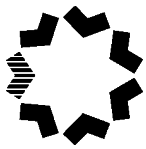

National Competition Council

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Abbreviations

ABS	Australian Bureau of Statistics
ACCC	Australian Competition and Consumer Commission
ACT	Australian Capital Territory
ACTO	Australian Cargo Terminal Operators Pty Ltd
ARMCANZ	Agriculture and Resources Ministerial Council of Australia and New Zealand
AN	Australian National (Railways Commission)
ANL	Australian National Line
AUS	Australian Union of Students
COAG	Council of Australian Governments
Council	National Competition Council
CPA	Competition Principles Agreement
CSO	community service obligation
CTO	cargo terminal operator
DEETYA	Department of Employment, Education and Youth Affairs (Commonwealth)
FAC	Federal Airports Corporation
GBE	Government Business Enterprise
GTE	Government Trading Enterprise
GRIG	Gas Reform Implementation Group
Implementation Agreement	Agreement to Implement the National Competition Policy and Related Reforms
IPART	Independent Pricing and Regulation Tribunal (NSW)
MCRT	Ministerial Council on Road Transport
NCP	National Competition Policy
NECA	National Electricity Code Administrator
NEM	National Electricity Market
NEMMCO	National Electricity Market Management Company
NRC	National Rail Corporation
NRTC	National Road Transport Commission
NSW	New South Wales
OHS	occupational health and safety
ORG	Office of the Regulator-General (Victoria)
PBS	Pharmaceutical Benefits Scheme

PSA	Prices Surveillance Authority
QMI	Queensland Manufacturing Institute
QR	Queensland Rail
RAC	Rail Access Corporation (NSW)
SCARM	Standing Committee on Agriculture and Resources Management
SCT	Specialized Container Transport
SMA	statutory marketing arrangement
SRA	State Rail Authority (NSW)
TPA	*Trade Practices Act 1974*
VCA	Victorian Channels Authority
VETC	Vocational Education and Training Council (ACT)

Abbreviations used in references are provided in the references section.

Part A Competition policy in overview

A1 Implementing competition policy: the state of play

A1.1 Setting the scene

When all nine Australian governments agreed to implement the National Competition Policy (NCP) reform package, they initiated a new phase in micro-economic reform. But whereas earlier reform efforts were often uncoordinated and focused largely on the traded goods sector, the NCP package represents a more systematic, comprehensive and balanced approach to reform. It contains a range of measures designed to realise the benefits which competition, properly harnessed, can bring. And yet it also recognises other approaches are sometimes needed to meet Australia's social, environmental and other economic goals.

When adopting the package, governments also established the National Competition Council. The Council administers some aspects of the reforms, assesses governments' progress in implementing the reforms, advises on areas where more work is needed, and provides public information on the NCP process generally.

NCP reform is a long-term process. The April 1995 inter-governmental agreements which established the NCP generally do not provide a set of ready-made and easily implemented reforms. Rather, in most cases they are broad 'statements of intent' which governments must interpret, refine and then put into practice. This is a large and complex task. It is why the reform program stretches right up to the year 2000 and beyond. Only after governments have gone through these processes and implemented the resultant reforms can the benefits of greater competition be attained.

Time-wise, the NCP reform program has been split into three 'tranches'. Each government has made broad commitments as to what reforms it will undertake in each tranche. The timing of the commitments vary. For example, both NSW and Victoria scheduled more reviews of anti-competitive legislation early in the period, while other States and Territories and the Commonwealth face a greater task later on.

Each government's progress in meeting its commitments is assessed by the Council at the end of each tranche: that is, on 1 July 1997, 1999 and 2001. These assessments are important because, to share the benefits of competition reform, the Commonwealth has agreed to make payments to the States and Territories, provided they make satisfactory progress in implementing the agreed reforms. All up, these payments are worth around $16 billion over the period to 2005-06.

The Council has just completed its first assessment, and the early progress has been positive. All governments have taken significant steps to meet their NCP commitments. As it is still early days, most activity to date has focused on getting the policy processes right. However, there have also been several 'on the ground' reforms, with some promising early results. The Council identified some matters which require greater attention by jurisdictions but, overall, it was able to recommend that all States and Territories receive the complete first instalment of their first tranche NCP payments.

Inevitably though, much more needs to be done. There is a need for the States, Territories and particularly the Commonwealth to address the deficiencies in their respective reform programs identified to date. Jurisdictions also need to proceed with the second tranche of reform commitments, and to increase the rate of 'on the ground' reform. Beyond this, jurisdictions will need to examine their other policies if the potential benefits of the NCP reforms are to be fully realised, equitably shared and put to the best uses.

In this chapter, the Council reviews progress with the NCP program to date, pointing to the broad achievements as well as the specific shortcomings, and provides its views on the task ahead.

A1.2 The broad achievements

Expanding protections against anti-competitive behaviour

Part IV of the *Trade Practices Act* protects consumers and businesses from anti-competitive practices and market rigging, but it previously did not cover State and Territory government businesses and some private businesses.

This has now been rectified through State and Territory legislation, effective since July 1996. Chapter B2 contains the details.

Promoting access to infrastructure

The National Access Regime is also up and running. The regime provides a legal mechanism for businesses to obtain essential services from other businesses' infrastructure. For example, a transport company may be able to gain access to a rail network and operate its own trains, in competition with the existing train operator. The Commonwealth legislation establishing the regime was enacted in late 1995. The Council released a guide on how it would process applications relating to access to infrastructure services in August 1996.

Several businesses have applied to the Council to have certain infrastructure services 'declared' for access. So far, the Council's processes for dealing with these applications appear to have worked well.

The Commonwealth Treasurer has just declared the first infrastructure services under the regime: certain services at Melbourne and Sydney airports. This will allow the applicant, a small business called Australian Cargo Terminal Operators (ACTO), to better compete against companies such as Ansett and Qantas. Other businesses which want to compete in this market now also have a legal right to negotiate access to these airport services. This holds out the prospect of lower freight rates and/or better services.[1]

As well, several State governments have developed their own access regimes dealing with specific infrastructure, such as gas pipelines and rail networks. State governments have made three

1 The Federal Airports Corporation has lodged an appeal against declaration of the Sydney airport facilities with the Australian Competition Tribunal. The appeal is yet to be heard.

applications to the Council to have one of their regimes 'certified' as effective under the national regime. To date, two regimes have been certified, relating to commercial shipping channels in Victoria and natural gas distribution networks in NSW. The other application, which deals with the NSW rail network, is still being processed. Again, the Council's processes appear to have worked well.

At the same time as these developments in access, there has been significant ongoing investment in infrastructure in Australia, and the sale prices of affected assets appear to have held up. For example, prospective investment in gas transmission pipelines currently totals upwards of $4.5 billion in anticipation of the national gas access arrangements.[2] And last year, the sale of Victorian electricity generation and distribution businesses realised a total of around $18 billion, substantially exceeding expectations (VDTF 1997). This suggests that the prospect of access to previously locked-up markets is supporting investment in infrastructure, and that access arrangements are not causing undue uncertainty for infrastructure owners.

Overall, these developments in access proffer the benefits of greater competition and more efficient use of Australia's infrastructure. Chapter B8 provides the details.

Commencing the legislation review program

As part of the NCP, governments have agreed to review and, where appropriate, reform all their legislation that restricts competition. So far, all jurisdictions have:

- developed review schedules, covering almost 2000 pieces of legislation in total;
- established mechanisms to vet new or amended regulations to ensure that they do not unduly restrict competition; and
- commenced their review programs.

The pace of undertaking the reviews has varied from jurisdiction to jurisdiction. This is mainly because of differences in the distribution of scheduled reviews over the period to the year 2000. For example, the NSW and Victorian governments scheduled a large number of important reviews early in the review period. Other jurisdictions have a greater task ahead.

In reports provided to the Council in March this year, the States and Territories indicated that they had completed around 100 reviews, although they were still to consider many of the recommendations.

While it is still only early days, there have been several positive developments from the program. For example, an examination of business licenses in NSW revealed significant overlap and unnecessary regulation. Some 34 licences are expected to be abolished outright and a further 44 licence categories collapsed into just three. In the ACT, restrictive and discriminatory trading hours legislation has been repealed after a preliminary examination suggested that the costs to the community clearly exceeded the benefits. Further, in simply compiling their review schedules,

2 Figures provided by the Commonwealth Department of Primary Industries and Energy are for pipelines under development or consideration. They are based on AGA (1997), but updated from that report to take into consideration new pipeline developments and adjustment of estimated costs of existing developments.

jurisdictions found numerous pieces of legislation that are completely redundant. These have been abolished.

At the same time, some reviews have recommended retaining anti-competitive provisions for public interest reasons. For example, a South Australian review found that while aspects of the *Water Resources Act* are restrictive, they generate net benefits by mitigating the risk of environmental degradation and disputes over water usage. It therefore recommended that they be retained.

Progress with the legislation review program is discussed fully in Chapter B3.

Improving the competitiveness of government businesses

As part of the NCP reforms, governments are reforming their businesses in three ways: by restructuring them; by making them compete on an equal footing with private businesses; and by monitoring their prices where the businesses retain monopoly power.

Governments have undertaken wide-ranging structural reform of their big, monopolistic enterprises. For example:

- NSW has broken up its State Rail Authority into seven smaller entities, each specialising in a particular facet of rail operations; and
- Victoria has restructured its port operations, putting responsibility for shipping channels in one body, and other wharf functions, which are amenable to competition for private businesses, elsewhere.

In undertaking these reforms, jurisdictions have in most cases applied the principles for structural reform in the NCP agreements. They have separated regulatory functions from business roles, and reviewed the ownership objectives and structure of their businesses before privatising them or exposing them to competition.

The 'competitive neutrality' reforms have also commenced. In essence, competitive neutrality is the application to public businesses of the same taxes, incentives and regulations as face private businesses. 'Corporatisation' and 'full cost pricing' are two ways competitive neutrality can be introduced. To date, jurisdictions have:

- developed policies for applying the competitive neutrality principles to their significant business activities;
- in most cases, published a list of the activities to which the policies will apply;
- established mechanisms to deal with any complaints about unfair advantages enjoyed by particular government businesses; and
- commenced the reforms.

Several government businesses have been corporatised or commercialised, and pricing reforms are being progressively introduced to many others.

Where, notwithstanding these other reforms, government businesses retain monopoly power, the NCP calls on governments to consider subjecting them to independent prices oversight. Most

governments have indicated compliance with this requirement, and a number of government business are subject to prices oversight.

These types of reforms to government trading enterprises — many of which predated the NCP agreements — are showing some positive results. The outcomes have varied between enterprises. However, over the four years to 1995-96, overall there have been improvements in labour productivity, a doubling of total payments by trading enterprises to governments, average price reductions of around 15 percent, and some limited improvement in service quality.[3]

Chapters B4 to B6 contain more details.

Progressing the specific infrastructure reforms

Beyond these broad cross-sectoral reforms, all jurisdictions have continued supporting the national processes to improve the efficiency of four specific industries: electricity, gas, water and road transport. These industries are major providers of essential infrastructure services to Australian businesses and consumers. The reform processes for these areas predated the NCP, but were brought within its ambit in April 1995.

Much of the work to date has been done by task forces of governmental officials and industry experts, established to resolve various technical issues which affect the way the reforms will work.

There has also been substantial 'on the ground' reform, particularly in relation to electricity. For example:

- several jurisdictions have separated the generation and transmission parts of their electricity systems, establishing new stand-alone bodies in each part;
- most jurisdictions have corporatised or, in some cases, privatised their government electricity utilities, to help prepare them for competition; and
- the first stage of the National Electricity Market commenced in May 1997, with direct trade between NSW, Victoria and the ACT, and indirectly with South Australia.

Since these reforms, electricity prices have fallen by around 10 percent in NSW and Victoria.[4] Further price reductions should be realised as the scope of the reforms expands to cover more consumers and as more states join the national market.

There have also been several reforms in relation to gas including:

- extensive structural reform of gas utilities;
- progress in removing regulatory barriers to competition; and
- the development by four jurisdictions of specific gas access regimes to provide transitional arrangements ahead of the introduction of a national regime.

3 SCNPMGTE (1997). See further discussion in Chapter B4.

4 In a recent survey of 312 Victorian electricity customers in the contestable part of the market, 78 percent indicated that their negotiated rates were cheaper than previous rates with the average decrease being just over 10 percent (ACM 1996). See Chapter A2 for further discussion.

Jurisdictions have also undertaken several reforms in relation to water pricing and the structure of water utilities, and there has been some limited implementation of reforms in the road transport area. However, the bulk of the reform task in both these areas lies ahead.

The details of these developments are in Chapter B7.

A1.3 The specific shortcomings

While jurisdictions have made good progress in implementing the NCP reforms, there have also been several specific shortcomings. Given the breadth and ambitiousness of the reforms, some shortcomings were perhaps inevitable. However, in some cases, the problems were avoidable and need rectifying if jurisdictions are to meet their NCP commitments.

Some specific shortcomings are outlined below and discussed in detail in the relevant chapters in Part B.

Deficiencies in the review program

While jurisdictions' original legislation review schedules listed a wide range of legislation, subsequent investigations by the Council revealed several omissions. Most of these have been rectified, but three sets of laws omitted from the schedules are still being examined to see whether they should be included: They are:

- certain NSW and Queensland laws pertaining to casino legislation;
- various Western Australian laws ratifying agreements between the State Government and private businesses; and
- Commonwealth laws pertaining to the licensing of pathology centres.

More omissions from the schedules are likely to come to light as the community's awareness of the NCP legislation review program increases.

There has been some slippage in meeting the early commitments set out in the jurisdictions' June 1996 legislation review timetables. This is to some extent understandable as jurisdictions deal with teething problems in their processes. The problem does not appear to be systemic. That said, the Council is concerned with early deferrals of programmed reviews as they may lead to cumulative slippages in review programs towards the year 2000 completion date.

Beyond these problems with the review schedules, the Council has concerns relating to the outcomes of some specific reviews.

First, a 1996 Queensland sugar industry review recommended removal of the tariff on sugar imported into Australia and the liberalisation of some other marketing arrangements, but also continuance of the domestic marketing monopoly and the single export desk, and a ten year moratorium on the further review of the arrangements. The recommendations were accepted by the Queensland and Commonwealth Governments, but the Council is not convinced about the basis of the recommendations. Queensland has undertaken to reconsider marketing arrangements for sugar should changes in market conditions suggest that the current arrangements are no longer

in the community interest. The Council would consider this criteria met if, among other things, evidence were to emerge that the potential benefits of full domestic deregulation were not achieved by the approach recommended by the review.

Second, the NSW Government decided to retain the current anti-competitive vesting arrangements available to the NSW Rice Board, despite the 1995 review recommendation that deregulation of domestic rice marketing arrangements would provide a net community benefit. The Council is not convinced that this decision is consistent with the NCP obligation to only retain anti-competitive arrangements where a net community benefit is demonstrated. The Council raised its concerns with the NSW Government, which has indicated a willingness to resolve the matter with the Council.

Third, the Council is yet to see a substantive community benefit case supporting four recent pieces of legislation which are likely to substantially restrict competition. They are the proposed NSW Totalisator Agency Board privatisation legislation, South Australia's *Casino Act 1997*, Commonwealth legislation regulating Medicare provider numbers, and proposed Commonwealth legislation maintaining restrictions on competition in the automotive industry. The Council has raised these matters with the relevant jurisdictions.

Failure to undertake pre-privatisation reviews

While most jurisdictions have adhered to the NCP requirements for structural reform of government businesses, the Commonwealth did not undertake a full review of the structure and commercial objectives of Telstra and Australian National Railways Commission in advance of their partial or full privatisation, as required by the NCP agreements. While reviews that covered some of the relevant issues were conducted, the Council considers that a more thorough and explicit review against the NCP principles was warranted, particularly in the case of Telstra.

The slow pace of infrastructure reform

While progress has been made in relation to each of the four specific areas of reform, in each case implementation has taken longer than expected:

- a competitive national market for electricity was originally envisaged to commence from July 1995, but an interim market did not commence until May 1997, and the full market is not now expected to commence until March 1998;
- a national gas code was initially envisaged to be operating by July 1996, but it is still being developed;
- although until recently there has been no agreed timetable for implementing reforms in the road transport sector, progress has been slower than expected, with only one of the six agreed reform modules being implemented since the process began in October 1992; and
- while the first implementation deadline for water industry reform is not until 1998, in many cases the pace of work will need to increase if it is to be met.

A1.4 The task ahead

While there has been much progress in implementing the NCP reforms, much more remains to be done. There is a need for the jurisdictions to address the deficiencies identified to date. Jurisdictions also need to proceed with the second tranche of reform commitments, and to increase the rate of 'on the ground' reform. Beyond this, jurisdictions will need to examine some of their other policies if the potential benefits of the NCP reforms are to be fully realised.

Reviewing and reforming anti-competitive legislation

The legislation review program stretches out to the year 2000. Only around 100 State and Territory reviews had been conducted by March 1997, and only a few of these had been acted upon. All jurisdictions face a substantial task in the time ahead.

As well as addressing the specific deficiencies mentioned earlier, the Council notes several other matters which jurisdictions will need to address in relation to their legislative review commitments. The Council will examine jurisdictions' performance in relation to these matters — outlined below and discussed in detail in Chapter B3 — when making its assessments in relation to the second tranche of competition payments.

First, jurisdictions will need to continue revising their review schedules. Where legislation that restricts competition is identified but is not on the schedule, it needs to be added — unless the restriction is trivial or a net benefit from the restriction has already been demonstrated. The Council will continue to work with governments and members of the community to ensure that review schedules are comprehensive.

Second, jurisdictions' review timetables should allow reforms to be completed by the year 2000. Some jurisdictions have indicated that they may need to phase-in reforms. While the Council accepts this, it considers that phasing beyond 2000 should only occur in exceptional circumstances. Where it appears that reform to a particular piece of legislation, should it be deemed appropriate, may require an element of phasing, the Council would expect that jurisdictions would take this into account when timetabling the relevant review: that is, by scheduling it early in the program.

Third, reviews should be conducted in an open and rigorous manner. As part of this, members of review panels should be impartial in relation to the issues under review. In this respect, the Council considers that industry representatives should not be appointed to review panels, and is cautious of situations where the government bodies responsible for promulgating particular regulations are represented on review panels. The Council also considers that reviews should generally make provision for public consultation or involvement. At a minimum, terms of reference should be made publicly available.

Fourth, jurisdictions need to go beyond conducting reviews: they must also implement 'on the ground' reforms. Where recommended reforms are not implemented, jurisdictions need to provide a bona fide public interest justification to support maintenance of the restriction on competition.

In saying that, the Council recognises that some governments may need the cooperation of opposition parties to implement reforms. Indeed, a Tasmanian Government reform to simplify its public vehicle licensing system was blocked by the State's upper house.

However, for the purposes of assessing jurisdictions' progress in implementing the NCP, the Council views the NCP as a national commitment by all parties, binding not only the government but also the parliament.

Implementing competitive neutrality

While governments have made some sound early progress on introducing competitive neutrality, several matters will need further or ongoing attention.

Firstly, regarding the scope of reform, the clear presumption in the NCP agreements is that competitive neutrality principles should be applied to all significant business activities, unless a clear net cost to the community can be demonstrated. In this context, the Council considers that all business activities of governments, including hospitals and community services, budget-funded activities and partially privatised businesses, should be considered for competitive neutrality reform. To help ensure that all appropriate business activities are examined, the Council considers that jurisdictions that have not yet done so should publish a list of significant businesses, together with a reform timetable. Further, the Council notes that reform is an ongoing process and that there is a case for extending competitive neutrality reform beyond larger or significant businesses to other business activities, as some jurisdictions have already started to do.

Secondly, progress in applying competitive neutrality to local government has proven difficult to date in several jurisdictions, although the Council expects that the pace of local government reform will increase in the second half of 1997. By this time, all potential local government business activities which are to be considered for reform should be identified and, where appropriate, reform should be initiated.

One impediment to reform in this sphere is the Commonwealth taxation of local government businesses which are corporatised as part of the competitive neutrality reform process. Government businesses which were previously exempt from taxes now need to pay the same taxes as private businesses. But whereas 'tax equivalent regimes' are in place to ensure that State and Territory governments retain the money which their corporatised enterprises would otherwise pay as Commonwealth taxation, no similar approach is available for local governments. This matter needs to be resolved quickly.

Some local governments have also complained that they are required to undertake reform without receiving specific competition payments. One way this can be addressed is for jurisdictions to direct a portion of their NCP payments to their local governments for implementing the reforms. This is a matter for State Governments to determine. Queensland, which has a large local government sector, is taking this approach.

Thirdly, to enhance the way competitive neutrality principles are applied, there is a need to resolve some complex technical issues, such as defining and introducing full cost pricing, and determining approaches in relation to valuing, funding and providing community service obligations (CSOs). The Council intends to work with jurisdictions on these matters.

There may also be a related need for jurisdictions to act to improve the understanding of competitive neutrality among people in government. Specialist practitioners may be needed to implement some of technical economic and accounting concepts involved in reform, but such practitioners will not always be available, particularly in smaller local governments.

Consequently, the provision of guidelines, workshops and model systems may all help improve government employees' understanding of these concepts, and thereby facilitate implementation of the reforms. Some jurisdictions are already doing this.

Similarly, jurisdictions may need to act to improve the skills of government employees involved in contracting out. Some of the tasks involved, such as specifying the services required in contractual form, developing performance indicators, and assessing trade-offs between cost and quality when evaluating tenders, are not straight forward. Again, the provision of guidelines, workshops and model systems may all help improve the understanding and application of these concepts.

Fourthly, there is a need to ensure that competitive neutrality complaints mechanisms operate effectively, so that businesses are encouraged to draw attention to cases where government businesses retain unfair advantages. The Council sees an effective complaints mechanism as:

- being independent;
- having scope to consider competitive neutrality complaints about any business activity which has a component of government ownership;
- being accessible and providing advice to potential complainants; and
- having transparent means of dealing with and reporting complaints and making recommendations.

It is also important that governments respond in a timely manner to recommendations from their competitive neutrality complaints units.

All these matters are discussed in detail in Chapter B4.

Reforming the big infrastructure sectors

Although the specific reforms to the electricity, gas, road transport and water supply sectors offer some of the largest benefits of the NCP program, progress in relation to the first three of these has been slower than originally anticipated. However, new reform timetables have been, or are expected to be, agreed in relation to these sectors. Significant reforms for all four sectors are scheduled over the next two years.

In conducting its future competition assessments, the Council will be according high priority to jurisdictions' progress in these areas.

To meet their NCP commitments, jurisdictions will need to implement specific 'on the ground' reform, rather than provide generic statements of intent.

The reforms also need to be implemented on time. The Council will be according high priority to jurisdictions meeting the agreed scheduled rate of reform.

Further, there should be few 'derogations'[5] from national approaches to reform. For example, the Council considers that transitional derogations from the National Electricity Code should be minimised. Any State or Territory derogations which remain in conflict with the national reform objectives when the fully competitive electricity market commences would need to have strong public policy justification, and appropriate phasing arrangements. Likewise, in relation to the National Gas Access Regime, the Council considers that derogations such as exempting particular infrastructure from the regime would seriously undermine national reform. It would be unlikely to endorse such derogations.

Finally, the Council will monitor individual jurisdictions' progress in meeting specific commitments, such as the Queensland and Tasmanian Governments' commitments to interconnect to the National Electricity Market.

As well as implementing the agreed NCP reforms in these areas, the Council considers that governments should aim to develop national approaches to reform in other infrastructure sectors, particularly in transport sectors such as rail, where current approaches are difficult, time-consuming and continue to shelter arrangements which restrict competition.

Chapter B7 discusses these matters in more detail.

Addressing the broader policy mix

Beyond the need to progress the NCP reforms, the Council considers that jurisdictions may need to address other aspects of their overall policy mix if the potential benefits of the reforms are to be reaped in full and used well.

Competition policy can play a major role in enhancing the performance of the economy. Its strength lies in improving productivity and economic efficiency. This can directly improve people's material living standards and, in conjunction with other measures, enable the attainment of the community's social and environmental goals.

However, implementing competition policy alone does not guarantee these outcomes. Competition necessarily entails losers as well as winners, particularly in the short term. And whether the potential benefits of competition reform are realised in full, shared equitably, and put to the best use will depend on other government policies and economic conditions.

If these other areas are not adequately addressed, there is a chance that people will simply equate competition policy and micro-economic reform with job losses, breakdown in communities, reduced government accountability and impaired environmental quality.

This has four sets of implications for governments.

First, there is a need for specific, ongoing action to address these other issues — such as social justice, the environment, tax reform, education and labour market reform — so that the impetus

5 A derogation occurs where a jurisdiction chooses not to adopt a provision in a national code in relation to one or more services: for example, exempting a selection of pipelines from the pricing principles in the code.

for broadly-based competition reform is not lost and so that the benefits can be fully realised and put to the best use.

The Council notes that, in addressing these types of issues, governments may need to consider a range of solutions, some quite far-reaching. For example, while recent discussion of tax reform has focussed on the appropriate form of taxation, there is also a need to address the level of taxation. Among other things, there is a need to ensure that governments have sufficient funds to help finance those social and environmental projects which, while providing net community benefits, would not be commercially viable. Likewise, in relation to the labour market, as well as solutions affecting the demand for, quality and cost of labour, there may also be a need for policies which address the scope for people to substitute between work and non-work activities. In particular, there may be a need to provide greater incentives for people in employment to increase the proportion of time they devote to non-work activities, as their material living standards increase.

The Council also notes that the extension of competition specifically into some of these areas may itself help solve current problems. In relation to labour market reform, for example, removing restrictions on competition for jobs has the potential to increase employment levels, and thereby benefit people who are currently unemployed, although at the risk of lower wage levels or reduced working conditions for some existing workers. Were such an approach to be taken, governments may need to re-examine their redistributive policies to ensure that those on lower levels of pay receive appropriate community support, either directly or through changes to the income tax system. Other labour market policy options include ongoing retraining programs, and broader macro-economic changes may also warrant consideration. But more fundamental labour market reforms may also need to be considered. These issues are neither new nor easy. That does not make confronting them any the less important.

Second, governments may need to revisit the issue of adjustment assistance for both individuals and communities which are affected by structural reform. Phasing reform is one form of assistance that is widely applied, although there is a need to ensure that phasing does not unduly delay the attainment of the benefits of reform. Alternatively, direct compensation may be appropriate where reforms deprive people of pre-existing property rights and rapid implementation is desirable. Specific retraining assistance programs may be appropriate where reforms are likely to involve lower employment in an industry. More generally, governments' approaches to adjustment assistance may need to be more flexible and targeted on likely reform outcomes.

Third, governments need to ensure that they do not use competition policy processes to introduce inappropriate reforms. Competition is not necessarily inconsistent with a wide range of policy settings — from environmentally friendly to environmentally adverse, from socially equitable to socially unjust, and from high government accountability to limited or no formal accountability. Recognising this, the NCP reforms entail processes which seek to ensure that restrictions on competition are not removed if they are in the public interest. Governments should also ensure that, when undertaking reforms, they do not falsely presume that adverse outcomes in other facets of policy are a necessary or appropriate trade-off to obtain the benefits of greater competition.

Finally, there is also a role for governments (and the Council) to clearly and accurately explain to the community the interface between the competition reforms, other aspects of government policy, and overall community objectives.

A2 Understanding competition policy: some implications of reform

A2.1 The context

Competition is not a new phenomenon: nor is competition policy. In Australia, national competition reform has been high on the agenda since the early 1990s. It has been developed and debated through various policy forums, culminating in the April 1995 decision of all Australian governments to adopt the NCP reform package.

In adopting the package, Australian governments knew it could fundamentally change the way Australians do business. Analysis at the time (CREA 1995, IC 1995) suggested that it will provide opportunities for some, risks for others, but with potentially substantial net benefits overall — real GDP up to 5.5 percent higher, for example. This in turn could enhance Australians' material living standards or, depending on government priorities, be channelled towards meeting social and environmental goals.

But while many policy makers understand the reforms and the types of benefits and costs entailed, this understanding is not shared fully by the broader community. Some of the risks inherent to doing business in a modern, competitive economy — such as the closure of specific production facilities — are often viewed in isolation and thus adversely. Meanwhile, the more diffuse benefits of lower prices, broader services and more sustainable conditions for economic and employment growth can be overlooked. And some NCP reforms have not always been accurately represented in the media.

One way the Council supports the NCP process is by providing public information on the reforms and their effects. The Council set out the rationale for the NCP program in its first annual report, and discussed some issues relating to the implications of competition reform as they affect other aspects of government policy in Chapter A1. In this chapter, the Council examines some of the specific implications of the reforms for particular groups — showing the ways they may be affected, how these effects should be consistent with the public interest, and how people can participate in the reform process.

A2.2 Opportunities and risks for people in business

While the NCP is designed to enhance the performance of the Australian economy overall, it is *not* designed to improve the profitability or viability of specific businesses themselves. Rather, it is intended to foster conditions in which the businesses that most benefit the community prevail.

Each of the NCP reforms involves direct opportunities and, correspondingly, direct risks for businesses. To take one example, the 'access' provisions are likely to give opportunities to firms which want to use other businesses' infrastructure, but potentially at a cost to those other businesses which own or operate infrastructure.

Consequently, the NCP reforms will not provide all benefits and no costs to businesses. Indeed, some businesses which face increased competitive pressures may lose market share or even be forced to close, unless they are able to improve their performance. Meanwhile, businesses which can provide better value for money to consumers will expand. The NCP reforms will also have broader effects on all businesses. These effects are outlined below.

Some implications of the competitive neutrality reforms

Under the NCP, private businesses should generally find it easier to win work from government businesses, because:

- under the competitive neutrality reforms, governments are to remove any unfair advantages their businesses enjoy relative to private businesses; and
- more areas of government activity are likely to be opened up to competition from private businesses.

To capitalise on these opportunities, private businesses may need to improve their understanding of government purchasing policies, needs and tendering processes. They may also need to review their business plans and consider expanding by increasing investment and/or taking on more staff. For example, since winning a local government tender to provide homecare services, a Victorian business called Silver Circle has expanded employing an additional 77 staff (IC 1996, 164).

However, existing businesses which already compete for government work may also find new private businesses entering these markets. Indeed, in some instances former government employees may establish a private business to compete for government work that is to be contracted out. These people will have in-depth knowledge and experience of government requirements and thus should be well placed to tender for work, provided they have or can develop appropriate business skills. Alternatively, former government employees may seek work in existing private businesses which compete for government contracts.

The flip-side of this is that government businesses face some risks from the reforms. First, being exposed to greater competition and/or being forced to compete on equal terms with private businesses[6] brings with it the risk of losing market share to private businesses. Second, some of their employees may choose to move to private businesses, unless they offer sufficiently attractive work conditions and remuneration.

6 The competitive neutrality reforms require that advantages *and disadvantages* that government businesses enjoy as a result of their government ownership be removed. To the extent that disadvantages — such as difficulties in accessing taxation benefits of depreciation, investment allowances and other deductions — are compensated for, and no other advantages are enjoyed by the government business in question, it will have its competitive position directly enhanced by the reforms. Generally, however, the Council anticipates that the reforms will result in the first instance in a reduction in the competitiveness of government businesses relative to their private sector counterparts.

On the other hand, many government businesses should be well placed to confront increased competition, because:

- some, such as Australia Post, may have established a favourable reputation and loyalty amongst some consumers, by virtue of their status as public bodies delivering community service obligations (CSOs);
- some may have strong positions in their markets, as in the case of Telstra; and
- their experience in providing a particular service can be an advantage when tendering for government work.

Further, some government businesses may gain from the reforms. Where a government business which is corporatised improves its efficiency and customer focus, it may be able to increase its market share at the expense of private businesses. For example, the ACT Government's corporatised Totalcare business recently won a contract to supply a range of support services to certain NSW private hospitals, in competition with private businesses.

This highlights that the NCP does not seek to pre-judge whether government or private businesses are more efficient. For example, the reforms do not mean that private businesses will automatically be awarded contracts ahead of government businesses. Rather, they seek to allow competition to happen such that businesses succeed on their merits.

Effects of reforms to anti-competitive legislation

Where legislative restrictions on competition are removed, new businesses may be able to enter into markets by competing with incumbent producers. One example which preceded the NCP reforms occurred in the legal market in NSW. Restrictions on competition were reduced thereby allowing para-legals to undertake some activities such as conveyancing.

An alternative outcome is that some existing businesses may be able to outcompete other existing businesses. For example, deregulation of shopping hours may provide an opportunity for those businesses willing to stay open at times customers find more convenient to gain market share at the expense of businesses which are not.

Where anti-competitive legislation is removed, incumbent businesses need to lift their game or risk losing market share. This may involve developing or rethinking business plans, looking for opportunities to expand their product range, improving service quality or finding ways of reducing costs.

In many cases, incumbent businesses will be well placed to fend off new competition. Often they will understand their market well and know their customers' needs. They may have had time to build up a loyal clientele and, as mature businesses, they are likely to have more settled and stable financial positions than new businesses.

For new businesses, the removal of anti-competitive legislation brings with it normal commercial risks involved in starting a new business. To make inroads into the market, such business people will generally need to be able to offer a more attractive product — whether it be lower priced, higher in quality, or better suited to customer needs — than the products offered by incumbents.

Again, the NCP makes no particular judgment about whether incumbent businesses or new businesses are more efficient. Rather, it seeks to provide appropriate conditions for competition in which those businesses best placed to satisfy consumers' wants can do so.

Implications of the access regimes

The National Access Regime, and other access regimes developed by governments, will provide opportunities for businesses which want to use infrastructure.

Businesses which are successful in gaining access may have their competitive position enhanced. For example, after negotiation with the Federal Airports Corporation failed, ACTO — a small business involved in the freight market — successfully applied to have certain airport facilities declared. This will allow it to better compete against Ansett and Qantas and other companies providing container terminal services.[7]

Other businesses will also benefit. This is because, once a service is declared, other businesses need not go to the expense of seeking declaration. They can simply enter into negotiation, backed up by the legal rights emanating from declaration. This should also enhance competition.

Infrastructure owners/operators, on the other hand, will need to consider the implications of the regime for their investments. For example, they may need to expand infrastructure capacity, as more users enter the market and overall output expands. If they were charging monopolistic prices for use of their infrastructure before the access regime, these may decline — with implications for their profitability. To provide greater certainty, infrastructure owners may also need to enter into undertakings with the Australian Competition and Consumer Commission (ACCC) about agreed terms and conditions of access (see Chapter B8).

The access reforms involve balancing these benefits and costs. They do not seek to allow access in all cases. Rather, they aim to facilitate competition where appropriate to bring down prices, improve services and/or increase the utilisation of infrastructure.

The broader, indirect effects on business

Beyond the direct opportunities and risks for specific businesses, the NCP reforms should bring about broader, indirect effects on the business environment.

These indirect effects are complex and difficult to track. They depend on the interaction of an array of economic variables, including interest rates, exchange rates, wage demands, and the level of domestic savings. Exactly how increased competition will affect the business environment depends on economic conditions both here and overseas, government policies and the reactions of people and businesses in the marketplace.

7 The Federal Airports Corporation has lodged an appeal against declaration of the Sydney airport facilities with the Australian Competition Tribunal. The appeal is yet to be heard.

In general terms, however, some indirect effects should improve the general business environment. For example:

- as discussed in Section A2.3 below, where competition increases, prices for the affected products should generally fall.[8] This will reduce the costs of other businesses which use those products as inputs in their own activities. It will also mean that consumers will be able to buy more products and/or save more with their incomes. If consumers buy more products overall rather than increasing their savings, domestic demand will increase and businesses will achieve more sales;
- to the extent that workers' wage demands are linked to price levels and changes in their effective buying power, they are likely to seek lower or slower wage increases. Where this occurs, pressure on business costs will be reduced further; and
- where business costs are lower, businesses will be more competitive, thereby being more able to displace imports and/or expand exports.

Other effects could counteract some of the improvements in the general business environment, particularly in specific areas. For example:

- where competition from new businesses or increased competition from existing businesses located elsewhere forces several businesses in a particular locality to contract or close, economic activity in the area would decline. This would reduce the sales of other local businesses; and
- under the competitive neutrality reforms, cross-subsidies currently provided by government business activities may be removed. While this would benefit those consumers who were funding the cross-subsidy, it could[9] also increase prices for the previous beneficiaries, which would reduce their spending power. If the beneficiaries of the particular cross-subsidy were geographically concentrated, sales by local businesses could decline. Where businesses themselves were the beneficiaries of the cross-subsidy, their input costs would increase and they would become less competitive.

Beyond these indirect effects, the reforms should affect the business environment in the longer term through their effects on the sustainable level of economic growth.

In recent decades, attempts to sustain high levels of economic growth in Australia have been impaired because, as growth has increased, so has the level of 'domestic demand' — that is, the aggregate level of spending activity in the economy. This in turn has increased the prices of goods and services, including those used by businesses as inputs. Higher domestic demand has also fuelled an increase in imports, and may have caused a switch of local production away from export markets, contributing in turn to an increase in Australia's trade deficit. To counter these

8 Variables such as prices, product quality, other product characteristics, business sales, employment or economic growth increase and decrease over time for a variety of reasons, of which increased competition is only one. Hence, where this report indicates that a variable should rise or fall consequent upon increased competition, it refers to the change in the variable of interest compared to the value it would take if competition did not increase: that is, 'controlling' for other factors.

9 Under the NCP, governments have agreed that, when reforming their businesses, they will examine ways to ensure that valid CSOs are maintained. Where cross-subsidies are removed, one way of maintaining CSOs is for governments to provide businesses which a specific budget payment to cover the costs of maintaining the subsidised services at previous prices.

effects, governments have typically sought to depress domestic demand by increasing interest rates or cutting back government spending. This in turn has reduced economic growth and, in some specific instances, led to economic recession.

As the NCP reform program takes effect, however, these economic limits to growth are likely to lift. This is because substantial improvements in national productivity are likely as more efficient businesses displace less efficient ones. With higher productivity, the economy will be able to generate more production from each particular level of employment and/or capital investment. With more domestic production possible, the cost and trade pressures which have constrained government attempts to increase growth should not occur to the same degree.

In other words, governments should be able to expand the economy at a faster rate than it otherwise could, before running into the barriers which have constrained growth in the recent past. Over the long term, this should provide a stronger and more stable business environment.

A2.3 Effects on consumers

Changes in prices

In general, prices should fall under conditions of enhanced competition.

