INTRODUCTION

Under the terms of the inter-governmental competition policy agreements, the National Competition Council has been asked to assess whether States and Territories have met the conditions for receipt of National Competition Policy (NCP) transfers from the Commonwealth that are provided under the Agreement to Implement the National Competition Policy and Related Reforms. Some $406 million is available for distribution (on a per capita basis) to States and Territories which are assessed as having satisfied reform obligations over the period to July 1997.[1]

This report provides the Council's assessment of State and Territory progress against reform obligations. The report takes into account governments' policy statements, the annual reports which governments provided to the Council in April 1997, information subsequently provided by States and Territories and relevant information available from other sources.

The report comprises three sections:

- Part 1 outlines the reform commitments set out in the relevant inter-governmental agreements;
- Part 2 discusses the Council's view of what constitutes satisfactory progress; and
- Part 3 provides the Council's assessment of the progress achieved by each jurisdiction against the first tranche obligations.

PART 1: REFORM COMMITMENTS

The NCP program is contained in three inter-governmental agreements signed by the Prime Minister, Premiers and Chief Ministers on 11 April 1995, together with inter-governmental agreements covering related areas of reform. The three competition policy agreements are the:

- Competition Principles Agreement;
- Conduct Code Agreement; and
- Agreement to Implement the National Competition Policy and Related Reforms.

The agreements set a range of reform obligations for each State and Territory, and also encompass reforms at local government level. In summary, the agreements provide for:

- consideration of the establishment of mechanisms providing for effective prices surveillance;
- introduction of competitive neutrality policies and principles, where appropriate, in respect to significant government business activities;
- structural reform of publicly owned monopolies prior to privatisation or the introduction of competition to the market traditionally supplied by the monopoly;
- review and, where appropriate, reform of all existing legislation which restricts competition;
- third party access to significant infrastructure facilities;

[1] Attachment A provides an estimate of the funds which could be available to each State and Territory in 1997-98.

- application of the competition principles to local government;[2]

- extension of the Competition Code within each State and Territory (Conduct Code Agreement); and

- implementation of related reforms in electricity, gas, water and road transport (Agreement to Implement the National Competition Policy and Related Reforms).

CONDITIONS FOR THE PAYMENT OF THE FIRST TRANCHE OF COMMONWEALTH TRANSFERS TO STATES AND TERRITORIES

The provision of certain financial transfers by the Commonwealth is conditional on the States and Territories making satisfactory progress with the implementation of the NCP and related reforms. The reform commitments for the first tranche transfers, starting in 1997-98, are specified in the Attachment to the Agreement to Implement the National Competition Policy and Related Reforms. Drawing from the Attachment, the commitments are that each State and Territory:

- has signed the Competition Principles Agreement and the Conduct Code Agreement at the COAG meeting in April 1995;

- in accordance with the Conduct Code Agreement, passed the required application legislation so that the Conduct Code was applied within that State or Territory jurisdiction by 12 months after the Commonwealth's Competition Policy Reform Bill received the Royal Assent;

- is a fully participating jurisdiction under the Competition Policy Reform Bill and a party to the Competition Principles Agreement at the time at which the payment is made (States and Territories must apply the Conduct Code as a law of the State without making significant modifications to the Code in its application to persons within their legislative competence and must remain a party to both Competition Policy Inter-Governmental Agreements);

- is meeting all its obligations under the Competition Principles Agreement, which include, but are not limited to:

    - when undertaking significant business activities or when corporatising their government business enterprises, having imposed on these activities or enterprises full government taxes or tax equivalent systems, debt guarantee fees directed towards offsetting the competitive advantages provided by government guarantees and those regulations to which private sector businesses are normally subject on an equivalent basis to the enterprise's private sector competitors;

    - having published a policy statement on competitive neutrality by June 1996 and published the required annual reports on the implementation of the competitive neutrality principles;

    - having developed a timetable by June 1996 for the review and, where appropriate, reform of all existing legislation which restricts competition by the year 2000;

[2] Local governments are not parties to the inter-governmental agreements. Each State and Territory is responsible for applying the principles to local government.

