

NEW SOUTH WALES

1997 New South Wales Progress Report

Contents

1 Object of the Report	67
2 Introduction	69
3 Conditions for the Payment of First Stage Competition Dividends ..	71
4 Application of Competition Code	75
Exceptions to the Application of the Trade Practices Act	75
5 Application of the Competition Principles Agreement	79
(A) Independent Pricing Oversight of Government Business Enterprises	80
Requirements of the Agreement	80
Application in NSW	80
(B1) Application of Competitive Neutrality to Significant Government Business Enterprises	82
Requirements of the Agreement	82
Application in NSW	83
State Owned Corporations	83
Financial Policy Framework	84
(B2) Application of Competitive Neutrality to Significant Business Activities of General Government Agencies	100
Requirements of the Agreement	100
Application in NSW	100
(B3) Social Program Policy	109
(B4) Complaints and Non-compliance	110
Requirements of the Agreement	110
Application in NSW	110
(C) Structural Reform of Public Monopolies	113
Requirements of the Agreement	113
Application in NSW	114

(D) Review of Legislation	117
Requirements of the Agreement	117
Application in NSW	117
Subordinate Legislation	119
Licence Reduction Program	119
National Reviews	121
Process and Outcome of Reviews of NSW Legislation in 1995-97	122
New Legislation	159
Casino Control Act	160
Rice Marketing	161
Review of Legislation Timetable	167
Reforms to the State’s Development Approval System	167
(E) Development of Third Party Access Regimes	170
Requirements of the Agreement	170
Application in NSW	170
Gas	170
Rail	171
(F) Application of the Competition Principles Agreement to Local Government	172
Requirements of the Agreement	172
Application in NSW	172
Competitive Neutrality	172
Structural Reform	176
Legislation Review	176
Independent Pricing Oversight	176
Third Party Access to Essential Infrastructure	177

6 Application of the Agreement to Implement National Competition Policy and Related Reforms 179

Requirements of the Agreement	179
Application in NSW	179
Electricity	179
Gas	184
Road Transport	187

1 Object of the Report

- 1.1 This Report is the NSW Government's first annual report to the National Competition Council on the Government's progress with the implementation of the National Competition Policy. The Report details how the Government has met the conditions for the payment of competition dividends in 1997/98 as specified in the *Agreement to Implement National Competition Policy and Related Reforms*. As agreed with the National Competition Council (NCC), this report deals with the implementation of National Competition Policy as at 1 January 1997.

2 Introduction

2.1 In April 1995, the Council of Australian Governments (COAG) ratified the National Competition Policy. The Policy is aimed at increasing consumer and business choice, improving efficiencies and creating an overall business environment in which to improve Australia's international competitiveness. Three Intergovernmental Agreements constitute the National Competition Policy. These Agreements are the:

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

2.2 The specific components of the National Competition Policy are the:

- extension of the competition provisions of the *Trade Practices Act (Cth) 1974* to persons in each jurisdiction in the manner specified in the *Conduct Code Agreement;*
- implementation of principles to facilitate the creation of competitive markets for public sector goods and services in the *Competition Principles Agreement;* and
- implementation of reforms in the electricity, gas, water and road transport sectors identified in the *Agreement to Implement National Competition Policy and Related Reforms.*

2.3 The Industry Commission (now the Productivity Commission) has estimated that the application of the National Competition Policy will boost Australia's Gross Domestic Product by about \$23 billion over the long term, and create opportunities for increased wealth and employment for all Australians. COAG has agreed that if these benefits are to be realised all levels of government need to be subject to the principles of competition.

2.4 Competition policy is of course only one part of the NSW Government's policy aims and its application is intended to sit alongside the Government's other economic, social and environment policy objectives. When applied, competition policy should be able to promote these other policy aims by creating a policy environment in which the costs and benefits of government regulation and service provision are subject to transparent assessment. Exposing public policy to this kind of transparency is essential for the efficient and effective allocation of resources for the benefit of the communities that governments serve.

2.5 Importantly, National Competition Policy provides an opportunity for governments to ensure that the principles of competition:

- promote increased consumer choice;
- promote increased business choice and innovation;
- facilitate the efficient allocation of resources in the economy; and
- increase the opportunities for Australian business to effectively compete for international market share.

2.6 The NSW Government is committed to achieving these goals whilst ensuring that:

- competition policy is not implemented as an end in itself;
- all customers continue to have access to goods and services;
- goods and services are equitably distributed; and consumers are protected in the choices they make.

3 Conditions for the Payment of First Stage Competition Dividends

3.1 Under the terms of the *Agreement to Implement National Competition Policy and Related Reforms*, State and Territory governments are entitled to receive competition payments from the Commonwealth, where they meet the requirements of the National Competition Policy. Between 1997 and 2006, State and Territory governments are entitled to share a total of \$4.2 billion allocated in three stages.

3.2 The first stage payments are to occur in the financial years 1997-98 and 1998-99. annual payments of approximately \$200M are to be shared between State and Territory governments in this first stage.

3.3 In order to be eligible for a share of this first stage payment, States and Territories are required to meet certain conditions detailed in the *Agreement to Implement National Competition Policy and Related Reforms*. These 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 Competition Code applied within that State or Territory jurisdiction by 20 July 1996;
- is a fully participating jurisdiction under the *Competition Policy Reform Act 1995* and a party to the *Competition Principles Agreement* at the time at which the payment is made (States and Territories must apply the Competition 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 the *Conduct Code Agreement* and the *Agreement to Implement National Competition Policy and Related Reforms*;

- 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, have 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,
 - 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) has 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.

4 Application of Competition Code

4.1 In ratifying the *Conduct Code Agreement* the NSW Government agreed to apply the Competition Code to all persons within NSW. The Competition Code is a Schedule to the *Trade Practices Act (Cth) 1974* and incorporates the competition provisions in Part IV of that Act.

4.2 The Competition Code was introduced into NSW by the *Competition Policy Reform (NSW) Act 1995*. The Act received the Royal Assent on 9 June 1995. The substantive provisions commenced on 21 July 1996. As a result, the Competition Code will apply to individuals, unincorporated associations, the professions and others, not just to corporations. It will also apply to Government agencies and instrumentalities, so far as they carry on a business.

4.3 The *Competition Policy Reform (NSW) Savings and Transitional Regulation 1996* was also enacted in 1996. The regulation in effect treats an authorisation granted or, notice given under the Commonwealth *Trade Practices Act (Cth) 1974* prior to 21 July 1996, as an authorisation or notice under the corresponding provisions of the Competition Code. This avoids the need for duplicate authorisations and notices to be granted or given under the Competition Code.

4.4 It is the intention of NSW and other jurisdictions that where modifications are made to the provisions of either Part IV *Trade Practices Act (Cth) 1974* or to the Schedule, similar modifications will be made to corresponding provisions of the other.

Exceptions to the Application of the Trade Practices Act

4.5 Where legislation, or a provision in legislation, is enacted or made in reliance on s51 *Trade Practices Act (Cth) 1974*, NSW is

obliged by clause 2 *Conduct Code Agreement* to notify the Australian Competition and Consumer Commission (ACCC) within thirty days of the legislation being enacted or made. Section 51 permits the State to specifically authorise or exempt conduct that would otherwise be subject to the competition provisions in the *Trade Practices Act (Cth) 1974*. However it is equally open to the Commonwealth Minister to table in the Commonwealth Parliament regulations under s51(1C) (f) to effectively disallow an exemption.

4.6 Since the commencement of the *Competition Policy Reform (NSW) Act 1995*, NSW has relied on s51 on only two occasions - in exempting certain activities of the NSW Dairy Corporation and of the Sydney Organising Committee for the Olympic Games (SOCOG).

Dairy Corporation

4.7 The NSW Dairy Corporation is established by the *Dairy Industry Act 1979*. The *Competition Policy Reform (NSW) Regulation 1996* was enacted to ensure that certain aspects of the milk marketing arrangements in NSW do not contravene the *Trade Practices Act (Cth) 1974* or the Competition Code. The Regulation ensures that things done by or on behalf of the Corporation in connection with the vesting of milk in the Corporation and the allocation, transfer, reduction or cancellation of milk quotas are protected. The Regulation will operate only for a transitional period of two years. A State based review of the *Dairy Industry Act (NSW) 1979* has already commenced. Its findings and recommendations are expected towards the latter part of 1997.

SOCOG

4.8 SOCOG is a corporation established for the purpose of performing obligations under the agreement with the International Olympic Committee and organising accommodation and transport in connection with the Olympic Games in Sydney in the year 2000. The *SOCOG Amendment Act*

(NSW) 1996 contains an exemption under s51 *Trade Practices Act (NSW) 1974* and the Competition Code.

- 4.9** The exemption authorises SOCOG to enter into various sponsorship, licensing and marketing agreements in connection with the Olympic Games. It also authorises the conduct of the parties in entering into these agreements and their conduct in performing these agreements. It removes any doubt that these agreements might otherwise infringe the *Trade Practices Act (NSW) 1974* or the Competition Code.

Notice to the ACCC

- 4.10** In each case the requisite notice has been given to the ACCC. To date NSW has not received any advice from the Commonwealth that it intends to pass a regulation under s51(1C) (f) to disallow these two exemptions.

5 Application of the Competition Principles Agreement

- 5.1 The *Competition Principles Agreement* (the Agreement) (attached as Annexure 1) agreed to by the Commonwealth, States and Territories at the April 1995 COAG meeting, is the key policy component of the National Competition Policy. Essentially, it recognises that applying the *Trade Practices Act (Cth) 1974* to regulate government activities for the purposes of promoting competition needs to be accompanied by a policy framework that facilitates the creation of competitive markets for public sector goods and services, where appropriate.
- 5.2 To guide governments in the creation of these markets, the Agreement specifies a range of principles primarily aimed at achieving clear delineation between the regulatory and commercial activities of government and exposing those commercial activities to competition, where applicable. These principles are the:

- (A) provision of independent pricing oversight of Government Business Enterprises (GBEs) (cl.2);
- (B) application of competitive neutrality to the significant business activities of government unless the costs outweigh the benefits (cl.3);
- (C) structural reform of public monopolies (cl.4);
- (D) review of legislation with a view to removing anti-competitive provisions where the costs outweigh the benefits (cl.5);
- (E) provision of third party access to significant infrastructure owned by the public and private sectors (cl.6); and
- (F) application of the Agreement to the activities of local government (cl.7).

(A) Independent Pricing Oversight of Government Business Enterprises

Requirements of the Agreement

5.3 The Agreement calls on governments to consider establishing independent sources of price oversight advice, where these do not exist, and proposes that this source should:

- be independent from the GBE which is having its prices assessed;
- have efficient resource allocation as its prime objective, but have regard to any explicitly identified and defined community service obligations imposed on the GBE; apply to all significant GBEs that are monopoly, or near monopoly, suppliers of goods and services (or both); permit submissions from interested persons; and
- publish its pricing recommendations and the reasons for them.

Application in NSW

5.4 Independent price oversight advice in NSW has been provided by the Independent Pricing and Regulatory Tribunal (IPART) (formerly the Government Pricing Tribunal) since 1992. Under s.11 of the *Independent Pricing and Regulatory Tribunal Act (NSW) 1992* (IPART Act), IPART has a standing reference from the Premier to advise on the pricing of a number of key declared government monopoly services scheduled in the IPART Act. Under s.12 of the IPART Act, the Premier can request IPART to advise on the pricing of any other government monopoly service that is not scheduled in the IPART Act.

5.5 Alternatively, under s.12A of the IPART Act, the Premier can request IPART to inquire into industry pricing that may involve Government business activities. For example, in 1996 IPART conducted an inquiry into the pricing policies of the

Waste Recycling and Processing Service, which included aspects of Government waste management services.

- 5.6 Recent amendments to the IPART Act have included new areas for pricing oversight, review and regulation. These new areas include irrigation charges and an industry policy review role based on Government provided references. IPART also absorbed the regulatory functions of the Gas Council in July 1996.
- 5.7 Section 15 of the IPART Act identifies the matters IPART is to have regard to when making its pricing recommendations. These matters include, efficiency in the supply of services, the need to promote competition, the appropriate rate of return on public sector assets, the social impact of its recommendations, standards of quality, reliability and safety of services, and ecologically sustainable development.
- 5.8 Section 19 and Part 4 of the IPART Act specify the procedures for IPART's investigations, including requirements for public inquiries, the receipt of public submissions and the reporting and publication of its recommendations.
- 5.9 The Government believes that arrangements now in place adequately meet the principles in the Agreement concerning independent pricing oversight of Government monopoly businesses.

(B1) Application of Competitive Neutrality to Significant Government Business Enterprises

Requirements of the Agreement

5.10 The principle of competitive neutrality requires that Government businesses operate without net competitive advantages or disadvantages in relation to other businesses as a result of their public ownership. Clauses 3(4) and 3(5) of the Agreement indicate the measures that governments are required to implement, where the benefits to be realised from implementation outweigh the costs. There is a presumption that the economic and social benefits of implementing competitive neutrality principles outweigh the costs. If this is not the case in any circumstance then it is up to the State or Territory government to demonstrate this.

5.11 Governments are required to prepare a policy statement on the application of competitive neutrality in their respective jurisdictions by June 1996. Jurisdictions are also required to publish an annual report on the implementation of the principles in clauses 3(4) and 3(5) of the Agreement.

5.12 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 Agreement requires governments, where appropriate, to:

- adopt a corporatisation model; and
- impose on GBEs 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 GBEs' private sector competitors.

Application in NSW

5.13 The NSW Government published its *Policy Statement on the Application of Competitive Neutrality* in June 1996. The Statement indicated that in NSW the *onus* is on a Government business to implement competitive neutrality principles unless it can show that the economic and social costs of implementation outweigh the economic and social benefits. Accordingly, a benefit-cost analysis, showing a net cost to the community, needs to be completed by Government businesses that consider it inappropriate to implement these principles.

5.14 The requirements of clause 3(4) are being achieved through the corporatisation of a large number of Non-Budget Sector agencies in NSW. Corporatisation reforms are based on a comprehensive corporatisation model, the State Owned Corporation (SOC), and are progressing through a Financial Policy Framework. The reforms listed in this annual report consolidate the reforms already applied or scheduled for implementation by 1998 in NSW.

State Owned Corporations

5.15 The *State Owned Corporations Act (NSW) 1989* and the *State Owned Corporations Amendment Act (NSW) 1995* provide a comprehensive framework for the corporatisation of Government businesses as proxy public companies called State Owned Corporations (SOCs). Those Government businesses that have been and are intended to be subject to corporatisation are listed at **Table 1** at **paragraph 5.22**.

5.16 There are two classes of SOC: the company SOC; and the statutory SOC. Both classes of SOC have a Board of Directors, share capital and a memorandum and articles of association like a public company limited by shares. Unlike a public company, however, the shareholders consist of the Treasurer and one other Minister (or potentially two or more Ministers for a company SOC).

- 5.17 SOCs are subject to certain Federal statutes, such as Part IV of the *Trade Practices Act (Cth) 1974* dealing with restrictive trade practices and equivalent provisions under the *Competition Policy Reform Act (NSW) 1995*. The full extent of the Commonwealth's *Corporations Law* applies to company SOCs but only those provisions expressly provided for (such as those dealing with officers' duties and liabilities) apply to statutory SOCs, which are exempt public authorities for the purposes of the *Corporations Law*.
- 5.18 The principal (and equal) objectives of every SOC, regardless of class, are to operate:
- efficiently;
 - in a way that maximises the net worth of the State's investment;
 - in a socially responsible manner;
 - in accordance with the principles of ecologically sustainable development; and
 - with consideration of regional development.

