusion in the work program.

(3) A Party will not put forward legislation conferring additional functions on the Council unless the Parties have determined that the Council should undertake those functions as part of its work program.

(4) Questions as to whether a matter should be included in the work program will be determined by the agreement of a majority of the Parties. In the event that the Parties are evenly divided on a question of agreeing to the inclusion of a matter in the work program, the Commonwealth shall determine the outcome.

(5) The Commonwealth Minister will only refer matters to the Council pursuant to subsection 29B(1) of the Trade Practices Act in accordance with the work program.

(6) The work program of the Council shall be taken to include a request by the Commonwealth for the Council to examine and report on the matters specified in subclause 2(2) of the Conduct Code Agreement.

Review of the Council

11. The Parties will review the need for, and the operation of, the Council after it has been in existence for five years.

Consultation

12. Where this Agreement requires consultation between the Parties or some of them, the Party initiating the consultation will:

    (a) send to the Parties that must be consulted a written notice setting out the matters on which consultation is to occur;

    (b) allow those Parties a period of three months from the date on which the notice was sent to respond to the matters set out in the notice; and

    (c) where requested by one or more of those Parties, convene a meeting between it and those Parties to discuss the matters set out in the notice and the responses, if any, of those Parties.

New Parties and Withdrawal of Parties

13.(1) A jurisdiction that is not a Party at the date of this Agreement commences operation may become a Party by sending written notice to all the Parties.

(2) A Party may withdraw from this Agreement by sending written notice to all other Parties. The withdrawal will become effective six months after the notice was sent.

(3) If a Party withdraws from this Agreement, this Agreement will continue in force with respect to the remaining Parties.

Sending of Notices

14. A notice is sent to a Party by sending it to the Minister responsible for the competition legislation of that Party.

Review of this Agreement

15. Once this Agreement has operated for five years, the Parties will review its operation and terms.

Commencement of this Agreement

16. This Agreement commences once the Commonwealth and at least three other jurisdictions have executed it.

Conduct Code Agreement – 11 April 1995

WHEREAS the Council of Australian Governments at its meeting in Hobart on 25 February 1994 agreed to the principles of competition policy articulated in the report of the National Competition Policy Review;

AND WHEREAS the Parties intend to achieve and maintain constant and complementary competition laws and policies which will apply to all businesses in Australia regardless of ownership;

THE COMMONWEALTH OF AUSTRALIA

THE STATE OF NEW SOUTH WALES

THE STATE OF VICTORIA

THE STATE OF QUEENSLAND

THE STATE OF WESTERN AUSTRALIA

THE STATE OF SOUTH AUSTRALIA

THE STATE OF TASMANIA

THE AUSTRALIAN CAPITAL TERRITORY, AND

THE NORTHERN TERRITORY OF AUSTRALIA agree as follows:

Interpretation

1.(1) In this Agreement, unless the context indicates otherwise:

"Commission" means the Australian Competition and Consumer Commission established by the Trade Practices Act;

"Commonwealth Minister" means the Commonwealth Minister responsible for competition policy;

"Competition Code" means the text in:

(a) the Schedule version of Part IV of the Trade Practices Act;

(b) the remaining provision of that Act (except sections 2A, 5, 6 and 172), so far as they would relate to the Schedule version if the Schedule version were substituted for Part IV; and

(c) the regulations under that Act, so far as they relate to any provision covered by paragraph (a) or (b)

applying as a law of a participating jurisdiction;

"Competition Laws" means:

(a) Part IV of the Trade Practices Act and the remaining provisions of that Act, so far as they relate to that Part; and

(b) the Competition Code of the participating jurisdictions;

"Council" means the National Competition Council established by the Trade Practices Act;

"fully-participating jurisdiction" means:

(a) until the end of twelve months after the day on which the *Competition Policy Reform Act 1995* receives the Royal Assent — a State or Territory that is a party to this Agreement; and

(b) after that date — has the meaning given by section 4 of the Trade Practices Act;

"jurisdiction" means the Commonwealth, a State, the Australian Capital Territory or the Northern Territory of Australia;

"legislation" includes Acts, enactments, Ordinances and regulations;

"modifications" has the meaning given by section 150A of the Trade Practices Act;

"participating jurisdiction" has the meaning given by section 150A of the Trade Practices Act;

"Party" means a jurisdiction that has executed, and has not withdrawn from, this Agreement;

"Trade Practices Act" means the *Trade Practices Act 1974*.

(2) Where this Agreement refers to a provision in legislation which has not been enacted at the date of commencement of this Agreement, or to an entity which has not been established at the date of commencement of this Agreement, this Agreement will apply in respect of the provision or entity from the date when the provision or entity commences operation.

Exceptions from the Competition Laws

2.(1) Where legislation, or a provision in legislation, is enacted or made in reliance upon section 51 of the Competition Laws, the Party responsible for the legislation will send written notice of the legislation to the Commission within 30 days of the legislation being enacted or made.

(2) After four months from when a Party sends written notice to the Commission pursuant to subclause (1), the Commonwealth Minister will not table in the Commonwealth Parliament regulations made forthe purposes of paragraph 51(1B)(f) of the Trade Practices Act in respectof the legislation referred to in the notice, unless the CommonwealthMinister tables in the Parliament at the same time a report by the Council on:

(a) whether the benefits to the community from the legislation referred to in the notice, including the benefits from transitional arrangements, outweigh the costs;

(b) whether the objectives achieved by restricting competition by means of the legislation referred to in the notice can only be achieved by restricting competition; and

(c) whether the Commonwealth should make regulations for the purposes of paragraph 51(1B)(f) of the Trade Practices Act.[4]

(3) Each Party will, within three years of the date on which the *Competition Policy Reform Act 1995* receives the Royal Assent, send written notice to the Commission of legislation for which that Party is responsible, which;

(a) existed at the date of commencement of this Agreement;

(b) was enacted or made in reliance upon section 51 of the Trade Practices Act (as in force at the date of commencement of this Agreement); and

4 The references in this section of the Conduct Code Agreement to paragraph 51(B)(f) of the Trade Practices Act are typographical errors. The correct reference is section 51(1C)(f).

(c) will continue to except conduct pursuant to section 51 of the Trade Practices Act after three years from the date on which the *Competition Policy Reform Act 1995* receives the Royal Assent.

Funding of the Commission

3. The Commonwealth will be responsible for funding the Commission.

Appointments to the Commission

4.(1) When the Commonwealth proposes that a vacancy in the office of Chairperson, Deputy Chairperson, member or associate member of the Commission be filled, it will send written notice to the Parties that are fully-participating jurisdictions inviting suggestions as to suitable persons to fill the vacancy. The Commonwealth will allow those Parties a period of thirty five days from the date on which the notice was sent to make suggestions before sending a notice of the type referred to in subclause (2) or (3).

(2) The Commonwealth will send to the Parties that are fully participating jurisdictions written notice of persons whom it desires to put forward to the Governor-General for appointment as Chairperson, Deputy Chairperson or member of the Commission.

(3) The Commonwealth will send to the parties that are fully-participating jurisdictions written notice of person whom it desires to put forward to the Commonwealth Minister for appointment as associate members of the Commission.

(4) Within thirty five days from the date on which the Commonwealth sends a notice of the type referred to in subclause (2) or (3), the Party to whom the Commonwealth sends a notice will notify the Commonwealth Minister in writing as to whether the Party supports the proposed appointment. If the Party does not notify the Commonwealth Minister in writing within that period, the Party will be taken to support the proposed appointment.

(5) The Commonwealth will not put forward to the Governor-General a person for appointment as a Chairperson, Deputy Chairperson or member of the Commission unless a majority of the fully-participating jurisdictions support, or pursuant to this clause, are taken to support the appointment.

(6) The Commonwealth will not put forward to the Commonwealth Minister a person for appointment as an associate member of the Commission unless a majority of the fully-participating jurisdictions support, or pursuant to this clause are taken to support, the appointment.

The Competition Code

5.(1) The Parties agree that the Competition Code text should apply by way of application legislation to all persons within the legislative competence of each State and Territory.

(2) Each State and Territory that is a Party will put forward for the consideration by their legislatures legislation which implements the principle set out in subclause (1).

(3) If the Commonwealth Minister is satisfied that the laws of a participating jurisdiction have made significant modifications to the Competition Code text in its application to persons within the legislative competence of the participating jurisdiction, the Commonwealth Minister maypublish a notice in the Commonwealth of Australia Gazette stating that the Commonwealth Minister is so satisfied. Any such notice is to be published before the expiry of two months from the date on which the Commonwealth received written notice pursuant to subclause 6(8).

(4) If the Commonwealth Minister has published a notice of the type specified in subclause (3), the Commonwealth Minister may revoke that notice by publishing a further notice in the Commonwealth of Australia Gazette.

Modifications to the Competition Laws

6.(1) It is the intention of the Parties that where modifications are made to provisions of either Part IV of the Trade Practices Act or of the Schedule version of Part IV of that Act, similar modifications will be made to corresponding provisions of the other.

(2) The Commonwealth will consult with fully-participating jurisdictions before it puts forward for parliamentary consideration any modification to Part IV of the Trade Practices Act of to the Competition Code text.

(3) At the conclusion of the Commonwealth's consultation with the fully participating jurisdictions in relation to proposed amendments to the

Competition Code text, the Commonwealth will call a vote on the proposed amendments by sending written notice to each fully-participating jurisdiction.

(4) For the purposes of voting:

(a) the Commonwealth will have 2 votes;

(b) each fully-participating jurisdiction will have 1 vote; and

(c) the Commonwealth will have a casting vote.

(5) If a fully-participating jurisdiction does not vote in respect of a proposed amendment within thirty five days of the Commonwealth sending notice under subclause 6(3), that jurisdiction will be taken to have voted in favour of the amendment.

(6) The Commonwealth will not put forward for parliamentary consideration an amendment to the Competition Code text unless a majority of the votes of the Commonwealth and the fully-participating jurisdictions support the amendment.

(7) The Commonwealth will not be obliged to put forward for parliamentary consideration any amendment with which it does not concur.

(8) Each Party will send written notice to all other Parties setting out modifications to the Competition Laws that have been made by the legislature of that Party, or by any person.

Consultation

7. Where clause 6 requires consultation between the Parties or some of them, the Party initiating the consultation will:

(a) send to the Parties that must be consulted a written notice setting out the matters on which consultation is to occur;

(b) allow those Parties a period of three months from the date on which the notice was sent to respond to the matters set out in the notice; and

(c) where requested by one or more of those Parties, convene a meeting between it and those Parties to discuss the matters set out in the notice and the responses, if any, of those Parties.

New Parties and Withdrawal of Parties

8. (1) A jurisdiction that is not a Party at the date of this Agreement commences operation may become a Party by sending written notice to all the Parties.

(2) A Party may withdraw from this Agreement by sending written notice to all other Parties. The withdrawal will become effective six months after the notice was sent.

(3) If a Party withdraws from this Agreement, this Agreement will continue in force with respect to the remaining Parties.

Sending of Notices

9. A notice is sent to a Party by sending it to the Minister responsible for the competition legislation of that Party.

Review of this Agreement

10. Once this Agreement has operated for five years, the Parties will review its operation and terms.

Commencement of this Agreement

11. This Agreement commences once the Commonwealth and at least three other jurisdictions have executed it.

Agreement to Implement the National Competition Policy and Related Reforms – 11 April 1995

WHEREAS the Council of Australian Governments at its meeting in Canberra on 11 April 1995 agreed to a program for the implementation of the National Competition Policy and related reforms;

AND WHEREAS the Commonwealth and the States have agreed to financial arrangements in relation to the implementation of the National Competition Policy (NCP) and related reforms;

THE COMMONWEALTH OF AUSTRALIA

THE STATE OF NEW SOUTH WALES

THE STATE OF VICTORIA

THE STATE OF QUEENSLAND

THE STATE OF WESTERN AUSTRALIA

THE STATE OF SOUTH AUSTRALIA

THE STATE OF TASMANIA

THE AUSTRALIAN CAPITAL TERRITORY, AND

THE NORTHERN TERRITORY OF AUSTRALIA agree as follows:

The provision of financial assistance by the Commonwealth is conditional on the States making satisfactory progress with the implementation of NCP and related reforms (as set out below). The Commonwealth's commitment is on the basis that the financial arrangements will need to be reviewed if Australia experiences a major deterioration in its economic circumstances.

The Commonwealth will maintain the real per capita guarantee of the FAGs pool on a rolling three year basis.

- This will involve the Commonwealth extending the guarantee to1997–98 now.
- The per capita element will have an estimated annual cost to theCommonwealth of $2.4 billion by 2005–06 (see attached table).
- Local government will benefit from the link between the State and Local government FAGs pools.

There will also be three tranches of general purpose payments in the form of a series of Competition Payments.

- The first tranche of Competition Payments will commence in July 1997 and will be made quarterly thereafter.
- The annual payment from 1997–98 under the first tranche will be $200 million in 1994–95 prices.
- It will be indexed annually to maintain its real value over time.
- Commencement of the first tranche of the Competition Payments and the per capita guarantee is subject to the States meeting the conditions set out below.
- The second and third tranches of the Competition Payments will commence in 1999–2000 and 2001–02. The annual Competition Payments will be $400 million, in 1994–95 prices, from 1999–2000 and $600 million, in 1994–95 prices, from 2001–2002. These payments will be indexed in real terms.

The Competition Payments to be made to the States in relation to the implementation of National Competition Policy (NCP) and related reforms will form a pool separate from the FAGs pool and be distributed to the States on a per capita basis. These Competition Payments will be quarantined from assessments by the Commonwealth Grants Commission.

- If a State has not undertaken the required action within the specified time, its share of the per capita component of the FAGs pool and of the Competition Payments pool will be retained by the Commonwealth.

Prior to 1 July 1997, 1 July 1999, and 1 July 2001 the National Competition Council will assess whether the conditions for payments to the States to commence on those dates have been met.

Conditions for payments to States

The first payments will be made in 1997–98 to each participating State as at the date of the payment and depending upon:

(i) that State giving effect to the Competition Policy Intergovernmental Agreements and, in particular, meeting the deadlines prescribed therein, in relation to the review of regulations and competitive neutrality;

(ii) effective implementation of all COAG agreements on: –

— electricity arrangements through the National Grid Management Council,

— the national framework for free and fair trade in gas, and

(iii) effective observance of road transport reforms.

Payments under the second tranche of the Competition Payments will commence in 1999–2000 and be made to each participating State as at the date of the payment and depending upon:

(i) that State continuing to give effect to the Competition Policy Intergovernmental Agreements including meeting all deadlines;

(ii) effective implementation of all COAG agreements on: –

— the establishment of a competitive national electricity market,

— the national framework for free and fair trade in gas, and

— the strategic framework for the efficient and sustainable reform of the Australian water industry; and

(iii) effective observance of road transport reforms.

Payments under the third tranche will commence in 2001–02 and be made to each participating State as at the date of the payment and depending on the State:

— having given full effect to, and continues to observe fully, the Competition Policy Intergovernmental Agreements; and

— having fully implemented, and continues to observe fully, all COAG agreements with regard to electricity, gas, water and road transport.

Full details of the conditions are set out in the [following] attachment.

Agreement to Implement the National Competition Policy and Related Reforms

National Competition Policy Payments (a)

	Per Capita (b) State	Per Capita (b) Local Govt (c)	Per Capita (b) Total	Per Capita (b) Total	Competition Payment		State and Local Government Total Payments	
Year	$m	$m	$m	1994-95 Prices $m	$m	1994-95 Prices $m	$m	1994-95 Prices $m
1997-1998	194	14	209	186	219	* 200	428	386
1998-1999	392	29	420	365	226	200	646	565
1999-2000	604	44	647	546	465	* 400	1 113	946
2000-2001	829	60	890	729	479	400	1 369	1 129
2001-2002	1 070	78	1 148	914	739	* 600	1 888	1 514
2002-2003	1 327	97	1 423	1 101	761	600	2 184	1 701
2003-2004	1 600	117	1 716	1 290	783	600	2 499	1 890
2004-2005	1 890	138	2 028	1 481	806	600	2 833	2 081
2005-2006	2 198	160	2 359	1 675	829	600	3 188	2 275
Total	**10 104**	**736**	**10 840**	**8 286**	**5 307**	**4 200**	**16 147**	**12 486**

* indicates year in which each additional payment is made

(a) Estimates.

