

FIRST TRANCHE ASSESSMENT: TASMANIA

SUMMARY

Tasmania has given strong commitment to the NCP reform process, developing comprehensive programs for the application of competitive neutrality policies and the review and reform of anti-competitive legislation. It has introduced competitive neutrality principles in all of its significant government business enterprises and has gone further than most other governments in stating that it will extend application of competitive neutrality reform to all business enterprises, regardless of their size, and to significant government business activities.

Tasmania has legislation in the Parliament to establish an independent competitive neutrality complaints handling mechanism under its *Government Prices Oversight Act 1995*. The mechanism will operate from as soon as possible after 1 July 1997 (due to delays in the Legislative Council), and will investigate and report on complaints about all Tasmanian Government businesses including those not formally subject to competitive neutrality policy. The Council strongly supports Tasmania's approach.

Tasmania is adopting a comprehensive legislation review process, and has listed more than 240 pieces of legislation for review. Many of these have been programmed for early in the review period, giving confidence that the State can complete the review and reform process by the year 2000. The Tasmanian Government confirmed that it intends to complete all reviews and implement appropriate reforms by the year 2000, but has noted that the review process might indicate a net community benefit in phasing implementation beyond 2000 in some cases.

Tasmania has given strong support to COAG's vision for a more competitive energy sector. It has introduced a framework for increased competition in electricity by removing the Hydro-Electric Corporation's (HEC) statutory monopoly on generation. In addition, the *Electricity Supply Industry Act 1995* enables non-discriminatory access by third parties to Tasmania's electricity grid, and introduces an independent regulator to the industry.

In April this year, Tasmania announced its commitment to participation in the National Electricity Market through interconnection with Victoria, setting an objective of interconnecting (through Basslink) within four years. Some early action to progress participation in the national market has been commenced. In particular, Tasmania is working towards establishing an interim State-based competitive electricity market and has set up a steering group to oversee the sale of the HEC's transmission and distribution/retail components. Tasmania has also put in place ring-fenced accounting arrangements within the HEC, but will need to structurally separate the HEC's generation and transmission functions prior to the State's entry into the national market.

Tasmania is supporting the national gas reform process. Although it has no natural gas industry as yet, Tasmania has endorsed the substance of the draft National Access Code and is contributing to the development of an inter-governmental agreement to implement the Code through nationally-based legislation.

Tasmania is approaching its commitment to apply the competition principles to local government in good faith, but as yet there is little evidence of reform progress. Extensive preparatory work has been undertaken, but the Government has temporarily postponed the next stage of the local government reform program pending consideration of the Local Government Board's recommendation on council amalgamations. Noting that advances consistent with first stage NCP

obligations are anticipated over the next 12 months, the Council will reassess progress with local government reform 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 Tasmania, with effect by 20 July 1996.

Implementation: The *Competition Policy Reform (Tasmania) Act 1996* received the Royal Assent on 10 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 Tasmania, including an implementation timetable and a complaints mechanism, and progress against the undertakings in the policy statement.

Tasmania 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

Tasmania is adopting a comprehensive competitive neutrality reform program. Tasmania's *Government Business Enterprises Act 1995* commits the Government, through corporatisation and commercialisation, to subject its significant GBEs to:

- tax equivalent regimes;
- debt guarantee fees directed at offsetting the advantage of government guarantees on borrowings; and
- all regulations normally applying to the private sector.

Tasmania has so far corporatised several larger business enterprises, including the HEC, the Forestry Corporation, the Metropolitan Transport Trust, and the Tasmanian Public Finance Corporation.

Tasmania also reported that steps are being taken to extend the coverage of the *Government Business Enterprises Act 1995* to include all GBEs regardless of their size.²⁷

While reform to date has focused on GBEs, Tasmania's annual report indicated that a timetable for introducing competitive neutrality principles to the Government's remaining significant business activities is to be finalised by 30 June 1997. The Government stated that it will review progress against the timetable every six months.

