FIRST TRANCHE ASSESSMENT: NEW SOUTH WALES

SUMMARY

New South Wales has taken a leading role in achieving the COAG vision of free and fair trade in natural gas in Australia. The State has already implemented an effective framework for providing third party access for natural gas distribution within its boundaries and has been a prime mover in establishing consistent access arrangements at a national level. The New South Wales regime is consistent with the proposed national framework and will operate until the national regime comes into effect. New South Wales has endorsed the substance of the draft National Access Code and has agreed to implement it within the timeframe agreed by COAG.

A key outcome of the New South Wales reforms will be a significant reduction in the price of gas. This will flow from the Australian Gas Light Company's (AGL) proposal for providing third party access established in accordance with the New South Wales regime. The proposal sets out the company's undertaking on the terms and conditions for access to its gas distribution system. The draft determination on AGL's terms and conditions by the Independent Pricing and Regulatory Tribunal (IPART), the regulator in the New South Wales regime, provides for:

- a substantial reduction in the cost of transporting gas (New South Wales estimates this to be almost 30 per cent in real terms over the next three years); and

- elimination over three years of the cross-subsidy from business customers to households, while keeping price increases to households capped to well below the rate of increase in the Consumer Price Index.

New South Wales has been one of the leaders in reforming the electricity supply industry, operating a competitive market for trade in wholesale electricity since May 1996. The New South Wales market is now open to participation by any licensed electricity retailer, and the ability of customers to purchase electricity from any New South Wales supplier is gradually being extended. It is expected that any customer in New South Wales will be able to purchase electricity from any supplier by 1 July 1999.

New South Wales has also been to the forefront of moves to establish a fully competitive electricity market in Australia. On 4 May 1997, New South Wales, Victoria and the ACT established the first stage of an interim national market in advance of the fully competitive market. This was achieved through harmonisation of the arrangements in the New South Wales and Victorian electricity markets to enable electricity generators to compete to supply power to retailers in the three jurisdictions, and indirectly in South Australia. New South Wales has substantially restructured its electricity generation and distribution arrangements to provide for greater competition in electricity supply.

In addition, New South Wales has demonstrated a continuing strong commitment to examining the commercial focus of its government business activities, and to introducing competitive neutrality reforms such that significant government businesses have no special advantages over their private sector competitors as a result of their government ownership. The Government's policy statement places the onus on government businesses to implement competitive neutrality principles unless they can demonstrate that the economic and social costs of implementation outweigh the benefits. This is being done through the corporatisation of a large number of non-Budget sector businesses and wide application of the Government's Financial Policy Framework. At the same time, social justice objectives in relation to the non-commercial activities of Government Trading Enterprises are

addressed through direct transparent payments from the Consolidated Fund to businesses that have adopted competitive neutrality principles in accordance with the Competition Principles Agreement. New South Wales also recognises the possibility of competition between general government enterprises from different States and Territories and indicated its support for the development of nationally consistent guidelines for pricing and costing.

The proposal by New South Wales to establish an independent competitive neutrality complaints handling mechanism within IPART deserves support. Although the coverage of the proposed mechanism is at present confined to businesses to which competitive neutrality principles are applied, a mechanism which is independent of the Government's competitive neutrality policy-making body and able to recommend on means of resolving complaints, including changes in policy, is desirable.

New South Wales has also developed a generally comprehensive program of review of legislation restricting competition, although the Council has identified some deficiencies. At this stage, New South Wales does not propose to review legislation providing a monopoly licence for casino owners. In addition, the Council is still to establish the community benefit case in respect of intended legislation conferring a long term monopoly licence on the (proposed) privatised Totalizator Agency Board. The Council is also critical of New South Wales' decision to continue the current vesting arrangements for the domestic marketing of rice, and considers that the decision does not meet the spirit of the Competition Principles Agreement. This decision to continue the vesting arrangements was taken despite the recommendation of an independent review panel that deregulation of domestic arrangements, while leaving the export monopoly intact, would provide a net benefit to the community.