One reason is that, where existing businesses face limited competition in their market, they are often able to raise their prices above the levels necessary to cover their costs (including their need to earn a normal profit). With more competition, new businesses will enter the market and seek to win sales by offering lower prices — albeit prices at which they can still make a reasonable profit.

A second reason is that, even if current businesses are not earning monopoly profits, lifting restrictions on competition may allow new businesses to enter which have new, more innovative, lower cost ways of supplying the particular product. Again, such businesses would have an incentive to undercut the price of existing businesses in a bid to gain market share.

The NCP reforms should also contribute to lower prices insofar as corporatisation and structural reform improve the efficiency of public business enterprises.

There is some recent evidence of falls in prices under competition and related reforms. For example:

- real average airfares were around 22 percent lower in September 1996 than their pre-deregulation level;[10]

10 ACCC (1997). Quiggin (1997) has questioned the use of changes in the average cost or revenue per kilometre as a measure of price changes on the basis that it does not represent an index of prices paid by passengers and thus does not compare the cost of comparable services over time. The Council observes that the use of a simple price index would be unlikely to accurately reflect consumer purchasing behaviour and changes in the range of airline services offered. Since deregulation, airlines have not only modified fares but also increased the degree of discounting and relaxed the conditions associated with discount fares. This has enabled more people to be able to afford air travel or to fly further on a fixed budget. This is reflected in, among other things, an 87 percent increase in domestic air travel since deregulation.

- in a survey of Victorian electricity customers in the contestable part of the market, 78 percent indicated that their negotiated rates were cheaper than previous rates with the average decrease being around 10 percent;[11]
- freight rates for rail freight transport between Melbourne and Perth fell by around 40 percent following the introduction of competition on that route in 1995-96;[12] and
- prices of government trading enterprises fell on average by around 15 percent in real terms over the four years to 1995-96.[13]

While prices should generally decline, in some cases the NCP reforms could increase prices. This is because aspects of the reforms involve removing subsidies. For example, part of the water reforms involves making the prices of water reflect the full costs of providing the water. At present, many water users do not pay the full costs of storing, treating and transporting water. They therefore have incentives to use more water than is either environmentally or economically sound. Consequently, under the reforms, the prices they pay may be increased.

This highlights that the aim of the NCP is not lower prices *per se*, but rather more efficient use of resources. Prices which are too low can be just as detrimental in terms of providing incentives for people to use resources efficiently as prices that are too high.

Changes in product value and availability

Product value has many dimensions: quality, safety, reliability, durability, utility, service associated with the product and so on.

In general, the value of products to the consumer should increase under conditions of enhanced competition.

One reason is that businesses which face competitive pressures have greater incentives to search out exactly what features consumers do value. This is because the more consumers value a product, the more they will normally be willing to pay for it. And the more they are willing to pay, the higher the profits which businesses can earn — at least until other businesses respond with their own enhanced product (or lower prices).

Another reason is that, in the absence of competition, businesses can earn monopolistic profits by cutting the value of their products rather than (or as well as) by increasing their prices. With competition, this approach would result in a loss of market share.

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11 ACM (1996). The survey found that 78 percent of the 312 respondents had been able to negotiate a better deal with the introduction of contestability, with price reductions ranging from one to 39 percent, and averaging just over 10 percent. 10 percent of respondents indicated they were worse-off price-wise, with their average price increase being 12 percent. Quality-wise, 33 percent of respondents reports an improvement in service, while 65 percent reported no change.

12 Two companies, Specialized Container Transport (SCT) and TNT, entered this market to compete against National Rail. As well as significant price reductions, improvements in transit time and service quality were recorded. See Section B8.45.

13 SCNPMGTE (1997). See Chapter B4 for further discussion.

As well as better value products, competition is also likely to generate a wider range of products. Businesses will have a greater incentive to innovate and develop new products, target them more closely to specific consumer niches, and market them more widely. For example, since the lifting of prohibitions on pay television in Australia, Australians have been able to choose from a much wider range of programs, with many specialised channels catering for specific consumer tastes in news, sport, movies, science and music.

More generally, in competitive markets the structure of firms and industries evolves over time in response to changing conditions, including shifts in consumer demand. For example, in the grocery retail market, the advent of better transport options and changing lifestyle patterns has resulted in a structural shift towards larger retail outlets which provide wider product choice, longer opening hours and generally lower prices. Likewise, many petrol stations now remain open 24 hours and stock a range of convenience items.

But while product value and availability should generally rise under the NCP reforms, it is also possible that some aspects of product value will fall. This is likely where consumers have been receiving products containing features which consumers did not value at the full cost of provision. Where there is limited competition, it is possible for a producer to continue to supply such products and continue to make a profit. However, with full competition, new businesses have an incentive to supply the product without the feature, and charge a lower price, and attract customers that way.

This highlights that the aim of the NCP is not increase product quality or availability *per se*, but rather to provide better 'value for money' for consumers and society as a whole. Products which are over-specified in terms of their quality, reliability etc can be just as wasteful of resources as products which are under-specified.

A2.4 Implications for employment

The NCP reforms will affect employment in several ways. Some of these mirror the effects on businesses and, consequently, there will be both opportunities and risks for workers and people who are currently unemployed. Some particular implications for workers in specific businesses or sectors have already been discussed in Section A2.2. At a broader level, there will be direct effects, both positive and negative, on jobs in industries which are directly exposed to greater competition. There will also be indirect effects on employment in other industries. And the reforms, through their effects on the sustainable level of economic growth, should affect the number of jobs which the economy can sustain in the longer term.

Where competition is extended into previously sheltered industries:

- the number of jobs provided by some existing businesses will fall. They will face greater pressures to boost productivity or trim costs. One way will be to reduce the number of workers needed to meet a particular level of demand. Further, where existing businesses lose market share to new or other existing businesses, employment in the less competitive businesses will fall. At the extreme, some existing businesses may close, thereby laying off of all their workforce; and

- these job losses will be offset to some extent by an increase in jobs provided by new businesses which enter those markets, and also by some existing businesses. The number of jobs created in new businesses will depend on the how much market share they are able to capture, and also on the proportion of labour they use as inputs in their production processes. The number of jobs provided by some existing firms will also rise where, for example, they displace other existing businesses or where lower prices resulting from competition lead to a sufficient expansion in total sales in the market. There will be particular employment gains where reforms such as the access arrangements unlock new markets which were previously supplied by a monopoly.

In terms of the effects on employment in other industries:

- where competition brings about lower prices for the products of newly exposed industries (as discussed in Section A2.3), all businesses which use those products as inputs will become more competitive. They will therefore be better able to displace imports or increase their exports. Similarly, to the extent that lower prices boost consumer spending power, Australian businesses will face increased demand for their goods. In both cases, businesses would have reason to expand their output by, among other things, hiring more staff; and
- these job gains would be offset to some extent if, as mentioned earlier, competition causes the contraction or closure of several businesses in a specific area. This would adversely affect local unemployment levels.

The extent to which aggregate employment would increase or decrease specifically from implementing the NCP reforms depends on the interaction of an array of economic variables. In estimating the effects of the reforms, the Industry Commission projected that they would increase aggregate employment by 30,000, compared to what it would otherwise be. However, the Commission emphasised that its estimates were sensitive to assumptions it used in its model. For example, changes in employment were constrained to induced changes in labour market participation rates (IC 1995). Under different labour market assumptions, the reforms could lead to less employment in the short run, or more employment in the long run, than forecast in the model.

Beyond the different effects on employment discussed so far, the NCP reforms provide the potential for increases in employment in the longer term through their effects on the sustainable level of economic growth.

As noted in Section A2.2, as the NCP reform program takes effect, substantial improvements in national productivity are likely. With higher productivity, the economy will be able to generate more production from each particular level of employment and/or capital investment. One implication is that, for a given level of production, there will be less demand for labour. This will drive some of the negative effects on employment discussed above. However, with more domestic production possible, the inflationary and trade pressures which have accompanied attempts to increase economic growth in the recent past should not occur to the same degree.

In other words, governments should be able to expand the economy at a faster rate than they otherwise could, with positive implications for employment.

Further, removing restrictions on competition for jobs themselves could substantially increase employment levels. The full effects of this approach are complex and would depend in practice on

an array of economic, industrial and political factors. However, in certain circumstances, effective competition for jobs would be expected to significantly reduce real labour costs and/or improve labour flexibility. This would improve business competitiveness, thereby increasing both growth and employment.

But while the NCP reforms provide scope for increasing employment, it should be emphasised that higher employment is not the primary aim, nor an automatic outcome, of competition policy *per se*. Rather, as discussed in Chapter A1, to seriously counter problems of unemployment, governments need to address other policy areas as well. In particular, further labour market reform may be necessary. Removing restrictions on competition for jobs is only one option. There may also need to be a greater emphasis of education and training which enhances the vocational skill base of people experiencing unemployment, and of young people soon to enter the labour force. The Council re-emphasises that governmental measures to address these and other matters are necessary if the potential benefits of the NCP reforms are to be fully realised and put to the best use.

A2.5 The role for community interest groups

While competition can bring various community benefits, the NCP agreements also recognise that there will be situations where unfettered competition may not be appropriate. For example, governments may need to intervene in the economy to redistribute income to disadvantaged groups for equity reasons. Restricting competition can be one way of doing this. Governments may also seek to intervene to deal with significant forms of 'market failure'. This occurs where special features of a market mean that its unfettered operation would reduce community welfare. For example, where consumers have insufficient information to assess the qualities of particular products or services, there may be a role for governments to help ensure that the quality of the product or service meets consumers' needs. Restricting the availability of lower quality products and services may be one way of doing this.

For these reasons, many of the NCP reform processes embody mechanisms for balancing the benefits and costs of restrictions on competition. To take one example, under the legislation review program, the guiding principle is that restrictions on competition should be removed unless the benefits of the restriction outweigh the costs, and the objectives of the legislation can not be obtained using alternative means. In assessing public interest arguments, the NCP agreements mention an array of issues, including effects on consumers, regional employment, the environment and social justice.

Community interest groups have opportunities to draw attention to public interest issues under various aspects of the NCP processes. For example, in a submission to the Council, the Highway Safety Action Group supported declaration of certain NSW rail services as it considered that more competition would increase rail's market share and reduce traffic on the roads. In a submission on the National Gas Access Code, the ACT Council of Social Service drew attention among other things to equity considerations relating to gas pricing. And as another example, in any review of professions regulations, consumer groups may want to ensure that anti-competitive regulation is

not used to hold up prices and, at the same time, that professional standards are maintained at reasonable levels.

The role of community interest groups in the reform process is particularly important because, often, their constituents are unlikely to have sufficient incentive to participate on an individual basis. While a restriction on competition may impose substantial costs on consumers as a group, each individual consumer may only lose a little. By contrast, the beneficiaries of a particular restriction will generally be more concentrated and have more incentive to highlight the costs of removing the restriction. By representing the collective interests of their constituents, community interest groups can help to ensure that that a more balanced judgment is made on matters of public interest than might otherwise occur.

A3 Supporting competition policy: the Council's contribution

A3.1 The Council's ambit

When Australia's governments adopted the NCP reform package, they also formed the National Competition Council.

The Council was formally established in November 1995 and has been operating effectively for about 20 months. It currently comprises four part-time councillors drawn from different business sectors and regions of Australia, supported by a secretariat of around 20 staff based in Melbourne.

Although funded by the Commonwealth, the Council is a national body — having been established and empowered by agreement of all Australian governments and with responsibilities to them as a group. As a statutory body, the Council is also independent of the executive arm of any government.

The Council has four main roles:

- to assess jurisdictions' progress in implementing the NCP reforms;
- to evaluate applications relating to the National Access Regime;
- to undertake other work as requested by Australian governments; and
- to increase understanding and to provide advice on the NCP process generally.

The last twelve months have been busy. The Council devoted considerable energy to the assessment process. It also encountered a heavy workload in relation to its access role. And it has recently devoted significant effort to raising awareness and understanding of the NCP program and its implications.

In this chapter, the Council discusses its recent work and foreshadows the task ahead. More details on the Council's operations and management are contained in Part C.

A3.2 Assessing jurisdictions' performance

The Council is responsible for assessing whether jurisdictions have made satisfactory progress in implementing their reform commitments, and making recommendations to the Commonwealth Treasurer about NCP payments to the States and Territories.

The Council has just competed its first assessment.

This has been a complex and difficult task. The NCP agreements generally comprise broad 'statements of intent' rather than specific, concrete commitments against which progress can be readily assessed. Further, since the April 1995 agreements, jurisdictions have jointly renegotiated some of the implementation timetables, and added to or modified some of the agreed reforms. In

practice, reform has been occurring across an array of fields, some of which cover issues which are extremely detailed and technical. In addition, it has not always been easy to gain clear information on some of the reforms. And finally, in making public assessments of jurisdictions' progress, and recommendations in relation to the competition payments, the Council has necessarily encountered political sensitivities.

The assessment process

The Council's approach to the assessment task involved several steps.

It commenced by seeking to clarify with jurisdictions what actions they would need to take to make 'satisfactory progress' in implementing their reform commitments. To this end, it:

- consulted with officials in all jurisdictions;
- disseminated material elaborating on aspects of the NCP agreements; and
- sought agreement from jurisdictions about what they needed to do.

As required under the NCP agreements, jurisdictions published policy statements in July 1996 in which they elaborated on their commitments in relation to legislation review, competitive neutrality reform and the application of the reforms to local government. Drawing on these policy statements and its other work, the Council summarised its views on what would constitute satisfactory progress in its first annual report, published in August 1996.

The second step was to commence gauging jurisdictions' overall progress against their commitments. As well as seeking information from jurisdictions themselves, the Council received information about achievements and possible slippages in the reform program from other parties, and drew on its own knowledge and investigations of specific reforms. As particular slippages or shortcomings in the reform program became apparent, the Council raised these with the relevant jurisdictions.

In February 1997 the Council circulated a preliminary assessment to jurisdictions. Among other things, the assessment set out matters on which the Council had formed concerns that jurisdictions may not have met their reform commitments. Providing the preliminary assessment was designed to give jurisdictions an opportunity to:

- provide evidence on their progress in relation to specific areas of concern;
- explain the reasons why they had adopted a particular approach; or
- modify their approach to those areas.

Following this, in March 1997, all States and Territories provided the Council with their first annual progress report on their implementation of the NCP reforms.

The Council then assessed these reports and sought clarification or further evidence on any omissions or matters of contention. As the assessment deadline neared, the Council met with senior officials and ministers in all jurisdictions to discuss any unresolved issues, together with any subsequent matters about which the Council was concerned.

Immediately prior to the assessment deadline, the Council circulated a draft final assessment to provide an opportunity for last minute revisions.

Finally, after taking into account jurisdictions' responses, the Council finalised its recommendations and dispatched them to the Commonwealth Treasurer at the beginning of July.

The Council's approach

In undertaking these tasks, the Council has seen its job as one of encouraging reform, rather than penalising non-compliance. It has therefore used flexibility and discretion in assessing jurisdictions' progress. It has not legalistically demanded perfect compliance with every particular commitment. Nevertheless, the Council's brief under the NCP implementation agreement is to assess whether all the conditions for payments have been met, rather than to overlook major shortcomings in any one area on the basis of better than satisfactory performance in other areas. The Council therefore sought genuine commitment by jurisdictions to implement each element of the reform program.

The Council also used its ability to recommend competition payments in a way that provided incremental incentives for jurisdictions to undertake reform. For example, where jurisdictions had failed to comply with significant NCP obligations by July 1997, the NCP agreements provided for the Council to recommend that the Commonwealth make deductions from its first tranche payments. However, the Council also established an intermediate option to deal with areas of deficiency. Provided the relevant jurisdiction agreed to address the matter during the coming year, the Council would defer its recommendations on the area until July 1998.

The Council's recommendations

The Council recommended that all States and Territories should receive full payment of all 1997 first tranche instalments, but that several matters should be examined further, prior to the payment of the second instalment of the first tranche payments in July 1998. These matters cover progress with national gas reform, some legislation review matters, and the application of the reforms to local government.

In other words, the Council assessed that all jurisdictions have made satisfactory progress against most of their early NCP reform obligations, but that satisfactory progress in relation to some specific issues is yet to be demonstrated.

The Treasurer accepted these recommendations and made the first instalment of competition payments to the States and Territories on 15 July 1997.

The next steps

Assessments will continue to figure prominently in the Council's work program. The Council will examine the deferred first tranche matters prior to July 1998. It has also commenced preliminary work on the second tranche assessment process in relation to the States and Territories. These assessments are due by July 1999. Further, the Council is to assess the Commonwealth's performance, with the Commonwealth expected to provide its first annual progress report to the Council shortly.

A3.3 Processing applications for access

Under the National Access Regime, the Council is required to assess applications and make recommendations to the relevant government on:

- whether infrastructure services should be 'declared' for access; and
- whether particular State or Territory access regimes should be 'certified' as being effective under the National provisions.

In August 1996, the Council published a draft guide on how it would approach its task. Among other things, it undertook to use open processes, such as preparing background papers and releasing draft recommendations for public comment. It also undertook to meet with the applicant and affected parties, to avoid undue legalism, and to seek to complete its assessment within sixteen weeks. As required under the legislation, the Council also drafts a Statement of Reasons for its recommendations, which are released to the public when the relevant Minister makes his or her decision.

During 1996-97, the Council has received applications from five businesses seeking declaration of infrastructure facilities, and three applications from State governments seeking certification of their access regimes. One of the declaration applications was subsequently withdrawn. Several other potential applicants have also approached the Council for informal guidance as to whether to proceed.

The processes adopted by the Council appear to be working well. Most applicants and affected parties, while often having conflicting interests, have made constructive contributions. The informal approach used, as well as saving costs and time, may have encouraged greater cooperation. And although the matters dealt with have entailed some complex technical issues, the Council completed all but one assessment within the sixteen week timeframe.

The Council's recommendations have varied. It has recommended 'declaration' in two cases, but recommended against declaration in one other. It has recommended for certification in two instances. In one of these, the State first modified its regime in response to concerns which arose during the Council's public assessment process.

Details of the applications and the Council's reasoning and recommendations, where the relevant Minister has announced a decision, are in Chapter B8.

A3.4 The broader work program

Under the NCP, the Council can be requested to:

- provide advice to the Commonwealth Parliament when it is considering overriding State or Territory exceptions from aspects of the *Trade Practices Act*; and
- recommend on whether State and Territory government businesses should be subject to prices surveillance.

These functions are explained in Chapters B2 and B6 respectively, although the Council was not required to provide assistance on either of these matters during 1996-97.

The Council also undertakes projects determined by agreement of a majority of Australia's governments. The work program can include the conduct of reviews and provision of advice to governments covering the review of restrictive legislation, the structural reform of public monopolies, prices oversight and competitive neutrality arising out of the competition policy agreements, and any other projects as agreed by a majority of governments.

With the agreement of the States and Territories, in May this year the Commonwealth Treasurer referred the *Australian Postal Corporation Act 1989* for review by the Council. While the review is to be undertaken in accordance with the competition principles, the Commonwealth has also requested the Council to consider some additional matters (see Box A3.1).

The Council is currently conducting a public inquiry on these matters and is scheduled to forward its final report to the Commonwealth Treasurer in February 1998.

Box A3.1 Review of postal services: some issues

Among other things, the Council is to:

- identify the social objectives Australians seek to achieve though their postal services;
- consider whether restricting private mail businesses from competing with Australia Post is necessary to achieve them;
- determine whether the way Australia Post competes with privately owned providers of postal services should be changed; and
- recommend any changes which should be made to the conditions applying to other operators which want to use Australia Post's network.

While there are no other matters on the work program, the Council considers that it is well placed, through its work program, to play a significant role in promoting the benefits of competition reform. The Council encourages governments to make use of its ability to bring an intergovernmental focus to competition reform. The Council is well placed to examine matters which have an effect beyond any single jurisdiction, such as legislation which regulates activities operating in more than one State or Territory, and the role and structure of national institutions. There are many other matters which would benefit from national examination, including statutory marketing arrangements and restrictions on the provision of various professional services.

A3.5 Developing information flows

Lifting awareness

In disseminating information about the NCP program, the Council seeks to project its message to a range of audiences. It recognises that the subject matter of competition policy is neither

straight-forward nor always immediately intuitive. It also recognises that different groups will have inherently different levels of interest in, and understanding of, competition policy issues. It therefore provides both short and easy-to-comprehend information for some audiences, as well as more technical and comprehensive information for others.

During this year, the Council and Secretariat staff presented papers at several conferences, made many less formal presentations on NCP to interested parties, and met with a wide range of people with an interest in NCP matters, including politicians, various government officials, business people and interest groups.

The Council also published six information papers on aspects of NCP (see Box A3.2). In the months ahead, the Council will publish a compendium of all jurisdictions' first annual progress reports. It also intends to update its Access guide to reflect lessons learned from the applications considered to date.

In recent months, the Council has increased its efforts to raise awareness and understanding of the NCP program in other ways.

For example, in May the Council commenced producing a monthly newsletter, called *NCC Update*. The Council distributed around 1,000 copies to people in governments, business, academics, unions, and community interest groups. More than 80 percent of recipients replied to the Council seeking to receive the newsletter on an ongoing basis.

In June the Council released a short, plain English kit about the NCP program for people in small business. The Council distributed more than 1,000 kits to small business people and organisations. One organisation reprinted the kit and sent it to its 4,000 members, and other organisations disseminated aspects of the information through small business newsletters.

After some early technical glitches, the Council's web-site became fully operational in July.

In August the Council produced a special edition of its newsletter focussing on the present review of postal services. This was disseminated broadly to all on the Council's general distribution list and all those who have expressed in interest in the postal review. It contained various articles on aspects of the review in a simple-to-access manner.

In the period May to August, the Council President and senior Secretariat staff also gave several media interviews, and provided briefings for journalists, to explain aspects of the NCP program and the Council's role.

The Council recognises the need for greater community understanding of the NCP and its implications and intends to make ongoing efforts to enhance this over the next year.

Box A3.2 Information papers available from the Council

- The National Access Regime: a draft guide to Part IIIA of the *Trade Practices Act* (August 1996);
- Considering the public interest under the National Competition Policy (November 1996);
- Competitive neutrality reform: issues in implementing Clause 3 of the Competition Principles Agreement (January 1997);
- Compendium of National Competition Policy agreements (January 1997)
- Legislation review compendium (April 1997);
- Assessment of State and Territory progress with implementing the National Competition Policy and related reforms (July 1997)

Encouraging involvement

Beyond providing information, the Council also recognises a need to increase the involvement of people and groups in the NCP processes.

The Council's processes already provide some scope for public involvement. For example:

- when assessing applications in relation to the access regime, the Council advertises and seeks submissions from interested parties and, in special cases, releases draft recommendations to provide an opportunity for further public comment and debate;
- for its review of postal services, the Council has publicised the review widely, invited submissions from the public, and is undertaking visits of postal users in metropolitan, rural and remote areas. It will also release an options paper to elicit further public comment on the matters under review; and
- the Council, in conjunction with the Gas Reform Implementation Group, is conducting a public consultation process in respect of the National Gas Access Regime.

The Council also encourages involvement in NCP reform through its work with jurisdictions on their reform processes. For example, as discussed in Chapters A1 and B3 of this report, the Council is expecting to see jurisdictions conduct independent and open reviews of anti-competitive regulation, except where this cannot be justified on cost-effectiveness grounds. At a minimum, the Council expects that terms of reference and review recommendations should be made publicly available. In most cases, the Council expects to see scope for public consultation and involvement in reviews. The Council will be considering the nature of reviews as part of its assessment of jurisdictions' reform in relation to the second tranche assessments.

In the year ahead, the Council will seek to hold regular meetings with advisory groups comprising representatives from big and small business, unions, and various community interest groups. At the meetings, the Council will provide briefings on the NCP and seek input on NCP issues and processes and the Council's approach.

Part B Competition policy: developments in detail

B1 About the NCP program

B1.1 Origins

The performance of the Australian economy at the micro-economic level has received increasing attention since around the mid-1980s, with governments at all levels undertaking numerous reforms:

- some of these introduced greater competition into sectors of the economy, as in the case of domestic airline deregulation;
- others involved more centrally coordinated changes to the structure and operations of particular sectors, as in the case of reforms to higher education; and
- many, such as tariff reductions and the abolition of quantitative import restrictions, sought to reduce inefficiencies in the traded goods sector.

By the late 1980s and early 1990s, it had become clear that a more balanced and coordinated approach to reform across the three spheres of government was required. Some progress was made at the 1991 Special Premiers' Conference. Subsequent meetings of Australian heads of governments advanced the agenda and, in 1993, governments created the vision for a national approach to competition reform when they commissioned the Hilmer Review into National Competition Policy (NCP).

Following receipt and analysis of the committee's report and recommendations, the Council of Australian Governments (COAG) agreed to implement the NCP reform package in April 1995. The package contains a range of measures designed to realise the benefits which competition, properly harnessed, can bring. It also contains processes which recognise that other approaches are sometimes needed to meet Australia's social, environmental and other economic goals.

B1.2 The reforms

Under the NCP, governments agreed to:

- extend the reach of the anti-competitive conduct laws in the *Trade Practices Act* (TPA);
- establish 'access' arrangements for the services of nationally significant infrastructure;
- review and, where appropriate, reform all laws which restrict competition, and ensure that any new restrictions provide a net community benefit;
- introduce competitive neutrality so that government businesses do not enjoy unfair advantages when competing with private businesses;
- processes for restructuring public sector monopoly businesses to increase competition;
- consider extending prices oversight to certain State and Territory government businesses; and

- implement and continue to observe previously agreed reforms in the areas of electricity, gas, water and road transport.

Governments also agreed to apply these reforms to local governments in their jurisdiction.

B1.3 The mechanics of the NCP program

Competition Policy Reform Act

The Commonwealth Government enacted the *Competition Policy Reform Act 1995*. It:

- amended the competitive conduct rules (Part IV) of the TPA and extended their coverage to State and local government businesses and unincorporated bodies;
- created a new Part IIIA of the TPA to provide a National Access Regime;
- amended the *Prices Surveillance Act* to extend prices oversight arrangements to State and Territory business enterprises; and
- created two new institutions to oversee the implementation of the NCP package — the Australian Competition and Consumer Commission (ACCC)[14] and the National Competition Council.

The intergovernmental agreements

Governments' NCP commitments are contained in three intergovernmental agreements:

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

The Conduct Code Agreement sets out the basis for extending the coverage of the TPA.[15]

The CPA sets out the principles to be followed by governments in relation to all the agreed reforms[16], other than those contained in the Conduct Code and the specific reforms in gas, electricity, water and road transport.[17]

14 The ACCC was created through the merger of the former Trade Practices Commission and the Prices Surveillance Authority. Its principal responsibility is enforcement of the TPA. The Trade Practices Tribunal was also renamed the Australian Competition Tribunal.

15 The Conduct Code Agreement also covers consultative processes for amending the competition laws of the Commonwealth, States and Territories and for appointments to the ACCC.

16 The CPA also sets out consultative arrangements for determining appointments to, and deciding the work program of, the National Competition Council.

The Implementation Agreement sets out the conditions for provision of financial payments by the Commonwealth to the States and Territories; and the role and functions of the Council in assessing States and Territories progress on the reforms and advising the Commonwealth Treasurer on eligibility for the NCP payments. The NCP reform program has been split into three 'tranches', and the Council assesses each government's progress in meeting their commitments at the end of each tranche: that is, on 1 July 1997, 1999 and 2001. The Commonwealth has agreed to make payments to the States and Territories, provided they make satisfactory progress in implementing the agreed reforms. All up, these payments are worth around $16 billion over the period to 2005-06.

Timing of the reforms

Under the Implementation Agreement, different reforms are required at different times in relation to the various reform areas. For example:

- for the reforms to extend the reach of Part IV of the TPA, the States and Territories needed to make a once-only legislative change by July 1996, with no further action required;
- for the National Access Regime, the Commonwealth was required to make a once-only legislative change, with further action limited to appropriate amendments to fine-tune the regime;
- in relation to legislation review and competitive neutrality, ongoing reform action is required, although each jurisdiction was responsible for compiling its own reform program;
- for matters such as prices surveillance and structural reform of public monopolies, jurisdictions simply need to observe the processes and requirements set out in the CPA if and when these matters arise; and
- for the specific infrastructure reforms, the nature and timing of the necessary reforms are set out in intergovernmental agreements. In electricity, gas and road transport, specific progress is required for each of the three tranches. For water, progress is formally only required for the second and third tranches.

The Council's functions

The general assessment function

The Council examines State and Territory progress in relation to each of the reform areas listed in Section B1.2, and makes recommendations to the Commonwealth Treasurer about the provision of NCP payments to the States and Territories.

17 The reform principles and commitments in relation to these areas are set out in other COAG agreements, and the requirement to implement them in the context on the NCP package is set out in the Implementation Agreement.

The Council completed its first assessment in July and made its recommendations to the Commonwealth Treasurer. The Council's full assessments have been published as a separate document.

In undertaking its assessments, the Council relied on information provided in State and Territory governments' annual progress reports, as submitted to the Council in March 1997, in conjunction with other information obtained by the Council. A description of the procedures followed by the Council is contained in Section A3.2.

The Council will also assess the Commonwealth Government's progress in implementing the agreed reforms. The Council has yet to receive the Commonwealth's first annual report. When it does, the Council will undertake a comprehensive assessment and publish its findings .

In Chapters B2 to B8 of this report, the Council discusses the agreed reforms and its assessment of progress to date in relation to each reform area. In most cases, each chapter sets out:

- the background to and rationale for the particular reform(s);
- governments' commitments in relation to the reform(s), and the progress expected in relation to each tranche of the NCP program;
- progress made to date; and
- implementation issues which have arisen and/or the task ahead for governments.

The chapters do not provide comprehensive information on all actions undertaken by Australia's governments in relation to each of the reform areas. Rather, they provide an overview of the reforms to date, including indicative examples of specific reforms. Further, the Council has been able to include only its preliminary considerations of the Commonwealth's performance.

Functions related to specific reforms

The Council assesses applications and makes recommendations to the relevant government in relation to the National Access Regime. In undertaking this role, the Council must consider arguments and weigh evidence to determine whether to recommend in favour of, or against, a particular application. The Council uses public processes and publishes its recommendations and analysis in a Statement of Reasons. The Council's processes are discussed in Section A3.3. In Sections B8.4 and B8.5, the Council discusses each application received during 1996-97 and, where the relevant government has announced its decision, provides a detailed summary of the Council's deliberations and recommendations.

The Council also has an advisory role in relation to Section 51 of the TPA, and a recommendatory role in relation to prices surveillance. These are discussed in Sections B2.2 and B6.2 respectively.

B2 Extension of the competitive conduct rules

B2.1 Implementing the competition code

Under the Conduct Code Agreement, governments agreed to extend the operation of Part IV of the TPA to all business activities.

Broadly speaking, Part IV prohibits a range of anti-competitive trade practices including:

- anti-competitive agreements;
- misuse of market power;
- exclusive dealing;
- resale price maintenance; and
- mergers which have the effect, or likely effect, of substantially lessening competition.

Constitutional limitations had previously prevented application of these provisions to unincorporated businesses, such as legal partnerships, operating solely in one State. Further, many State and Territory government businesses had 'Shield of the Crown' immunity from the TPA.

To rectify this, State and Territory governments have enacted a modified version of Part IV, called the competition code, in each of their jurisdictions. All States and Territories other than Western Australia enacted the necessary application legislation by the agreed date of 20 July 1996. Western Australia enacted its legislation in September 1996, but made it apply retrospectively from the earlier July date.

All jurisdictions met this aspect of their first tranche commitments.

B2.2 Council recommendations for competition law exceptions

Section 51 of the TPA allows for State or Territory laws to specifically authorise conduct which would otherwise breach Part IV of the Act.

The Commonwealth Treasurer has the discretion to override such statutory exceptions within four months of the States and Territories providing notification of their laws.

To do this after four months, the Treasurer requires a report from the Council on:

- whether the benefits to the community from the State or Territory legislation, including the benefits from transitional arrangements, outweigh the costs;

- whether the objectives achieved by restricting competition by means of the legislation can only be achieved by restricting competition; and
- whether the Commonwealth should make regulations for overriding the legislation.

The Council is yet to receive such a request from the Commonwealth Treasurer.

B3 Legislation review

B3.1 Background

Regulation is important. Unfettered markets can fail to deliver socially optimal outcomes. For example, businesses which do not pay the full costs of pollution will emit excessive amounts of waste into the environment or undertake insufficient recycling. Regulation is one means by which governments endeavour to safeguard the interests of individuals and the community against these types of problems. Properly designed, it can help to satisfy a range of legitimate concerns, including consumer protection and public health and safety, as well as the environment.

However, like many other developed countries, Australia faces a range of problems with its regulatory systems:

- overly stringent and prescriptive regulations reduce competition and can impose substantial costs on business, consumers and society;
- regulations which focus on existing problems and are not adaptable to new situations lose relevance once the problem they were designed to address is resolved or superseded;
- regulatory differences within and between levels of government add unnecessarily to the costs of Australian business, which is operating increasingly on at least a national level; and
- as global markets develop for many goods and services, the domestic regulatory environment is becoming increasingly important for the competitiveness of Australian firms.

Governments have been seeking to address some of the problems of inappropriate regulation since the mid-1980s. Several jurisdictions have established regulation review bodies and processes to vet new and existing regulation.

But in some instances, there have been gaps in these programs, the mechanisms available for enforcing them have been limited, compliance with regulation review principles has been overridden by other considerations, and the review programs generally have not directly addressed problems of the anti-competitive effects of regulation.

As part of the NCP agreements in April 1995, each government agreed to review and, where appropriate, reform all existing regulation which restricts competition by the year 2000. The guiding principle is that legislation should not restrict competition unless:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

The reforms arising from the legislation review program are expected to impact across the economy, from professional groups to retailers to consumers. In broad terms, the expected benefits include a reduction in regulatory compliance costs, greater scope for business innovation and markets more responsive to the needs of consumers.

B3.2 Governments' commitments

Under Clause 5 of the CPA, governments committed to:

- develop a comprehensive legislation review timetable by June 1996;
- review, and where appropriate, reform legislation that restricts competition (including at the local government level) over the period to 2000;
- ensure that proposals for new legislation which restrict competition are accompanied by evidence that the legislation is consistent with the competition principles; and
- produce annual reports of their progress with their legislation review programs.

Governments' progress in relation to their commitments under the legislation review program is relevant for the Council's assessment at each of the three tranches.

B3.3 Progress to date

Legislation review timetables

All jurisdictions developed a timetable for reviewing their legislation in accordance with the NCP requirements, and provided them to the Council by July 1996.

Typically, the schedules included information on:

- the name of the legislation;
- the government agency responsible for administering it;
- a description of the legislation and/or the nature of the restriction on competition it involves; and
- the proposed scope and date of the review.

In developing the schedules, governments needed to identify and make a preliminary assessment of all their existing legislation and associated regulations to determine which pieces should be reviewed. This was a complex and lengthy task.

To help ensure that all anti-competitive legislation is scheduled for review, each jurisdiction also audited all legislation it had enacted since signing the NCP agreements in April 1995. The audits revealed several pieces of anti-competitive legislation which had previously not been scheduled for review. Where the restriction was not trivial, these pieces were added to the review programs.

All up, the schedules cover almost 2,000 pieces of legislation, dealing with a range of matters. Box B3.1 contains a selection.

Box B3.1 Selected legislation from jurisdictions' schedules

Jurisdiction	*Name of legislation*	*Date*
Cmwlth	*Insurance (Agents and Brokers) Act 1984*	1997-98
Cmwlth	*Navigation Act 1912 (Part IV)*	1998-99
Cmwlth	*Financial Corporations Act 1974*	1998-99
NSW	*Murray Valley Citrus Marketing Act 1989*	1996-97
NSW	*Business Licenses Act 1990*	1997-98
NSW	*Innkeepers Act 1968*	1997-98
Vic	*Workers' Compensation Act 1958*	1996-97
Vic	*Fisheries (Commercial) Regulations 1992*	1998-99
Vic	*Transport (Taxi-Cab) Regulations 1994*	1998-99
Qld	*Business Names Act 1962*	1998-99
Qld	*Land Sale Act 1984*	1996-97
Qld	*Financial Intermediaries Act 1996*	1998-99
WA	*Casino (Burswood Island) Agreement Act1985*	1998
WA	*Health (Liquid Waste) Regulations 1993*	1999
WA	*Employment Agents Act 1976*	2000
SA	*Legal Practitioners Act 1981*	1997
SA	*Environment Protection Act 1993*	1999
SA	*Landlord and Tenant Act 1936*	1999
Tas	*Mining Act 1929*	1997
Tas	*Metropolitan Transport Act 1954*	1998
Tas	*Land Use Planning and Approvals Act 1993*	1999
ACT	*Business Franchise ('X' Videos) Act 1990*	1997
ACT	*Fair Trading Act 1992*	1997
NT	*Business Franchise Act*	1998
NT	*Pay-Roll Tax Act*	1998

Note: This selection represents a small sample of the 2,000 odd pieces of legislation in jurisdictions' schedules. A full listing is available in the Council's Legislation Review Compendium published in April 1997.

Processes for examining new legislation

All governments have developed mechanisms for examining proposals to introduce new legislation, and amend existing legislation, in accordance with the NCP requirements. These mechanisms are to ensure that the proposals comply with the competition principles.

Typically, the mechanisms:

- involve an assessment of the incidence and, where possible the magnitude, of competitive restrictions, as well as an examination of regulatory alternatives;

- take the form of a 'regulatory impact statement', a 'public interest test' or a 'competition test';
- are coordinated by a central agency; and
- are included in Cabinet documentation in support of a proposal.

In some instances, before legislation which contains anti-competitive elements can proceed, the Premier or Chief Minister must formally approve it.

All jurisdictions have also developed guidelines to assist their agencies in assessing the competition implications of new legislation.

Progress with the review program

While the focus of much of the legislation review activity by governments over the past twelve months has been on establishing mechanisms and guidelines for reviews, all jurisdictions have commenced their review programs.

The pace of review varies between jurisdictions reflecting, in part, differences in the distribution of scheduled reviews over the period to the year 2000. For example, the NSW and Victorian Governments scheduled a large number of reviews early in the review period while other jurisdictions' review activity will increase over the next eighteen months.

There has been some slippage in meeting the early commitments set out in the jurisdictions' June 1996 legislation review timetables. This is to some extent understandable as jurisdictions deal with teething problems in their processes, and as the timing of reviews is altered to reflect changed priorities.

