AUSTRALIAN CAPITAL TERRITORY

3RD TRANCHE PROGRESS REPORT TO THE NATIONAL COMPETITION COUNCIL ON IMPLEMENTING NATIONAL COMPETITION POLICY AND RELATED REFORMS

MARCH 2004

1. Introduction

The Competition Principles Agreement signed by the Commonwealth, States and Territories in April 1995 obliges the parties to report annually on the implementation of clauses 3 and 5 of the Agreement, addressing competitive neutrality and legislation review. In addition, there is an annual reporting requirement with respect to implementation of the related reforms in electricity, gas, water and road transport, according to the CoAG reform framework or its agreed modifications.

This is the ACT's eighth annual report to the National Competition Council (NCC) and covers the reforms implemented in the period 1 April 2003 to 31 March 2004.

2. Summary of third tranche NCP reform obligations

The third tranche reform program is established by the three April 1995 NCP Agreements, generally termed the Competition Policy Agreements. These are:

- the *Competition Principles Agreement;*
- the *Conduct of Code Agreement*; and
- the *Agreement on Related Reforms*.

To meet agreed third tranche obligations, Governments are required:

- to be a participating jurisdiction, that is, to have implemented the competition code, a modified version of Part IV of the TPA, including;
  - to have notified to the Australian Competition and Consumer Commission (ACCC) all legislation or provisions in legislation enacted or made in reliance upon section 51 of the TPA, within 30 days of the legislation being enacted or made (relevant legislation for the third tranche is legislation made since that notified for the second tranche assessment);
- to be a party to the CPA and to have implemented the major elements of the CPA program including;
  - application of competitive neutrality principles to all significant government-owned businesses, including local government businesses, where appropriate (clause 3);
  - structural reform of public monopolies where competition is to be introduced or before a monopoly is privatised (clause 4);
  - completion of the program of review of all legislation that restricts competition (including Acts, enactments, Ordinances or regulations) and removal of restrictions, where appropriate (clause 5);
  - gatekeeper regulatory impact analysis, including systematic and transparent assessment of alternatives to regulation, where new or amended legislation that restricts competition is proposed (clause 5);
- to achieve effective participation in the fully competitive national electricity market (NEM) including completion of all transitional arrangements;
- to fully implement free and fair trading in gas between and within jurisdictions;
- to achieve satisfactory progress towards implementation of the 1994 CoAG Strategic Framework for the reform of the water industry consistent with timeframes established through inter-governmental agreement;
- to fully implement reforms to road transport developed by the Australian Transport Council and endorsed by CoAG; and

- to ensure that national standards are set in accordance with principles and guidelines for good regulatory practice endorsed by CoAG.

3. Road transport (COAG program)

Heavy vehicles registration scheme

The ACT has fully implemented the heavy vehicle registration reforms except for continuous registration. It has used its best endeavours to implement continuous registration but the regulation that was introduced into the Legislative Assembly in 2001 was disallowed. A further budget proposal to implement continuous registration was also heavily criticised by the Assembly Estimates Committee in 2003. Therefore, it would not seem practicable at this time to enact the necessary regulation. The ACT notes that continuous registration has not been implemented in a consistent way across all jurisdictions. If it is not feasible to pass a regulation implementing continuous registration, the ACT proposes to explore alternatives to the scheme introduced into the Assembly in 2001 to enforce compliance with the legislative requirement not to use unregistered vehicles, and thus encourage timely renewals of registration.

4. Competitive neutrality

Competitive neutrality complaints

The Independent Competition and Regulatory Commission (ICRC) is the responsible authority in the ACT for investigating competitive neutrality (CN) complaints. For the period to 31 March 2004, the ICRC did not receive any CN complaints. There are no outstanding CN issues requiring resolution.

Coverage

On 27 March 2003, the ACT's *Taxation (Government Business Enterprises) Act 2003* came into effect with the associated regulations commencing on 16 April 2003. The legislation gives statutory effect to the ACT's participation in the National Tax Equivalent Regime (NTER) to meet competitive neutrality obligations under Clause 3 of the Competition Principles Agreement.

In late 2003, ActewAGL advised that ACTEW Investments Pty Ltd, a subsidiary listed in the regulations as an entity subject to the NTER, had ceased operations on 1 July 2000 and been deregistered from the Australian Securities and Investments Commission on 4 June 2002. Subsequently, ACTEW Investments Pty Ltd was removed from the NTER by ministerial order and Commonwealth, State and Territory governments and agencies were advised in accordance with clause 31 of the NTER Memorandum of Understanding.

The following entities are currently subject to the NTER:

- ACTEW Corporation Limited;

- ACTEW Distribution Limited;
- ACTEW Retail Limited;
- ACTEW China Pty Limited;
- ACT Forests;
- ACTION Authority;
- ACTTAB Limited; and
- Totalcare Industries Limited.