Financial Policy Framework

- 5.19 The Financial Policy Framework has been guided by the corporatisation principles specified in 1988 by the NSW Steering Committee on Government Trading Enterprises in *A Policy Framework for Improving Performance of GTEs*. These principles, which mimic those faced by a private sector firm in a competitive market, are:
- the establishment of clear and non-conflicting objectives;
 - the granting of managerial responsibility, authority and autonomy in pursuit of such objectives;
 - performance evaluation and accountability;
 - provision of rewards and sanctions commensurate with performance; and
 - the establishment of competition and competitive neutrality.

5.20 All significant NSW Government businesses that are monitored on a quarterly or half-yearly basis by NSW Treasury are subject to the Financial Policy Framework. Those businesses not yet covered will be subject to it by 1997-98. All Category 1 businesses listed in **Table 1** at **paragraph 5.22** are within the Financial Policy Framework. The Framework encompasses:

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

5.21 **Table 1** below lists:

- all those GBEs that have been or are intended to be corporatised under the SOC Act;
- those GBEs that have been privatised; and
- those GBEs that have not been corporatised or privatised, but are subject to the principles of competitive neutrality within the Government’s Financial Policy Framework (discussed in detail from **paragraph 5.23**). As discussed below, the Government’s Financial Policy Framework is consistent with the Agreement. Reasons for not subjecting these particular GBEs to corporatisation are provided in the comments section in Table 1;
- those Government businesses that, on the basis of risk and materiality, have not been corporatised or subjected to the Financial Policy Framework.

5.22 **Table 1.** NSW Government Businesses subject to corporatisation under the SOC Act or privatisation.

No.	Industry	Government Business	ABS PTEI	CSD Monitor ²	Cat. ³	Already Priv'n ⁴ Corp'n ⁵	Candidate Priv'n	Candidate Corp'n	Date Priv'n/Corp'n	Comments
1	Electricity	Advance Energy	x	x	1		x		1/3/96	
2		Australian Inland Energy	x	x	1		x		1/3/96	
3		Delta Electricity	x	x	1		x		1/3/96	
4		energyAustralia	x	x	1		x		1/3/96	
5		Great Southern Energy	x	x	1		x		1/3/96	
6		Integral Energy	x	x	1		x		1/3/96	
7		Macquarie Generation	x	x	1		x		1/3/96	
8		NorthPower	x	x	1		x		1/3/96	
9		Pacific Power	x	x	1		x		1/3/96	
10		Eraring Holdings Pty Ltd								Subsidiary of Pacific Power
11		Power Coal Pty Ltd	x		6			x	1/7/96	Subsidiary of Pacific Power
		Snowy Mountains Hydro Electricity Auth.	x		1					Corp'n on 1/7/97
		TransGrid	x	x						Corp'n after Nat Electricity Market is established
12	Finance	Axiom Funds Management Corporation	PFE		3					
13		Government Insurance Office (GIO)	PFE	x	4	x			16/7/92	
14		NSW Treasury Corporation (TCorp)	PFE	x	1					
15		State Bank of NSW	PFE	x	4	x			31/12/94	
16	Gaming & Recreation	Eastern Creek Raceway	x	x	1					Site leased on 29/11/96
17		Newcastle International Sports Centre Trust	x		3					
18		Newcastle Showground & Exhibition Centre Trust	x		3					
19		NSW Lotteries	x	x	1		x		1/1/97	
20		Parramatta Stadium Trust	x		3					
21		Sydney Cricket & Sports Ground Trust	x	x	1					
22		Sydney Opera House Trust	x	x	3					
23		Totalisator Agency Board of NSW (TAB)	x	x	1					
24		Wollongong Sportsground Trust	x	x	3					
25	Zoological Parks Board of NSW	x	x	2						Reform options under investigation

No.	Industry	Government Business	ABS PTE1	CSD Monitor ²	Cat. ³	Already Priv'n ⁴ Corp'n ⁵	Candidate Priv'n Corp'n	Date Priv'n/Corp'n	Comments
26	Housing	City West Housing Pty Ltd	x	x	1				Reform options under investigation.
27		Department of Housing	x	x	1				
28		Home Purchase Assistance Authority		x	1				
29		Office of Community Housing		x	1				Under the financial Policy Framework (FPF) from first quarter 1997/98.
30		Office of Housing Policy			3				
31		Teacher Housing Authority of NSW	x		3				
32	Ports &	Darling Harbour Authority		x	1				
33	Waterways	Marine Ministerial Holding Corporation		x	1				
34		Newcastle Port Corporation	x	x	1	x		1/7/95	
35		Port Kembla Port Corporation	x	x	1	x		1/7/95	
36		Sydney Ports Corporation	x	x	1	x		1/7/95	
37	Transport	Freight Rail Corporation	x	x	1	x		1/7/96	
38		Rail Access Corporation	x	x	1	x		1/7/96	Under the FPF from fourth quarter 1996/97.
39		Rail Services Authority	x	x	1	x		1/7/96	Under the FPF from fourth quarter 1996/97.
40		State Rail Authority of NSW (SRA)	x	x	1	x		1/7/96	Under the FPF from fourth quarter 1996/97.
41		State Transit Authority (STA)	x	x	1		x		Under the FPF from fourth quarter 1996/97.
42	Water	Broken Hill Water Board	x		3				
43		Cobar Water Board	x		3			July 1997	
44		Coleambally Region Irrigation Areas & Districts (DLWC)	x		3				
45		Fish River Water Supply Authority	x		3				
46		Hunter Water Corporation	x	x	1	x		1/1/92	
47		Murrumbidgee Region Irrigation Areas & Districts (DLWC)	x		3		x	1/7/97	
48		South-West Tablelands Water Supply Authority	x		3				
49		Sydney Water Corporation	x	x	1			1/1/95	

No.	Industry	Government Business	ABS PTE1	CSD Monitor ²	Cat. ³	Already		Candidate		Date Priv'n/Corp'n	Comments
						Priv'n ⁴	Corp'n ⁵	Priv'n	Corp'n		
50	Misc	Chipping Norton Lake Authority		x	3						
51		City West Development Corporation		x	1						
52		Department of Public Works and Services		x	1						
53		First Australian National Mortgage Acceptance Corporation (FANMAC)		x	5						
54		Fish Marketing Authority			3						Business of Sydney Fish Market Pty Ltd sold & site leased on 31/10/1994.
55		Honeysuckle Development Corporation		x	1						
56		Jenolan Caves Reserve Trust	x		3						
57		LANDCOM	x	x	1						Commercial Advisory Board to be established.
58		Land Titles Office (DLWC)		x	1						
59		Lord Howe Island Board			3						
60		Public Trustee		x	1						
61		Registry of Births, Deaths and Marriages		x	2						Feasibility of corp'n under investigation.
62		State Forests of NSW		x	1						
63		Sydney Cove Redevelopment Authority		x	1						Corp'n deferred.
64		Sydney Market Authority	x	x	1						Corp'n deferred.
65		Waste Service NSW	x	x	1						

The Key to Table 1 is a follows:

¹ Public Trading Enterprises (PTEs) and Public Financial Enterprises (PFEs) as defined by the Australian Bureau of Statistics (ABS) in *Government Finance Statistics Australia: Concepts, Sources and Methods*.

² Government businesses monitored by Treasury's Commercial Sector Division (CSD) on a quarterly or half-yearly basis are within the Financial Policy Framework (FPF).

³ On the basis of a risk and materiality assessment, Treasury's Commercial Sector Division (CSD) has identified five financial monitoring programs. These are categorised as follows:

(1) Quarterly reporting and monitoring for:

- > all State Owned Corporations (SOCs);
- > all dividend paying Government businesses;
- > those Government businesses which are assessed as having the potential in the medium term to become dividend paying; and
- > high risk/materiality Government businesses.

(2) Half-yearly monitoring for Government businesses in the medium risk/materiality category.

(3) Portfolio monitoring exclusively by the relevant Minister for Government businesses with relatively low risk.

(4) Post-privatisation monitoring for Government businesses which are no longer owned by the Government but in respect of which the Government may bear ongoing financial risks which require identification and management. Frequency of monitoring will vary depending upon circumstances of sale and the right of the Government to access information. Major privatised Government businesses are to be reviewed at least on a quarterly basis.

(5) Businesses where the State has a minority interest as a shareholder are monitored quarterly, assuming that the shareholding is material and/or the business is exposed to particular trading/operating risks.

(6) The Snowy Mountains Hydro Electric Authority is a Commonwealth Statutory Authority. NSW is entitled to 58% of its capacity whilst Victoria and the Commonwealth are entitled to 29% and 13% respectively. It will be incorporated on 01/07/97 as a public company owned by NSW, Victoria and the Commonwealth in shares of 58%, 29% and 13% respectively.

⁴ Privatisation.

⁵ Corporatisation

5.23 Table 2 at paragraph 5.57 lists all those Government businesses that are subject to the Financial Policy Framework. The elements of the Financial Policy Framework are detailed below.

Performance Targets

5.24 Government business boards and management have clear performance targets, against which performance is assessed. This is set out in an annual contractual agreement between the Government and the Government business called a Statement of Financial Performance (SFP). (The SFP is called a Statement of Corporate Intent (SCI) for those Government businesses that are SOCs.) The performance targets focus on commercially based capital structures, rates of return and dividends as well as the economic and business assumptions which underlie the financial projections and targets. The first such agreements were concluded in 1993.

(a) Capital Structures

5.25 The Government has sought to ensure that Government business' balance sheets are commercially sound and consistent with competitive neutrality requirements. They feature targeted capital structures based on clearly articulated criteria to achieve appropriate mixes of debt and equity.

5.26 The Government's Capital Structure Policy, which was introduced in 1994, establishes target capital structures on a case by case basis according to a debt level which:

- supports a good investment grade credit rating (*ie* 'A' or above) over the long term (generally five years);
- enables the financing of an approved capital expenditure program having regard to the current phase of the Government business' investment cycle;
- is capable of being repaid within a reasonable period; and
- provides flexibility for relevant contingencies.

5.27 The methodology for establishing target capital structures involves the following steps:

- development of a business profile;
- review of business plans and forecasts;
- analysis of business risks;
- construction of a model to analyse cash flows;
- sensitivity analysis of the impact of key variables on the cash flows; and
- determination of a notional credit rating applicable to the Government business as a stand alone entity, based on credit rating criteria.

5.28 The above-mentioned methodology for determining capital structures enables Government business managers to conduct their business with a greater degree of confidence, as well as providing a comprehensive framework within which financial targets are set. A target capital structure enables a unique cost of capital to be determined for each Government business to ensure that investment decisions are made with regard to the opportunity cost of capital given the risk of the particular class of asset involved. It also provides more certainty to Government business management by limiting the Government's ability to seek excessive dividends which could result in debt levels at commercially imprudent levels.

(b) Rates of Return

5.29 Once the capital structure is set at an appropriate level then the focus of management is on attaining a commercial rate of return on that capital.

5.30 One of the main performance targets included in the SFP is that the rate of return on future Government business investments equal its weighted average cost of capital (WACC). There are three basic elements of WACC:

- the cost of debt;
- the cost of equity; and
- the capital structure or mix of debt and equity.

5.31 The first two elements were addressed in the Financial Distribution Policy. A Government business' cost of debt is equal to the cost of servicing debt which includes interest

payments and any Government guarantee fee applicable. The cost of equity is specified as the prevailing return on a 10 year Commonwealth Bond plus the risk premium for the particular Government business.

- 5.32** Because the rate of return on capital is a financial indicator that relies heavily on asset valuation principles, the establishment of an appropriate asset valuation methodology is an essential precondition for calculating a meaningful rate of return on Government business capital that is comparable with other financial indicators.
- 5.33** A committee involving NSW Treasury, IPART and the major SOCs, are investigating a uniform asset valuation approach for NSW Government businesses for pricing and performance purposes. It is intended that a paper will be released for discussion in early 1997-98.
- 5.34** However, regardless of any future agreement on a uniform asset valuation approach, s.15 of the IPART Act requires IPART to have reference to a wider range of matters than just the return on capital (and thus the value of that capital) when making pricing determinations. This situation is likely to arise in other jurisdictions as they acquire independent price regulators.

(c) Financial Distributions (Dividends)

- 5.35** If the structure and the return on capital are appropriate, then the focus, according to the Financial Distribution Policy, is on dividends that should broadly reflect private sector practice.
- 5.36** A target dividend payment is negotiated as part of the process of developing a SFP (or SCI) before the commencement of the financial year. Based on the actual audited results, the Board of the Government business makes a recommendation on the dividend to be paid to the Consolidated Fund in the following year. The final decision on this is influenced by a range of factors, such as: liquidity, capital expenditure requirements, pricing policy and capital structure. The overriding consideration is that the payment of the dividend should not put the Government business at financial risk. It should be

appreciated, however, that dividend raising capability is a function of the prices that are set.

5.37 As indicated above, maximum prices for designated monopoly government services in NSW have been determined by IPART since 1992.

Performance Monitoring

5.38 As part of the microeconomic reform process, more rigorous measures of performance, and performance monitoring processes, have been established for NSW Government businesses. Performance monitoring is informing the microeconomic reform process, as well as being an important tool for the successful implementation of reforms. Performance measures provide:

- information to promote yardstick competition for Government businesses that face little direct competition in input or output markets;
- a means of monitoring public sector managerial performance;
- a powerful internal management tool that can provide information on efficiency, explain reasons for poor performance and identify appropriate role models; and
- information that facilitates accountability to Parliament and the community.

5.39 NSW Treasury has been undertaking, since the start of the 1990s, regular financial monitoring of significant Government businesses from a shareholder perspective. This acts as a surrogate for the performance assessment usually done by the debt and equity markets. This involves Government businesses providing Treasury with quarterly reports including such information as business plans, operating budgets, cash flow statements, income and expenditure statements, balance sheets and management accounting data.

- 5.40** Government businesses also report, on an exception basis, any risks which arise throughout the financial year. This acts as an early warning of problems which might arise, so that appropriate action may be taken where necessary.
- 5.41** Treasury will use shareholder value added (SVA) analysis to set financial targets for the major Government businesses in 1997-98 and is investigating the use of total factor productivity (TFP) to assist in separating the financial performance of Government businesses into productivity and price components. TFP measures relate a weighted index of outputs (weighted by revenue shares) to an aggregate measure of inputs (weighted by cost shares). Shareholder Value Added
- 5.42** Shareholder value added (SVA) is an estimate of an entity's true economic profit from employing capital. SVA is calculated as net operating profit after taxes (NOPAT) less a capital charge. The latter is evaluated by multiplying the cost of capital by the total value of capital employed (K). The cost of capital is the minimum rate of return on capital invested required to compensate debt and equity investors for bearing risk. It is calculated using the weighted average cost of capital (WACC) methodology, which takes into account the mix and cost of debt and equity used to fund the entity.
- 5.43** SVA is calculated as follows: $SVA = NOPAT - WACC \times K$. The net present value (NPV) of future SVAs is equal to Market Value Added (MVA). MVA in turn is that amount of an entity's market value (or NPV of future cash flows) which is above the capital invested. Thus, shareholder value is:
- created where the overall cash flow or NOPAT of the business exceeds the cost of capital invested; and
 - destroyed where the opposite is true.
- 5.44** SVA directly accounts for the cost of capital to a Government business and objectively measures the creation of value to its shareholder, who is ultimately the NSW taxpayer. Not only does SVA offer a superior means of measuring the overall financial performance of a Government business, but it can

similarly be used within a Government business so that all employees can better assess their contribution to the value of their organisation as well as offering an incentive to increase its value.