While the problem does not appear to be systemic, the Council is concerned to ensure slippage of scheduled reviews does not lead to cumulative failure to complete review programs as the year 2000 approaches.

Further, the Council recognises that it will be necessary to vary the review programs from time to time, but is concerned to avoid the situation whereby reviews of legislation which significantly restrict competition are scheduled towards, or deferred until, the end of the review period.

One issue in this respect is the Commonwealth's proposal that pharmacy legislation be subject to a national review in 1999. The proposed timetable will have the effect of deferring State reviews of pharmacy legislation, most of which are scheduled for 1997-98.

Among other things, pharmacy legislation affords industry incumbents significant protection from competition and imposes costs and restrictions on pharmacists and their practices. For example, pharmacists are limited to owning no more than three outlets, and a new pharmacy cannot locate within two kilometres of an existing approved pharmacy without losing the benefits of certain subsidies provided under the Pharmaceutical Benefits Scheme (PBS). At present, under the Community Pharmacy Agreement between the Commonwealth and the Pharmacy Guild, some of the regulations governing the sector are in place until 30 June 2000.

Because of the interlinkages between the various levels of regulation of the pharmacy sector, including State and Territory structural regulation, financial regulation in the PBS and the

Community Pharmacy Agreement, the Council is supportive of a national approach to reviewing pharmacy legislation as suggested by the Commonwealth.

However, the Council considers that earlier consideration than proposed by the Commonwealth is warranted. The complexity and nature of pharmacy regulation suggests that there could be significant community costs entailed in delaying any appropriate reforms. Moreover, the proposed national review will necessarily consider some sensitive and difficult issues and is likely to require lengthy and time-consuming consultation with interested parties. Consequently, a mid-1999 commencement date may place some pressure on the year 2000 target for implementation of any reforms which may be recommended.

Review outcomes

In their March 1997 annual progress reports, the States and Territories advised that in total they had completed some 100 reviews of legislation. These reviews have recommended:

- the repeal of legislation or the removal of specific provisions within Acts;
- the development of replacement legislation which conforms with CPA principles;
- the streamlining of administrative arrangements and licensing; and/or
- the retention of anti-competitive arrangements.

Examples in each category are given below.

However, not all the review recommendations made to date have been implemented, with many being considered by governments at the time the jurisdictions forwarded their annual progress reports to the Council. As previously stated, the Council anticipates that the implementation of review outcomes will increase over the next 12 months.

Repealing legislation or removing specific provisions within Acts

As a result of its review activity to date, Victoria has, or intends to, repeal or amend almost two dozen pieces of anti-competitive legislation, including:

- the *Second-Hand Dealers and Pawn Brokers Act 1989* and associated regulations;
- the *Bourke Street Mall Act 1982;* and
- the *Shop Trading Act 1987/Capital City (Shop Trading) Act 1992*.

Similarly, the ACT has repealed its *Trading Hours Act 1996*.[18] The Act provided for restrictive retail trading hours that discriminated against retailers in larger shopping centres. After an initial

18 In its 1995-96 annual report, the Council advised that the ACT Government had agreed to monitor and review this Act over the 18 months to February 1998 and have the Australian Bureau of Statistics survey the impact on the community. This work was intended to augment the review of the *Trading Hours Act 1996* scheduled for 1998. However, the ACT Government has since advised the Council that, having undertaken the first part of its survey of the community impact, it was apparent that the evidence did not support the restriction. Consequently, it repealed the legislation in May 1997. The Council endorses the approach taken by the ACT on this matter.

examination of the impact of the Act, the ACT Government stated that 'it was evident from the survey results that, ultimately, the public benefit of the [trading hours] restriction did not outweigh the cost'.

In addition to repealing anti-competitive laws following reviews, several jurisdictions reported that they have repealed a significant volume of legislation after a simple, preliminary examination identified that it was redundant. For example, to date Western Australia has repealed, or plans to repeal, some 15 Acts. This type of examination of legislation, rather than a full NCP review, is likely to continue to feature in jurisdictions' review activities. Used appropriately, it is an efficient way of 'cleaning up the law books'.

Replacing legislation

Queensland has advised of its intention to repeal and replace its *Local Government (Planning and Environmental) Act 1990*, with the *Integrated Planning Act*. Competition policy issues were considered in drafting the new Act, and it will be examined for consistency with the NCP prior to its introduction into Parliament.

Western Australia enacted the *Censorship Act 1996* to replace the *Censorship and Films Act 1947*, the *Video Tape Classification and Control Act 1987*, and the *Indecent Publications and Articles Act 1902*. The new legislation will be reviewed in accordance with the NCP principles.

The Northern Territory intends to repeal its *Nursing Act* and *Mental Health Act* and is preparing replacement legislation. This legislation will comply with the CPA, and also take account of 'mutual recognition' implications, and national standards and accreditation requirements.

Streamlining administrative arrangements and licensing

The 1996 review of Tasmanian *Traffic Act 1925* proposed streamlining of public vehicle licences. It recommended amendments to the Act which will reduce the number of licensed freight vehicles and trailers in Tasmania from approximately 7,700 to 3,500. The Government has adopted these proposals (but see comments in Section B3.3 relating to blockages by the Tasmanian upper house on this matter).

In August 1995, NSW initiated a Licence Reduction Program under which it has examined some 250 licences of which 34 have been nominated for repeal. A further 44 licence categories were administratively repealed and amalgamated into three general categories — fencing, general maintenance and cleaning. Where licensing legislation is found to contain other restrictions on competition, it is to be scheduled for NCP review.

Alongside its NCP legislation review program, the ACT is undertaking a systematic review of all ACT legislation and regulation to remove unnecessary regulatory burdens on business.[19] One of

19 This process follows recommendations from the ACT's Red Tape Task Force. The Task Force recommended a package of reforms to remove regulatory burdens and led to the establishment of a Business Regulation Review Unit within the ACT Government and the use of Regulatory Needs Analysis and Business Impact Assessments in the development of new legislation and regulation.

the first exercises undertaken was an examination of all pre-1980 ACT legislation, which resulted in the repeal of 75 Acts with a identification of a further 650 for possible future repeal.

Retaining anti-competitive arrangements

The joint Commonwealth and Queensland review of the sugar industry recommended the lifting of the tariff on imported sugar, but the retention of the single export desk and domestic marketing arrangements through the Queensland Sugar Corporation. The review determined that the (restrictive) single export desk arrangements produced a net community benefit through the attainment of price premiums. (But see discussion in Section B3.3 on aspects of this review.)

The South Australian review of its *Water Resources Act 1990* found that the water allocation and resource management provisions of the legislation, while restrictive in nature, generate a net benefit through mitigating the risk of environmental degradation and disputes over water usage. It therefore recommended that restrictions be retained.

A review of the South Australian *Liquor Licensing Act 1985* identified several anti-competitive elements in the legislation and recommended partial deregulation of the State's licensing arrangements. However, it also chose to retain restrictions on the types of outlets which can be licensed to sell liquor and the 'proof' required to obtain a license. This was based on concerns about the availability of liquor and the community's ability to adjust from a highly regulated to a more deregulated environment. The review recommended that the restrictions be reviewed again in three to four years. This would allow for a transition period and provide an opportunity to examine the experience of jurisdictions which are further down the deregulation path.

B3.4 Implementation issues

From its analysis of jurisdictions' annual progress reports, its assessment process, and concerns raised with it and its own investigations, the Council has identified several issues which it, together with jurisdictions, will need to address as the review program progresses. The most pressing of these are discussed below.

Scope of legislation review programs

General coverage

While jurisdictions' review timetables list a wide range of legislation, they may still contain gaps. Indeed, investigations by the Council following inquiries by interested parties have revealed several omissions. More are likely to be identified as the community's awareness of the legislation review program increases.

To help identify anti-competitive laws not yet included in the schedules, the Council published a compendium of all governments' review timetables programs in April 1997. The aim is to encourage public scrutiny of this aspect of the NCP program. The Council will periodically

update the compendium to reflect program variations and review outcomes. Jurisdictions' annual NCP progress reports will also contribute to public awareness of the legislation review program.

Further, as noted above, jurisdictions' audits of legislation enacted since signing the NCP agreements in April 1995 have led to several pieces of anti-competitive legislation being added to the review programs.

Jurisdictions have been amenable to adding legislation to their review programs when raised with them. For example, Western Australia has added several pieces of primary industries legislation to its program which were not originally included in its schedule.

The Council will continue to work to ensure that the legislation review schedules are comprehensive and that anti-competitive legislation is added to review timetables where it has not already been scheduled for review.

Given the magnitude of the review task, the Council recognises that it will be necessary for governments to set priorities in implementing their review programs. This may involve focusing initially on those areas of legislation which impose the greatest restriction on competition. Alternatively, it may involve deferring review of some anti-competitive legislation, or exempting certain legislation from review because its impact on competition is small or trivial and any potential benefits from reform are likely to be outweighed by the review costs: that is, it is not 'cost effective' to review the legislation. While recognising that such judgments may be appropriate in some instances, the Council notes that exclusions from the review program need to be justified in net community benefit terms to comply with the CPA.

Specific omissions

Beyond these general points, to date the Council has identified four specific areas of concern in relation to jurisdictions' review schedules.

First, NSW and Queensland have not scheduled for review certain laws pertaining to casino legislation.[20] The Council considers failure to review the anti-competitive elements of the casino control and related casino agreement Acts (such as exclusive licensing arrangements) is inconsistent with the spirit of the CPA. The Council recognises that reviewing casino licensing laws is likely to involve some complex issues and potential costs, especially where casino agreement Acts are concerned. However, it believes that this legislation should not be exempt from scrutiny under the NCP. To this end, the Council will be working with jurisdictions over the next twelve months to develop an approach to reviewing this legislation which satisfies the NCP requirements and addresses the concerns of the NSW and Queensland Governments.

Second, the Commonwealth has yet to formally schedule legislation relating to pathology centres in its NCP legislation review program. This matter was drawn to the Council's attention during the year. At present, the allocation of licensed pathology collection centres is restricted, which affects competition between pathology laboratories. These restrictions are contained in Part IIA of the *Health Insurance Act 1973*. The Council understands that, while the Commonwealth

20 Queensland has scheduled its general casino legislation but not individual casino agreement Acts, which typically contain exclusive licensing agreements. NSW has not scheduled any casino legislation.

Department of Health and Family Services intends to review Part IIA in 1998-99, it had not intended this review to address competition matters. The Council has raised this matter with the Commonwealth and understands that consideration is being given to examining the competition implications as part of the 1998-99 review.

Third, several jurisdictions have agreement/ratification legislation which typically contain exclusive licensing arrangements. Where such legislation has been excluded from review, the Council has sought to verify that the effect on competition is trivial or that the net community benefit from the restriction has been demonstrated. Most jurisdictions have presented a case to support the non-review of their agreement Acts.

In response to a request by the Council, Western Australia has undertaken to give greater consideration to its laws ratifying agreements between the Government and private sector entities, where these contain provisions such as exclusive licensing arrangements. Given the large number of agreement Acts in question, Western Australia is examining a sample of its resource development agreement legislation over the next twelve months. The aim is to ascertain the degree to which competition is restricted. Where non-trivial restrictions which potentially impose a net cost on the community are identified, the Council expects the legislation, and Acts similar in effect, to be reviewed in detail. And, as for all restrictive legislation, if the Council receives, or is made aware of, a complaint, it will seek to have the relevant Act and similar legislation reviewed and, where appropriate, reformed.

Fourth, three jurisdictions have enacted or proposed legislation likely to introduce a substantial restriction on competition and are still to demonstrate the associated net community benefit.

The CPA requires that all legislation proposed which restricts competition is examined to ensure that the restriction provides a net community benefit and that the objective of the legislation can only be met by restricting competition. All jurisdictions have mechanisms in place to examine the competition implications of new legislation.

However, the Council is yet to receive the detailed net benefit assessments associated with:

- proposed NSW Totalisator Agency Board privatisation legislation; and
- South Australia's *Casino Act 1997*.

Both of these contain restrictions on competition, although both governments have indicated a willingness to provide net benefit assessments to the Council.

Similarly, the Commonwealth is yet to provide evidence of a substantive net public benefit assessment in support of its 1996 legislation limiting Medicare provider numbers available annually to new doctors, thus restricting entry to medical practice. The Commonwealth has forwarded some research and analysis of this matter to the Council. Among other things, it indicates that an over-supply of medical practitioners can induce inappropriate medical expenditures. However, the Council considers that a more comprehensive analysis of the problem, and alternative mechanisms of dealing with it including measures which do not restrict competition, is necessary to meet the CPA requirements.

Likewise, the Council is yet to receive evidence of a substantive net public benefit assessment of the Commonwealth's decision to retain restrictions on competition in the passenger motor vehicle industry. The Commonwealth decided to freeze tariffs on imported cars at 15 percent from the year 2000 until 2005, when it is intended that they will fall to 10 percent. It took this decision

amongst considerable media debate, and despite the majority conclusions of an independent review that there would be a net benefit overall from faster and deeper tariffs reductions. The Commonwealth has indicated to the Council that the decision reflected sensible and pragmatic considerations and continued the process of tariff reform in a way that should attract further investment in the car industry. However, the Council has yet to see the Commonwealth's evidence that retaining this restriction on competition will produce a net benefit for the community overall as required under the CPA. The Council considers that the Commonwealth has failed to meet its obligations under the CPA on this matter.

There are some indications that the current review of the textile, clothing and footwear industry will raise similar issues, and will require systematic consideration of the net benefit to overall community welfare, rather than simply supporting investment and employment within the industry, for compliance with the CPA requirements.

Timeframe for completing reviews and reforms

Under the NCP agreements, reviews and reforms are to be completed by the end of the year 2000. The Council has consistently sought to ensure that the review and reform programs are completed on time. All governments have stated that they intend to complete their review and reform programs on time 'where appropriate' in accordance with the NCP agreements.

However, some jurisdictions have indicated that there may be a need to phase reform implementation over a period extending beyond 2000.

While the Council accepts that phased reform will sometimes be appropriate, it considers that phasing *beyond 2000* should only occur in exceptional circumstances. Where it appears that reform of a particular piece of legislation, should it be deemed appropriate, may require an element of phasing, the Council would expect jurisdictions to have taken this into account when timetabling the relevant review: that is, by scheduling the review earlier in the review program. Any phasing beyond the 2000 reform target would, in the Council's view, need a strong public interest justification. The Council will give substantial emphasis to each jurisdiction's progress against the year 2000 target in its future NCP assessments.

Reviews of national issues

While most reviews are scheduled to be conducted by individual jurisdictions, the NCP also provides scope for joint-jurisdictional and national reviews.

To date, national reviews of agricultural, veterinary and industrial chemicals legislation, and food laws, are under way. A national review of legislation relating to travel agents is also being established, and the Commonwealth has proposed a national review of pharmacy legislation in mid-1999. The Commonwealth, State and Territory governments are examining other areas of legislation which might be subject to national review.

All jurisdictions will need to revise their legislation review timetables to reflect agreements on national reviews. In particular, most States and Territories will need to conduct state-based reviews where proposed national approaches do not proceed.

The Council notes that adopting a national approach to review proffers obvious synergies and benefits, particularly where it results in a uniform regulatory position across all jurisdictions. This removes unnecessary compliance costs and barriers to business, and the scope for regulatory arbitrage. Where state-by-state reviews are undertaken in relation to 'national' issues, they will need to take account of the benefits of consistency in regulatory standards.

Consultative processes

Concerns have been raised with the Council about the level of publicity and the opportunity for public involvement and consultation in some review processes.

Review process adopted by governments vary in nature reflecting to some degree the diversity of the legislation on governments' programs and their views about the likely extent of public involvement. Most governments adopt a range of review models:

- at one extreme, full scale public reviews are held, particularly where removal of legislative restrictions involves complex technical issues and/or matters of significant community interest; and
- at the other extreme, internal reviews may be appropriate for matters where government policy is already clear and there is expected to be minimal requirement for public consultation. For example, governments have repealed some redundant legislation after an internal examination rather than a full NCP process.

However, even in cases where public participation is likely to be minimal, governments' policy statements recognise that it is appropriate for review processes to consider public consultation through, for example, the issue of draft recommendations for comment or consultation with interest groups.

The Council sees the differentiated approach as generally appropriate, given the size of the overall review program and the varied nature of the legislation programmed for review.

At the same time, the Council emphasises the benefits of public consultation and the importance of providing reasonable opportunities for input by affected parties. At a minimum, it considers that full terms of reference should be made publicly available.

There are several documents in the public arena which can help interested parties find out about review activities, including:

- governments' June 1996 review timetables;
- governments' first (March 1997) annual progress reports, which outline progress against the objectives set out in the review timetables;
- the Council's April 1997 Legislation Review Compendium; and
- the Council's first tranche assessment of governments' progress in implementing the NCP reforms.

The other main source of information on specific reviews are the National Competition Policy Units in each jurisdiction. Their contact details are listed at the end of this report.

Independence of review panels

Several concerns relating to the independence of review panels have been brought to the Council's attention over the past six months. The concerns have generally related to a perceived bias of industry members of review panels and, consequently, the potential pre-empting of review outcomes.

Such concerns indicate that there is a risk of review panels being captured by vested interests. This is particularly the case where such interests are beneficiaries of the protections against competition subject to review. The Council is currently investigating allegations raised with it, in consultation with relevant jurisdictions.

There is obviously a need for industry representatives and members to participate in reviews of legislation affecting their industry. Among other things, they will have a detailed knowledge of the industry structure and the markets it operates in. They may be well placed to suggest useful options for reforming the relevant legislation, and are likely to be directly affected by any reform proposals. One way industry representatives can have input is by making submissions and providing information to review panels.

However, the Council considers that there should not be industry representation on review panels themselves, and stresses the need for reviews to be objective and aimed at genuine reform opportunities.

Similarly, while the Council considers that government officials responsible for promulgating and/or administering particular regulations are well placed to have input into reviews of those regulations, it is cautious about situations in which such officials are appointed to review panels, because of the risk of bureaucratic 'capture'.

Further, it is important that all information and views presented to a review panel be objectively considered. There will almost inevitably be conflict between some of those views. It is important to establish and maintain community confidence in the NCP review program if the potential opportunities and benefits from reform are to be identified and attained. This is especially so for reviews of legislation which have far reaching effects on the community or to which the community is particularly sensitive (for example, casino control legislation). Unless it can be convincingly demonstrated that open processes would impose net community costs by, for example, invoking 'sovereign risk' problems, these reviews in particular should be conducted in an independent, open and transparent way, against clear terms of reference, and in a manner that allows interested parties to participate.

Agricultural marketing arrangements

In its assessment of governments' progress with NCP implementation, the Council outlined its concerns with the review of some statutory marketing arrangements (SMAs) for agricultural products. Specifically, the Council has questioned aspects of the outcomes from:

- the 1996 Queensland sugar industry review; and
- the 1995 NSW review of rice marketing arrangements.

The Queensland sugar review recommended removal of the tariff on sugar imported into Australia and the liberalisation of some other marketing arrangements, but also continuance of the domestic marketing monopoly and the single export desk, and a 10 year moratorium on the further review of the arrangements. The Queensland and Commonwealth Governments have endorsed the review recommendations, with the removal of the tariff effective from 1 July 1997.

However, it is not clear to the Council that all of the review panel's conclusions are sustainable. In particular, questions arise in relation to the review's conclusion that 'the benefits of full domestic deregulation can be achieved by mandating the provision of export parity priced raw sugar to the domestic market while, at the same time, avoiding the adverse impact of domestic deregulation on the competitiveness of export arrangements.' Further, the Council has questions about the basis of the estimated 'Far East premium', and the expectation that it will persist over time.

In response to the Council's concerns, Queensland has undertaken to reconsider marketing arrangements for sugar before ten years should changes in market conditions suggest that the current arrangements may no longer be in the community interest. The Council would consider this criterion satisfied if, among other things, there is evidence that the benefits which full domestic deregulation would bring are not being achieved by mandating the provision of export parity priced raw sugar.

With respect to the NSW rice review, the NSW Government decided to retain the current anti-competitive arrangements, despite the review recommendation that deregulation of domestic rice marketing arrangements would provide a net community benefit.

The Council is not convinced that this decision is consistent with the CPA obligation to retain anti-competitive arrangements only where a net community benefit is demonstrated. The Council raised its concerns with the NSW Government, which has indicated a willingness to try to resolve the matter in a manner consistent with the CPA. The Council will re-examine this matter prior to July 1998 when it assesses whether NSW has progressed this, and other, outstanding issues from the first tranche assessment sufficiently to warrant receipt of the second instalment of its first tranche competition payments.

While the Council recognises that reviewing agricultural SMAs may raise some sensitive community and political issues, it is necessary for review processes to be bona fide and genuinely aimed at reform. This is not to suggest that total deregulation of SMAs is the only outcome acceptable. Indeed, retention of anti-competitive arrangements is entirely consistent with the NCP principles if it can be clearly demonstrated that the benefits to the community as a whole arising from a restriction outweigh the costs of that restriction. Rather, it is to point out the CPA requirement that any decision to retain such arrangements should occur *only if* a net benefit for the whole community, rather than just one section of it, can be demonstrated.

Several reviews of significant agricultural marketing arrangements are scheduled over the next three years, such as those for wheat, barley and dairy. The Council is keen to ensure that the review processes are independent and objective, and include provision for all relevant stakeholders to participate.

The Council will be looking closely for evidence of bona fide reviews and, where appropriate, reform of SMAs when forming judgments of governments' compliance with the CPA and progress with their legislation review programs for the second tranche NCP assessments.

Blockage of reforms by parliaments

In response to the recommendations of an Independent Committee of Review, the Tasmanian Government has sought to simplify the state's public vehicle licensing system. The Government intended to achieve this through amendments of the *Traffic Act 1925*, to be introduced to the Tasmanian Parliament by October 1997, and through the making of interim regulations under the Act pending enactment of the new legislation. However, the interim regulations were disallowed by the Tasmanian Legislative Council.

There are a number of minority or near-minority governments in Australia and/or situations where a government does not control the upper house. The Tasmanian experience may therefore be replicated elsewhere.

While there will inevitably be issues of contention between the government of the day and the parliament, the Council sees it as incumbent upon a government to devote effort to ensuring that reforms are accepted by the parliament. The Council views a commitment to the NCP agreements and agenda by jurisdictions as binding not only on the government of the day, but also on the jurisdiction's parliament, particularly as governments change over time. Further, the Council's assessments of a jurisdiction's performance in relation to the NCP payments view performance at a 'whole of jurisdiction' level which includes actual reform implementation.

B3.5 The next steps

The legislation review program stretches out to the year 2000. Only around 100 State and Territory reviews had been conducted by March 1997, and only a few of these had been acted upon. All jurisdictions face a substantial task in the time ahead.

There are several matters which jurisdictions will need to address in relation to their legislative review commitments. The Council will examine jurisdictions' performance in relation to these when making its future assessments of progress in relation to the competition payments.

First, there is a need to address the specific omissions identified to date. This includes placing legislation on review schedules where it has been identified as having anti-competitive elements but is not currently scheduled. Such legislation should be excluded from the schedule only if the restriction is trivial or a net benefit from the restriction has already been demonstrated. To meet their CPA commitments, jurisdictions will also need to demonstrate a bona fide public interest justification in cases where they have retained anti-competition legislation in the face of review recommendations or other evidence indicating that such restrictions should not be retained. This requirement also remains to be met in some instances in which jurisdictions have introduced, or are intending to introduce, new legislation which restricts competition but have not provided the requisite analysis.

Second, jurisdictions will need to continue examining their regulations and revising their schedules to ensure that all legislation which restricts competition is, where appropriate, placed on the schedules. The Council will continue to work with governments and members of the community to identify further anti-competitive legislation and to ensure that review schedules are comprehensive.

Third, jurisdictions' review timetables should allow reforms to be completed by the year 2000. Where it appears that reform to a particular piece of legislation, should it be deemed appropriate, may require an element of phasing, jurisdictions may need to bring forward its review date to provide sufficient time.

Fourth, reviews should be conducted in an open and rigorous manner. In this respect, it is important to ensure that review panel members are clearly impartial and that appropriate public consultation processes are used.

Fifth, jurisdictions need to go beyond conducting reviews: they must also implement 'on the ground' reforms. Where reforms recommended by future reviews are not implemented, jurisdictions will need to provide a bona fide public interest justification to support maintenance of the restriction on competition.

B4 Competitive neutrality

B4.1 Background

Improving the performance of government businesses became a major issue for all Australian governments during the 1980s. Many studies and reviews provided widespread evidence of poor performance, including poor capital and labour productivity, overstaffing and excessive use of material inputs, inappropriate management practices, poor quality goods and services, inappropriate pricing practices and poor financial performance.

In the face of this evidence, and the realisation that government businesses have a significant impact on Australia's economy, all governments have been examining the nature of their involvement in the businesses they own.

One way governments have sought to improve the performance of their businesses, and their role in the economy, is to reform their organisational structure and practices, through mechanisms such as commercialisation, corporatisation and cost-reflective pricing. Among other things, these reforms seek to put government businesses on a 'competitively neutral' footing compared to their private sector counterparts.

As part of the NCP agreements in April 1995, governments committed to apply 'competitive neutrality' principles to all their significant business activities. The principles pick up some aspects of the earlier reforms, and add others. In essence, competitive neutrality involves the application to public enterprises of the same taxes, incentives and regulations as face private businesses. This allows the two sectors to compete for resources on an equal footing and encourages efficient operation of public enterprises. The underlying aim is to ensure that the community's resources are used as efficiently as possible.

B4.2 Governments' commitments

Under Clause 4 of the CPA, governments committed to do three things.

First, they agreed to introduce competitive neutrality principles to their significant business activities. What this means is discussed further in Section B4.3 below.

Second, jurisdictions agreed to provide a mechanism whereby individual businesses can lodge complaints that competitive neutrality is not being implemented appropriately in relation to certain government business activities.

Third, each jurisdiction agreed to provide the Council with:

- a competitive neutrality policy statement by 30 June 1996; and
- annual progress reports which identify areas of achievement or concern and allegations of non-compliance with competitive neutrality principles.

Whether jurisdictions have made satisfactory progress in meeting these commitments is relevant for the Council's recommendations in relation to each tranche of NCP payments.

B4.3 Agreed reforms to government business activities

Identifying relevant business activities

The CPA says that the competitive neutrality principles should apply to the 'significant business activities' of government entities.

There are two types of 'significant business activities' identified by the CPA:

- *government business enterprises (GBEs)* which include Public Trading Enterprises and Public Financial Enterprises and are defined as government undertakings which aim at recovering most of their expenses by deriving revenue from sales of goods and services (ABS 1994); and
- *other significant business activities* which include activities that are commonly undertaken by government agencies as part of a wider range of functions. Examples of such activities include refuse collection, maintenance operations, and hospital services such as laundering, cleaning and catering.

The above definitions are very broad and provide jurisdictions with the flexibility necessary to adapt the principles outlined in the CPA to their individual institutional arrangements and policy priorities. In its first annual report, the Council recommended that business activities considered should be 'significant' in terms of their impact on the market in which they operate. The Council also notes that a significant business activity should be included in the coverage of the CPA whether or not it is currently returning a profit.

Reforming the activities

The CPA sets out two broad approaches for reforming significant government business activities.

First, it recommends that GBEs be corporatised where appropriate. The suggested model involves the introduction of clear business objectives, management independence and accountability, independent performance monitoring, and an effective system of rewards and sanctions. As part of this, all significant GBEs need to introduce:

- full Commonwealth, State and Territory taxes or tax equivalent systems;
- debt guarantee fees directed towards offsetting the competitive advantages provided by government guarantees; and
- those regulations to which private sector businesses are normally subject, such as those relating to the protection of the environment, and planning and approval processes, on an equivalent basis to private sector competitors.

Second, in situations where corporatisation is not appropriate, the CPA states that competitive neutrality should be achieved through the introduction of the above three reforms, and action to ensure that prices fully reflect production costs, including taxes and financing costs.

The application of either of these two models is appropriate only when the gains to the community are expected to be greater than the costs. Introducing a more competitive orientation to government businesses can result in a more efficient use of resources. However, the NCP recognises that there may be occasions where the costs of reform exceed the benefits. For example, the costs of changing legislation and management systems may outweigh the potential gains, particularly for small organisations. Before deciding to introduce the competitive neutrality reforms, therefore, jurisdictions may evaluate these matters to ensure that reform would provide net community benefits.

B4.4 Progress to date

Process issues

Each jurisdiction provided a policy statement outlining its approach to implementing competitive neutrality reform, the types of business activities to be considered and a timetable for their reform. All policy statements were received by June 1996, as required.

In March 1997, jurisdictions also provided their first annual progress reports to the Council, covering the period to 31 December 1996.

In developing their competitive neutrality reform schedules, most jurisdictions took some or all of the following steps:

- identified a list of business activities that will be considered for reform;
- developed generic models for corporatisation and full cost pricing;
- assessed whether introducing competitive neutrality principles to a particular business activity would yield net public benefits; and
- where it would, determined a timetable for the appropriate reforms.

As a measure for assessing performance in this area, the Council has encouraged jurisdictions to publish a full list of businesses subject to competitive neutrality reform, including local government businesses.

Most jurisdictions have published lists of their significant business activities, although some are yet to finalise exactly which activities are to be reformed. This is often because reviews of the benefits and costs of their reform are still under way. For example, around a third of the general government businesses scheduled for consideration in Victoria are still being reviewed. Similarly, almost half of the significant business activities identified in Queensland's March 1997 annual report are still to have the relative benefits and costs of their reform determined. However, most of these reviews are scheduled for completion by the end of 1997.

South Australia has not yet published a list of the specific businesses to which it will apply, or consider applying, competitive neutrality reforms, although it has provided at least de facto identification by proclaiming significant business activities according to size in legislation.

Tasmania has published a list only for its GBEs — but not yet for its other significant business activities.

Progress on introducing reform

Reforms to Commonwealth, State and Territory business activities

In line with their CPA commitments, all jurisdictions have commenced their competitive neutrality reform programs. There has been good progress with the commercialisation and corporatisation of some larger government businesses. More recently, governments — particularly Victoria — have privatised a number of their businesses, particularly in the energy sector. Full cost pricing is also being introduced to many smaller government businesses in all States and Territories. (See Box B4.1.)

Reform has typically been prioritised according to the size of the business activities involved. For example, the Tasmanian Government has indicated that, having initially focussed on its major GBEs, it is now taking steps to extend its GBE reform program to include all GBEs regardless of their size.

Box B4.1 Recent State and Territory reforms

- Of the 65 significant GBEs identified by NSW in its annual progress report, 16 have been corporatised — 14 since the signing of the CPA. Ten more have been identified as candidates for future corporatisation, with some for possible privatisation. NSW also expects that all significant government businesses will be subject to its Financial Policy Framework by 1997-98.
- Victoria has corporatised two thirds of its 32 significant GBEs. Seven more are being reviewed with the objective of corporatisation. Apart from these, Victoria has identified 32 other significant businesses activities of which 19 will be commercialised, two will be corporatised, one will be sold, one will be disbanded and the remaining nine are still under review.
- Seven Queensland government businesses were fully commercialised by March 1997, a further four were being commercialised and three were being corporatised. Eighteen significant business activities identified in the State's annual progress report are under review while the remaining three have been restructured, merged with other entities or transferred to the private sector.
- Western Australia has listed 38 significant businesses of which Western Power, AlintaGas and the Water Corporation have already been corporatised. Three businesses (Westrail, the Fremantle Port Authority and the Bunbury Port Authority) have been commercialised but are yet to pay State and local government rate equivalents and face regulation akin to the private sector. The Commonwealth tax equivalent regime has also been introduced to a further six significant businesses.
- Tasmania has undertaken to introduce competitive neutrality principles to all 21 of its GBEs. It has already taken steps to apply tax equivalent payments, dividends and/or guarantee fees to all GBEs. The State indicated that it is also developing a timetable for introducing competitive neutrality principles to its remaining significant business activities by June 1997.

Box B4.1 continued

- The South Australian Water Corporation, the Ports Corporation of South Australia, ETSA Corporation and SA Generation Corporation have all been corporatised. Tax equivalents, debt guarantee fees and business regulations are being applied to a significant proportion of State businesses. However, South Australia is yet to publish a list of the businesses in which competitive neutrality principles apply.
- The ACT expects to corporatise all government businesses of significant size that are capable of being self funding. To date, Totalcare, ACTEW and ACTTAB have been corporatised. The ACT is also reviewing, and where appropriate reforming, 41 of its general government activities. Progress has included the creation of three statutory corporations.
- The Northern Territory has corporatised three significant business enterprises: the Power and Water Authority, the Darwin Port Authority and the Territory Insurance Office. It is also commercialising ten smaller business entities.

Source: July 1996 policy statements and March 1997 annual progress reports.

Application of competitive neutrality principles to local government businesses

Jurisdictions have initiated reform of significant local government business activities although factors such as the diversity of local governments and failure by Commonwealth, State and Territory governments to resolve arrangements for taxing GBEs (see Section B4.5) have inhibited reform.

Most jurisdictions have undertaken to identify significant local government business activities (by July 1997) and have indicated that reform progress will increase over the second half of 1997. The status of the reform within each jurisdiction is discussed in Box B4.2.[21]

Box B4.2 Recent reforms in local government

- NSW is considering corporatisation for business activities with annual gross operating incomes greater than $2 million, with full cost pricing to be applied in the remainder, as appropriate.
- Victoria stated that full cost attribution will apply to significant local government businesses from July 1997, with corporatisations to be completed by July 1998. Two local government businesses are already corporatised.
- Queensland will initially focus on its 17 largest councils but will

21 The ACT does not have a local government sector and the business activities of local government in the Northern Territory are not significant for the purposes of the CPA.

consider extending its competitive neutrality program to other councils over time. It has in place a voluntary Code of Competitive Conduct, aimed at introducing full cost pricing to smaller local government businesses. The Government has decided to pass on to local governments participating in the NCP process a proportion of its NCP payments to provide a greater incentive for local government participation.

- Western Australia intended to identify target businesses for reform by June 1997. Most larger local governments have initiated this process, although some are experiencing difficulty in assessing the potential costs and benefits of reform.
- South Australia is reviewing its *Local Government Act 1934* and relevant by-laws to ensure that local government businesses do not enjoy a competitive advantage due to regulation. The identification of significant local government businesses for reform has been delayed by three months to 30 September 1997.
- Tasmania had intended to implement full cost pricing in its significant local government business activities by July 1997. Identification has been deferred, principally because Tasmania judged that it is necessary to first complete the current council amalgamation program. Eighteen of Tasmania's 29 councils stated their commitment to full cost pricing for all of their business activities.

Source: July 1996 policy statements and March 1997 annual progress reports.

Recent performance of government trading enterprises

While the NCP reforms are still in their infancy, some information is available on the recent performance of government trading enterprises (GTEs). Many of the reforms, such as corporatisation and commercialisation, had been applied to these enterprises prior to the formal adoption of the NCP programs. For example, Victoria had corporatised or privatised almost two-thirds its significant businesses activities prior to signing the NCP agreements. While performance has varied significantly between GTEs, the Steering Committee on National Performance Monitoring of GTEs[22] found that:

- dividends and taxes or tax equivalents increased by over 40 percent, to almost $5 billion (in 1989-90 dollars) and total GTE payments to government have more than doubled over the period 1991-92 to 1995-96. Telstra and the electricity sector were significant contributors to the increase in the amount payable to government;
- prices charged by GTEs have fallen in real terms by around 15 percent over the five years to 1995-96;

22 SCNPMGTE (1997). The public enterprises covered in the report do not include Public Financial Enterprises but do include both significant and non-significant GTEs.

- labour productivity has increased by 54 percent since 1991, with particular improvements in the gas and water sectors;
- the Commonwealth's two largest GTEs — Telstra and Australia Post — have experienced marked increases in their return on assets. Over 1991-92 to 1995-96, Telstra's return on assets doubled while that of Australia Post increased by more than 50 percent. On the whole, however, the return on assets has remained relatively stable;
- average GTE profitability has remained reasonably stable over the period, although there have been reductions in the profitability of electricity and urban transport GTEs offset by improvements in the profitability of other GTEs; and
- while information on service quality is limited, customer satisfaction with most GTE sectors appears to be improving, although slowly.

Not all these changes are due to competitive neutrality. Other reforms, such as structural reform, access and the introduction of greater competition into the relevant market, may also have had an impact in some cases. Further, in some industries such as telecommunications, price reductions may have resulted from improvements in technology which, although possibly hastened by competition, may have occurred anyway. Nevertheless, these findings suggest that reforms to GTEs are bringing benefits.

Progress with complaints mechanisms

Complaints handling mechanisms have been operating in all jurisdictions except the Commonwealth since July 1997. Several different models have been adopted (see Box B4.3). A sample of complaints received is provided in Table B4.1 (on pages 90-91), and some other complaints are discussed later in this chapter.

Box B4.3 Competitive neutrality complaints mechanisms

- In NSW, Queensland South Australia and Tasmania, complaints are handled by the State's independent pricing regulator.
- In Western Australia, Victoria and the Northern Territory, complaints units have been established within the jurisdictions' Treasury or Premier's Department.
- The ACT has proposed an independent complaints mechanism supported by legislation, although this is yet to be implemented. An interim complaints mechanism is provided by the ACT's Office of Financial Management.
- The Commonwealth had proposed that its complaints mechanism be provided by the Productivity Commission from July 1997. However, the necessary legislation has not yet been passed, and there is no interim measure for resolving competitive neutrality complaints about Commonwealth businesses.

Source: July 1996 policy statements and March 1997 annual progress reports.

B4.5 Implementation issues

Scope of business activities subject to reform

The CPA obliges governments to implement competitive neutrality arrangements in their significant business activities. The Council has recommended that significance be determined according to the influence of the business entity over related markets.

Some jurisdictions have used organisational size as an indicator of significance. The threshold level adopted by jurisdictions has varied, reflecting differences in market size and government policy. For example, NSW set a threshold for corporatisation of its local government businesses of $2 million annual revenue, and South Australia is considering corporatisation for its business activities which have revenue in excess of $2 million or assets greater than $20 million. Queensland has recommended corporatisation for all government businesses with annual revenue greater than $10 million. Victoria set a minimum threshold of $10 million or 15 employees for corporatisation, and indicated that a close examination of the costs and benefits of corporatisation should occur for organisations with revenue bases between $10 million and $20 million.