(b) Population growth is assumed to be about 1.1% from 1997-98 onwards.

(c) Reflecting the existing link between the respective pools.

Attachment

Conditions of Payments to the States

(a) Per capita Guarantee and First Tranche of the Competition Payments

Payment under the extension of the per capita guarantee and the first tranche will start in 1997–98 to each State and Territory that:

- 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 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 Intergovernmental 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 enterprises' 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,
- 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) has 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 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.

(b) Second Tranche of the Competition Payments

Payments under the second tranche will commence in 1999–2000, and be made each year thereafter to the States and Territories that have undertaken the following specified reforms by July 1999 in so far as they apply to them:

- (for relevant jurisdictions) completion of the transition to a fully competitive National Electricity Market by 1 July 1999;
- (for relevant jurisdictions) full implementation of free and fair trading in gas between and within the States including the phasing out of transitional arrangements in accordance with the schedule to be agreed between the parties;
- implementation of the strategic framework for the efficient and sustainable reform of the Australian water industry and the future processes as endorsed at the February 1994 COAG meeting and embodied in the Report of the Expert Group on Asset Valuation Methods and Cost-Recovery Definitions, February 1995;

- continuing to be 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;
- continued effective observance of the agreed package of road transport reforms; and
- meeting all obligations under the Competition Policy Intergovernmental Agreements.

(c) Third Tranche of Competition Payments

Payment under the third tranche will commence in 2001–02 and be made each year thereafter to the States and Territories on the basis of each State's or Territory's progress on the implementation of the following reforms:

- the extent to which each State and Territory has actually complied with the competition policy principles in the Competition Principles Agreement, including the progress made in reviewing, and where appropriate, reforming legislation that restricts competition;
- whether the State and Territory has remained a fully participating jurisdiction as defined in the Competition Policy Reform Bill;
- the setting of national standards in accordance with the Principles and Guidelines for National Standard Setting and Regulatory Action and advice from the Office of Regulation Review on compliance with these principles and guidelines; and
- continued effective observance of reforms in electricity, gas, water and road transport.

PART 2

AGREEMENTS ON RELATED REFORMS

Electricity

The April 1995 competition policy agreements link NCP payments to, among other conditions, the implementation of specified electricity reforms. States and Territories are to take all measures necessary to implement an interim competitive National Electricity Market (NEM) from 1 July 1995 or on such other date as agreed by the parties for the first tranche of NCP payments. Following a letter of 10 December 1996 from the Prime Minister to all Premiers and Chief Ministers, the agreed implementation date for the NEM was changed to early 1998.

The trading rules, network pricing principles, system controls and rules for access to networks, and other matters have been developed and incorporated into an electricity Code of Conduct (the Code). Two institutional bodies have been established, the National Electricity Code Administrator (NECA) and the National Electricity Market Management Company (NEMMCO), which are responsible for administering the Code and managing the market, respectively.

The Australian Competition and Consumer Commission (ACCC) received applications by NECA and NEMMCO, on behalf of governments of the Australian Capital Territory, New South Wales, Queensland, South Australia and Victoria:

- to accept under Part IIIA of the TPA an access code for the electricity transmission and distribution networks; and
- to authorise under Part VII of the TPA the proposed electricity wholesale market arrangements within the Code.

The ACCC authorised the Code and the arrangements set out in the Code on 9 December 1997, subject to a number of conditions being met. The ACCC released a draft determination conditionally accepting the access code. A final determination is expected to be released before the start of the market.

As an interim step in establishing to the establishment of the NEM, in November 1996, NSW, Victoria and the ACT signed a Heads of Agreement to introduce an interim market (NEM1). On 4 May 1997, the first stage of NEM1 commenced, which involved the harmonisation of market rules in the NSW (including the ACT)

and Victorian electricity markets to enable generators to bid against each other to supply power to energy retailers in NSW, Victoria and the ACT, and indirectly to South Australia.

South Australia is committed to participating in the NEM and took the role of lead legislator in relation to the legislation required to establish the NEM and apply the Code in participating jurisdictions. South Australia passed the National Electricity (South Australia) Act in June 1996. However, South Australia is not expected to participate until the full establishment of the NEM.

Queensland recently commenced its interim electricity market, which is virtually identical to the proposed NEM arrangements. Queensland will also join the NEM once it is fully established, although full integration with the NEM will not occur until physical interconnection with New South Wales (around 2001).

The Tasmanian Premier stated in his Directions Statement (10 April 1997) that Tasmania is committed to participating in the NEM on the basis that it proceeds with an interconnection with Victoria (the proposed Basslink project). The Tasmanian Premier has set the objective of implementing Basslink by 2002.

The second tranche of NCP payments, to commence in 1999-2000, will depend on relevant States and Territories completing the transition to a fully competitive NEM by 1 July 1999. Third tranche payments, to commence in 2001-02, will depend on relevant States and Territories giving full effect to, and continuing to fully observe, all COAG agreements with regard to electricity.

Agreements on reforms to the electricity industry, including the establishment of the NEM, were made at the following meetings:

•	Special Premiers' Conference	Brisbane	30-31 October 1990
•	Special Premiers' Conference	Sydney	30 July 1991
•	Premiers' and Chief Ministers' Meeting	Adelaide	21-22 November 1991
•	Heads of Government	Canberra	11 May 1992
•	COAG	Perth	7 December 1992
•	COAG	Melbourne	8-9 June 1993

•	COAG	Hobart	25 February 1994
•	COAG	Darwin	19 August 1994
•	Leaders' Forum[5]	Adelaide	12 April 1996

Extracts pertaining to electricity industry reform in the Communiqués for each of these meetings are reproduced below. Also provided are relevant extracts from the Prime Minister's 10 December 1996 letter to Heads of Government covering electricity reform.

Special Premiers' Conference Brisbane 30-31 October 1990

Leaders agreed that there may be additional benefits from an extension of, and/or organisational changes to, the interstate electricity network covering NSW, Victoria, Queensland, South Australia, Tasmania and the ACT. Consequently, they further agreed that a working group be set up to;

(a) assess whether extensions to the interstate network are economically justified;

(b) if so, assess the organisational options for achieving this, including a jointly owned interstate transmission system, a pool arrangement, and other ways of improving the management of current interstate arrangements; and

(c) report to the next Special Premiers' Conference.

The working group will include representation from relevant electricity authorities and policy agencies from the respective governments including the Commonwealth, and seek contributions from interested parties, including major users in the private sector.

Special Premiers' Conference Sydney 30 July 1991

Leaders and representatives agreed to establish a National Grid Management Council to encourage and coordinate the most efficient, economic and environmentally sound development of the electricity industry in eastern and southern Australia having regard for key National and State policy objectives. This represents an important

5 The Leaders' Forum comprised of State and Territory First Ministers but did not include the Commonwealth.

step forward in advancing cooperation in the electricity industry, the absence of which has cost the nation dearly in terms of excessive generation capacity, inappropriate plant mix and inflexibility of fuel use.

The Agreement is entered into on a cooperative basis.

The Council will encourage open access to the eastern and southern Australian grid and free trade in bulk electricity for private generating companies, public utilities and private and public electricity customers. It will also coordinate planning of the generation and interconnected transmission systems and encourage the competitive sourcing of generation capacity and the use of demand management.

Each participating government will nominate a representative to the Council which is to have an independent chairperson. The governments represented on the Council will be the Commonwealth, New South Wales, Victoria, Queensland, South Australia, Tasmania and the ACT. However, should these initiatives develop into more formal arrangements involving the ownership or joint operation of transmission or generation systems assets, the membership of the continuing organisation will be reviewed. The current membership arrangements should not be taken as a precedent for future arrangements. These governments have agreed to contribute the resources required for the Council without establishing a separate new organisation with overhead costs.

The Council is to oversee the preparation of a draft protocol covering the planning, operation, development, monitoring and extension of the eastern and southern Australian grid. In preparing the draft, which is to be submitted to participating Heads of Government for consideration in November, the Council is to seek and encourage external input and comment.

Leaders and representatives noted that extensions to the current interstate grid linking New South Wales, Victoria, South Australia and the ACT were technically feasible and economically justified. They asked that the more detailed technical appraisals of the proposed links to Queensland and Tasmania continue with a view to the results being available by the November Special Premiers' Conference. On present indications, a link to Tasmania could be operational by the mid to late 1990s and extension of the grid to Queensland possibly from 1997.

In setting in place these arrangements, leaders and representatives noted the potential that they contain to deliver cheaper electricity and a more rational use of the nation's

resources and to better position Australia in the international market for electricity supply. [6]

Premiers' and Chief Ministers' Meeting Adelaide 21-22 November 1991

Mr John Landels, Chair of the National Grid Management Council, reported to Premiers and Chief Ministers on the progress of the Council's work program.

The Premiers and Chief Ministers are pleased to note the environmental benefits to Australia which will result from this process, as there is potential for a significant reduction in greenhouse gases by deferring the need for additional generating capacity.

The Council has considered a draft National Grid Protocol and a timetable on the need for additional generating capacity. The draft Protocol will be used as a basis for a round of public consultation commencing next month.

These seminars will be conducted in Sydney, Melbourne, Brisbane, Adelaide, Hobart and Canberra. The participants will include a wide section of stakeholders: industry existing and potential private generators, major bulk supply customers, unions and commercial groups.

The Council has also considered the links to Tasmania and Queensland.

[The State Electricity Commission of Victoria] and [the Hydro-Electric Commission] have forwarded a report on the feasibility of a DC cable interconnection between Tasmania and the mainland. The report suggests that there are significant potential gains from such a link.

The Premiers note the progress that has been made. Broader economic and business studies are now being done to assess comprehensively the case for proceeding with the link in the near future.

The Premiers and Chief Ministers encourage the progression of these studies and will consider the wider implications for the grid.

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6 On 30 July 1991, First Ministers from the Commonwealth, New South Wales, Victoria, Queensland, South Australia, Tasmania and the Australian Capital Territory signed the *Electricity Generation and Transmission Interstate Co-operation Heads of Agreement* which established the NGMC.

The Queensland and NSW Governments support in principle the interconnection of their electricity grids and have directed that a detailed feasibility study be undertaken.

The feasibility study should be completed early in 1992 which would indicate the economics and time of the options for interconnection. Further work needs to be then carried out to determine the sharing of costs and benefits and to establish commercial arrangements satisfactory to Queensland, New South Wales and the other parties to the existing interconnection (Victoria and South Australia).

Securing easements for the interconnector will involve a lengthy process of community consultation and environmental assessment of alternative routes.

To ensure that capability to achieve the benefits of interconnection is preserved the Queensland and New South Wales Governments will authorise the Queensland Electricity Commission and the Electricity Commission of New South Wales to immediately commence a joint coordinated process for planning and determining an easement corridor to provide for future interconnection.

Premiers and Chief Ministers noted Mr Landels' advice that the Council would advise them on the processes for direct arrangements between major customers and generators at their next meeting.

Heads of Government Canberra 11 May 1992

It was agreed to develop an interstate transmission network across the eastern 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.

Heads of Government agreed to finalise the draft national grid protocol prepared by the National Grid Management Council via correspondence by the end of June.

COAG Perth 7 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.

The Heads of Government also noted the work the NGMC has been undertaking on transmission pricing and pooling arrangements in advance of the proposed introduction of customer-generator links. Given the importance of these two issues to the future development of trade in energy, the Heads of Government endorsed the NGMC's commitment to consult widely on its proposals in these areas before finalising them.

COAG Melbourne 8-9 June 1993

Since the National Grid Management Council (NGMC) was established in July 1991, relevant Heads of Government have extensively considered the arrangements necessary to give effect to their decisions to implement a competitive electricity supply industry in eastern and southern Australia. On this occasion they discussed two NGMC reports - one on the structure of the transmission network across eastern and southern Australia and one on the NGMC's recent work including proposals for a detailed timetable of the steps which need to be taken to commence a competitive market.

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. SouthAustralia 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 MNC model.

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

In making this commitment the Council noted that the establishment of an interstate electricity market and the implementation of the MNC model requires the settling of a number of important and sensitive issues including market trading arrangements, grid pricing and regulatory framework, budgetary impact on the States, the resolution of tax compensation issues and reform arrangements for the Snowy Mountains Scheme.

It was agreed that there be a progress report on these, and a range of operational matters under examination by the NGMC, to the next Council of Australian Governments meeting. Heads of Government endorsed the NGMC's commitment to consult closely with key stakeholders in carrying through its work.

Heads of Government also agreed to the further examination, during the establishment of the MNC structure, of whether the network structure for governments to work towards should be a national network corporation or another option.

The conclusions of a response to the NGMC's reports prepared by senior officials for Heads of Government which were endorsed are attached [see the following Attachment], together with the NGMC's timetable of events leading up to a 1 July 1995 commencement of a competitive electricity market.

Attachment

Electricity industry reform

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.)

5. Committed to further examine, during the course of the establishment of the Multiple Network Corporation structure, of whether the network structure for governments to work toward should be a National Network Corporation or another option.

6. Reconfirmed the objective of competitive generation as envisaged in the National Grid Protocol, noting that this will involve merit order dispatch of individual generators to ensure that the most cost-effective generation is despatched and to enable private sector generation to compete on equal terms.

7. Called for a report from the NGMC at the next meeting of the Council of Australian Governments on the following major issues associated with implementation of electricity reform:

   - the implementation of network pricing and market trading arrangements to underpin competition in electricity trading;
   - appropriate regulatory arrangements, noting that the Hilmer inquiry into competition policy will report during this period;
   - progress in the establishment of a high-voltage transmission link between NSW and Queensland (Northlink); and
   - demand management opportunities.

8. Asked the NGMC to address further major issues, including:

   - methodologies to ensure a consistent and commercial approach to the valuation of transmission assets; and
   - the implementation of effective system control arrangements for the integrated network, independent of the generation sector, that meet the needs of generators, distributors and major customers.

9. Noted that the NGMC will need to further consult widely and visibly with major stakeholders.

10. Agreed that the parameters for the 1994 review of the NGMC be agreed at the next meeting of the Council of Australian Governments.

11. Requested the senior officials working group to report back to the next meeting of the Council of Australian Governments on:

- which established the NGMC.whether a Memorandum of Understanding is required between Heads of Government to advance the establishment of an interstate transmission network and, if so, what it should contain;
- progress in the resolution of the tax compensation matter;
- progress in resolution of reform arrangements for the Snowy Mountains Scheme; and
- reform actions taken within the States to facilitate the introduction of a competitive electricity market.

COAG Hobart 25 February 1994

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

1. Noted the progress which has been made since their June 1993 meeting to fulfil their commitment to have the necessary structural changes in place to allow the implementation of a competitive electricity market from 1 July 1995 including:

- substantial progress in Victoria and Queensland in the structural separation of generation, transmission, system control and distribution elements and the commitment by New South Wales to form a separate incorporated transmission subsidiary to Pacific Power as the first step in separation of transmission in that State;
- the commitments by New South Wales and Victoria to review before 1 July 1995 the structure of the generation sectors in their States;
- the commencement by the National Grid Management Council (NGMC) on 1 November 1993 of a market trial in all participating States which should spread the market culture and provide prospective market participants with experience in use of market instruments;
- the memorandum of understanding between New South Wales and Victoria which reflects the agreement by both States to develop a process for coordinating reform activities by 1 March 1994 in order to meet the objectives of competitive interstate trade by 1 July 1995;

- the agreement between officials of New South Wales and Victoria of a statement (for negotiations with the Commonwealth) of principles for the reform of the Snowy Scheme; and
- development by the NGMC for circulation early in 1994 of a discussion paper on demand management issues in a competitive electricity market.