5.45 The following Government businesses provide SVA data in their quarterly reports:

- electricity:
 - Advance Energy;
 - Australian Inland Energy;
 - energyAustralia;
 - First State Power;
 - Great Southern Energy;
 - Integral Energy;
 - Macquarie Generation;
 - North Power;
 - Pacific Power; and
 - TransGrid;
- water:
 - Hunter Water Corporation; and
 - Sydney Water Corporation;
- ports:
 - Newcastle Port Corporation;
 - Port Kembla Port Corporation; and
 - Sydney Port Corporation;
- transport:
 - Freight Rail; and
 - Rail Access Corporation; and
- other:
 - State Forests; and
 - Waste Recycling and Processing Service.

5.46 From 1997-98, these Government businesses will state their SVA targets in their SFPs (and SCIs). The remaining Government businesses will begin stating their SVA targets in their SFPs and providing SVA data from 1998-99. These targets replace the target rates of return on assets and equity.

Payment of Taxes and Tax Equivalents

(a) State Taxes

5.47 Since 1 July 1994, all major NSW Government businesses have been progressively required to make direct payments of State taxes, principally payroll tax, stamp duty and land tax. These State taxes were applied to most Government businesses from 1 July 1995, although there will be a transition period for others. Under the Financial Policy Framework, all Government businesses will be required to make direct payments of State taxes by 1997-98.

(b) Commonwealth Tax Equivalents

5.48 At the March 1994 Premier's Conference it was agreed in principle that States and Territories would impose uniform tax equivalent regimes (TERs) on all Government businesses by 1997, while the Commonwealth would amend its income and sales tax legislation to unambiguously exempt State enterprises from Commonwealth tax liabilities.

5.49 All major NSW Government businesses, since 1 July 1994, have been progressively required to make tax equivalent payments to the Consolidated Fund. Tax equivalent regimes were introduced, where applicable, for the balance of Government businesses during 1996-97.

Debt Guarantee Fees

5.50 Government businesses benefit from the Government's Triple-A credit rating by virtue of their Government ownership and are able to obtain borrowings through Treasury Corporation (TCorp) more cheaply than comparable private sector firms.

5.51 Since 1990, however, Government businesses with Government guaranteed borrowings have paid a credit-rating-based fee to the Consolidated Fund. The scheme is intended to:

- make up the difference between the interest paid by Government businesses and what they would have paid had they been in the private sector;

- ensure competitive neutrality with private sector businesses of similar risk, which lack Government backing and face correspondingly higher borrowing costs;
- correct any distortions in Government business investment and pricing decisions;
- encourage better debt management practices by Government businesses by making them aware of the full cost of borrowing; and
- compensate the Government for the financial risk of guaranteeing debt repayment by Government businesses.

5.52 The guarantee fee applies to all commercial Government agencies with guaranteed borrowings exceeding \$1M. They reflect the difference between the Government's borrowing rate and the assessed 'stand alone' credit rating of the particular Government business. They vary according to each organisation's 'stand alone' credit rating. The lower the Government business' stand-alone credit rating, the higher the fee.

Equivalent Regulation

5.53 Many Government businesses gain exemptions from certain State legislation and regulations as a result of their status as an entity of the Crown or statutory authority. When a Government business is corporatised as a SOC, it automatically loses this status and therefore its exemption/s. In effect, this means that SOCs will have to comply with the same regulation imposed on the private sector.

5.54 SOCs are also subject to certain provisions of the Federal *Corporations Law* dealing with duties and liabilities and *Part IV* of the *Trade Practices(Cth) Act 1974* dealing with restrictive trade practices.

5.55 The SOC Act does not intrinsically alter GBEs' exposure to other legislation and regulations. Rather, it simply establishes the structural, legal and accountability framework to be applied to nominated GBEs. Those Acts that are directly related to these regulatory issues are reviewed under the

Government's legislation review framework at the time of corporatisation.

5.56 Other Acts and regulations that may have an indirect impact on the activities of corporatised entities, whilst not being intrinsic to the operation of the regulatory framework governing corporatisation, are reviewed in accordance with the Government's overall policy agenda. The Government's legislation review timetable released in June 1996 is comprehensive in its identification of statutes with potential anti-competitive effects.

5.57 **Table 2.** List of all NSW Government businesses within the Financial Policy Framework.

- 1 Advance Energy
- 2 Australian Inland Energy
- 3 City West Development Corporation
- 4 City West Housing Pty Ltd
- 5 Darling Harbour Authority
- 6 Delta Electricity
- 7 Department Of Housing
- 8 Department of Public Works and Services
- 9 Eastern Creek Raceway
- 10 energyAustralia
- 11 Freight Rail Corporation
- 12 Great Southern Energy
- 13 Home Purchase Assistance Authority
- 14 Honeysuckle Development Corporation
- 15 Hunter Water Corporation
- 16 Integral Energy
- 17 LANDCOM
- 18 Land Titles Office (DLWC)
- 19 Macquarie Generation
- 20 Marine Ministerial Holding Corporation
- 21 Newcastle Port Corporation
- 22 NorthPower
- 23 NSW Lotteries
- 24 NSW Treasury Corporation (TCorp)
- 25 Office of Community Housing
- 26 Pacific Power

- 27 Port Kembla Port Corporation
- 28 Public Trustee
- 29 Rail Access Corporation
- 30 Rail Services Authority
- 31 Registry of Births, Deaths and Marriages
- 32 State Forests of NSW
- 33 State Rail Authority of NSW (SRA)
- 34 State Transit Authority (STA)
- 35 Sydney Cove Redevelopment Authority
- 36 Sydney Cricket and Sports Ground Trust
- 37 Sydney Market Authority
- 38 Sydney Ports Corporation
- 39 Sydney Water Corporation
- 40 Totalisator Agency Board of NSW (TAB)
- 41 Trans Grid
- 42 Waste Service NSW
- 43 Zoological Parks Board of NSW

(B2) Application of Competitive Neutrality to Significant Business Activities of General Government Agencies

Requirements of the Agreement

5.58 Clause 3(5) of the Agreement applies to agencies that are not significant GBEs within the meaning of cl. 3(4), but undertake significant business functions as part of a broader range of functions. Clause 3(5) indicates that with respect to these business activities, the Parties will:

- where appropriate, implement the principles outlined in clause 3(4); or
- ensure that the prices charged for goods and services will take account, where appropriate, of full Commonwealth or State taxes or tax equivalent regimes, debt guarantee fees and equivalent regulation, and reflect full cost attribution for these activities.

Application in NSW

5.59 General pricing and costing principles are being developed by NSW Treasury to ensure that NSW General Government Enterprises (GGEs), that undertake significant business activities as part of a broader range of functions, price these goods and services in manner that reflects full cost attribution in the long run. A list of the businesses to which these Principles will apply is at **Table 3** at **paragraph 5.65**.

5.60 The principles will be part of the whole-of-government guidelines on pricing and costing. These guidelines will deal with the following three areas:

- business activities;
- general government activities; and
- contracting out of business and /or general government activities.

These guidelines will be released for comment in the last quarter of 1996-97 and will apply no later than 1 July 1998.

- 5.61** The NSW Government is cognisant of the possibility of competition between GGE business activities from different States and Territories. Accordingly, the NSW Government supports the development of nationally uniform guidelines for the pricing and costing of GGE business activities. It is acknowledged that such guidelines would supersede State and Territory ones.
- 5.62** Unless the Government business can demonstrate that the costs to the community outweigh the benefits, the pricing and costing principles for Government business activities will apply to:
- all GGEs that impose 'user charges' on consumers and private and public sector businesses, as distinct from taxes, regulatory fees and fines; and
 - those PTEs that are yet to come within the Financial Policy Framework or not currently subject to prices oversight by IPART.
- 5.63** The pricing principles will allow GGE business activities to charge between marginal and full cost in the short run and to recover the full costs of provision in the long run. Competitive neutrality is the determining factor for short run user charging. This can only be determined on a case-by-case basis within the parameters of a GGE's particular market.
- 5.64** As noted above, charging below full cost recovery may occur under certain appropriate circumstances (such as where excess capacity exists during off-peak periods), provided the charge:
- at least recovers the marginal cost (or average variable cost) of provisions in the short run;
 - contributes to the enterprise overall meeting fully attributed costs (or average costs) in the long run; and
 - is not for an anti-competitive purpose within the meaning of Part IV of the *Trade Practices Act (Cth) 1974*.

5.65 The Government indicated in its June 1996 *Policy Statement on the Application of Competitive Neutrality* that full cost pricing principles would 'apply to all entities within the Budget Sector that impose user charges on the consumers of their goods and services by no later than 1997-98'. The user charges of NSW GGEs, as listed in **Table 3**, need to be audited to assess compliance with the ABS definition of 'user charges'. This will occur in early 1997-98, with a view to finalising the coverage by 1 July 1998.

5.66 **Table 3.** List of NSW general Government Business Activities.

No.	Government Purpose (ABS) ¹	Government Agency/Activity	GGE (ABS) ²	BSD Monitor ³	User ⁴ Charges	Sig ⁵	Min ⁶
1	(01) General Public Services	Archives Authority of NSW	X	X	X		X
2		Audit Office of NSW	X				
3		Cabinet Office	X	X			
4		Government Actuary	X				
5		Independent Commission Against Corruption	X	X	X		X
6		Internal Audit Bureau	X				
7		Legislature	X	X	X		X
8		Local Government, Dept of	X	X	X		X
9		Ombudsman's Office	X	X	X		X
10		Parliamentary Counsel's Office	X	X			
11		Premier's Department	X	X	X		X
12		State Electoral Office	X	X	X		X
13		Statutory & Industrial Ballots - and Local Government Elections	X	X			
14		Superannuation Administration Authority	X				
15		Superannuation Funds Management Corporation					
16		Treasury	X	X	X		X
17	(03) Public Order & Safety	Attorney General's Dept	X	X	X	X	
18		Barristers Admission Board	X				
19		Bush Fire Services, Dept of	X	X	X		X
20		Corrective Services, Dept of	X	X	X	X	
21		Crime Commission, NSW	X	X	X		X
22		Director of Public Prosecutions, Office of	X	X	X		X
23		Fire Brigades, NSW	X	X	X		X
24		Judicial Commission of NSW	X	X	X		X
25		Juvenile Justice, Dept of	X	X	X		X
26		Law Reporting, Council of	X				
27		Legal Aid Commission	X	X	X	X	
28		Police, Ministry for	X	X	X		X
29		Police Service, NSW	X	X	X	X	
30		Solicitors Admission Board	X	X	X		X
31		State Emergency Service	X	X	X		X

No.	Government Purpose (ABS) ¹	Government Agency/Activity	GGE (ABS) ²	BSD Monitor ³	User ⁴ Charges	Sig ⁵	Min ⁶
32 (04) Education		Adult Migrant English Services	x				
35		Board of Studies, Office of the	x	x	x	x	
36		School Education, Dept of	x	x	x	x	
37		TAFE Commission, NSW	x	x	x	x	
38 (05) Health		Cancer Council of NSW	x				
39		Dental Board	x				
40		Health Care Complaints Commission	x	x	x		x
41		Health, Dept of	x	x	x	x	
42		Health Professionals Registration Board	x				
43		Medical Board	x				
44 (06) Social Security & Welfare		Aboriginal Affairs, Dept of	x	x			
45		Aboriginal Land Council, NSW	x				
46		Ageing and Disability Department	x	x	x		x
47		Community Services Commission	x	x	x		x
48		Community Services, Dept of	x	x	x		x
49		Ethnic Affairs Commission	x	x	x	x	
50		Home Care Service of NSW	x	x	x	x	
51		Women, Dept of	x	x	x	x	x
52 (07) Housing & Community Amenities		Coastal Council of NSW	x				
53		Crown Land Homesites					
54		Environmental Trusts	x				
55		Environment Protection Authority	x	x	x		x
56		HomeFund Commissioner's Office	x	x			
57		Lake Illawarra Authority	x				
58		Ministerial Development Corporation	x				
59		Sydney Region Development Fund	x	x			
60		Upper Parramatta River Catchment Trust	x				
61		Urban Affairs and Planning, Dept of	x	x	x		x

No.	Government Purpose (ABS) ¹	Government Agency/Activity	GGE (ABS) ²	BSD Monitor ³	User ⁴ Charges	Sig ⁵	Min ⁶
62	(08) Recreation & Culture						
63		Anzac Memorial Building, Trustees of	x	x	x	x	
64		Art Gallery of NSW	x	x	x		x
65		Arts, Ministry for the	x		x		x
66		Sydney Entertainment Centre	x		x		
67		Australian Museum	x	x	x	x	
68		Bicentennial Park Trust	x	x	x		x
69		Casino Control Authority	x	x	x		x
70		Centennial Park and Moore Park Trust	x	x	x	x	
71		Film and Television Office, NSW	x	x	x		x
72		Gaming and Racing, Dept of	x	x	x		x
73		Greyhound Racing Control Board	x				
74		Harness Racing Authority of NSW	x				
75		Heritage Conservation Fund	x				
76		Historic Houses Trust of NSW	x	x	x		x
77		Museum of Applied Arts and Sciences	x	x	x		x
78		National Parks and Wildlife Service	x	x	x		x
79		Olympic Co-ordination Authority	x	x	x		x
80		Royal Botanic Gardens and Domain Trust	x	x	x		x
81		Somersby Park Pty Ltd	x				
82		Sport and Recreation, Dept of	x	x	x	x	
83		State Library of NSW	x	x	x	x	
84	(09) Fuel & Energy						
85		Coal & Shale Mine Workers					
86		Coal Compensation Board	x		x		
87		Coal Miners Superannuation Fund					
		Coal Mining Industry					
		- Long Service Leave Trust Fund	x				

No.	Government Purpose (ABS) ¹	Government Agency/Activity	GGE (ABS) ²	BSD Monitor ³	User ⁴ Charges	Sig ⁵	Min ⁶
88		Energy, Dept of	x	x	x		x
89		Gas Council of NSW	x				
90		Mineral Resources, Dept of	x	x	x		x
91		Mines Rescue Board	x				
92		Mines Subsidence Board	x				
93		Sustainable Energy Development Authority	x	x			
94	(10) Agriculture, Forestry, Fishing & Hunting	Agriculture, Dept of	x	x	x	x	
95		Agricultural Scientific Collections Trust	x				
96		Banana Industry Committee	x				
97		Dairy Corporation, NSW	x				
98		Dairy Industry Conference, NSW	x				
99		Dumaresq-Barwon Border Rivers Commission	x				
100		Fisheries, NSW	x	x	x		x
101		Hunter Catchment Management Trust	x				
102		Land and Water Conservation, Dept of	x	x	x	x	
103		Luna Park Reserve Trust	x				
104		Soil Business	x				
105		Surveyors Board	x				
106		Valuer General's Office	x				
		Marketing Boards:					
107		Central Coast Citrus	x				
108		Dried Fruits	x				
109		NSW Grains	x				
110		Kiwifruit	x				
111		MIA Citrus Fruit	x				
112		Processing Tomato	x				
113		Rice	x				
114		Tobacco Leaf	x				
115		Wine Grapes	x				
116		Meat Industry Authority NSW	x				
117		Rural Assistance Authority	x				
118		Tick Control, Board of	x	x	x		x
119		Veterinary Surgeons Board NSW	x				
120		Wild Dog Destruction Board	x				

No.	Government Purpose (ABS) ¹	Government Agency/Activity	GGE (ABS) ²	BSD Monitor ³	User ⁴ Charges	Sig ⁵	Min ⁶
121	(11) Mining, Mineral	Architects of NSW, Board of	x				
122	Resources, Manufacturing & Construction	Building & Construction Industry - Long Service Leave Payments Corporation	x				
123	(12) Transport & Communications	Air Transport Council	x	x			
124		Marine Administration, Office of	x	x			
125		Motor Accidents Authority	x	x			
126		Roads and Traffic Authority	x	x	x		
127		Tow Truck Industry Council of NSW	x				
128		Transport, Dept of	x	x	x		x
129		Waterways Authority	x	x	x		x
130	(13) Other Economic Affairs	Fair Trading, Dept of	x	x	x	x	
131		Registry of Encumbered Vehicles	x	x			
132		Financial Counselling Trust Fund	x				
133		Financial Institutions Commission, NSW	x				
134		Independent Pricing & Regulatory Tribunal	x	x	x		x
135		Industrial Relations, Dept of	x	x	x		x
136		Insurance Ministerial Corporation	x				
137		Insurers Contribution Fund	x				
138		Insurers Guarantee Fund	x				
139		Premiums Adjustment Fund	x				
140		Protective Commissioner	x				
141		State and Regional Development, Dept of	x	x	x		x
142		Tourism NSW	x	x	x		x
143		Training and Education Co-ordination, Dept of	x	x	x		x
144		Vocational Education & Training Accreditation Board	x				
145		WorkCover Authority	x				
146		Worker's Compensation (Dust Diseases) Board	x				
147		Workmen's Compensation (Broken Hill) Act - Joint Committee	x				
148	(14) Other Purposes	Crown Transactions	x	x			

- 1 Categories as per the Australian Bureau of Statistics (ABS) in *Government Finance Statistics Australia: Concepts, Sources and Methods*.
- 2 General Government Enterprises (GGEs) as defined by the ABS in *GFS Australia: Concepts, Sources and Methods*.
- 3 These agencies/activities are monitored by the Budget Sector Division (BSD) of Treasury on the basis of a risk and materiality assessment.