The New South Wales Government has indicated a preparedness to enter into meaningful discussions with the Council on the Council's competition policy concerns with its domestic rice marketing arrangements. Recognising this, and the fact that New South Wales rice marketing was one of the first major reviews of legislative restrictions on competition, the Council will reassess New South Wales' progress on legislation review matters prior to July 1998 for the purposes of the second part of the first tranche assessment and in future tranche assessments. The Council will take into account the discussions with New South Wales on rice marketing in these assessments, particularly given its view that consideration of SMAs will be one of the most important areas of the forthcoming NCP program.

New South Wales has made progress with applying the competition principles to local government, particularly in developing guidelines for implementation. However, the Council does not yet have sufficient evidence that reform progress satisfies New South Wales' first tranche obligations. Noting that advances are anticipated over the next 12 months, the Council will reassess progress 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 New South Wales, with effect by 20 July 1996.**

Implementation: The *Competition Policy Reform Act 1995* received the Royal Assent on 9 June 1995. The substantive provisions of the Act commenced on 21 July 1996.

Assessment

Complies with commitment.

COMPETITIVE NEUTRALITY

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

New South Wales 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 intended competitive neutrality reform and progress to date.**

Assessment

New South Wales is implementing competitive neutrality principles in both its GBEs and its general government enterprises (GGEs). The New South Wales Government indicated its support for competitive neutrality reform, stating that it has placed the onus on significant government businesses to implement competitive neutrality principles unless they can show that the economic and social costs of implementation outweigh the economic and social benefits. Accordingly, government businesses in New South Wales must complete a benefit cost analysis and demonstrate a net cost to the community if competitive neutrality principles are not to be introduced.

The legislative vehicles for corporatising GBEs in New South Wales are the *State Owned Corporations Act (NSW) 1989* and the *State Owned Corporation Amendment Act (NSW) 1995*. To date, 18 of the State's 65 GBEs subject to the *State Owned Corporations Act (NSW) 1989* have been corporatised or privatised. Most of these – some 14 – have been corporatised since the signing of the Competition Principles Agreement. A further 10 government business have been identified as candidates for future corporatisation or privatisation. Corporatised or privatised GBEs are involved in a range of areas including electricity, finance, gaming and recreation, and ports and waterways.

Corporatisation reforms under the Competition Principles Agreement are being progressed through the Government's Financial Policy Framework (FPF). All larger New South Wales Government businesses are already operating under the FPF and, by 1997-98, all significant government

businesses are expected to be subject to the FPF. Businesses operating under the FPF are committed to:

- the application of commercially based target rates of return, dividends and capital structures;
- regular performance monitoring;
- the payment of State taxes and Commonwealth tax equivalents;
- the payment of a risk related borrowing fee; and
- explicitly funded "Social Programs" or Community Service Obligations (CSOs).

To assist the application of competitive neutrality to GGEs, the New South Wales Government has developed general pricing and costing principles as part of the whole-of-government guidelines on pricing and costing. The principles are intended to ensure that GGEs undertaking significant business activities as part of a broader range of functions price their goods and services in a manner that reflects full cost attribution in the long run.

The New South Wales local government policy statement indicated that, from 1 July 1997, the Government intends to apply a corporatisation model to local council businesses with annual gross operating incomes above $2 million. Local government businesses with annual gross operating incomes of less than $2 million will be subject to full cost attribution as far as possible.

The Council is satisfied that the competitive neutrality reform agenda developed by New South Wales and the progress achieved against that agenda demonstrate satisfactory progress against New South Wales' first tranche competitive neutrality reform commitments in relation to State Government business activities.

Issue: Adequacy of the reform agenda: operation of the complaints mechanism

Assessment

New South Wales advised the Council in June 1997 that it intends to establish an independent competitive neutrality complaints function within IPART. At present, competitive neutrality complaints in New South Wales are, in the first instance, referred to the government business concerned. Complainants may also address their concerns to the Premier, whereupon the Cabinet Office would seek resolution of the issue in consultation with the business concerned. Complaints relating to tendering issues are dealt with separately by the State Contracts Control Board.