- having published by June 1996 a statement specifying the application of the principles in the Competition Principles Agreement to local government activities and functions (this statement to be prepared in consultation with local government); and

- (for relevant jurisdictions) taken all measures necessary to implement an interim competitive National Electricity Market, as agreed at the July 1991 special Premiers' Conference, and subsequent COAG agreements, from 1 July 1995 or on such other date as agreed by the parties, including signing any necessary Heads of Agreement and agreeing to subscribe to the National Electricity Market Management Company and National Electricity Code Administrator;

- (for relevant jurisdictions) has implemented any arrangements agreed between the parties as necessary to introduce free and fair trading in gas between and within the States by 1 July 1996 or such other date as agreed between the parties, in keeping with the February 1994 COAG agreement; and

- effective observance of the agreed package of road transport reforms.

First Tranche Reform Commitments Arising from the Conduct Code Agreement

The Conduct Code Agreement requires each State and Territory government to have passed the necessary application legislation such that the Competition Code operates within that government's jurisdiction within twelve months of 20 July 1995.

Interpretation: Each government must have applied the Competition Code as a law of the State without making significant modifications to the Code in its application to persons within the legislative competence of the State, with effect from 21 July 1996. The effect is to extend the application of the Trade Practices Act's conduct rules to both the unincorporated sector, including the professions, and State and local government business activities.

First Tranche Reform Commitments Arising From the Competition Principles Agreement

Rather than specifying particular reforms, the Competition Principles Agreement contains statements of broad principle aimed at enhancing the competitiveness of the Australian economy. For the first tranche assessment, jurisdictions are committed to achieving satisfactory progress in relation to competitive neutrality reform and the review and reform of legislation restricting competition, including in relation to local government. Governments are also committed to examining the structure and the commercial objectives of publicly owned monopolies operating in markets where the introduction of competition is proposed or before privatising the monopoly and to consider establishing independent sources of prices oversight advice where these do not exist.

The Council's primary focus in assessing governments' first tranche progress against Competition Principles Agreement reform objectives centred on the implementation of competitive neutrality policy and principles, the legislation review and reform program and the application of competition principles to local government.

Competitive Neutrality

With respect to significant Government Business Enterprises (GBEs) classified as Public Trading Enterprises and Public Financial Enterprises by the Australian Bureau of Statistics, clause 3(4) of the Competition Principles Agreement requires governments, where appropriate, to :

- adopt a corporatisation model; and
- impose on the enterprise full Commonwealth, State and Territory taxes or tax equivalent systems, debt guarantee fees directed towards offsetting the competitive advantages provided by government guarantees; and
- those regulations to which private sector businesses are normally subject on an equivalent basis to the government business's private sector competitors.

With respect to significant business activities undertaken as part of a broader range of a government agency's functions, the Competition Principles Agreement obliges governments to:

- adopt a corporatisation model and impose full taxes or tax equivalent systems, debt guarantee fees and equivalent private sector regulation; or
- ensure that the prices charged for goods and services take account, where appropriate, of the above items and reflect full cost attribution.

Governments are to have published a policy statement on their proposals for implementing competitive neutrality policy and principles to significant government businesses activities, including an implementation timetable and a complaints mechanism, by June 1996. Governments are also to have published an annual report covering their progress in implementing competitive neutrality policy and principles, and including allegations of non-compliance.

Interpretation: The Council's judgment that reform progress is satisfactory requires that governments have published a competitive neutrality policy statement for the application of competitive neutrality reforms across all significant government business activities where appropriate. Governments must also have provided evidence in their annual report to the Council of satisfactory progress with the reform, where appropriate, of significant government businesses consistent with clause 3 of the Competition Principles Agreement.

A competitive neutrality complaints mechanism should have been established and allegations of non-compliance with competitive neutrality policy should have been addressed objectively and promptly.