2. Agreed to the principles for a national competitive electricity industry of a uniform approach to network pricing and regulation, and to the principle of a form of vesting contracts for managing the transition to the competitive market. With regard to network pricing, this applies to such things as common asset valuation methodologies and rates of return as well as cost reflective and uniform pricing methodologies. With regard to vesting contracts, the timing and maturity profile of these contracts will be determined after further financial analysis, with the aim of completing the transition process by no later than 1 July 1999.

   In the context of regulation, governments agreed to the following proposals by the NGMC for a regulatory framework for the electricity industry which reflects the decision of the Council on the Hilmer Report recommendations:

   (a) that the regulatory approach for the competitive national electricity industry be a framework encompassing a code of conduct which is consistent with overall national regulation with some State regulation, where required, subject to the following principles:

   - a national regulator for market conduct;
   - a code of conduct which, following endorsement by governments, would be subject to authorisation by a national regulator with oversight for three areas covering: network pricing; pool rules, operation and system control; and network connection and access. Oversight will include pricing surveillance, at either State or national level, of non-competitive generation market segments;
   - a national advisory body (which could be the NGMC or its successor) to provide governments with the information on the monitoring/oversight of a code of conduct for planning of future system developments; and
   - State regulation for franchise customer pricing, the environment and safety;

   (b) that national regulation of market conduct be undertaken by a general body like the Trade Practices Commission or its successor;

(c) that where national pricing oversight is undertaken, a general body like the Prices Surveillance Authority or its successor be utilised;

(d) that development of the code of conduct be by the NGMC in collaboration with a wide cross-section of electricity market participants and that subsequent administration of the code after authorisation be through the NGMC or its successor;

(e) that the national regulator which authorises the code of conduct be the Trade Practices Commission or its successor, noting that if after experience with the use of a general regulator, further benefits are identified for the option of creating an industry-specific regulator to oversight the codes of conduct, this option could be further explored;

(f) that in the short term, recognising that reforms are occurring at different speeds in different jurisdictions, individual governments may (where necessary) seek to put in place transitional regulatory arrangements that are consistent with the regulatory framework outlined in recommendation (a);

(g) that, recognising the timeframe commitment for the introduction of a national competitive market, the existing and transitional regulatory arrangements begin to be phased out from 1 July 1995, and be replaced by the new regulatory framework as soon as practicable as competition in the national electricity market commences; and

(h) that a task force be established consisting of representatives from key regulatory agencies and policy areas, as well as specialists that have been contributing to the NGMC process, to report on the implementation issues identified in the NGMC Regulatory Arrangements Report, with the aim of having in place the new regulatory framework by 1 July 1995.

3. In relation to system security, agreed to confirm their commitment to the concept of inter-jurisdictional merit order commitment and dispatch and interstate sourcing of generation where cost-effective, noting that the Electricity Supply Industry code of conduct (see above) will ensure that each jurisdiction is fairly treated in the provision of an agreed level of system reliability.

4. Agreed that a fundamental review of the NGMC should be deferred until after the commencement from 1 July 1995 of the competitive market but that in the interim there be a review of the NGMC by Senior Officials, for completion by 1 July 1994, clearly delineating the Council's role, in particular, its relationship with the Senior Officials' Working Group.

5. Asked the NGMC to report to the relevant Heads of Government out of session in time for governments to consider in advance of the next Council of Australian Governments meeting on:

   (a) options and desirability for reducing the initial 10MW threshold for customers permitted to participate in the competitive electricity market (noting that Victoria has considered lowering this threshold to 50[kW] by 1998);

   (b) options for an appropriate uniform and cost reflective grid pricing mechanism; and

   (c) progress towards uniform pool arrangements and any necessary refinements to market trading and associated arrangements in light of a review of the results of the market trial.

COAG Darwin 19 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 [see the following attachment].

Attachment

Report on electricity reform

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

1. Noted the progress which has been made since the 25 February 1994 Council meeting including:

   (a) substantial progress in structural reform to achieve a competitive Market:

   - in Victoria a competitive market will apply from October 1994 with five distribution organisations, a grid company, a wholesale market company and a generation holding company under which individual generators will act independently;
   - in New South Wales a transmission company was established in July 1994 as a subsidiary to Pacific Power and a wholly independent transmission organisation is expected to be established in early 1995. It is intended to carry out a review of the structure of generation in New South Wales prior to July 1995;
   - in Queensland the generation sector is to be separated from transmission and distribution in early 1995. The transmission and distribution functions are to rest with legally separate subsidiaries. It is intended that there will be scope for competition in generation, including from new entrants, subject only to technical licensing requirements; and
   - reviews of the State electricity industries in both Tasmania and South Australia are now under way with a view to structural reform consistent with the national model;

   (b) in relation to the National Grid Management Council (NGMC) activities:

   - the successful completion of the market trial on 30 June 1994;
   - increased involvement in the reform process for distributors, major customers and other key stake-holders through membership of a high-level steering group and associated working groups;

- the proposed provision by governments of additional resources ($7 million in 1994-95) and tighter project management arrangements with the appointment of a full-time General Manager; and
- the agreement to take full advantage of current reform implementation experience in developing national market arrangements;

(c) good progress towards agreement between the Commonwealth, New South Wales and Victoria on key principles for the corporatisation of the Snowy scheme from 1 July 1995 and its introduction as a key source of competitive generation in the interstate electricity market; and

(d) commencement in June 1994 of the public consultation phase on the Eastlink project with a commitment by Queensland and New SouthWales to an even-handed evaluation of the economics of the project as a means of future electricity supply.

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 eachjurisdiction 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;

(d) by October 1994 the NGMC should prepare a report for early decision by Heads of Government on the interim national market arrangements to apply from 1 July 1995 and by November 1994, a report on the arrangements for integrated system control to support that market; and

(e) the relevant jurisdictions would make decision by the end of 1994, or as soon as practicable thereafter, on the other elements essential to the establishment of a national market including industry structure, legislative arrangements, Snowy reform and the Interconnection Operating Agreement which currently governs electricity trade between the interconnected States.

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:

(i) network prices should be determined according to a common method throughout the national electricity market;

(ii) network charges for EHV [extra high voltage] transmission networks and lower voltage sub-transmission networks should in principle be cost reflective ensuring that both franchised and non-franchised customers and generators are charged, on a consistent basis, in accord with their use of network assets, and taking into account the impact of network constraints;

(iii) in view of the complexity of calculating the value of network services used by individual small customers and householders, distribution system pricing could be calculated using a greater degree of averaging than that required for EHV and sub-transmission networks;

(iv) further detailed work should be carried out by the NGMC to determine the extent of charges that should apply to existing and new generators;

(v) further work should be carried out by the NGMC in conjunction with the development of the energy market to ensure appropriate treatment of interconnections including commercial incentives for the development of new interconnectors;

(vi) within distribution, the retail and network functions should be ringfenced and separately accounted for; and

(vii) prices for high voltage and distribution networks should be transparent and published;

(b) [There was no sub-point 3(b) in the Communique.]

(c) for the purposes of developing network pricing and access charges, the methodology for asset valuation should be consistent with the National Performance Monitoring sub-committee report and with Australian Accounting Standards, and:

(i) that Deprival Value should be adopted as the preferred approach to valuing network assets,

(ii) that the approaches adopted for applying Deprival Value should be transparent and uniform across jurisdictions to avoid distortions to competition, and

(iii) that by 31 December 1994 the NGMC establish a set of agreed transparent and non-discriminatory methods and principles for applying Deprival Value;

4. Agreed in relation to customer market thresholds that:

(a) the move to a competitive electricity market by 1 July 1999 include an agreed timetable for the progressive reduction in the threshold level for competitive customers,

(b) at the commencement of the transition phase on 1 July 1995, competitive access be allowed by each State at least for customers of 10MW, and

(c) the NGMC report back to the Council's February 1995 meeting on both the timetable to reduce competitive customer thresholds over the transition period and the arrangements that should apply from 1 July 1999;

5. Agreed that current working arrangements between the NGMC and Senior Officials are appropriate to carry through the reform process to 1 July 1995;

6. Requested the Senior Officials' Working Group, working in collaboration with the NGMC and State and Territory Treasuries, to report back to Heads of Government by the end of 1994 on the timing and maturity profile of vesting contracts between generators and distributors over the transition to a fully competitive electricity market by no later than 1 July 1999 taking into account State financial/budgetary impacts (ie., generator values, debt servicing capacity, scope for tariff reform, etc) and the reduction in the customer market thresholds.

Leaders' Forum Adelaide 12 April 1996

Leaders discussed the creation of a national electricity market and reaffirmed their commitment to implementing the COAG agreements.

It is expected that New South Wales, Victoria and the Australian Capital Territory will participate in a market based on modifications to existing State market rules and systems, with South Australia participating following implementation of the National Electricity Code.

Leaders noted that interstate trade provided economic benefits to the interconnected States. Queensland stated that they were committed to not only participating in the agreement but were reviewing options for a connection to the national grid.

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:

(a) noting that the transfer of national market implementation functions from the National Grid Management Council to the National Electricity Market Management Company and the National Electricity Code Administrator will be completed in February 1997; and

(b) seeking endorsement of the phased implementation timetable for national electricity reform. The implementation timetable, whichis 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, involving:
  - progressive introduction of interstate trade in electricity;
  - system security under the control of TransGrid in NSW (and the ACT) and VPX in Victoria;
  - trading of existing Snowy entitlements through a single NSW Victorian energy trader; and
  - enhancing interstate retail competition;
- 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 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;
- 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, requiring:
  - NEMMCO to have successfully installed and tested for 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.

Gas

At its February 1994 meeting, COAG agreed that future arrangements for the gas industry needed to be settled within the next two years, with the objective of achieving free and fair trade in natural gas by 1 July 1996. A central plank in the reform process was to implement a uniform national framework for third party access to natural gas transmission pipelines by that date.

The April 1995 competition policy agreements linked NCP payments to, among other conditions, the implementation of specified reforms providing for free and fair trading in gas. The first tranche of payments, commencing in 1997–98, depended on relevant States and Territories effectively implementing 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.

Payments under the second tranche to commence in 1999–2000, will depend on relevant jurisdictions having fully implemented free and fair trading in gas between and within the States including the phasing out of transitional arrangements in accordance with the schedule to be agreed between the Parties.

Payments under the third tranche, to commence in 2001-02, will depend on the States and Territories giving full effect to, and continuing to fully observe, all COAG agreements with regard to gas.

The original reform agenda and timetable has been modified by a number of subsequent events. COAG agreed in June 1996 to broaden the scope and extend the timeframe for the reforms. It decided that the national access framework should apply to distribution systems as well as transmission pipelines. It also agreed that the reforms need not be finalised until 30 September 1996.[7]

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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. Without conceding its views on the June 1996 Communique, in its response to the Prime Minister's letter of 10 December 1996, South Australia nevertheless agreed that the National Access Code should apply to distribution pipelines as well as transmission pipelines.

Following the passing of this revised deadline, the Prime Minister in December 1996 proposed further amendments to the timeframe for introducing the national gas pipelines access code. He also sought agreement on certain regulatory and implementation issues. All jurisdictions other than Western Australia[8] agreed to these proposals.

The slippages in the reform program caused the NCC to reconsider what was necessary for jurisdictions to meet their first tranche commitments. As most jurisdictions agreed to the Prime Minister's revised timetable, the NCC took this into account when assessing progress towards implementing a national access framework. The NCC was cognisant that the slippages in the reform program did not necessarily reflect a lack of genuine commitment to achieve reform. And the NCC was also aware that the Gas Reform Implementation Group,[9] under the auspices of COAG, was developing a revised implementation timetable expected to be endorsed in a new intergovernmental agreement in late 1997.

The NCC therefore decided not to recommend financial penalties in relation to the first (1997-98) instalment of the first tranche payments, but to withhold endorsement of the second instalment of payments until a further assessment of progress prior to July 1998. The NCC's view was that, by then, jurisdictions' progress in relation to the (modified) first tranche commitments would be clearer.

All Heads of Government signed the Natural Gas Pipelines Access Agreement on 7 November 1997. The Agreement incorporates a national access code for gas pipeline systems, a legislative framework for implementation, and a revised implementation date of 30 June 1998.

In summary, agreements in relation to free and fair trade in natural gas were made at the following meetings:

- COAG Perth 7 December 1992
- COAG Melbourne 8–9 June 1993
- COAG Hobart 25 February 1994
- COAG Canberra 14 June 1996
- COAG Canberra 7 November 1997

8 Western Australia did not support the Prime Minister's specific proposals, expressing particular concern with the pace of deregulation and the proposed national transmission regulator.

9 Comprising all State and Territory governments, the Commonwealth, peak industry/user associations, the NCC and ACCC.

Extracts pertaining to gas industry reform in the Communiques for each of these meetings are reproduced below. Also provided are relevant extracts from the Prime Minister's 10 December 1996 letter to Heads of Government covering gas reform.

COAG Perth 7 December 1992

In recent years Heads of Governments have taken a number of steps to remove barriers and impediments to trade within Australia. The Council noted that at present there are barriers to trade in natural gas which could inhibit the development of the gas industry and discourage exploration and commercial development of gas markets and related infrastructure.

The Council has asked the Australian and New Zealand Minerals and Energy Council (ANZMEC) to provide a report to the first Council meeting in 1993 which:

- identifies and reviews existing legislative or other government imposed impediments and barriers to free and fair trade in natural gas, within and between jurisdictions;
- recommends action to remove impediments and barriers to free and fair trade in natural gas, within and between jurisdictions;
- outlines the work required to move toward a more uniform pipeline approvals process between States and Territories for pipeline development, including the recommended basis for third party access to gas transmission pipelines; and
- achieves the Council's objectives of free and fair trade in gas.

Upon receipt of ANZMEC's report, the Council at its first meeting in 1993 is to address the timetable for implementing free and fair trade in natural gas.

COAG Melbourne 8–9 June 1993

The Council received a report from the Australian and New Zealand Minerals and Energy Council on removal of governmental impediments to free and fair trade in natural gas. The report noted that, while Australia has abundant reserves of natural gas, on present indications additional interstate sales of gas will be required in the near term. 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.

To this end, the Council has 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. In this connection, officials have been asked specifically to review existing regulatory arrangements, within and between jurisdictions, including those applying to third-party access to gas pipelines.

COAG Hobart 25 February 1994

The Council 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 and facilitate exploration and the development of production, transmission and distribution facilities.

The Council 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.

The Council noted that existing contractual and regulatory regimes in the gas industry arose from past industry, regional development and market objectives. The Council 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. The Council 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. The Council 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.

The Council 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.

The Council 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.

The Council'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 the Council:

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, 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, the Council 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

The Council 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 the Council'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.

The Council 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.

The Council also agreed that:

(a) the Access Code should apply to distribution systems as well as transmission pipelines[10]; and

10 South Australia and Western Australia have indicated they regard this statement as an incorrect reflection of the decision taken at the meeting. Both jurisdictions have stated that, in their view, the application of the Access Code to distribution systems was not agreed. Western Australia has indicated that its Premier does not endorse the communique.

(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 to Premiers and Chief Ministers, 10 December 1996–

National Third Party Access Code for Natural Gas Pipelines

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;

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.

COAG Canberra 7 November 1997

Heads of Government signed the Natural Gas Pipeline Access Agreement (see below) which will deliver competition to the natural gas sector. The Council noted that the Agreement represents a further major step in competition reform which will ensure free and fair trade in the natural gas sector.

Heads of Government agreed that each jurisdiction will establish nationally consistent and uniform arrangements governing third party access to natural gas pipelines, by legislating to give effect to a national gas pipelines access law and a national third party access Code.