There are currently 76 such agencies/activities.
- 4 There are currently 65 user charging NSW Government agencies. The existence of user charges is a broad indicator of a business activity.

However, the categorisation of user charges/business activities needs further refinement. This refinement will be finalised in early 1997-98.
- 5 Significant > \$2 000 000 user charges revenue p.a. as based on 1996-97 Budget estimates.
- 6 Minor < \$2 000 000 user charges revenue p.a. as based on 1996-97 Budget estimates.

(B3) Social Program Policy

5.67 The Government's Social Program Policy provides a structure for addressing its social justice objectives in relation to the non commercial activities of Government Trading Enterprises. When fully implemented direct, transparent payments from the Consolidated Fund will be made to Government businesses (that have either corporatised (in accordance with cl. 3(4) or adopted general pricing principles (in accordance with cl. 3(5)) to deliver social programs (SPs) according to service agreements with social policy portfolios).

5.68 The key objectives of the Social Program Policy are to:

- provide a means for the effective separation of commercial and non-commercial activities of Government businesses so that management may be given clear and non-conflicting objectives, thus enabling it to be held accountable for both commercial performance and the delivery of SPs;
- ensure social expenditures by Government businesses are subject to the Budget process, thereby making them transparent and enhancing Parliamentary accountability; and
- provide a means to improve the effectiveness of SP expenditures by thorough review and evaluation.

5.69 The Policy sets out a means whereby a Government business is compensated for the costs involved in undertaking a SP for the Government. The delivery of the SP and the payment for its performance are to be set out in a contract between the portfolio Minister and the Government business. This contract must be consistent with a service agreement between the Minister responsible for achieving the social outcomes of the SP and the portfolio Minister.

5.70 The Policy is being implemented in two stages. Stage I requires all Government businesses to identify and analyse non-commercial activities currently undertaken and to identify and describe those activities that are proposed as SPs. The first round of Stage I was completed in June 1995 and identified at least \$900M of SP expenditure which was either approved

through the Budget under previous guidelines or funded internally by cross subsidy.

- 5.71 Stage II implementation began in January 1996 with Ministers evaluating SPs with the participation of relevant stakeholders. Evaluation and contracting may be completed for some subsidised price concession SPs in 1997, especially those provided to pensioners and other welfare recipients.

(B4) Complaints and Non-compliance

Requirements of the Agreement

- 5.72 Clause 3 of the Agreement requires governments to include a complaints mechanism in their Policy Statements on Competitive Neutrality and publish allegations of non-compliance in their annual reports.

Application in NSW

- 5.73 An actual or potential competitor of a Government business may wish to make a complaint if it perceives it is being adversely affected or being denied a market opportunity because of a Government business' net competitive advantage resulting solely from its public ownership. The *NSW Policy Statement on Competitive Neutrality* indicates that, in the first instance, all competitive neutrality complaints are directed to the Government business that is the subject of the complaint. Alternatively, complainants may approach the Premier in the first instance, whereby The Cabinet Office will seek resolution of the issue in consultation with the relevant Government business. Complaints relating to tendering issues, however, will be dealt with separately by the State Contracts Control Board.

- 5.74 The Government is currently considering the possibility of an independent body investigating competitive neutrality

complaints that have not been resolved to the complainant's satisfaction. Should this mechanism be instituted, it is likely that the independent body would convey its findings and recommendations to the relevant Government Minister for action.

Complaints

5.75 In 1996/97, The Cabinet Office received three complaints in relation to the application of competitive neutrality to Government businesses. The complaints were made with respect to:

- the manufacture and sale of artificial eyes by Sydney Eye Hospital;
- the operation of Upper Macquarie County Council's services with respect to the eradication of noxious weeds; and
- the manufacture of products at Junee prison.

Sydney Eye Hospital

5.76 The Government is currently considering the application of the competitive neutrality principles to Sydney Eye Hospital as part of the general application of the National Competition Policy. This includes the application of tax and tax equivalent regimes and debt guarantee fees to the hospital's artificial eyes business. The application of these principles would address the issues raised in the complaint.

Upper Macquarie County Council

5.77 A complaint was also received from a business concerning the retail operation of councils having responsibility for weed control, particularly the Upper Macquarie County Council. The Upper Macquarie County Council is a specific purpose weeds council administered by the Minister for Agriculture. The complainant argues that the Council sells chemicals for weed control at prices that do not reflect the full costs of the business. The complainant is of the opinion that the Council is

obtaining a competitive advantage to the detriment of its business.

- 5.78** The Minister for Agriculture has met with the principal of the business with a view to resolving the dispute. The Minister has also released a discussion paper for comment concerning the future arrangements for the control of noxious weeds, the role of county councils and the way in which such organisations operate. The complaint will be considered in light of the discussion paper.

Junee Prison

- 5.79** The Premier of Victoria referred to NSW, a complaint received from a Melbourne division of a large Australian company. The company claimed that Junee prison was involved in unfair competition by using low cost prison labour to manufacture products similar to that produced by the company. It is claimed that the competition is unfair because the prices charged for the products do not reflect full costs or that some cross subsidisation is involved.
- 5.80** The NSW Minister for Corrective Services has advised that the manufacturing operations at Junee prison took place in consultation with industry. In addition, the Corrective Services Industries Consultative Council in NSW oversees the impact of correctional industries on the private sector. The Council comprises representatives of employer associations, the Labor Council, Department of Corrective Services and the community appointed by the Minister.
- 5.81** At the initiative of NSW, a National Code of Practice is currently being developed to addresses some of the more specific issues relating to the application of competitive neutrality principles to prison industries.

(C) Structural Reform of Public Monopolies

Requirements of the Agreement

- 5.82 Clause 4 of the Agreement indicates that, before competition is introduced to a sector traditionally supplied by a public monopoly, the non-contestable regulatory or other functions of the monopoly need to be separated from those commercial activities that can be subject to competition. This eliminates any conflict of interest with commercial functions and facilitates competitively neutral regulation of public and private businesses.
- 5.83 Clause 4 also specifies that when introducing competition to a market traditionally supplied by a public monopoly, and before a public monopoly is privatised, governments are required to undertake a review into the following matters:
- the appropriate commercial objectives for the public monopoly;
 - the merits of separating any natural monopoly elements from potentially competitive elements of the public monopoly;
 - the merits of separating potentially competitive elements of the public monopoly;
 - the most effective means of separating regulatory functions from commercial functions of the public monopoly;
 - the most effective means of implementing the competitive neutrality principles set out in the Agreement;
 - the merits of any community service obligations undertaken by the public monopoly and the best means of funding and delivering any mandated community service obligations;
 - the price and service obligations to be applied to the industry; and

- the appropriate financial relationships between the owner of the public monopoly and the public monopoly, including the rate of return targets, dividends and capital structure.

Application in NSW

5.84 The NSW Government has been applying the principles of structural reform to a number of sectors traditionally supplied by public monopolies. The major sectors are electricity, gas (privately owned and operated), road transport and water. Structural reform in these sectors had been occurring prior to the ratification of the National Competition Policy. However, the National Competition Policy now draws these reforms within the consistent framework of principles provided in the *Competition Principles Agreement*. How reforms in these four sectors are required to be progressed are detailed in the *Agreement to Implement National Competition Policy and Related Reforms*. Accordingly, NSW's implementation of reforms in these sectors will be discussed in the chapter in this report dedicated to application of the *Agreement to Implement National Competition Policy and Related Reforms*.

5.85 In addition to reforms in the electricity, gas, road transport and water sectors, the NSW Government has applied structural reform principles to the provision of rail services in NSW. Under the *Transport Administration Amendment (Rail Corporatisation and Restructuring) Act 1996*, the ownership, provision of third party access and maintenance of railway track (previously owned by the State Rail Authority) was separated from the operation of train services. This separation took effect on 1 July 1996. Rail services in NSW are now provided in accordance with the following roles and responsibilities:

- Rail Access Corporation owns infrastructure, except for rolling stock and stations;
- Railway Services Authority is responsible for maintaining the track and construction;

- State Rail Authority conducts a rail passenger business through the independent commercial operators CityRail and CountryLink;
- Freight Corp is now distinct from State Rail Authority, has been corporatised and conducts a rail freight business; and
- Public Transport Authority is responsible for co-ordinating all passenger transport services.

5.86 The Government is pursuing structural reform in a number of other areas. During 1996, NSW Lotteries was corporatised. The regulatory regime under which NSW Lotteries operates was also reformed with a comprehensive licensing regime being established to cover all existing and future lotteries activities. The new taxing arrangements which have also been introduced are designed to increase the commercial incentives for the corporatised entity to develop its business, new products and market share. These reforms have also provided the commercial basis necessary for the future introduction of competition into the lotteries and gambling business in NSW.

5.87 During 1996, the Government announced its intention to withdraw from the day to day operation of the Sydney Market Authority, providing that acceptable arrangements can be made for the stallholders to take over the operations of the market. The Government has signed Heads of Agreement with the company established by the industry to run the markets and negotiations on the details of the arrangements are continuing.

5.88 In 1996 the Government agreed that the Murrumbidgee and Coleambally irrigation schemes should be corporatised as SOCs. Significant progress towards achieving this was made during the year and the schemes are due to be corporatised by July 1997.

5.89 The NSW Parliament passed legislation in 1996 separating the regulatory role of the Valuer General from the provision of valuation services. The legislation also enables the Valuer General to seek the provision of those services by way of

competitive tender. Tenders were called during 1996 and it is anticipated that the first round of competitive contracts will be awarded by July 1997.

- 5.90** The Government also agreed that the Office of the Public Trustee should be corporatised as a SOC and work was commenced in 1996 to achieve this during 1997.
- 5.91** The Government commenced a review of the TAB in 1996 with a view to structuring the organisation so as to increase its ability and that of the racing industry generally, to compete effectively in the expanding wagering and betting market.

(D) Review of Legislation

Requirements of the Agreement

5.92 Clause 5 of the Agreement requires jurisdictions to review legislation “that restricts competition” between 1996 and 2000. The Agreement indicates that legislation should not restrict competition unless it can be demonstrated that the benefits to the community as a whole outweigh the costs and that the objectives of the legislation can only be achieved by restricting competition. The determination of whether particular legislation “restricts competition” and requires review is for each jurisdiction to determine. Each jurisdiction is required to have published a Legislation Review Timetable by June 1996.

Application in NSW

5.93 NSW has adopted a broad definition of the term “legislation that restricts competition” consistent with its economic development priorities. All NSW legislation has been examined to determine whether it establishes market entry barriers or sanctions or requires conduct which has the potential to restrict competitive behaviour in the market. The examination was also aimed at determining whether the costs of such legislation are not known, are unnecessarily high or may not be outweighed by public benefits.

5.94 Legislation that restricts competition to an extent where the costs of that restriction are not outweighed by public benefits has been nominated for further review and where necessary, reform. NSW legislation in this category is listed in the *NSW Government Policy Statement on Legislation Review*, published in June 1996. The process and outcome of reviews of these Acts are detailed at paragraph 5.102.

5.95 The reviews of legislation nominated in 1995-97 have been targeted to the anti-competitive restrictions contained in the legislation. For example, where only part of the legislation has

an impact on competition (eg. legislation regarding the regulation of professions), the focus of the review has been on those restrictions.

5.96 The terms of reference for reviews are developed in accordance with the nature and operation of the particular legislation. The terms of reference for a large number of reviews have been developed on a case by case basis using the template terms of reference below as a guide.

1. The party reviewing the (*insert name of Act*) shall be required to conduct the review in accordance with the terms of reference for legislation reviews set out in the National Competition Principles Agreement. The guiding principle of the review is that legislation should not restrict competition unless it can be demonstrated that:
 - (a) the benefits of the restriction to the community as a whole outweigh the costs; and
 - (b) the objectives of the legislation can only be achieved by restricting competition.
2. Without limiting the scope of the review of the (*insert name of Act*), the party shall:
 - (a) clarify the objectives of the legislation;
 - (b) identify the nature of the restrictive effects on competition;
 - (c) analyse the likely effect of any identified restriction on competition on the economy generally;
 - (d) assess and balance the costs and benefits of the restrictions identified; and
 - (e) consider alternative means for achieving the same result, including non-legislative approaches.

3. In the course of the review the party should:
 - (a) identify any issues of market failure which need to be , or are being addressed by the legislation; and
 - (b) consider whether the effects of the legislation contravene the competitive conduct rules in Part IV of the *Trade Practices Act 1974* (Cth) and Competition Codes of each jurisdiction.
4. The party shall consult with and take submissions from consumers, producers and other interested parties.

Subordinate Legislation

- 5.97** Where legislation is identified as subject to review, associated regulations have also been examined as part of the process.

Licence Reduction Program

- 5.98** The NSW Government's Licence Reduction Program (LRP) began in August 1995 when the Premier wrote to all Ministers requiring them to justify the licence requirements under their portfolios. The LRP involved the review and repeal of all licences that cannot be justified by reference to countervailing public benefits.

- 5.99** Where licensing requirements were in effect the primary anti-competitive elements of legislation reviewed in 1995-97, the LRP applied to the legislation and no additional review was undertaken. This approach is indicated by the inclusion of the term "Licence Reduction Program" under the "Review Category" heading described in the legislation review schedule at paragraph 5.107. However, where legislation imposes competitive restrictions additional to the licensing requirements the legislation has been scheduled for further review.

- 5.100** Under the LRP, the Government has reviewed over 250 licences. Of these, 34 have been nominated for repeal by the

Regulatory Reduction Act 1996. Sixteen of these nominated licences were repealed with the proclamation of the *Regulatory Reduction Act* on 7 February 1997. These 16 licences are as follows:

- Notice of Intention to Erect a Conveyor
- Notice of Intention to Set up a Commercial Type Hoist
- Notification of Intention to Set up a Crane
- Refrigeration Engine Driver
- Temporary Vessel Permit for interstate vessels operating in NSW waters
- Certificate for service in place of a competency test
- Temporary certificate of Competency where full certification requirements have not been met
- Registration of Mobile Cranes (Maritime),
- Registration of a Forklift Truck (Maritime Uses)
- Structure Licence for persons to erect or use a structure above the bed of enclosed water
- Visiting Small Craft Permit
- Load Lines on lighters and barges
- Navigation Locality Permit
- Trade Permit
- Recreation Vehicle Area Permit
- Loss Assessor (Motor Vehicle).