Most jurisdictions appear to have adopted size thresholds as a guide only, acknowledging that, while size is an effective indicator of potential significance, it should not be used to exempt government businesses that may have a significant impact.

Some jurisdictions have also acknowledged the benefit from extending the reforms, where appropriate, across all government business activities over time. For example, Tasmania has already taken steps to introduce tax equivalent, guarantee fee and dividend regimes to all GBEs regardless of their significance. The Northern Territory has introduced, or is introducing, competitive neutrality arrangements to the bulk of its business activities.

Some areas of government activity such as health and education provide both commercial and non-commercial functions. Competitive neutrality under the CPA is directed towards the commercial activities of government only. While governments' roles in these areas are largely non-commercial, they also

commonly involve some commercial activities. For example, hospitals and universities conduct basic research, some of which has commercial application, and are also involved in other commercial activities where there is actual or potential private sector competition. Because of this, 'community services' such as health and education should not receive a blanket exemption from reform. In this context, Victoria indicated that it will release a timetable in 1997 for the introduction of competitive neutrality to public hospital businesses, such as those providing laundry services.

Some business activities may be owned partly by government and partly by the private sector. For example, Telstra is soon to be partly privatised by means of a public float of the value of one-third of its assets. The Commonwealth will retain ownership of the other two-thirds of the value of Telstra.

To what extent should partially privatised businesses be subject to the competitive neutrality principles? Clause 3 of the CPA does not explicitly address this. Rather, it indicates only that the principles should apply to the business activities of publicly-owned entities. However, it also specifies that the objective of the principles is the elimination of resource allocation distortions arising out of the public ownership of entities engaged in significant business activities. In the Council's view, such distortions certainly have the potential to arise wherever a Government commands a controlling interest in an entity. However, they may also arise in cases where governments have a minority ownership stake, if a condition associated with government ownership affects the way the business operates: for example, if the business's staff are employed under a public service Act.

The Council considers that the competitive neutrality principles should apply in all cases where government ownership, whether it be full, majority or minority, affects the operations of a business and thus has the potential to create resource distortions.

Full cost pricing

Competitive neutrality assumes as a starting point that government businesses have defined and costed their outputs. The definition and full costing of outputs has been a feature of all governments' recent financial and accounting reform. The objective is for accounting arrangements to incorporate all costs incurred in the delivery of businesses' outputs including, for example, payroll tax, rent or notional rent, long service leave provision, depreciation and finance costs. Full cost pricing under the CPA requires establishing the competitively neutral price by adjusting the price of the good or service for these factors.

Introducing full cost attribution may increase prices, particularly where goods and services have traditionally been undervalued or heavily subsidised. For example, it has been estimated that the price of rural water services will have to rise significantly to recover the full cost of their provision. In its recently released draft determination on bulk irrigation water prices in NSW, the State's Independent Pricing and Regulatory Tribunal (IPART) called for price increases of between 15 and 20 percent.

On the other hand, as and if public enterprises improve their efficiency, their costs should fall meaning that, to properly reflect their costs, their prices should also fall.

Further, full cost pricing does not mean that the government will no longer offset the price of some services. One way that governments can do this is through a transparent, separately funded CSO (see below). Alternatively, a subsidy may be provided directly to consumers of the service.

Where a substantial increase in prices is expected, the government may choose to phase the introduction of prices reflecting full cost. This allows consumers time to adjust and, if done transparently, minimises the impact on investment.

Community service obligations

A CSO is a non-commercial activity that, while often aimed at achieving a particular social objective, would not be provided through the normal course of business. Traditionally, many government businesses have been required to provide CSOs to meet government equity objectives.

The approach to competitive neutrality suggested in the CPA calls for clear definition and separate funding of CSOs. Ideally, the provision of CSOs should be open to competition. Achieving the desired equity outcome in the most effective way should be the goal.

A recent complaint to Queensland's interim competitive neutrality complaints mechanism illustrates some of the outcomes for competition associated with the provision of CSOs by government businesses. The complainant, Coachtrans, claimed that Queensland Rail is using a government subsidy to offer artificially low prices for its Brisbane to Gold Coast rail service. As a consequence, Coachtrans claimed that its bus service operating over a similar route is no longer profitable. The Coachtrans complaint is currently before the Queensland Competition Authority. In evaluating complaints of this type, a competitive neutrality complaints handler will need to consider the possibility of making the delivery of the CSO contestable. Introducing competition to the provision of CSOs would help ensure that the community benefit is maximised due to the CSO being delivered by the most efficient and effective provider.

Assisting implementation

Communication and consultation are vital to implementing reform effectively. This has been acknowledged by jurisdictions, all of which have produced guidelines to assist competitive neutrality implementation. Most jurisdictions have developed, or are developing, guidelines or holding workshops on:

- full cost pricing;
- corporatisation;
- competitive tendering;
- contracting out;
- the delivery of CSOs; and
- assessments of the costs and benefits of reform.

Once initiated, it is important that central agencies continue to monitor progress with reform implementation. Effective monitoring ensures that the reform process remains on track and that

any difficulties with implementation are resolved before they develop into major problems. For example, in response to feedback that local councils were experiencing difficulty conducting public benefit tests, the Western Australian Government scheduled a number of 'hands on' workshops and commenced developing guidelines on the issue. Other governments have also consulted widely with their local government sectors. As discussed below, competitive neutrality complaints mechanisms are also important monitoring tools in that they provide information on both the effectiveness of existing reform and identify other areas requiring attention.

Application to local government

To date, it has proven difficult in most states to extend competitive neutrality reform to local government business activities, for several reasons.

First, local governments vary significantly in terms of their responsibilities, the goods and services they produce and in the skills and experience of their staff. Consequently, the broad principles outlined in the CPA must be applied to a diverse range of local government situations. Some of the concepts involved in implementing competitive neutrality are not straight-forward, making implementation difficult, particularly where staff with specialist technical skills are not readily available. Measures such as promulgating guidelines and holding workshops (as discussed above) may assist in this regard.

Second, in jurisdictions such as South Australia and Tasmania, reform has been temporarily delayed because local governments are dealing first with matters such as amalgamations and changes in boundaries. However, jurisdictions have indicated that they expect to meet their overall reform timetables, even where there has been some early delay.

A third reason is current uncertainty about Commonwealth taxation of local government businesses. Newly corporatised government businesses can become liable for Commonwealth government taxation in the same way that their private sector counterparts are. But while the Commonwealth and State and Territories have agreed on an approach whereby State GBEs do not transfer monies to the Commonwealth, there is no equivalent understanding for local government corporations. The failure to resolve taxation issues is inhibiting reform at local government level, particularly in Queensland which has a large local government sector.

Fourth, some local governments have also complained that they are required to undertake reform without receiving specific competition payments. Queensland has dealt with this concern by making competition payments available to their local governments for implementing the reforms.

Competitive neutrality complaints

An effective competitive neutrality complaints mechanism is a vital part of realising the potential benefits of competitive neutrality reform. It allows specific focus on issues which inhibit competition, provides a means of fine-tuning existing reform initiatives, and can identify other reform priorities or problems with existing policy measures.

While competitive neutrality complaints units have been operational for only a short time, they have already received complaints covering a wide range of issues. For example, Victoria had received nine complaints at the time of preparing its annual progress report on matters ranging

from government waste disposal services to the use by a local government child care agency of an internal database. Other competitive neutrality complaints have focused on the 'neutrality' of tender processes involving in-house and external bidders, the appropriate use and specification of government subsidies and the degree to which prices charged by government agencies reflect full cost.

Some complaints have extended beyond a single jurisdiction. For example, a competitive neutrality complaint made by a Victorian division of a large Australian firm regarding a NSW prison-based industry was forwarded to the NSW complaints unit by the Victorian Government. The NSW Government's response included notification that it has initiated a national process to determine the best way to apply competitive neutrality to prison industries.

The broad scope of complaints received indicates the need for effective complaints mechanisms. Effectiveness implies certain characteristics such as:

- independence;
- scope to consider a full range of complaints;
- accessibility and advice to complainants; and
- transparency in reporting complaints and recommendations.

It is also important that governments respond in a timely manner to recommendations from their competitive neutrality complaints units.

While it is too early to determine the operational effectiveness of individual complaints mechanisms, in this section the Council comments on desirable features of some of the proposed complaints mechanisms and raises issues that will be important in relation to the Council's future tranche assessments.

Independence

An independent complaints mechanism, preferably supported by its own legislation, has important advantages over one provided as part of a government agency, and particularly an agency with responsibility for competitive neutrality policy. Independence grants the complaints handler the ability to determine the most equitable and efficient outcome free from the potential conflict of interests which may result from having responsibility for hearing complaints and enforcing policy vested in the same entity. An independent mechanism can comment on the appropriateness of current policy rather than just its application.

The independence of existing complaints mechanisms varies. Six jurisdictions (NSW, Queensland, South Australia, Tasmania, the ACT and the Commonwealth) have proposed complaints mechanisms which are independent of the policy making arm of government. However, the enabling legislation has not yet been enacted by the ACT, or the Commonwealth. The ACT has provided an interim mechanism able to respond to complaints. At this stage, the Commonwealth mechanism does not have the legislative backing to investigate complaints received by it. Western Australia, Victoria and the Northern Territory have established a complaints mechanism within their Treasuries or Premier's Departments.

While free from the potential conflict of interests on policy matters, complaints mechanisms in price regulation agencies will also need to be conscious of the potential for overlap and

conflicting interests. For example, conflict could potentially arise between an agency's responsibilities for investigating complaints about competitive neutrality/full cost pricing, its pricing oversight role and its role in arbitrating access terms and conditions.

Coverage

The coverage of different jurisdictions' competitive neutrality complaints mechanisms varies. Both the Commonwealth and the South Australian mechanisms will consider complaints against the competitive neutrality of all government business activities. NSW, Queensland and Tasmania will initially limit the scope of their complaints mechanism to businesses already covered by competitive neutrality policy, although all three have indicated that they intend to consider extension of their coverage to all government businesses in the future. Western Australia's annual progress report noted that its complaints mechanism may be limited to government businesses covered by competitive neutrality policy, which would mean only a small number of government businesses are covered.

The broader the coverage of a complaints mechanism, the greater the potential benefits which it will generate. Clearly, all businesses subject to competitive neutrality reforms should be covered. This includes businesses which are only partially owned by governments. Further, if the coverage of complaints mechanisms is extended beyond businesses already subject to competitive neutrality, complaints may also identify new areas requiring competitive neutrality reform. These benefits need to be balanced against the costs of operating a broader complaints mechanism. However, in the Council's view, broad coverage is generally likely to be warranted.

Indeed, apart from helping to resolve competitive neutrality difficulties, complaints mechanisms can provide feedback on whether competitive neutrality has been applied effectively and provide a stimulus for reform action. For example, in a recent complaint to Queensland's interim complaints mechanism, the Civil Contractors Federation questioned the effectiveness of existing competitive neutrality policy. Competition has been introduced to road construction and maintenance work in Queensland through competitive tendering. However, the Federation claimed that the Road Transport Construction Service had an unfair advantage in competing for road construction and maintenance work by virtue of its government ownership. In response to the complaint, the tender process has been investigated to ensure compliance with competitive neutrality principles.

Locating complaints about a broad range of businesses in the one agency also ensures a consistent approach and facilitates economies of scope. Complaints against local governments will be included in the coverage of some jurisdictions' competitive neutrality complaints mechanisms (for example, Victoria, Tasmania and South Australia). In-house tenders are included in the coverage of most jurisdictions' competitive neutrality complaints mechanisms. However, in NSW for example, these types of complaints will be dealt with by the State Contracts Board.

Accessibility

The effectiveness of a complaints handling mechanism is reduced if potential users are not aware of its existence, are unable to gain timely access to it, or do not receive timely advice of recommendations. Wide dissemination of information about the State's complaints mechanism, its role and how to use it are vital for optimising its potential contribution to community welfare.

A low number of complaints may mean that the competitive neutrality reform process is working well, but it may also result from potential users of the service being unaware of its existence. The Council will bear this in mind in considering the performance of complaints mechanisms for future tranche assessments.

It is important that the complaints process not discourage valid complaints. For example, long delays in resolving complaints may create an artificial barrier to achieving competitive neutrality. To date, the small number of complaints received by jurisdictions have been responded to soon after their receipt. The timeliness with which complaints are resolved will be an issue which will be considered further in future tranche assessments.

Competitive neutrality complaints mechanisms have limited resources which will be placed under greater pressure as awareness increases and the number of complaints rise. A number of jurisdictions have included in their complaints mechanism a filter to discourage potentially frivolous or vexatious complaints. Western Australia and Tasmania both charge complainants an investigation fee. The fee is refunded if non-compliance is proven in the case of Western Australia or when the Tasmanian complaints unit is satisfied that the complainant has experienced a disadvantage. This approach is effective provided the level of the fee does not discourage valid complaints. Other jurisdictions such as NSW and Victoria encourage, as a first step, direct negotiation between the complainant and the source of the complaint to enable minor complaints to be resolved without the involvement of the State's complaints mechanism.

Transparency

Transparency is central to an effective complaints mechanism. It is important that all parties involved in the complaint understand the rationale and process behind the ruling made by the complaints handling body. This promotes confidence in the complaints handling process and increases the accountability of the complaints handling mechanism**.**

A transparent process for resolving complaints, involving communication with the parties involved throughout the resolution process, ensures that the complaints mechanism determines and addresses the substance of the complaint. It also ensures that the recommendations of the complaints mechanism are based on a full understanding of relevant issues.

Transparency is also important to the government and the broader community in that it ensures that the outcomes achieved by complaints mechanisms are in line with their terms of reference. It also ensures that these outcomes are in the community's best interest and are achieved through a rigorous process. In their annual progress reports, jurisdictions can publish information on complaints received by competitive neutrality complaints mechanisms and the rationale underlying their recommendations. This would ensure that their activities are open to government and public scrutiny.

B4.6 The next steps

Governments have made sound early progress on introducing competitive neutrality to their significant business activities. In its recent assessment of jurisdictional performance, the Council

judged that all State and Territory governments had on balance achieved sufficient progress to meet the requirements of the first tranche of competition payments.

However, it is important that jurisdictions maintain this momentum to ensure that the gains from competitive neutrality reform are maximised and to enable them to meet the requirements of future tranche assessments.

The Council considers that the following areas warrant particular attention.

The first is the scope of reform. The clear presumption in the CPA is that competitive neutrality principles should be applied to all significant business activities, unless a clear net cost to the community can be established. In this context, the Council considers that:

- competitive neutrality principles should apply in all cases where government ownership, whether it be full, majority or minority, affects the operations of a business and thus has the potential to create resource distortions;
- significant business activities should be exempt from reform only after careful consideration of the relative costs and benefits, and exemptions should be determined on a case-by-case basis;
- blanket exceptions of broad categories of government business activities, such as hospitals and community services, should be avoided; and
- budget-funded business activities should be part and parcel of the competitive neutrality reform process.

To help ensure that all appropriate business activities are covered, an important step in State and Territory, Commonwealth and local government reform programs is the publication of a list of significant businesses to be considered for reform, together with a reform timetable. The Council considers that jurisdictions that have not yet done so should publish this information. This will help ensure that competitive neutrality reform is an open and transparent process.

Further, the Council notes that reform is an ongoing process. Some jurisdictions have already begun to extend competitive neutrality reform beyond to the requirements of the CPA to improve the performance of all government businesses and promote a more efficient and effective use of government resources.

The second area warranting particular attention is the application of competitive neutrality to local government. Progress in this sphere has been hampered to date in several jurisdictions, although the Council has been advised that the pace of local government reform will increase in the second half of 1997. By this time all potential local government business activities which are to be considered for reform should be identified and, where appropriate, reform should be initiated. To assist in this regard, there is also a need to quickly resolve issues relating to the Commonwealth taxation of corporatised local government businesses.

Thirdly, to enhance the way competitive neutrality principles are applied, there is a need to resolve complex technical issues, such as defining and introducing full cost pricing, determining approaches in relation to CSO funding and provision. The Council intends to work with jurisdictions on these matters.

Fourth, there is a need to further develop complaints mechanisms and to expand the scope of complaints handled to include all government businesses including partially privatised government businesses. This will enable complaints mechanisms to not only refine existing reform but also to identify new areas that may be considered for reform. The Council will also, where requested, endeavour to assist jurisdictions to maximise the effectiveness of competitive neutrality complaints mechanisms and assist with issues such as achieving a coordinated response to inter-jurisdictional complaints.

B5 Structural reform of public monopolies

B5.1 Background

In competitive markets, the structure of firms and industries evolves over time in response to changing market conditions, including shifts in consumer demand and changing cost structures. This flexibility and responsiveness to change can foster business and market structures which promote efficiency, minimise waste and allow customer requirements to be readily met.

For example, in the grocery retail market, the advent of better transport options and changing lifestyle patterns has resulted in a structural shift towards larger retail outlets which provide wider product choice, longer opening hours and lower prices. Likewise, many petrol stations now remain open 24 hours and stock a range of convenience items.

But in the case of some public monopolies, protection from competition through regulation or other government policies has allowed structures to develop that are less responsive to market conditions. Strategies which may rectify this include:

- removing the relevant regulatory restrictions on competition;
- applying competitive neutrality principles to the monopoly; and
- providing access to infrastructure services supplied by the monopoly.

These reforms are discussed in Chapters B4, B4 and B8 respectively, but such reforms will not always be sufficient to establish effective competition.

Where a business has developed into an integrated monopoly, structural reform might be needed to dismantle it. In essence, structural reform involves splitting a monopoly (or parts of it) into a number of smaller, separate entities. Structural reform is particularly important where a public monopoly is to be privatised. If appropriate reform is not undertaken beforehand, privatisation will simply result in a private monopoly supplanting the former public monopoly, with few real gains and some risks.

Governments have been undertaking structural reform of public monopolies since about the late 1980s.

As part of the NCP, governments agreed to procedures and principles they will apply when undertaking structural reform of their monopoly businesses. Importantly, the principles do not require that privatisation or structural reform be undertaken. Nor do they guarantee that it will be undertaken only where appropriate. Rather, they seek to ensure the governments systematically consider all business structure issues before engaging in privatisation and introducing competition to public monopoly markets.

B5.2 Governments' commitments

Under Clause 4 of the CPA, before introducing competition into a sector traditionally supplied by a public monopoly or privatising a public monopoly, governments are to review:

- the appropriate commercial objectives of the public monopoly;
- the merits of separating potentially competitive elements of the public monopoly from the natural monopoly elements;
- the merits of separating potentially competitive elements into independent competing businesses;
- the best way of separating regulatory functions from the monopoly's commercial functions;
- the most effective way of implementing competitive neutrality;
- the merits of any community service obligations (CSOs) provided by the public monopoly, and the best means of funding and delivering any mandated CSOs;
- the price and service regulations to be applied to the relevant industry; and
- the appropriate financial relationship between the owner of the public monopoly and the public monopoly.

Governments can seek the Council's assistance in conducting such reviews.

As well, before introducing competition, governments agreed to relocate any industry regulation functions away from the government enterprise, to prevent it enjoying a regulatory advantage over its (existing or potential) competitors.

Adherence to these principles is relevant for the Council's assessment of governments' performance in relation to each of the three tranches.

B5.3 Progress to date

State and Territory reforms

All State and Territory governments expressed a strong commitment to the CPA structural reform principles in their March 1997 progress reports to the Council. All indicated that they had complied with the principles wherever they had introduced competition into markets traditionally served by public monopolies and where they had privatised public monopolies.

Governments have undertaken the most extensive structural reforms in the gas, electricity and water markets (see Chapter B7), and the States and Territories have also reviewed and reformed the structure of public monopoly businesses in a number of other areas. Some examples are outlined below.

Box B5.1 Some State and Territory structural reforms

As well as reforming their gas, electricity and water utilities, the States and Territories have undertaken other structural reforms.

- In NSW, the ownership, provision of third party access and maintenance of rail track was separated from the operation of train services in July 1996. The restructure involved relocating the functions of the State Rail Authority (SRA) into seven entities: the Rail Access Corporation, the Rail Services Authority, CityRail and CountryLink, Freight Corp and the Public Transport Authority, as well as the SRA itself.

Box B5.1 continued

- NSW has also separated the regulatory role of the Valuer General from the provision of valuation services, with the latter to be awarded by way of competitive tender from around July 1997.
- Victoria has substantially restructured its public transport sector. The Public Transport Corporation has been broken up into five separate businesses, providing country passenger rail, metropolitan passenger rail, rail freight, tram and bus services.
- Victoria has also restructured its port operations. Among other things, the shipping channels monopoly element has been separated from the other elements such as wharf services, by forming the Victorian Channels Authority. (During 1996-97, Victoria successfully applied for certification of its access regime for commercial shipping channels — see Chapter B8). The Port of Melbourne's policy and regulatory functions have also been separated. Responsibility for environmental, safety and pricing regulation of port activities now lies with the relevant regulatory agencies of the Victorian Government.
- In Western Australia, several functions of Transperth, which was responsible for most functions in relation to public bus, ferry and rail transport provision in the Perth metropolitan area prior to 1993-94, have been relocated to other bodies. The Department of Transport now has responsibility for administrative, policy and other functions; rail services are provided under contract by Westrail to the Department; ferry and some bus services are provided by the Metropolitan Passenger Transport Trust; and, since 1995, bus services have been provided by the Trust or private operators under a competitive tendering system.
- In the ACT, the regulatory and commercial functions of Canberra Tourism and the Australian International Hotel School have been separated.

Source: Jurisdictions March 1997 annual progress reports

The Commonwealth's reforms

There has also been structural reform activity in a range of Commonwealth areas of responsibility, including aviation and shipping (see Box B5.2).

However, in at least two other areas, the Commonwealth appears to have engaged in reform without explicitly meeting its obligations to review the areas according to the principles set out in

Clause 4 of the CPA. These areas are the forthcoming sales of Australian National and part of Telstra.

Box B5.2 Some Commonwealth structural reforms

- In July 1995, the Civil Aviation Authority was replaced by two new authorities: Airservices Australia, which provides civil airways services, and the Civil Aviation Safety Authority, which is exclusively responsible for air safety regulation.
- In November 1995, the Government announced that the Australian National Line (ANL) would be restructured prior to its possible future sale. ANL has since disposed of its 50 percent shareholding in Coastal Express Line (which operated across Bass Strait), withdrawn from its loss making shipping trade between Australasia and Europe and sold the vessel operating the service, disposed of its assets in MESCO (a container park operation in Brisbane), and has rationalised its corporate structures and staffing. . In May 1996, ANL provided the Government with a report on options for proceeding with the sale of ANL. However, as at July 1997, a sale has not occurred.
- In April 1996, the Federal Airports Corporation (FAC) adopted a new organisational structure in preparation for the sale of long term leases to 22 airports, with a particular focus on the Melbourne, Brisbane and Perth airports which were sold in 1997 in the first tranche of the Government's airports sales program. The FAC changed airport management from a centralised structure to stand alone operations, with internal boards now at Sydney, Melbourne, Brisbane, Perth and Adelaide airports.

Australian National Railways Commission

The first is in relation to the forthcoming sale of Australian National Railways Commission (AN). Among other things, AN owns intra-state railway lines in South Australia and Tasmania. Following the Brew review of the commercial performance of AN and the National Rail Corporation (June 1996), the Commonwealth commissioned a study into the sale of rail industry assets in January 1997. However, it did not explicitly address the Clause 4 requirements.

When this matter arose, the Council's Secretariat investigated the analysis undertaken in relation to the sale of AN. While this had addressed some of the issues specified in Clause 4, it was not clear that aspects such as commercial and regulatory arrangements were appropriately examined.

The Commonwealth has more recently indicated that there are no regulatory functions attached to the AN assets being sold, that earlier reviews have examined the commercial aspects of AN businesses, that any CSOs will be considered when the bids for AN's assets are assessed, and that

competitive neutrality is not an issue because all AN businesses, other than interstate track, are to be sold.

Despite the Commonwealth's failure to explicitly examine Clause 4 structural reform issues in relation to AN, the Council accepts that the recent reviews and associated changes go a long way towards addressing the Commonwealth's structural reform obligations.

However, it considers that a formal consideration of the Clause 4 requirements, conducted separately from the sale process, should have been undertaken.

Telstra

The second and more substantive area relates to Telstra Corporation. The Commonwealth is undertaking a public float of one-third of the value of the assets of Telstra, although the Commonwealth does not appear to have conducted a review of the structure and commercial objectives of Telstra as required by Clause 4 of the CPA.

Telstra is a fully vertically integrated provider of telecommunications products and services and, prior to 1991, was a monopoly provider of telephone services in Australia. Under reforms embodied in the *Telecommunications Act 1991*, Telstra has been exposed to some increase in competition, primarily from Optus. These reforms occurred over the period July 1991 to June 1997, in advance of the introduction of unrestricted competition from July 1997. At present, Telstra remains the dominant player in Australia's telecommunications market.

Some aspects of the current structure of the telecommunications industry appear consistent with the CPA requirements. For example, industry regulation lies not with Telstra but with the Australian Communications Authority and the ACCC.[23]

In addition, there have been a series of reviews of the industry pertinent to both the partial sale of Telstra and broader telecommunications sector competition issues. These reviews include the Telecommunications Policy Review, the Telstra Scoping Study, the Review of the Standard Telephone Service and the Senate Committee report Telstra: *To Sell or not to Sell?*

However, these reviews do not represent as comprehensive an assessment of structure issues as would have occurred under a Clause 4 CPA review. Given Telstra's monopoly over the public switched telephone network, the Council considers that an explicit Clause 4 review of Telstra should have been undertaken in the context of the current market and existing and anticipated technologies. The Commonwealth's failure to undertake the appropriate review represents a significant failure to adhere to this element of the CPA.

23 The Australian Communications Authority deals principally with consumer protection, technical standards, and management of the radio communications spectrum, while the ACCC deals with market conduct.

B6 Prices oversight of public monopolies

B6.1 Implementing prices oversight

Legislated monopolies, and businesses which operate in markets with natural monopoly characteristics or markets where competition is weak, have considerable potential to engage in monopolistic pricing behaviour: that is, they may be able to restrict output and charge higher prices.

Exposing sheltered areas of the economy to enhanced competition can encourage greater efficiency in the supply of goods and services. To achieve this, governments committed themselves to reviewing regulatory barriers to entry, implementing competitive neutrality arrangements, considering restructuring public monopolies and providing rights of access to significant facilities (as discussed in Chapters B3, B4, B5 and B8 respectively).

However, as effective competition may not always be achievable or may take time to develop, government oversight of prices can be an appropriate option.

The principal mechanism for prices oversight in Australia is the *Prices Surveillance Act 1983*. Under this legislation, the Commonwealth Treasurer may 'declare' private businesses and major Commonwealth agencies such that they must notify proposed price increases to the ACCC.

With the extension of oversight arrangements to monopolistic State and Territory businesses under the CPA, the Commonwealth can also declare a State and Territory business for prices surveillance by the ACCC. It can do this without the consent of the owner government, provided it receives a recommendation to do so from the Council (see Section B6.2).

However, in the first instance, the States and Territories agreed to consider establishing independent sources of prices oversight of their monopolistic business enterprises where oversight arrangements do not already exist. Jurisdictions can establish their own process or, with the Commonwealth's agreement, subject their businesses to a mechanism administered by the ACCC. Box B6.1 sets out current arrangements in the States and Territories.

Box B6.1 State and Territory prices oversight arrangements

- In NSW, prices oversight has been provided by the IPART since 1992. IPART has a standing reference to advise on key declared government monopolies. The Premier may also request advice on the pricing of any other government monopoly service or to inquire into industry policy that may involve government businesses activities.
- In Victoria, the Office of the Regulator General provides independent prices oversight.
- The Queensland Competition Authority does this in Queensland.

- The ACT has established the ACT Energy and Water Charges Commission to investigate prices charged by ACTEW Corporation, the ACT's major monopoly provider. The ACT is also preparing legislation to provide for the establishment of a Commissioner for Prices Oversight who would provide advice with the assistance of consultants as needed.
- The Government Prices Oversight Commission has been set up in Tasmania to investigate the pricing policies of Tasmanian's monopoly or near monopoly GBEs and Government agencies. The Metropolitan Transport Trust and Hydro-Electric Corporation have recently been subject to prices oversight, and the range of government businesses covered by the Commission has been recently extended to include local government businesses.
- In South Australia, the *Government Business Enterprises (Competition) Act 1996* establishes a prices surveillance mechanism for the State's monopoly or near monopoly government businesses. The SA Water Corporation was declared under the Act with the resulting investigation to be undertaken by an independent Competition Commissioner.
- Neither Western Australia nor the Northern Territory have as yet established independent prices oversight bodies.

B6.2 Council recommendations for prices surveillance

Under the CPA, the Commonwealth Minister can declare a State or Territory enterprise for prices surveillance by the ACCC without the consent of the owner government upon the recommendation of the Council that the authority be declared. In making its decision, the Council must be satisfied that effective prices surveillance is not already in place, and that the business has a significant impact on interstate or constitutional trade or commerce.

In 1996-97, the Council received no requests from the Treasurer in this respect.

B7 The specific infrastructure reforms

B7.1 Introduction

Infrastructure services such as energy supply, transportation, communications and water supply play an important role in the Australian economy. They are major business inputs, representing between 7 and 16 percent of production costs for most industries (BIE 1995). They are also essential services for people in the community. And the industries which supply these services are major resource users in their own right.

Any inefficiencies in infrastructure provision have a direct impact on Australia's growth, competitiveness, and ultimately on Australians' living standards. Bringing the cost and efficiency of Australia's infrastructure services at least into line with world best practice must therefore continue to be a central focus of micro-economic reform.

This is recognised in the competition policy agreements, which commit governments to implement an array of reforms — many of them previously agreed to by COAG — to four sectors:

- electricity;
- gas;
- water; and
- road transport.

In this chapter, the Council discusses the nature of these reforms, the progress governments have made to date, and what more needs to be done. It also comments on one other sector — rail — where a similar approach to reform process appears warranted.

B7.2 Electricity

Background

The electricity supply industry has $55 billion in assets, a workforce of 42,000 people, 8 million customers and over $12.3 billion in annual revenue.

Historically, the industry developed on a State-by-State basis, with one government-owned vertically-integrated[24] electricity utility dominating in each State. There was little electricity trade between jurisdictions. Cross-subsidies between different customer classes were common. There was little incentive to improve the level of services to customers. And some States over-capitalised by building too many power stations and related infrastructure. This was because their utilities made investment decisions without the disciplines provided by competition and cost-related pricing, allowing them to focus more on increasing 'value' rather than 'value-for-money'.

In July 1991, governments agreed to work cooperatively to improve competitiveness in the electricity industry. The National Grid Management Council was established, with the ultimate aim being to replace separate State markets with a competitive electricity market covering southern and eastern Australia.

In June 1993, six governments — the Commonwealth, NSW, Victoria, Queensland, South Australia and the ACT — committed to undertake reforms necessary to allow a competitive electricity market to commence from July 1995. They agreed to establish an interstate electricity transmission network involving those States already inter-connected, together with Queensland. They also agreed to separate the transmission elements of their existing electricity utilities from the generation elements, and turn them into stand-alone corporations.[25] The principles underlying these reforms were that:

- generators should compete for the right to supply electricity;
- there should be open access to the grid for new generation; and
- customers should be free to choose who supplies their electricity.

At the April 1995 COAG meeting, these reforms were extended and brought within the NCP process — with payments to the States and Territories depending partly on adequate progress in implementing the reforms.

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24 'Vertical integration' refers to an industry structure wherein one business controls different elements of the supply chain. For example, in electricity, the supply chain can be broken into four segments: generation; transmission (ie: long distance transfer of electricity using high voltage wires); distribution (ie: short distance electricity transfer using lower voltage wires within a specific urban area); and retail. A vertically integrated businesses would undertake two or more of these functions: for example, electricity generation and transmission. In the past, some State utilities did all four functions.

25 At the time, South Australia stated that it would consider a subsidiary structure pending the resolution of cost issues associated with separating transmission from its vertically integrated authority. Resolution of those issues would enable the adoption of the model.

The National Grid Management Council has since developed trading rules, network pricing principles, system controls and rules for access to networks, and other matters. These have been incorporated into an electricity Code of Conduct (the Code), and submitted to the ACCC for approval.

Two institutional bodies have also been established: the National Electricity Code Administrator (NECA) and the National Electricity Market Management Company (NEMMCO). NECA will be responsible for enforcing the Code; dispute resolution concerning the provisions of the Code; managing changes to the Code; and administering reporting on compliance with the Code and its adequacy. NEMMCO will be responsible for managing the power system, including national merit order dispatch of generation and controllable load, and operation of the spot and forward trading markets.

However, there has been some slippage in implementing the National Electricity Market (NEM). It is to evolve in stages, with full implementation of the arrangements as specified in the Code and national market systems now expected to commence by the end of March 1998. As an interim step, in November 1996, NSW, Victoria and the ACT agreed to harmonise trading arrangements in the movement to the proposed NEM. Over time, competition will increase with the progressive lowering of the consumption threshold which determines which customers can participate in the market. By July 2001 all customers will have the freedom to choose their electricity supplier.

Governments' commitments

For the first tranche of competition payments, (relevant) governments agreed to take 'all measures necessary to implement an interim NEM, 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 NEMMCO and NECA'.

Relevant jurisdictions also agreed to the structural separation of generation and transmission, and to ring-fence[26] the 'retail' and 'wires' businesses within distribution. In addition, Queensland is committed to establishing an interconnection with New South Wales, after which it is to become a participant in the national market.

For the second tranche, governments agreed to the effective implementation of all COAG agreements on the establishment of a competitive NEM. Relevant jurisdictions are to complete the transition to a fully competitive NEM by 1 July 1999.

For the third tranche, States and Territories are to fully implement, and continue to observe fully, all COAG agreements with regard to electricity.

Progress to date

The major focus of electricity reform has been the establishment of a competitive national market encompassing eastern and southern Australia.

26 'Ring-fencing' involves splitting financial and administrative business units within a single entity.

The national market was initially intended to commence in July 1995 but, as noted above, there has been significant slippage in implementing agreed national electricity reforms. This partly reflects the inherent difficulties involved in developing, and gaining agreement to, the national reforms in an area as complex as electricity.

In December 1996, the Prime Minister proposed a revised phased implementation timetable for national electricity reform. The timetable, which has been agreed by all governments, sets out key reform dates, including:

- harmonisation of the NSW (including the ACT) and Victorian wholesale electricity markets (NEM1 Phase 1) by February 1997;
- authorisation of the National Electricity Code by the ACCC for the purposes of Part IV of the TPA and acceptance of the Code as an industry access code for the purposes of Part IIIA of the Act by April/May 1997;
- further harmonisation of Victorian and NSW markets (NEM1 Phase 2) by July 1997;
- passage of legislation to give effect to the National Electricity Law by participating jurisdictions by Autumn 1997; and
- full implementation of the market arrangements specified in the National Electricity Code by early 1998.

There has been some further slippage. NEM1 Phase 1 commenced in May 1997 — three months later than scheduled — with direct trade between NSW, Victoria and the ACT, and indirectly with South Australia. Phase 2, which will see all provisions of the Code apply except those for market rules and system security, is now expected to be commence in October 1997. Full implementation of the NEM is expected to commence in March 1998.

In relation to their other first tranche commitments:

- NSW, Victoria, South Australia and the ACT have subscribed to NEMMCO and NECA, as required. Queensland is only required to subscribe to these institutions upon interconnection with NSW, which is scheduled by 2000-01;
- NSW, Victoria, Queensland and South Australia have also structurally separated generation from transmission; and
- NSW, Victoria, Queensland and the ACT have ring-fenced the 'wires' and 'retail' functions of the distribution businesses. South Australia indicated in November 1996 that it will wait until the NEM is established in full before it elects to join the market and, therefore, will be required to ring-fence the 'wires' and 'retail' activities within distribution before 29 March 1998.

Progress to date has thus been mixed. There has been slippage from the original commitments, particularly in relation to the commencement date for the interim competitive NEM. Notwithstanding these slippages, the Council considers that jurisdictions have generally shown genuine commitment to implement the agreed electricity reforms. They have also made significant progress towards the competitive national market, and a timeframe for phasing in the competitive national market is now agreed by all governments. Further, Queensland has recently confirmed its intention to interconnect with NSW. Finally, Tasmania recently announced its intention to proceed with a link to Victoria (Basslink) within four years. Subject to this, it is committed to

participating in the NEM. On balance, the Council did not assess the progress achieved by relevant jurisdictions against the first tranche objectives as being unsatisfactory.

The task ahead

In conducting its second tranche assessments, the Council will be according high priority to jurisdictions meeting the agreed scheduled rate of reform, and any further slippage would be unacceptable.

In particular, jurisdictions agreed at the August 1994 COAG meeting, and in signing the inter-governmental agreement on implementing NCP and related reforms, for a *fully* competitive national market to operate from *1 July 1999*, with its main objectives as:

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

Jurisdictions also agreed at the August 1994 COAG meeting that transition arrangements would be developed on the basis of the earliest practicable achievement of each of the objectives for the fully competitive market.

The Council considers that any transitional arrangements or derogations from the Code should therefore be kept to a minimum. In this respect, the Council would expect that derogations are phased out to meet the objectives of the fully competitive market as soon as practicable. Any derogations which remain in conflict with the objectives when the fully competitive market commences would need to have strong public policy justification.

The Council will monitor Queensland's progress in its commitment with interconnection to the NEM for purposes of Queensland's subsequent assessments. Failure by Queensland to progress interconnection of sufficient capacity such that the year 2000-01 timetable is not met would be regarded by the Council as a lack of compliance with a central NCP commitment.

The Council will also monitor Tasmania's progress in meeting its commitment in relation to interconnection to the NEM. This commitment is a positive development. The Council will consider the actions taken by Tasmania in regard to the national agreed electricity reform commitments as the Basslink interconnection proceeds.

Box B7.1 State-by-State developments

Beyond the national market developments, there have been various electricity industry reforms at the State and Territory level, including:

- NSW separated the transmission functions from its generation utility, Pacific Power, in 1995. It has since split Pacific Power into three independent, government-owned generation businesses, and amalgamated the 25 electricity distribution bodies to form six large, independent, government-owned distributors. A competitive wholesale electricity market commenced in May 1996. NSW released a discussion plan in May 1997 which, if adopted, will see the privatisation of the NSW electricity supply industry.