The COAG Communique noted that national access arrangements will foster competition in the delivery of gas, leading to lower prices, greater choice for consumers and environmental benefits. Implementation of the national access regime will provide the certainty required to encourage additional investment in resource exploration and development and in pipeline infrastructure leading to an integrated gas pipeline network. Lower prices through competition reform will also increase the competitiveness of our gas-consuming industries, thereby stimulating investment and generating jobs. To the extent that competition in gas stimulates energy substitution, increased gas usage could also contribute to the reduction in Australia's CO_2 emissions.

Under the new arrangements, any supplier, retailer or gas consumer will be able to contract with pipeline owners on "fair and reasonable terms" to transport gas across a pipeline, such as the Moomba-Sydney pipeline. It will also facilitate the development of new pipelines, such as the Wagga-Wodonga Interconnect or the Eastern Gas Pipeline, which would connect the Victorian and New South Wales markets, promoting competition between the Cooper Basin and Bass Strait in the eastern Australian gas market.

South Australia will introduce lead legislation establishing the third party access regime for gas pipelines with a view to its enactment by 31 December 1997. Other States and Territories, with the exception of Tasmania, will introduce legislation establishing

similar arrangements in their own jurisdictions as soon as possible, but no later than six months, after the enactment of the SouthAustralian legislation. Tasmania, which currently does not have a natural gas industry, is committed to intorducing legislation whcih will establish a similar arrangement prior to approval being given for the first natural gas pipeline in the State or before any competitive tendering process for a new natural gas pipeline in the State is commenced. The Commonwealth will also submit to its Parliament in the current sittings, application legislation to facilitate the establishment of the new national access regime for gas pipelines.

NATURAL GAS PIPELINES ACCESS AGREEMENT

7 November 1997

THE COMMONWEALTH OF AUSTRALIA

THE STATE OF NEW SOUTH WALES

THE STATE OF VICTORIA

THE STATE OF QUEENSLAND

THE STATE OF SOUTH AUSTRALIA

THE STATE OF WESTERN AUSTRALIA

THE STATE OF TASMANIA

THE AUSTRALIAN CAPITAL TERRITORY, AND

THE NORTHERN TERRITORY OF AUSTRALIA

Recitals:

A. The Council of Australian Governments at its meeting in Hobart on 25 February 1994 agreed to implement complementary legislation so that a uniform national framework applies to access to natural gas transmission pipelines both between and within jurisdictions.

B. The Parties, after consultation with industry and gas users, have agreed that certain principles are to apply to access negotiations and that there will be a National Third Party Access Code for Natural Gas Pipeline Systems. This Access Code is intended to comply with the requirements of the Competition Principles Agreement.

C. The Parties have agreed that the National Third Party Access Code for Natural Gas Pipeline Systems should be given legal effect by a uniform Gas Pipelines Access Law. The Gas Pipelines Access Law and the Code should be set out in schedules to legislation of the State of South Australia and be applied by each other Party by means of application legislation (except in the case of Western Australia which will enact the Gas Pipelines Access Law as a law of Western Australia).

D. The Parties have agreed that the Code and this agreement will apply to natural gas transmission and distribution pipelines.

Operative provisions:

1. Preliminary

1.1 This agreement may be referred to as the Natural Gas Pipelines Access Agreement.

1.2 In this agreement, unless the contrary intention appears:

"Access Legislation" means the legislation enacted by a Party pursuant to clause 5 of this agreement and, if applicable, the Gas Pipelines Access Law as applied by that legislation, as amended from time to time (or in the case of Western Australia means the legislation as enacted in Western Australia pursuant to clause 5 of this agreement, as amended from time to time);

"Appeals Body" means a person or entity which will determine appeals brought under the Gas Pipelines Access Law as that Law is applied or enacted in a jurisdiction;

"Code" or "Access Code" means the National Third Party Access Code for Natural Gas Pipeline Systems, which will initially be in the form of Annex D, as that Code is amended from time to time;

"Gas Pipelines Access Law" means the Gas Pipelines Access Law giving legal effect to the Code enacted as a schedule to an Act of the Parliament of South Australia in accordance with this agreement, and the Code, each as amended from time to time in accordance with this agreement (or in the case of Western Australia means the Gas Pipelines Access Law enacted by Western Australia in accordance with this agreement, and the Code, each as amended from time to time in accordance with this agreement);

"Jurisdiction" means the Commonwealth, a State, the Australian Capital Territory and the Northern Territory of Australia;

"legislation" includes subordinate legislation;

"Ministers" means the Ministers nominated by each Party under clause 3;

"Parliament" includes the Legislative Assembly of a Territory; and

"Relevant Regulator" means an independent person or entity which will act as the regulator under the Access Legislation (including the Access Code) with respect to a particular natural gas pipeline.

2. Access objectives

2.1 The objective of this agreement is to establish a uniform national framework for third Party access to natural gas pipelines that:

(a) facilitates the development and operation of a national market for natural gas;

(b) prevents abuse of monopoly power;

(c) promotes a competitive market for natural gas in which customers may choose suppliers, including producers, retailers and traders;

(d) provides rights of access to natural gas pipelines on conditions that are fair and reasonable for both Service Providers and Users; and

(e) provides for resolution of disputes.

3. Ministers

Each Party will keep each other Party informed, by written notice, of the Minister responsible for implementing that Party's obligations under this agreement and who will perform the functions conferred on him or her under the Gas Pipelines Access Law (including the Code).

4. Operation of agreement

4.1 This agreement is effective when executed by all Parties.

4.2 This agreement may be amended by agreement executed by all Parties.

4.3 In relation to the State of Tasmania, the Parties acknowledge the State of Tasmania's commitment to participate as a Party to this agreement and comply with all obligations under this agreement from a time sufficiently before the first natural gas pipeline in that State is approved or any competitive tendering process for a new natural gas pipeline in that State is commenced.

5. Enactment of legislation

5.1 The State of South Australia will submit to its Parliament, in that Parliament's 1997 Spring sitting, legislation in the form set out in Annex A (with the Gas Pipelines Access Law in the form set out in Annex B as Schedule 1 and the Code in the form set out in Annex D as Schedule 2), subject in each case to possible minor drafting amendments, and will take all reasonable measures to ensure that legislation is enacted in the form submitted and is enacted and assented to by 31 December 1997 (provided the Commonwealth legislation referred to in clause 5.2 has commenced to the extent necessary to enable the South Australian legislation to have legal effect).

5.2 The Commonwealth of Australia will submit to its Parliament, in that Parliament's 1997 Spring sitting, legislation in the form set out in Annex C, subject to possible minor drafting amendments, and will take all reasonable measures to ensure its legislation is enacted and proclaimed expeditiously and in the form submitted.

5.3 Subject to clause 5.4, each other Party (except Western Australia) will submit to its Parliament as soon as practicable (but in any event no later than six months) after the enactment of the South Australian legislation, application legislation applying the Gas Pipelines Access Law, as that Law is enacted as schedules to the South Australian Act and as amended from time to time, as a law of the Party (including in State or Territory offshore waters). Subject to clause 5.4, Western Australia will submit to its Parliament as soon as practicable (but in any event no later than six months) after the enactment of the South Australian legislation, legislation having an essentially identical effect to the Gas Pipelines Access Law as enacted as schedules to the South Australian Act, except as permitted by this agreement or as otherwise agreed between the Parties. The legislation of each such Party shall:

(a) be consistent with this agreement; and

(b) have been agreed in writing by all the Ministers prior to submission to its Parliament.

Each such Party will take all reasonable measures to ensure its legislation is enacted in the form submitted and is proclaimed and commenced by 30 June 1998.

5.4 Each Party's obligations under clause 5.3 are subject to:

(a) the South Australian Parliament enacting legislation as required by clause 5.1;

(b) the Commonwealth of Australia Parliament enacting legislation as required by clause 5.2; and

(c) in the case of Tasmania, clause 4.3.

5.5 South Australia will as soon as practicable after the passage of the legislation referred to in clause 5.1 take all reasonable measures to make any regulations under that legislation which have been approved in writing by all the Ministers. After Western Australia has enacted the legislation referred to in clause 5.3 it will take all reasonable measures to make any regulations under that legislation which have been approved in writing by all the Ministers. Western Australia will take all reasonable measures to ensure that at all times regulations made under the Western Australian legislation have an essentially identical effect to those made under the South Australian legislation.

6. Amending legislation

6.1 A Party must not amend its Access Legislation (either directly or by making other legislation that would alter its effect, scope or operation) unless the amendment has been approved in writing by all the Ministers.

6.2 South Australia will submit to its Parliament a bill amending the Gas Pipelines Access Law that is enacted as Schedule 1 to an Act of the Parliament of South Australia if that bill has been approved in writing by all the Ministers and will take all appropriate steps to secure the passage of that bill and bring it into force in accordance with a timetable agreed by all Ministers.

6.3 Western Australia will submit to its Parliament a bill amending the Gas Pipelines Access Law as enacted in Western Australia if that bill has been approved in writing by all the Ministers and will take all appropriate steps to secure the passage of that bill and bring it into force in accordance with a timetable agreed by all Ministers. Western Australia will take all reasonable measures to ensure that at all times the Gas Pipelines Access Law as enacted in Western Australia has (except to the extent permitted by this agreement) essentially identical effect to the Gas Pipelines Access Law as enacted as a schedule to an Act of the South Australian Parliament.

7. Conflicting legislation

7.1 Each Party will, no later than the time its Access Legislation commences, take all reasonable measures to repeal, amend or modify any other legislation which

is inconsistent with, or would alter the effect, scope or operation of, the Access Legislation (including the Access Code) or this agreement (other than legislation in relation to transitional arrangements and derogations permitted under clause 12 or franchising and licensing arrangements permitted under clauses 13 and 14).

7.2 Except as agreed in writing by all the Ministers, a Party will not submit a bill to its Parliament or take other action to bring into force any legislation (by way of amendment of existing legislation or otherwise) which would be inconsistent with, or alter the effect, scope or operation of, the Access Legislation (including the Access Code) or this agreement (other than a bill or legislation in relation to franchising and licensing arrangements permitted under clauses 13 and 14).

7.3 For the purposes of this agreement, legislation regulating retail gas prices shall not of itself be prohibited under clause 7.1 or 7.2.

8. Access code

8.1 The Parties agree that the initial Access Code will be a schedule to the South Australian legislation referred to in clause 5.1 and will be in the form set out in Annex D to this agreement.

8.2 The Parties agree that the Access Code will be capable of amendment by agreement between the Ministers in accordance with the procedures set out in the Gas Pipelines Access Law (including the Access Code).

9. Administration of the code

9.1 Administration of the Code will be the responsibility of a National Gas Pipelines Advisory Committee (NGPAC), to be established by the Parties under this agreement.

9.2 The NGPAC will be composed as follows:

(a) an independent Chair to be appointed collectively by the Parties;

(b) the Code Registrar;

(c) one person nominated by each Party;

(d) one person nominated by each of the following industry groups:

- Australian Gas Association (AGA),
- Australian Petroleum Production and Exploration Association (APPEA),

- Australian Pipeline Industry Association (APIA), and
- Business Council of Australia Energy Working Group (BCA);

(e) two representatives of State and Territory Relevant Regulators appointed by the Parties on a rotation basis, with Victoria and New South Wales to provide the first two such representatives; and

(f) one representative nominated by the Australian Competition and Consumer Commission.

The National Competition Council will be invited to participate as an observer and adviser.

9.3 Only persons nominated by a Party under clause 9.2(c) will be entitled to vote at NGPAC meetings.

9.4 The functions of the NGPAC will be to:

(a) monitor, review and report on the operation of the Gas Pipelines Access Law (including the Code);

(b) provide advice to the Ministers on interpretation and administration the Gas Pipelines Access Law (including the Code);

(c) prepare information on the Gas Pipelines Access Law (including the Code) for general publication; and

(d) make recommendations on amendments to the Gas Pipelines Access Law (including the Code) to Ministers.

The Parties may agree to give the NGPAC other functions. NGPAC may determine its own procedures subject to the requirements as set out in the Gas Pipelines Access Law (including the Code).

9.5 The Commonwealth will pay one third of the costs of funding the NGPAC (including its Chair) and the Code Registrar (including any damages or legal costs arising out of the Code Registrar performing its functions under the Code). The balance of those costs will be shared by the Parties (other than the Commonwealth) on the basis of population.

9.6 The Parties may from time to time unanimously agree on other appropriate mechanisms for administration of the Code.

10. Effective access regime

10.1 Each State and Territory Party other than Tasmania agrees to submit the access regime embodied in its Access Legislation (including the Code) to the National Competition Council for certification as an effective access regime under Part IIIA of the Trade Practices Act not later than thirty (30) days after enactment of its Access Legislation. Tasmania agrees to submit the access regime embodied in its Access Legislation (including the Code) to the National Competition Council for certification as an effective access regime under Part IIIA of the Trade Practices Act as soon after enactment of its Access Legislation as is possible.

10.2 If the access regime embodied in a Party's Access Legislation (including the Code) has been certified as an effective access regime under Part IIIA of the Trade Practices Act, each Party will take all such actions as may be necessary to ensure that that access regime remains an effective access regime.

10.3 The Parties will as far as possible co-ordinate referrals and submissions to the National Competition Council and do so collectively or concurrently where possible.

11. Jurisdiction of relevant regulator and other code bodies

11.1 The Parties agree that in relation to those pipelines classified or determined to be transmission pipelines pursuant to the Gas Pipelines Access Law the Relevant Regulator shall be the Australian Competition and Consumer Commission (except that the Relevant Regulator for all transmission pipelines that are located wholly in Western Australia will be a State-based independent Relevant Regulator, subject to independent review of this position in the event that a significant inter-state pipeline is to be constructed to or from another jurisdiction to the east of Western Australia or five years from the date Western Australia signs this agreement, whichever is the earlier).

11.2 The Parties agree that in relation to those pipelines classified or determined to be distribution pipelines pursuant to the Gas Pipelines Access Law:

(a) that are located wholly in a particular State or Territory, the Relevant Regulator shall be the body specified in Annex G in relation to that State or Territory (or such other body as the Parties may agree); and

(b) that are located in more than one State or Territory, the Relevant Regulator shall be the body specified in Annex G in relation to the State

or Territory with which the Pipeline concerned is most closely connected as determined pursuant to the Gas Pipelines Access Law (or such other body as the Parties may agree).

Any such Relevant Regulator must at all times be an independent authority established by statute and recognised by the National Competition Council as independent.

11.3 Each Party which has established a body which will act as a Relevant Regulator under the Code agrees to take such actions as are available to it to ensure that the body concerned develops guidelines for the conduct of arbitrations under the Code in relation to pipelines for which it will be the Relevant Regulator, which (amongst other things) contain practices and procedures to establish sufficient independence between arbitration decision making and regulatory decision making under the Code. Such practices and procedures should include provisions to the effect that, if a party to a dispute so requires, the Relevant Regulator will appoint as an arbitrator a person (who may be a Commissioner, member or other officer of the Relevant Regulator) who has not been substantially involved in regulatory decision making in relation to the pipeline to which the arbitration relates.

11.4 The Parties agree that the Appeals Body:

(a) in relation to decisions made by the Australian Competition and Consumer Commission or the Commonwealth Minister for which administrative appeals are provided in the Gas Pipelines Access Law shall be the Australian Competition Tribunal;

(b) in relation to decisions made by jurisdictional Relevant Regulators or State or Territory Ministers for which administrative appeals are provided in the Gas Pipelines Access Law shall be the body specified in Annex G in relation to the State or Territory under whose Access Legislation the Relevant Regulator or Minister concerned was acting (or such other bodies as the Parties may agree).