The New South Wales complaints process is available only in relation to complaints about government businesses to which competitive neutrality principles are formally applied. However, New South Wales indicated that it would consider extension of the jurisdiction of the complaints handling process to other government businesses after the Government has had an opportunity to consider the operation of the mechanism.

New South Wales reported three allegations of non-compliance with competitive neutrality policy. These related to:

- the manufacture and sale of artificial eyes by the Sydney Eye Hospital;
- the eradication of noxious weeds by the Upper Macquarie County Council; and
- the manufacture of products at Junee Prison.

In its annual report, the New South Wales Government noted that it is currently considering the application of competitive neutrality principles to the Sydney Eye Hospital as part of the general application of the NCP reforms. The Government considered that this will address the concerns raised in the complaint.

In the case of the Upper Macquarie County Council, the complainant alleged that it had been placed at a competitive disadvantage as a result of the county council selling chemicals for weed control at prices not reflecting full production costs. This complaint is being addressed through public consultation. The Government reported that the Minister of Agriculture met with the complainant and that a discussion paper addressing future arrangements for controlling noxious weeds and the role of county councils has been released for comment.

The complaint relating to the use of labour at Junee Prison was forwarded to the New South Wales Government by Victoria. New South Wales stated that a national code of practice is being developed to address issues relating to the application of competitive neutrality policy to prison-based industries on an inter-jurisdictional basis.

While full details of the proposed competitive neutrality complaints handling facility within IPART are yet to be provided, the Council supports the proposal for a mechanism within IPART, independent from the New South Wales Government agency with responsibility for development of competitive neutrality policy. The Council draws attention to its earlier comments concerning the coverage of the complaints handling mechanism. In particular, the Council encourages New South Wales to address competitive neutrality complaints about all government businesses through IPART rather than only those about businesses to which competitive neutrality reforms are applied.

There is no resolution as yet in relation to any of the allegations of non-compliance with competitive neutrality policy. However, the Council is satisfied that each is receiving appropriate consideration.

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

New South Wales has restructured the regulatory and operating sectors of its electricity industry, with the operating sector further divided into its natural monopoly (transmission and distribution) and potentially competitive components (generation and retail). The passage through the New South Wales Parliament of the *Electricity Supply (NSW) Act 1995* saw the establishment of a unified legislative framework for the industry and made provision for transmission and distribution

of network service provision, competitive retail electricity supply and the establishment and regulation of a wholesale electricity market.

The New South Wales Government has also made progress in reforming its gas monopolies. Its annual report pointed to a range of initiatives, including the:

- transfer of regulation of domestic gas tariff markets to IPART;
- implementation of a third party access regime for natural gas distribution;
- provision of the staged removal of cross subsidies; and
- amendment of legislative provisions and the review of CSOs to facilitate competitive neutrality between the gas and electricity sectors as part of a strategy to stimulate development of an overall energy market.

New South Wales also stated that it has undertaken action consistent with its structural reform obligations under clause 4 of the Competition Principles Agreement in a number of other areas including rail, the Lotteries Commission, the Murrumbidgee and Coleambally irrigation schemes, the Sydney Market Authority, the Valuer General and the Office of the Public Trustee.

The Council notes that New South Wales has prepared legislation for the privatisation of the Totalizator Agency Board and is considering the possibility of privatising its electricity sector. Structural reform action taken by New South Wales in both these areas will be important clause 4 matters for future tranche progress assessments if the privatisations proceed.

The Council considers that New South Wales has met first tranche obligations in relation to clause 4 structural reform matters.

LEGISLATION REVIEW

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

New South Wales 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 on progress under clause 5(10) of the Competition Principles Agreement.

Issue: Adequacy of the review program

Assessment

New South Wales reported that it has examined all State legislation to identify laws which restrict competitive behaviour and to determine whether the costs of the restrictions are known, unnecessarily high or not justified by the benefit to the community. More than 200 pieces of legislation were identified and have been listed in the June 1996 *NSW Government Policy Statement on Legislative Review,* for review and where appropriate, reform in the period to the end of the year 2000.