To assist competitive neutrality reform, the Tasmanian Government advised that it is developing policy guidelines on, corporatisation, public benefit assessments, and the delivery of CSOs. Policy guidelines on full cost pricing are also being developed to assist reform at the local government level. The Government has already issued guidelines for competitive tendering and contracting out.

The Council is satisfied that the competitive neutrality reform agenda developed by Tasmania and the progress achieved against that agenda demonstrate satisfactory progress against Tasmania's first tranche competitive neutrality reform commitments in relation to government businesses.

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

Assessment

Tasmania has legislation in the Parliament to establish an independent competitive neutrality complaints handling mechanism under its *Government Prices Oversight Act 1995*. The mechanism will operate from as soon as possible after 1 July 1997 (due to delays in the Legislative Council), and will investigate and report on complaints about all Tasmanian Government businesses including those not formally subject to competitive neutrality policy. The Government stated that it sees consideration of all complaints as valuable in helping to identify future areas for reform.

Tasmania has operated an interim mechanism through the National Competition Policy Unit located within the Ministry of Finance. As at 31 December 1996, Tasmania had received no complaints relating to competitive neutrality issues.

The Council strongly supports Tasmania's approach to competitive neutrality complaints handling. The Council is satisfied that Tasmania has met its first tranche obligations on this matter.

²⁷

The Housing Division of the Department of Community and Health Services will be excluded from the coverage of the Act but will be commercialised as a separate process.

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

Tasmania has advised the Council that while it strongly supports the Competition Principles Agreement obligations in relation to the structural reform of public monopolies, it has not had cause to apply the principles to date.

LEGISLATION REVIEW

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

Tasmania 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

Tasmania is adopting a rigorous review process. Where an Act is considered to contain a major competitive restriction, the review must involve the preparation of a Regulatory Impact Statement to assist in identifying the costs and benefits associated with the legislation and the conduct of a public consultation process.

Tasmania's Legislation Review Program involves the review of more than 240 pieces of legislation before the year 2000. Of these:

- 141 are for general review involving identification and assessment of any anti-competitive elements;
- 79 have been nominated for national review; and
- 20 have been classified as community standards where some restriction of competition may be required to achieve social objectives.

Tasmania indicated that it intends to complete its review program by the year 2000. The Government also stated that it is aiming to complete implementation of reforms arising from its review program by the year 2000, but that the review process might in some cases indicate a net community benefit in phasing implementation beyond 2000.

The Council acknowledges that the potential for reform implementation to extend beyond the end of the year 2000 has been reduced because Tasmania has scheduled many of its major reviews early in its review timetable. However, the Council draws attention to its earlier comments concerning the timing of reform implementation. Specifically, phased implementation beyond 2000 would require a strong public interest justification for the Council to consider that Tasmania had met the spirit of the Competition Principles Agreement.

The Council is satisfied that Tasmania's legislation review schedule complies with Tasmania's first tranche commitments.

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

A Tasmanian Government audit of all legislation introduced since April 1995 revealed that 44 of the 173 Acts enacted between April 1995 and December 1996 contained some anti-competitive elements. These Acts are now scheduled for review under the Legislation Review Program.

Tasmania indicated that all new legislative proposals are required to include an assessment of the impact and magnitude of any anti-competitive elements, in order to ensure that new legislation restricts competition only where the benefits outweigh the costs. Further, Tasmania advised that all new subordinate legislation must conform with the requirements of the *Subordinate Legislation Amendment Act 1994* which reflect the clause 5 principles of the Competition Principles Agreement.

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

Issue: Adequacy of progress with legislation review and reform

Assessment

Tasmania scheduled 40 Acts for review during 1996. At the time of its annual report to the Council, reviews of 18 pieces of legislation were in progress and seven reviews had been deferred. A further 14 Acts had been repealed and one review deleted from the program.