Legislation Review

The Competition Principles Agreement obliges governments to review, and where appropriate, reform legislation that restricts competition (both State and local government) over the period between 1996 and 2000. The guiding principle is that legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

Governments must have developed a timetable for the review and, where appropriate, reform of all existing legislation restricting competition by June 1996, with the reviews, and where appropriate, reforms to be completed by the year 2000. All proposals for new legislation which restricts competition should have been accompanied by evidence that the legislation is consistent with the

guiding principle above. Governments must have produced an annual report for 1997, outlining their progress against the review timetable.

Interpretation: Governments must have:

- produced a comprehensive review program encompassing all legislation which restricts competition, with the objective of completing the review and reform process by the end of the year 2000; and
- an annual progress report for 1997.

Governments' performances against the first tranche legislation review obligations have been considered on the basis of four criteria.

First, all legislation restricting competition should have been programmed for review, such that the review process is able to be completed and resulting reforms in place by the end of the year 2000. Only in exceptional circumstances would a longer implementation period be justified. Satisfactory progress against this criterion involves governments having progressed their review programs in the first tranche assessment period consistent with their June 1996 undertakings. It may also require some recasting of State and Territory timetables to include reviews originally expected to proceed on a national basis where these national reviews do not proceed.

Second, consistent with the Competition Principles Agreement, reviews should be bona fide examinations of the effect of restrictions on competition and on the economy generally, and genuine assessments of the costs and benefits of the restriction. Alternative means of achieving the same outcome, including non-legislative means, should have been examined. Reviews should aim at genuine reform.

Third, reform implementation should have regard to review findings, with restrictions retained only where there is shown to be a net benefit to the community as a whole and where the objectives of the legislation can only be met by restricting competition.

Fourth, governments should have in place a process whereby proposals for new restrictive legislation are examined to ensure that the restriction provides a net community benefit, and that the objective can only be achieved by restricting competition. Any restrictive legislation enacted after April 1995 not so examined should have been programmed for review over the period to 2000.

Structural Reform of Public Monopolies

Before competition is introduced into a sector traditionally supplied by a public monopoly, the owner government must have removed and relocated any responsibilities for industry regulation so as to prevent the former monopolist from enjoying a regulatory advantage over its (existing and potential) rivals. Before a government introduces competition to a market traditionally supplied by a public monopoly, or privatises a public monopoly, the government must have reviewed the commercial objectives and operating arrangements of the public monopoly.

Interpretation: Satisfactory progress requires jurisdictions to have demonstrated that they have relocated responsibility for industry regulation where appropriate, and examined the structure and commercial objectives of public monopolies before introducing competition into a market supplied by that monopoly or before privatising a public monopoly.

The Council has relied on advice from jurisdictions that they have complied with the Competition Principles Agreement commitments on structural reform.

Application to Local Government

The Competition Principles Agreement obliges governments to apply the competition principles to local government. Governments are to have produced a policy statement, prepared in consultation with local government, which specifies the application of the principles to particular local government activities and functions.[3]

Interpretation: Governments should have published a policy statement outlining their proposals for applying the competition principles to local government. The competition principles with most relevance for local government are the application of competitive neutrality principles and the review of restrictive local government legislation. In assessing first tranche reform performance, the Council has focused on the adequacy of the local government reform agendas proposed by State and Territory governments in these two areas, and evidence of progress against these agendas.

First Tranche Reform Commitments Arising from the Inter-Governmental Agreements on Electricity Reform[4]

In May 1992, Heads of Government agreed to develop an interstate transmission network across the eastern and southern states. They also agreed that the National Grid Management Council (NGMC) should report on the precise nature and operating guidelines of the structure by the end of 1992. To achieve this, Heads of Government agreed to the principles of separate generation and transmission elements in the electricity sector.

Some States recorded qualifications. South Australia indicated that it wanted to look further at the implications for its system. Tasmania stated that its participation would be dependent on the development of a Basslink proposal. Western Australia, while not a part of the national grid, supported the agreed approach.