The review agenda incorporates the Licensing Review Program which to date has resulted in the review of some 250 licences. Of these, 34 have been nominated for repeal under the *Regulatory*

Reduction Act 1996 and seven removed by amending particular legislation or introducing new legislation. A further 44 licenses have been administratively repealed or simplified into one of three licence categories - fencing, general maintenance and cleaning.

New South Wales has stated its intention to complete its review and reform program by the year 2000 'where appropriate'. The Council is satisfied with New South Wales' stated commitment to the year 2000 target date. However, the Council draws attention to its earlier comments regarding the importance of completing the review and reform program by the year 2000. Only in exceptional circumstances would the Council consider a jurisdiction to have complied with the spirit and intent of the Competition Principles Agreement if reform implementation extended beyond the year 2000.

The Council is not convinced that the New South Wales program incorporates all anti-competitive legislation. In particular, the Council notes that New South Wales has not listed the *Casino Control Act 1992* in its review program.

The Council has considered the argument by the New South Wales Government that there is a strong public benefit case justifying retention of the current casino licensing arrangements without review, with benefits arising from the minimisation of the risk of criminal influence and exploitation of gambling outweighing the cost of restricting competition. New South Wales also argued that the restrictions on casino licensing contained in the legislation were arrived at following extensive debate within the Parliament and the community at a comparatively recent time.

The Council notes that the *Casino Control Act 1992* contains provisions relating to exclusive licensing entitlements and on this basis should be listed for review. The Council does not consider the case put by New South Wales provides sufficient justification for exclusion from review, particularly given that other States are proposing to review similar casino legislation.

The Council considers that the failure to include the *Casino Control Act 1992* in the Government's legislation review program is inconsistent with New South Wales' obligations under clause 5 of the Competition Principles Agreement. However, the Council anticipates that a process for considering the anti-competitive elements of casino legislation can be agreed with New South Wales over the next 12 months. In view of this, and noting that casino licensing involves consideration of some complex social questions, the Council recommends that the matter be reassessed prior to July 1998. The Council recommends that the first part of the first tranche of NCP payments available to New South Wales not be affected by the Council's assessment of this matter.

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 Council notes the advice provided by New South Wales that it has examined all post-April 1995 legislation. This process has identified two pieces of legislation which contain anti-competitive elements – the *Waste Minimisation Act 1995* and the *Pawn Brokers and Second Hand Dealers Act 1996*. The Council has been advised that both pieces of legislation contain a provision requiring their review five years after the date of assent.

New South Wales stated that it has adopted a process whereby all new legislation is reviewed for consistency with the Competition Principles Agreement by the Cabinet Office. Any elements of legislation perceived to contain anti-competitive provisions are referred by the Cabinet Office to the responsible Minister for further consideration or brought to the attention of the Cabinet, where the anti-competitive elements must be formally approved by the Premier. Further, all New South Wales Government agencies are required to prepare Regulatory Impact Statements with respect to subordinate legislation.

New South Wales advised the Council in June 1997 that it is preparing new legislation for the privatisation of the Totalizator Agency Board. This legislation will include a monopoly licensing provision for the privatised entity of up to 15 years duration. Noting that the new legislation will introduce a restriction on competition, the Council is seeking advice from New South Wales that the evidence available to the Cabinet Office is consistent with a judgment that the new legislation provides a net benefit to the community as a whole, in line with the requirements of clause 5(5) of the Competition Principles Agreement.

Subject to the availability of evidence to support a net community benefit from the restrictive elements of the Totalizator Agency Board privatisation legislation, the Council is satisfied that New South Wales has met its first tranche obligations with respect to the consideration of the competition implications of new legislation. The Council proposes to reassess the New South Wales' compliance with clause 5(5) of the Competition Principles Agreement in relation to the new Totalizator Agency Board legislation prior to July 1998.

Issue: Adequacy of progress with legislation review and reform

Assessment

Some 52 reviews have been scheduled by New South Wales for 1995-96. New South Wales reported that 36 have been completed and a further 15 were under way as at 31 December 1996. From the 1996-97 program, five reviews have been completed, 47 are in progress, and three are yet to commence.