11.5 The Parties agree that for the purposes of the sections of the Access Code dealing with Coverage:

(a) the National Competition Council shall have the functions conferred on it under the Access Code; and

(b) in the case of pipelines listed in the Code as transmission pipelines, or classified or determined to be transmission pipelines pursuant

to the Gas Pipelines Access Law, the Relevant Minister for the purposes of the Gas Pipelines Access Law (including the Access Code) shall be the Commonwealth Minister or, if a Minister other than the Commonwealth Minister is specified in Annex G, that Minister (or such other Minister as the Parties may agree);

(c) in the case of pipelines listed in the Code as distribution pipelines or classified or determined to be distribution pipelines pursuant to the Gas Pipelines Access Law:

(i) if the Pipeline is located wholly in a particular State or Territory, the Relevant Minister for the purposes of the Gas Pipelines Access Law (including the Access Code) shall be the Minister of that State or Territory (or, if that State or Territory so elects, the Commonwealth Minister); and

(ii) if the Pipeline is located in more than one State or Territory, the Relevant Minister for the purposes of the Gas Pipelines Access Law (including the Access Code) shall be the Minister of the State or Territory with which the Pipeline concerned has the closest connection as determined pursuant to the Gas Pipelines Access Law (or, if that State or Territory so elects, the Commonwealth Minister).

11.6 The Commonwealth and each other Party agree for the purpose of section 44ZZM of the Trade Practices Act that each Party may confer on the Australian Competition and Consumer Commission the functions and powers contemplated by this agreement and the proposed Access Legislation of that Party (including the Code) and that these functions and powers shall be performed or exercised in accordance with the proposed Access Legislation of that Party (including the Code).

11.7 The Parties agree for the purposes of clause 10 of the Competition Principles Agreement that the functions of the National Competition Council contemplated by this agreement (including consideration of any proposed amendments to the access regime embodied in the Access Legislation (including the Code)) form part of the work program of the National Competition Council.

11.8 The Commonwealth and each other Party agree for the purposes of proposed section 44ZZOA of the Trade Practices Act (to be introduced by the legislation to be enacted by the Commonwealth pursuant to clause 5.5) that each Party may confer on the Australian Competition Tribunal the functions and powers

contemplated by this agreement and the proposed Access Legislation of the Party concerned and that these functions and powers shall be performed or exercised in accordance with the proposed Access Legislation of that Party (including the Code). The Commonwealth agrees to ensure that the Australian Competition Tribunal is sufficiently resourced to perform functions conferred on it by the Gas Pipelines Access Law.

12. Proposed transitional arrangements and derogations

12.1 The Parties agree that transitional arrangements and derogations from the Gas Pipelines Access Law (including the Access Code) will be allowed only if they:

(a) have been approved by all the Ministers; and

(b) are specifically identified in their respective Access Legislation or other legislation that is appropriate.

Each Party's timetable for the phase in of access which is intended to be applied as at the date of this agreement is set out in Annex H. The other transitional arrangements and derogations intended to be applied by each Party as at the date of this agreement are set out in Annex I.

The Parties note that the specification of transitional arrangements and derogations in Annex H, Annex I and the Access Legislation of a particular jurisdiction, or the decision of Ministers under clauses 5.3 or 12.1, does not limit the discretion of the Commonwealth Minister to certify or not certify the access regime embodied in a jurisdiction's Access Legislation (including the Code) as an effective access regime under section 44N of the Trade Practices Act or the National Competition Council's discretion under section 44M of the Trade Practices Act.

12.2 Each Party will ensure that any transitional arrangements or derogations will:

(a) be limited, in duration and extent, to transitional arrangements or derogations essential to the orderly introduction of the competitive arrangements contemplated by the Gas Pipelines Access Law (including the Code); and

(b) except where otherwise noted in Annex H or Annex I or approved by all the Ministers under clause 12.1(a), be phased out, repealed or terminated no later than 1 September 2001, so that a competitive natural

gas market characterised by access to all gas consumers and all producers in all States and Territories exists after this date.

12.3 It is the intention of the Parties that the implementation of the Access Code will not result in additional transitional expenditures for Pipeline owners such as additional taxes. In particular each Party will exempt from stamp duty and other taxes the transfer of assets by a Service Provider (as defined in the Access Code) made to comply with the ring fencing obligations in the Access Code.

13. Franchising principles

13.1 Each Party agrees to conform to the Franchising Principles contained in Annex E and put in place arrangements at the time its Access Legislation is enacted to remove, phase out or reform existing exclusive franchise arrangements by 1 September 2001 (except in the case of Kalgoorlie-Boulder in Western Australia in relation to which a ten year non-renewable franchise for the distribution system and a ten year non-renewable franchise for the trading of gas on the system, have been awarded under a competitive tender process and which need not be removed, phased out or reformed until the end of the ten year term).

14. Licensing principles

14.1 Each Party agrees to conform to the Licensing Principles contained in Annex F and put in place arrangements at the time its Access Legislation is enacted to remove, phase out or reform existing licensing arrangements incompatible with the Licensing Principles or the Gas Pipelines Access Law (including the Access Code) by 1 September 2001 (or 1 July 2002 in the case of Western Australia).

15. Withdrawal of parties

15.1 The Parties agree that if:

(a) a Party fails to comply with any of its obligations under this agreement; or

(b) Access Legislation has not been enacted and become effective in a Party's jurisdiction on or before the date applicable to that Party under clause 5, it may be required to withdraw from this agreement if all of the other Parties give written notice requiring it to withdraw.

15.2 A Party may withdraw from this agreement by giving notice in writing to the other Parties of its intention to do so, and all Parties shall then negotiate in good faith in relation to the terms of withdrawal of the Party which has given notice, including the date upon which the Party will cease to be a Party and any changes to legislation and other arrangements with respect to the Gas Pipelines Access Law (including the Access Code) that may be necessary as a consequence of the withdrawal.

15.3 If a Party withdraws, this agreement will nevertheless continue as an agreement between all other Parties.

Annexes

Annex A - South Australian Application Legislation

Annex B - Gas Pipelines Access Law

Annex C - Commonwealth Applications Legislation

Annex D - National Third Party Access Code for Natural Gas Pipeline systems

Annex E - Franchising Principles

Annex F - Licensing Principles

Annex G - National Access Code Bodies and Appeals Bodies - Distribution Pipelines

Annex H - Transitional Arrangements - Timing of Phase-in of Customer Classes

Annex I - Transitional Arrangements and Derogations

Annexes A, B, C, D, H and I are not provided here for reasons of space but are available on the Internet at: **http://gasreform.dpie.gov.au**

Annex E - Franchising Principles

The following are the Franchising Principles:

1. By-pass to, and interconnection in order to supply gas to, contestable customers should be allowed if the operator has the necessary operating licences and can meet the requirements of the relevant network operating procedures (contestable customers being customers who are able to choose their supplier of gas from any appropriately licensed retailer or other supplier in accordance with the phase in timetable as contained in Annex H).

2. No new exclusive franchises should be granted for the sale of gas in a geographic area or through a specific facility except for a prospective natural gas pipeline service which meets all of the following criteria:

   (a) a franchise for the sale of gas must be limited to significant "greenfields" projects (infill and extensions to existing networks would be excluded) where there is evidence that investment in pipelines would not otherwise occur, or the services provided to some customer classes would be severely limited, and the franchise has been justified on the balance of public interest;

   (b) any retail franchise applies to specific small use customer classes and is limited in duration and non-renewable:

      - limited to customer classes that normally fall into a consumption range of no more than 1 terajoule per year;
      - limited to a period from the grant of the franchise of normally no more than 5 years, consistent with the maximum period for grant of a franchise for provision of Gas Pipeline services (but in any event no more than 10 years);

   (c) the pipeline service operator is selected through a competitive tender process, Prospective Users are consulted, where possible, in determining the conditions of the franchise, and any other conditions that are considered necessary to protect the public interest are met;

   (d) consideration is given to the longer term benefits and feasibility of encouraging market structures which enhance competition by splitting the franchise into smaller or multiple franchise areas to be allocated to competing bidders; and

   (e) there is prices oversight, by an independent body, for franchise customers over the duration of any proposed franchise.

3. No new exclusive franchises should be granted for provision of natural gas pipeline services in a geographic area or through a specific facility except for a prospective natural gas pipeline service which meets all of the following criteria:

   (a) the pipeline service will be provided through an integrated pipeline network which will require systematic development over a significant period in order to achieve the lowest expected long term cost;

(b) there is a strong likelihood that in the absence of an exclusive franchise the pipeline network will not be developed in line with the lowest expected long term cost;

(c) the pipeline service operator is selected through a competitive public tender process, prospective users are consulted in determining the conditions of the franchise, and any other conditions that are considered necessary to protect the public interest are met; and

(d) the exclusive franchise is limited to a period of not more than 5 years, and is non-renewable.

Annex F - Licensing Principles

The licensing requirements and conditions will be consistent with the requirements of COAG agreements in relation to free and fair trade in gas (for example, the agreement to remove legislative or regulatory barriers to both inter- and intra-jurisdictional trade in gas).

Specifically, the Parties agree to the following Licensing Principles:

1. Licences to operate natural gas pipelines to be unbundled from any other type of licence and open to all appropriately qualified pipeline service operators;

2. Licensing will not be used to restrict the construction or operation of pipelines that could deliver gas to the same market as a licensed pipeline;

3. A licence will not limit the services an operator may provide;

4. By-pass to, and inter-connection in order to supply gas to, contestable customers should be allowed if the operator has the necessary operating licences and can meet the requirements of the relevant network operating procedures (contestable customers being customers who are able to choose their supplier of gas from any appropriately licensed retailer or other supplier in accordance with the phase in timetable as contained in Annex H);

5. Licence conditions may include an obligation to connect customers onto the natural gas pipeline network. This may include an obligation to undertake minor or infill extensions to the geographic range of the network;

6. There will be full transparency in decision-making on licensing through public notification and accountability for decisions.

Annex G

National Access Code Bodies and Appeals Bodies -Distribution Pipelines

Jurisdiction	Function	Code Body	Appeal
NSW	CAB	NCC	
	CDM	NSW/Commonwealth Minister	Judicial review - Federal Court Admin Appeal - [Australian Competition Tribunal]
	Regulator	IPART/ACCC[1]	Judicial review - Federal Court Admin Appeal - [Australian Competition Tribunal]
	Arbitrator	IPART/ACCC[1]	Judicial Review - Federal Court
VIC	CAB	NCC	
	CDM	VIC Minister	Judicial review - Federal Court Admin Appeal - [Australian Competition Tribunal]
	Regulator	ORG	Judicial review - Federal Court Admin Appeal - ORG Appeal Panel
	Arbitrator	ORG	Judicial review - Federal Court
QLD	CAB	NCC	
	CDM	QLD Minister	Judicial Review - Supreme Court (QLD JR Law) Admin appeal - QLD Gas Appeals Tribunal
	Regulator	QLD Competition Authority (QCA)	Judicial Review - Supreme Court (QLD JR Law) Admin appeal - QLD Gas Appeals Tribunal
	Arbitrator	QCA	Judicial Review - Supreme Court (QLD JR Law)
SA	CAB	NCC	
	CDM	SA Minister	Judicial Review - Federal Court Admin Appeal - SA Gas Review Board
	Regulator	SA Independent Pricing & Access Regulator	Judicial Review - Federal Court Admin Appeal - SA Gas Review Board
	Arbitrator	SA Independent Pricing & Access Regulator	Judicial Review - Federal Court

1 Queanbeyan and Yarrowlumla will be regulated as for the Canberra distribution system. Access regulation of NSW distribution to be transferred to the Commonwealth at a future date

Jurisdiction	Function	Code Body	Appeal
WA	CAB	NCC	
	CDM	WA Minister	Judicial Review-Supreme Court Admin appeal - A WA appeals body
	Regulator	A WA independent	Judicial Review-Supreme Court Admin appeal - A WA appeals body
	Arbitrator	A WA independent regulator	Judicial Review-Supreme Court
TAS	CAB	To be determined	
	CDM	To be determined	To be determined
	Regulator	To be determined	To be determined
	Arbitrator	To be determined	To be determined
ACT	CAB	NCC	
	CDM	ACT/C'wealth Minister[2]	Judicial Appeal - Federal Court. Admin appeal - [Australian Competition Tribunal]
	Regulator	IP&RC/ACCC[2]	Judicial Appeal - Federal Court. Admin appeal - [Australian Competition Tribunal]
	Arbitrator	IP&RC/ACCC[2]	Judicial Appeal - Federal Court.
NT	CAB	NCC	
	CDM	NT Minister	Judicial Appeal - Federal Court. Admin appeal - [Australian Competition Tribunal]
	Regulator	ACCC	Judicial Appeal - Federal Court. Admin appeal - [Australian Competition Tribunal]
	Arbitrator	ACCC	Judicial Appeal - Federal Court.

2 ACT& NSW agree to a single regulator (either IPRC or IPART) for the Canberra/Queanbeyan/Yarrowlumla distribution system. Access regulation of ACT/NSW cross border distribution pipelines to be transferred to the Commonwealth at a future date.

CAB = Coverage Advisory Body
CDM = Coverage Decision Maker
ACCC = Australian Competition and Consumer Commission
ORG = Office of the Regulator General
IPART = Independent Pricing and Regulatory Tribunal (NSW)
IP&RC = Independent Prcing and Regulatory Commission (ACT)

National Access Code Bodies and Appeals Bodies - Transmission Pipelines

Jurisdiction	Function	Code Body	Appeal
NSW	CAB	NCC	
	CDM	Commonwealth Minister	Judicial review - Federal Court Admin Appeal - [Australian Competition Tribunal]
	Regulator	ACCC	Judicial review - Federal Court Admin Appeal - [Australian Competition Tribunal]
	Arbitrator	ACCC	Judicial Review - Federal Court
VIC	CAB	NCC	
	CDM	Commonwealth Minister	Judicial review - Federal Court Admin Appeal - [Australian Competition Tribunal]
	Regulator	ACCC	Judicial review - Federal Court Admin Appeal - [Australian Competition Tribunal]
	Arbitrator	ACCC	Judicial review - Federal Court
QLD	CAB	NCC	
	CDM	Commonwealth Minister	Judicial Review - Federal Court Admin appeal - [Australian Competition Tribunal]
	Regulator	ACCC	Judicial Review - Federal Court Admin appeal - [Australian Competition Tribunal]
	Arbitrator	ACCC	Judicial Review - Federal Court
SA	CAB	NCC	
	CDM	SA Minister	Judicial Review - Federal Court Admin Appeal - SA Gas Review Board
	Regulator	ACCC	Judicial Review - Federal Court Admin Appeal - [Australian Competition Tribunal]
	Arbitrator	ACCC	Judicial Review - Federal Court

CAB = Coverage Advisory Body
CDM = Coverage Decision Maker
ACCC = Australian Competition and Consumer Commission
ORG = Office of the Regulator General
IPART = Independent Pricing and Regulatory Tribunal (NSW)
IP&RC = Independent Pricing and Regulatory Commission (ACT)

Jurisdiction	Function	Code Body	Appeal
WA	CAB	NCC	
	CDM	WA Minister	Judicial Review-Supreme Court Admin appeal - A WA appeals body
	Regulator	A WA independent regulator	Judicial Review-Supreme Court[1] Admin appeal - A WA appeals body[1]
	Arbitrator	A WA independent regulator	Judicial Review-Supreme Court[1]
TAS	CAB	To be determined	
	CDM	To be determined	To be determined
	Regulator	ACCC	Judicial review - Federal Court Admin appeal - [Australia Competition Tribunal]
	Arbitrator	ACCC	Judicial review - Federal Court Admin appeal - [Australia Competition Tribunal]
ACT	CAB	NCC	
	CDM	Commonwealth Minister	Judicial review - Federal Court. Admin appeal - [Australian Competition Tribunal]
	Regulator	ACCC	Judicial review - Federal Court. Admin appeal - [Australian Competition Tribunal]
	Arbitrator	ACCC	Judicial review - Federal Court.
NT	CAB	NCC	
	CDM	NT Minister	Judicial review - Federal Court. Admin appeal - [Australian Competition Tribunal]
	Regulator	ACCC	Judicial review - Federal Court. Admin appeal - [Australian Competition Tribunal]
	Arbitrator	ACCC	Judicial review - Federal Court.