Interpretation: On the basis of this agreement, the Council considers New South Wales, Victoria, the ACT and Queensland to have committed to participation in a national electricity market. The Council considers that the agreement commits South Australia to participation in the national market on the basis that its concerns about the implications for its system arising from the separation of the generation and transmission elements can be satisfied.

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[3] The ACT does not have a local government sphere and is not required to provide a local government policy statement.

[4] The Heads of Government agreements on electricity reform relevant to the first tranche assessment of progress are reproduced in Attachment B.

At the COAG meeting in December 1992, the Prime Minister, the Premiers of New South Wales, Victoria, Queensland, South Australia, Tasmania and the Chief Minister of the ACT noted a report from the NGMC covering, in particular, the NGMC's oversight of the development of an interstate transmission network and its intention to meet the timetable set by the Heads of Government for a report on the nature and operating guidelines of the interstate network by the end of 1992. Relevant Heads of Government reaffirmed their commitment to the principle of separate generation and transmission elements in the electricity sector.

At the COAG meeting in June 1993, the Prime Minister, the Premiers of New South Wales, Victoria, Queensland, South Australia and the Chief Minister of the ACT gave a commitment to undertaking the necessary structural changes to allow a competitive electricity market to commence from 1 July 1995 as recommended by the NGMC.

The agreed structural changes included the establishment of an interstate electricity transmission network involving those States already inter-connected, together with Queensland. Jurisdictions also agreed to work towards the implementation, by 1 July 1995, of the Multiple Network Corporation (MNC) structural option outlined in the NGMC's report.

The MNC structure involved the separation of the transmission elements of the relevant, existing electricity utilities from generation and their placement in separate corporations. At the time, South Australia stated that it would consider a subsidiary structure pending the resolution of cost issues associated with separating transmission from its vertically integrated authority. Resolution of those issues would enable the adoption of the NGMC model. Tasmania reserved its position pending the outcome of its, then, current electricity industry review.

Interpretation: On the basis of this agreement, the Council considers New South Wales, Victoria, the ACT and Queensland to have made an unambiguous commitment to structural reform in the lead up to a national electricity market. The agreed date for the commencement of the interim market was July 1995.

South Australia's commitment to structural reform was qualified on 'the resolution of cost issues' associated with such reform. This matter has been examined by the Council in consultation with South Australia. The Council considers that South Australia's concerns about costs for their system are now resolved. As a result, the Council has treated South Australia's commitment to structural separation as now unqualified.

The structural reforms put in place are an important aspect of progress. The Council considers that, at a minimum, there must be complete separation of generation and transmission, as well as ring-fencing and separate accounting for the retail and network businesses within distribution, on the part of those jurisdictions participating in the national framework.

While recognising that the June 1993 COAG agreement on electricity does not oblige the non-participating jurisdictions to restructure their electricity systems in this way, the Council considers that complete separation of generation and transmission is critical to maximising the benefit to the community from electricity reform.

At the COAG meeting in August 1994, relevant Heads of Government noted the progress that had been made since the Council's February 1994 meeting and agreed to work to fulfil their commitment to have the necessary changes in place to allow the implementation of a competitive electricity market from 1 July 1995.

COAG also set out its main objectives for a fully competitive national market to operate from 1 July 1999 as:

- the ability for customers to choose which supplier, including generators, retailers and traders, they will trade with,
- non-discriminatory access to the interconnected transmission and distribution network,
- no discriminatory legislative or regulatory barriers to entry for new participants in generation or retail supply, and
- no discriminatory legislative or regulatory barriers to interstate and/or intrastate trade.

COAG agreed that transition arrangements would be developed on the basis of the earliest practicable achievement of each of the objectives for the fully competitive market.