ACT Forests

How profitable was ACT Forests in 2002-03 and how profitable is it expected to be over the next three years or more? If ACT Forests is not expected to meet its cost of capital, why not?

ACT Forests' operating result before extraordinary items for the year to June 2003 was a surplus of $4.91m, which includes a $3.62m increase in the valuation of the remaining plantation at Kowen, reflecting in part, the improved forest management practices of recent years. Extraordinary revenues ($73.12m) and extraordinary expenses ($60.21m) resulting from the January 2003 firestorm increased the final operating surplus to $17.82m.

Following the destruction of two thirds of the commercial forests estate, ACT Forests is not expected to be profitable for at least the next 20 years and certainly will not cover its cost of capital. The future of ACT Forests will focus on land management functions rather than commercial forestry. ACT Forests will be reliant on Government appropriations to sustain the rehabilitation and ongoing management of the former commercial estate.

The 2003 Assessment found that a higher standard of disclosure of timber prices assumed for valuation purposes may be required to be confident that the aims of competitive neutrality are being achieved. What action has the Government taken in this regard?

Negotiations between ACT Forests and its timber customers are undertaken in commercial confidence. Prices are negotiated on a "Mill Gate Delivered Price", and this price includes the costs of harvesting, loading, haulage, and stumpage paid to the grower. It is an industry norm to trade timber in this manner. The price negotiated with timber customers varies with regard to the specifications of the timber products delivered and therefore it is difficult to make other than general price comparisons on broad categories of log quality.

To gain market intelligence, facilitate public scrutiny and ensure competitive neutrality, ACT Forests participates in regular and specific national log price index reviews including:

- Federal Government Bureau of Rural Science industry reviews;
- KPMG's Assurance and Advisory Australian Pine Log Price Index Review (updated on a six monthly basis); and

- Industry consultancies - such as the Jaako Poryry Consulting Pine Log Price Benchmarking reviews.

Participation in these industry-wide reviews provides both the private competitors in the timber industry and the general public with sound information regarding Australian log prices without breaching commercial confidences inherent in specific contracts between suppliers and customers.

Given ACT Forests' active participation in such studies, and findings within the Jaako Poryry Consulting Pine Log Price Benchmarking review, indicating that ACT Forests' timber customers were paying average delivered log prices in the top 15 percentile, the ACT Government is adhering to its competitive neutrality obligations in respect of the timber industry.

5. Legislation review and reform

Veterinary Surgeons Registration Act 1965

A submission is currently being prepared for consideration by the government to enable reform of the Act. Amending legislation is to be based on the reform model utilised for reform of health professionals, the Health Professionals Bill 2003. Reforms required are minor in nature and will be completed in 2004.

Dangerous Goods Act 1975

The Dangerous Substances Bill 2003 was introduced into the Legislative Assembly on 11 December 2003 and passed on 4 March 2004. The new Act commenced on 5 April 2004 and the *Dangerous Goods Act 1975* was subsequently repealed. The new Act is consistent with the National Standard for Storage and Handling of Dangerous Goods and provides a statutory framework for regulating the way that dangerous goods and hazardous substances are managed, to minimise the risk these materials can pose to the health and safety of people working with these substances, the general community and the environment. An electronic version of the Act is available at:

http://www.legislation.act.gov.au/a/2004-7/default.asp

Motor Traffic Act 1936 (taxis); Road Transport (General) Act 1999; Road Transport (Passenger Services) Act 2001

Legislation amending the taxi and hire car industries was introduced into the Legislative Assembly on 17 June 2003. The Road Transport (Public Passenger Services) Amendment Bill 2003 was broadly consistent with the NCC's principles for reform and allowed for the Independent Competition and Regulatory Commission to assess the competitive state of the industry two years after reform implementation to ensure pro-competition outcomes were being achieved. The Bill, however, was referred to the Assembly Standing Committee on Planning and Environment ("the Committee").

The Committee's terms of reference were:

Undertake an analysis of the Bill in the context of the draft Sustainable Transport Plan, and to have regard to:

- The role of taxis, hire cars and other small passenger vehicles in a sustainable public transport strategy;
- Appropriate licensing and accreditation strategies to support that role; and
- Any transitional arrangements such as compensation that should accompany any recommended changes to industry regulation.