New South Wales claimed a number of benefits arising from completed reviews, including the reduction of administrative arrangements and compliance costs and the repeal of legislation. In some instances, restrictive arrangements — notably licensing arrangements — have been retained on the basis of public safety considerations. The recommendations from several reviews were still being considered by the New South Wales Government at the time of reporting to the Council.

The New South Wales annual report also stated that eight pieces of legislation are under consideration for national review.

The Council appreciates that New South Wales has scheduled a large number of reviews during the first two years of the review program, and is satisfied that New South Wales has sufficiently progressed its review program. The Council can see little evidence of slippage in the review program to date.

The Council has examined the review and reform process followed by New South Wales in relation to the State Government's examination of domestic rice marketing arrangements dependent on the *Marketing of Primary Products Act 1983*. In particular, the Council noted that the decision by the New South Wales Government to extend the current (anti-competitive) vesting arrangements

available to the NSW Rice Marketing Board was taken despite the review recommendation that deregulation of domestic marketing arrangements would provide a net community benefit.

The New South Wales Government addressed the matter of the domestic marketing of rice in its annual report following a request from the Council for a statement indicating the net community benefit arising from the decision to maintain the vesting arrangements. The New South Wales Government stated, in essence, that it believes the benefits from deregulation of domestic rice marketing arrangements are relatively small, and cited concern that deregulation 'posed a great risk not only to the substantial benefits to the State, but also to the national economy'. The Government also claimed that there is no feasible means of deregulating domestic marketing arrangements while maintaining the Rice Marketing Board's export monopoly, which it considered contributed an unambiguous benefit, and that vesting arrangements are to be reviewed again in 2002.

The Council is not convinced that the New South Wales Government's approach on this matter is consistent with its Competition Principles Agreement commitments to retain restrictive arrangements only where a net benefit to the community is demonstrated. The Council has raised its concerns with the New South Wales Government. In response, the Government has indicated a preparedness to enter into meaningful discussions with the Council on domestic rice marketing arrangements. Recognising this, and the fact that New South Wales rice marketing was one of the first major reviews of legislative restrictions on competition, the Council will reassess New South Wales' progress on legislation review matters prior to July 1998 for the purposes of the second part of the first tranche assessment and in future tranche assessments. The Council will take into account the discussions with New South Wales on rice marketing in these assessments.

APPLICATION TO LOCAL GOVERNMENT

Reform commitment: **Provision of a policy statement detailing the implementation of competition principles to local government in New South Wales, and progress against undertakings in the policy statement.**

New South Wales provided a policy statement in accordance with clause 7 of the Competition Principles Agreement.

Assessment

The Council notes the assurances provided by New South Wales that application of competitive neutrality policies and principles is intended to be comprehensive, with a threshold of $2 million in gross operating income initiating corporatisation. Below this threshold, as many local government businesses as practicable are to apply full cost attribution principles and set prices which reflect full costs. Guidelines for local government businesses on the application of competitive neutrality reforms are expected to be distributed very soon, with the reforms scheduled to apply from July 1997.

New South Wales has an interim process for dealing with complaints about local government business activities. Some 10 complaints have been considered by the Department of Local Government since May 1996. Five of these were generic complaints from industry groups. Of the balance, two were found to involve a breach of policy requiring corrective action.

New South Wales is currently reviewing its planning, land use and natural resource approvals systems and the Government has released a White Paper and draft exposure Bill for comment. The *Local Government Act 1993* is scheduled for review in 1997-98.

While the Council is satisfied that the approach to reform at local government level proposed by New South Wales meets the intent of the Competition Principles Agreement, the Council is not convinced on the basis of the available evidence that the objectives outlined in the New South Wales policy statement have been achieved, particularly in relation to competitive neutrality reform. The Council acknowledges that New South Wales has approached the task of implementing reform at local government level in good faith, and that important preparatory work has been undertaken. However, the Council would need evidence of application of reforms to local government businesses to be confident that New South Wales has fully met its first tranche obligations in this area.