5.101 The remaining 18 licences nominated for repeal will be removed progressively, as the staged proclamation of the *Regulatory Reduction Act* takes effect. These licences include those concerning Dried Fruit Classifier, Artificial Breeders, Crane Chasers and Air Conditioning and Refrigeration Tradepersons.

5.102 In addition to the 34 licences nominated for repeal by the *Regulatory Reduction Act*, the Government has removed 7 other licences by amending the particular legislation relating to the licence or introducing new specific legislation. These licences are the: Operative Bakers Certificate, Bread Manufacturers Licence, Hawkers Licence, Exhibition Licence, Second-Hand Dealer - Market Endorsement, Collectors Licence and Certificate of Work performed on an engine since receipt of an engine noise notice.

5.103 In addition to those licences removed by legislation, a further 44 licences have been administratively repealed or

amalgamated into three general categories of work. These categories are:

- fencing;
- general maintenance; and
- cleaning.

5.104 These 44 licences are as follows:

- | | |
|----------------------------------|--------------------------------------|
| • Masonry Fencing | • Tile Cleaning |
| • Chain Wire Fencing | • Concrete Cleaning |
| • Mesh Fencing | • Sandstone Cleaning |
| • Fencing | • Graffiti Cleaning |
| • Pre-Cast Concrete Fencing | • Repair Relocatable Dwellings |
| • Fencing Repairs | • Maintain Int/External Timber |
| • Decorative Boundary Fencing | • Garage Frame Repairs |
| • Swimming Pool Safety Fencing | • Pest Control Related Building Work |
| • Panel Crete Fencing | • Gates |
| • Brushwood Fencing | • Sandblasting |
| • Concrete Curing | • Woodcarving & Decorative Timber |
| • Falsework | • Meter Boxes |
| • Fibrecharm Only | • Water Tanks |
| • Acrylic Bath Inserts | • Glass Panel Doors & Balustrades |
| • Eaves and Facias | • Internal Moulding Out |
| • External Fixing | • Prefab Aluminium Structures |
| • Installation of Baths & Basins | • Plaster Reinstatement Work |
| • Brick Cleaning | • Install Vehicle Turntables |
| • Bath Resurfacing | • Metal gates |
| • Eaves | • Timber Gates |
| • Fascias | • Remote Control Mechanism |
| • High Pressure Water Cleaning | • Pest Control |

National Reviews

5.105 Council of Australian Government Senior Officials have considered a number of Acts for review at a national level. At this stage the program, framework, terms of reference and review bodies are still being considered.

5.106 In addition, the NSW Government had proposed that its *Dairy Industry Act 1979 No 208*, along with other jurisdictions' dairy industry legislation, be subject to a national review. However, because of a lack of support from other jurisdictions, the Government has decided not to proceed with its proposal for a national review.

Process and Outcome of Reviews of NSW Legislation in 1995-97

5.107 The categories utilised for the process of legislation review are:

- A Review process involves the relevant department, central government agencies and includes participation of relevant industry and public stakeholders.
- B Review process involves an Inter-departmental Committee comprised of representatives of the relevant department and central government agencies.
- C Review process involves representatives of the relevant department and one other agency or body.
- D Review process involves representatives of the relevant department only.

1995/96

Portfolio: Agriculture

Farm Produce Act 1983 No 30

Objectives: Makes provisions for the registration and regulation of farm produce merchants and farm produce agents.

Review Category: D

Outcome: Proposed repeal.

Tobacco Leaf Stabilisation Act 1967 No 34

Objectives: Makes provisions with respect to the stabilisation of the tobacco leaf industry.

Review Category: D

Outcome: Proposed repeal.

Rice Marketing Board [Marketing of Primary Products Act 1983 No 76]

Objectives: Establishes the NSW Rice Marketing Board which markets or arranges to market the annual rice crop in its role as the sole statutory marketing body for rice.

Review Category: A

Outcome: Legislative arrangements maintained. (see paragraph 5.113-5.133 for detailed comments on outcome).

Meat Industry Act 1978 No 54

Objectives: Constitutes the NSW Meat Industry Authority and provides for the regulation and control of the NSW meat industry.

Review Category: A

Outcome: Review still underway. Public consultation has been undertaken and public submissions received - report being prepared by review group. Rationalisation of current arrangements supported by producers.

Banana Industry Act 1987 No 66

Objectives: Constitutes the Banana Industry Committee (a statutory marketing authority) and links the compulsory grower charges to services provided by the committee.

Review Category: A

Outcome: Review complete. Not yet publicly released. Proposal to Ministers in early 1997.

MIA Wine Grapes Marketing Board Act [Marketing of Primary Products Act 1983 No 76]

Objectives: Constitutes the MIA WGMB - a statutory marketing authority responsible for the marketing of MIA wine grapes and to represent the interests of growers.

Review Category: A

Outcome: Review complete. Not yet publicly released. Proposal to Ministers in early 1997.

Portfolio: Arts

Library Act 1939 No 40 (Library Regulation 1995)

Objectives: Makes further provisions for the establishment, maintenance and management of libraries, library services and information services and creates certification scheme for librarians.

Review Category: C

Outcome: Review complete - certification scheme abolished.

Portfolio: Attorney-General

Monopolies Act 1923 No 54

Objectives: Amends law relating to monopolies and restraint of trade.

Review Category: D

Outcome: Review underway.

Public Notaries Act 1985 No 6

Objectives: Provides for appointment, enrolment and disciplinary procedures for Public Notaries.

Review Category: D

Outcome: Review complete - options under consideration.

Public Trustee Act 1913 No 19

Objectives: Establishes the Public Trustee as a corporation empowered to conduct personal trust work.

Review Category: B

Outcome: Legislation reviewed as part of corporatisation.

Restraints of Trade Act 1976 No 67

Objectives: Provides for Supreme Court action based on applications against activities which create restraints of trade.

Review Category: D

Outcome: Review underway

Trustee Companies Act 1964 No 6

Objectives: Consolidates and amends the law relating to the restrictions, liabilities, privileges and powers of trustee companies.

Review Category: B

Outcome: Review underway
Part of Standing Committee of Attorney-Generals (SCAG) approved national trustee process.

Portfolio: Energy

Energy Administration Act 1987 No 103

Objectives: Establishes the Department of Energy, constitutes the Energy Corporation of NSW and defines its functions.

Review Category: B

Outcome: Review complete - licence and approval requirements repealed with the proclamation of the *Electricity Supply Act* 1995. Sections 35A and s35B dealt with as part of structural reform of the gas industry.

Portfolio: Environment

Pesticides Act 1978 No 57

Objectives: Controls the sale , supply, use and possession of pesticides, the application of pesticides from aircraft and provide for the prevention of foodstuff contamination.

Review Category: C. Dealt with under Licence Reduction Program

Outcome: Licence retained. Public safety considerations outweigh costs.

Radiation Control Act 1990 No 13

Objectives: Makes provision for the regulation and control of the sale, use, keeping and disposal of radioactive substances and radiation apparatus.

Review Category: C. Dealt with under Licence Reduction Program

Outcome: Licence retained. Issues of public safety outweigh costs.

Recreation Vehicles Act 1983 No 136

Objectives: Regulates the off-road use of motor vehicles.

Review Category: B

Outcome: Review underway. Recreation Vehicle Area Permit already abolished.

Environmentally Hazardous Chemicals Act 1985 No 14

Objectives: Provides for the control of the effect on the environment of chemicals and chemical waste. Constitute the Hazardous Chemicals Advisory Committee.

Review Category: C. Dealt with under Licence Reduction Program

Outcome: Licence retained. Public safety and community health considerations outweigh costs.

National Parks and Wildlife Act 1974 No 80

Objectives: Consolidates and amends the law relating to the establishment, preservation and management of national parks, historic sites and certain other areas and the protection of certain fauna, native plants and aboriginal relics.

Review Category: B. Dealt with under Licence Reduction Program

Outcome: Licence retained. Preservation of natural flora and fauna outweigh costs.

Waste Disposal Act 1970 No 97

Objectives: Provides for the constitution of a corporation to be called the "Metropolitan Waste disposal Authority", to confer and impose on the

corporation responsibilities, powers, authorities, duties and functions with respect to the transport, collection, reception, treatment, storage and disposal of waste within the Metropolitan Waste Disposal Region.

Review Category: D

Outcome: Replaced by *Waste Minimisation and Management Act 1995*.

Portfolio: Fair Trading

Hawkers Act 1974 No 23

Objectives: Provides for the licensing and control of Hawkers.

Review Category: D

Outcome: Review complete - repealed with proclamation of *Pawnbrokers and Second-Hand Dealers Act 1996*.

Trade Measurement Act 1989 No 233

Objectives: Relates to trade measurement in NSW as part of the scheme for uniform trade measurement legislation throughout Australia.

Review Category: C. Dealt with under Licence Reduction Program.

Outcome: Licence retained - part of a nationally uniform scheme. The Trade Measurement Advisory Committee to the Ministerial Council on Consumer Affairs is reviewing the uniform trade measurement legislation. Relevant stakeholders are to be consulted. The current situation is that there is no duplication with other laws. The licence cost is minimal and operates at full cost recovery for Government.

Portfolio: Gaming and Racing*Sydney Turf Club Act 1943 No 22*

Objectives: Constitute and incorporates a Sydney Turf club and declares its objects, functions and powers and provides for associated matters.

Review Category: A

Outcome: Review complete. Ministers currently considering.

Australian Jockey Club Act 1873

Objectives: Extends the period for which the trustees of the Randwick Racecourse are enabled to grant leases and to enable members of the "Australian Jockey club" to sue and be sued in the name of the Chairman.

Review Category: A

Outcome: Review underway

Portfolio: Health*Therapeutic Goods and Cosmetics Act 1972 No 14*

Objectives: To regulate the manufacture, distribution and advertising of certain therapeutic goods and to impose standards in relation to certain therapeutic goods and cosmetics.

Review category: C

Outcome: Review complete. Act repealed.

Poisons Act 1966 No 31

Objectives: To regulate, control and prohibit of the sale and use of poisons, restricted substances, drugs of addiction and certain dangerous drugs and to establish a Poisons Advisory Committee.

Review category: A

Outcome: Currently being considered by jurisdictions for national review.

Dentists Act 1989 No 139

Objectives: Regulates the practice of dentistry.

Review category: A

Outcome: Review complete. Report is being considered.

Medical Practice Act 1992 No 94

Objectives: Provides for the registration of medical practitioners and medical students, the making of complaints and disciplinary action.

Review Category: A

Outcome: Review complete. Restrictions on advertising minimised.

Tobacco Advertising Prohibition Act 1991 No 65

Objectives: Prohibits the advertising of tobacco and tobacco products, trade marks, brand names and logos.

Review Category: C

Outcome: Review complete. Restrictions on advertising minimised to maximise public health benefits.

Portfolio: Industrial Relations

Bread Act 1969 No 54

Objectives: Makes provisions in respect of times for the baking and delivery of bread, licensing of bread manufacturers, certification of operative bakers, standard bread size, constitutes a Bread Industry Advisory Council and amends other acts.

Review Category: D

Outcome: Repealed.

Occupational Health and Safety Act 1983 No 20

Objectives: To secure the health, safety and welfare of persons at work and to amend certain other Acts.

Review Category: A

Outcome: Consolidated regulation being developed consistent with recommendations of Productivity Commission. Regulation to be released for comment in early 1997.

White Phosphorous Matches Prohibition Act 1915 No 1

Objectives: Prohibits the use of white phosphorus in the manufacture of matches and prohibits the sale of matches made with white phosphorous.

Review Category: D

Outcome: Repealed.

Portfolio: Land and Water Conservation

Surveyors Act 1929 No 3

Objectives: Provides for the registration of surveyors of land, regulates the making of surveys.

Review Category: D

Outcome: Review underway

Portfolio: Local Government

Local Government (Theatre and Public Halls) Amendment Act 1989 No 10

Objectives: Amends *Local Government Act* to make provision for approval and regulation of places of public entertainment and certain structures.

Review Category: C. Dealt with under Licence Reduction Program.

Outcome: Licence retained. Issues of public safety outweigh costs.

Portfolio: Mineral Resources

Petroleum (Onshore) Act 1991 No 84

Objectives: Regulates the search for and mining of petroleum.

Review Category: C. Dealt with under Licence Reduction Program.

Outcome: Authority for exploration retained. Business compliance costs minimised.

Petroleum (Submerged Lands) Act 1982 No 23

Objectives: Relates to the exploration for and exploitation of petroleum resources and certain other resources adjacent to the coast of NSW.

Review Category: C. Dealt with under Licence Reduction Program.

Outcome: Authority for exploration retained. Business compliance costs minimised.

Mining Act 1992 No 29

Objectives: Makes provisions with respect to prospecting for and mining minerals.

Review Category: C. Dealt with under Licence Reduction Program.

Outcome: Currently subject to further review.

Portfolio: Police

Wool, Hides and Skins Dealers Act 1935 No 40

Objectives: Regulates the buying and selling of wool, hides and skins.

Review category: B

Outcome: Review underway with a view to possible repeal.

Security (Protection) Industry Act 1985 No 52

Objectives: Provides for the licensing and regulation of persons carrying on, or employed in, the business of providing security and protection for persons or property.

Review Category: B. Dealt with under Licence Reduction Program.

Outcome: Industry subject to ongoing inquiry. Results and recommendations of inquiry not yet released. Some licensing requirements have been removed under the *Regulatory Reduction Act 1996*.

Portfolio: Ports and Waterways

Commercial Vessels Act 1979 No 41

Objectives: Regulates the use of certain vessels and of certain motors for propelling vessels, provides for marking of load lines and the carriage of certain equipment by vessels.

Review Category: B. Dealt with under Licence Reduction Program.

Outcome: Anti-competitive licenses and permits deleted.

Maritime Services Act 1935 No 47

Objectives: Provides for the constitution of the Maritime Services Board of NSW and its powers.

Review Category: B. Dealt with under Licence Reduction Program.

Outcome: Act retained without amendment. Where duplication was identified, other Acts were modified.

Marine Pilotage Licensing Act 1971 No 56

Objectives: Provides for the Licensing of pilots.

Review Category: B. Dealt with under Licence Reduction Program.

Outcome: Licence retained. Overlap with Commonwealth legislation and accreditation. Possible national review.

Portfolio: Public Works and Services

Architects Act 1921 No 8

Objectives: Provides for the registration of architects and regulation of the practice of architecture.

Review Category: C. Dealt with under Licence Reduction Program.

Outcome: Further review currently underway.

Portfolio: RoadsDriving Instructors Act 1992 No 3

Objectives: Provides for the licensing of driving instructors and to repeal the *Motor Vehicle Driving Instructors Act 1961*.

Review Category: C

Outcome: Management review and report by Independent Commission Against Corruption have been completed. Outcomes of these review are being consolidated into Issues Paper.

Portfolio: Sport and RecreationMotor Vehicles Sports (Public Safety) Act 1985 No 24

Objectives: Makes provision for the control and regulation of meetings for motor vehicle racing.

Review Category: B

Outcome: Review underway.

Boxing and Wrestling Control Act 1986 No 11

Objectives: Regulates the conduct of professional boxing, constitutes the Boxing Authority of NSW and defines its functions, regulates the conduct of wrestling and amateur boxing contests.

Review Category: B

Outcome: Review underway

Portfolio: Transport

Tow Truck Act 1989 No 158

Objectives: Provides for a licensing and certification scheme for tow truck drivers and operators, to regulate other matters and to constitute the Tow Truck Industry Council.

Review Category: A

Outcome: Proposal to deregulate industry apart from city smash towing.

Air Transport Act 1964 No 36

Objectives: Prohibits, in certain circumstances, the carriage by aircraft of passengers or goods from one place to another within NSW except if licence is granted by the Minister. Also amends other Acts.