Consistent with its February 1994 decision that the principles relating to the recovery of the fixed cost component of network pricing would encompass common asset valuation methodologies and rates of return as well as cost reflective and uniform pricing methodologies, the August 1994 meeting of COAG resolved that, in relation to the fixed cost component of network pricing, within distribution, the retail and network functions should be ring-fenced and accounted for separately.

Interpretation: The Council considers Heads of Government to have agreed that, while different jurisdictions will be at different stages of reform during the interim phase, transition arrangements were to have been developed on the basis of the earliest practicable achievement of each of the four principal objectives of the fully competitive market.

Moreover, the Council considers relevant jurisdictions to have agreed to make decisions by the end of 1994, or as soon as practicable thereafter, regarding reform of the Snowy system (Commonwealth, Victoria, New South Wales and the ACT) and the Interconnection Operating Agreement (Victoria, New South Wales and the ACT).

National Electricity Reform: Prime Minister's Letter to Premiers and Chief Ministers, 10 December 1996

On 10 December 1996, the Prime Minister wrote to all Heads of Government proposing a phased implementation timetable for national electricity reform. The implementation timetable, which is now agreed by all Heads of Government, sets out key reform dates, including:

- harmonisation of the New South Wales (including the ACT) and Victorian wholesale electricity markets (NEM Phase 1) by February 1997;
- authorisation of the National Electricity Code by the Australian Competition and Consumer Commission (ACCC) for the purposes of Part IV of the *Trade Practices Act* and acceptance of the Code as an industry access code for the purposes of Part IIIA of the *Trade Practices Act* by April/May 1997;
- further harmonisation of Victorian and New South Wales market arrangements (NEM Phase 2) by July 1997;
- passage of legislation to give effect to the National Electricity Law by participating jurisdictions by Autumn 1997; and

- full implementation of the market arrangements specified in the National Electricity Code by early 1998.

Interpretation: The Council considers that the framework implies that first tranche electricity commitments require implementation of NEM Phase 1 and evidence of progress towards NEM Phase 2.

First Tranche Reform Commitments Arising from Inter-Governmental Agreements on Gas Reform[5]

In December 1992, COAG noted that there were barriers to trade in natural gas which could inhibit the development of the gas industry and discourage the exploration and commercial development of gas markets and their related infrastructure.

COAG asked the Australian and New Zealand Minerals and Energy Council (ANZMEC) to provide a report to the first COAG meeting in 1993. This report:

- identified and reviewed existing legislative or other government imposed impediments and barriers to free and fair trade in natural gas, within and between jurisdictions;
- recommended action to remove impediments and barriers to free and fair trade in natural gas, within and between jurisdictions;
- outlined the work required to move toward a more uniform pipeline approval process between States and Territories for pipeline development, including the recommended basis for third-party access to gas transmission pipelines; and
- outlined the actions required to achieve COAG's objective of free and fair trade in gas.

Following consideration of the ANZMEC report in June 1993, Heads of Government agreed to co-operate in the development of policies and arrangements covering the gas industry which are pro-competitive, facilitate the development of gas markets on commercial criteria and remove impediments to free and fair trade in gas. COAG called for a further report from officials, for its next meeting, on progress towards a pro-competitive framework for the natural gas industry, within and between jurisdictions.

At the February 1994 meeting, COAG received a report from the Working Group on Gas Reform entitled "Progress Toward a Pro-Competitive Framework for the Natural Gas Industry, Within and Between Jurisdictions". The report noted that the benefits of free and fair trade in gas would be facilitated by further developments aimed at stimulating a more competitive framework for the gas industry. COAG noted that the main features of a national framework characterised by free and fair trade would be:

- no legislative or regulatory barrier to both inter- and intra- jurisdictional trade in gas;
- third-party access rights to both inter- and intra- jurisdictional supply networks;
- uniform national pipeline construction standards;
- increased commercialisation of the operations of publicly-owned gas utilities;
- no restrictions on the uses of natural gas (eg. for electricity generation); and

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5 Relevant Heads of Government agreements are reproduced in Attachment C.