Recognising that the complexities associated with local government reform and on the basis of the progress likely over the next 12 months, the Council considers that New South Wales should meet its first tranche obligations. The Council recommends that progress be reassessed prior to July 1998 and that the first part of New South Wales' first tranche NCP payments due in 1997-98 not be affected.

PROGRESS ON RELATED REFORMS

ELECTRICITY

Recent history of reform in New South Wales

In August 1991, the Electricity Commission of New South Wales was renamed Pacific Power. It was restructured into six semi-autonomous, commercially oriented business units — three generating groups, a pool trading unit, a grid business and a services unit.

The Heads of Government meeting in May 1992 saw New South Wales commit itself to participating in a national electricity market. Arising from the COAG meeting of June 1993, New South Wales made an unambiguous commitment to reform in the lead-up to establishing the competitive national market, and agreed that the target date for commencement of the interim market should be July 1995. At the Darwin COAG meeting in August 1994, relevant jurisdictions, including New South Wales, agreed to make decisions by the end of 1994 or as soon as practicable thereafter on Snowy reform and the Interconnection Operating Agreement.

In February 1995, the transmission activities of Pacific Power were separated to become the Electricity Transmission Authority (trading as Transgrid), with Pacific Power's activities confined to generation.

In early 1996, the 25 electricity distribution bodies were amalgamated to form six large, independent, government-owned distributors. Each distributor operates ring-fenced wires and energy trading operations.

Early 1996 also saw the separation of Pacific Power into three independent, government-owned generation businesses – Pacific Power, Delta Electricity and Macquarie Generation.

A competitive market for state-based trade in wholesale electricity commenced on 10 May 1996. Participation in this market was initially limited to New South Wales generators and distributors and

ACTEW (Corporation Ltd). However, from 1 October 1996, the market was opened to participation by any licensed retailer, irrespective of ownership or location.

New South Wales is progressively extending retail competition to include all customers by 1 July 1999. Stage 1 commenced on 1 October 1996, with the New South Wales market opened to customers who consume more than 40 GWh per year. By 1 July 1997, any customers who consume over 750 MWh are expected to become eligible to enter the market.

In November 1996, New South Wales signed a Heads of Agreement with Victoria and the ACT to introduce an interim market (NEM1) in the movement to the proposed 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:	**Agreement 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 New South Wales 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

New South Wales has shown strong commitment to implementing the agreed electricity reforms and has made significant progress towards the competitive national market. While concerned about the delays to date, the Council accepts that action by New South Wales has been in good faith.

The Council considers that any further slippage in the implementation of agreed electricity reforms would be unacceptable and will be according high priority to this area in conducting its second tranche assessments.

The Council considers that New South Wales has complied with its first tranche electricity reform commitments.

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

Assessment

Complies with commitment.

Reform commitment:	**Agreement to the structural separation of generation and transmission.**
Implementation:	Generation and transmission have been completely structurally separated.

Assessment

Complies with commitment.

Reform commitment: **Agreement to ring-fence the 'retail' and 'wires' businesses within distribution.**

Implementation: Ring-fencing is by the application of an accounting framework. IPART has developed an accounting separation code, which provides principles and guidelines for the accounting separation and financial reporting requirements for the network monopoly activities of distributors.

Assessment

Complies with commitment.

GAS

Recent history of reform in New South Wales

The only gas transmission pipeline in New South Wales – the Moomba-Sydney facility – 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.

AGL distributes most of the natural gas sold in New South Wales markets.[15] The *Gas Supply Act (NSW) 1996* established a third party access regime for natural gas distribution services, with IPART as the regulator. The regime was submitted to the Council for certification in 1996. The Council released a draft recommendation in January 1997 that the Regime be certified as an effective access regime under section 44M of the Trade Practices Act, subject to a number of amendments to the Regime. All required amendments were implemented by April 1997.

IPART issued a draft determination in May 1997 to approve the amended AGL Access Undertaking lodged under the New South Wales Regime. The reference tariffs subject to this determination will provide for a substantial reduction in average transportation charges in the gas distribution market, and be structured to phase out cross-subsidies from the industrial market to the retail market.

