



AUSTRALIAN CAPITAL TERRITORY

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

MARCH 2005

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1. Introduction

The Competition Principles Agreement (CPA) 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 ninth annual report to the National Competition Council (NCC) and covers the reforms implemented in the period 1 April 2004 to 31 March 2005.

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 *Trade Practices Act 1974* (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. Energy

NEM reform

The ACT has participated on all national working groups leading to the development of the National Electricity Law package that was passed by the South Australian (SA) Parliament on 13 April 2005. This package provides the framework for rule-making and enforcement activities to be undertaken by two new regulatory bodies, the Australian Energy Regulator and the Australian Energy Markets Commission. Following the proclamation of the National Electricity Law package in June 2005, the ACT's application legislation will commence.

Retail market competition

As part of the introduction of full retail contestability for electricity in mid 2003, the ACT established a transitional tariff arrangement to protect customers of the incumbent retailer during the transition to a competitive market. This price safety net is administered by the Independent Competition and Regulatory Commission as part of its retail price oversight. The arrangement is to be reviewed in mid 2007 to establish whether there is a sufficiently competitive market in place and what the social effects of its removal may be.

Gas quality standards

This matter is being addressed by an industry working group and no proposals have yet been developed for consideration by jurisdictions. It is anticipated that, should a recommended position be adopted, then either Victoria or SA (as the largest producers/trans-shippers of gas) would provide legislative leadership in establishing a national standard.

4. Road transport

Heavy vehicles registration scheme

In 2001, the ACT Legislative Assembly disallowed the regulation that would have introduced continuous registration of heavy vehicles, and the Assembly Estimates Committee criticised a 2003 budget proposal to implement continuous registration as being a revenue raising measure. The ACT Government has since modified registration procedures to encourage timely re-registration (reminder letters are now routinely sent advising of the consequences of delayed registration). In addition, the use of camera technology to detect unregistered vehicles has been trialled and the Government will be examining legislative options to enable infringement notices to be issued in respect of unregistered vehicles detected using this technology.

5. 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.

There were no competitive neutrality complaints inquired into in the period ending 31 December 2004. However, the Commission received a complaint that was responded to according to the provisions of the *ICRC Act 1997*, as laid out in section 19B. The ICRC's initial assessment was that there was no complying competitive neutrality complaint. The complaint also proposed an investigation under the terms of s19C (government regulated activities). This was rejected, however, if the complainant provided further information and argument and lodgement of a determined security, the ICRC would reconsider the matter. The complainant has not yet responded and, accordingly, there are no outstanding CN issues requiring resolution.

Coverage

The ACT has not made any changes to its competitive neutrality principles or complaints handling processes since its last annual NCP report. There have, however, been amendments to the list of entities subject to CN arrangements during the past 12 months.

The following entities are currently subject to the National Taxation Equivalent Regime:

- ACTEW Corporation Limited
- ACTEW Distribution Limited
- ACTEW Retail Limited
- ACTEW China Pty Limited
- ACT Forests
- ACTION Authority
- ACTTAB Limited
- Capital Linen Service
- Rhodium Asset Solutions Limited

The following entities are currently subject to ACT taxes and charges:

- ACTEW Corporation Limited
- ACTEW Distribution Limited
- ACTEW Retail Limited
- ACTEW China Pty Limited
- ACT Forests

- ACTION Authority
- ACTTAB Limited
- Capital Linen Service
- Rhodium Asset Solutions Limited
- Australian Capital Territory Public Cemeteries Board
- Australian Capital Tourism Corporation
- Australian International Hotel School
- ACT Insurance Authority
- CIT Solutions
- CityScope
- Cultural Facilities Corporation
- DUS Facilities Management
- Land Development Agency
- National Exhibition Centre Trust
- Stadiums Authority
- Yarralumla Nursery

CN guidelines have undergone a recent review and will be released to agencies shortly.

6. Priority legislation review and reform

Veterinary Surgeons Registration Act 1965

The ACT has developed a legislative proposal to bring veterinary surgeon registration within the scope of the *Health Professionals Act 2004* ("the Act"). Legislation has been drafted, within a broader legislative package known as the *Health Legislation Amendment Bill 2005*, to amend the definition of a health service within the Act to include health services provided to animals. This will be finalised by mid-2005 and a specific veterinary surgeons regulation will be drafted and come into effect within 12 months.

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

Taxis

The ACT is considering new and previously developed options for the reform of taxi licence quota restrictions.

Hire cars

Recent legislative amendments, and the buyback of hire car licences to commence on 1 July 2005, will allow accredited operators to obtain leased hire car licences on payment of an annual fee of \$4,600. This will reduce fees currently paid by operators to licence owners by half. The ACT anticipates that this will result in an increase in the number of hire cars, lower hire car

fares and provide a greater variety of hire car services (e.g. wheelchair accessible hire cars). It is also anticipated that the new arrangements for the hire car sector will provide a higher level of competition with the taxi industry, particularly through lower fares.