The Committee's report was provided to the government on 17 December 2003 and did not fully endorse the government's proposed approach to taxi and hire car deregulation. A response to the Committee's report is currently being drafted and is expected to be completed for tabling in the Legislative Assembly by 10 May 2004. Until this response has been tabled, the government is unable to expand upon the final nature of reform that it intends to proceed with. An electronic version of the Committee's report is available at:

http://www.legassembly.act.gov.au/committees/committees.asp?action=reports&committee=34&session={12%2F02%2F2004+2%3A52%3A40+PM}

Health practitioner legislation:

Dental Technicians and Dental Prosthetists Registration Act 1988; Dentists Act 1931; Chiropractors and Osteopaths Act 1983; Medical Practitioners Act 1930; Nurses Act 1988; Optometrists Act 1956; Physiotherapists Act 1977; Psychologists Act 1994; Podiatrists Act 1994

The Health Professionals Bill 2003, which repeals existing health professionals Acts, was introduced into the Legislative Assembly on 11 December 2003 and is scheduled for debate in June 2004 with enactment expected before the end of 2003/04. An electronic version of the Bill is available at:

http://www.legislation.act.gov.au/b/db_9368/default.asp

Pharmacy Act 1931

Following government approval in March 2004, draft legislation is being prepared to allow the operation of friendly society-owned pharmacies in the ACT, utilising Commonwealth legislation (*Corporations Act 2001* and/or *Life Insurance Act 1995*) as the basis to define 'friendly society'. Subsequent introduction into the Legislative Assembly is scheduled for late April 2004 with an expectation that enactment of reforming legislation will occur by mid-2004.

Agents Act 1968 (employment agents)

Following the passage of the *Agents Amendment Act 2000* in the ACT Legislative Assembly on 1 March 2000, employment agents were required to be licensed. Licensing took effect on 10 August 2000. The rationale for licensing employment agents was based on sound public interest justifications, namely protecting the financial interests of unemployed people using agency services and ensuring probity within the industry. Reforming legislation for the industry removed restrictions about place of work and this initiative was carried over in the new Agents Act that took effect on 1 November 2003. This type of restriction was cited as a significant restriction on agents' capacity to operate in the ACT.

As part of the regulatory reform process, licence fees for employments agents were reduced in late 2003 to bring these fees into line with those charged for similar licensing fees in other industries based on a cost recovery basis. In addition, other administrative red tape requirements on this industry were removed.
Currently, there is no distortion within the market and no evidence that employment agents are constrained by the costs associated with the licensing requirement. There have been no complaints about inappropriate market conduct concerning unemployed people being charged for employment services since the regulation of this industry was introduced.

On the basis that the system has been through a thorough public benefit assessment, incurs minimal cost to the industry and is not attracting negative comments from relevant participants, the ACT is not re-considering the licensing requirement for employment agents.

In respect of the ACT's position, it should be noted that the amendments to the CPA endorsed by COAG in December 2000 require the NCC's assessment as to whether jurisdictions have met their commitments under clause 5(1) of the CPA be guided by the following amendment to the CPA.

"In assessing whether the threshold requirement of clause 5 has been achieved, the NCC should consider whether the conclusion reached in the report is within a range of outcomes that could reasonably be reached based on the information available to a properly constituted review process. Within the range of outcomes that could reasonably be reached, it is a matter for Government to determine what policy is in the public interest."

The ACT believes that the appropriate public interest considerations have been made in respect of this issue.

Education Act 1937; Schools Authority Act 1976; Public Instruction Act 1880 (NSW); Free Education Act 1906 (NSW)

The Education Bill 2003 was presented to the Legislative Assembly on 27 November 2003 and was debated and passed on 30 March 2004.

Enactment of the Bill is expected to occur by mid-2004 with a commencement date early in 2005 to enable transitional arrangements to be put in place. An electronic version of the Bill is available at:

http://www.legislation.act.gov.au/b/db_8577/default.asp

Betting (ACTTAB Limited) Act 1964; Betting (Corporatisation) (Consequential Provisions) Act 1996

Arising from the report of the cross border betting task force, the Australian Racing Ministers' forum has agreed in principle to the concept of a racing product fee being levied on all corporate bookmakers, excluding TABs. This in principle agreement has been communicated to industry, which is currently formulating its response.

The *Betting (Corporatisation)(Consequential Provisions) Act 1996* was repealed in 2001.

Gaming Machine Act 1987

On 23 October 2003, the ACT Government tabled in the Legislative Assembly its response to the ACT Gambling and Racing Commission's comprehensive report on the review of the *Gaming Machine Act 1987*. A copy of the government's response was provided to the NCC on 11 November 2003.

On 3 March 2004, the Legislative Assembly passed amending legislation, in the form of the Gaming Machine Amendment Act 2004. The Act, which took effect on 12 March 2004, reflects findings of the review that harm minimisation measures are an element of gaming machine legislation and requires all applicants for gaming machines to undertake new social impact assessment requirements.