- gas franchise arrangements consistent with free and fair competition in gas markets and with third-party access.

It was accepted that there may be a need for some government oversight of retail gas prices in the absence of fully competitive gas markets. The need for transitional arrangements in some States was also acknowledged.

COAG agreed on a broad set of principles to ensure third-party access to pipelines and asked the Working Group on Gas Reform to report, by the next meeting of COAG, on the implementation of these principles in order to achieve free and fair trade in natural gas by 1 July 1996.

In relation to free and fair trade in gas COAG:

1. 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 (Heads of Government noted that Victoria's ability to commit to this timetable is contingent upon satisfactory and timely resolution of the PRRT [Petroleum Resource Rent Tax] issue);

2. 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 (Heads of Government noted that Victoria's ability to commit to this timetable is contingent upon satisfactory and timely resolution of the PRRT issue);

3. 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;

4. noted that Heads of Government were addressing the question of access to essential facilities in the context of their consideration of the Hilmer Report on National Competition Policy and that any legislation arising from decisions in this context would be able to cover gas pipelines;

5. agreed to adopt AS 2885 to achieve uniform national pipeline construction standards by the end of 1994 or earlier;

6. 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;

7. agreed that approaches to price control and maintenance in the gas industry be considered in the context of agreed national competition policy;

8. agreed to place their gas utilities on a commercial footing, through corporatisation, by 1 July 1996;

9. noted that contracts, between producers and consumers for the supply of gas, entered into prior to the enactment of gas reform legislation would not be overturned by that legislation;

10. 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 (Heads of Government noted that Victoria's ability to commit to this timetable is contingent upon satisfactory and timely resolution of the PRRT issue);

11. agreed that reforms to the gas industry to promote free and fair trade be viewed as a package and that each government would move to implement the reforms by 1 July 1996; and

12. noted that Victoria has commissioned an independent study of the impact of PRRT on the Bass Strait gas industry.

In June 1996, COAG received a progress report on gas reform from the Chairman of the Gas Reform Task Force. The report noted:

1. substantial progress towards agreement of a uniform national access framework. The framework will apply Australia-wide and take the form of a code extrinsic to legislation. It will be supported in legislation by each jurisdiction in line with an Inter-Governmental Agreement to deal with the implementation and maintenance of the code;

2. agreement had been reached on some of the main access principles to underpin the code with further consideration being given to others such as asset valuation and other pricing principles, ring-fencing requirements, information requirements, secondary trade arrangements and the role of franchise agreements; and

3. the Task Force had agreed that the State regulator should be the regulatory institution for distribution systems.

COAG agreed that the national access framework should be finalised as follows:

1. 20 June 1996: Finalisation of the principles in the draft Access Code.

2. 30 June 1996: Release of the draft Access Code for a two month stakeholder consultation period.

3. 30 September 1996: Access Code and associated draft Inter-Governmental Agreement to be finalised and submitted to Heads of Government for endorsement.

COAG also agreed that:

1. the Access Code should apply to distribution systems as well as transmission pipelines;[6] and

2. 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.

National Third Party Access Code for Natural Gas Pipelines: Prime Minister's Letter to Premiers and Chief Ministers, 10 December 1996

On 10 December 1996, the Prime Minister wrote to all Heads of Government proposing amendments to the timeframe for the introduction of the National Access Code (the Code) and seeking agreement to the regulatory framework and implementation arrangements outlined. The Prime Minister proposed that, in relation to free and fair trade in natural gas, all jurisdictions agree:

1. to the substance of the National Third Party Access Code for Natural Gas Pipelines as prepared by the Gas Reform Task Force (noting that further refinements are to be made), and to apply the final Code uniformly to natural gas transmission and distribution systems in all jurisdictions;

2. that the Code would be an extrinsic document and given consistent legislative effect by jurisdictions by 1 July 1997, in accordance with arrangements detailed in an Inter-Governmental Agreement;