Review Category: A. The Premier had referred the review of the industry to the Independent Pricing and Regulatory Tribunal (IPART).

Outcome: The Government is considering IPART's interim report.

Portfolio: Treasurer

Business Franchise Licence (Petroleum Products) Act 1987 No 94

Objectives: Provides for the licensing of people carrying on the business of selling certain petroleum products.

Review Category: C. Dealt with under Licence Reduction Program.

Outcome: Licence retained. Compliance costs minimised.

Business Franchise Licence (Tobacco) Act 1987 No 93

Objectives: Provides for the licensing of people carrying on the business of selling tobacco.

Review Category: C. Dealt with under Licence Reduction Program.

Outcome: Licence retained. Compliance costs minimised.

Payroll Tax Act 1971 No 22

Objectives: Imposes a tax upon employers in respect of certain wages and provides for the assessment and collection of the tax.

Review Category: C. Dealt with under Licence Reduction Program.

Outcome: Licence retained. Compliance costs minimised.

Public Authorities (Financial Arrangements) Regulations 1987 No 33

Objectives: Makes provisions with respect to certain financial arrangements and investments of public authorities, constitutes the NSW Capital Works Financing Corporation.

Review Category: D

Outcome: Review complete. Compliance costs reduced to the extent possible.

Public Finance and Audit Act 1983 No 152

Objectives: Makes provision with respect to the administration and audit of public finances.

Review Category: B

Outcome: Review underway

1996/97

Portfolio: Agriculture

Prevention of Cruelty to Animals Act 1979 No 200

Objectives: Provides for the prevention of cruelty to animals.

Review Category: A

Outcome: Review underway. Green Paper released for public comment - submissions being considered.

Agricultural Tenancies Act 1990 No 64

Objectives: Regulates the rights of agricultural landowners, tenants and sharefarmers and provides for the determination by arbitration of disputes.

Review Category: B

Outcome: Terms of Reference have been approved.

Rural Assistance Act 1989 No 97

Objectives: Constitutes the NSW Rural Assistance Authority

Review Category: B

Outcome: Reviewed by Public Accounts Committee in 1995. Review to coincide with Commonwealth review of Rural Adjustment Scheme which is currently underway. Terms of reference for NSW review have been approved.

Rural Lands Protection Act 1989 No 197

Objectives: Establishes Rural Lands Protection Districts and associated boards which levy and collect rates, provide animal health services and control of noxious weeds and animals.

Review Category: B

Outcome: Terms of reference have been approved.

Homing Pigeons Protection Act 1909 (1910 No 1)

Objectives: Provides for the protection of homing pigeons during their flights.

Review Category: D

Outcome: Repealed.

Seeds Act 1982 No 14

Objectives: Regulates the sale of seeds and prohibits the sale of certain seeds and plants.

Review Category: C

Outcome: Terms of reference have been submitted for consideration and approval.

Stock Foods Act 1940 No 19

Objectives: Regulates the sale of food for stock.

Review Category: C

Outcome: Terms of reference have been submitted for consideration and approval.

Stock Diseases Act 1923 No 34

Objectives: Relates to diseases in stock and repeals the *Stock Diseases (Tick) Act 1901* and the *Stock Diseases (Tick) Amendment Act 1915*.

Review Category: C

Outcome: Terms of reference have been submitted for consideration and approval.

Apiaries Act 1985 No 16

Objectives: Regulates the keeping of bees, requires and provides for the registration of beekeepers, prevent the introduction of, and to control and eradicate, certain diseases and pests which afflict bees and apiaries and to provide for the payment of compensation to registered beekeepers in certain cases.

Review Category: C

Outcome: Terms of reference have been submitted for consideration and approval.

Exotic Diseases of Animals Act 1991 No 73

Objectives: Provides for the detection, containment and eradication of certain diseases affecting livestock and other animals.

Review Category: C

Outcome: Terms of reference have been submitted for consideration and approval.

Plant Diseases Act 1924 No 38

Objectives: Makes further provisions to prevent the introduction into NSW of diseases and pests affecting plants and fruit, to provide for the eradication of such diseases and pests, and to prevent their spread. Also makes certain provisions regarding the sale and grading of fruit and to cotton plants.

Review Category: C

Outcome: Terms of reference have been submitted for consideration and approval.

Horticultural Stock and Nurseries Act 1969 No 3

Objectives: Provides for the registration of certain nurserymen and resellers of horticultural stock and regulates the sale or propagation of certain horticultural stock.

Review Category: A

Outcome: Terms of reference have been approved. Strategy developed to repeal the Act and disperse legitimate market failure issues to other legislation. Discussed extensively with Ministerial Advisory Committee on the Act and at industry forums.

Stock (Artificial Breeding) Act 1985 No 196

Objectives: Repeals the Stock (Artificial Insemination) Act 1948 and makes provisions with respect to the artificial breeding of stock.

Review Category: A

Outcome: Review underway. *Regulation Reduction Act 1996* provides for the abolition of registration requirements for individual artificial breeders.

Cattle Compensation Act 1951 No 26

Objectives: Provides for the establishment of a Cattle Compensation Fund and for payment of compensation to owners of cattle and carcasses of cattle destroyed as suffering from disease.

Review Category: C

Outcome: Terms of reference have been approved. Possible repeal. Compensation fund could be included in the proposed *Agricultural Industry Services Bill*.

Swine Compensation Act 1928 No 36

Objectives: Provides for the establishment of a Swine Compensation Fund and for payment of compensation to owners of pigs and carcasses of pigs destroyed as suffering from disease.

Review Category: C

Outcome: Terms of reference have been approved.

Noxious Weeds Act 1993 No 11

Objectives: Provides for the identification, classification and control of noxious weeds.

Review Category: C

Outcome: Terms of reference are being prepared.

Prickly Pear Act 1987 No 202

Objectives: Provides for the control and destruction of Prickly Pear.

Review Category: D

Outcome: Repealed. Prickly Pear now listed in *Noxious Weeds Act 1993*.

Fertilisers Act 1985 No 5

Objectives: Provides for the registration of brand names for fertilisers and liming materials and regulates the sale of fertilisers, liming materials and trace element products.

Review Category: B. Involvement of Department of Health and possibly Fair Trading.

Outcome: Terms of reference have been submitted for consideration and approval.

Stock Medicines Act 1989 No 182

Objectives: Relates to medicines for stock and other animals for the purposes of enhancing the quality of agricultural production, protecting the environment and safeguarding the health of stock and other animals.

Review Category: C

Outcome: Terms of reference have been submitted for consideration and approval.

Stock (Chemical Residues) Act 1975 No 26

Objectives: To prevent the slaughter for human consumption of stock which contain certain concentrations of residues of chemicals or which are otherwise chemically affecting and to prevent stock from becoming chemically affected.

Review Category: C

Outcome: Terms of reference have been submitted for consideration and approval.

Sydney Market Authority Act 1968 No 11

Objectives: Constitutes the Sydney Market Authority and to define its powers, authorities, duties and functions and to vest certain property in the authority.

Review Category: A

Outcome: The Government has signed Heads of Agreement with the company established by the industry to run the markets and negotiations on the details of the arrangements are continuing.

Poultry Meat Industry Act 1986 No 101

Objectives: Constitutes the Poultry Meat Industry Committee and to define its functions and to regulate and control the poultry growing industry.

Review Category: A

Outcome: Terms of reference will be developed following outcome of the review of the *Meat Industry Act*.

Poultry Processing Act 1969 No 45

Objectives: Provides for the registration of plants in which poultry is processed for sale and to make provisions for the regulation and control of these plants.

Review Category: A

Outcome: Terms of reference will be developed following the outcome of the review of the *Meat Industry Act*.

Murray Valley Citrus Marketing Act 1989 No 155

Objectives: Makes provision for a joint NSW-Victorian scheme for marketing citrus fruit.

Review Category: A

Outcome: Review yet to commence. Currently awaiting outcome of Productivity Commission study on the feasibility of amalgamation. After completion of industry study there may be liaison with Victoria and SA.

MIA Citrus Fruit Promotion Marketing Committee (Marketing of Primary Products Act 1983 No 76)

Objectives: Part of MPP Act (see above) which relates to the marketing of certain primary products and provides for the establishment of marketing boards and enables the making of marketing orders.

Review Category: A

Outcome: Review nearing completion.

Agriculture and Veterinary Chemicals (NSW) Act 1994 No 53

Objectives: Applies certain laws of the Commonwealth relating to agricultural and veterinary chemical products as laws of NSW. Complementary to Commonwealth legislation.

Review Category: B

Outcome: Complementary with Commonwealth legislation. Currently being considered for national review.

Biological Control Act 1985 No 199

Objectives: Makes provision for the biological control of pests in NSW. Complementary to Commonwealth legislation.

Review Category: B

Outcome: Complementary with Commonwealth legislation. Currently being considered for national review.

Wheat Marketing Act 1989 No 211

Objectives: Relates to the marketing of wheat and other grains.

Review Category: A

Outcome: Complementary with Commonwealth legislation. Currently being considered for national review.

Veterinary Surgeons Act 1986 No 55

Objectives: Regulates veterinary surgeons and premises, defines acts to be performed by vets, establishes Veterinary Surgeons Board and disciplinary procedures, controls delegation of duties, regulates advertising and use of title "Veterinary Surgeon".

Review Category: A. Initial stages of review commenced

Outcome: Review underway

Dairy Industry Act 1979 No 208

Objectives: Constitutes the NSW Dairy Corporation which is responsible for the production, quality, supply and distribution of milk and the production, quality and storage of dairy products.

Review Category: A

Outcome: Review underway

Portfolio: Attorney-General

Legal Profession Act 1987 No 109

Objectives: Regulates the admission and practice of barristers and solicitors and repeals the Legal Practitioners Act 1898. Constitutes the Barristers Admission Board and Legal Practitioners Admission Board.

Review Category: COAG review - final report released.

Outcome: NSW has proposed national review. Awaiting response from other jurisdictions.

Motor Vehicles (Third Party Insurance) Act 1942 No 15

Objectives: Requires that owners and drivers of motor vehicles are insured against liability in respect of death or bodily injury, amends the Transport Act 1930 and the Compensation to Relatives Act 1987.

Review Category: A

Outcome: Review outcome expected shortly.

Motor Accidents Act 1988 No 102

Objectives: Relates to the recovery of damages and compulsory insurance against liability for the death or injury of persons as a consequence of motor accidents.

Review Category: A

Outcome: Review outcome expected shortly.

Portfolio: Energy

Pipelines Act 1967 No 90

Objectives: Relates to the construction, operation and maintenance of pipelines.

Review Category: B

Outcome: Review underway

Portfolio: Environment

Unhealthy Building Land Act 1990 No 122

Objectives: Provides for the declaration of certain land as unhealthy building land and for the effect of such a declaration.

Review Category: B

Outcome: Legislation to be incorporated into proposed Contaminated Lands Act.

Portfolio: Fair Trading

Building Services Corporation Act 1989 No 147

Objectives: Makes provisions concerning the residential building industry and certain specialist work and to constitute the Building Services Corporation and define its functions.

Review Category: A. Review underway and to involve Green Paper on licensing.

Outcome: Insurance arrangements for tradepersons will commence shortly. Remaining elements of the review under consideration.

Door to Door Sales Act 1967 No 36

Objectives: Controls and regulates certain agreements relating to the sale or bailment of goods and the provision of services on credit.

Review Category: C

Outcome: Act currently being considered. Cooling off provisions to be considered separately.

Funeral Funds Act 1979 No 106

Objectives: Controls and regulates contributory and pre-arranged funeral funds.

Review Category: C

Outcome: Terms of reference have been agreed and review is proceeding.

Prices Regulation Act 1948 No 26

Objectives: Makes provision for the regulation of prices and rates of certain goods and services.

Review Objectives: B

Outcome: Review underway. Relationship with role of IPART being considered.

Landlord and Tenant (Rental Bonds) Act 1977 No 44

Objectives: Constitutes a Rental Bond Board, confers and imposes certain powers, authorities, duties and functions on the Board, requires lessors of residential premises to deposit rental bonds with the Board, provides for the paying out of rental bonds and to enable the investment of rental bonds and the investment and expenditure of rental bonds.

Review Category: B

Outcome: Review underway

Property, Stock and Business Agents 1941 No 28

Objectives: Regulates real estate, stock and station, business and managing agents.

Review Category: A

Outcome: Green Paper being prepared. Expected to be completed by August 1997.

Business Names Act 1962 No 11

Objectives: Makes provision with respect to the registration and use of business names.

Review Category: B

Outcome: Possible national review

Motor Dealers Act 1974 No 52

Objectives: Provides for the granting of licences to people carrying on the business of a motor dealer, an auto-dismantler, a wholesaler, a motor vehicle parts reconstruction, a car market operator or a motor vehicle consultant, or a prescribed business, requires the keeping of certain records, imposes certain obligations on motor dealers, provides for the settlement of disputes and establishes a motor dealers compensation fund.

Review Category: A

Outcome: Review nearing completion

Motor Vehicles Repair Act 1980 No 71

Objectives: Constitutes the Motor Vehicle Repair Industry Council and confers on it licensing functions concerning repair businesses and tradesman and loss assessors.

Review Category: A

Outcome: Review nearing completion

Retirement Villages Act 1989 No 74

Objectives: Relates to the termination of occupation rights of residents in retirement villages and confers jurisdiction over certain matters relating to retirement villages on the residential Tenancies Tribunal.

Review category: D

Outcome: Terms of reference being developed

Valuers Registration Act 1975 No 92

Objectives: Provides for the registration of real estate valuers, regulates the qualifications for and the effect of such registrations and confers and imposes functions on the Property Services Council.

Review Category: A

Outcome: Issues Paper finalised. Public consultation in process

Portfolio: Gaming and Racing*Registered Clubs Act 1976 No 31*

Objectives: Makes provisions with respect to the registration of clubs and their rules and management.

Review Category: A

Outcome: To be done in tandem with the review of the *Liquor Act*.

Liquor Act 1982 No 147

Objectives: Regulates the sale and supply of liquor and regulates the use of premises at which liquor is sold.

Review Category: A

Outcome: Steering Committee formed. Draft Issues Paper to be released shortly.

Portfolio: Health*Podiatrists Act 1989 No 23*

Objectives: Regulates the practice of podiatry, makes provisions for the registration of podiatrists and regulates the qualifications for and the effect of such registration, constitutes the Podiatrists Registration Board and specifies its functions.

Review Category: A

Outcome: Terms of reference being developed

Human Tissue Act 1983 No 164

Objectives: Relates to the donation of tissue by living persons, the removal of tissue from deceased persons and the conduct of post-mortem examinations of deceased persons.

Review Category: A. Review to be limited to examination of regulation of blood and blood products.

Outcome: Draft Discussion Paper to be released shortly

Optometrists Act 1930 No 20

Objectives: Provides for the registration of optometrists and regulates the practice of optometry.

Review Category: A

Outcome: Working Party engaging in pre-consultation. Draft Issues Paper being prepared.

Psychologists Act 1989 No 51

Objectives: Makes provision for the registration of psychologists, to regulate the qualifications for the effect of such registration and to constitute the Psychologists Registration Board and to specify its functions.

Review Category: A

Outcome: Public consultation being conducted

Portfolio: Industrial Relations*Rural Workers Accommodation Act 1969 No 34*

Objectives: Provides for the accommodation of rural workers and constitutes Rural Workers Accommodation Advisory Council. Creates certificate of compliance for accommodation.

Review Category: D

Outcome: Terms of reference being prepared

Factories, Shops and Industries Act 1962 No 43

Objectives: Makes provisions with respect to the supervision and regulation of factories, shops and certain other industries and to the health, safety and welfare of employees, restricts trading hours, controls advertising and description of goods, regulates outdoor work in clothing trade, restricts hours of trade and labour, controls advertising, creates licensing regime for hairdressers and prescriptive requirements for hairdressing premises.