1 Applies only to transmission pipelines solely intra-state. The position for intra-state transmission pipelines will be reviewed if there is a significant pipeline from the east or in 5 years, whichever is the earlier.

Water Resource Policy

In February 1994, COAG adopted a strategic framework for the reform of the Australian water industry. The framework covers natural resource management, pricing (including the treatment of cross-subsidies), more rigorous approaches to future investment, trading in water entitlements, institutional reform and improved public consultation. The timetable for implementation requires jurisdictions to adopt charges based on the principles of consumption-based pricing and full cost recovery by 1999, with full cost recovery in respect of rural water supply achieved by 2001.

There are two caveats to the strategic framework. First, while Queensland, South Australia and Tasmania agreed to the broad principles of the framework, they had concerns on the detail of the recommendations. Second, COAG recognised that the speed and extent of water industry reform and adjustment will be dependent on the availability of financial resources to facilitate structural adjustment and asset refurbishment.

The April 1995 agreements link NCP payments to, among other conditions, the implementation of water industry reforms. There were no obligations for water reform attached to the first tranche of payments.

Payments under the second tranche to commence in 1999-2000, will depend on States and Territories effectively implementing the strategic framework for the efficient and sustainable reform of the Australian water industry and future processes as endorsed at the February 1994 COAG meeting and embodied in the Report of the Expert Group on Asset Valuation Methods and Cost-Recovery Definitions (February 1995).

Payments under the third tranche, to commence in 2001–02, will depend on States and Territories giving full effect to, and continuing to fully observe, all COAG agreements on water.

Agreements in relation to water resource policy were made at the following meetings:

COAG	Perth	7 December 1992
COAG	Melbourne	8-9 June 1993
COAG	Hobart	25 February 1994
COAG	Canberra	11 April 1995
ARMCANZ	Hobart	27 February 1998

Extracts pertaining to water industry reform from the Communiques for each of these meetings are reproduced below. Also provided is the relevant extract from the attachment to the Prime Minister's letter to Heads of Government of 10 February 1997 covering water reform.

The 27 February 1998ARMCANZ meeting endorsed guidelines for the application of the sections of the 1994 Strategic Framework dealing with assets, the return on assets and asset renewals in the context of cost recovery and subsequent price determination. ARMCANZ has recommended that the guidelines to be considered by COAG as the basis for the NCC's assessment of jurisdictions' obligations on full cost recovery.

COAG Perth 7 December 1992

The Council noted that the issue of appropriate pricing and distribution of water as a resource has been given substantial attention in recent resource policy development at both Commonwealth and State/Territory level. This reflects the intrinsic economic and environmental importance of the issues, and their national nature, which impact on and are of concern to, all levels of government. The Industry Commission and the Ecologically Sustainable Development process have also focussed on water reform issues and proposed that issues such as water pricing and transferability of water entitlements between users need to be further progressed.

The Council agreed to the preparation of a report for their next meeting on the current state of play in both urban and rural water use, as a basis for considering the need for greater impetus to be given to reform in key areas.

COAG Melbourne 8–9 June 1993

As requested at its December 1992 meeting, the Council received a report from

officials on the current state of play in both urban and rural water use. The report noted that, while progress has been made in reforming pricing, allocation and other aspects of the industry, there are still significant economic and environmental benefits to be derived from adoption of a range of measures to overcome impediments to reform.

The Council has therefore asked a working group of officials with an independent chair, to develop and report on a strategic framework for efficient and sustainable reform of the water industry, which, at the same time, takes account of the technical and policy diversity that exists across the States and Territories. The report is also to address the future roles of the Council of Australian Governments and Ministerial Councils in the reform process, other mechanisms and a proposed timetable for implementation. The report is to be completed in time for consideration by Heads of Government at the next meeting of the Council.

COAG Hobart 25 February 1994

The Council considered a report from the Working Group on Water Resource Policy outlining a strategic framework for the efficient and sustainable reform of the Australian water industry. The report had been commissioned by the Council at its June 1993 meeting.

The report noted that, while progress is being made on a number of fronts to reform the water industry and to minimise unsustainable natural resource use, there currently exists within the water industry:

- approaches to charging that often result in commercial and industrial users of water services, in particular, paying more than the costs of service provision;
- major asset refurbishment needs in rural areas for which, in general, adequate financial provision has not been made;
- impediments to irrigation water being transferred from low value broad-acre agriculture to higher value uses in horticulture, crop production and dairying;
- service delivery inefficiencies; and
- a lack of clear definition concerning the role and responsibilities of a number of institutions involved in the industry.

The report also noted that there is a number of issues and deficiencies involving water and the wider natural resource base that require the attention of governments. These include widespread natural resource degradation which has an impact on the quality and/or quantity of the nation's water resources.

The Council endorsed the strategic framework proposed by the Working Group and agreed to its implementation. Queensland, SouthAustralia and Tasmania agreed to the broad principles but had concerns on the detail of the recommendations. The framework embraces pricing reform based on the principles of consumption-based pricing and full-cost recovery, the reduction or elimination of cross-subsidies and making subsidies transparent. The framework also involves the clarification of property rights, the allocation of water to the environment, the adoption of trading arrangements in water, institutional reform and public consultation and participation.

Implementation of the strategic framework is expected to result in a restructuring of water tariffs and reduced or eliminated cross-subsidies for metropolitan and town water services with the impact on domestic consumers of water services being offset by cost reductions achieved by more efficient, customer-driven, service provision.

In the case of rural water services, the framework is intended to generate the financial resources to maintain supply systems should users desire this and through a system of tradeable entitlements to allow water to flow to higher value uses subject to social, physical and environmental constraints. Where they have not already done so, States are to give priority to formally determining allocations or entitlements to water, including allocations for the environment.

Environmental requirements are to be determined on the best scientific information available and will have regard to the inter-temporal and inter-spatial water need required to maintain the health and viability of river systems and groundwater basins. The Council also agreed where significant future irrigation activity or dam construction is contemplated, that in addition to economic evaluations, assessments will be undertaken to ensure that the environmental requirements of river systems can be adequately met.

Because the changes flowing from the framework are extensive and far reaching in their implications, the Council considered that a five to seven year implementation period will be required. Part of this process will involve governments consulting the community on aspects of the framework. The speed and extent of water industry

reform and the adjustment process will be dependent on the availability of financial resources to facilitate structural adjustment and asset refurbishment. The detailed decisions of the Council in relation to water resource policy are [contained in the following attachment].

The Council has asked the Working Group on Water Resource Policy to prepare a report for its first meeting in 1995 on progress in implementing the framework with further reports to be prepared annually on progress over the succeeding four years.

Attachment

Water resource policy

In relation to water resource policy, the Council agreed:

1. that action needs to be taken to arrest widespread natural resource degradation in all jurisdictions occasioned, in part, by water use and that a package of measures is required to address the economic, environmental and social implications of future water reform;

2. to implement a strategic framework to achieve an efficient and sustainable water industry comprising the elements set out in (3) through (8) below;

3. in relation to pricing:

   (a) in general –

      (i) to the adoption of pricing regimes based on the principles of consumption-based pricing, full-cost recovery and desirably the removal of cross-subsides which are not consistent with efficient and effective service, use and provision. Where cross-subsides continue to exist, they be made transparent,

         • Queensland, SouthAustralia andTasmania endorsed these pricing principles but have concerns on the detail of the recommendations;

      (ii) that where service deliverers are required to provide water services to classes of customer at less than full cost, the cost of this be fully disclosed and ideally be paid to the service deliverer as a community service obligation;

(b) urban water services -

(i) to the adoption by no later than 1998 of charging arrangements for water services comprising an access or connection component together with an additional component or components to reflect usage where this is cost-effective;

(ii) that in order to assist jurisdictions to adopt the aforementioned pricing arrangements, an expert group, on which all jurisdictions are to be represented, report to COAG at its first meeting in 1995 on asset valuation methods and cost-recovery definitions; and

(iii) that supplying organisations, where they are publicly owned, aiming to earn a real rate of return on the written-down replacement cost of their assets, commensurate with the equity arrangements of their public ownership;

(c) metropolitan bulk-water suppliers –

(i) to charging on a volumetric basis to recover all costs and earn a positive real rate of return on the written-down replacement cost of their assets;

(d) rural water supply –

(i) that where charges do not currently fully cover the costs of supplying water to users, agree that charges and costs be progressively reviewed so that no later than 2001 they comply with the principle of full-cost recovery with any subsidies made transparent consistent with 3(a)(ii) above;

(ii) to achieve positive real rates of return on the written-down replacement costs of assets in rural water supply by 2001, wherever practicable;

(iii) that future investment in new schemes or extensions to existing schemes be undertaken only after appraisal indicates it is economically viable and ecologically sustainable;

(iv) where trading in water could occur across State borders, that pricing and asset valuation arrangements be consistent;

(v) where it is not currently the case, to the setting aside of funds for future asset refurbishment and/or upgrading of government-supplied water infrastructure; and

(vi) in the case of the Murray-Darling Basin Commission, to the Murray-Darling Basin Ministerial Council putting in place arrangements so that, out of charges for water, funds for the future maintenance, refurbishment and/or upgrading of the headwork's and other structures under the Commission's control be provided;

(e) groundwater –

(i) that management arrangements relating to groundwater be considered by Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ) by early 1995 and advice from such consideration be provided to individual jurisdictions and the report be provided to COAG;

4. in relation to water allocations or entitlements:

(a) the State government members of the Council, would implement comprehensive systems of water allocations or entitlements backed by separation of water property rights from land title and clear specification of entitlements in terms of ownership, volume, reliability, transferability and, if appropriate, quality;

(b) where they have not already done so, States, would give priority to formally determining allocations or entitlements to water, including allocations for the environment as a legitimate user of water;

(c) in allocating water to the environment, member governments would have regard to the work undertaken by ARMCANZ and Australian and New Zealand Environment and Conservation Council (ANZECC) in this area;

(d) that the environmental requirements, wherever possible, will be determined on the best scientific information available and have regard to the inter-temporal and inter-spatial water needs required to maintain the health and viability of river systems and groundwater basins. In cases where river systems have been over-allocated, or are deemed to be stressed, arrangements will be instituted and substantial progress made by 1998 to provide a better balance in water resource use including appropriate allocations to the environment in order to enhance/restore the health river systems;

(e) in undertaking this work, jurisdictions would consider establishing environmental contingency allocations which provide for a review of the allocations five years after they have been determined; and

(f) where significant future irrigation activity or dam construction is contemplated, appropriate assessments would be undertaken to, inter alia, allow natural resource managers to satisfy themselves that the environmental requirements of the river systems would be adequately met before any harvesting of the water resource occurs;

5. in relation to trading in water allocation or entitlements:

(a) that water be used to maximise its contribution to national income and welfare, within the social, physical and ecological constraints of catchments;

(b) where it is not already the case, that trading arrangements in wate allocations or entitlements be instituted once the entitlement arrangements have been settled. This should occur no later than 1998;

(c) where cross-border trading is possible, that the trading arrangements be consistent and facilitate cross-border sales where this is socially, physically and ecologically sustainable; and

(d) that individual jurisdictions would develop, where they do not already exist, the necessary institutional arrangements, from a natural resource management perspective, to facilitate trade in water, with the provision that in the Murray-Darling Basin the Murray-Darling Basin Commission be satisfied as to the sustainability of transactions;

6. in relation to institutional reform:

(a) that where they have not already done so, governments would develop administrative arrangements and decision-making processes to ensure an integrated approach to natural resource management;

(b) to the adoption, where this is not already practised, of an integrated catchment management approach to water resource management and set in place arrangements to consult with the representatives of local government and the wider community in individual catchments;

(c) to the principle that, as far as possible, the roles of water resource management, standard setting and regulatory enforcement and service provision be separated institutionally;

(d) that this occur, where appropriate, as soon as practicable, but certainly no later than 1998;

(e) the need for water services to be delivered as efficiently as possible and thatARMCANZ, in conjunction with the Steering Committee on National Performance Monitoring of Government Trading Enterprises, further develop its comparisons of inter-agency performance, with service providers seeking to achieve international best practice;

(f) that the arrangements in respect of service delivery organisations in metropolitan areas in particular should have a commercial focus, and whether achieved by contracting out, corporatised entities or privatised bodies this be a matter for each jurisdiction to determine in the light of its own circumstances; and

(g) to the principle that constituents be given a greater degree of responsibility in the management of irrigation areas, for example, through operational responsibility being devolved to local bodies, subject to appropriate regulatory frameworks being established;

7. in relation to consultation and public education:

(a) to the principle of public consultation by government agencies and service deliverers where change and/or new initiatives are contemplated involving water resources;

(b) that where public consultation processes are not already in train in relation to recommendations (3)(b), (3)(d), (4) and (5) in particular, such processes will be embarked upon;

(c) that jurisdictions individually and jointly develop public education programs in relation to water use and the need for, and benefits from, reform;

(d) that responsible water agencies work with education authorities to develop a more extensive range of resource materials on water resources for use in schools; and

(e) that water agencies should develop individually and jointly public education programs illustrating the cause and effect relationship between infrastructure performance, standards of service and related costs, with a view to promoting levels of service that represent the best value for money to the community;

8. in relation to the environment:

   (a) that ARMCANZ, ANZECC and the Ministerial Council for Planning, Housing and Local government examine the management and ramifications of making greater use of wastewater in urban areas and strategies for handling stormwater, including its use, and report to the first Council of Australian Governments' meeting in 1995 on progress;

   (b) to support ARMCANZ and ANZECC in their development of the National Water Quality Management Strategy, through the adoption of a package of market-based and regulatory measures, including the establishment of appropriate water quality monitoring and catchment management policies and community consultation and awareness;

   (c) to support consideration being given to establishment of landcare practices that protect areas of river which have a high environmental value or are sensitive for other reasons; and

   (d) to request ARMCANZ and ANZECC, in their development of the National Water Quality Management Strategy, to undertake an early review of current approaches to town wastewater and sewage disposal to sensitive environments, noting that action is underway to reduce accessions to water courses from key centres on the Darling River system (It was noted that the National Water Quality Management Strategy is yet to be finalised and endorsed by governments.);

9. in relation to water and related research, member governments would:

   (a) give higher priority to the research necessary to progress implementation of the strategic framework including consistent methodologies for determining environmental flow requirements; and

   (b) to greater coordination and liaison between research agencies to more effectively utilise the expertise of bodies such as the Land and Water Research and Development Corporation, the Murray-Darling Basin Commission and other State and Commonwealth organisations;

10. in relation to taxation:

   (a) that a sub-committee of Commonwealth and State officials, established by the Working Group on Microeconomic Reform, meet to discuss taxation issues of relevance to the water industry with a view to reporting, through the Working Group, to the Council within 12 months;

(b) to support water-related taxation issues being examined in the proposed Industry Commission Inquiry in Private Sector Infrastructure Funding; and

(c) to accept any future consideration of tax compensation payments involving the water industry being dealt with through the Commonwealth State Working Group established at the July 1993 financial Premiers' Conference; and

11. in relation to recommendations (3) through (8):

(a) that the Working Group on Water Resource Policy would coordinate report to the Council for its first meeting in 1995 on progress achieved in implementing this framework including reductions in cross-subsidies, movement towards full-cost recovery pricing in urban and rural areas and the establishment of transferable water entitlements; and

(b) that as part of the monitoring and review process, ARMCANZ, ANZECC and, where appropriate, the Murray-Darling Basin Ministerial Council and the Ministerial Council for Planning, Housing and Local Government would report annually over the succeeding four years, and again at its first meeting in 2001, to the Council of Australian Governments on progress in implementing the various initiatives and reforms covered in this strategic framework.

COAG Canberra 11 April 1995

In the lead up to the meeting, the Council agreed to initiatives in the areas of water resource policy and regulatory reform.