Box B7.1 continued

- Victoria vertically and horizontally separated its generation and distribution activities and introduced a wholesale market in late 1994. It has sold all five State-owned distribution and four of the generation utilities, and is seeking to sell its remaining generation and transmission utilities.
- The South Australian Generation Company was established as an independent government business enterprise in January 1997. Transmission and distribution functions have been ring-fenced within the separate State owned electricity utility ETSA.
- Queensland separated generation from transmission and distribution in January 1995. The Government has foreshadowed splitting its generation utility, Austa Electric, into at least three independent and competing Government-owned generators, and creating three new independent retail corporations. An interim competitive market will be established in late 1997, with operation of a fully competitive market by 2001.
- Tasmania and the ACT have moved to corporatise their electricity utilities, including the ring-fencing of the different electricity activities and the separation of regulatory functions from the utilities.
- Western Australia and the Northern Territory are not part of the national electricity reforms. Western Australia is developing its own State-based competitive market in electricity and has introduced a third party access system to both the high voltage transmission system and distribution network. However, Western Power continues to operate as a vertically integrated monopoly in Western Australia's electricity industry. The Council considers that it is essential that electricity generation and transmission functions are structurally separate to ensure that the anticipated benefits from a more competitive electricity market are achieved. Western Australia has advised the Council that it is currently examining this matter, and that it has not ruled out separation of generation and transmission.

B7.3 Gas

Background

The performance of Australia's natural gas industry has direct effects on business, consumers, and the overall health of the economy. As an alternative energy source to oil and coal, gas is an important business input. Industrial gas usage accounts for more than half of all gas sales. Major

users include the metals, chemicals, and glass, brick and cement industries. Electricity generation accounts for another 22 percent of gas usage. Gas is also an important consumer item in its own right, being supplied to over 2.8 million Australian households — mostly in NSW and Victoria (AGA 1997). Finally, gas is a major export earner — forecast to exceed $1.8 billion in 1996-97 (ABARE 1997a). Overall, gas generates over $6 billion in annual sales, with a value adding contribution of $3 billion.

Gas is also Australia's fastest growing energy source. For example, gas usage in Western Australia — which accounts for about a third of industrial demand for gas — is expected to rise sharply in the coming decade with further expansion in the metal products sector. More generally, while currently satisfying around 18 percent of Australia's primary energy demand, gas is expected to account for about 28 percent by the year 2010.

To keep pace with rising demand, the gas industry will require significant investment in new infrastructure. Indeed, a number of new projects — including liquefied natural gas plants, pipelines, power stations and gas storage facilities — are currently being considered.

But largely because of its historical development, there are barriers to competition within the gas industry which could jeopardise investment projects and undermine the goal of reducing, as far as practicable, gas prices to consumers.

Historically, Australia's natural gas industry evolved as a series of State-based operations dominated by a few large enterprises. Within each State, a single transmission pipeline would connect a single gas basin with population and industrial centres. Competition was constrained by the 'natural monopoly' characteristics of gas pipelines.[27] Pervasive 'economies of scale' mean that transmission and distribution[28] pipelines are rarely commercially viable to duplicate in Australian markets. And third party access, where available at all, has typically been at tariffs set by the monopoly pipeline owners. At the same time, governments have supported anti-competitive arrangements in gas production and gas retailing to facilitate development of the industry.

The outcome has been highly integrated supply chains in each State supported by long-term exclusive contracts between producers, pipeliners and retailers. Consumers typically have had little choice but to buy a bundled package of gas and gas haulage services from a monopoly distributor supplied by other, 'vertically integrated' monopolies.

The first move towards gas reform occurred in December 1992, when COAG noted that barriers to trade in Australia's natural gas markets could inhibit the development of the industry and discourage exploration and commercial development of gas markets and infrastructure.

27 Natural monopolies occur where a single facility can supply the entire market more cheaply than two or more smaller facilities. This can occur where a facility requires big, up-front investment in infrastructure, but has relatively low operating costs. As such, there are likely to be significant 'economies of scale,' with average production costs declining as output rises.

28 Gas *transmission* pipelines transport large volumes of gas, usually at high pressures and over long distances, from production basins to one or more distribution centres and/or one or more large volume consumers. Gas *distribution* pipelines deliver gas at low or medium pressures to large numbers of smaller consumers within a geographical area.

In February 1994, COAG resolved to remove impediments to free and fair trade in natural gas. The underlying objective was to develop a nationally integrated and competitive industry in which consumers can contract directly with a gas producer of their choice for the supply of gas, and separately with a pipeline operator for gas haulage. This would encourage competition between gas basins and between producers within particular basins. To achieve this, COAG established several guiding principles and specific commitments for reform. In summary, it agreed by 1 July 1996 to:

- remove all legislative and regulatory barriers to free trade in gas;
- introduce a uniform framework for 'access' to gas transmission pipelines;
- reform gas franchise arrangements;[29]
- corporatise remaining government owned gas utilities; and
- implement 'structural separation' or 'ring-fencing' of vertically integrated transmission and distribution activities.

At the April 1995 COAG meeting, the above reforms were brought within the ambit of the NCP process — with payments to the States and Territories being dependent in part on adequate progress in implementing the reforms.

Governments' commitments

Governments committed in the 1995 Implementation Agreement to the effective implementation of all COAG agreements on the national framework for free and fair trade in gas. In summary, these commitments include:

- for the first tranche of competition payments, the effective implementation of all COAG agreements on the national framework for free and fair trade in gas between and within the States by 1 July 1996 or such other date agreed by the parties in keeping with the February 1994 COAG agreement;[30]
- for the second tranche, the effective implementation of all COAG agreements on the national framework, including the phasing out of transitional arrangements in accord with a schedule to be agreed between the parties; and
- for the third tranche, participating States are to fully implement, and continue to fully observe, all COAG agreements with regard to gas.

National gas access regime: progress to date

The central commitment in the gas package is the development of a National Code for access.

Development of the Code began in 1995 when COAG established the Gas Reform Task Force to coordinate national gas reforms. By mid 1996, the Task Force had developed a draft National

29 No time-frame was specified for implementing this commitment.

30 The June 1996 COAG meeting proposed a 30 September 1996 timeframe to finalise the Access Code and associated Intergovernmental Agreement, for subsequent Heads of Government endorsement.

Code, originally to apply only to transmission pipelines. It was developed with significant involvement of government agencies and industry stakeholders. The draft Code was released for public consultation which led to a number of amendments.

However, in June 1996, COAG agreed 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.[31]

Following the passing of the revised deadline, the Prime Minister in December 1996 proposed further amendments to the timeframe for introducing the National Code. He also sought agreement on certain regulatory and implementation issues. In summary, the Prime Minister proposed that jurisdictions agree:

- to the substance of the National Code as prepared by the Gas Reform Task Force, and to apply the final Code uniformly to natural gas transmission and distribution systems;
- that the Code be given consistent legislative effect by jurisdictions by 1 July 1997;
- that any derogations from the Code and transitional arrangements be fully transparent and have firm end dates, with transitional arrangements to be phased out by 1 July 2001; and
- that the ACCC be the single national regulator for transmission pipelines, with gas distribution pipelines to be regulated by independent regulators.

All jurisdictions other than Western Australia[32] agreed to these proposals.

In February 1997, the Gas Reform Implementation Group (GRIG) was given the task of finalising and implementing the Code. The GRIG comprises all State and Territory governments, the Commonwealth, peak industry/user associations,[33] the Council and ACCC.

However, the process is still ongoing — meaning that the Prime Minister's revised implementation deadline has not been met.

The slippages in the reform program caused the Council 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 Council considered this when assessing progress by jurisdictions

31 Details of the 1994 and 1996 COAG agreements on gas are provided in the Council's Compendium of NCP Agreements. Western Australia considers that the June 1996 Communique is inaccurate on a range of matters, including the commitment to a uniform National Access Code. South Australia believes the June 1996 Communique is inaccurate in respect to the decision on application of the National Access Code to distribution systems. Subsequently, in its response to the Prime Minister's letter of 10 December 1996, South Australia agreed that the National Access Code should apply to distribution pipelines as well as transmission pipelines.

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

33 Australian Gas Association, Australian Petroleum Production and Exploration Association, Australian Pipeline Industry Association, and the Business Council of Australia.

in implementing a National Access Framework.[34] That said, the Council was also cognisant that the slippages in the reform program did not necessarily reflect a lack of genuine commitment to achieve reform. And it was aware that the GRIG is currently developing a new implementation timetable which is likely to be endorsed in a new intergovernmental agreement. It will contain a new implementation date — likely to be 30 June 1998.

The Council therefore decided not to recommend deductions in relation to the first (1997) instalment of the first tranche payments, but to withhold endorsement of the second instalment of payments until July 1998. By then, jurisdictions' progress in relation to the (modified) first tranche commitments should be clearer.

Box B7.2 The Council's role in national gas reform

- participation on the GRIG in developing and refining the National Code.
- joint conduct with the GRIG of public consultation on the Code.
- jurisdictions to apply to Council for certification of their access regimes from late 1997.
- assessment of State and Territory Government progress in implementation of COAG reform commitments, including timely implementation of the National Code.
- working with individual jurisdictions in development of (interim) access regimes prior to introduction of the National Code, and assessing certification applications.

National gas access regime: the state of play

The GRIG has agreed that the format of the National Gas Access Regime package will be a single National Code supported by an intergovernmental agreement and a legislation package. It is expected that the legislation will be implemented through an 'application of laws' approach, with South Australia acting as the lead legislator and other jurisdictions applying the South Australian law. In addition, each jurisdiction will require legislation on state-specific matters such as the identity of the regulator and any derogations or transitional arrangements. Jurisdictions would then apply to the Council for certification of the state-based regimes.

The National Code will establish a legal regime by which persons can gain access to natural gas transmission and distribution pipeline services on reasonable terms and conditions. It will facilitate commercial negotiation of access in a broad regulatory framework, with a right to binding arbitration to resolve disputes.

34 While Western Australia has not agreed to the proposals in the Prime Minister's letter, it has indicated an intention to achieve consistency with the National Code by 2000. The Council recommended that for Western Australia to have satisfied its first tranche commitments in respect of implementation of a uniform national framework for access to gas transportation services, it must commit to adoption of the National Code and have a timetable for implementation. The Council will reassess this matter prior to July 1998.

Infrastructure owners will be required to submit access arrangements complying with the provisions of the Code to the regulator. Access arrangements must include reference tariffs for reference services (benchmark prices for standard services) which comply with specified pricing principles. Reference tariffs may be used to determine access prices or may serve as a basis for negotiation. However, the arbitrator must apply the reference tariffs in a dispute over pricing of a reference service.

In developing the Code to its current position, the GRIG has debated a number of issues fundamental to the operation of the Code.

One issue to have received considerable attention is the appropriate appeals provisions to protect the rights of aggrieved parties while ensuring timely outcomes for regulatory processes. The position as at July 1997 was for the Code to provide for judicial review of all decisions and administrative review of the merits of decisions by code bodies on a limited number of matters.

Another development was the inclusion in the Code of an optional 'competitive bidding' process for setting the reference tariffs for proposed new pipelines. Sometimes, a gas producer (or any other person) may call for tenders to build a new pipeline and determine gas haulage tariffs for its use. Under the new provision, the tariffs specified in the successful tender may be used as reference tariffs if, before the tender is conducted, the gas producer submits the tender proposal to the relevant Commonwealth or State regulator for approval. To give approval, the regulator would need to be satisfied, among other things, that the successful tenderer will be selected principally on the basis of lowest sustainable charges to users.

National gas access regime: the task ahead

In July 1997, the Council in conjunction with the GRIG launched the first phase of public consultation on the National Gas Access Regime. This initial consultation will focus on generic issues relevant to the broad framework and operation of the regime and will result in a preliminary assessment as to whether the regime complies with the criteria for certification in the CPA. The GRIG intends to resolve any outstanding issues prior to the regime being finalised and implemented by each jurisdiction.

A second phase of public consultation, likely to begin late in 1997, will focus on issues relevant to specific jurisdictions. The outcome of this process will provide the basis for the Council's recommendations on certification of the access regimes which each jurisdiction will establish under the National regime.

Several issues related to the application of the Code by individual jurisdictions are yet to be finalised, and the treatment of some of these matters may be refined as an outcome of public consultation.

Two matters of potential concern to the Council are:

- the identity of state-based regulators and appeals bodies; and
- transitional arrangements and derogations.

On the first matter, the Council considers that bodies responsible for imposing any limits on commercial negotiation should be independent from all affected parties and have resources

sufficient for their task. In this sense, the Council will be concerned with the independence of regulators and appeal bodies from service providers, users, potential users and governments.

On the second matter, transitional arrangements can provide a 'breathing space' for parties to adjust to the realities of a fully competitive market. While there may be sound reasons for jurisdictions to allow a phased introduction of access for different classes of customer, other kinds of derogations — for example, exempting particular infrastructure from the Code — would seriously undermine national reform. The Council cannot recommend certification of services under the National Code where the relevant infrastructure is subject to a derogation of this kind. In this sense, infrastructure which has been 'exempted' from the National Code will not be protected from declaration under Part IIIA. Where a pipeline service is derogated from a specific section of the Code, rather than the Code as a whole, the Council will need to examine whether the derogation alters the effectiveness of the Code as it applies to the pipeline service. The Council will also take any derogations into account when assessing whether jurisdictions have met their commitments in relation to national gas reform more generally. Where a jurisdiction fails to adhere to the national reform principles, the Council will take this into account when advising the Commonwealth Treasurer in relation to future NCP payments.

More generally, the Council notes the extensive delays in the reform process to date and expects to see the implementation process proceed rapidly in the next few months. Jurisdictions' progress on these matters will be vital for the Council's assessment of the second phase of first tranche payments, and also for the second tranche.

Removal of legislative and regulatory barriers: progress to date and the task ahead

While the timeframe for implementing the National Code has slipped, the timeframes for other gas reforms (such as the removal of legislative and regulatory barriers to trade) remain as agreed by COAG in February 1994.

Some jurisdictions have, or are making, significant progress in this area. For example:

- South Australia has embarked on an extensive review of legislation and regulation affecting its gas industry. In particular, a public review of the *Cooper Basin (Ratification) Act 1975*, previously identified by the ACCC as a significant legislative barrier to competition, is under way; and
- resolution of the Petroleum Resource Rent Tax dispute in November 1996 paved the way for Victorian reforms to remove a wide range of anti-competitive regulatory restrictions, including the exclusive franchise arrangements between Esso/BHP and Gascor. The reforms are expected to be implemented as part of a legislated reform package in late 1997.

However, the Council notes that the June 1996 deadline for reforming impediments to trade elapsed without completion of the task. The Council is also concerned that licensing arrangements may be used as a mechanism to restrict entry to energy infrastructure markets and hinder free and fair trade in gas. The Council will continue to monitor this area and take account in its future assessments of any legislative or regulatory barriers that are subsequently discovered.

Structural reform of gas utilities: progress to date and the task ahead

Extensive structural reform of gas utilities has occurred in all jurisdictions since 1994 and is continuing to occur:

- several government-owned transmission pipelines were privatised between 1994-96, including the Moomba-Sydney pipeline (Commonwealth), Moomba-Adelaide pipeline (South Australia) and State Gas Pipeline (Queensland);
- all remaining State and Territory owned gas utilities have been corporatised;
- in NSW, AGL restructured its former gas distribution business into ring-fenced business units in 1997;
- in 1997, Western Australia foreshadowed the privatisation of the Dampier-Bunbury pipeline, which will see the separation of gas transmission and distribution activities in that state, and announced a process for obtaining expressions of interest in the construction of a new Dampier-South West pipeline by mid-1998; and
- in 1997, Victoria announced the restructuring of its state-owned gas transmission and distribution utilities to prepare for privatisation.

The Council notes that the National Gas Access Regime will necessitate further structural reform, including ring-fencing between gas pipeline businesses and other business activities, such as gas retailing.

Box B7.3 Jurisdiction-based initiatives in gas access

Apart from working towards a National Code, several jurisdictions have developed their own gas access regimes:

- The Commonwealth, Western Australia, South Australia and Queensland have implemented their own access regimes to accompany the privatisation of gas infrastructure or clarify the regulatory environment to stimulate new investment. The regimes were developed outside and ahead of the national framework.
- NSW developed an access regime for gas distribution services as a transitional measure prior to the introduction of the National Code. The NSW Access Code was modelled on the national framework, but with certain variations (for example, the NSW arbitrator has greater discretion over reference tariffs). NSW applied for certification of its regime in October 1996. The Council's recommendation to certify the regime was approved by the Commonwealth Treasurer in August 1997. The NSW Code will be replaced by the National Code according to an agreed timeframe.
- Victoria is developing a transitional access regime as part of a reform package for the Victorian gas industry. The regime is modelled on the draft national framework and will be replaced by the National regime according to an agreed timeframe.

B7.4 Water

Background

Over $90 billion is presently invested in Australia's water infrastructure assets (in replacement cost terms) of which more than half is devoted to urban water services. Most water is used for irrigation purposes, with around 10 percent being required for household supply and waste water disposal.

Several factors have focussed attention on the need to improve efficiency of water delivery services. These include regional variations in water availability and consumption, the high costs associated with developing new water supplies, and environmental considerations. In many population centres such as those in the Murray-Darling Basin,[35] the continued availability of

35 The Murray-Darling Basin covers four states and one territory (Queensland, NSW, Victoria, South Australia and the ACT), supports over 20 cities, has a population of 3 million, and is Australia's most important agricultural region. The Basin produces annual agricultural output exceeding $10 billion or one-third of national rural output.

quality water is under threat. And the prices charged for water in most parts of Australia do not cover the costs of supply.

In February 1994, COAG agreed to develop a 'strategic framework' for the efficient and sustainable reform of the Australian water industry. It entails:

- pricing reform based on the principles of consumption-based pricing, full-cost recovery, and removal of cross-subsidies, with remaining subsidies made transparent;
- implementation by States and Territories of comprehensive systems of water allocations or entitlements, including allocations for the environment as a legitimate user, backed by separation of water property rights from land title;
- by 1998, the structural separation of the roles of service provision from water resource management, standard setting and regulatory enforcement; adoption of two-part tariffs for urban water where cost-effective; and the introduction of arrangements for trading in water allocations or entitlements;
- by 2001, rural water charges reflecting full cost recovery (with subsidies made transparent), and the achievement wherever practicable of positive real rates of return on the written-down replacement costs of assets; and
- future investment in new schemes or extensions to existing schemes being undertaken only after appraisal indicates it is economically viable and ecologically sustainable.

COAG anticipated that implementation of the strategic framework would result in a restructuring of water tariffs, with cross-subsidies for water services being reduced or eliminated. COAG considered that the impact on consumers would be offset by cost reductions from more efficient service provision. In the case of rural water services, the strategic framework aims to generate the financial resources to maintain supply systems, and through a system of tradeable entitlements to allow water to flow to higher value uses subject to social, physical and environmental constraints.

In April 1995, governments agreed to bring the water reform agenda within the ambit of the NCP process.

Governments' commitments

Under the Implementation Agreement, governments committed to progressing water reform as follows:

- for the second tranche of competition payments, the effective implementation of all COAG agreements on the strategic framework and future processes as endorsed at the February 1994 COAG meeting and embodied in the February 1995 *Report of the expert group on asset valuation methods and cost-recovery definitions*; and
- for the third tranche, full implementation and continued observance of all COAG agreements with regard to water.

Most reforms are required for the second tranche, and some (rural reforms) for the third tranche. Furthermore, some reforms such as structural reform, adoption of urban two-part tariffs, and implementation of trading arrangements for water allocations/entitlements, are required to be implemented by the end of 1998.

Progress to date

To date, most effort has involved formulating policies and considering technical matters in relation to the proposed reforms.

In 1994, COAG requested that the Agricultural and Resource Management Council of Australia and New Zealand (ARMCANZ) oversee and report on the national water reform agenda.

In turn, ARMCANZ, through the Standing Committee on Agriculture and Resource Management (SCARM), appointed an intergovernmental task force to coordinate the COAG water reform program (the SCARM Task Force).

The Council has been represented on the SCARM Task Force for national water reform as a participating observer for the past year. In this time:

- the Task Force has developed generic national 'milestones' as advice to jurisdictions in implementing the Strategic Framework requirements;
- the Task Force commissioned a consultancy on methods for valuing water-related assets, such as dams, water towers, drains and pipes. The aim was to establish guidelines which water-related businesses, governments and industry regulators can use to determine what constitutes full cost recovery. This in turn will be used to help determine prices for water. The proposed 'deprival value methodology' for valuing assets is consistent with the COAG water reform framework. The Task Force has recommended to SCARM that the Asset Valuation package be 'rolled out' to the water industry over a six month period and that final guidelines be presented to SCARM/ARMCANZ for endorsement by February 1998; and
- The Council has commissioned a consultancy to examine whether water facilities are likely to meet the criteria for declaration under the National Access. The consultants are due to report their findings in mid-September 1997. The Council will then look to release a joint publication with the Task Force on this issue later this year.

Jurisdictions have also undertaken several reforms in relation to water pricing and the structure of their water supply utilities. For example, during 1996-97:

- in NSW, IPART made 'medium path' price determinations[36] for Sydney and Hunter Water for the next four years, and for Gosford and Wyong Council for the next three years;
- South Australia declared water and sewerage services for prices oversight by the South Australian Competition Commissioner;
- the ACT Government established the ACT Energy and Water Charges Commissioner to provide independent advice on prices for water and sewerage;
- the Northern Territory transferred its Water Resources Division to the Department of Lands, Planning and Environment. The Division, which is responsible for managing water resources, had previously been part of the Power and Water Authority, which supplies and sells water to customers;

36 The medium path approach involves increasing prices from existing levels to full cost pricing levels in steps, rather than making a one-off jump to full cost pricing.

- South Australia passed its *Water Resources Act 1996* providing for devolution of water resource management to local government, and establishing property rights for water licensing; and
- the Murray Darling Basin Commission received Ministerial endorsement to ring-fence its service provision role from its policy, standard setting and resource management roles, by establishing a separate Water Business Unit to provide and manage water. The Unit will be subject to external regulation including independent prices oversight.

The task ahead

These reforms are important. They extend beyond competition policy matters to embrace social policy issues such as recognising the environment as a legitimate user of water. If fully implemented, they could have a greater impact on community welfare (broadly defined) than any other single measure. The Council therefore intends to give high priority in the second and third tranche assessments to the timely implementation of agreed water reforms.

The milestones developed by the SCARM Task Force are statements of intent designed to assist jurisdictions in setting and agreeing specific jurisdictional milestones with the Council. The Council's assessment is bound to the requirements for the COAG strategic framework and not the milestones presented. Jurisdictions may approach the Council with their state-specific milestones. To date though, no jurisdiction formally has.

Given the importance of these reforms, the Council is concerned to see that there are no slippages in implementation. The COAG strategic framework for water reform covers an extensive agenda. If reforms are to be delivered on time, jurisdictions will need to accelerate the pace of reform. Having said that, the Council recognises that water services are the domain of primarily local governments in some jurisdictions, for example Queensland, and that implementation issues relating to local government will therefore bear on the ability of jurisdictions to implement reform. While recognising these matters, the Council, in assessing competition payments, will be looking for 'on the ground' implementation of the reforms rather than generic statements by jurisdictions.

B7.5 Road Transport

Background

Road transport services are important inputs for many businesses, particularly those in country areas.

Historically, there have been problems in the regulatory framework governing the industry, including varying regulations across Australia and charging systems which bear little relation to the costs which users imposed on the road network. There have also been concerns about the past safety record of some sections of the industry.

In October 1992, Australian Transport Ministers agreed on a national approach to road transport reform. The aim was to improve transport efficiency, increase road safety and reduce the administrative and compliance costs of regulation. This was to be achieved through, among other things, uniform national arrangements for vehicle roadworthiness and driver licensing, and vehicle charges which reflect the full cost of providing road transport services. The Ministers agreed to pursue reform in six modules, covering:

- uniform heavy vehicle charges;
- uniform arrangements for transportation by road of dangerous goods;
- vehicle operation reforms covering national vehicle standards, roadworthiness, mass and loading laws, oversize and overmass vehicles, and road rules;
- a national heavy vehicle registration scheme;
- a national driver licensing scheme; and
- a consistent and equitable approach to compliance and enforcement with road transport laws.

The National Road Transport Commission (NRTC) was established to oversee the process of developing and implementing the reforms.

In April 1995, the road transport reforms were brought within the ambit of the NCP process.

Governments' commitments

The Implementation Agreement commits governments to the 'effective observance of road transport reforms'. It also indicates that observance of the reforms is relevant for the Council's assessment of jurisdictions' performance at each of the three tranches.

As no road transport reforms are specified in the 1995 NCP agreements themselves, the Council has sought to clarify what these commitments entail. In doing this, the Council has taken into account the six national reform modules agreed to by Transport Ministers in October 1992, advice from the NRTC, and comments from States and Territories.

On this basis, the Council considers that road transport reform obligations over the three assessment tranches should involve the timely development and implementation of heavy vehicle regulations, including:

- heavy vehicle construction requirements;
- traffic codes;
- vehicle roadworthiness;
- inspection standards;
- driver licensing standards;
- codes of heavy vehicle practice (loading codes and permit conditions);
- enforcement levels;
- sanctions for breaches; and

- aspects of operator controls (including freight and public vehicle licensing).

Progress to date

As originally envisaged, jurisdictions were to phase in the six reform modules commencing in 1995. The process was to use 'template' legislation. The Commonwealth Government would pass legislation to apply the agreed reforms in the ACT. Other governments would then adopt and apply the Commonwealth legislation 'by reference' in their own jurisdictions.

Progress has been slower than anticipated. To date, jurisdictions have implemented only one of the modules — relating to standard heavy vehicle charges and associated permit reforms.[37] And in most instances, they implemented it later than originally agreed.

In February 1997, Transport Ministers — now meeting as the Ministerial Council of Road Transport (MCRT) — agreed to modify the reform process. They removed the requirement for the reforms to be implemented using template legislation. The new approach allows jurisdictions to implement the transport modules, once approved by the MCRT, without waiting for the passage of Commonwealth legislation. Rather than seeking to immediately achieve national *uniformity*, this new approach seeks national *consistency* in the first instance. The MCRT also agreed to a timetable to implement the reform modules.

The slippage in the reform program caused the Council to reconsider what jurisdictions would need to do to meet the 'effective observance of road transport reforms' criterion for the first tranche payments. The Council considered that, as well as implementing the first reform module, jurisdictions should make a commitment to link the implementation of the other road transport reforms, according to the new MCRT timetable, to future NCP payments.

While noting that the MCRT approach did not have COAG endorsement, all jurisdictions did this. The Council is satisfied that all jurisdictions met the first tranche assessment criteria.

The task ahead

The new national implementation strategy, endorsed by the MCRT, specifies timeframes and processes for national implementation of the remaining reform modules. The key elements are:

- uniform arrangements for the transport of dangerous goods be implemented by all jurisdictions by no later than 1 January 1998;
- the Australian road rules regulations (part of the vehicle operations module) be implemented by no later than September 1998;
- a national driver licensing scheme be implemented by no later than 1 July 1998; and

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

- the remaining modules be implemented by no later than 1 July 1998 without waiting for enactment of Commonwealth legislation, provided that the result is uniform and consistent laws across jurisdictions.

Jurisdictions' performance against the MCRT program should provide the criteria for the Council's second and third assessments of road transport reform performance.

However, the Council recognises that:

- the road transport reform agenda has not been endorsed by COAG, and any change to the program agreed by COAG would *necessarily* supersede the current arrangement;
- future changes to the reform program agreed by the MCRT *may* also amend the assessment framework; and
- the Commonwealth's legislative program *may* constrain implementation by the ACT.

That said, the Council encourages jurisdictions to proceed directly with road reform. The development and implementation of the reforms has taken longer than originally envisaged. The Council considers that there should be no further slippages in implementation, and will give some priority in the second and third tranche to progress in road transport reforms.

All jurisdictions have accepted that this new agreement and timetable will be the basis on which the Council assesses competition payments for road transport reform. Given the timetable, it seems reasonable to expect implementation of all six modules during the second tranche. The Council will be looking for 'on the ground' implementation of the agreed reforms.

B7.6 Rail

Notwithstanding some recent improvements, the performance of Australian rail freight services remains inferior to world best practice (BIE 1995).

In last year's annual report, the Council noted that a nationally agreed approach to reform may be warranted for rail — as well as for some other key infrastructure industries — and subsequent developments have reinforced this view.

Without a national rail reform agreement, the business community, in its attempts to obtain improved service quality and lower prices, has had to rely on the general provisions of the CPA and, in particular, the National Access Regime. As a consequence, most access issues submitted to the Council have related to rail services, as can be seen in the next chapter.

The National Access Regime can help drive reform in rail, but the process has been, and is likely to continue to be, more difficult and time-consuming than if a national agreement was in place. There are at least two reasons for this:

- 'access' is only part of the answer: other impediments to a national rail services market (such as the lack of consistency in technical and safety standards), and the efficiency of rail track and related infrastructure, also need to be addressed; and
- without coordinated development of access regimes, settling the requirements of the first access regimes is more problematic. Thus, the Council is currently involved in complex

discussions with NSW on how its rail access regime will facilitate trade before other State/Territory access regimes have been developed.

The electricity and gas reform agreements both dealt with these matters, and Australia is close to achieving a national market in these sectors.

But rail services are a long way behind, even though:

- existing rail infrastructure is more developed nationally than both electricity and gas infrastructure; and
- rail is publicly owned — a characteristic which made electricity reform simpler when compared to gas industry reform.

There have been some recent moves towards national reform. The Commonwealth, State and Territory Transport Ministers are meeting in September. This issue will be an important part of their agenda.

The proposed privatisation of National Rail Corporation (NRC) is also likely to boost competition in rail freight services. The new owner is expected to compete aggressively in several interstate and intrastate markets, particularly with the state-owned rail freight companies.

However, in a submission to the Council on the certification of the NSW rail access regime (see Chapter B8), NRC advised that the NSW Government —which partially owns NRC — had not consented to NRC competing in NSW intrastate freight markets, including the Hunter coal freight market. The Council understands that other State governments have taken a similar approach.

Such restrictions mean that one of the key potential competitors in the intrastate rail freight business is prohibited from operating and an obvious avenue for increasing competition is lost.

An agreement between governments to remove these types of impediments to competition could significantly improve the quality and competitiveness of rail freight services in Australia.

B8 Access to infrastructure

B8.1 Background

The final products of sectors such as transport, energy and communications are all important consumer items and inputs for businesses in other sectors. The sectors are also major uses of resources in their own right. Their efficiency and competitiveness thus effects the performance of the Australian economy generally.

These sectors typically rely on major infrastructure facilities — such as ports, aerodromes, roads, rail networks, gas pipelines, electricity grids, and phonelines or radio communications network — to help deliver their final products. These facilities typically have 'natural monopoly' characteristics, meaning that it would be uneconomic for more than one business to build and operate these facilities in the same area. In many of these areas, these facilities have been built and operated by public utilities, with gas being a notable exception.

But while the infrastructure facilities may of necessity be monopolies, the services other segments of the industry provide using the facilities need not be. For example, while it would be uneconomic to build two rail networks in the one region, it may be economic to allow two or more different businesses to operate trains on the one network, in competition with each other (and with other forms of transport).

However, it can be difficult for new businesses to gain access to the services of these types of infrastructure. In many cases, the government-owned utility which has been responsible for building and operating the infrastructure has also supplied products in the upstream and downstream industry segments. Likewise, in the gas sector, the pipeline owners have often been 'vertically integrated', with gas production and distribution operations and/or partners. They have thus had little incentive to provide access to the infrastructure services to their upstream and downstream competitors, at least not on reasonable terms and conditions. Even where this conflict does not exist, the monopoly power held by the infrastructure provider, and the complexities involved in determining conditions of access, put businesses wanting to negotiate access in a difficult bargaining position.

Where this happens, the infrastructure may not be utilised efficiently and competition in upstream and downstream segments of the sector may be blunted.

Some measures introduced by governments in recent years, such as structural separation or prices surveillance of government utilities, have reduced the potential for these problems to a limited degree. However, these measures are not directly targeted at the 'access' issue.

To specifically address this issue, governments are introducing legislative access regimes. These regimes set conditions of access, or specify processes for determining conditions of access, in relation to the relevant infrastructure services. During the first half of the 1990s, governments introduced access regimes for telecommunications and certain gas pipelines, and also commenced work on national access arrangements for gas pipelines and electricity grids.

In April 1995, as well as bringing the energy reforms within the ambit of the NCP processes (see Chapter B7), governments agreed to the establishment of an overarching national arrangement to provide access to monopolistic infrastructure services not already covered by other effective access regimes.

B8.2 Governments' commitments

Under Clause 6 of the CPA, governments agreed:

- that the Commonwealth Government establish a National Access Regime for services provided by means of significant infrastructure facilities;
- to the conditions under which access should be provided under the National regime;
- that the National regime should not cover a service provided by an infrastructure facility already covered by an 'effective' State or Territory regime, unless substantial difficulties arise from the infrastructure facility being situated in more than one jurisdiction, or its influence outside the jurisdiction; and
- to principles which specific State or Territory access regimes should incorporate to be deemed effective.

The conditions for access under the National regime are similar to the principles which State and Territory regimes need to meet to be deemed effective.

In essence then, governments agreed that the National regime should apply except if there is another regime which provides effective access to the services in question. The agreement does not require that States and Territories introduce specific access regimes, nor that any regimes they do introduce must be effective under the Clause 6 principles. However, for their specific access regimes to be the sole regime under which access can be obtained, the regimes must meet the effectiveness criteria.

B8.3 Progress to date

The *National Competition Reform Act 1995* introduced a new Part IIIA into the TPA, providing for the National Access Regime.

Part IIIA provides three routes through which businesses can get access to nationally significant infrastructure services:

- under the declaration route, businesses can apply through the Council to have an infrastructure service 'declared' and then, if the relevant Minister declares the service, enter into negotiation, supported by legally binding arbitration, with the infrastructure operator to determine the terms and conditions of access;
- under the undertakings route, where an infrastructure operator has made a voluntary access undertaking to the ACCC, businesses can get access to the infrastructure services on the terms and conditions set out in the undertaking; and

- under the provisions of other regimes, such as specific State or Territory regimes.

Part IIIA also provides that, if an infrastructure service is already subject to an effective access regime, it cannot be declared under the National regime. It also provides for State or Territory governments to apply to the Council to have an access regime certified as effective in relation to a particular service. And it provides that decisions on declaration and certification can be appealed to the Australian Competition Tribunal (formerly the Trade Practices Tribunal) within 21 days.

During 1996-97, the Council received applications from five businesses seeking declaration of infrastructure facilities. Of those applications on which decisions have been announced, it has recommended for declaration in two cases and against in one other. One application was withdrawn as, after lodgment, the applicant was able to make more effective progress in negotiating access with the infrastructure provider. The declaration applications made under the regime to date are discussed in Section B8.4.

The Commonwealth Treasurer declared the first infrastructure services under the regime in July 1997: certain services at Melbourne and Sydney airports. This will allow the applicant, a small business called Australian Cargo Terminal Operators, to better compete against Ansett, Qantas and others.[38] Other businesses which want to compete in this market now also have a legal right to negotiate access to these airport services. This holds out the potential for lower freight rates and/or better services.

As well, several governments have developed their own access regimes dealing with specific infrastructure, such as gas pipelines, shipping channels, telecommunications services and rail networks. State governments have made three applications to the Council to have their regimes 'certified' as effective under the national regime. To date, two regimes have been certified, with the certification assessment process still continuing in relation to the other.

Beyond this, there have been national developments in respect of access to gas pipeline services and electricity network services. The proposed national regime for third party access to natural gas systems is currently being developed by all jurisdictions and will be introduced through an application of laws approach, with South Australia as lead legislator. It is intended for all jurisdictions to apply the regime by 30 June 1998. Each jurisdiction will seek certification of the regime as it applies within its boundaries. In respect of electricity, the national access regime will be enacted through undertakings being offered to the ACCC. The developments in both these sectors are discussed in more detail in Chapter B7.

At the same time as these developments in access, there has been significant ongoing investment in infrastructure in Australia, and the sale prices of affected assets appear to have held up. For example, prospective investment in gas transmission pipelines currently totals upwards of $4.5 billion in anticipation of the national gas access arrangements.[39] And last year, the sale of Victorian electricity generation and distribution entities realised a total of around $18 billion, substantially exceeding expectations (VDTF 1997). This suggests that the prospect of access to

38 The Federal Airports Corporation has lodged an appeal against declaration of the Sydney airport facilities with the Australian Competition Tribunal. This appeal has yet to be heard.

39 Figures provided by the Commonwealth Department of Primary Industries and Energy are for pipelines under development or consideration. They are based on AGA (1997), but updated from that report to take into consideration new pipeline developments and adjustment of estimated costs of existing developments.

previously locked-up markets may be supporting investment in infrastructure, and that the regime has not been causing undue uncertainty for infrastructure owners.

Overall, these developments in access proffer the benefits of greater competition and more efficient use of Australia's infrastructure.

B8.4 Council recommendations on declaration

As noted earlier, the Council has a role under the declaration provisions of Part IIIA.

To date, interest in declaration has been higher than expected. Applications have covered different types of services, including electronic payments systems, the use of facilities for offering cargo-related services at airports, and parts of rail networks. That said, most interest is in the latter types of big infrastructure. There has also been some variety of applicants — including a student union, and small and big businesses.

The applications processed to date (including one received before and one received after the 1996-97 financial year) are:

- an application by the Australian Union of Students for a payroll deduction service provided by a Commonwealth Department;
- an application by Futuris Corporation Ltd for access to a high-pressure gas distribution system in Western Australia;
- applications by Australian Cargo Terminal Operators Pty Ltd for access to particular airport services at both Melbourne and Sydney international airports;
- an application by Specialized Container Transport for access to rail services provided by the NSW rail network;
- an application by Carpenteria Transport Pty Ltd for access to rail services provided by the Queensland rail network;
- an application by the NSW Minerals Council for access to rail services provided by the NSW rail network in the Hunter Valley; and
- applications by Specialized Container Transport for access to rail services provided by the Western Australia rail network.

In processing applications for declaration, the Council is required to make assessments against criteria set out in Part IIIA. These are set out in Box B8.1. The Council usually undertakes public consultation processes. It advertises the application, seeks submissions, sometimes releases draft recommendations, and provides a comprehensive Statement of Reasons. The Council's processes in relation to each application for declaration are discussed in turn below. For those applications on which the relevant government has released a decision, the Council's reasons and recommendations are also discussed.