Tasmania has also repealed another eight pieces of legislation which had been originally scheduled for review between 1997 and 1999. In addition, another four pieces of legislation are now being proposed for consideration as part of a national process.

Tasmania identified six pieces of legislation, scheduled for review in 1996, as potentially having a major impact on the State economy:

- *Traffic Act 1925*;
- *Apple and Pear Industry (Crop Insurance) Act 1982*;
- *Local Government Act 1993*;
- *Liquor and Accommodation Act 1990*;
- *Hospitals Act 1918*; and
- *Inland Fisheries Act 1995*.

The Council is satisfied that Tasmania's progress with its legislation review program has been sufficient to meet the first tranche obligations.

APPLICATION TO LOCAL GOVERNMENT

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

Issue: **Adequacy of the reform agenda: application of the competitive neutrality principles to local government activities should provide for a level of reform consistent with the intent of the Competition Principles Agreement.**

Assessment

The Council had initial concerns that the scope and timing of reform proposed for local government in Tasmania would be insufficient to meet the State's National Competition Policy reform obligations. For example, Tasmania's policy statement on the application of the competition principles to local government set a target date of July 2000 for the corporatisation of significant local government businesses. Tasmania has also suspended its early timetable for the application of competitive neutrality principles to local government, citing the need to first complete a round of local government amalgamations.²⁸

While anticipated local government amalgamations have delayed the timetable for the application of competitive neutrality principles to local government businesses, the Council is satisfied that the State Government, in cooperation with local government, is approaching the task of applying the competition principles to local government in good faith. Guidelines for corporatisation are expected to be available for local government by late 1997, with application to significant businesses as appropriate expected well before 2000. The Council understands that 18 of 29 local councils have agreed to introduce full cost attribution in pricing for all their business activities. The State Government indicated that it believes the amalgamations have the potential to speed the application of the NCP competitive neutrality reforms.

²⁸ Tasmania advised the Council that its Local Government Board has been asked to recommend new boundaries, with a view to reducing the existing 29 local councils by at least half and creating single councils for the Hobart and Launceston metropolitan areas. The Local Government Board has been asked to report to the State Government by the end of October 1997.

Tasmania's local government legislation review program is now underway. The review of the *Local Government Act 1993* initiated in 1996 is continuing. All by-laws pursuant to the Act are also being reviewed with procedures to introduce new by-laws being modified to better reflect National Competition Policy principles. Tasmania is also taking action to extend the coverage of the *Government Prices Oversight Act 1995* to include prices oversight of local government monopolies. The Government has consulted widely with local government and has an amending Bill in the Parliament.

Notwithstanding Tasmania's actions to date, the Council is not yet in a position to be satisfied that the State Government has met its first tranche reform commitments. The Council does recognise the importance of the early preparatory work, and accepts that progress over the next 12 months is likely to increase as the amalgamation program proceeds. In view of this, the Council recommends that Tasmania's progress with the application of the NCP reforms to local government be reassessed prior to July 1998. The Council recommends that the first part of Tasmania's first tranche payments due in 1997-98 not be affected.

PROGRESS ON RELATED REFORMS

ELECTRICITY

Recent history of reform in Tasmania

Tasmania's electricity authority, the HEC, is a vertically integrated monopoly, operating a predominantly hydro system.

Legislative reforms introduced a framework for increased competition in Tasmania's electricity supply industry by removing the HEC's statutory monopoly on electricity generation. The *Electricity Supply Industry Act 1995* provides for non-discriminatory access by other participants to the grid and the licensing of participants in the Tasmanian electricity market, and introduces an independent Regulator to the industry.

Ring-fencing of accounts is being developed, and regulatory functions have been separated from the utility. A separate pricing tribunal has been established to recommend on maximum HEC power prices, and the independent Regulator will control network access rates.

Tasmania has stated that it is committed to participating in the National Electricity Market on the basis that it proceeds with an interconnection with the mainland (the proposed Basslink project). The Tasmanian Premier has set the objective of implementing Basslink within four years (Directions Statement, 10 April 1997).