Health Professions Act 2004

The ACT is in the process of developing the individual profession specific regulations (schedules) that will in effect permit the transition of the regulated professions from their existing Acts to the new *Health Professionals Act 2004* ("the Act"). The regulations will be developed against the policy principles contained in the Act, which were developed to meet the requirements of the NCP review. Accordingly, the regulations will be consistent with the recommendations of the NCP review. If future regulatory initiatives have a potential anticompetitive impact they will be subject to full regulatory analysis in accordance with the ACT's RIS requirements for subordinate legislation contained in the *Legislation Act 2001*.

Dental Technicians and Dental Prosthetists Registration Act 1988

The ACT does not propose any legislative changes to the Act.

Pharmacy Act 1931

Allens Consulting has been engaged to conduct a study into community pharmacy services in the ACT with a particular focus on the access to pharmacy services after hours. The terms of reference for the study were developed through consultation with the Pharmacy Guild and the ACT Pharmacy Board. The results of this study will complement the work of the NCC and provide a more detailed basis for a government response to the NCC recommendations on the *Pharmacy Act 1931*.

Drugs of Dependence Act 1989; Poisons Act 1933; Poisons and Drugs Act 1978

The ACT is committed to reforming its poisons and drugs legislation but is awaiting COAG's final response, currently under consideration, to the Galbally *Review of Drugs, Poisons and Controlled Substances Legislation* report before commencing legislative changes.

Legal Practitioners Act 1970

The ACT's Parliamentary Counsel's Office is currently drafting national model laws for the reform of the legal profession in accordance with the Standing Committee of Attorneys-General agreement to introduce nationally consistent legislation.

Agents Act 1968

Travel agents

The ACT is progressively implementing recommendations endorsed by the Ministerial Council on Consumer Affairs (MCCA) in November 2002 with the exception of the recommendation lifting the licence exemption threshold to \$50,000. This recommendation was not supported on the basis that given the geographic smallness of the ACT region in comparison with the larger States, consumers of travel agency services in the ACT would be disadvantaged if the threshold limit was raised providing no commercial or public benefit for the ACT region.

Issues assessed as outstanding by the Council in 2004 have been substantially progressed. Reforms regarding qualification requirements have been endorsed by MCCA and the ACT is proceeding with implementation. The issues relating to the Travel Compensation Fund contributions and prudential/reporting requirements are being finalised by the Standing Committee of Officials on Consumer Affairs and reform obligations will be met when these issues have been resolved at the intergovernmental level and subsequently implemented.

Employment agents licensing

The ACT maintains the position advised to the Council in the 2004 annual report, namely, that licensing of employment agents has been through a thorough public benefit assessment, incurs minimal cost to the industry and is not attracting negative comments from relevant participants. Accordingly, the ACT is not reconsidering the licensing requirement for employment agents.

Trade Measurement Act 1991

The ACT is waiting for the Ministerial Council on Consumer Affairs to agree on a national approach to reform. The ACT is committed to the reform process and will undertake amendments to the Territory's trade measurement legislation following ministerial council agreement.

Public Sector Management Act 1994

The ACT government has noted the recent changes to Commonwealth legislation to allow choice of superannuation provider for new employees and is considering its position in respect of superannuation for ACT public servants. A decision is expected shortly.

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

The ACT has previously expressed its willingness to consider further the issue of non-exclusive TAB licensing arrangements when the findings of the National Cross-border Betting Task Force became known. At the core of the Task Force's findings is a recommendation, endorsed in principle by the Australian Racing Ministers' forum, that a product fee based on bookmaker turnover be levied on all corporate bookmakers, excluding the TABs. While peak national racing bodies have initiated negotiations with corporate bookmakers and, concurrently, moved to secure the intellectual property rights in the racing product, these negotiations are understood to have stalled.

These events have occurred against a background of large scale, unlicensed foreign betting exchanges operating over the Internet on Australian racing. Concurrent with these developments, the Victorian-based gambling entity TABCORP Holdings Ltd has taken over the NSW-based totalisator TAB Limited. The takeover/merger of these two entities, both holding monopoly totalisator licences in their respective States, has been approved by the ACCC. A key aspect of TABCORP's takeover of TAB Ltd is the merging of the NSW and Victorian totalisator pools, including the SuperTAB partners of TABCORP, the ACT, Tasmania and Western Australia. The merging of pools is forecast to occur early in 2005.

The TABCORP takeover and the associated proposal to merge the NSW and Victorian totalisator pools has also seen significant and potentially far reaching developments in relation to the televising of racing product images, with the monopoly held by Sky Channel (previously owned by TAB Ltd) now challenged by racing industry owned TVN.

In view of these significant changes relating to totalisator operations, the ACT Government considers that the appropriate time to consider further the issue of non-exclusive TAB licensing arrangements is when the results of the merging of pools is known with a degree of certainty.

As previously advised, the *Betting (Corporatisation)(Consequential Provisions) Act 1996* was repealed in 2001.

Gaming Machine Act 1987

The ACT has had for a number of years a policy of non-proliferation of gaming machines to limit the harmful effects of this type of gambling pending the outcomes of considerable research, which is progressively being undertaken. To this end, a cap of 5200 gaming machines was included in legislation.