Review Category: D

Outcome: Review underway. Regulations to be repealed in September 1997 and will then be covered under the consolidated OH&S regulation.

Construction Safety Act 1912 No 38

Objectives: Provides for the regulation and inspection of construction work and to consolidate the Acts controlling scaffolding and lifts. Creates several certificates of competency - some already reviewed and removed under LRP.

Review Category: D

Outcome: Regulations to be repealed in September 1997 and will then be covered under the consolidated OH&S regulation.

Dangerous Goods Act 1975 No 68

Objectives: Consolidates and amends the law relating to explosives and other dangerous substances.

Review Category: A

Outcome: National standard being developed

Industrial Relations Act 1991 No 34

Objectives: Restates and reforms the law concerning industrial relations.

Review Category: B. Review limited to regulation of employment agents.

Outcome: Repealed. Replaced by the *Industrial Relations Act 1996* and *Employment Agents Act 1996*.

Portfolio: Mineral Resources

Coal Ownership (Restitution) Act 1990 No 19

Objectives: Provides for the restitution of certain coal acquired by the crown as a result of the Coal Acquisition Act 1981.

Review Category: C

Outcome: Review currently underway

Coal Acquisition Act 1981 No 109

Objectives: Vests all coal in the crown.

Review Category: C

Outcome: Review underway

Mines Inspection Act 1901 No 75

Objectives: Makes better provision for the regulation and inspection of mines other than coal and shale mines and regulates the treatment of the products of such mines.

Review Category: A

Outcome: Review underway

Portfolio: Police

Commercial Agents and Private Inquiry Agents Act 1963 No 4

Objectives: Provides for the licensing and control of commercial agents, private inquiry agents and their subagents.

Review Category: B

Outcome: Terms of reference being considered

Portfolio: State and Regional Development

Country Industries (Payroll Tax Rebates) Act 1977 No 79

Objectives: Allows rebates of pay-roll tax in respect of certain country manufacturing or processing industries.

Review Category: B

Outcome: Review underway

Portfolio: Transport

National Rail Corporation (Agreement) Act 1991 No 82

Objectives: Approves and gives effect to an agreement between NSW, the Commonwealth and other States relating to the National Rail Corporation Ltd.

Review Category: B

Outcome: Possible national review

Parking Space Levy Act 1992 No 32

Objectives: To discourage car use in business districts by imposing a levy on off-street parking and using the revenue to develop infrastructure and encourage the use of public transport.

Review Category: D

Outcome: The Government is considering the scope of the review.

New Legislation

5.108 Since the Government's ratification of the *Competition Principles Agreement* in April 1995 and the passage of the *Competition Policy Reform (NSW) Act* through the NSW Parliament in June 1995, proposals for new legislation are required to take account of competition policy requirements. To ensure that this occurs all proposals for new legislation or amendments to existing statutes are reviewed by officials in The Cabinet Office.

5.109 Inconsistencies between new legislation and competition policy requirements are either referred back to the responsible Minister for further consideration or brought to the attention of Cabinet. Ministers are aware that, should they proceed with anti-competitive legislation, approval must be sought from the Premier for any statutory exemptions or authorisations in relation to the *Trade Practices Act*.

5.110 A list of new legislation with possible anti-competitive effects enacted since April 1995 is provided below.

Waste Minimisation and Management Act 1995 No. 102

Objectives: Deals with the management, regulation and reduction of landfill waste in order to meet the Government's goal to reduce landfill waste disposal by 60% by the year 2000. The Act provides for the establishment of Regional Waste Management Boards to plan and oversee the reduction of waste on a regional basis within NSW. The effect of this is that the State Government and local councils can effectively monopolise the ownership of landfill disposal sites and regulate the pricing of landfill.

- Review:** The Act includes a provision that it be reviewed as soon as possible after the period of 5 years from the date of assent of the Act.
- Comment:** In passing the Act, the Parliament was satisfied that the environmental outcomes facilitated by the Act could not be more effectively achieved via alternative mechanisms. At this stage, the Government is satisfied that the environmental benefits provided by the Act outweigh the costs.

Pawn Brokers and Second Hand Dealers Act 1996 No. 13

Objectives: Revises the laws relating to Pawnbrokers, Hawkers and Second Hand Dealers and places them in a single statute. The Act establishes a single licence to authorise the undertaking of any one or more of the activities authorised. The Act establishes the Department of Fair Trading as the sole licensing authority. However, the Act does deregulate dealings in second hand goods apart from those at high risk of theft.

Review: The Act includes a provision that it be reviewed as soon as possible after the period of 5 years from the date of assent of the Act.

Comment: In passing the Act, the Parliament was satisfied that the regulatory regime in the Act is necessary to ensure consumer protection. The Government views the regulation provided in the Act as a significant part of its overall crime prevention strategy. Accordingly, at this stage, the Government has concluded that the benefit to consumers and the community as a whole outweigh the costs.

Casino Control Act

5.111 The NCC has requested that the NSW Government comment on its review of the Casino Control Act.

- 5.112** The NSW Parliament has decided that only one licence may be granted for the operation of a casino, and only in respect of a single location. A licensing regime has been considered imperative because such regimes provide governments with the best opportunities to ensure that casino gaming is conducted honestly, and to ensure that criminal influence or exploitation is removed from the gaming environment. This position was arrived at after lengthy and protracted discussion and debate in Parliament and the community over a number of years, and the Government considers that there are clear public interest grounds for current licensing arrangements.

Rice Marketing

- 5.113** The NCC has requested that the NSW Government provide a fuller explanation of its decision with respect to the review of the ricemarketing arrangements in NSW.
- 5.114** In 1995, as part of its commitments under the Agreement, the NSW Government undertook a review of the legislative arrangements which establish the NSW Rice Marketing Board (the Board). The Board is established under the *Marketing of Primary Products Act 1983* (the Act). The objective of the Act is to facilitate the commercial and efficient marketing of agricultural commodities in the best long term interests of producers. As well as being a requirement of the Agreement, a review of the statutory powers of the Board was also a condition of the last extension of the Board's statutory powers until 31 January 1999.
- 5.115** Under the Act, all rice grown in NSW vests in the Board. The vesting arrangements require the rice to be delivered to the Board, or its sole authorised buyer (the Ric growers Co-Operative Limited) within seven days of harvest or it becomes the property of the Board. The threat of compulsory acquisition of the crop by the

Board has enabled the Co-Operative to become the sole processor and marketer of rice produced in NSW.

The Review

5.116 The review was undertaken by a group chaired by the Department of Agriculture and comprising representatives of the NSW Rice Marketing Board, The Cabinet Office and Treasury. The Review Group held five meetings during the review. Key functions of the Review Group were preparation and distribution of an issues paper, consultation with stakeholders, co-ordination of research to assess the benefits and costs of statutory powers provided to the Board, consideration of submissions, and preparation of the final report.

5.117 The Agreement requires that legislation should not restrict competition unless it can be demonstrated that the benefits to the community as a whole outweigh the costs and that the objectives of the legislation require that competition be restricted. In assessing the costs and benefits of particular legislation, the Agreement provides that the following matters, where relevant, may be taken into account:

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- government legislation and policies relating to matters such as occupational health and safety, industrial relations, and access and equity;
- economic and regional development, including employment and investment growth;
- the interests of consumers generally, or a class of consumers;
- the competitiveness of Australian business; and the efficient allocation of resources.

5.118 In addition to the principles in the Agreement, the Review Group's terms of reference required it to:

- clarify the government's objectives for the Board under all relevant legislation;
- identify the nature of the restriction of the Board's activities on competition;
- analyse the likely effect of the restriction of the Board's activities on competition on the economy generally;
- assess and balance the costs and benefits of the restrictions identified; and
- consider alternative means for achieving the same result including non- legislative approaches.

5.119 The Review Group agreed that the primary benefits of the legislation establishing the Board were market power premiums on export markets obtained as a result of the defacto single desk exporter status of the Co-operative. The Review Group received a submission from the Board which included quantification of the benefits from single desk export selling. NSW Agriculture also undertook studies in this area. The Board's estimates indicate the annual benefits of legislation establishing the Board are in the range of \$26 - 35M in 1996/97 rising to \$36 - 45M in 2000/01.

5.120 These benefits include an estimated \$13 - 22M per annum from single desk selling in export markets other than Japan. The Board estimates that annual premiums rising from \$13M in 1996/97 to \$23M in 2000/01 could be obtained from single desk selling to the Japanese market.

5.121 The Review Group acknowledged that while it was not in a position to confirm these financial figures, it is probable that premiums up to the size estimated by the Board are achievable over the next five years.

5.122 The Review Group agreed that the primary costs of legislation establishing the Board were:

- the income transfers from Australian consumers of Australian rice to Australian rice growers;

- associated inefficiencies in rice consumption and production which occur as a result of price differentiation and equalisation by the Co-operative; and
- efficiency costs associated with cost pooling by the Co-operative.

5.123 The Review Group noted that the net public benefit test requirement under the Agreement had not been well defined for circumstances such as those faced by the rice industry. The Agreement had largely been framed for application to purely domestic markets and did not adequately deal with potential benefits and costs in export markets.

Outcome of the Review

5.124 Nevertheless the Review Group concluded that the current rice industry arrangements generated a net public benefit. The benefits from the current export arrangements were seen to significantly exceed the costs borne by domestic consumers and the economy.

5.125 The Review Group made the following recommendations:

- that the NSW Government note the Review Group's finding that the current single desk export selling arrangements of the NSW rice industry generate market premiums for the rice industry and a net public benefit;
- that the NSW Government apply to the Commonwealth Government for an export licence or equivalent that provides a single desk export arrangement for the rice industry to commence on 1 February 1999;
- that the NSW Government agree to provide a State based regime to secure single desk export selling for the NSW rice industry from 1 February 1999, whether by way of an attenuated vesting arrangement or otherwise, but which

- has minimal anti-competitive effects, in the event that the Commonwealth does not grant an export licence or equivalent;
- that the NSW Government note the Review Group's conclusion that further net public benefits can be achieved by removing the current vesting provisions and their anti-competitive impact on the domestic market;
- that the NSW Government agree to the deregulation of the domestic rice market by not renewing the current vesting powers of the NSW Rice Marketing Board after 31 January 1999;
- that the NSW Government note the Review Group's conclusion that the National Competition Principles Agreement does not adequately address the situation applying to export oriented industries, and that this is a matter which should be taken up with COAG; and
- that the NSW Government establish a working group to monitor and progress the implementation of the above recommendations.

5.126 The NSW Government believes that the significant benefits currently achieved from having a single desk exporter for rice should be maintained. Consistent with the requirement that regulation is designed in manner that least restricts competition, two options for reform were considered by the review group.

5.127 The first option proposed by the review is to approach the Commonwealth to seek a single desk export licence allowing the domestic rice market to be deregulated. The NSW Government considers this unnecessary until there is a significant expansion of rice production beyond NSW borders.

5.128 The second option proposed by the review was that if it was not feasible to obtain an export licence, the NSW Government should put in place arrangements that

maintain single export sales of rice production in NSW and allow competition on the domestic market. In considering this recommendation, it is the NSW Government's view that State arrangements which might achieve deregulation on the domestic market are unlikely to be feasible.

- 5.129** The Government was also conscious of the review findings that the benefits of the current regulatory arrangements were estimated to be in the range of \$26-\$35 million in 1996/97 rising to \$36-\$45 million in 2000/2001. These benefits significantly exceed the domestic costs of the regulation which were estimated to be between \$2-\$12 million annually.
- 5.130** Accordingly, the NSW Government has determined that the option of retaining the current vesting arrangements is the most effective method of securing the identified public benefits. These arrangements are to be extended to 31 January 2004 following expiry of the existing arrangements in 1999. In 2002 the Government will review the vesting arrangements and consider whether changed market conditions justify any alterations to this regulatory regime.
- 5.131** This decision was made by the Government after careful consideration of all available options. The Government was concerned that the deregulation option posed a great risk not only to the substantial benefits to the State but also to the national economy. In coming to this decision the Government was conscious of the fact that the Act is scheduled for review in 1997/98. This will afford the Government a further opportunity to consider the regulatory arrangements in the Act, in accordance with the review principles in the Agreement.
- 5.132** In mid 1996 the Government also took action to address a number of legal and probity issues flowing from the review of the legislation establishing the Board. The

Minister for Agriculture convened an Officers' Working Party for this purpose. The Working Party tabled its report with the Minister in August 1996. The Report is being considered by the Government.

- 5.133** The Government is satisfied that the review of legislation has been conducted in accordance with the review requirements in the Agreement.

Review of Legislation Timetable

- 5.134** The Government's legislation timetable is reviewed by the Premier in consultation with other Ministers, in accordance with the Government's overall policy agenda. Any alterations to the timing of reviews are agreed to between the Premier and Minister responsible for any particular Act. The NSW Government's timetable for review of legislation will permit the completion of reviews of nominated legislation by the year 2000.

Reforms to the State's Development Approval System

- 5.135** The Government's *Policy Statement on Legislation Review* included the Government's plans to reform the planning, land use and natural resource approvals systems. With respect to this, the Government released a draft Bill titled '*Environmental Planning and Assessment Amendment Bill 1997*' and a related White Paper on 12 February 1997 which propose changes to the existing development assessment and approvals system in New South Wales. The Bill was released as an 'exposure draft' for public comment prior to finalisation and introduction of the legislation into Parliament during the Autumn Session 1997. Public submissions and comment on the draft Bill were due by 27 March 1997.
- 5.136** The draft Bill and White Paper represent the Government's response to submissions made on a

Green Paper released in May 1996 titled '*Towards an Integrated Land Use, Planning and Natural Resource Approvals Policy for New South Wales*'.

5.137 The proposals in the Bill aim to:

- streamline sequential approvals and duplicated regulatory processes;
- simplify assessment considerations and approval procedures for development proposals; and
- introduce competition into the compliance aspect of the development assessment system.

5.138 The proposed legislative scheme consists of:

- the draft Bill which totally replaces the existing Part 4 of the *Environmental Planning & Assessment Act 1979* relating to environmental planning control;
- regulations that will contain the detail of the various procedures that lead to the grant or refusal of development consent; and
- use of environmental planning instruments to specify what category a particular development will fall under eg. 'exempt' or 'complying' development.

Streamlining approvals

5.139 With respect to streamlining approvals, the Bill is aimed at:

- introducing a new single assessment and approval system for development, building and subdivisions control;
- rationalising other Local Government approvals (for instance, community land and waste management) in the single assessment and approval system under the EP&A Act; and
- linking approval requirements under other Acts with a development consent granted under the EP&A Act (this includes an expansion of the existing dispute resolution role of the Premier, where there is disagreement between the Minister for Urban Affairs and Planning and other

Government agencies about the terms of approvals for State significant development).

Simplifying assessment

5.140 With regard to simplifying assessment, the Bill is aimed at:

- exempting minor proposals from the need for any approval (eg. pergolas);
- introducing a specific assessment process for routine 'complying development';
- simplifying and rationalising assessment criteria;
- clarifying and improving the assessment process for 'Local Development'; and
- rationalising the decision-making process for State or regionally significant development.

Introducing Competition

5.141 In relation to facilitating competition, the Bill is aimed at:

- enabling professionals or certifiers to carry out compliance functions currently conducted by consent authorities;
- enabling 'accredited certifiers' to issue three new types of 'certificates of compliance'; and
- enabling professional associations to act in partnership with Government in the implementation of an accreditation scheme.

(E) Development of Third Party Access Regimes

Requirements of the Agreement

5.142 Clause 6 of the Agreement indicates that States and Territories can develop regimes for the provision of third party access to services that are provided by means of significant infrastructure facilities. State based access regimes are to apply where:

- it would not be economically feasible to duplicate the facility;
- access to the service is necessary in order to permit effective competition in a downstream or upstream market; and
- access can be provided safely.