In the interests of allowing competition in the industry, the government has agreed to allow taverns and hotels with fewer than 12 rooms access to modern machines that had previously been the preserve of higher capacity hotels. An electronic version of the Act is available at:

http://www.legislation.act.gov.au/a/2004-6/default.asp

Architects Act 1959

On 2 February 2004, the ACT Government agreed to the drafting of legislation to reform the *Architects Act 1959*. Amending legislation was introduced into the Legislative Assembly on 4 March 2004, passed on 1 April 2004 and will commence on 1 July 2004. The ACT's amendments are consistent with the agreed principles for harmonisation of architects' Acts as agreed by COAG and is closely modelled on NSW and Queensland reforms that the NCC has assessed as complying with NCP requirements. An electronic version of the Bill is available at:

http://www.legislation.act.gov.au/b/db_10613/default.asp

Building Act 1972; Electricity Act 1971 (electricians licensing); Electricity Safety Act 1971; Plumbers, Drainers and Gasfitters Board Act 1982

The Construction Occupations (Licensing) Bill 2003 was introduced into the Legislative Assembly on 20 November 2003 and passed on 11 March 2004. The new Act introduces significant reforms to the regulation of building and construction industry trades and implements the recommendations of the National Competition Policy Review of Occupational Licensing in the ACT, which reflected reform proposals that had been considered over a number of years. The legislation will commence on 1 September 2004 to allow sufficient time to run education sessions for licensees and administrators and to establish new administrative databases and related systems. An electronic version of the legislation is available at:

http://www.legislation.act.gov.au/a/2004-12/default.asp

6. National legislation review and reform

Drugs of Dependence Act 1989; Poisons Act 1933; Poisons and Drugs Act 1978 (drugs and poisons)

The Review of Drugs, Poisons and Controlled Substances Legislation (the Galbally review) Final Report was presented to the Australian Health Ministers' Conference (AHMC) in January 2001. The AHMC is required by the Terms of Reference of the Review to forward the report to COAG with its comments. A Working Party of the Australian Health Ministers' Advisory Council was established in February 2001 to assist with the preparation of the comments on the report for COAG.

As a number of the Galbally review recommendations potentially impacted on the management of agricultural and veterinary chemicals, the Working Party consulted the Primary Industries Ministerial Council in preparation of the response. The response was endorsed by the AHMC out-of-session in October 2003 and is expected to be considered, along with the final report of the Review, by COAG in early 2004.

The timeframe for implementation of the Galbally Review recommendations will in most cases be twelve months from the time of endorsement by COAG of the Report of the Galbally Review.

The ACT is committed to reforms of its poisons and drugs legislation but is awaiting COAG's final response to the Galbally report before commencing legislative changes.

Legal Practitioners Act 1970

The review of the *Legal Practitioners Act 1970* is being carried out under the auspices of the Standing Committee of Attorneys-General (SCAG) through the legal profession model laws project. Members endorsed model provisions as the basis for consistent laws for the regulation of Australia's legal profession at the August 2003 meeting of SCAG.

Recommendations were agreed at the November 2003 meeting to progress drafting instructions for the Parliamentary Counsels' Committee on the model rules and regulations. It was also agreed that a cross-jurisdictional working group would be formed to advise on the implementation and maintenance of the model provisions. This working group is yet to meet. The proposed regulatory framework will require, when ready, implementation through legislation at the ACT level.

Consultation on reform of licensing, complaints and disciplinary systems have commenced with relevant stakeholders at a Territory level. Consultation is on-going.

The ACT expects to consider the introduction of legislation based on the national model.

Agents Act 1968 (travel agents)

A National Competition Policy review of the National Scheme for the Regulation of Travel agents was undertaken and the Centre for International Economics prepared a report for the Ministerial Council on Consumer Affairs (MCCA) in March 2000. In November 2002, the MCCA endorsed a series of recommendations flowing from the report and directed the Standing Committee of Consumer Affairs (SCOCA) to oversee their implementation. SCOCA established a working group with Western Australia as the lead jurisdiction.

The Working group of which the ACT is a member is continuing its consultation with stakeholders and the development of the recommendations endorsed by the MCCA. The MCCA will be advised of progress on the recommendations by SCOCA at its annual meeting in 2004. The ACT has already implemented one of the recommendations coming out of this review process.

Public Sector Management Act 1994 (superannuation)

The ACT has not reviewed its superannuation arrangements as it is constrained in its capacity to offer a choice of superannuation provider to its permanent public servants until the position of the Commonwealth's superannuation legislation has been resolved.

The passage of amending Commonwealth legislation providing for choice of superannuation fund was not passed by the Senate following its introduction in 2001. In December 2003, the Commonwealth released an exposure draft of a paper relating to possible amendment to the Public Sector Superannuation scheme. The paper specifically noted that changes to superannuation arrangements did not include providing for choice of fund.

Accordingly, until reform issues regarding the Commonwealth's legislation have been settled, review and any subsequent reform in the ACT is not possible.

Interactive Gambling Act 1998

Officers in the Commonwealth Department of Communications, Information Technology and the Arts have advised that a draft report of the review of the *Interactive Gambling Act 2000* will be provided to the relevant Minister, the Honourable Daryl Williams MP, in late March 2004. Consequently, the ACT's review of its legislation cannot proceed until the findings of the review and the Commonwealth Government's response to it are made public. As previously advised in the ACT's 2003 report, the issue of ministerial discretion in the granting of a licence will be reviewed as part of the overall evaluation of the Territory's legislation.