Reform commitment: **None.**

While noting Tasmania's public commitment to proceed with Basslink, the Council accepts that, for the purpose of the first tranche assessment, Tasmania is a non-participating jurisdiction.

Nonetheless, the Council considers that it is essential that electricity generation and transmission functions are structurally separated to ensure that the anticipated benefits from a more competitive electricity market are achieved. The Council's strong view is that ring-fencing these operations is insufficient. Tasmania's entry into the National Electricity Market will require the State to implement structural reforms.

The Tasmanian Premier has informed the Council that, since the Directions Statement, two committees have been established to progress reform. The Basslink Development Steering Committee will oversee, among other things, the implementation of an interim electricity market in Tasmania to operate prior to the completion of Basslink, and the HEC Equity Withdrawal Steering Committee will oversee the sale of the HEC's transmission and distribution/retail components to the private sector.

GAS

Recent history of reform in Tasmania

While there is currently no natural gas industry in Tasmania, the State has actively participated with other jurisdictions in the development of a National Access Regime for gas pipelines. The draft Intergovernmental Agreement on Natural Gas provides that Tasmania is only required to introduce legislation to promote free and fair trade in gas once a proposal for a natural gas pipeline in the State has been approved.

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;²⁹ 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

Tasmania 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, once a proposal for a natural gas pipeline in the State has been approved. Tasmania 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 intergovernmental agreement to implement the Code through nationally-based legislation.

The Council considers that Tasmania has complied with its first tranche reform commitments in regard to the national regulation of access arrangements for the gas industry.

²⁹

See footnote 7.

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 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 Council is not aware of any matters that are relevant to Tasmania in respect of this reform commitment.

The Council is satisfied that Tasmania meets this commitment.

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

Assessment

The Council is not aware of any matters that are relevant to Tasmania in respect of this reform commitment.

The Council is satisfied that Tasmania meets this commitment.

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 Council is not aware of any matters that are relevant to Tasmania in respect of this reform commitment.

The Council is satisfied that Tasmania meets this commitment.

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 matters that are relevant to Tasmania in respect of this reform commitment.

The Council is satisfied that Tasmania meets this commitment.

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 matters that are relevant to Tasmania in respect of this reform commitment.

The Council is satisfied that Tasmania meets 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

Tasmania implemented the heavy vehicle charges and associated permit reforms by state legislation with a number of amendments to the Commonwealth model on 1 October 1996. The Council notes Tasmania's requirement to first remove existing permit schemes relating to heavy vehicles operating at higher mass limits in order to introduce the charges had the effect of delaying implementation beyond the original timetable.

Tasmania stated in its annual report that it is committed to implementation of future road transport reforms in line with the road transport implementation strategy agreed by the MCRT. Tasmania noted that this commitment is subject to the availability of the required NRTC legislative modules. In short, the Government undertook to meet the MCRT timetable provided the modules are available in good time.

Tasmania is currently engaged in the process of simplifying the State's public vehicle licensing system through reform of the *Traffic Act 1925*. The Government stated that it has accepted in principle the recommendations of the Independent Committee of Review into Public Vehicle Licensing in Tasmania, and that it will introduce legislation simplifying licensing arrangements into the Parliament by October 1997. Tasmania stated in its annual report to the Council that the Committee's recommendations would be implemented through gazettal of (interim) regulations under the Traffic Act pending enactment of the new legislation.

The Tasmanian Government has since advised the Council (8 May 1997) that the interim regulations have been disallowed by the Legislative Council. While acknowledging the Government's commitment to devote effort to ensuring that the new legislation is accepted by the Tasmanian Parliament, the Council emphasises that full and on time implementation of the recommended changes to the Traffic Act is an important element of assessing Tasmania's reform progress. The Council will continue to monitor the progress of Tasmania's transport reforms.

With the above qualification, the Council considers Tasmania to have complied with its first tranche road transport reform commitments.