FIRST TRANCHE ASSESSMENT: THE AUSTRALIAN CAPITAL TERRITORY

SUMMARY

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

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

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

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

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 The ACT indicated that it has so far repealed 75 pieces of pre-1980 legislation and has identified a further 650 Acts for possible repeal in the future.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

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

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

established the first stage of an interim national market in advance of the fully competitive market. The ACT has also endorsed the substance of the draft National Access Code for gas. The Council will reassess the progress achieved by the ACT in implementing the National Access Code prior to July 1998.

COMPETITION CODE

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

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

Assessment

Complies with commitment.

COMPETITIVE NEUTRALITY

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

The ACT provided a competitive neutrality policy statement and an annual report in accordance with clauses 3(8) and 3(10) of the Competition Principles Agreement.

Issue: **Adequacy of the reform agenda: the scope and timing of the intended competitive neutrality reform and the progress to date.**

Assessment

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

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

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

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

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

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

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

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

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

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

Assessment

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

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

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

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

STRUCTURAL REFORM OF PUBLIC MONOPOLIES

Reform commitment: **Before a party introduces competition to a sector traditionally supplied by a public monopoly, it will remove from the monopoly responsibilities for industry regulation to prevent the former monopolist from enjoying a regulatory advantage over its rivals. Before a party introduces competition into a market traditionally supplied by a public monopoly and before a party privatises a public monopoly, it will undertake a review of the structure and commercial objectives of the monopoly.**

Issue: Adequacy of progress against reform objectives

Assessment

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

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

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

LEGISLATION REVIEW

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

The ACT provided a timetable for the review and reform of existing legislation which restricts competition in accordance with clause 5(3) of the Competition Principles Agreement and an annual report covering progress on implementation in accordance with clause 5(10) of the Competition Principles Agreement.

Issue: Adequacy of the review program

Assessment

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

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

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

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

The coverage of each jurisdiction's legislation review program will be an ongoing assessment issue. Any pieces of legislation which restrict competition subsequently found not to be on the timetable will need to be listed for review for jurisdictions to be assessed as continuing to meet the spirit of the Competition Principles Agreement.

Issue: The competition policy implications of new legislation are routinely examined

Assessment

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

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

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

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

Issue: Adequacy of progress with legislation review and reform

Assessment

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

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

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

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

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

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

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

APPLICATION TO LOCAL GOVERNMENT

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

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

PROGRESS ON RELATED REFORMS

ELECTRICITY

Recent history of reform

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

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

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

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

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

Assessment

Complies with commitment.

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

Assessment

Complies with commitment.

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

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

Assessment

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

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

GAS

Recent history of reform in the ACT

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

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

Reform Commitments in Relation to Implementation of a National Framework for Access to Gas Transmission Lines

Reform commitment: **Agreed to implement complementary legislation so that a uniform national framework applies to third-party access to all gas transmission pipelines both between and within jurisdictions by 1 July 1996.**

Reform commitment: **Noted that legislation to promote free and fair trade in gas, through third-party access to pipelines, should be developed co-operatively between jurisdictions and be based on the following principles:**

- pipeline owners and/or operators should provide access to spare pipeline capacity for all market participants on individually negotiated non-discriminatory terms and conditions;

- information on haulage charges, and underlying terms and conditions, to be available to all prospective market participants on demand;

- if negotiations for pipeline access fail, provision be made for the owner/operator to participate in compulsory arbitration with the arbitration based upon a clear and agreed set of principles;

- pipeline owners and/or operators maintain separate accounting and management control of transmission of gas;

- provision be made for access by a relevant authority to financial statements and other information necessary to monitor gas haulage charges; and

- access to pipelines would be provided either by Commonwealth or State/Territory legislation based on these principles by 1 July 1996.

Reform commitment: **Noted that open-ended exclusive franchises are inconsistent with the principles of open access expounded in points 1, 2 and 3 above:**

- agreed not to issue any further open-ended exclusive franchises; and

- agreed to develop plans by 1 July 1996 to implement more competitive franchise arrangements.