7. Outstanding non-priority legislation

Environment Protection Act 1997

The *Environment Protection Act 1997* came into effect on 1 June 1998 and was a result of NCP reviews of the *Air Pollution Act 1984,* the *Water Pollution Act 1984,* the *Noise Control Act 1988,* the *Pesticides Act 1989* and the *Ozone Protection Act 1991*, which were all subsequently repealed. The establishment of the single Act was designed to safeguard the public interest in terms of protecting the environment from pollution and its negative effects (as identified through the NCP reviews of the other five Acts), but through a legislatively simplified regime.

In November 2003, a discussion paper was released for public comment as part of another review of the Act. The review is to identify legislative improvements and resourcing levels needed to achieve the intended outcomes of the Act and examine and make recommendations about the role of the Environment Protection Authority established by the Act.

Nature Conservation Act 1980

A review of the *Nature Conservation Act 1980* was completed in June 1999 and determined that provisions within the legislation were consistent with the objectives of the Act and necessary to conserve the ACT's biodiversity for current and future generations.

However, several of the schedules of protected and controlled flora and fauna were out of date or considerably more restrictive than in other jurisdictions. Subsequently, a review of the schedules was undertaken to ensure that only those animals or plants necessary to conserve local biodiversity were granted protection under the Act and that flora and fauna commercial and hobby activities were not adversely affected. The revised schedules were prepared and tabled in the Legislative Assembly in June 2002.

Public Health (Prohibited Drugs) Act 1957

See response for *Drugs of Dependence Act 1989; Poisons Act 1933; Poisons and Drugs Act 1978* (drugs and poisons) on page 14.

Public Health Act 1997

The ACT commenced a process of reviewing its public health legislation by introduction of the *Public Health Act 1997*. This legislation established a template for the management of health risk activities or procedures through a Code of Practice approach. As codes of practice are developed, existing health risk management provisions that are under the former *Public Health Act 1928* are repealed. The revised legislative approach while more focussed on outcomes, stakeholder collaboration and the currency of the health risk, retains potential restrictions on approval, activity and conduct. Accordingly, the revised legislation has the potential to impose costs and restrict competition. A departmental review has been completed that identifies the anticompetitive provisions that arise through the application of the Act to health risk activities and procedures.

An Amendment Bill was introduced in May 2000, and subsequently passed, that provided some registration provisions to address the anticompetitive provisions identified in the review. Reforms (in the form of introducing codes of practice) were introduced on an incremental basis as the *Public Health Act 1928* was progressively repealed. These included:

- swimming and spa pools (1999);
- drinking water, cooling towers and hairdressing (2000); and
- health care facilities (2001).

Radiation Act 1983

In March 2004, the Radiation Health Committee of the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) released the draft of the National Directory for Radiation Protection (NDRP) for the second, and last, round of public comments. Flowing from the NCP review of radiation protection legislation undertaken by ARPANSA, the NDRP will provide the 'best practice' template for jurisdictions to make legislative amendments to incorporate the findings agreed to by the Australian Health Ministers' Conference in September 2002. Contingent upon approval of the final draft of the NDRP by the Australian Health Ministers' Conference, the NDRP is

expected to be available in the second half of 2004 and amendments to the *Radiation Act 1983* will be dependent on the final form of that document.

Trans-Tasman Mutual Recognition Act 1997

The Productivity Commission (PC) concluded its review, *Evaluation of the Mutual Recognition Schemes*, (incorporating the Trans-Tasman Mutual Recognition Agreement (TTMRA)), on 17 October 2003. The key finding was that the TTMRA has been effective overall in achieving the objective of assisting the integration of the Australian and New Zealand economies and promoting competitiveness and, consequently, should continue.

Currently, there are a number of special exemptions from the TTMRA and are matters primarily involved with public safety. They are: therapeutic goods, hazardous substances, industrial chemicals and dangerous goods, consumer product safety standards, road vehicles standards, gas appliances standards, electromagnetic compatibility and radiocommunications standards. Another significant finding of the PC was that many of the permanent exemptions and exclusions should remain, as mutual recognition would otherwise erode justified regulatory differences.

A response to the PC's review is currently being prepared for endorsement by COAG. The ACT's legislation mirrors the Commonwealth Government's, accordingly, any legislative amendments resulting from the review's recommendations will be determined by changes occurring at the Commonwealth Government level.

8. New legislation and gatekeeping

Is there formal regulatory impact assessment of all legislation — including new and amended primary legislation *(Bills) and* subordinate legislation *— that contains non-trivial restrictions on competition?*

Yes. With respect to primary legislation, preparation of a Regulatory Impact Statement (RIS) is mandatory. The ACT Cabinet Handbook April 2002 (Section 7.45) states:

"Where any new or amended law or government direction is proposed, a Regulation Impact Statement must be completed as part of the policy development process. All proposals of a regulatory or legislative nature or that refer to restrictions on competition or to trade practices risks must have a Regulation Impact Statement."