Box B8.1 Criteria for declaration of access

- Access would need to promote competition in an upstream or downstream market. For example, for access to an electricity transmission grid to be granted it would need to enhance competition in the market for electricity generation or distribution.
- It would need to be uneconomical to develop another facility to provide the service. It could be argued, for example, that an electricity grid satisfies this criterion because duplication of the grid is likely to be prohibitively expensive and a waste of resources.
- The facility to which access is sought would need to be of national significance, having regard to its size, its importance to Constitutional trade or commerce, or its importance to the national economy. This criterion puts relatively insignificant facilities outside the declaration framework.
- Access must not be associated with undue risk to health or safety.
- The service for which an application for declaration is made must not already be the subject of an effective access regime.
- Access must not be contrary to the public interest. Public interest considerations include economic efficiency and other objectives such as jobs, community service obligations, regional development, environmental matters, social welfare and various equity considerations.

B8.41 Certain payroll deduction services

The application

On 24 April 1996, the Council received an application from the Australian Union of Students (AUS) seeking access to a service described by AUS as the 'Austudy Payroll Deduction Service'. AUS identified the facility to provide the 'service' as the computer network of the Commonwealth Department of Employment, Education, Training and Youth Affairs (DEETYA). Austudy is a form of financial assistance provided by the Commonwealth Government to approved students.

The 'service' sought by AUS requires DEETYA to establish a system of payroll deductions to enable the Applicant, AUS, to be paid membership fees directly from students' Austudy payments. The facility to provide the 'service' is DEETYA's computer network. DEETYA

currently does not provide a payroll deduction service. In seeking declaration of the service, AUS requested that the Council require DEETYA to establish the service in the form outlined by AUS.

The process

The Council adopted an expedited process, consulting directly with both AUS and DEETYA, before making its recommendation to the Commonwealth Treasurer on 19 June 1996. The Council recommended that the service sought by the AUS not be declared. On 14 August 1996, the Treasurer announced his agreement with the Council's recommendations and reasons. The processes used by the Council in considering the application, and the reasons for the Council's recommendation, were set out in the Council's 1995-96 annual report.

On 30 August 1996, AUS lodged an appeal with the Australian Competition Tribunal, seeking a review of the Treasurer's decision. On 28 July 1996, the Tribunal affirmed the Treasurer's decision not to declare the service.

B8.42 Western Australian gas distribution services

The application

On 4 September 1996, the Council received an application from Futuris Corporation Limited (Futuris) seeking access to supply natural gas to its gas-fired plants (used to manufacture bricks and related products) located in the Perth metropolitan area. Futuris identified the facility to provide the service as the AlintaGas high-pressure gas distribution system. Under Western Australia's then proposed access arrangements, Futuris claimed it could only negotiate access to supply gas to two brick plants, and was seeking access to deliver gas to all six plants.

The process

Shortly after the Council acknowledged the declaration application, Futuris informed the Council that it was engaged in negotiations with AlintaGas, and requested that no further action be taken on the application until further notice.

On 18 November 1996, Futuris formally advised the Council that it had reached agreement with AlintaGas on particular issues and withdrew its application for declaration.

B8.43 Sydney and Melbourne airport services

The application

On 6 November 1996, the Council received applications from Australian Cargo Terminal Operators Pty Ltd (ACTO) to declare particular services at the Sydney and Melbourne International Airports.

ACTO is a small business which provides cargo terminal services to international airlines. It breaks down and builds up freight, and transfers that freight to and from international aircraft.

ACTO sought declaration of the following services:

- the service provided through the use of the freight aprons and hard stands to load and unload international aircraft at Sydney International Airport ('S1') and Melbourne International Airport ('M1');
- the service provided by the use of an area at the airport to: store equipment used to load/unload international aircraft; and to transfer freight from the loading/unloading equipment to/from trucks at Sydney International Airport ('S2') and Melbourne International Airport ('M2'); and
- the service provided by use of an area to construct a cargo terminal at Sydney International Airport ('S3') and Melbourne International Airport ('M3').

ACTO identified the Federal Airports Corporation (FAC) as the provider of the service.

The process

In processing the application, the Council:

- advised the Treasurer, the FAC, and the Federal Department of Transport and Regional Development of receipt of the applications;
- held discussions with ACTO and the FAC;
- placed advertisements in major newspapers on December 1996, seeking submissions by 7 February 1997;
- released a Discussion Paper;
- received 21 submissions; and
- commissioned a consultancy to provide certain information on international experiences in relation to international air freight handling operations.

On 8 May 1997, the Council forwarded its recommendations to the Commonwealth Treasurer. It recommended that the services specified in the first and second applications should be declared (S1, S2, M1, and M2), but that those specified in the third should not be (S3 and M3).

On 14 July, the Treasurer announced his acceptance of the Council's recommendations and the reasons supporting them.

The FAC subsequently lodged an appeal with the Australian Competition Tribunal in relation to declaration of services at Sydney airport (S1 and S2). The appeal has yet to be heard.

Criterion A: Access would promote competition in another market

In assessing the application against this criterion, the Council:

- discussed the market for the services for which ACTO sought declaration; and
- identified other markets in which access might promote competition; and
- examined the prospects for access to increase competition in those markets.

The services ACTO wanted declared can be loosely described as 'the use of FAC facilities to provide freight ramp services and cargo terminal operator (CTO) services to international aircraft at Sydney and Melbourne airports.' The FAC facilities include hard stands, freight and passenger aprons, storage space and space to conduct CTO operations. These basic facilities can and are used by a number of different companies, and are inputs used to provide a variety of services to an aircraft parked at an airport, including catering, baggage handling, engineering and cleaning. The Council determined that the services ACTO wanted declared fell within a market for airport services that are necessary for international airline operations at both Sydney and Melbourne.

Council identified the main markets in which competition might be promoted if access were granted as the markets for ramp handling services and the market for CTO services, at Sydney and Melbourne respectively. These two markets are both elements in the airfreight chain but are functionally distinct from each other because each market requires use of different skills and equipment. Ramp services are provided to aircraft through the use of specialised equipment such as upper and lower deck loaders. Other equipment that may also be used includes forklifts, tugs and dollies. Equipment of this nature is used for both the handling of passengers' baggage and freight. For the users of ramp services, no substitute service could be identified. CTO services involve consolidating freight and arranging for its transportation. Ramp and CTO services are themselves inputs into the airfreight forwarding market.

The Council also considered whether the market for these services at Melbourne International Airport is separate for the market to these services at Sydney International Airport. It concluded that they are separate markets because of:

- the location-specific nature of airfreight, which is most likely to be time-sensitive;
- the small cost of airport charges relative to the cost of operating aircraft;
- the destination-specific nature of aircraft travel; and
- the distance between the two airports.

Having identified the relevant markets, the Council then considered whether access would promote competition in the CTO and ramp handling markets. It surveyed the present state of competition in those markets. It noted the FAC's views that the current ramp operators and CTOs gave priority to their own cargo and passenger business as opposed to cargo delivered by other airlines; and that the recovery of import freight suffered from long delays. Other submissions stated that there was under-investment in facilities, rapidly increasing prices, and poor and

undifferentiated service in these markets. A report by the House of Representatives Standing Committee into perishable freight (the Vaile Report) also noted similar criticisms of the cargo terminal arrangements at Sydney International Airport. It considered market access was the key to increasing competition.

The Council concluded increased access could have positive effects on price, service quality and differentiation, and investment in new facilities which relieve congestion.

The Council considered and rejected the following arguments against declaration.

- *Unsuitable providers would gain access:* It was argued that providing access to parties whose methods of operation were unknown or unproven would not increase competition. The Council considered that needs of users were likely to be best met when they have access to a range of providers offering a range of services. Where a provider does not meet the needs of users, that provider would fail.

- *Congestion costs of access:* It was argued that declaration would result in too many participants entering the market, which would diminish the efficiency of freight handling at the airport. The Council noted that the effects of congestion on the airport could best be managed by the owner of the services establishing appropriate methods and procedures to limit congestion costs and increase available capacity. Further, the Council noted that access to the services could not be enforced where there is no capacity available for use, or potential for increases in capacity.

- *Scarcity of land limits access:* It was said that land restrictions could impose an absolute constraint on available capacity, in addition to the congestion of aprons and hard stands, especially at Sydney International Airport. The Council considered that appropriate management strategies could meet these concerns. These strategies may include increased use of off-airport CTOs, and the development of pricing arrangements which allocate airport land to its highest value use.

- *Airline alliances:* It was argued that alliances between international airlines and Qantas and Ansett for reciprocal freight handling services could make it difficult for an independent operator to enter the market, even after declaration. The Council noted that significant participants in the airline market are unaligned, and are likely to benefit from competition in the ramp services and CTO markets.

Criterion B and Section 44F(4): Uneconomic to duplicate all or part of the facilities

The applications covered several facilities:

- hard-stands (which are packing areas for aircraft) and freight and passenger aprons;
- space on-airport for parking and loading/unloading of equipment; and
- space for an on-airport CTO.

The Council considered that there was a strong connection between the services provided by the above facilities and the other services provided by airport infrastructure, such as runways. To

duplicate the facilities to provide the services that the applicant intends to provide, it would be necessary to duplicate the Sydney and Melbourne International Airports.

The Council considered whether it was economic to construct another airport to handle the freight services sought to be declared in the application. The Council believed that airports benefit from the strong network externalities — for example, advantages emanating from other airlines' use of the facilities such as the number of potential passengers for which a particular airport is the most convenient airport, the number of destinations served, and the frequency of service.

The Prices Surveillance Authority (PSA) Inquiry into Aeronautical and Non-Aeronautical charges noted the advantages held by airports, including:

- economies of scale in the provision of airport services;
- significant economies of utilisation;
- significant barriers to entry; and
- significant barriers to exit, due to large sunk costs.

Regarding barriers to entry, the PSA noted that the scarcity and costs of acquiring large tracts of land close to the city, and the costs of developing supporting infrastructure, especially for intermodal transport connections. The PSA concluded that the airport service markets are largely non-contestable and can be considered local monopolies.

The Council concluded that Sydney and Melbourne International Airports possessed features which gave them significant market power and natural monopoly characteristics. They would be uneconomic to duplicate.

In relation to the issue of whether it is possible to duplicate part of the facilities, the Vaile Report considered that the economic viability of freight airports required sufficient volumes of products over a sustained period of time with high value products a prerequisite. It concluded that this was likely to be difficult to establish given the overwhelming importance of the export of perishable products being driven by high value air freight imports and passenger services.

The Council found that on-airport and off-airport CTOs were imperfect substitutes. The consultant's report commissioned by the Council found that off-airport operators of CTO were viable and a common practice at several major overseas airports, and that they could be competitive with on-airport CTOs depending on the decisions taken by the airport owner. This is despite the fact that off-airport CTOs suffer disadvantages in double handling of freight, and in trying to meet two hour cut-off limits imposed by airlines relative to on site CTOs.

The Council considered that it was economic to duplicate the cargo terminals off-airport. As a result it considered that applications S3 and M3 did not meet Criterion (b).

Criterion C: National significance

The Council considered that, as a matter of statutory interpretation, this criterion should be applied to the facilities identified above rather than the whole airport. However, the location of the facilities at the airports was a highly important factor in assessing the facilities' significance.

On a variety of measures the facilities were nationally significant. For example, 20 percent of Australia's trade by value went through its airports, and Melbourne and Sydney accounted for 70 percent of this figure. Airfreight was growing by an estimated eight percent annually. Also the facilities were strategically significant as there was no opportunity for by-pass. Moreover, their role contributed to the possibility of creation of new forms of business such as just-in-time inventory controls.

Criterion D: Health and safety

A significant issue under this criterion was whether it was possible to operate an off-airport CTO facility safely in terms of its interface with on-airport ramp handling services.

The FAC contended that on-airport entry by an off-airport CTO operator was dangerous because it created unacceptable congestion. The FAC contended that on-airport ramp handling from an off-airport CTO service was only feasible where the CTO operator dropped cargo at a by-pass facility (for existing ramp handlers to load on planes). A by-pass facility was mooted (although not confirmed) for Sydney; there were no plans to build such a facility at Melbourne.

The Council commissioned a consultancy report that concluded:

- the operations complained of by the FAC were to some extent going on at the moment;
- overseas off-airport CTO operations were carried out;
- some of these involve ramp handling;
- there were independent ramp handlers;
- the risks could be reasonably managed;
- congestion was a function of the amount of freight rather than the number of operators;
- with appropriate incentives ramp handlers would take sufficient care to avoid accidents; and
- insurance was obtainable for the risks.

The operations proposed by the applicant were not against existing safety regulations. The Council concluded that provided new entrants observed existing safety regulations, access could be provided without undue risk.

Criterion E: Effective existing access regimes

The Council considered three possible access regimes raised by submissions. These were:

- the current administrative arrangements governing access;
- the FAC's implementation at Sydney airport of its KSA Freight study; and
- Part 13 of the *Airports Act 1996*.

The current arrangements were found to be ineffective because they were completely at the FAC's discretion, and the FAC had, to date, refused to open up access to parties other than Qantas and Ansett, and to a very small extent ACTO and another operator.

The FAC's plans at Sydney had yet to be finalised. The draft plans only contemplated entry into the CTO market.

The opportunity for declaration under the *Airports Act* was only relevant in relation to Melbourne Airport and does not come into effect until 12 months after its privatisation. In the interim, the new owner may, but does not have to, provide an undertaking as to access.

The Council was not satisfied that an adequate access regime was in place.

Criterion F: Public interest

The Council considered, and rejected, several public interest objections to declaration of the service, as follows.

- *Possible undertaking:* It was argued that declaration would deprive a new airport owner of the opportunity to lodge an undertaking. The Council considered that it was unjustifiable to delay access by potentially over twelve months. If declaration expired in twelve months, the new owner would still have some time to lodge an undertaking.

- *Expansion plans at Sydney:* It was argued that the FAC should be allowed to implement its plans at Sydney. These plans were not yet definite, and the FAC was seeking input from industry into the final form of the plans through an 'expression of interest' process. The Council considered that declaration would not prevent the FAC from pursuing these plans. However, it noted that investment decisions made in a competitive environment were more likely to be economically efficient.

- *Investment issues:* It was argued that declaration would discourage the investment necessary for effective competition. The Council did not see it as appropriate to judge between the commercial feasibility of different forms of operations. These were market-place decisions.

- *Planning processes:* It was argued that declaration would interfere with normal planning processes. In the Council's view, these issues could be addressed during negotiations of the terms and conditions of access. There were also safeguards in Part IIIA of the TPA to protect existing rights of access. Many facilities have competing uses; appropriate judgments about trade-offs are difficult without competition in all types of usage.

Duration of declaration

In respect of the applications regarding access to the services at Sydney International Airport, the Council recommended declaration for five years to allow entrants to recoup their initial investment, which includes some sunk costs in the purchase of specialist equipment.

In respect of the applications regarding access to the services Melbourne International Airport, the Secretariat recommended declaration until just before expiry of the 12 month period after privatisation in order to give the new airport owner a chance to lodge an undertaking prior to the services being declared by the Minister for Transport and Regional Development under the *Airports Act*.

B8.44 Brisbane to Cairns rail freight services

The application

On 24 December 1996, the Council received an application from Carpentaria Transport Pty Ltd seeking declaration of specified rail freight services on the Brisbane-Cairns corridor.

Carpentaria, which is owned by TNT Ltd, transports and warehouses freight in Queensland. It already moves freight along the coastal corridor extending as far as Cairns by dedicated trains operated by Queensland Rail (QR).

Carpentaria sought increased access to services provided by QR needed to run dedicated trains along the Brisbane-Cairns line. It specified a range of facilities — including narrow gauge track, rollingstock, shunting equipment, lifting equipment, and terminals — which it argued was necessary to provide the service.

The process

In processing the application, the Council:

- advised QR and the Queensland Premier of application;
- held discussions with Carpentaria and QR;
- placed advertisements in major newspapers and in January 1997, seeking submissions by 7 March 1997;
- released a Discussion Paper;
- received 27 submissions; and
- commissioned a consultancy to examine the feasibility of duplicating rollingstock.

The Council had originally anticipated making its recommendation on 2 May 1997, but the late arrival of a major submission from Carpentaria delayed the process.

On 3 June 1997, the Council forwarded its recommendation to the Queensland Premier. It recommended against declaration of the service. The Council considered the application failed Section 44F(4), which is a test of whether it is economic to duplicate part of the facilities, and consequently Criterion (c), the test of national significance.

On 1 August 1997, the Queensland Premier announced his decision not to declare the service as he considered that the application failed Criterion (a), Section 44F(4) and Criterion (f). The Premier's statement of reasons differed in several respects from the Council's. The areas of difference are discussed after the following summary of the Council's assessments against each of the criteria for declaration.

On 21 August, Carpentaria lodged an appeal against this decision with the Australian Competition Tribunal. The appeal has yet to be heard.

Criterion A: Access would promote competition in another market

In the first instance, the Council's analysis focused on establishing whether the market for the service for which access was sought fell outside the market in which competition would be promoted. The Council identified the possible markets relevant to its analysis as:

- the market for the service of moving freight by rail; and
- the market for freight forwarding services, which involves door-to-door freight movements potentially using a range of transport modes.

Carpentaria argued the rail freight services market is 'functionally' different from the freight forwarding market, and that rail linehaul services are a different market from road linehaul services based on the 'product dimension' of the market.

QR, on the other hand, rejected the idea that there is a separate market for freight forwarding services, nor indeed a separate rail freight transportation market. Rather, it argued that these are all elements of a 'total logistical transport solution'.

After assessing the evidence presented, the Council concluded rail linehaul services and freight forwarding services were in separate markets because:

- customers do not consider the service of rail transport is substitutable for a freight forwarding service. Increasingly, customers are looking for timing and logistics management in addition to shipment such that the products of freight forwarding and rail transport are different;
- QR is competing to provide freight transport services both to end users and to intermediate service providers: that is, freight forwarders. That one company sells two types of services does not mean that these services are necessarily in the same market; and
- freight forwarding and rail freight services are in different functional markets based on tests by Henry Ergas, and Smith and Norman.

Having determined this, the Council then considered whether access would promote competition in the freight forwarding market.

The Council considered that increased rail access could promote competition by improving the prospects for entry, innovation and market structure in the freight forwarding market. Increased competition would see increased cargo volumes, increased efficiencies and lower costs in freight forwarding, choice to freight forwarders which could encourage improvements in service and

lower prices, and the potential for new entrants to provide a complete transport service, including new entrants to rail transport.

The Council recognised that the increase in competition is unlikely to be large and would not directly affect all aspects of the freight forwarding market, but was satisfied that increased rail access would increase competition in those segments of the non-bulk freight market that see rail as the preferred transport mode. Rail seems to be the only viable transport option for many of the types of freight carried by Carpentaria and other freight forwarders. Further, if substantial improvements were made in the efficiency of rail operations, an access regime could enhance competitive pressures in the transport of all non-bulk freight.

In reaching this conclusion, the Council considered and rejected the following arguments against declaration.

- *High levels of contestability between rail and road:* It was argued that there is already significant competition from road haulage. While accepting this in relation to some products currently transported on QR's network, the Council considered that road and rail are not good substitutes for all of the services for which Carpentaria sought access. Carpentaria demonstrated a range of scenarios where the costs of road transport services would be considerably higher than for rail.

- *Carpentaria already has access:* It was argued that Carpentaria already has access to the Brisbane-Cairns corridor, so further access would not promote competition. On this matter, the Council accepted Professor Ergas's view that declaration will lower the barriers to entry and exit for other third party access, as well as for Carpentaria. Therefore, access would be expected to place pressure on QR and Carpentaria to provide the best services possible.

- *The service is Carpentaria-specific:* It was argued that Carpentaria's investment in terminals, timepaths and customers makes the service Carpentaria-specific, so access would not promote competition. However, the Council noted the declaration process only gives a third party a right to negotiate terms and conditions of access, with arbitration if required. It does not give a right of exclusivity to specific timepaths. Nor, since the declaration period is finite, does it confer a permanent right of access.

- *Permanent allocation of rollingstock:* It was argued that declaration would require a specified number of rollingstock be permanently allotted to Carpentaria. The Council noted, however, that declaration would look at types not numbers of rollingstock. Further, arbitration of a dispute could require expansion of capacity at the access seekers' expense to accommodate additional rail operators.

- *Lack of lower prices:* It was argued that access may not result in lower prices if QR applied full cost recovery and commercial rates of return. The Council felt this argument prejudged the issue and is not relevant to any criterion considered by the Council. In any case, prices are not the only variable which would be affected by greater competition in freight forwarding.

- *Existing competition in freight forwarding:* It was argued there is already strong competition in freight forwarding which is unlikely to be enhanced by declaration. The Council noted, among other things, that rail is the only viable transport option for much

of the freight carried by Carpentaria and other freight forwarders, and concluded that access arrangements, by intensifying rail competition for freight, would be likely to increase competition in the freight forwarding market.

- *Carpentaria has market power:* It was argued that Carpentaria has significant market power in rail and road, meaning that providing Carpentaria with access could entrench its position — rather than stimulate competition. However, the Council was not convinced that Carpentaria is so dominant in the market that it could retain all the benefits from access, rather than seeing them flow at least in part to consumers. Nor was the Council convinced that Carpentaria could prevent existing operators gaining access to QR's linehaul services in order to expand, or that it could prevent other players from entering the market.

- *Small scale of general freight operations:* It was argued that general freight represents a small proportion of total freight traffic on the line such that benefits may not flow from subjecting a small dispersed rail freight task to competition from a new private rail operator. The Council stressed that the terms of access are automatically available to other third parties. Given that some products are specifically suited to rail transport, improvements in rail services do have the potential to flow through into freight forwarding.

- *Abuse of market power:* Carpentaria and QR both argued that the potential for competition in another market is affected by the other party's use of its market power. Both parties deny that they have monopoly power or that they would act in a way to exploit that power. The access provisions were not set up to address the issue of abuse of market power. This issue is covered under Part IV of the TPA.

Criterion B and Section 44F(4): Uneconomic to duplicate all or part of the facilities

The application covered several facilities:

- track;
- above track facilities including locomotives and rollingstock;
- terminal facilities and loading equipment; and
- impact of factors such as safety accreditation.

Given the massive capital investment required to duplicate track alone, the Council agreed with submissions that it was not possible to develop another set of facilities to provide the entire service.

The question thus became whether it is economical to develop another facility (or facilities) to provide *part* of the service — the Section 44F(4) test.

To address this issue, the Council needed to devise some guidelines for dividing facilities which provide the service into appropriate parts. In doing this, the Council was conscious of the risk of incorrectly recommending declaration because monopoly facilities were bundled with those operating in competitive markets. But it had to balance this against the risk of incorrectly

recommending against declaration because a very small part of the facility is theoretically possible to duplicate. The Council concluded that it is possible that part of the service will be commercially viable to duplicate when either:

- the service is provided by several separate facilities; or
- the service has a number of component parts which could be separated. For instance, some infrastructure facilities can be used for several purposes. If a declaration application covers a number of purposes, it would be legitimate to consider each purpose separately when assessing whether it is possible to develop another facility that could provide part of the service.

In this case, the service was defined as a rail transport service, provided by multiple facilities.

Generic arguments for all parts of the service

One argument Carpentaria raised was that none of the facilities could be economically duplicated in the timeframe for which declaration was sought given the characteristics of the Queensland rail freight market and QR's position in that market.

The Council did not accept that the test of whether it is uneconomic to duplicate the facilities should be based on whether a rate of return can be made within the declaration period sought, in this case seven years. Rather, in the Council's view, the commercial rate of return should be based on industry standards for investment. Otherwise, a third party could seek access to facilities and specify an unrealistically short period of time, say two years, in which it could not repatriate the costs of investment, and hence the facilities would obviously be uneconomic to duplicate. The Council also noted that the expiry date for declaration does not mean that access necessarily reverts back to the previous terms and conditions, as anyone can apply to have the service redeclared.

Another argument Carpentaria raised was that it required access to *all* the services to enable effective competition in price, product, and service packages offered to customers. If all of the services were not declared, Carpentaria argued that it would not be possible to get access at all due to predatory pricing and control of barriers to entry.

The Council considered that potential abuse of monopoly power is not relevant for assessments against this criterion. Rather, they are an issue for other parts of the TPA.

Track

All of the submissions accepted that the track facilities are uneconomic to duplicate. The Council agreed, recognising that the track involved substantial fixed costs (many of which are sunk), and relatively low variable costs.

Above track facilities including locomotives and rollingstock

In relation to rollingstock, Carpentaria argued that the defined service displays monopoly characteristics that render it uneconomic to duplicate, including the nature of narrow gauge equipment in Queensland. Carpentaria argued that second hand rollingstock which is currently

available is poor quality and in limited supply, it would take 18 months to 2 years to build new rollingstock, and that QR is a large player in the market and currently owns the bulk of the rollingstock available in Queensland.

While recognising these points, the Council did not believe they warrant the declaration of rollingstock. Other submissions pointed to many precedents to demonstrate 'above rail' facilities are economically feasible to duplicate. Indeed, drawing on expert advice, the Council concluded there are a range of options for providing rollingstock which could be used to supply all or part of the needs of Carpentaria or any new entrant into the market. These include:

- purchase of second hand rollingstock;
- purchase of new rollingstock;
- leasing (second hand or new);
- conversion of standard gauge equipment to narrow gauge; and
- continuing to lease from QR.

While the economics of each of these options will vary depending on the particular service being provided, the Council considered that the purchase or lease of new locomotives or wagons, and the provision of breakdown and other ancillary services through paid service contracts, are economic for third parties to duplicate.

The Council concluded that rollingstock is economically feasible to duplicate.

Terminal facilities and loading equipment

Carpentaria argued that the existence of excess capacity at current QR terminals means it is uneconomic to duplicate terminal facilities as the existing facilities are sufficient to service the entire market. However, the Council noted that, while it may be highly desirable to allow joint use of terminal facilities wherever possible, the existence of substantial excess capacity does not mean they are not economically possible to duplicate.

A number of submissions argued that the fact that Carpentaria already owns or operates many terminals currently used for the service shows that it is economic to duplicate large parts of the facilities. However, the Council noted that the existence of terminals in places like Gladstone, Mackay and Townsville partly reflects historical 'conditions of entry' to the Queensland market imposed by the State government.

Nevertheless, on the evidence provided, the Council did consider that terminals and lifting equipment are economic for a third party to duplicate, given the availability of land in most regional Queensland centres, and the relatively low costs to establish terminal facilities.

Other factors such as safety accreditation

Carpentaria argued that while safety accreditation could be obtained, it represents an additional long run cost penalty and hence a barrier to entry to a new entrant. However, the Council examined the requirements of Queensland's safety accreditation regime and found no evidence that it is more onerous in its requirements than other states. The Council concluded there is

adequate scope to contract aspects of these services, or to seek to obtain some form of limited accreditation.

Capacity of QR's facilities to provide the service

Many submissions questioned whether QR's rollingstock and terminals currently have sufficient capacity to accommodate access by Carpentaria. In the Council's view, this was not an issue for the consideration of whether to *declare* a service. Whether there is sufficient capacity to allow access is addressed through negotiation and arbitration. The arbitrator can require the infrastructure owner to extend capacity to accommodate access if that is warranted. This extension, however, must be paid for by the access seeker.

Conclusion

The Council concluded that it would be economical to duplicate the 'above rail' elements of the service, including rollingstock and terminals, and that a range of narrow gauge rollingstock, whilst perhaps less than optimal, can be sourced for the QR system. On the other hand, the Council concluded that the track could not be economically duplicated.

Criterion C: National significance

In looking at this criterion, the Council needed to determine whether it should assess the national significance of the facilities defined by the application (that is, track, rollingstock, lifting and shunting equipment) together or on an individual basis. The Council recognised that, if it over-aggregates facilities, it risks recommending declaration of facilities which are not nationally significant. Against this, if it disaggregates facilities too far, it risks recommending a service not be declared simply because one facility, which is integral to providing that service, is not nationally significant.

The Council considered the appropriate way to assess the national significance test will vary between applications and will depend on factors such as the extent to which each of the facilities are integral to providing the service the applicant is seeking access to. This will be determined in applying the test of Section 44F(4).

The Council considered that there should generally be consistency of treatment of the criteria which specifically address the facilities providing the service: that is, Criterion (b), Section 44F(4), and Criterion (c). Whether the facilities should be considered separately under Criterion (c) will therefore depend on whether it has been concluded under Section 44F(4) that the facilities can in part be economically duplicated.

In this case, rollingstock and terminals were earlier judged to be economically feasible to duplicate and therefore not essential to gaining effective access to QR services. Hence, the Council decided to consider national significance in relation to the separate facilities: that is, the track, locomotives and rollingstock, and terminal facilities and loading equipment.

The Council concluded the track is nationally significant due to its physical size, the importance of the ports served, and the operation of the corridor as the main trunk line of Queensland's rail

system providing rail transport services to the major centres in Queensland. The Council did not consider the rollingstock specified and the terminals nominated to be nationally significant.

Criterion D: Health and safety

Carpentaria sought access to the service as it is presently provided by QR and therefore contended there were no undue risks to human health and safety. QR did not raise any health and safety risks from access provided requirements for dangerous goods and out of gauge loadings were complied with.

The Council examined the requirements of the Queensland safety accreditation regime and found it to be very similar to those operating in other states.

Criterion E: Effective existing access regimes

Legislation to establish the Queensland State access regime occurred late in the Council's consideration of the application. The Council understands that the regime is yet to cover Queensland rail services. As declaration was not recommended in relation to the other criteria, the Council did not fully consider the regime. A full examination of the regime would necessarily be carried out in the context of future applications.

Criterion F: Public interest

Under this criterion, the Council needed to assess whether declaration would be *contrary* to the public interest. Since the application did not satisfy criteria (a) to (e), the Council provided comments under this criterion for discussion only.

The Council considered several objections, including the following.

- *Pending state access regime:* It was argued that declaring the service would be inappropriate ahead of the introduction of the Queensland state access regime. The Council cannot assess the effectiveness of the Queensland regime until the regime is in place and without a full public process. The Council could not be certain about the nature of any access codes which may be introduced for rail under the regime, and whether all the elements in the Carpentaria service would be covered by the regime.

- *National developments:* It was argued that declaration would have adverse implications for other rail services in Australia including national developments to establish a national track authority, consistency across access regimes, and realisations from asset sales. The Council saw no more uncertainty resulting from a decision to declare than presently exists. Part IIIA presently applies to all rail operators who are all equally open to declaration. By examining the merits to declare or not, the Council is seeking to better define those situations where declaration would be relevant. Publishing the Council's views on what aspects of rail services do and don't meet the criteria for declaration, and

even the introduction of access regimes in some areas, would increase certainty by raising the level of information available on what services could be declared and how access would work in practice. The Council concluded that this consideration should not prevent recommendation of declaration.

- *OHS and industrial relations:* It was argued if a new entrant used different policies than QR's, issues could emerge in such areas as award and union coverage, award conditions, OHS compliance by new entrants using QR's network, uniformity of enterprise bargaining, access of personnel to QR sites, and Carpentaria using its own employees for limited aspects of the service. However, the Council concluded that the Queensland Government safety accreditation scheme covered the issues raised in relation to OHS concerns. It also found that the industrial relations issues identified are part of normal commercial considerations which apply across all industries, and are not rail specific. No specific examples of 'different policies' to be used by Carpentaria were cited.

- *Employment and regional development issues:* It was argued that reduced QR revenues would place pressure on employment in rural communities in North Queensland. However, Carpentaria applied for access as a means to expand rather than contract its operations. A decision to declare could also result in other competitors further utilising the rail line which could result in an increase in rail transport. Furthermore, there are potential benefits to regional Queensland of a more efficient transport system to service the needs of North Queensland. It is difficult to accurately gauge the extent to which changes would occur. The Council felt there was insufficient evidence to conclude that declaration would be contrary to the public interest in terms of these issues.

- *Historical matters:* It was argued that there were historical arrangements, including the recent history of negotiations between QR and Carpentaria, such that the Council should await the outcome of future negotiations between the parties. The Council substantively addressed this argument under Criterion (a). The benefits of declaration would be to open new opportunities from competition in terms of efficiency and potential new entrants.

The Premier's decision against the CPA criteria

The Queensland Premier announced his decision not to declare on 1 August 1997. The Premier's statement of reasons differed from the Council's reasons in several respects. The Premier did not agree with the Council's recommendation in relation to Criterion (a), the Section 44F(4) test, and Criteria (c) and (f). The areas of difference were as follows.

Criterion A

The Premier was *not* satisfied that access would promote competition in another market.

In the decision, he argued that without more data and extensive economic research, it was not possible to determine whether access would promote competition in another market. The Premier also indicated in his reasons that he was not satisfied there is a separate market for the service, and did not accept that freight forwarding is a distinct market.

This differs from the Council's assessment, which concluded on several grounds that rail linehaul services and freight forwarding services are in separate markets, and that increased access would promote an increase in competition which, while unlikely to be large, would not be trivial either.

The Premier also argued that, even if freight forwarding was a distinct market, access would not promote competition due to constrained capacity resulting in queuing problems.

As noted earlier, the Council considered that this issue is not relevant for considering whether a service should be declared. Rather, the issue properly arises in the negotiation and arbitration phase. Arbitration may require that an infrastructure owner extend the facility at an access seeker's expense.

Section 44F(4)

The Premier agreed that it would be economical in part to develop above track facilities such as rollingstock and terminals.

However, in his reasons, the Premier states that '...it may not, however, be commercially feasible to reproduce all of the components of the above track service within the timeframe to which the access application has laid claim'.

The Council, in its reasons, did not accept the idea that the declaration period sought defined the criteria of whether a facility would be economic to duplicate on the basis that applications could specify unreasonably short periods for declaration to meet this criteria.

Criterion C

The Premier decided the facility as a whole met the criteria of national significance.

In the Council's reasons, as rollingstock and terminals were considered to be economical to duplicate under Section 44F(4), the Council concluded that national significance be determined for the separate facilities of track, locomotives and rollingstock, and terminal facilities including loading equipment. The Council's recommendation concluded that the track only could be considered to be nationally significant on the basis of importance to the national economy and size.

In his reasons, the Premier considered the facilities both in aggregate and separately. He agreed that rollingstock and terminals are economically feasible to duplicate and do not meet the national significance criterion. His concluding paragraph states:

The TPA requires an examination of whether the facility is of national significance. I believe that the facility, as a whole, is of national significance; however, the separate above track facilities are not of national significance.

Criterion F

The Premier stated in his decision that he did not consider Carpentaria's application 'demonstrated a public interest benefit', and that granting access to QR's above track services would discourage investment by both QR and other users.

The Council notes that the test of Criterion (f) is expressed in the negative — 'not contrary to the public interest' — rather than the positive — 'in the public interest'. This reflects the fact that Criteria (a) to (e) already addressed positive elements in the public interest.

The Premier's reasons also noted the ACCC applies a wide range of criteria in determining the public benefit in authorisations and notifications, and in applying the concept in rural guidelines.

While this is correct, the Council does not consider that these matters are of any particular relevance for considering whether declaration would not be contrary to the public interest as required under Part IIIA.

B8.45 Sydney to Broken Hill rail services

The application

On 4 February 1997, Specialized Container Transport (SCT) applied to the Council for declaration of the Sydney-Broken Hill rail service provided by the NSW Rail Access Corporation (RAC).

SCT currently provides an interstate rail freight forwarding and distribution service from Melbourne to Perth. It commenced this service in July 1995 and currently operates two train services per week on this route. The company began operating in 1974 as a freight forwarder and has warehousing facilities in Sydney, Perth, Brisbane, Melbourne and Adelaide.

SCT is seeking to offer its own rail freight forwarding service between Sydney and Perth. It intends to carry freight on RAC track between Sydney and Broken Hill, for on-carriage to Perth via the transcontinental railway owned by Australian National which traverses South Australia and runs into Western Australia.

In its application, SCT sought declaration of:

- standard gauge railway lines between Sydney and Broken Hill along the routes, Sydney-Lithgow-Parkes-Broken Hill and Sydney-Cootamundra-Parkes-Broken Hill; and
- services provided by rail infrastructure facilities which are integral to providing access to these lines.

RAC is a NSW Government agency which sells access to the state rail network to existing and new passenger and freight rail operators.

The process

In processing the application, the Council:

- notified the RAC and the NSW Premier;
- placed advertisements in major newspapers on 21 February 1997 seeking submissions from interested parties by 7 April 1997;

- released an Issues Paper in February 1997;
- received 16 submissions; and
- held discussions with SCT and officials of the NSW Government, RAC and the NSW IPART.

On 16 June 1997, the Council recommended to the Premier of NSW that the service to which SCT seeks access be declared.

On 18 August 1997, the Premier announced that he had decided not to make a formal decision in relation to the Council's recommendation given work being undertaken between the Council and the NSW Government in relation to its application for certification of the NSW Rail Access Regime. As a result, the service is deemed not to be declared.

On 27 August 1997, SCT lodged an appeal against this outcome with the Australian Competition Tribunal.

Criterion A: Access would promote competition in another market

In assessing the application against this criterion, the Council:

- considered whether the service for which declaration was sought is in a different market to the market in which competition might be promoted by access; and
- determined whether declaration would indeed promote competition in that market.

The service SCT wanted declared is certain RAC track and related infrastructure in NSW so that it can run its own freight trains on that track, whereas the markets in which competition might be promoted are the freight transport market and the broader door-to-door freight forwarding market. The Council considered that the market for the service and the other markets are indeed separate, on product and functional dimensions. It also noted that access might promote competition not only in the interstate freight market but also in the intrastate market.

But would access actually promote competition? The Council recognised that the key factor in this respect is the extent to which rail transport is substitutable for transport services provided by other modes. If there is effective competition between modes, then access would have very little affect on competition in the freight transport market.

In considering this matter, the Council had regard, among other things, to the BTCE's multi-modal transport analyses. It noted that freight can at a basic level be categorised as cost sensitive or time sensitive, and that there are two principal types of freight moved: bulk freight, such as coal, ores, minerals, grain and fertiliser; and non-bulk freight which is a container load or less of goods such as manufactures, packaged foodstuffs or livestock.

The Council's deliberations were as follows.