The Council agreed to the public release of three documents:

- the Second Report of the Working Group on Water Resource Policy;
- the Report of the Expert Group on Asset Valuation Methods and Cost-Recovery Definitions for the Australian Water Industry[11]; and
- Principles and Guidelines for National Standard Setting and Regulatory Action.

11 Victoria has noted that COAG's agreement to the public release of the Report of the Expert Group should not be taken to imply endorsement of the Report's recommendations. The Agreement to Implement the National Competition Policy and Related Reforms (April 1995) requires implementation of the strategic framework as endorsed at the February 1994 COAG meeting, and the principles 'embodied in' the Report of the Expert Group.

[The following]Attachment contains descriptions of [the first two] of these documents.

Attachment

Water resource policy and regulatory reform

The Council has agreed to the public release of the following documents:

- *The Second Report of the Working Group on Water Resource Policy*

  This report documents progress by jurisdictions in implementing the framework for reform of the Australian water industry outlined in the first report of the Working Group on Water Resource Policy endorsed by Heads of Government in February 1994.

- *The Report of the Expert Group on Asset Valuation Methods and Cost-Recovery Definitions for the Australian Water Industry*

  The Expert Group on Asset Valuation Methods and Cost-Recovery Definitions expands on the strategic framework for the Australian water industry contained in the February 1994 Report of the Working Group on Water Resource Policy. The Expert Group report outlines preferred approaches to the valuation of assets, recognition of costs and pricing to ensure that water charges reflect the true economic (including environmental) costs of water service provision.

Prime Minister's letter to Premiers and Chief Ministers, 10 February 1997

On 10 February 1997, the Prime Minister wrote to all Heads of Government agreeing to extend the COAG water reform framework to include ground and storm/waste water and to note a set of generic milestones for water reform.

Governments agreed:

- to extend the 1994 COAG water reform framework to incorporate ground and storm/waste water as proposed in the ARMCANZ papers;[12]

12 The ARMCANZ papers are "Allocation and Use of Groundwater: A National Framework for Improved Groundwater Management in Australia", "A National Framework for Improved Wastewater Reuse and Stormwater Management in Australia"

- that the modifications be by way of revisions to the clauses in the 1994 framework referring to ground and stormwater management, to incorporate the recommendations in the ARMCANZ papers;

- to endorse the extended water reform framework as the 1996 framework for the strategic reform of Australia's water industry; and

- that Competition Payments referred in the 1995 Agreement to Implement the National Competition Policy and Related Reforms be confined to the 1994 Framework.

ARMCANZ Hobart 27 February 1998

On 27 February 1998, ARMCANZ (the Agriculture and Resource Management Council of Australia and New Zealand) Ministers endorsed the SCARM taskforce guidelines for the application of sections of the Strategic Framework and the report of the Expert Group dealing with asset valuation, the return on assets and asset renewals in the context of cost recovery and subsequent price determination. One of the key areas of reform is water pricing where COAG calls for the adoption of consumption based pricing and full cost recovery.

The Task Force, in undertaking this work, commissioned consultants Ernst and Young to assist in the preparation of the guidelines and to develop a financial model for use by water authorities in examining the impact of implementing the COAG requirements for cost recovery under different scenarios. Ernst and Young's report and financial model will provide detailed practical assistance to government agencies and industry in the interpretation and application of the guidelines. The report and model have been exposed to comment from all jurisdictions.

The Task Force also had access to the work undertaken by its member jurisdictions including a study commissioned from consultants Marsden Jacob and Associates by five Victorian rural water authorities.

When all of this work is taken into account, it becomes clear that a prescriptive approach that can be universally applied is not practicable. Indeed to apply a rigid formula to cost recovery is likely to cause unintended consequences in pricing.

ARMCANZ agreed the guidelines should be applicable to the Council's assessments and should be endorsed by COAG as the minimum requirements. These guidelines

maintain the integrity of the COAG reforms but recognise the range of circumstances peculiar to each water authority that should be considered in determining whether the full cost recovery test is met. It still remains for the guidelines to be endorsed by COAG as the basis for the Council's assessment of jurisdictions' application of full cost recovery obligations.

Guidelines for the Application of Section 3 of the Strategic Framework and Related Recommendations in Section 12 of the Expert Group

1. Prices will be set by the nominated jurisdictional regulators (or equivalent) who, in examining full cost recovery as an input to price determinations, should have regard to the principles set out below.

2. The deprival value methodology should be used for asset valuation unless a specific circumstance justifies another method.

3. An annuity approach should be used to determine the medium to long term cash requirements for asset replacement/refurbishment where it is desired that the service delivery capacity be maintained.

4. To avoid monopoly rents, a water business should not recover more than the operational, maintenance and administrative costs, externalities, taxes or TERs [tax equivalent regime], provision for the cost of asset consumption and cost of capital, the latter being calculated using a WACC [weighted average cost of capital].

5. To be viable, a water business should recover, at least, the operational, maintenance and administrative costs, externalities, taxes or TERs (not including income tax), the interest cost on debt, dividends (if any) and make provision for future asset refurbishment/replacement (as noted in (3) above). Dividends should be set at a level that reflects commercial realities and stimulates a competitive market outcome.

6. In applying (4) and (5) above, economic regulators (or equivalent) should determine the level of revenue for a water business based on efficient resource pricing and business costs. Specific circumstances may justify transition arrangements to that level.

7. In determining prices, transparency is required in the treatment of community service obligations, contributed assets, the opening value of assets, externalities including resource management costs, and tax equivalent regimes.

A number of terms used require further comment in the context of these guidelines:

- The reference to *or equivalent* in principles 1 and 6 is included to take account of those jurisdictions where there is no nominated jurisdictional regulator for water pricing.

- The phrase *not including income tax* in principle 5 only applies to those organisations which do not pay income tax.

- *Externalities* in principles 5 and 7 means environmental and natural resouce management costs attributable to and incurred by the water business.

- *Efficient resource pricing* in principle 6 includes the need to use pricing to send the correct economic signals to consumers on the high cost of augmenting water supply systems. Water is often charged for through a two part tariff arrangement in which there are separate components for access to the infrastructure and for usage. As an augmentation approaches, the usage component will ideally be based on the long-run marginal costs so that the correct pricing signals are sent.

- *Efficient business costs* in principle 6 are the minimum costs that would be incurred by an organisation in providing a specific service to a specific customer or group of customers, or the minimum amount that would be avoided by not providing the service to the customer or group of customers. Efficient business costs will be less than actual costs if the organisation is not operating as efficiently as possible.

Road Transport

An intergovernmental agreement establishing a national heavy vehicle registration, regulation and charging scheme was signed on 30 July 1991.[13] It provides for a Ministerial Council for Road Transport (MCRT) and the National Road Transport Commission (NRTC) to regulate heavy vehicles on a nationally uniform basis and develop a heavy vehicle charging scheme.

On 11 May 1992, it was agreed to extend the role and functions of the NRTC to cover all other road users.[14] In the development of a national road transport legislation package, the NRTC adopted a modular approach covering six key reform areas: heavy vehicle charges; transportation of dangerous goods by road; vehicle operations; vehicle registration; driver licensing; and compliance and enforcement. The first module covering heavy vehicle charges has now been implemented through legislation by all jurisdictions. Reforms in the other five areas are being progressively developed through the NRTC.

The April 1995 competition policy agreements link NCP payments to, among other conditions, the implementation of agreed road transport reforms. The first and second tranches of payments, to commence in 1997–98 and 1999–2000 respectively, will depend on each State and Territory observing agreed reforms. Payments under the third tranche, to commence in 2001–02, will depend on the States and Territories giving full effect to, and continuing to fully observe, all COAG agreements on road transport.

Agreements in relation to road transport reform were made at the following meetings:

•	Special Premiers' Conference	Brisbane	30/31 October 1990
•	Special Premiers' Conference	Sydney	30 July 1991
•	Premiers' and Chief Ministers' Meeting	Adelaide	21–22 November 1991
•	Heads of Government	Canberra	11 May 1992
•	MCRT	Hobart	14 February 1997
•	MCRT	Queenstown	14 November 1997
•	Australian Transport Council	Leura	24 April 1998

13 See Schedule 1 of the *National Road Transport Commission Act 1991*. This agreement — the Heavy Vehicles Agreement — was made between the Commonwealth, the States and the Australian Capital Territory.

14 See Schedule 2 of the *National Road Transport Commission Amendment Act 1992*. This agreement — the Light Vehicles Agreement — was made between the Commonwealth, New South Wales, Victoria, Queensland, South Australia, the Northern Territory and the Australian Capital Territory.

In the Council's first tranche assessment, the Council sought a commitment from jurisdictions to link implementation of road transport reforms based on the agenda endorsed by the MCRT on 14 February 1997 to future competition transfers. Governments provided an in principle commitment, although some stated that the Second Heavy Vehicle Reform Package endorsed by the MCRT on 14 Feburary should be agreed to by COAG if it is to be used as a condition for competition transfers.

The November 1997 MCRT meeting revised the February 1997 timetable and put back implementation of several reforms. Because of the frequent slippages to the reform program, the NCC wrote to Heads of Government seeking COAG endorsement of an agreed timetable. The NCC's objective is that COAG endorse a program which will be the basis for the Council's assessment of future progress.

Relevant extracts from the Communiques of Heads of Governments and other inter-jurisdictional meetings are reproduced below.

Special Premiers' Conference Brisbane 30–31 October 1990

Heads of Government agreed to the establishment of, through co-operative processes involving referral of powers or complementary legislation, a national heavy vehicle registration scheme together with uniform technical and operating regulations and nationally consistent charges.

The scheme may permit variations in standards to take account of different regional conditions (eg to cover operation of road trains in rural and remote areas).

Charges will be developed with regard to the principles established by the Inter State Commission and with a view to full and consistent levels of cost recovery.

A working group will report to the next Special Premier's Conference on the implementation of these new standards and charges, and whether there should be a joint Commonwealth/ State/Territory organisation to handle heavy vehicle registration and regulation.

The working group will recommend an achievable timeframe for meeting full and consistent levels of cost recovery.

Funds for local roads will also be untied and paid at the same real level as at present to local governments, or to State governments where they are responsible for local roads, via general purpose grants.

Heads of Government recommended that ATAC [Australian Transport Advisory Council] further consider the principles for distribution of road funds between States and Territories.

Special Premiers' Conference Sydney 30 July 1991

Roads – Provision, Charging and Regulation

Heavy Vehicle Registration, Regulation and Charging

Leaders and representatives noted a report from officials and (with the exception of the Northern Territory) signed an intergovernmental Agreement establishing a national heavy vehicle registration, regulation and charging scheme. The integrated package of reforms is designed to overcome a number of serious problems in the road transport sector, the main ones being varying regulations across Australia and charging systems which bear little relation to costs which users impose on the road network.

The focal point for the new scheme is the establishment of a National Road Transport Commission to regulate heavy vehicles on a nationally uniform basis and develop a heavy vehicle charging regime. An interim Commission will be established by September 1991, pending enabling legislation, to assist in developing legislation and to begin work on regulation, registration and charging arrangements. The Commission would report to a Ministerial Council, comprising Federal, State and Territory Ministers nominated by respective Heads of Government. Recognising its extensive road responsibilities, local government would have observer status at meetings of the Ministerial Council.

Planning is to commence immediately to inter-link the existing set of motor registries, allow for the automatic exchange of defect notices, allow a simplified number plate system and facilitate the development of registration procedures so that information on all heavy vehicles is available nationally by July 1992. In addition, the Federal Interstate Registration Scheme is to be subsumed into the national heavy vehicle scheme.

Leaders and representatives agreed that the following areas should be included in the nationally uniform regime:

- heavy vehicle construction requirements (new construction and in-service modification), including dimension and weight limits and vehicle emission standards;
- aspects of traffic codes relating to heavy vehicles;
- vehicle roadworthiness and inspection standards;
- driver licensing standards and procedures;
- special codes of practice covering heavy vehicles, (eg loading codes, permit conditions);
- enforcement levels and sanctions for breaches of regulations, noting the need to provide a meaningful deterrent and maintain consistency of penalties in this area between all jurisdictions; and
- aspects of operator controls, particularly affecting heavy vehicles (eg freight and public passenger vehicle licensing) but excluding economic regulation.

As an early priority, the new system will allow the operation of B-Doubles and road trains under nationally uniform conditions. While their operation will continue subject to certain limitations such as designated routes, this will lead to significant increases in productivity for some freight operations.

The Northern Territory decided not to sign the Agreement at this time. The Northern Territory, however, supports the establishment of the Commission and will mirror in its jurisdiction non-charging regulations implemented under the new scheme to achieve uniform regulations throughout Australia.

Other leaders and representatives agreed that a charging structure be implemented comprising a nominal administration charge, a road use charge component of Commonwealth diesel excise and a registration (or mass-distance) charge for vehicles which do not meet their road costs through fuel payments alone. The Commission will also consider an access charge to avoid any significant interface problem between vehicles above and below the 4.5 tonne level and to facilitate introduction of the new charging regime.

The road use part of diesel excise is to be structured to avoid the administratively cumbersome imposition of registration (or mass distance) charges on a significant proportion of the vehicle fleet. The registration charge is to be applied to heavy

vehicles where it would be inequitable (ie it would involve significant over recovery for other vehicles) if they covered their road costs by fuel charges alone.

Leaders and representatives agreed that charges are always to be set:

- to recover fully distributed road costs, thereby achieving full recovery of all road costs while minimising over-recovery from any vehicle class;
- adopting a common methodology;
- to determine and collect charges in a way that achieves a reasonable balance between administrative simplicity, efficiency and equity in the charging structure;
- to improve pricing, leading to a better allocation of resources, with investment decisions being based on more relevant demand signals; and
- to minimise the incentive for operators to 'shop around' for lower charges and undermine the integrity of the national charging system.

Until it is recommended otherwise by the Commission, charges are to be set:

- using the PAYGO methodology for determining what expenditure is to be recovered;
- using expenditure on roads, as assessed by the National Commission:
  - using the average of two years actual and one year's budgeted expenditure, indexed; and
  - excluding from the PAYGO base self-financed road expenditure programs, such as toll roads or fuel franchise fees where nominated by a State or Territory as a road user charge; and
- using a methodology based, in the first instance, on the ISC model but enhanced with further research currently being undertaken by the Australian Road Research Board.

Registration charges and the road use charge component of Commonwealth excise on diesel are to be adjusted in future by the National Road Transport Commission in line with the amount of national road system costs attributable to heavy vehicles. Accordingly, State fuel franchise fees and the taxation component of Commonwealth diesel excise are to be separately identified and adjusted in future by separate mechanisms.

In regard to treatment of alternative (especially gas-based) transport fuels, it was acknowledged that there are broader energy policy issues which need to be taken into account. For this reason, it was agreed that road track costs should not be attributed to these fuels at this stage.

Existing concessions to road users which are not related to the level of road use are to be provided independently of the road user charging system through transparent budgetary means. In other words, the new charging system is to clearly differentiate between social-welfare oriented "concessions" and valid distance-related "rebates".

The new National Road Transport Commission is to determine and recommend the road use charge component of Commonwealth diesel excise by March 1992 so that it can apply from a date no later than 1 January 1993.

Regarding registration charges, leaders and representatives noted but did not endorse the schedule of indicative charges in the official's report. Charges to be recommended by the National Road Transport Commission will be phased in as follows:

- the first instalment of new charges is to be determined and recommended by March 1992 so that it can apply from a date no later than 1 January 1993;
- the phasing in of full cost recovery charges is to be determined by the National [Road Transport] Commission and is to take account of:
  - the impact of varied charges on the road transport industry and industry generally;
  - the impact of varied charges on particular regions, such as some in remote Australia; and
- the different levels of charges that currently exist in each jurisdiction;
- the phasing should seek to implement charges that reflect full cost recovery as soon as is appropriate given the three considerations above and in any event by not later than 1 July 1995 for all vehicles except road trains;
- for road trains full-cost recovery mass distance charges should be implemented with up to a fifty per cent discount at latest by 1 July 1995 and be fully implemented at latest by 1 July 2000;
- in the early years, the National Road Transport Commission is to concentrate on charges using average distance while approving valid distance-related rebates where appropriate; and

- over time, and in consultation with industry, the National Commission is to move to reliance on a more discrete approach to distance measuring within vehicle classes wherever feasible and justifiable.