For subordinate laws, such as regulations, preparation of a RIS is a statutory requirement in accordance with Section 34 of the ACT's *Legislation Act 2001*, which states:

"If a proposed subordinate law or disallowable instrument is likely to impose appreciable costs on the community, or a part of the community, then, before the proposed law is made, the Minister administering the authorising law must arrange for a regulatory impact statement to be prepared for the proposed law."

Are there published guidelines for conducting regulation impact analysis that must be followed by all government entities that review or make regulations that restrict competition?

Yes. In June 2003, the ACT was in the initial stages of a review of its RIS process when the ACT Government agreed to a recommendation from the Business Regulation Review Committee (BRRC) which stated, "That the *March 2000 Guide to Regulation in the ACT* be endorsed by the Government and be re-issued to all agencies."

The ACT Treasury has completed its review and update of the guide, now known as the *Best Practice Guide For Preparing Regulatory Impact Statements*, to incorporate recent trends in regulatory best practice. The guide was endorsed for release by the government on 9 February 2004 and an electronic version of the document is available at:

http://www.treasury.act.gov.au/competition/pol.html

Do impact assessment guidelines specifically embody the Competition Principles Agreement (CPA) clause 5 guiding principle?

Yes. Page 5 of the ACT's RIS guide makes specific reference to the clause 5 principles of the CPA and states that:

"…these principles are also required to be incorporated in regulatory impact statements for proposed new or amended legislative proposals."

Is there an independent body that:

i. advises agencies on when and how to conduct regulatory impact assessments?

The Microeconomic Reform Section of the ACT Department of Treasury provides training, guidance and advice to ACT Government departments and agencies in the theory and practice of the RIS process. The Section's website (www.treasury.act.gov.au/competition) provides contact details and links to relevant material for parties wishing to obtain information and advice on the ACT's RIS process.

ii. is empowered to examine regulatory impact assessments and to advise the Cabinet on whether they provide an adequate level of analysis?

The Microeconomic Reform Section of the ACT Department of Treasury has responsibility for assessing all submissions relating to legislative proposals and advising Cabinet in terms of their compliance with best practice regulatory assessment. Proposals do not receive Treasury endorsement if their associated RIS fails scrutiny either in terms of analysis or content. Departments/agencies are required to address Treasury concerns prior to their final submissions going to Cabinet for decision.

iii. monitors and reports annually on compliance with the regulation impact analysis guidelines?

Reporting on agency compliance with the ACT's RIS process is not currently undertaken. The ACT Government has decided that from 2003/04 a BRRC recommendation that all ACT agencies include within their annual reports a summary and analysis of the costs and benefits of regulatory reforms undertaken during the previous year will be applied. An electronic version of the reporting proforma is available at:

http://www.treasury.act.gov.au/competition/pol.html

Are there processes in place to ensure that all agencies adhere to gatekeeping requirements?

Yes, see the response to (ii) above.

Are there gatekeeping processes in place to facilitate consideration of interjurisdictional consistency (or harmonisation) when assessing regulatory impacts?

Yes. Step 4 in the ACT's RIS process requires an identification and assessment of any mutual recognition issues. Explicit in consideration of these issues is a requirement that proposals should, wherever possible, seek to harmonise the ACT's regulatory regimes with those of other jurisdictions.

Legislation considered by the gatekeeping process since 1 July 2003, including the total number of pieces of legislation assessed, the number for which an appropriate regulation impact assessment was conducted, and the number assessed as meeting the CPA clause 5 guiding principle.

In the period 1 July 2003 to 1 March 2004, the Microeconomic Reform Section of the ACT Department of Treasury assessed a total of 34 legislative proposals in accordance with government and statutory requirements. 15 RIS'

of the proposals that required regulatory impact analysis were assessed as satisfactorily meeting the ACT's requirements, however, the RIS for one proposal regarding greenhouse gas abatement measures was rejected and is currently being re-drafted.

The following table provides a summary of legislative proposals received.

Proposals resulting from NCP reviews	4(i)
Proposals of administrative or non-competition nature not requiring a RIS	11(ii)
Proposals based on national legislation for which a RIS was prepared	3(iii)
Proposals that required a RIS	15(iv)
Total	34

(i) Health professionals' legislation reviewed twice.
(ii) A code of practice established by one piece of legislation, the Heritage Bill 2003, will require a RIS at a later stage.
(iii) Human cloning legislation reviewed twice.
(iv) A proposal regarding greenhouse gas abatement measures is being re-done after failing to meet RIS requirements.

9. Water reform obligations

Trade waste

The ACT's utility provider, ACTEW Corporation, is close to formalising its Liquid Waste (Trade-Waste) Acceptance Policy following public consultation. The acceptance policy is a requirement of the Water Supply and Sewerage Service Standards Code under the *Utilities Act 2000*. The code allows for negotiated contracts between the utility and customers. Within these contracts, users contribute to costs of monitoring and, in a small number of applicable cases as a transitional measure, extra treatment costs of discharge based on volume and strength.