- *Air versus rail:* The Council did not consider air and rail transport to be generally substitutable for each other. Cargo normally carried by air cargo is non-bulk only and usually time sensitive. Further, regional areas served by intrastate rail services often have

poor access to air freight services. Competition with air freight services in a typical mainland corridor is usually confined to overnight express road freight services.

- *Sea versus rail:* While substitution is theoretically possible between sea and rail transport on the Sydney-Perth route, the Council considered that it was unlikely to be significant. The *bulk* freight task in this market is very low, and rail does not appear to contest it. And the volume of *non-bulk* freight transported by sea between Sydney and Perth is low relative to total freight moved in this market. And clearly, there is little possibility for substitution in the intrastate market under consideration.

- *Road versus rail in the interstate bulk market:* The Council noted that rail has significant advantages over road transport in the interstate bulk freight market, but that most of the bulk freight task between Sydney and Perth is carried by coastal shipping anyway.

- *Road versus rail in the intrastate bulk market:* As road is generally competitive with rail in the bulk freight market only in short haul tasks, the Council found that road transport would not significantly limit any increase in competition in this market which might result from declaration of the service.

- *Road versus rail in the interstate and intrastate non-bulk market:* the Council noted that rail clearly faces strong competition from road transport in many segments of the non-bulk market, meaning that the provision of access to rail would not necessarily increase competition significantly in relation to those segments. However, the Council noted that it is feasible that rail is the preferred transport mode for some non-bulk freight, for example, steel products. This could provide rail operators with a substantial degree of market power in this segment of the freight market. In turn, this means that competition from road would not significantly reduce any gain in competition from increased access to rail in these segments.

Having assessed the potential for intermodal substitution and competition, the Council examined the likelihood that declaration would increase competition. Among other things, it noted evidence from both the National Rail Corporation (NRC) and SCT itself that there had been significant reductions in freight-rates (around 40 percent) after SCT and TNT commenced competing on the Melbourne to Perth route. It also noted views by the RAC that SCT is a price and service competitive freight transporter and that access would likely promote competition. It also noted some specific freight tasks for which access could promote competition. For example, the Council observed that the markets for carriage of non-bulk goods by rail between Sydney and Perth and between Sydney and Broken Hill are currently serviced only by NRC and FreightCorp, respectively. The Council believed that the entry, and threat of entry, of other rail operators has a potential to enhance competitive pressures in these markets, through lower prices and improved quality or new types of services which are likely to be offered by new operators seeking to gain a share in these markets.

The Council concluded that access to the Sydney-Broken Hill service would promote competition:

- in the markets for interstate and intrastate transport of non-bulk goods by rail, by improving the prospects for entry of other rail freight operators to these markets; and
- in the intrastate transport of bulk goods by improving the prospects for entry of other rail freight operators to the market for carriage of bulk goods, such as grain, by rail.

Criterion B and Section 44F(4): Uneconomic to duplicate all or part of the facilities

In assessing this matter, the Council observed that:

- the related infrastructure for which declaration is sought — such as cuttings, earthworks, tunnels, bridges, level crossings, signalling and train control systems, and associated works, buildings, plant and machinery — is integral to the service provided by the track;
- the service has 'natural monopoly' characteristics, requiring large up-front investments and their variable operating costs are relatively small;
- NRC estimated that the annual capital cost of duplicating the infrastructure would be in excess of four times the total available revenue which could be earned from the Sydney-Broken Hill service;
- a BTCE study estimated that the NSW-Broken Hill line should have sufficient capacity to cope with demand anticipated over a period of 20 years; and
- the barriers to investment in a duplicate facility caused by the high sunk costs of the present facility are accented by the particular geographic features associated with part of this service and its excess capacity relative to demand.

The Council considered that it would be uneconomical for anyone to develop another facility to provide the Sydney-Broken Hill service, or to provide part of that service.

Criterion C: National significance

The Council considered that the facility is nationally significant in terms of *size*. In this context, it noted that the Sydney-Lithgow-Parkes-Broken Hill line and the Sydney-Cootamundra-Parkes-Broken Hill line are approximately 1,332 kilometres and 1,697 kilometres in length, and carry 4.9 million and 6.2 million tonnes of freight per annum, respectively. It also noted that the estimated cost of duplicating these lines is in excess of $1.5 million per kilometre of track.

Regarding the facility's *importance for interstate commerce and trade*, the Council observed that a significant volume of freight is transported interstate via the Broken Hill line. As well as bulk freight, more than one million tonnes of non-bulk freight is carried between Sydney and Adelaide via Broken Hill. The monetary value implied by these volume figures is considerable.

Regarding the facility's *importance to the national economy*, the Council observed that both the Sydney-Lithgow-Parkes and Sydney-Cootamundra-Parkes sections of the Sydney-Broken Hill service traverse important economic centres in southern and south west NSW, many of which depend on rail transport for carriage of the commodities which they produce, particularly grain. The Council also observed the importance of these lines for the carriage of coal. Overall, the Council considered the facilities to be nationally significant on the basis of their importance to the national economy given the:

- location of the facilities in relation to the sources of production of several major export commodities;
- value of sales of these commodities;

- limitations on their carriage by other transport modes;
- prospects that access will facilitate entry of other rail freight operators to the market for carriage of bulk goods; and
- probability that entry of other operators would substantially promote competition.

Criterion D: Health and safety

SCT stated in its application that access to the service may be provided by means of an agreement between RAC and SCT. This agreement would, among other things, specify the times at which SCT trains would use the route and provide specifications for the operations of those trains and related matters. SCT therefore argued that providing access would not pose any undue risk to human health or safety. Other submissions did not disagree.

Several pieces of legislation and other regulatory instruments governing rail operations in NSW, and the Council observed that all public and private rail operators in NSW must comply with these controls. It concluded that access to the Sydney-Broken Hill service could be provided without undue risk to human health and safety.

Criterion E: Effectiveness of NSW Rail Access Regime

Infrastructure services covered by 'effective' access regimes cannot be declared under Part IIIA of the TPA. NSW has established an access regime for its rail network. As this regime has not been certified, the Council was required to consider its effectiveness in relation to SCT's declaration application.

To be deemed effective, a State or Territory access regime must meet all the relevant criteria contained in Clauses 6(2)-(4) of the CPA.

In this case, the Council judged that the regime is ineffective when considered against clauses 6(4)(a)-(d). The Council did not undertake a full assessment of the regime because:

- the Council was also considering an application for declaration of the NSW Hunter Valley Coal lines. Submissions to that application, which were likely to contain more information on the regime, did not close until 11 June 1997;
- the Council received an application to certify an amended NSW Rail Access Regime on 12 June 1997. The certification process had the potential to draw out more information and, as the Council considered that as the regime was not effective for SCT's application, it would be more productive to deal with the full consideration of the regime in the context of the certification application; and
- the Council had commissioned a consultancy looking specifically at assessing the pricing principles of the NSW regime against the Clause 6 principles of the CPA. This work was expected to be completed by the end of July 1997 and could not be taken into account fully in the context of SCT's application.

The Council's reasons for finding the original NSW Rail Access Regime ineffective are as follows.

Clause 6(4)(a)-(c)

Clause 6(4)(a) requires that, 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. This is supported by Clauses (b) and (c) which require that, where this cannot be reached, the regime must establish a 'right to negotiate' supported by an 'enforcement process'.

The Council judged that the NSW Rail Access Regime was ineffective against these criteria. In doing so, the Council noted that new entrants had been unable to enter the market for rail freight services in a timely manner and an existing operator, NRC, had experienced difficulties in finalising its access arrangements. The Council considered that if entry is discouraged, the competitive discipline from market contestability is diminished and the benefits which may be realised from competitive rail freight services will not be available to consumers. Further, the Council noted the transaction costs, such as legal costs, associated with the NSW regime's negotiation and arbitration process.

The Council believed that commercial negotiation of access had been impeded by the combined effect of:

- the uncertainty of the funding methodology for rail CSOs in NSW;
- a general lack of clarity on the application of the NSW Regime's pricing principles; and
- the absence of adequate information on access prices.

Clause 6(4)(d)

This criterion provides that State or Territory access regimes should contain mechanisms to review, over time, the right to negotiate access. The policy intent of clause 6(4)(d) is to provide for a periodic review of the need for access regulation to apply to a particular service. For example, while a facility may not be economically feasible to duplicate at present, market evolution may change this situation in the future. As such, the Council believes that the review provisions in clause 6(4)(d) relate to the point in time at which a decision is made to apply an access regime to a particular service; that is, to the decision to cover or declare the service.

In assessing the NSW Rail Access Regime against this criterion, the Council observed that there were no provisions within the regime to review the right to negotiate access. The Council therefore considered that the NSW Rail Access Regime did not meet clause 6(4)(d) of the CPA.

Criterion F: Public interest

Proposed future access arrangements for interstate track

The Commonwealth Government has foreshadowed establishment of a new government owned national track entity, in 1998, to manage the interstate rail network. Several submissions raised these forthcoming rail access arrangements as a reason, under public interest grounds, for the Council not recommending declaration.

However, the Council resolved that declaration of the Sydney-Broken Hill service would not preclude the establishment of such an entity nor a 'national' track access regime, because the introduction of an 'effective' national regime would mean that the conditions for declaration are no longer met. Were such a regime introduced, the Council could revoke declaration of the Sydney-Broken Hill service under Section 44J of the TPA. As part of this process, the Council would consider the implications of revocation for intrastate rail operators.

Concerns raised by the NSW Government

The Council received an application for certification of an amended NSW Rail Access Regime on 12 June 1997, just prior to the lodgement of the Council's recommendation.

Following this, the NSW Government expressed concern about the Council recommending declaration of the Sydney-Broken Hill service given that an application for certification of an amended NSW Rail Access Regime had been submitted.

While the Council believed that the NSW Government's application for certification demonstrated its commitment to introducing an effective access regime, the Council considered its priority to be that affective access arrangements are implemented as soon as possible in those areas where such arrangements are appropriate.

The Council decided that it was appropriate that a full assessment of the NSW Rail Access Regime be undertaken as part of the certification process. As there is no guarantee of when any necessary changes would be made to the regime, the Council cannot be sure of when this regime would be effective. The Council has the ability to revoke an access declaration after an effective regime is introduced. Therefore, it considered that declaring this service would not compromise the NSW Government's ability to implement uniform, effective access arrangements for the NSW rail network.

Accordingly, the Council considered that there were no public interest grounds which would preclude a decision by the Council to declare the Sydney-Broken Hill service.

Duration of declaration

The period of declaration is considered by the Council on a case-by-case basis. Relevant considerations include the need to balance the benefits of long-term certainty for businesses against the potential for technological development, reform initiatives, or other industry changes which could undermine the grounds for declaration.

In this case, the Council recommended that the duration of declaration should be 15 years. In doing so, the Council noted that this duration period provides a greater level of certainty about rail access rights than currently enjoyed by private rail operators in Australia. It also noted that declaration of the Sydney-Broken Hill service could be reconsidered at the end of the 15 year period. As access seekers are able to negotiate contracts which extend beyond the period of declaration, the period of certainty for individuals could be extended, while still allowing the application of the Access Regime to be reviewed.

B8.46 Hunter Valley rail services

The Application

On 3 April 1997 the Council received an application from NSW Minerals Council Limited for declaration of the Hunter Rail Line service provided using the railway line and associated infrastructure facilities controlled by the Rail Access Corporation (RAC).

The Minerals Council represents 21 coal producing companies which use the Hunter Rail Line to transport their coal to Eraring Power Station, south of Newcastle, and to the Port of Newcastle for transport to domestic and international markets.

In the application, the Minerals Council argues that the Hunter Rail Line has the characteristics of a natural monopoly and is of substantial importance to the Australian economy in that it is a vital conduit between mines and markets. It says that declaration would allow its members to negotiate directly with RAC and freight haulers, imposing competitive pressures on both services.

The application contains complaints about the ability of the NSW Rail Access Regime to facilitate access to the Hunter Rail Line, pointing to the lack of alternatives to FreightCorp as evidence. The Minerals Council is also concerned at the pricing approach used in the regime, arguing that it is arbitrary, prescriptive and contains monopoly elements.

A threshold issue in considering this application is the interpretation of Section 78 of the *Competition Policy Reform Act 1995* which provides:

> 78(1) For the period of 5 years after the commencement of Section 59, a government coal-carrying service is not a service for the purposes of Part IIIA of the Principal Act [ie the TPA].
>
> (2) In this section:
> 'government coal-carrying service' means a service of carrying coal by rail, where the provider of the service is a State or Territory or an authority of a State or Territory.

In its application, the Minerals Council argued that, in this instance, Section 78 did not apply. The basis of its argument was the distinction drawn in the definition of a service under Section 44B of the TPA between the use of an infrastructure facility ((a) — eg a railway line) and the handling or transporting of goods or people ((b) — eg railway haulage). The Minerals Council argued that the use of a railway line falls within the definition of service ((a) — eg a railway line) under paragraph 44B. As Part IIIA of the TPA operates only in relation to a service defined under Section 44B of the TPA, the Minerals Council believes its declaration application should be considered by the Council.

In view of the importance of Section 78 to the Mineral Council's application, the Council sought independent legal advice concerning its ability to consider this application. This advice supported the views put by the Minerals Council and concluded that the application could be considered by the Council.

The process

To date, in processing the application, the Council:

- notified the RAC and the NSW Premier of the application;
- placed advertisements in major newspapers and in April 1997, seeking submissions from interested parties by 11 June 1997;
- released an Issues Paper;
- received five submissions; and
- held discussions with the Minerals Council, the RAC, NSW Government officials, FreightCorp, and other interested parties.

The Council aims to send a recommendation to the NSW Premier by 1 September 1997.

B8.47 Western Australian rail services

The application

On 25 July 1997, the Council received applications from Specialized Container Transport (SCT) for the declaration of certain Western Australian rail services.

It sought declaration of the following services:

- the service provided through the use of the Westrail railway network and associated infrastructure between Kalgoorlie and the Perth metropolitan area including access to the Forrestfield yard and the branch from the yard to the SCT terminal at Welshpool and access to the proposed Canning Vale terminal of SCT;
- particular arriving and departing services at the Forrestfield yard;
- particular marshalling and shunting services operated on Westrail track;
- particular Westrail network services and associated infrastructure to enable SCT to undertake its own marshalling and shunting activities in respect of SCT freight trains operated on Westrail track; and
- particular fuelling services operated on Westrail track including such services at and between Kalgoorlie and the Perth metropolitan area and within the Perth metropolitan area.

SCT identified Westrail as the provider of the services.

The process

To date, in assessing the application, the Council has:

- advised the Premier of Western Australia and Westrail of receipt of the applications;
- held discussions with SCT, Westrail and the Western Australian Government; and

- placed advertisements in major newspapers and released a Discussion Paper in August 1997, seeking submissions by 19 September 1997.

The Council expects to forward its recommendations to the Western Australian Premier by the end of November 1997. This date may be brought forward, however, in response to a request by SCT.

B8.5 Council recommendations on certification

As noted earlier, the Council has a role in certifying State and Territory regimes as 'effective' under Part IIIA.

To date, the Council has received three applications for certification, dealing with:

- the NSW gas distribution access regime;
- Victorian shipping channels; and
- the NSW rail network.

In processing applications for certification, the Council is required to make assessments against criteria set out in Clause 6 of the CPA. The Council conducts a public consultation process. It advertises the application, seeks submissions, sometimes releases draft recommendations, and provides a comprehensive Statement of Reasons. The Council's processes in relation to each application, and its reasoning in relation to the key issues covered in those cases where the Treasurer has made a decision, are discussed below.

B8.51 NSW natural gas distribution

The application

On 9 October 1996, the NSW Premier applied to the Council to consider the effectiveness of the NSW regime for access to the services of natural gas distribution networks.

The NSW regime comprises an access code operating in conjunction with the *Gas Supply Act (NSW) 1996*. It was developed as an interim measure until a uniform National Access Code for gas is implemented (see Chapter B7). The Council was asked to consider the effectiveness of the regime in relation to services owned by the AGL Gas Company (NSW) Limited[40] and the Albury Gas Company Limited.

40 In a recent corporate restructure, the gas distribution functions of the AGL Gas Company (NSW) Limited were relocated to a new company, AGL Gas Networks Limited.

The process

In assessing the application, the Council:

- placed advertisements in major newspapers on 14 October 1996, seeking submissions by 6 December 1996;
- released an Issues Paper;
- received 11 submissions;
- held discussions with the NSW Cabinet Office, the Department of Energy and IPART;
- released a draft recommendation on 19 February 1997 to certify the NSW regime as effective, subject to several amendments, and invited further comment; and
- received another 11 submissions.

By late April 1997, all amendments required to make the regime effective had been implemented. In addition, the NSW Government introduced other amendments to the regime, including amendments to the transitional arrangements and pricing principles, to satisfy its own policy concerns.

On 16 May 1997, the Council recommended to the Commonwealth Treasurer that the NSW Regime be certified as effective. On 18 August 1997, the Treasurer announced his acceptance of the Council's recommendation and the reasons supporting it.

Key issues considered during the application process are as follows.

Definition of 'service'

Under Clause 6(3) of the CPA, the Council can only recommend that an access regime is effective if the services it applies to are provided by significant infrastructure facilities where, in part, it would not be economically feasible to duplicate the facility.

The NSW regime, as submitted to the Council in October 1996, defined services as 'haulage provided by means of a 'Pipeline', and may include firm haulage, interruptible haulage, spot haulage, storage, balancing, backhaul and interconnection services and services ancillary to the operation of a Pipeline, but does not include the production, sale or purchasing of natural gas.'

In response to concerns that it may be economically feasible to duplicate the provision of 'storage' services *external* to a pipeline, the NSW Government amended the regime to clarify that 'storage' covers only services *within* a pipeline.

Transitional arrangements

The NSW regime includes a number of transitional arrangements, including:

- phased contestability of access; and
- rebalancing of access tariffs.

Transitional arrangements can provide a 'breathing space' for parties to adjust to the realities of a fully competitive market.

However, transitional arrangements can constrain commercial negotiation for access, and may thereby conflict with clauses 6(4)(a)-(c) of the CPA. These indicate a preference for commercial negotiation of access. The Council therefore needed to consider whether the length and nature of transitional arrangements in the NSW regime were justified.

Regarding the first point above, the NSW regime includes a timetable for phasing in access contestability for different classes of customers, with large users being granted access rights sooner than smaller users. IPART, as the regime's regulator, advocated the phased introduction of competition to address such issues as the removal of cross-subsidies between customer classes. In particular, IPART supported a gradual phasing out of cross-subsidies from the contract market to the small-user ('tariff') market, which is price sensitive due to strong competition from electricity.

The Council was concerned that the NSW regime did not initially specify a date for the introduction of competition in the retail ('tariff') market. The NSW Government later amended the regime to set 1 July 1999 as the final date to allow contestability in this market. The Council was satisfied with this timeframe, noting that it is within that agreed by COAG on gas reform.

Regarding the second point above, the NSW Government amended the regime in April 1997 to reflect that access pricing will not be fully cost-reflective during a transitional period while network charges are being restructured. IPART was concerned that, while the access tariffs AGL[41] charges its contract customers are significantly above cost, an orderly transitional path should be adopted for restructuring network charges, with an end-point of 30 June 2002. IPART argued that a sudden adjustment would cause price shocks for small consumers and adversely affect AGL's financial position.

The Council accepted that there are justifiable policy grounds for the rebalancing arrangements. In particular, the Council was satisfied that:

- clear policy justifications were identified and strongly advocated by the independent regulator; and
- the arrangements are to be transparently implemented.

Independent arbitration

Clause 6(4)(g) of the CPA requires that effective access regimes should have an independent arbitration process.

IPART has a dual role as regulator and arbitrator under the NSW regime, and some submissions argued its regulator role might compromise its independence as an arbitrator, particularly in disputes over 'reference tariffs' which it has previously approved.

41 While the Council's assessment was in relation to the NSW regime (comprising the NSW Code and the Gas Act), the AGL undertaking provided useful evidence of how the regime would operate in practice.

NSW made several amendments to the regime to address these concerns. A key amendment provides that if a party objects to IPART as arbitrator, IPART will, in consultation with the parties, appoint an alternative arbitrator.

The Council is satisfied that these amendments provide for an independent dispute resolution process. This does not, however, preclude alternative approaches. For example, an effective independent appeals process may alleviate the need for independence between regulatory and arbitration functions.

Cross-border issues

The NSW application, as submitted in October 1996, covered certain services in NSW connected via the ACT or Victoria.

The Council noted that these jurisdictions had not agreed to cross-vesting arrangements to guarantee access to the affected services. As such, the Council was concerned that the NSW regime did not provide a single process for access to these services, as required under clauses 6(4)(p) and 6(2) of the CPA.

Following discussions with the Council, NSW amended its regime to remove the affected services from its application.

Duration of certification

The Council's public consultation process revealed a consensus that the NSW regime, if certified, should be so for a period which provides certainty for industry players, while taking account of the relatively early stage of gas reform and the pending implementation of a uniform National Access Code for gas pipelines.

Balancing these considerations, the Council recommended that the NSW Regime be certified as effective for the *shorter* of 5 years; *or* 12 months from the date of enactment of the National Gas Pipelines Access law by the lead legislator, South Australia (see Chapter B7).

B8.52 Victorian commercial shipping channels

The application

On 24 December 1996, the Premier of Victoria applied to the Council to consider the effectiveness of the Victorian Access Regime for Commercial Shipping Channels.

This regime applies to Victorian commercial shipping channels covering the ports of Melbourne, Geelong, Hastings and Portland. It is given legislative effect under the *Port Services Act (Victoria) 1995* (the PSA) and is administered by the Victorian Channels Authority (VCA). The VCA is a public authority responsible for managing and maintaining the channels in

Victorian port waters, which provide navigable access for shipping vessels between the high seas and port berths. These relevant channels are those in Port Phillip Bay providing entry into the ports of Melbourne and Geelong, and the channels providing entry into the ports of Portland and Hastings. The VCA directly manages the channels in Port Phillip Bay and has channel operating agreements with the channel operators at Portland and Hastings.

The Council was asked to consider the effectiveness of the Victorian regime in relation to services provided by the channels leading to the Ports of Melbourne, Geelong, Portland and Hastings.

The process

In processing the application, the Council:

- placed advertisements in major newspapers and on 9 January 1997, seeking submissions by 21 February 1997;
- released an Issues Paper;
- received six submissions; and
- held discussions with officials of the Victorian Government, the VCA and the Victorian Office of the Regulator-General (ORG).

On 12 May 1997 the Council recommended to the Commonwealth Treasurer that the Victorian regime be certified as effective, for a period of five years. On 18 August the Treasurer announced his acceptance of the Council's recommendation and the reasons supporting it.

Key issues considered during the application process are as follows.

Arrangements for negotiating access

The Council considered the question of whether the Victorian access regime's arrangements for negotiation of access are adequate, in the context of the costs which may be incurred by a ship operator when a ship is delayed from entering port.

While these arrangements are generally not practical for vessels seeking to negotiate access charges *on entry* to port, the Council judged that they would be adequate where shipping companies or their agents are seeking to negotiate future access charges, particularly for regular users of a port. The VCA advised that it is unlikely in practice for a vessel to seek to negotiate access charges *on entry* to port, partly because of the timeframes involved and the expense an anchored vessel would incur as a result. Rather, such negotiations generally occur between a channel operator and an agent representing a vessel or shipping company in advance of a vessel seeking entry.

This regime operates along-side Victoria's pre-existing channel access arrangements which, under international conventions, ensures that freedom of entry into Victorian ports is maintained and that costly delays in port entry are avoided.

The Council was satisfied that the Victorian regime creates a 'right to negotiate' access supported by binding dispute resolution where the parties are unable to reach an agreement via commercial negotiation.

Independence of dispute resolution

The Council believes that a strong, independent dispute resolution process is critical to an effective access regime. To assess this issue, the Council looks at both the process for dispute resolution and the process for appeals against a decision of the dispute resolution body.

In assessing the Victorian regime, the Council noted concerns regarding other access regimes where the one body has been designated as regulator and arbitrator. Such arrangements may create conflict or tension where, for example, the body involved is engaged in both price regulation and making determinations on disputes about access prices.

The Council noted that, although pricing orders applicable to channel access are established initially by the Victorian Government under the regime, the ORG is responsible for subsequent price regulation, accepting general determinations and resolution of disputes about access prices.

The Council does not object in principle to the regulator of an access regime also resolving disputes, provided the regime contains safeguards where the parties to a dispute question the independence of dispute resolution by a regulator.

The Council observed the Victorian regime contains several safeguards, including transparency in the ORG's decision making process and an appeals process. While the Council considered that the independence of the dispute resolution process could have been strengthened, it deemed that the Victorian regime met the minimum requirements of the CPA in respect of dispute resolution.

Duration of certification

The Victorian Government's application did not specify a period for certification, although the regime itself provides for a review in the year 2000 of the declaration and pricing provisions.

The Council determined that the duration of certification should be five years. The Council considered that this time period will provide certainty to industry while enabling the Council to assess the Victorian regime's practical operation and effectiveness after the year 2000 review.

B8.53 NSW rail services

The application

On 12 June 1997, the Council received an application from the NSW Government to certify as 'effective' a regime for access to NSW rail services under Part IIIA of the TPA.

The NSW regime commenced operation in August 1996 and consists of the *NSW Rail Access Regime* operating in conjunction with:

- the *Commercial Arbitration Act 1984* (*NSW*);
- the *Transport Administration Act 1988 (NSW)*;
- *the Rail Safety Act 1993 (NSW)*;

- the *State Owned Corporations Act 1989 (NSW)*; and
- the *IPART Act 1992* (NSW).

The NSW Government amended the gazetted version of the regime just prior to lodging its application. These ungazetted amendments centre mainly on the arrangements for coal, particularly the phasing out of a defined monopoly profit.

The regime establishes the conditions of access by rail operators to the NSW rail network and associated infrastructure owned by or vested in the Rail Access Corporation (RAC).

The regime creates a right for existing and prospective rail operators to negotiate access if they can demonstrate a financial and managerial capability adequate to sustain their proposed rail operations.

For general cargo, the regime contains pricing principles which establish a 'ceiling' and a 'floor' between which a negotiated access price should fall.

For coal, prices are to be determined according to a schedule of haulage specific origin-destination categories.

Third parties negotiate access directly with the RAC and an arbitration and appeals process is available when disputes arise. The regime identifies factors the arbitrator must take account of in resolving a dispute. These include those under Clause 6(4)(i) of the CPA and the conditions of the regime itself. However, the regime does not provide guidance on what to do if cases arise in which these matters conflict with each other.

The process

To date, in processing the application, to date the Council has:

- placed advertisements in major newspapers on early June 1997, seeking submissions by 10 July 1997;
- released an Issues Paper;
- received two specific submissions; and
- held discussions with the RAC, the NSW Government and other interested parties.

In the Issues Paper, the Council indicated that, when considering the NSW Government's application for certification of its Rail Access Regime, it would take into account submissions made to it in relation to Specialised Container Transport's and NSW Minerals Council's applications for declaration of particular NSW rails services. The effectiveness of the NSW regime is one issue the Council was/is required to deal with in relation to those applications. Submissions made in relation to these matters addressed the issue of the effectiveness of the NSW regime in substantial detail.

This matter is still under consideration by the Council.

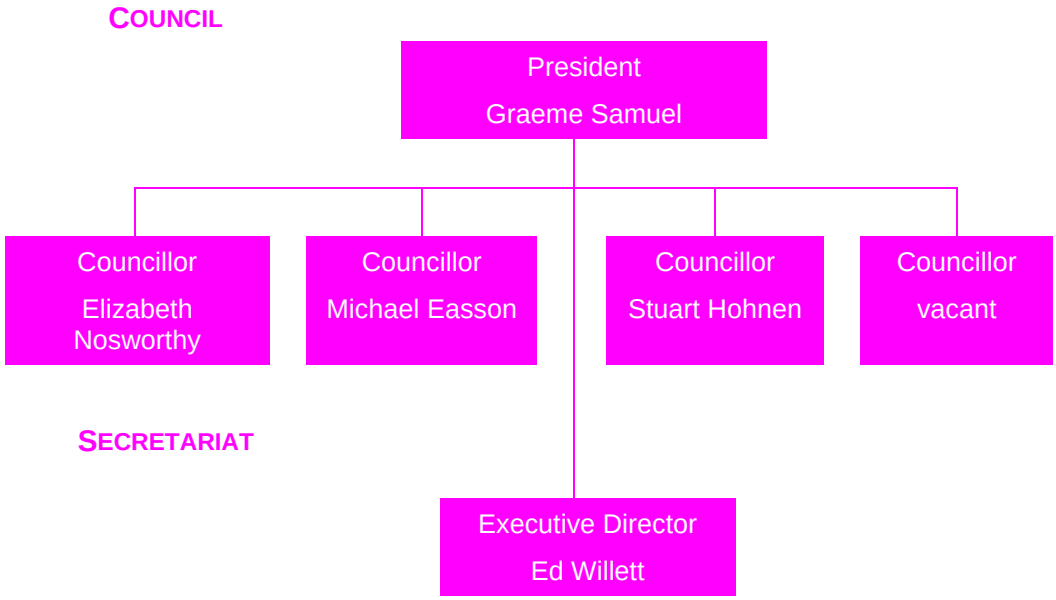
Part C Corporate review

C1 Organisation

C1.1 Structure

The National Competition Council currently comprises four part-time Councillors, with a secretariat of 20 staff located in Melbourne. The structure of the Council at 30 June 1997 is illustrated in Figure C1.1.

Figure C1.1 National Competition Council organisation chart



C1.2 The Council

Councillors

The members of the Council are drawn from different areas of the private sector to provide a range of business skills and experience. The appointments are made jointly by the Commonwealth, State and Territory governments. The Councillors are: Graeme Samuel, President (who is resident in Melbourne); Michael Easson (Sydney); Stuart Hohnen (Perth); and Elizabeth Nosworthy (Brisbane).

During the year, the former President, Tony Daniels, resigned his position. Mr Samuel was then appointed as President, for a term of five years. The Councillor position left after Mr Samuel was appointed President has yet to be filled. Each of the other Councillors has been appointed for a term of three years.

Graeme Samuel

Graeme Samuel is a company director and corporate strategic consultant. He is Chairman of Opera Australia, Chairman of the Inner & Eastern Health Care Network, Chairman of the Melbourne & Olympic Parks Trust, Trustee of the Melbourne Cricket Ground Trust and a Commissioner of the Australian Football League. He is also a Director of Thakral Holdings Ltd. Mr Samuel holds a Bachelor of Laws (Melbourne) and Master of Laws (Monash).

Mr Samuel was Partner of the law firm Phillips Fox & Masel from 1972 to 1980, Executive Director of Hill Samuel Australia Ltd and subsequently Macquarie Bank Ltd from 1981 to 1986, and co-founder of Grant Samuel & Associates in 1988.

He was President of the Victorian Chamber of Commerce and Industry from 1993 to 1995, and President of the Australian Chamber of Commerce and Industry from 1995 to 1997.

Michael Easson

Michael Easson is Adjunct Professor at the Centre for Corporate Change at the Australian Graduate School of Management, University of NSW. He is an adviser with Corrs Chambers Westgarth and with Hill and Knowlton. His current directorships include Australian Stadium 2000, Industrial Property Trust (Macquarie Bank), UNICEF Australia, Barclay Mowlem, ACT Electricity and Water and Australian Stationery Industries Group.

Mr Easson's previous appointments include Chair of the Commonwealth Task Force on Payments to Statutory Authorities and Special Purpose Payments to States in 1995-96, Director of the NRMA Insurance Group from 1994 to 1996, Director of the NSW State Rail Authority from 1989 to 1993, Secretary of the Labor Council of NSW from 1989 to 1994, Vice President of the Australian Council of Trade Unions from 1993 to 1994 and Member of the Economic Planning Advisory Commission from 1989 to 1994. Mr Easson has also been an Associate Commissioner on two Industry Commission inquiries.

Stuart Hohnen

Stuart Hohnen is a resource sector management consultant. He is Deputy Chairman of the Gas Corporation of Western Australia (AlintaGas) and a Director of Carnarvon Petroleum NL. He holds a Bachelor of Engineering (Hons) and a Master of Business Administration (Stanford).

Mr Hohnen's previous appointments include Chief Executive of the WA Department of Resources Development from 1982 to 1987, Executive Director of Anglo Pacific Resources PLC from 1987 to 1991 and Managing Director of the Cockburn Corporation from 1991 to 1993.

During 1992-93, Mr Hohnen was a member of the WA Energy Board of Review (Carnegie Review) and in 1993-94 was a member of the Energy Implementation Committee which was responsible for the restructuring of the WA energy sector.

Elizabeth Nosworthy

Elizabeth Nosworthy is a Director of Telstra Corporation Ltd and David Jones Ltd, Deputy Chairman of the Queensland Treasury Corporation, Chairman of the Port of Brisbane Corporation, a member of the Supervisory Board of General Property Trust and Brisbane Airport Corporation Ltd. She holds a Bachelor of Arts (Queensland), a Bachelor of Laws (Queensland) and a Master of Laws (London School of Economics).

Ms Nosworthy's previous appointments include partner in the law firm Morris Fletcher and Cross from 1975 to 1989, and partner in the national law firm Freehill Hollingdale and Page from 1989 to 1995. During 1986-87 she was President of the Queensland Law Society.

Ms Nosworthy was a Director of the Federal Airports Corporation from 1991 to 1994. She is an ex-Chancellor of Bond University Ltd. During 1988-89, she was a member of the Companies and Securities Consultative Group appointed by the Commonwealth Attorney General.

Council meetings

Table C1.1 lists the meetings of the Council held during 1996-97. While the Council generally meets on a monthly basis, more recently its workload has required more frequent meetings. During 1996-97, the Council met on a total of 13 occasions. The Council held 10 meetings in Melbourne, as well as one each in Perth and Canberra, and one by teleconference.

While most meetings are held in Melbourne for cost reasons, the scheduling of Council meetings in other capitals provides an opportunity for the Council to consult with State and Territory governments and government officials involved in competition reform.

In addition to their monthly meetings, Councillors and Secretariat staff have met with representatives of all State and Territory governments and/or State and Territory competition policy units during 1996-97.

Table C1.1 National Competition Council meetings 1996–97

Date of meeting	*Location of meeting*
23 July	Melbourne
22 August	Melbourne
24 September	Melbourne
28 October	Canberra
22 November	Melbourne
16 December	Melbourne
28 January	Melbourne
25 February	Melbourne
25 March	Melbourne
24 April	Melbourne
27 May	Perth
12 June	Teleconference
24 June	Melbourne

C1.3 The Secretariat

The Council is supported by a Secretariat which is located in Melbourne and provides advice and analysis at the Council's direction on matters related to the implementation of NCP. It represents the Council in dealings with Commonwealth, State and Territory government officials, other parties with interests in competition policy matters, and on several intergovernmental committees dealing with competition issues including the Gas Reform Implementation Group and the SCARM Task Force on Water Reform. Senior Secretariat staff also present conference papers on issues related to the Council's work program.

Overview of staffing developments

The Council ended 1995-96, its first year, with 13 Secretariat staff.

During 1996-97, the Council's workload began expanding more quickly than originally expected. In response, the Council received additional funding in

the 1996-97 budget.[47] This has allowed it to increase the number of staff to 20, including both permanent and temporary employees.

As at June 30 1997, the Secretariat had 20 staff, comprising the Executive Director, 16 research/policy officers and three administrative staff.

The Council is a small organisation which covers a diverse range of issues, and it was always intended that it would draw on the expertise of people in other organisations. As well as engaging consultants, the Council has seconded officers to work on specific projects. Two temporary officers have been employed to work on the review of the postal services, and an ACT Government officer was seconded to assist the Council in its assessments of State and Territory progress in implementing the NCP reforms. One officer from the Commonwealth Treasury has been seconded to work on national gas reform issues, while another from the ACCC has been seconded to work on rail access issues.

All Secretariat staff, including temporary secondees, are employed under the *Public Service Act 1922* and located in Melbourne. The Council has no inoperative staff. Staff profiles, including information on declared EEO status, is provided in Tables C1.2-4 below.

Senior Executive Service information

The Council has one Senior Executive Service position, that of Executive Director. Ed Willett has held this position throughout 1996-97. There were no additional permanent or temporary appointments to a Senior Executive Service position at the Council during the year.

47 The Council will receive an additional $882,000 in 1997-98 and $746,000 each year for 1998-99 to 2000-01 (Treasury 1997, 195).

Table C1.2 Staff profile, 30 June 1997

Level	*Female*	*Male*	*Total*
Senior Executive Service Band 1	0	1	1
Senior Officer Grade A	1	0	1
Senior Officer Grade B	2	2	4
Senior Officer Grade C	2	4	6
Administrative Service Officer Grade 6	2	2	4
Administrative Service Officer Grade 5	0	2	2
Administrative Service Officer Grade 4	0	0	0
Administrative Service Officer Grade 3	1	0	1
Administrative Service Officer Grade 2	0	0	0
Administrative Service Officer Grade 1	1	0	1
Total	**9**	**11**	**20**

Table C1.3 Staff by employment status, 30 June 1997

Level	*Female*	*Male*	*Total*
Full-time permanent	6	8	14
Full-time temporary	2	3	5
Part-time staff	1	0	1
Total	**9**	**11**	**20**

Table C1.4 Staff by EEO group, 30 June 1996

Level	*Female*	*NESB 1*[a]	*NESB 2*[a]	*A&TSI*[b]	*Disabilities*
Senior Executive Band 1	0				
Senior Officer Grades A-C	6				
Administrative Service Officer Grades 1–6	3	1			
Total	**9**	**1**			

a Non-English speaking background (first and second generation)
b Aboriginal and Torres Strait Islanders

Consultants

The Council utilised the services of consultants in 1996-97 where it considered it was efficient and cost-effective to do so. Table C1.4 list the number and value of consultancies engaged. Several of these projects are ongoing so that the total cost will not be paid until 1997-98. The value of consultants engaged in 1995-96, but paid in 1996-97, was $21,597.

Table C1.5 Summary of consultants engaged 1996-97

Purpose	*Number*	*Contract amount ($)*
Legal advice	12	29,691
Part IIIA applications	5	92,800
Publications and corporate services	3	68,410
Postal services review	3	273,000
Total	**23**	**463,901**

C2 Functions

The Council has statutory responsibilities under both the TPA and the *Prices Surveillance Act* to make recommendations to relevant governments on:

- access to significant infrastructure services; and
- whether State and Territory government businesses should be subject to prices surveillance by the ACCC.