3. that any derogations from the Code and transitional arrangements would be identified in the Code, and that these would be fully transparent and have firm end dates;

4. that access will be provided to transmission and distribution pipelines for all industrial and commercial users with loads greater than 100 terajoules by 1 July 1997, and to all remaining industrial and commercial users by 1 July 1999; for residential users the phase in of access to take account of cross-subsidy and related issues would be completed by 1 July 2001;

5. that the Code will be given effect through legislation and jurisdictions will work towards common core clauses where that is necessary to provide uniform application and effect of the Code, with other mandatory clauses individually drafted by jurisdictions in a single part of the legislation;

6. that the ACCC would be the single national regulator for transmission pipelines, subject to the ACCC having a business plan acceptable to participating jurisdictions to enable it effectively to carry out this work;

7. that the National Competition Council would assess which future pipelines would be covered by the Code;

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[6] Western Australia and South Australia have indicated that they regard this statement as an incorrect reflection of the decision taken at the meeting. Western Australia considers that the June 1996 Communique is inaccurate on a range of matters, including the commitment to a uniform National Access Code. Both governments stated that the application of the National Access Code to distribution systems was not agreed at the June 1996 meeting.

8. that the Australian Competition Tribunal would be the single national appeals body for Determinations made under the Code by the national regulator, and a jurisdiction-based-appeals body would be the appeals body for Determinations made under the Code by a jurisdiction-based regulator for distribution pipeline networks;

9. that gas distribution pipelines will be regulated by independent regulators;

10. that the Gas Reform Task Force would finalise its activities by 15 December 1996, with an implementation group to be established by participating jurisdictions to finalise the Inter-Governmental Agreement and any outstanding issues on the Code for signature by Heads of Government, and to develop appropriate arrangements for administering the Code;

11. in-principle to an obligation on gas producers to provide unbundled gas prices ex-plant when requested;

12. that jurisdictions would not seek to make windfall gains from taxes and charges arising upon the transfer of assets by a pipeline owner or operator in complying with ring-fencing arrangements in the Code; and

13. that the Commonwealth would report to the COAG meeting in 1997 on whether the provisions for access to services in Part IIIA of the *Trade Practices Act 1974* fully reflect the principles and intent of the national competition policy as they affect gas processing and related facilities.

The Prime Minister's letter also noted COAG's agreement in February 1994 to the sanctity of contractual rights in pre-existing contracts between the producers and consumers for the supply of natural gas. In this respect, as provided for under Part IIIA of the *Trade Practices Act 1974*, contractual rights in contracts between producers, transporters and consumers existing prior to 30 March 1995 are to be protected and not overturned by the enactment of gas reform legislation.

It was also noted that Victoria is in the process of considering the restructuring of its natural gas distribution and retail sector to further enhance competition in the sector. The Prime Minister's letter noted that Victoria had agreed to the above timelines for access, but that Victoria's ability to introduce access for large industrial and commercial users by 1 July 1997 would depend on whether it proceeds to restructure its distribution and retail sector and on the timing of the restructuring.

Interpretation: The Council considers that all jurisdictions have agreed to implement the reform commitments outlined in the February 1994 and June 1996 COAG Communiques within the agreed timeframes.[7]

The Council is aware that all jurisdictions other than Western Australia have agreed to the proposals outlined in the Prime Minister's letter.[8] On this basis, the

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[7] Western Australia considers that the June 1996 Communique is inaccurate on a range of matters, including the commitment to a uniform National Access Code. South Australia believes the June 1996 Communique is inaccurate in respect to the decision on application of the National Access Code to distribution systems. Subsequently, in its response to the Prime Minister's letter of 10 December 1996, South Australia agreed that the National Access Code should apply to distribution pipelines as well as transmission pipelines.

[8] Western Australia does not support the specific proposals in the Prime Minister's 10 December 1996 letter, expressing particular concern with the pace of deregulation and the proposed national transmission regulator. Queensland's acceptance was qualified by its concerns in regard to the sanctity of pre-existing contracts, competitive tendering and the ACCC as national regulator for transmission. The Council understands that Queensland's concerns have now been resolved.