ACTEW is working to the timetable previously advised to the NCC and has commenced work to assess the approach to trade waste charging from a broader charging perspective. The terms of reference for the regulatory pricing review of water and wastewater services for the next regulatory period (from 1 July 2004) require the ICRC to investigate and determine a price path for regulated trade waste services. In preparation for its submission to the review, ACTEW commissioned the Centre for International Economics to review charging options for wastewater in the ACT. Based on this report, ACTEW's August 2003 submission to the review proposes reform of non-residential wastewater pricing requiring the gathering of information on costs and customer characteristics over the next two years. Cost information will establish whether economic efficiency would be enhanced by the

implementation of a trade waste charge. ACTEW proposes to obtain information on the costs attributable to different types of trade waste by using existing information in other jurisdictions and from a customer survey.

To ensure that trade waste charges are cost reflective and minimise cross subsidies, there will be a careful assessment of the actual nature of customer loads and the costs of treating such wastes. ACTEW has already gathered information of the type and extent of activity and pre-treatment conditions in place for most of its large industrial customers, but information on many of the smaller commercial customers is still required. A customer survey would be designed to fill the information gaps that exist in the customer database and would need to be confirmed in some instances through inspections and sampling.

ACTEW is to examine a number of options for trade waste charging encompassing access charges, volume charges, excess mass charges and agreement and inspection fees.

The ICRC's draft decision on water and wastewater pricing (December 2003) responded in support of ACTEW's proposed review and notes that the Water Supply and Sewerage Service Standards Code under the *Utilities Act 2000*, allows for negotiated contracts between the utility and customers. The ICRC encourages this process to continue and has stated that where the additional treatment or maintenance costs imposed by trade waste are material, "these higher costs should be passed through to the relevant customers". However, the ICRC has not formally deemed trade waste services to be contestable or otherwise.

Water entitlements

The ACT is a member of the Water Access Entitlements and Water Markets Task Team established by COAG in August 2003 and is fulfilling its membership obligations in respect of assisting in the development of a draft intergovernmental agreement on a water entitlement framework.

Accordingly, until COAG agree on an entitlement arrangement, no detailed response is available at this time. In the interim, the ACT's existing Water Resource Management Plan does embody the relevant principles of an entitlement framework in that it provides for allocations on a volumetric basis, clearly defines risk, explicitly states conditions of use and provides for compensation on full and just terms in the event of government re-appropriation.

Cost recovery and consumption-based pricing: water licence fees

The *Water Resources Act 1998* provides for a range of fees for the issue of allocations, permits and licences, application and annual administration fees and the water abstraction charge.

Fees (excluding the water abstraction charge) were set at the estimated costs incurred in the administration and compliance monitoring of allowed and licensed activity. Estimated costs were compared with NSW fees to ensure cross border equity. Fees are subject to an annual CPI adjustment.

The water abstraction charge is designed to achieve two goals. It sends a signal to consumers regarding true costs of water to encourage efficient water use and recovers the cost of water provision not covered by the regulation of ACTEW to ensure appropriate cost recovery.

On 23 May 2003, the Independent Competition and Regulatory Commission received a reference from the ACT Government requesting that it consider and advise on a methodology for the calculation of the appropriate level of the Water Abstraction Charge (WAC).

A final report was published on 10 October 2003, which recommended that the WAC be increased to $0.20 per kilolitre as from 1 January 2004. This recommendation was adopted by the ACT Government as the Water Resources (Fees) Revocation and Determination 2003 (No.2).

Cap on water diversions/Intra-territory and cross-border trading

Water Strategy

The draft water resource strategy *Think water, act water*, a strategy for sustainable water resources management was released on 21 November 2003 and was open for public comment until 16 February 2004.

Think water, act water outlines how the key targets of the *Water ACT* draft policy are to be implemented, including:

- Between 2003 and 2013: 12 per cent less water usage per capita and the use of treated effluent (reclaimed water) increased from 5 per cent to 20 per cent; and
- By 2023: 25 per cent less water usage per capita (compared with 2003);

The draft strategy addresses a range of issues, including variables affecting the future of the ACT's water resources (population growth, climate change, bushfire impact), water supply options, water use efficiency, water quality, water sensitive urban design, catchment management, riparian zone management and education and community partnerships.

In addition to setting the direction for future water resource management in the ACT, *Think water, act water* also considers how impacts in the ACT affects water management across the region and downstream of the ACT.

Through the strategy, and recognising that risk management in the Cotter and Googong water supply catchments is more important than ever, the ACT Government will formalise catchment management arrangements to ensure

better directed, more coordinated outcomes and to better protect the ACT's water supplies.