Apart from these statutory responsibilities, the three NCP agreements establish a role for the Council in the following areas:

- advice to the Commonwealth when considering overriding State or Territory exceptions from the TPA; and
- other work on competition policy as agreed by a majority of the stakeholder governments. Some potential work program items are outlined in the CPA, including prices oversight of government business enterprises (subclause 2(2)), implementation of competitive neutrality principles (subclause 3(3)), structural reform of public monopolies (subclause 4(4)), and a review of legislation which restricts competition where the review has a national dimension (subclause 5(8)).

The Council also has an implied function of supporting the NCP process and appropriate micro-economic reform more generally. This is reflected in its mission statement:

> To help raise the living standards of the Australian community by ensuring that conditions for competition prevail throughout the economy that promote growth, innovation and productivity.

These various functions and responsibilities are reflected in the Council's work program objectives. These are set out in Box C2.1.

Box C2.1 The Council's work program objectives

- To assess progress with agreed competition policy reforms, and to recommend to the Commonwealth prior to July 1997, July 1999 and July 2001 whether the conditions for National Competition Policy payments to the States and Territories have been met.
- To recommend on applications for declaration of access to services provided by nationally significant infrastructure and the certification of access regimes under Part IIIA of the TPA.
- To recommend on whether State and Territory government businesses should be declared for prices surveillance by the ACCC, and to report on the costs and benefits of legislation reliant on section 51 of the TPA.
- To promote micro-economic reform within the community, including by undertaking research and providing advice to governments on competition policy matters.

More information about the Council's statutory and other responsibilities, and the Council's actions in relation to them over the past year, is presented in the following areas of this report:

- Chapter A3 presents an overview of what the Council has done to discharge each of its functions during 1996-97, and outlines the task ahead;
- Chapter A1 provides an overview of the NCP reforms and the Council's assessments of jurisdictions' progress in implementing them. Chapters B1 to B8 explain these matters in detail;
- Sections B8.4 and B8.5 present more detail on the Council's responsibilities regarding Part IIIA and discusses what the Council has done to discharge them over the last year; and
- Sections B2.2 and B6.2 presents more detail on the Council's responsibilities in relation to Section 51 exceptions and prices surveillance, and discusses relevant activity over the last year.

C3 Management

C3.1 Staff development and management

Training

Excluding salary costs of staff undertaking training, a total of $11,082, representing 1.1 percent of the Secretariat's salary costs, was devoted to staff training for 1996-97. In total, 11 Secretariat staff spent 31 person days in relevant training programs during the year. Seven staff participated in a variety of training programs in areas such as financial management, skills development, reporting requirements, and professional development. In addition, five Secretariat staff attended conferences on issues associated with competition policy and its implementation. In-house training for all staff was held in occupational health and safety (OH&S) and fire procedures. Three officers are currently receiving assistance to undertake further tertiary education.

Industrial democracy

Industrial democracy plan

The Council adopted the Commonwealth Department of Treasury's draft *Industrial Democracy Plan 1994–96* as the basis of its own industrial democracy practices during the year.

As required under section 22(c) of the *Public Service Act 1922*, the Council is developing its own industrial democracy plan. The plan is still under consideration, although many of the components have been implemented. The Council's Deputy Executive Director will have formal responsibility for the implementation of industrial democracy principles and practices.

Consultative mechanisms

The Secretariat Executive, which includes the Executive Director, Deputy Executive Director and the two Section Heads, meets weekly. Section meetings are held to provide feedback and input into the Executive.

The Executive Director conducts a meeting with all Secretariat staff within one week of the Council's monthly meetings. These staff meetings are the principal forum for informing Secretariat staff of Council decisions and inviting staff consideration of issues currently facing the Council. Proposed changes to research priorities, staffing arrangements, office accommodation, information technology issues and training are discussed at these regular meetings. During 1996-97, all Secretariat staff participated in decision making regarding information technology requirements (including training), EEO and industrial democracy policies, corporate planning and office accommodation.

Occupational health and safety

During 1996-97, the Council undertook or continued the following initiatives to ensure the health and safety of its staff and contractors:

- participation in OHS training;
- establishment of an OHS committee, and election of a health and safety representative;
- encouragement of staff participation in lunch-time and after-hours exercise programs;
- two-yearly eyesight testing for screen-based equipment users;
- appointment of fire wardens and fire safety training for all staff;
- the appointment and training of a First Aid Officer;
- advice on ergonomic furniture usage and posture; and
- purchase of ergonomic equipment where appropriate.

The Council received no accident/incident reports during 1996-97. There were no notices lodged or directions given to the Council under sections 30, 45, 46 or 47 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* during the year.

C3.2 Equity matters

Social justice

Within its work program, the Council addresses social justice issues in three main contexts.

First, in conducting its functions in relation to the National Access Regime, the Council must consider public interest issues. Matters which the Council may consider include, although are not limited to, the following:

- policies concerning occupational health and safety, industrial relations, access to justice and other government services, and equity in the treatment of different persons;
- economic and regional development, including employment and investment growth; and
- the interests of consumers generally, or a class of consumers.

In assessing applications for access, the Council has considered these types of issues as appropriate. For example, in considering an application to declare certain rail services between Brisbane and Cairns, the Council addressed the issue of the regional economic and employment effects that declaration would entail (see Section B8).

Second, as part of its role of assessing jurisdictions' progress in implementing the NCP reforms, the Council must consider the extent to which governments have undertaken bona fide reform processes. For example, where legislation that restricts competition is maintained, retention must be justified on net public benefit grounds. These may include social justice considerations. In cases where restrictions are to be retained, the Council seeks to assure itself that a substantive net public benefit case is presented. The NCP agreements implicitly recognise that social justice considerations may in some instances justify restrictions on competition, although it also calls for an examination of whether the social justice objectives can be met through ways which do not restrict competition. At the same time, the NCP agreements also recognise that many restrictions, by advantaging specific groups at a cost to the broader community, promote neither social justice nor economic efficiency.

Third, where it conducts reviews under the NCP principles, the Council is also required to considered social justice issues. For example, in its review of the *Australian Postal Corporation Act*, the Council must identify current community service obligations provided by Australia Post and the most efficient mechanisms for delivering CSOs.

Further, the Council has released a paper on *Considering the public interest under the NCP* in November 1996, and has provided some outline comments on the interface between social justice and the NCP reforms in Chapter A1 of this report.

Access

Since its inception in November 1995, the Council has instituted open and transparent processes. For example, declaration and certification applications for third party access to essential facilities explicitly provide interested parties the opportunity to have their views considered by the Council, including through meetings with members of the Council and Secretariat. The Council is also using a public process to provide input into its review of Australia Post. The Secretariat has also met with representatives of local government and the private sector on competition policy matters during the year.

During 1996-97, the Council released several publications designed to assist community understanding of its role and functions:

- The National Access Regime: a draft guide to Part IIIA of the TPA (August 1996);
- Annual Report 1995-96 (August 1996);
- Considering the public interest under the NCP (November 1996);
- Competitive neutrality reform: issues in implementing clause 3 of the CPA (January 1997);
- Compendium of NCP policy agreements (January 1997); and
- Legislation review compendium (April 1997);

The Council also commenced distribution of a monthly newsletter which has a circulation of over 1,000 copies and provides information on the status of current projects and articles on topics of interest.

In response to the specific needs of small business, the Council developed and distributed a plain English kit called *Competition Policy: what it means for small business* during the year.

The Council will continue to examine arrangements for compliance with the Commonwealth Government's access and equity objectives in 1997-98, including providing improved access to its processes to people from non-English speaking backgrounds.

Equal employment opportunity

The Council adopted the Commonwealth Department of Treasury's *Equal Employment Opportunity (EEO) Program* as its guide in this area.

The Deputy Executive Director undertook responsibility for EEO during 1996-97.

All recruitment conducted during 1995-96 included a selection criterion relating to understanding of the principles and practical effects of policies on EEO. Selection panels included at least one male and one female. At 30 June 1997, nine Secretariat staff were members of an EEO group (see Table C1.4) above.

The Council has identified contact officers for both EEO and sexual harassment issues. The Council is examining further strategies to meet its specific needs as a small organisation. The Deputy Executive Director will be responsible for developing the EEO strategy.

There were no reported cases of workplace harassment at the Council during 1995-96.

C3.3 Internal and external scrutiny

During 1996-97:

- the Council did not undertake any internal reviews of its processes;
- there were no cases of fraud involving the Council; and

- there were no comments by the Ombudsman, or decisions by the courts or administrative tribunals on matters involving the Council.

The Commonwealth House of Representatives Standing Committee on Financial Institutions and Public Administration (1997) recently completed an inquiry into aspects of the NCP reform package. Its report contained one specific recommendation relating to the Council: namely, that the Council:

> . . . adopt a more open approach to its work and be more active in disseminating information about the activities of the Council and National Competition Policy.

In response, the Council has recently increased its efforts at disseminating information (see Section A3.5) and will be commencing a program of consultative meetings with key interest groups. It is currently identifying appropriate groups in each State and Territory.

Beyond this, the Council is subject to external scrutiny through the publication of its recommendations to all governments on matters relating to access determinations and competition reforms, external publications, and other work which may be placed on the work program from time to time.

C3.4 Other matters

Freedom of information

The Council received one request for documents under the *Freedom of Information Act* during 1996-97.

The following information is provided in accordance with subsection 8(1) of the *Freedom of Information (FOI) Act 1982*.

Organisation of the Council

Details of the Council's organisational structure, role and functions are detailed in Appendices C1 and C2, Chapter A3, and elsewhere in this report.

Arrangements for outside participation

Persons or organisations outside the Council are encouraged to participate in the formulation of Council advice on access declarations, competition reform or other work program matters, by making representations in person or in writing to the Council.

Categories of documents held by the Council

The Council Secretariat holds the following three classes of documents.

First, it holds representations to the Council President and Executive Director. The Council receives correspondence covering a number of aspects of government micro-economic policy and administration.

Second, it holds policy and administration files relevant to the Council's responsibilities. The documents on these files include correspondence, analysis and policy advice prepared by Secretariat officers. There are two main categories of working files:

- Council views on matters relating to competition reform implemented by Commonwealth, State and Territory governments; and
- Council recommendations and accompanying reasons relating to access declarations provided to the designated Minister. The designated Minister is required to publish either the declaration or the decision not to declare the service. The Minister must give reasons for the decision and provide a copy of the Council's recommendation to the provider and the applicant. The Council makes its recommendations and reasons publicly available after the designated Minister has published a decision. If the designated Minister does not make a decision, the Council will publish its recommendation 60 days after it provided it to the Minister.

Third, the Council Secretariat holds documents on internal departmental administration. These include a broad range of documents relating to the personal details of staff and to the organisation and operation of the Council. These documents include personal records, organisation and staffing records, financial and expenditure records, and internal operating documentation such as office procedures and instructions.

Documents open to public access subject to a fee or a charge or available free of charge upon request

The following categories of documents are publicly available:

- the Council's Annual Reports to Parliament;
- speeches presented by Council and Secretariat staff;
- discussion papers and guides on specific competition policy issues;
- departmental plans;
- declaration or certification applications, and issues papers developed by the Council in response to access declaration or certification applications or other reviews;
- submissions made by interested parties on access declaration or certification applications, or other reviews, where information contained is not commercial-in-confidence; and
- statements of reasons outlining the Council's reasons for its recommendations on declaration and certification applications.

In 1996-97, Council and Secretariat staff presented the following conference papers, which are publicly available:

- Tony Daniels, *NCP: the way forward*, presented to the Business Council of Australia/Minerals Council of Australia, 9-10 July 1996;
- Stuart Hohnen, *Implementing competition policy*, presented to WA Treasury, WA Ministry of Fair Trading, ACCC, AGS, RIPAA, 26-26 July 1996;
- Ed Willett, *Competition policy reform in action: increasing efficiency and competitiveness*, presented to the Queensland Treasury, 1-2 August 1996;
- Elizabeth Nosworthy, *NCP: implications for Queensland*, presented to the Local Government Association of Queensland, 27 August 1996;
- Stuart Hohnen, *National and State Competition Policy initiatives*, presented to the WA Office of energy and Australian Institute of Energy, 7-8 November 1996;

- Tony Daniels, *National Competition Policy*, presented to the 13th Annual Business Congress, 21 November 1996;
- Ed Willett, *Prospects for success in achieving competitive outcomes*, presented to ABARE, 5 February 1997;
- Elizabeth Nosworthy, *A progress report from the national perspective*, presented to CEDA, 19 February 1997;
- Deborah Cope, *Applying competition policy to water*, presented to ICM, 10 March 1997;
- Graeme Samuel, *Competition reform and the customer*, presented to APPEA, 16 April 1997;
- Michelle Groves, *Access: A NCC perspective*, presented to Business Law Seminar 'Trade Practices and Access Update', 22 May 1997;
- Paul Swan, *Rail reform and third party access: a national perspective*, presented to IIR Commercialising railways conference, 11 June 1996; and
- Jane Brockington, *An overview of the NCC*, presented to AIC Conference: Regulation and the regulators, 16 June 1997.

In 1996-97, the following documents were also publicly released:

- The National Access Regime: a draft guide to Part IIIA of the TPA (August 1996);
- Annual Report 1995-96 (August 1996);
- Considering the public interest under the NCP (November 1996);
- Competitive neutrality reform: issues in implementing clause 3 of the CPA (January 1997);
- Compendium of NCP policy agreements (January 1997);
- Legislation review compendium (April 1997);
- NCC, *Competition Policy: what it means for small business*, Information Kit, June 1997;
- *NCC Update* newsletter;
- Australian Cargo Terminal Operators application for declaration, issues paper and statement of reasons;

- Carpentaria Transport application for declaration, issues paper and statement of reasons;
- Specialized Container Transport application for declaration in NSW, issues paper and statement of reasons;
- Specialized Container Transport application for declaration in Western Australia, and issues paper;
- Mineral's Council application for declaration and issues paper;
- Victorian Shipping Channels application for certification, issues paper and statement of reasons;
- NSW Rail application for certification and issues paper.

Facilities for access to Council documents

Applicants seeking access under the *FOI Act* to documents in the possession of the Council should apply in writing to:

The Deputy Executive Director
National Competition Council
GPO Box 250B
MELBOURNE VIC 3001
Attention: Freedom of Information Coordinator

Requests must be accompanied by an application fee of $30. Unless an application fee is received, or explicit waiver given, the request will not be processed. Telephone enquiries should be directed to the FOI Coordinator, telephone (03) 285 7484 between 9.00am and 5.00pm.

The Deputy Executive Director is authorised under section 23 of the *FOI Act* to make decisions to grant or refuse requests for access to documents. In accordance with Section 54 of the *FOI Act*, an applicant may apply to the Executive Director within 28 days of receiving notification of a decision under the Act, seeking an internal review of a decision to refuse a request. The application should be accompanied by a $40 application review fee as provided for in the *FOI Act*.

If access under the *FOI Act* is granted, the Council will provide copies of documents after receiving payment of all applicable charges. Alternatively,

applicants may make arrangements to inspect documents at the National Competition Council office, Level 12, Casselden Place, 2 Lonsdale Street, Melbourne between 9.00am and 5.00pm, Monday to Friday.

Advertising and market research

The Council did not engage any advertising or market research agencies in 1996-97.

Annual reporting requirements and aids to access

Information contained in this annual report is provided in accordance with:

- Section 74 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*;
- Section 50AA of the *Audit Act 1901*;
- Section 8 of the *Freedom of Information Act 1982*;
- Section 29(O) of the *Trade Practices Act 1974*; and
- the guidelines issued by the Department of the Prime Minister and Cabinet.

A compliance index is provided below.

The contact officer for inquiries or comments concerning this report, and for inquiries about any Council publications, is:

Deputy Executive Director
National Competition Council
GPO Box 250B
MELBOURNE VIC 3001
Telephone (03) 9285 7474
Facsimile (03) 9285 7477

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C4 Financial Statements

Financial statements

for the year ended 30 June 1997

Audit report

[DN: insert]

Audit report

[DN: insert]

NATIONAL COMPETITION COUNCIL
DEPARTMENTAL REVENUES AND EXPENSES

for the year ended 30 June 1997

	Notes	1996-97 $	6/11/95-30/06/96 $
NET COST OF SERVICES			
Expenses			
Employees	3	1,038,270	716,221
Suppliers	4	969,455	639,138
Depreciation and amortisation		87,332	46,114
Net losses from disposal of assets	5	-	757
Total expenses		**2,095,057**	**1,402,230**
Revenues from independent sources			
Sale of goods and services		1,835	-
Other revenues from independent sources		566	409
Total revenues from independent sources		**2,401**	**409**
Net cost of services		**2,092,656**	**1,401,821**
REVENUES FROM GOVERNMENT			
Appropriations used for:			
Ordinary annual services (net appropriations)		1,732,000	1,460,337
Resources received free of charge		21,000	299,882
Total revenues from government		**1,753,000**	**1,760,219**
Operating surplus/(deficit) before extraordinary items		**(339,656)**	**358,398**
Net expenses from extraordinary items:			
Establishment expenses	6	-	99,390
Operating surplus/deficit		**(339,656)**	**259,008**
Accumulated results at 1 July		259,008	-
Change in accounting policy	2.7	207,000	-
Accumulated results at 30 June		**126,352**	**259,008**

The above Statement should be read in conjunction with the accompanying notes

NATIONAL COMPETITION COUNCIL
DEPARTMENTAL ASSETS AND LIABILITIES

as at 30 June 1997

	Notes	**1996-97** **$**	6/11/95-30/06/96 $
PROVISIONS AND PAYABLES			
Employees	7	264,936	200,659
Suppliers	8	64,290	26,802
Other	9	50,751	44,756
Total provisions and payables		**379,977**	**272,217**
EQUITY			
Accumulated results	10	126,352	259,008
Total equity		**126,352**	**259,008**
Total liabilities and equity		**506,329**	**531,225**
FINANCIAL ASSETS			
Cash		2,000	7
Receivables	11	31,040	382
Total financial assets		**33,040**	**389**
NON-FINANCIAL ASSETS			
Land and buildings	12,13	195,190	209,229
Plant and equipment	12,13	152,478	153,714
Inventories - held for sale		7,087	-
Other - prepayments		118,534	167,893
Total non-financial assets		**473,289**	**530,836**
Total assets		**506,329**	**531,225**
Current liabilities		**255,462**	**168,961**
Non-current liabilities		**124,515**	**103,256**
Current assets		**154,052**	**168,282**
Non-current assets		**352,277**	**362,943**

The above Statement should be read in conjunction with the accompanying notes

NATIONAL COMPETITION COUNCIL
DEPARTMENTAL CASH FLOWS

for the year ended 30 June 1997

	Notes	**1996-97 $**	6/11/95-30/06/96 $
OPERATING ACTIVITIES			
Cash received			
Appropriations		1,836,821	1,295,171
Other		948	27
Total cash received		**1,837,769**	**1,295,198**
Cash used			
Employees		973,993	513,272
Suppliers		861,783	781,919
Total cash used		**1,835,776**	**1,295,191**
Net cash from operating activities	14	**1,993**	**7**
INVESTING ACTIVITIES			
Cash received			
Appropriations		72,057	165,166
Total cash received		**72,057**	**165,166**
Cash used			
Purchase of property, plant and equipment		72,057	165,166
Total cash used		**72,057**	**165,166**
Net cash from in investing activities		**-**	**-**
Net increase in cash held		**1,993**	**7**
add cash at 1 July		7	-
Cash at 30 June		**2,000**	**7**

The above Statement should be read in conjunction with the accompanying notes

NATIONAL COMPETITION COUNCIL
SCHEDULE OF COMMITMENTS

for the year ended 30 June 1997

Departmental

	1996-97 **$**	6/11/95-30/06/96 $
BY TYPE		
OTHER COMMITMENTS		
Operating leases	157,701	250,311
Total other commitments	**157,701**	**250,311**
COMMITMENTS RECEIVABLE	-	-
Net commitments	**157,701**	**250,311**
BY MATURITY		
One year or less	118,819	89,285
From one to two years	38,882	122,172
From two to five years	-	38,854
Net commitments	**157,701**	**250,311**

The above schedule should be read in conjunction with the accompanying notes

NATIONAL COMPETITION COUNCIL
STATEMENT OF TRANSACTIONS BY FUND

for the year ended 30 June 1997

	Notes	1996-97 Budget $	**1996-97 Actual $**	6/11/95-30/06/96 Actual $
Consolidated Revenue Fund				
RECEIPTS				
Section 35 of the *Audit Act 1901* to be credited to Running Costs - Division 676		1,000	948	27
Total Receipts		**1,000**	**948**	**27**
EXPENDITURE				
Expenditure from annual appropriations:	15			
Appropriation Act (No.1)		1,939,000	1,908,878	-
Advance from the Minister for Finance		-	-	1,460,364
Audit Act 1901 (section 35)		1,000	948	-
Total Expenditure		**1,940,000**	**1,909,826**	**1,460,364**
Loan Fund		Nil	**Nil**	Nil
Trust Fund				
Heads of Trust (private moneys):				
Receipts		Nil	**Nil**	Nil
Expenditure		Nil	**Nil**	Nil
Trust Account (Commonwealth activities):				
Receipts		Nil	**Nil**	Nil
Expenditure		Nil	**Nil**	Nil
Total Receipts		Nil	**Nil**	Nil
Total Expenditure		Nil	**Nil**	Nil

The above Statement should be read in conjunction with the accompanying notes

NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING
PART OF THE FINANCIAL STATEMENTS

for the year ended 30 June 1997

Note 1: Aim and objectives of the National Competition Council

The National Competition Council (the 'Council') was established on 6 November 1995 by the *Competition Policy Reform Act 1995* following agreement by the Commonwealth, State and Territory governments.

The Council is an independent advisory body for all governments involved in implementing the competition reforms. The Council's aim is to help raise the living standards of the Australian community by ensuring that conditions for competition prevail throughout the economy which promote growth, innovation and productivity.

The Council's program objectives are:

- to promote micro-economic reform within the community, including by undertaking research and providing advice to governments on competition policy matters;
- to recommend on applications for declaration of access to services provided by nationally significant infrastructure and the certification of access regimes under Part IIA of the Trade Practices Act;
- to assess progress with agreed competition policy reforms, and to recommend to the Commonwealth prior to July 1997, July 1999 and July 2001 whether the conditions for National Competition Policy payments to the States and Territories have been met; and
- to recommend on whether State and Territory government businesses should be declared for prices surveillance by the Australian Competition and Consumer Commission, and to report on the costs and benefits of legislation reliant on section 51 of the Trade Practices Act.

Note 2: Summary of significant accounting policies

2.1 Basis of Accounting

The production of the financial statements is required by section 50 of the *Audit Act 1901* and represent a general purpose financial report. They have been prepared in accordance with the Guidelines on *Financial Statements of*

Departments issued by the Minister for Finance in June 1997 (the 'Guidelines'). The Guidelines require that the financial statements are prepared:

- in compliance with Australian Accounting Standards, Accounting Guidance Releases issued by the Australian Accounting Research Foundation;
- other mandatory professional reporting requirements (Urgent Issues Group Consensus Views) and Statutory Requirements; and
- having regard to Statements of Accounting Concepts.

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention. They have not been adjusted to take account of either changes in the general purchasing power of the dollar or changes in the prices of specific assets.

The continued existence of the Council in its present form is dependent on Government policy and on continuing appropriations by Parliament for the Council's administration.

2.2 Departmental and Administered Items

A distinction is required to be made within the financial statements between 'departmental' items and 'administered' items.

'Administered' items represent those assets, liabilities, expenses and revenues which are controlled by the Government and managed in a fiduciary capacity by the Council.

'Departmental' items represent those assets, liabilities, expenses and revenues which are controlled by the Council.

The purpose of this distinction is to enable an assessment to be made of the efficiency of the Council in providing goods and services ('departmental' items), while at the same time enabling accountability by the Council for all resources administered by it.

The Council did not manage 'administered' items on behalf of the Government in relation to the reporting period.

2.3 Taxation

The Council is exempt from all forms of taxation except fringe benefits tax.

2.4 Insurance

In accordance with Commonwealth Government policy, assets are not insured and losses are expensed as they are incurred.

2.5 Comparative figures

Where necessary, comparative figures have been adjusted to conform with changes in presentation in these financial statements.

2.6 Program Statements

The Council represents a component of a sub-program within the Department of the Treasury portfolio. As a result there is no requirement for a program statement to be included in the financial statements.

2.7 Appropriations

Appropriations for departmental operations other than running costs are recognised as revenue when the Council obtains control over the funds. Control is obtained at the time of expending the funds.

Appropriations for departmental running costs operations are recognised in accordance with their nature under the Running Costs Arrangements. Under these arrangements, the Council receives a base amount of funding by way of appropriation for running costs each year. The base amount may be supplemented in any year by a carryover from the previous year of unspent appropriations up to allowable limits, as well as by borrowings at a discount against future appropriations of the base amount. The repayment of a borrowing is effected by an appropriate reduction in the appropriation actually received in the year of repayment.

The Council recognises, in relation to departmental running costs operations:

- as revenue an amount equal to the appropriation spent during the financial;

- as a receivable an amount equal the unspent appropriation carried over to the next year; and
- as a liability an amount equal to the running cost borrowings.

Change in accounting policy

The abovementioned policy in relation to the accounting treatment of appropriations for departmental running costs differs to the policy adopted in previous reporting periods.

In previous reporting periods, running cost appropriations were recognised as revenue only to the extent that appropriation funds were spent.

The financial effect of this change in policy has resulted in an adjustment to opening accumulated results of $207,000 relating to the recognition of appropriation carry-over from 1995-96.

2.8 Employee Entitlements

The provision for employee entitlements encompasses all employee benefits including; salaries and wages, annual leave, leave bonus and long service leave.

No provision has been made for sick leave as all leave is non-vesting and the value of sick leave estimated to be taken in the future is expected to be less than the entitlement that will accrue to Council staff in those future periods.

The provision for long service leave reflects the present value of the estimated future cash flows to be made in respect of all employees. In determining the value of the liability, the Council has taken into account attrition rates and pay increases through promotion and inflation.

The determination of current and non-current liability portions of the long service leave provision is based on staff survey. The value of long service leave entitlements estimated to be taken within the next twelve months are classified as current.

Annual leave and leave bonus entitlements are classified as current liabilities.

2.9 Superannuation

Staff of the Council contribute to the Commonwealth Superannuation Scheme and the Public Sector Superannuation Scheme. Superannuation contributions made by the Council on behalf of staff in relation to these schemes have been expensed in these financial statements.

A liability is not shown for any unfunded superannuation liability that exists in relation to Council staff as the employer contributions fully extinguish the accruing liability assumed by the Commonwealth.

2.10 Resources Received Free of Charge

Resources received free of charge are recognised in the Operating Statement as revenue where the amounts can be reliably measured. Use of those resources is recognised as expenses, or where there is a long term benefit, as an asset.

Resources received free of charge which cannot be reliably measured are disclosed in the notes.

2.11 Cash

For the purposes of the Statement of Cash Flows, cash includes notes, coins and cheques on hand.

2.12 Inventory

Inventories held for sale are valued at the lower of cost and net realisable value.

Inventory not held for sale which is material in value is recognised as an asset and valued at cost.

Inventories on hand are valued on an average cost basis. All material, labour and other costs which can be reasonably identified and attributed are assigned to the cost of inventories.

2.13 Capitalisation Threshold – Property, Plant and Equipment

All items of computers, plant and equipment with historical cost equal to or in excess of $500 are capitalised in the year of acquisition. The items below this threshold are expensed in the year of acquisition.

All items of leasehold improvements controlled by the Council and with historical costs equal to or in excess of $5,000 are capitalised in the year of acquisition.

The capitalisation threshold is applied to the aggregate cost of each functional asset.

2.14 Measurement of Property, Plant and Equipment

All property, plant and equipment assets in excess of the capitalisation threshold are recorded at cost, except in circumstances in which acquisitions are made at no cost from other Commonwealth controlled entities. In such circumstances property, plant and equipment are recorded at the amounts at which they were recognised in the transferor's books immediately prior to transfer.

2.15 Depreciation and Amortisation of Property, Plant and Equipment

Depreciable property, plant and equipment are depreciated over their estimated useful lives. The useful life of an asset reflects the life of the asset to the Council.

Depreciation is calculated using the straight–line method which reflects the pattern of usage of the Council's depreciable property, plant and equipment.

Leasehold improvements are amortised over the estimated useful life of each improvement, or the unexpired period of the lease, whichever is shorter.

2.16 Leases

A distinction is made between finance leases which effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of the leased plant and equipment asset and operating leases under which the lessor effectively retains substantially all such risks and benefits.

Where a non-current asset is acquired by means of a finance lease, the asset is capitalised at the present value of minimum lease payments at the inception of the lease and a liability recognised for the same amount. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are charged to the Operating Statement.

2.17 Lease Incentives

The value of rent which would otherwise have been incurred during a rent free period, provided by building owners, is initially recognised as a liability. This liability is reduced once the rent free period ceases by allocating payments between rental expense and reduction of the liability.

	1996-97 $	6/11/95-30/06/96 $

Note 3: Expenses: Employees

Basic Remuneration (for services provided)	1,020,510	716,221
Total remuneration	1,020,510	716,221
Other employee expenses	17,760	-
Total	**1,038,270**	**716,221**

Note 4: Expenses: Suppliers

Supply of goods and services	883,145	639,138
Operating lease rentals	86,310	-
Total	**969,455**	**639,138**

Note 5: Expenses: Net Losses from Disposal of Assets

Non-financial assets:		
Plant and equipment	-	757
Total	**-**	**757**

Note 6: Extraordinary Item: Establishment Expenses

In 1995-96 the Council paid the Department of the Treasury a corporate services levy of $99,390 for the value of resources expended by Treasury for the establishment of infrastructure, information technology and procedures to enable the Council to operate as an independent agency.

	1996-97 $	6/11/95-30/06/96 $

Note 7: Provisions and Payables: Employees

Salaries and wages	11,629	9,427
Annual leave, leave bonus and long service leave	233,757	190,350
Superannuation	1,790	882
Other 17,760	-	
Aggregate employee entitlement liability	**264,936**	**200,659**

Note 8: Provisions and Payables: Suppliers

Trade creditors	**64,290**	**26,802**

Note 9: Provisions and Payables: Other

Lease incentives	**50,751**	**44,756**

Note 10: Equity: Accumulated Results

Opening balance	259,008	-
Add: Operating surplus/deficit	(339,656)	259,008
Change in accounting policy	207,000	-
Closing balance	**126,352**	**259, 008**

Note 11: Financial Assets: Receivables

Appropriations	30,122	-
Goods and services	918	-
Other	-	382
Total	**31,040**	**382**

No component of the above receivables were overdue at the end of the reporting period. In addition no component of the receivables were considered doubtful.

Note 12: Non-Financial Assets: Property, Plant and Equipment

	1996-97 $	6/11/95-30/06/96 $
LAND AND BUILDINGS		
Leasehold improvements - at cost	60,398	20,468
Less: accumulated amortisation	12,311	2,244
	48,087	**18,224**
Leasehold improvements - received free of charge	219,511	219,511
Less: accumulated amortisation	72,408	28,506
	147,103	191,005
Total land and buildings	**195,190**	**209,229**
INFRASTRUCTURE, PLANT AND EQUIPMENT		
Plant and equipment - at cost	175,987	143,860
Less: accumulated depreciation	38,406	11,252
	137,581	**132,608**
Plant and equipment - received free of charge	25,137	25,137
Less: accumulated depreciation	10,240	4,031
	14,897	**21,106**
Total infrastructure, plant and equipment	**152,478**	**153,714**

Note 13: Non-Financial Assets: Analysis of Property, Plant and Equipment

	Land and buildings $	Plant and equipment $	Total $
AGGREGATE			
Gross value as at 1 July 1996	239,979	168,997	408,976
Additions	39,930	32,127	72,057
Gross value as at 30 June 1997	**279,909**	**201,124**	**481,033**
Accumulated depreciation/amortisation as at 1 July 1996	30,750	15,283	46,033
Depreciation/amortisation charge for assets held as at 1 July 1996	47,996	31,640	79,636
Depreciation/amortisation charge for additions	5,973	1,723	7,696
Accumulated depreciation/ amortisation as at 30 June 1997	**84,719**	**48,646**	**133,365**
Net book value as at 30 June 1997	**195,190**	**152,478**	**347,668**
Net book value as at 1 July 1996	**209,229**	**153,714**	**362,943**
AT COST			
Gross value as at 1 July 1996	20,468	143,860	164,328
Additions	39,930	32,127	72,057
Gross value as at 30 June 1997	**60,398**	**175,987**	**236,385**
Accumulated depreciation/amortisation as at 1 July 1996	2,244	11,252	13,496
Depreciation/amortisation charge for assets held as at 1 July 1996	4,094	25,431	29,525
Depreciation/amortisation charge for additions	5,973	1,723	7,696
Accumulated depreciation/amortisation as at 30 June 1997	**12,311**	**38,406**	**50,717**
Net book value as at 30 June 1997	**48,087**	**137,581**	**185,668**
Net book value as at 1 July 1996	**18,224**	**132,608**	**150,832**

	Land and buildings	Plant and equipment	Total
RECEIVED FREE OF CHARGE			
Gross value as at 1 July 1996	219,511	25,137	244,648
Gross value as at 30 June 1997	**219,511**	**25,137**	**244,648**
Accumulated depreciation/amortisation as at 1 July 1996	28,506	4,031	32,537
Depreciation/amortisation charge for assets held as at 1 July 1996	43,902	6,209	50,111
Accumulated depreciation/amortisation as at 30 June 1997	**72,408**	**10,240**	**82,648**
Net book value as at 30 June 1997	**147,103**	**14,897**	**162,000**
Net book value as at 1 July 1996	**191,005**	**21,106**	**212,111**

Note 14: Cash Flow Reconciliation

	1996-97 $	6/11/95-30/06/96 $
Reconciliation of net cost of services to net cash provided by operating activities:		
Net cost of services	(2,092,656)	(1,401,821)
Extraordinary items	-	(99,390)
Loss on disposal of property, plant and equipment	-	757
Depreciation/ Amortisation	87,332	46,114
Revenue from government	1,753,000	1,760,219
Appropriations used for investing activities	(72,057)	(165,166)
Change in accounting policy	207,000	-
Changes in assets and liabilities		
(Increase) in receivables	(30,658)	(382)
(Increase)/decrease in other assets	49,359	(167,893)
(Increase) in inventories	(7,087)	-
Increase/(decrease) in provisions and payables	107,760	272,217
Assets included in resources free of charge	-	(244,648)
Net cash from operating activities	**1,993**	**7**

Note 15: Expenditure from Annual Appropriations

		Appropriation	**Expenditure**	Expenditure 6/11/95-30/06/96
		1996-97 $	**1996-97 $**	$
ORDINARY ANNUAL SERVICES OF GOVERNMENT APPROPRIATION ACT Nos 1 & 3 Division 676 - National Competition Council				
1	Running Costs	1,939,948	1,909,826	-
Advances to the Minister for Finance:				
	Other running costs	-	-	1,389,359
	Running costs – SES salaries	-	-	71,005
		1,939,948	**1,909,826**	**1,460,364**

Note 16: Services Provided by the Auditor-General

Audit services are provided free of charge by the Auditor-General. The fair value of audit services provided in relation to the reporting period is $21,000 (1995-96:$23,500).

No other services were provided by the Auditor-General in relation to the reporting period.

Note 17: Executive Remuneration

The number of executive officers who received or were due and receivable to receive fixed remuneration of more than $100,000 or more:

	Number	**Number**
$100,000 to $110,000	1	-
The aggregate amount of fixed remuneration of executive officers shown above	$103,361	-

Note 18: Act of Grace Payments, Waivers and Amounts Written Off

No Act of Grace payments were made pursuant to sub-section 34A(1) of the *Audit Act 1901* during the reporting period.

No waivers of amounts owing to the Commonwealth were made pursuant to sub-section 70C(2) of the *Audit Act 1901* during the reporting period nor pursuant to any other legislation.

Note 19: Events Occurring After Balance Date

No events of a material nature have occurred since the end of the reporting period (1995-96: Nil) which warrant disclosure within the financial statements.

Note 20: Average Staffing Levels

	1996-97 Number	6/11/95-30/6/96 Number
Average staffing levels for the Council are as follows:	14.6	4.9

Competition Policy Units

Each Australian government has established a unit to deal with competition policy matters. Their contact details are listed below.

National
National Competition Council
GPO Box 250B
MELBOURNE VIC 3000
Phone: 03 9285 7474
Fax: 03 9285 7477
E-mail: ncc@c031.aone.net.au
Web-site: http://www.ncc.gov.au

Commonwealth
Competition Policy Branch
Commonwealth Treasury
Block B, Parkes Place
PARKES ACT 2600
Phone: 06 263 3887
Fax: 06 263 2937

New South Wales
Inter-governmental and Regulatory Reform Branch
The Cabinet Office
Level 37, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000
Phone: 02 9228 3712
Fax: 02 9228 4408

Victoria
Economic Development Branch
Department of Premier and Cabinet
1 Treasury Place
MELBOURNE VIC 3002
Phone: 03 9651 5143
Fax: 03 9651 6457

Queensland
Structural Policy Division
Queensland Treasury
100 George Street
BRISBANE QLD 4000
Phone: 07 3224 5673
Fax: 07 3229 3501

Western Australia
Competition Policy Unit
Treasury
Level 13, 197 St George's Terrace
PERTH WA 6000
Phone: 09 222 9158
Fax: 09 222 9914

South Australia
Strategic Policy and Cabinet Division
Micro Economic Reform Division
Department of Premier and Cabinet
State Administration Centre
200 Victoria Square
ADELAIDE SA 5000
Phone: 08 8226 0903
Fax: 08 8226 1111

Tasmania
Economic Policy
Department of Treasury and Finance
Franklin Square Offices
Murray Street
HOBART TAS 7000
Phone: 03 6233 3100
Fax: 03 6223 2755

Australian Capital Territory
Office of Financial Management
Chief Minister's Department
Level 1, ACT Administration Centre
1 Constitution Avenue
CANBERRA CITY ACT 2600
Phone: 06 207 0280
Fax: 06 207 0267

Northern Territory
Economic Services
Northern Territory Treasury
6th Floor, AMP Building
38 Cavanagh Street
DARWIN NT 0800
Phone: 08 8999 7406
Fax: 08 8999 6446

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