In effect, the non-proliferation policy relates predominantly to the Class C machines that are installed only in non-public places (clubs) thereby limiting their accessibility.

A further consideration in restricting the installation of the machines to non-public places is that their installation is secondary or ancillary to the principal objects of the establishment, unlike that of a public gaming house. Gaming machines are, like other facilities offered by clubs such as libraries, liquid and other refreshments, music and educational activities and other social amenities, for the benefit and enjoyment of members who individually and collectively have a personal association with the principal objects of the club. The restriction of Class C gaming machines to clubs that are not-for-profit organisations, results in the gaming machine profits of the clubs being retained by their respective memberships and, consequently, the ACT community in which those clubs are established.

Interactive Gambling Act 1998

The resumption of the review of the *Interactive Gambling Act 1998* (IGA) has been delayed due to higher priority legislative reviews, namely the *Casino Control Act 1988*, the *Lotteries Act 1964* and the *Pool Betting Act 1964*. The ACT does not have any IGA applications under consideration and in view of the 'no change' outcome in relation to interactive gaming of the Australian Government's review, the delay will not detrimentally affect any potential licence applicant.

The ACT is not aware that any state that provides for the licensing of interactive gaming operations has received an application to conduct interactive gaming operations since the Australian Government's involvement in this area of gambling, such is the uncertain legislative environment that has resulted. Moreover, only one licensee of four that existed at the time the Australian Government became involved continues in operation, the remainder having ceased operations and surrendered their licences. Additionally, all licence applications being considered then have been withdrawn for the same reason. Furthermore, new licence applications are most unlikely to occur due to Australia having lost its 'first to market' position in regulating interactive gaming during the period of the retrospectively imposed moratorium preceding the Australian Government's legislation.

The resumption of the review of the *Interactive Gambling Act 1998*, anticipated in the latter part of 2005, will start from the proposition that if the Australian Government's legislation makes it too difficult for state licensed interactive gaming operations to be conducted profitably, is licensing legislation required at all.

7. Non-priority legislation review and reform

Consumer Credit Act 1995

The ACT is waiting for the template legislation being developed by Queensland to be completed. Immediately following passage of the template legislation by the Queensland parliament, the Territory's 'mirror' legislation will commence to give effect to reform requirements.

Public Health (Prohibited Drugs) Act 1957

The report of the Galbally review of drugs, poisons and controlled substances legislation 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 the Council of Australian Governments (COAG) with its comments. A working party of the Australian Health Ministers' Advisory Council (AHMAC) 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 impact on the management of agricultural and veterinary chemicals, the Working Party consulted the Primary Industries Ministerial Council (PIMC) in preparing the response. The response was endorsed by the AHMC out-of-session in November 2003 and is currently under consideration by COAG, along with the final report of the Review (out-of-session).

Following endorsement by COAG, the ACT will reform its suite of legislation to incorporate the Galbally review recommendations.

Radiation Act 1983

At its 29 July 2004 meeting, the Australian Health Ministers' Conference (AHMC) endorsed Edition 1.0 of the National Directory for Radiation Protection (NDRP) as the uniform national framework for radiation protection in Australia. AHMC agreed that upon consideration and approval of the provisions of the NDRP, the regulatory elements of the NDRP would be adopted in each jurisdiction as soon as possible, using existing Commonwealth/State/Territory regulatory frameworks. Accordingly, the ACT is commencing amendments to its *Radiation Act 1983* to achieve reforms identified in the NCP Review of Radiation Protection Legislation completed in May 2001. The amended legislation is expected to be finalised in 2006.

Trans-Tasman Mutual Recognition Act 1997

In May 2004, COAG endorsed out-of-session the Committee for Regulatory Reform interim report on the findings of the Productivity Commission's (PC) *Review of Mutual Recognition Schemes*. In accordance with the recommendations, a Cross Jurisdictional Review Forum ("the Forum") was established to carry out further consultations and prepare a final report to COAG and the New Zealand (NZ) government on the PC's findings. The ACT has endorsed the Forum's report, which is to be forwarded to COAG and the NZ government for their consideration.

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

There have been no changes to the ACT's regulatory impact statement (RIS) processes since the last annual report to the NCC.

Scope of regulatory impact assessment requirements

The ACT continues to require RISs to be prepared for primary and subordinate legislation.

For primary legislative proposals, 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 trade practices must have a Regulation Impact Statement."

For subordinate laws, such as regulations, Section 34 of the ACT's *Legislation Act 2001*, 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."

RIS Guidelines

In December 2003, the ACT completed a review and update of its RIS guide, *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>

Compliance with Competition Principles Agreement (CPA) clause 5 guiding principles

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."

RIS advice and review responsibilities

The Microeconomic Reform Section (“the Section”) of the ACT Department of Treasury provides training, guidance and advice to ACT Government departments and agencies on 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.

The Section has responsibility for assessing all submissions relating to legislative proposals and advising Cabinet in terms of their compliance with best practice regulatory requirements.

Monitoring and reporting

The Section monitors agency compliance with the ACT's RIS process and provides reports to senior managers and government on an ‘as required’ basis.

Agency compliance

Legislative 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.