As part of the strategy, ACTEW is to complete feasibility studies to shortlist the water supply options by the end of 2004 in case water use efficiency measures are not able to save enough water to avoid a new water supply.

The draft strategy also gives direction on a range of environmental management issues relating to water resources and commits the ACT Government to review Environmental Flow Guidelines, review water resource monitoring and implement a riparian management plan.

A key element of the strategy will be the development of water use efficiency programs to improve the efficiency of water use in the house and garden. Through these programs, the draft strategy anticipates to achieve a reduction in water use of around 6 per cent or about one half of the first stage target of 12 per cent by 2013.

To achieve these reductions the draft strategy proposes to offer a number of incentives to households, including:

- a rebate for AAA showerheads;
- a subsided household domestic water audit/tune-up (householders will be provided with written advice on water efficiency, the fitting of an AAA showerhead, up to two tap valves or flow regulators and up to two tap washers);
- a subsidy to the household towards the fitting of a AAA rated 6/3 litre dual flush toilet in place of a single flush toilet;
- a subsidised garden audit/tune-up, providing written advice on garden water efficiency and provision of products to save water; and,
- a revised rainwater tank rebate program which would include waiving of development and plumbing approval fees to encourage the installation of larger tanks, a scaled subsidy program for a greater range of tank sizes, and an additional subsidy for cold water connection to a toilet or washing machine.

As part of the strategy, the Water Resources Management Plan 1999 is being reviewed and is also open for public comment.

Water Cap

The ACT Government is actively working to adopt a cap for the ACT. The ACT Chief Minister restated the ACT commitment to establishing a cap at the May 2003 Murray-Darling Basin Ministerial Council meeting.

Several options for an ACT cap are under active consideration. The majority of the options rely on the availability of interstate trade to meet future growth in ACT demand. The ACT is not able to finalise a cap until the detail of interstate trading arrangements is determined and the impact of those arrangements would have on each of the options under consideration is

known. The ACT is actively participating in the development of the interstate trading arrangements through the relevant Murray-Darling Basin Commission structures.

While a cap has not formally been set, there has not been a marked growth in extraction in the ACT over recent years and the ACT Government is actively developing formal arrangements to ensure future growth in demand is restrained. The ACT Government released *Water ACT*, a draft policy for sustainable water resource management in July 2003. It identified demand management as one of its key long-term objectives. A draft strategy for water resource management in the ACT, *Think water, act water*, was released for public comment in November 2003 and expands on the importance of demand management and recommends implementation through a range of incentives and community education. The strategy will be finalised during 2004 with implementation expected to follow immediately thereafter.

Trading

There has been little progress on any developments in relation to intraterritory and cross-border trading due to lack of demand for trading and because there has been no finalisation on the cap. Trading parameters will be finalised upon finalisation of the cap and commencement of demand for trading.

10. Energy

Code derogations

The ACT has endorsed the COAG National Energy Reforms recommended by the Ministerial Council on Energy (MCE) along with the Commonwealth, the States and the Northern Territory.

The MCE has assumed the functions of the National Electricity Market (NEM) Ministers Forum and is progressing the NEM Members commitments in relation to derogations from the National Electricity Code and maximising the potential for competition in the retail market.

There are two derogations under the National Electricity Code still in place in the ACT and both relate to the ownership and management of electricity meters. They are:

- Clause 9.24A.3 concerning the recovery of costs relating to metering installation will expire on 30 June 2004 and will not be renewed.

- Clause 9.24A.2 concerning the deeming of Responsible Persons relating to metering will expire on 28 February 2006. Unless effective market competition is established within the Territory before that time, it is intended that this derogation run its declared period.

A derogation concerning the deeming of accreditation of a meter provider (Clause 9.24A.4) expired on 29 February 2004 and will not be renewed.

Retail market competition

Full retail competition for electricity in the ACT commenced on 1 July 2003 and there are currently 13 licenced electricity retailers under the *Utilities Act 2000*. There has been minimum customer churn at this stage. It is expected that this will pick up when retailers offer bundled energy packages of both electricity and gas.

It is expected that the potential for maximising competition will become more effective when jurisdictions introduce the national distribution and retail regulation framework. This will introduce uniform rules and licensing reporting requirements so that electricity distributors and retailers will be able to operate across jurisdictions, leading to reduced business and compliance costs. The ACT Government established a safety-net price for franchise customers during the transition period. This safety net is in effect until 28 February 2006 at which time its continued need will be reassessed.

Community service obligations

The ACT Government has recently undertaken a comprehensive review of concessions, including those offered on utilities. It is anticipated that announcements of new arrangements for such payments will be made in the context of the ACT 2004/05 Budget.

Gas quality standard

The ACT Independent Competition and Regulatory Commission have commenced a comprehensive inquiry into the access arrangement for the ActewAGL natural gas distribution system to apply for the period 1 January 2005 to 30 June 2010. It is expected that the national gas quality standard will be adopted in the access arrangement.