New South Wales has developed its access regime as an interim measure ahead of the implementation of a National Access Regime under the auspices of COAG. New South Wales has endorsed the substance of the draft National Access Code and has agreed to implement it within the timeframe agreed by COAG.

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.**

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15 The exceptions are Wagga Wagga (where the gas distribution utility was sold by the City Council to Great Southern Energy in 1997) and in the Albury region (where natural gas is distributed by the Albury Gas Company, a GASCOR subsidiary).

Reform commitment: N**oted 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:[16] 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

New South Wales has provided a clear commitment to implementing national access arrangements for the gas industry consistent with the process outlined in the Prime Minister's 10 December 1996 letter. New South Wales has endorsed the substance of the draft National Access Code for finalisation by the inter-jurisdictional implementation group and is contributing to the development of an inter-governmental agreement to implement the Code through nationally-based legislation. New South Wales has made progress in implementing the intent of agreed reforms in this area through the establishment of an access regime for the services of gas distribution pipelines in the State, closely modelled on the draft National Access Code.[17]

The Council judges New South Wales to have complied with its first tranche reform commitments in regard to the national regulation of access arrangements for the gas industry.

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

The Council sees this as a general statement that encompasses 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. 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

A report by officials to Heads of Government in August 1994, *Implementation of a Pro-Competitive Framework for the Natural Gas Industry, Within and Between Jurisdictions* (the

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16 See footnote 7.

17 While some important differences exist between the New South Wales Regime and the draft national code, New South Wales plans to adopt the national code once it has been given legislative effect by participating jurisdictions.

August 1994 Report) reported that there were no significant legislative barriers to free and fair trade in gas in New South Wales at that time.

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

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

Assessment

New South Wales reported that the SAA Pipeline Code AS2885 was implemented in 1987. Since its adoption the Code has been applied in respect to the construction of the major pipelines, including the Mobil aviation turbine pipeline at Botany and AGL's natural gas pipelines to Newcastle and Wollongong. All new pipelines are required to meet the Code as a minimum requirement for pipeline construction licensing purposes under the *Pipelines Act 1967*.

The Council considers that New South Wales 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

New South Wales has transferred responsibility for the regulation of domestic gas tariffs in New South Wales to IPART.

Further, New South Wales has implemented an access regime for the natural gas distribution system that is modelled on the National Access Code for Natural Gas.

The Council considers that New South Wales 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

Transmission and distribution services in New South Wales are operated by separate legal entities: EAPL (transmission), AGL (distribution), the Albury Gas Company (distribution) and Great Southern Energy (distribution). EAPL is 51 per cent owned by AGL. No company in NSW operates *both* transmission and distribution services.

The New South Wales Access Regime for gas distribution services provides for the ring-fencing of a gas haulage business from any other business. In the light of this reform, AGL is currently implementing a corporate restructure to separate its network operations from retail functions.

The Council is satisfied that New South Wales has met this commitment.

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

Assessment

Before March 1997, the Wagga Wagga City Council operated the only publicly-owned gas transportation business in New South Wales. In March 1997, the City Council sold its utility to Great Southern Energy. Great Southern Energy is one of the recently formed New South Wales Government-owned electricity distribution businesses, and operates on a commercial footing.

More generally, New South Wales is providing for the staged removal of cross-subsidies provided by industrial to domestic gas markets and has reviewed arrangements for dealing with Community Service Obligations to facilitate competitive neutrality between the gas and electricity sectors of the energy market.

The Council is satisfied that New South Wales has met this commitment.

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

New South Wales implemented the heavy vehicle charges and associated permit reforms by state legislation on 1 July 1996. The Council accepts that the requirement for New South Wales to first remove existing permit schemes relating to heavy vehicles operating at higher mass limits in order to introduce the charges may have contributed to the delay in implementation beyond the original reform timetable.

New South Wales confirmed that it agrees with the policy position proposed by the MCRT, subject to reviewing the draft legislation and the revised Heads of Government Agreements being endorsed by Heads of Government prior to introduction into the Commonwealth Parliament.

The Council considers New South Wales to have complied with its first tranche road transport reform commitments.