Leaders and representatives agreed that it was essential that consultation occur with industry on all issues taking into account Australia's geographic differences and the diverse structure of the road transport industry.

Zonal Road Charging Arrangements

Leader and representatives agreed that there will be two zones for the purpose of setting registration (or mass-distance) charges. Zone A shall comprise New South Wales, Victoria, Tasmania and the Australian Capital Territory and shall include the Commonwealth as a decision-making member. Zone B shall be Queensland, Western Australia and South Australia. The new Commission shall determine registration (or mass-distance) charges for each zone in accordance with the above principles, subject to disapproval by fifty per cent or a majority of Ministers from jurisdictions covered by the relevant zone. The Commission shall also advise on any possible zonal change but agreement to any new zonal structure shall require approval of three quarters of the Ministerial Council.

Vehicles moving from low cost into high cost zones must pay any difference in the registration (or mass-distance) charge. An appropriate mechanism for administering this is to be developed by the Commission.

Leaders and representatives also agreed to ask officials to provide in November 1991 regulation, registration, charging, distribution and expenditure determination proposals on the feasibility and desirability of including light vehicles (ie vehicles 4.5 tonnes and below) in the system. Work is to be done in full consultation with the Working Group on Tax Powers.

Road Responsibilities and Funding

Leaders and representatives agreed that the Commonwealth should concentrate its involvement in roads program delivery by more clearly defining its program to remove ambiguity in terms of which tier of government is responsible for which roads.

It was agreed that the Commonwealth's responsibilities should be concentrated on national highways and other roads of national significance. The precise delineation

of the Commonwealth's involvement would be settled in the preparation for the November special Premier's Conference.

It was noted that the Better Cities Program could involve land transport considerations.

In any event, leaders and representatives agreed that a minimum of $350 million in current SPPs [Special Purpose Payments] would be untied, with the distribution mechanism for those funds to be settled at the November special Premier's Conference. It was agreed that the standard of Australia's road infrastructure needed to be maintained within this process and that action by the States to continue to lift the efficiency of their road construction authorities was vital to this objective.

Premiers' and Chief Ministers' Meeting Adelaide 21–22 November 1991

Premiers and Chief Ministers agreed on a national light vehicles regulation and registration scheme.

For the first time, Australia will have uniform rules of the road.

Premiers and Chief Ministers agreed that there will be uniform standards covering traffic rules for all road users, vehicle safety and pollution standards, and driver skills and knowledge.

Uniform regulations will generate immediate benefits for international tourists and interstate travellers, eliminate anomalies, promote a more efficient road transport industry and reduce the risk of accidents occurring due to ignorance of local rules.

The specific areas where uniform national standards will be developed as a priority by the National Road Transport Commission are:

- the traffic code;
- new vehicle safety and emission standards;
- in-service vehicle safety and emission standards;
- roadworthiness performance standards;
- driver capability criteria;
- the transport of dangerous goods;
- information exchange; and
- national data base integration.

The moves towards national databases and better exchange of information between jurisdictions will have major benefits in reducing car theft and improving vehicle safety. Opportunities for laundering stolen vehicles interstate will be reduced and police will be better able to identify unregistered vehicles and unlicensed drivers.

Exchange of defect notices between States will prevent the practice whereby drivers avoid sanctions for unroadworthy vehicles simply by operating a vehicle with an out-of-state registration.

It was further agreed that the Commission would examine the potential benefits of developing national standards in a number of key areas. These areas are:

- licensing requirements and performance standards including the potential for introducing a uniform minimum age for licensing drivers;
- uniform registration and licensing system;
- vehicle related sanctions;
- coordination of national road safety research and public education;
- enforcement and sanctions;
- special technical standards;
- modified light vehicle standards;
- regulations regarding towed vans; and
- licensing business rules.

Legislation will need to be enacted to enable the Commission to be directly and immediately responsible for developing and maintaining the new uniform standards in the agreed areas.

Premiers and Chief Ministers called on the Commonwealth to support their initiatives in the interest of developing a more efficient national road transport system.

Premiers and Chief Ministers also agreed on an enhanced information role for the National Road Transport Commission, which will publish comparative information on road safety charges, and efficiency and effectiveness of road construction authorities.

Noting that this and other recent reforms will lead to a clearer distinction between road taxes and charges, they also agreed to consider the need to review the incidence

of taxation on heavy vehicles after the National Road Transport Commission has made its recommendations on road use charges.

The work of officers on the wider issue of road charges for light vehicles will need to be further considered by governments in the context of reform of Commonwealth/State financial relations and clarification of the Commonwealth's road funding responsibilities.

Proposal for a National Vehicle Security Register

Premiers and Chief Ministers agreed to develop a national vehicle security register as soon as possible. All Australian jurisdictions operate security systems but there is no national system or linkage of the separate databases, nor is there uniform legislation.

The fragmentation of the present system has contributed to widespread losses incurred by consumers, the motor trade and the finance industry.

Premiers and Chief Ministers now wish to accelerate work to establish a national vehicle security register. The register, which would have the potential to be expanded to cover other consumer items, would operate on a full cost-recovery basis. Its establishment costs could be recouped from user fees and upfront contributions from the motor vehicles and finance industries.

With the full support of all Premiers and Chief Ministers it is anticipated that this important proposal will be given high priority and can be operational at an early date.

COAG Canberra 11 May 1992

Leaders and representatives noted the Commonwealth's decision to provide an additional $25 million in 1991–92, $437.5 million in 1992–93 and $140 million in 1993–94 for augmenting and rehabilitating the National Highway System, accelerating selected National Arterial projects and expanding the Black Spots program. They also noted the positive employment effects of this expenditure in the period up to 1993–94.

Leaders and representatives agreed to the role and functions of the National Road Transport Commission. An Agreement has been signed by the Commonwealth, New South Wales, Victoria and South Australia to this end. Queensland indicated its intention to sign.

The Commission was established after the July 1991 Heads of Government meeting to develop national road transport legislation and regulations and to recommend on charges to apply no later than 1 January 1993 for vehicles over 4.5 tonnes. It will now also be responsible for developing regulations for all other road users.

In addition, the Commission is to assemble and publish comparative information on the funding and management of roads, performance indicators for the road system and the efficiency and effectiveness of road authorities.

Leaders and representatives agreed that it was important to delineate clearly Commonwealth and State road responsibilities. The Prime Minister indicated that he would shortly be advising the States of the Commonwealth position on the National Highway System.

It was confirmed that $350 million of the Commonwealth roads program would be untied. The Prime Minister indicated that he would be writing to other Heads of Government soon on an appropriate basis for this distribution, including continuing the distribution currently applying to the road funding being untied, with a view to settling the matter before the June Premiers' Conference.

Ministerial Council for Road Transport 14 February 1997

Transport Ministers from the Commonwealth, State and Territory Governments endorsed the recommendations of the Review Committee into the National Road Transport Commission (NRTC), that the NRTC continue beyond its sunset date of January 1998 as the independent co-ordinator of national road transport reform in Australia. The NRTC will be subject to a review every six years and will focus on the development of policies to fast-track delivery of key reforms.

Ministers endorsed a strategy for implementing the current national transport reform program. The strategy provides for implementation of the reforms once approved by Ministers without waiting for passage of Commonwealth legislation.

The endorsed reforms and completion dates for the national road transport implementation strategy are detailed below.

Road Transport Reform Implementation Strategy	14 February 1997
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; • 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 (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 September 1998

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) [National Exchange of Vehicle and Driver Information System]	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

Ministerial Council for Road Transport 14 November 1997

NRTC Strategic Plan

Ministers discussed and agreed to the National Road Transport Commission's strategic plan covering the three years to 2000-01. The plan provides a good focus for the future direction of the Commission in fast-tracking reforms, becoming more involved in implementation and giving greater attention to innovation, road safety and the environment. It also provides a clear statement of the Commission's objectives, and improves accountability and consultative procedures with stakeholders. It maps national road transport for the next three years, making reform objectives and performance transparent.

Alternative Compliance Policy

Ministers endorsed a comprehensive alternative compliance package.

The package proposes establishing a national accreditation scheme, based initally on the pilot Mass Management and Maintenance schemes with the option of adding

other modules as they are developed and approved by Ministers.

Ministers also committed to reducing the impact of conventional enforcement activities on accredited operators.

The NRTC will establish an implementation group to resolve any outstanding issues.

Mass Limits

Ministers considered the issue of increased mass limits. A number of jurisdictions expressed their willingness to implement increased mass limits as recommended by the NRTC, subject to the provision of additional funding and appropriate enforcement.

Ministers called for the NRTC to prepare a report and recommendations for the next MCRT meeting in April 1998. This report will include detailed costs and funding proposals that would be necessary to implement the increase, as well as advice on the benefit of road friendly suspension vehicles with a load limit of 42.5 tonnes, the identification of the beneficiaries of the mass limits increase, and the impact on rail.

Ministers also requested the NRTC to report back on proposals for:

- operators to be required to be accredited as members of an approved mass-management compliance-assurance scheme in order to operate at increased limits; and
- penalties for overloading, including substantial increases in penalties for gross overloading, commensurate with the risk to safety and the damage to bridges and roads.

Delivering Road Transport Reforms - Status Report

Ministers considered a status report on progress with the initial reform agenda and agreed to the revised timetable for implementation of reforms.

Road Transport Reform Implementation Strategy 14 November 1997	
Reform	**Timing**
Uniform arrangements for dangerous goods transport	1 July 1998
National heavy vehicle registration scheme	1 July 1998
National driver licensing scheme	February 1999
Vehicle operations reforms covering: • restricted access vehicles; • mass and loading laws; • oversize and overmass vehicles.	October 1998
National vehicle standards	October 1998
National truck driving hours laws (excluding WA and NT)	August 1998
National bus driving hours (may not apply in WA or NT)	August 1998
Consistent compliance and enforcement	To be determined
Second charges determination including fixing anomalies in current charges	July 1999
Australian Road Rules	Not decided

Source: Federal Office of Road Safety

Second Heavy Vehicle Reform Package - Status report

Ministers agreed a revised timetable for the Second Heavy Vehicle Reform Package. This package was agreed by Ministers in February 1997 and proposed early national implementation of ten reforms to road safety, industry productivity, administration and enforcement without waiting for the passage of Commonwealth legislation.

Ministers renewed their commitment to early implementation of the package as a means of delivering the benefits of reform to industry and endorsed the timetable for national implementation.

Australian Transport Council 24 April 1998

Transport Ministers met and discussed mass limits (following from the meeting of 14 November 1997), the NRTC Chairman's report and liaison with the NCC.

Mass Limits

Ministers:

- acknowledged the productivity benefits obtainable from increasing allowable axle mass limits for vehicles with road friendly suspension, the need to upgrade Australia's bridges to realise these benefits and the importance of reducing gross overloading;

- agreed by majority (with NSW and ACT not supporting) that, subject to the provision of sufficient additional funding for upgrading bridges, allowable general axle mass limits for vehicles fitted with road friendly suspensions be increased, as follows:

  - 0.5 tonne increase on tandem axle groups, to 17.0 tonnes;
  - 2.5 tonne increase on triaxle groups, to 22.5 tonnes;
  - 1.0 tonne increase on single drive axles on buses, to 10 tonnes;
  - 1.0 tonne increase on six-tyred tandem axles, to 14.0 tonnes; and
  - 0.7 tonne increase on steering axles of long combination vehicle prime movers (ie, road trains and similar) fitted with single tyres, to 6.7 tonnes (regardless of the type of suspension);

- agreed to restrict increases in allowable mass for triaxles to vehicles operated by members of approved mass-management compliance-assurance schemes;

- agreed to the impostition of substantial penalties on grossly overloaded vehicles, the penalties being commensurate with the risks to safety and infrastructure damage and the commercial benefits from overloading;

- agreed that a National Bridge Upgrading Program be established to facilitate the adoption of increased mass limits, subject to appropriate Commonwealth funding;

- recognising the expected Commonwealth revenue gains from the productivity benefits of increased mass, requested the Commonwealth to report back to the nextATC meeting on the additional funding which it is prepared to put into a national bridge upgrade program, the timeframe overwhich the funds would be available, and the distribution of funding between National Highways, State/ arterial roads and local government roads;

- agree that road users who take advantage of increased mass should contribute to ongoing funding requirements associated with increased mass limits. The Commission will recommend relevant charges in its Second Charges Determination; and

- request the NRTC to report back to the nextATC meeting with its advice on the impact of accreditation, costs on small and large transport operators and further information on the impact of road friendly suspensions of local roads.

NRTC Chairman's Report

Ministers noted the NRTC report on status of road transport reforms, priorities review and accountabilities and confirmed each jurisdictions' capacity to meet MCRT -endorsed timelines.

Ministers agreed to consider the potential to bring foward implementation of reform elements, in particular items outstanding from the first Heavy Vehicle Reform Package.

Ministers reaffirmed the findings of the NRTC review, proposing an approach to reform based on policy implementation and where appropriate including the preparation of draft model regulation to assist jurisdictions.

Ministers also endorsed individual jurisdictions adopting by agreement the role of lead agency in the development of selected reforms suitable for consistent application nationally.

NCC Liaison

Ministers discussed a letter from NCC and agreed to take up the issues raised in it with their Heads of Government.

Appendix A National Competition Policy Contacts

For further information about the National Competition Policy process, please contact the National Competition Council or the relevant Commonwealth, State or Territory competition policy unit.

National Competition Council
Level 12
Casselden Place
2 Lonsdale Street
MELBOURNE VIC 3000

Telephone: (03) 9285 7474
Facsimile: (03) 9285 7477

Email
ncc@c031.aone.net.au

Commonwealth
Competition Policy Branch
Commonwealth Treasury
Block B, Parkes Place
PARKES ACT 2601

Telephone: (02) 6263 3887
Facsimile: (02) 6263 2937

New South Wales
Inter-governmental and Regulatory Reform Branch
The Cabinet Office
Level 37
Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Telephone: (02) 9228 5414
Facsimile: (02) 9228 4709

Victoria
Economic Development Branch
Department of Premier and Cabinet
1 Treasury Place
MELBOURNE VIC 3002
Telephone: (03) 9651 5143
Facsimile: (03) 9651 6457

Queensland
National Competition Policy Unit
Queensland Treasury
102 George Street
BRISBANE QLD 4000

Telephone: (07) 3224 5673
Facsimile: (07) 3229 3501

Western Australia
Competition Policy Unit
Treasury
Level 12, 197 St George's Terrace
PERTH WA 6000

Telephone: 08 9222 9816
Facsimile: 08 9222 9914

South Australia <BT>Cabinet Office Department of Premier and

SouthAustralia
Microeconomic Reform Branch
Department of Premier and Cabinet
State Administration Centre
200 Victoria Square
ADELAIDE SA 5000

Telephone: (08) 8226 0903
Facsimile: (08) 8226 1111

Tasmania
Economic Policy
Department of Treasury and Finance
Franklin Square Offices
Murray Street
HOBART TAS 7000

Telephone: (03) 6233 3100
Facsimile: (03) 6223 2755

Northern Territory
Economic Services
Northern Territory Treasury
7th floor
38 Cavenagh Street
DARWIN NT 0801

Telephone: (08) 8999 7406
Facsimile: (08) 8999 6446

Australian Capital Territory
National Competition Policy Unit
Office of Financial Management
Chief Minister's Department
Level 1, Canberra-Nara Centre
1 Constitution Avenue
CANBERRA CITY ACT 2600

Telephone: (02) 6207 5904
Facsimile: (02) 6207 0267