Council considers that the national regulatory framework and implementation arrangements proposed by the Prime Minister in his 10 December 1996 letter alter the implementation timetable agreed at the June 1996 meeting of COAG. The Council is aware that the timetable for implementation of the National Access Code proposed in the Prime Minister's letter will not be met and that the Gas Reform Implementation Group is currently developing a new timetable. This new timetable will be reflected in an Inter-governmental Agreement to be signed by all jurisdictions.

Apart from the actions to apply the National Access Code specified in the Prime Minister's letter, several other gas reform commitments are specified in the February 1994 COAG Communique (such as the removal of legislative and regulatory barriers to trade in gas by 1 July 1996). The Council has assessed jurisdictions' progress in accordance with the commitments in this Communique.

First Tranche Reform Commitments Arising from the Inter-Governmental Agreements on Road Transport

The Agreement to Implement the National Competition Policy and Related Reforms commits governments to the 'effective observance of road transport reforms' for the first tranche assessment of progress. The relevant road transport reforms are not specified in COAG agreements.

In October 1992, Transport Ministers endorsed an approach to road transport reform involving the development and implementation of six national reform modules covering:

- heavy vehicle charges;
- the transport by road of dangerous goods;
- vehicle operations;
- vehicle registration;
- driver licensing; and
- compliance and enforcement.

Noting the approach of the Transport Ministers, the advice from the National Road Transport Commission (NRTC) and comments from States and Territories, the Council considers road transport reform obligations over the three assessment tranches should involve the development and effective observance of heavy vehicle regulations, including heavy vehicle construction requirements, traffic codes, vehicle roadworthiness, inspection standards, driver licensing standards, codes of heavy vehicle practice (loading codes and permit conditions), enforcement levels, sanctions for breaches and aspects of operator controls (including freight and public vehicle licensing).

All jurisdictions have implemented the standard heavy vehicle charges and associated permit reforms.[9] On 14 February 1997, the Ministerial Council of Road Transport (MCRT) endorsed a

[9] The NRTC's first determination for heavy vehicle charges proposed that the existing concessions for primary producers not be maintained. However, most jurisdictions have maintained at least part of their existing concession regimes. The NRTC has indicated that it will develop a second heavy vehicle charges determination in the second half of 1998.

national implementation strategy with specified timeframes for implementing the remaining modules.[10] In summary, the MCRT agreed that:

- uniform arrangements for the transport of dangerous goods be implemented by all jurisdictions by no later than 1 January 1998;
- the Australian road rules regulations (part of the vehicle operations module) be implemented by no later than September 1998;
- a national driver licensing scheme be implemented by no later than 1 July 1998; and
- the remaining modules be implemented by no later than 1 July 1998 without waiting for enactment of Commonwealth legislation, provided that the result is uniform and consistent laws across jurisdictions.

Implementation: The Council considers "effective observance of road transport reforms" to constitute implementation of reform modules according to the MCRT timetable: to date the standard heavy vehicle charges and permit reforms. However, in view of the slippage in the road reform timetable to date, the Council considers that effective progress for the first tranche assessment should also involve a commitment to link the implementation of road transport reforms, according to the agenda agreed by the MCRT, to future competition transfers. In essence, this means that the MCRT reform timetable endorsed on 14 February 1997 becomes the framework for the Council's second and third tranche assessments. All jurisdictions have given at least in principle commitment to the MCRT agenda, although the ACT's commitment is necessarily qualified by its reliance on legislative action by the Commonwealth.

The Council recognises that the reform agenda has not been endorsed by COAG, and acknowledges that any change to the program agreed by COAG would necessarily supersede the current arrangement. The Council also acknowledges that future changes to the reform program agreed by the MCRT would also amend the assessment framework.

[10] The MCRT road reform timetable is reproduced in Attachment D.