The above agreed reforms were subsequently amended at the COAG meeting of 14 June 1996 and should be read in conjunction with the following commitments:

Reform commitment: **Agreed that the national access framework would be finalised as follows:**

20 June 1996	**Finalisation of the principles in the draft Access Code.**
30 June 1996	**Release of the draft Access Code for a two month stakeholder consultation period.**
30 September 1996	**Access Code and associated draft Inter-Governmental Agreement to be finalised and submitted to Heads of Government for endorsement.**

Reform commitment: **Agreed:**

(a) the Access Code should apply to distribution systems as well as transmission pipelines:[30] and

(b) the Commonwealth Minister for Resources and Energy would convene a meeting of State and Territory Energy Ministers to settle on a mode of regulation that would maximise competition and facilitate investment in the gas industry.

Assessment

As accepted by the Council, the Prime Minister's letter of 10 December 1996 amended the previous timeframes flowing from the 1994 and 1996 Communiques. In accepting the Prime Minister's proposals, jurisdictions agreed to give legislative effect to the National Access Code by 1 July 1997. This will not be achieved.

The Council acknowledges that the ACT is committed to implementing the National Access Code and is contributing to the development of an intergovernmental agreement to implement the Code through nationally-based legislation. The Council is also aware that the timetable for this process now envisages South Australia, as lead legislature, passing the legislation in October/November 1997, with other jurisdictions following later that year or in early 1998. This timetable has not yet been the subject of formal agreement between the jurisdictions.

There has been considerable slippage from the original timetables in the 1994 and 1996 Communiques and from the timetable outlined in the Prime Minister's letter. The Council is concerned that jurisdictions meet the timetable now being developed through the Gas Reform Implementation Group and to be provided in the Intergovernmental Agreement.

The Council recommends that, for the ACT to be assessed as having satisfied its first tranche commitments in respect of implementation of the National Access Code, it will need to have implemented the Code in accordance with the timetable to be agreed in the Intergovernmental Agreement. The Council proposes to reassess this matter for report to the Commonwealth Treasurer prior to July 1998.

Reform Commitments in Relation to Issues Other than a National Framework for Access

Arising from the February 1994 and June 1996 meetings of COAG, all jurisdictions undertook to put in place a range of reforms designed to permit the free and fair trade in gas between and within jurisdictions.

Reform commitment: **Agreed that reforms to the gas industry to promote free and fair trade be viewed as a package, that each government would move to implement the reforms by 1 July 1996**.

Assessment

[30] See footnote 7.

The Council sees this as a general statement that would encompass all the agreed reform commitments in relation to both the commitments in respect of a national framework for access to gas pipelines and the other gas reforms detailed below. The Council sees the 1 July 1996 deadline as binding unless it has been amended by subsequent unanimous agreement between the parties.

Reform commitment: **Agreed to remove all remaining legislative and regulatory barriers to the free trade of gas both within and across their boundaries by 1 July 1996.**

Assessment

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

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

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

Assessment

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

The Council is satisfied that the ACT has complied with its first tranche commitments in this area.

Reform commitment: **Agreed that approaches to price control and maintenance in the gas industry be considered in the context of agreed national competition policy.**

Assessment

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

The Council is satisfied that the ACT has complied with its first tranche commitments in this area.

Reform commitment: **Agreed that where publicly-owned transmission and distribution activities are at present vertically integrated, they be separated, and legislation introduced to ring-fence transmission and distribution activities in the private sector by 1 July 1996.**

Assessment

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

The Council is satisfied that the ACT has complied with its first tranche commitments in this area.

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

Assessment

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

The Council is satisfied that the ACT has complied with its first tranche commitments in this area.

ROAD TRANSPORT

Reform commitment: **Adopt the first reform module (heavy vehicle charges) with effect from 1 July 1995. Commit to the MCRT timetable for future road transport reforms.**

Assessment

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

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

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