Application in NSW

Gas

5.143 In August 1996, the Government gazetted the NSW Third Party Access Code for gas distribution infrastructure, along with associated regulations under the *Gas Supply Act 1996*. These measures implement the NSW gas pricing and Access Regime, with application to various sectors of the gas distribution market being phased in over several years.

5.144 The NSW Access Regime for gas distribution has been submitted to the NCC for certification as an effective access regime in accordance with the Agreement. The submission of this Regime is the first by any State or Territory government.

- 5.145 When a national access regime for gas distribution and transmission is implemented, it is expected that it will replace the current NSW Regime which has been designed to be consistent with current national developments.

Rail

- 5.146 Also in August 1996, the Government gazetted the NSW Third Party Access Regime for all rail services in NSW, along with associated amendments to the *Transport Administration Act 1988*. The Regime will be submitted to the NCC for certification as an effective access regime in accordance with the Agreement.

(F) Application of the Competition Principles Agreement to Local Government

Requirements of the Agreement

- 5.147 Clause 7 of the Agreement indicates that all the principles in the Agreement should be applied to local government. Jurisdictions are required to have prepared a Policy Statement by June 1996 on how they are applying the principles of competitive neutrality, structural reform and legislation review to local government.

Application in NSW

- 5.148 The NSW Government published its *Policy Statement on the Application of National Competition Policy to Local Government* in June 1996. The Policy Statement, prepared in consultation with local government, details the Government's approach to the application of the Agreement to Local Government and makes a series of commitments with respect to the ongoing implementation of competition reforms.

Competitive Neutrality

- 5.149 As indicated in the Policy Statement, from 1 July 1997 local councils will apply a corporatisation model to their businesses with annual gross operating incomes of \$2M and above. This will involve the establishment of separate reporting frameworks for accounting and management purposes. Businesses with annual gross operating incomes of less than \$2M will be subject to the full cost attribution as far as practicable. Councils already operate under the same regulatory framework as the private sector (eg. *Trade Practices Act* and planning and environmental laws).

- 5.150 The Government is currently preparing guidelines on the application of competitive neutrality, to assist councils with necessary accounting and other organisational changes. Local government has been involved in the preparation of these guidelines.

Complaints

- 5.151 As indicated in the Policy Statement, local councils are responsible in the first instance for dealing with complaints regarding the application of competitive neutrality. The Government has issued a practice note to local councils on the management of complaints and is developing more detailed guidelines for the assistance of councils.
- 5.152 Complainants are also able to approach the Department of Local Government concerning the application of competitive neutrality principles. Since May 1996, the Department has received about ten written complaints relating to competitive neutrality in councils. Half of these were generic letters from industry lobby groups at the time the Government's draft Policy Statement was released for comment. Others have been received on specific councils' business activities or competitive tendering processes. Two complaints were judged by the Department to offend competitive neutrality principles. Details of the complaints received by the Department are provided below.

COMPLAINTS RELATING TO COMPETITIVE NEUTRALITY OF LOCAL COUNCILS

Council and Topic of Complaint	Number of complaints	Action taken
<ul style="list-style-type: none"> • <i>Upper Macquarie County Council</i> • selling of chemicals not on level playing field, general competition with private section 	<p>2 (one longstanding complainant, ongoing correspondence)</p>	<p>Some parts of complaint may be justified. Others appear not to involve competitive neutrality principles. Specifically relates to Minister for Agriculture’s administration (<i>Noxious Weeds Act 1993</i>): In response to the complaint:</p> <ul style="list-style-type: none"> • there has been ongoing correspondence/ discussion between Ministers, Department of Local Government (DLG) and NSW Agriculture; • NSW Agriculture has had discussions with the County Council; and • DLG has discussed the matter with The Cabinet Office. • The following progress is being made:

		<ul style="list-style-type: none"> • the review of the <i>Noxious Weeds Act</i> currently underway. • the government's guidelines on competitive neutrality may provide some assistance, when released.
<p><i>Upper Macquarie County Council</i></p> <ul style="list-style-type: none"> • general competition with private sector 	1 complaint	No competitive neutrality principles at issue. DLG has replied.
<p><i>Newcastle City Council, Lake Macquarie City Council</i></p> <p>competing with private sector in roadworks on 'unfair' basis</p>	1 complaint	The complaint was made in December 95 prior to the release of the Government's Policy Statement on the Application of Competition Policy to Local Government and forthcoming guidelines on competitive neutrality. The Policy Statement addresses the complaint. The guidelines are also likely to be of assistance, when released. DLG has replied.

<p><i>General complaint</i> councils competing with private sector</p>	<p>3 complaints</p>	<p>No competitive neutrality principles at issue. DLG has replied.</p>
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Structural Reform

5.153 As indicated in the Policy Statement, the Government has no plans to apply the principles of structural reform to local government, beyond those measures that are integral to the application of competitive neutrality.

Legislation Review

5.154 As indicated in the Policy Statement, the *Local Government Act 1993* is scheduled for review in 1997/98. The Government is in the process of completing its review of planning, land use and natural resource approvals systems and has released both a White Paper and draft exposure Bill for comment in this regard. The Bill seeks to consolidate and streamline those parts of the *Environment Planning and Assessment Act 1979* and the *Local Government Act 1993* relating to planning, land use and natural resource approvals systems. It is expected that legislation will be passed to effect this in April 1997.

Independent Pricing Oversight

5.155 As indicated in the Policy Statement, the Independent Pricing and Regulatory Tribunal (IPART) in NSW has the power to review the pricing practices of local government business activities that can be declared as monopolies under the IPART legislation. Alternatively, IPART can inquire into industry pricing that may involve local government business activities.

Third Party Access to Essential Infrastructure

5.156 To date, no local councils appear to own or operate services that require the application of a State based access regime. As such, their will be subject to the generic regime in Part IIIA of the *Trade Practices Act*.

6 Application of the Agreement to Implement National Competition Policy and Related Reforms

Requirements of the Agreement

6.1 Under the *Agreement to Implement National Competition Policy and Related Reforms* (attached as Annexure 2) jurisdictions are required to implement reforms in the electricity, gas, water and road transport sectors, as agreed to by the Council of Australian Governments (COAG). As discussed in Chapter 3 of this Report, jurisdictions are required to implement specified reforms in the electricity, gas and road transport areas, if they are to qualify for the first stage of competition dividend payments.

Application in NSW

Electricity

6.2 Following independent reviews of generation and distribution structure, the electricity industry in NSW has been restructured in order for NSW to give effect to the COAG agreements concerning the introduction of a National Electricity Market.

6.3 The NSW electricity industry has been separated into its regulatory and operating parts (generation, transmission, distribution and retail) and the latter then separated into its natural monopoly (transmission and distribution) and potentially competitive parts (generation and retail).

6.4 On 1 March 1996, a substantial portion of Pacific Power's electricity generating capacity was segregated into two new

generator entities: Delta Electricity and Macquarie Generation. Pacific Power continues to be responsible for the Eraring power station and the State's entitlement from the Snowy Scheme.

6.5 A program of amalgamations reduced the number of electricity distributors from 25 to 6, two of which are metropolitan based. While the restructure has involved implementation costs of around \$80M, the scale economies arising from the revised structure are estimated to generate recurrent savings in excess of \$130M per annum.

6.6 Excluding Pacific Power, the 8 new businesses (2 generators and 6 distributors) were established as State-owned energy services corporations under the *Energy Services Corporation Act (NSW) 1995*. Administered by independent boards with a strong commercial focus, they are accountable to the Government as their shareholder, and each year must formulate a statement of corporate intent.

6.7 The transmission network was transferred from Pacific Power and vested with the Electricity Transmission Authority, trading as TransGrid. TransGrid, as a monopoly, is subject to IPART monopoly prices oversight.

6.8 IPART will continue to regulate electricity tariffs applying to the non-contestable tariff sector until effective competition and choice is in place for small consumers.

Legislative Framework

6.9 Financial year 1995/96 saw the establishment of a unified legislative framework for the industry - involving the repeal or replacement of most existing legislation and the drafting and passage through Parliament of the *Electricity Supply (NSW) Act 1995*, which provided for the establishment and regulation of a wholesale electricity market, competitive retail electricity supply and transmission and distribution network service provision.

6.10 Within this legislative framework, TransGrid was nominated as the Market and System Operator with responsibility for the operation of a State wholesale electricity market. A key component of this is an approved access regime for transmission and distribution systems.

Wholesale Electricity Market

6.11 The substantial reform program introduced in New South Wales has established a competitive structure and framework for the State electricity sector and has created the basis for the early introduction of interstate trade.

6.12 A competitive market in wholesale electricity commenced on 10 May 1996. It involved the development by TransGrid, and interim authorisation by the Australian Competition and Consumer Commission of a State Market Code. Participation in the market was initially limited to NSW generators and distributors and the ACTEW Corporation, with trades subject to 85 per cent vesting contract cover. However, from 1 October 1996, the market was opened up to participation by any licensed retailer, irrespective of ownership or location.

6.13 The competitive wholesale market is a major step in the reform program and is already providing real competition in the supply of wholesale electricity, with generators actively competing to supply the 6 new distributors.

National Electricity Market (NEM)

6.14 In addition to the extensive reforms applied within the State, substantial progress was made during the year on preparations for the introduction of the NEM. New South Wales, in consultation with other jurisdictions and industry, has so far:

- established NEM institutions;
- reviewed the draft National Electricity Code (NEC), which sets down the rules and procedures for NEM participants;
- drafted and approved the *National Electricity Law*, which is required in each participating jurisdiction to legally enforce the NEC; and
- developed a proposal for interstate trade in generation

through the harmonisation of the NSW and Victorian electricity markets.

- 6.15** The NSW Government is using the progress made in its wholesale market to bring forward the operation of a competitive interstate market. In the transition to a national market, the NSW, Victorian and Australian Capital Territory markets will be harmonised from March 1997, thereby allowing unrestricted trade between the NSW and Victorian State markets from 1 July 1997. In addition, TransGrid has entered a joint venture with the Victorian Power Exchange to develop NEM trading systems.

Retail Competition

- 6.16** The development of a policy for retail competition involved a program of industry, customer and community consultation and the preparation of detailed recommendations for the timing, progressive introduction and management of customer choice in retail electricity supply. The policy was announced by the Minister for Energy in June 1996.
- 6.17** Under this policy, competition will be progressively extended to include all customers by 1 July 1999. The phased introduction of retail competition will allow time to establish suitable metering and financial settlement systems and to increase customers' awareness of the opportunities which will arise. Substantial benefits will arise as franchises are progressively removed and customer choice of electricity supplier becomes available. Stage 1 commenced on 1 October 1996 and applied to the largest consumers with site thresholds in excess of 40 GWh per annum who represent around 14 per cent of the market. Customers in the over 4 GWh and 750 MWh categories will become eligible to enter the market on 1 April 1997 and 1 July 1997 respectively.

Consumer Protection

6.18 Circumstances can arise where market mechanisms do not adequately deliver appropriate consumer protection.

In these circumstances, consumer protection will be provided within a framework which includes:

- established NEM institutions;
- customer contract regulations developed in conjunction with the Department of Fair Trading;
- the operation of Customer Consultative Groups required to be formed by the distributors;
- IPART; and
- application of the Minister for Energy's powers provided under the *Electricity Supply (NSW) Act 1995*.

6.19 Average retail electricity prices in New South Wales were already among the lowest in Australia in March 1995. However, since then electricity charges have been reduced by a further 8.4 per cent (in real terms), as a result of reduced cross-subsidies and improved cost-reflectivity of prices, and are projected to fall a further 11.4 per cent in the next four years. This projected reduction will enable cross-subsidies to be further unwound, without the need for real price increases for any class of customers.

6.20 Business customers who currently pay higher electricity prices relative to households, will continue to be the major beneficiaries from the reform process. At the commencement of the market it was expected that businesses would save 25 per cent (in real terms) on average over the next four years in addition to the \$170M they have already saved. Market outcomes since the commencement of retail competition on 1 October 1996 indicate that savings for most businesses will substantially exceed this estimate. Households, which have had their electricity prices largely frozen during the four year period between 1992 and 1996, can also expect real savings of around 7 per cent.

Gas

6.21 The NSW Government has taken the lead in reforming the natural gas industry, both locally and nationally. In a bid to accelerate the development of a competitive gas market now and on into the next decade, the Government has introduced a range of legislative and structural reforms. These reforms have involved:

- the transfer of regulation of domestic gas tariff markets to the Independent Pricing and Regulatory Tribunal (IPART);
- implementation of a third party access regime for natural gas distribution, which has been submitted to the NCC for certification as an effective regime under the *Competition Principles Agreement*;
- provision for the staged removal of cross subsidies provided by industrial to domestic markets; and
- the 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.

6.22 In accordance with the NSW access regime, the Australian Gas Light Company (AGL) has lodged its proposed undertaking for third party access with IPART. IPART has in turn released its draft determination on the terms and conditions offered by AGL in its undertaking. Key features of the draft determination include:

- average transport tariffs for use of the AGL distribution system (ie. charges for moving gas) to fall by almost 30 per cent in real terms over the next 3 years; and
- the cross-subsidy from business customers to households is to be largely eliminated over the next 3 years while keeping the household price capped well within the Consumer Price Index (CPI).

6.23 The gas supply business operated by Wagga Wagga City Council is not currently included in the coverage of the NSW Access

Regime for Natural Gas Distribution Systems. Wagga Wagga City Council has called for expressions of interest for the purchase of this business with a view to privatisation being progressed in late 1997. It is understood that seven expressions of interest have been received. The NSW Government will consider declaring coverage of the NSW Access Regime over the Wagga Wagga Operation once this privatisation process and the associated resolution of any market or technical issues have been undertaken by Wagga Wagga City Council

- 6.24** Since the release of the draft determination, end users and potential gas suppliers have raised concerns that the proposed AGL undertaking may see higher prices than necessary and discourage competition in the supply of gas. IPART, on the basis of comment received, has indicated that the proposed undertaking does not provide a basis for access that acceptably balances the interests of customers, potential gas suppliers and the network operator. IPART has requested that AGL submit a revised undertaking for consideration. Subject to public comment, IPART is scheduled to issue its final determination in the near future.
- 6.25** As part of these outcomes, the State's economy stands to benefit from new energy projects such as energy efficient cogeneration facilities and major transportation pipelines whose viability will be facilitated by the increasingly competitive commercial environment. Of particular note is the proposed Eastern Australian Gas Pipeline project which will provide for increased trade between interstate gas markets, and for which the NSW Government passed supporting legislation in 1996.
- 6.26** Importantly, the gas reforms within NSW have been implemented ahead of the development of a national access regime under the National Competition Agreements, and NSW is leading the way in the negotiations between all States to open up cross-border competition in the gas trade and create the same benefits Australia-wide. NSW has endorsed the substance of the draft National Access Code for finalisation by an interjurisdictional implementation group and is contributing to the development of an Intergovernmental

Agreement to make such a national regime a reality through nationally-based legislation as soon as possible in line with COAG's commitment to national gas reform.

PIPELINE CODE AS 2885 - 1987

- 6.27** The NCC requested that the NSW Government indicate its progress in applying Australian Standards with respect to pipeline development. Australian Standard 2885 establishes requirements for the safe design, construction, inspection, testing, operation and maintenance of a land or a submarine pipeline constructed from steel. These requirements are necessary for:
- the protection of the general public;
 - the protection of the operating personnel; the protection of the environment; and
 - the protection of the pipeline against accidental damage.
- 6.28** The majority of pipelines to which the Standard applies will be designed, constructed, tested and operated under some form of statutory authority licence or regulation. The Standard does not override or replace any statute or regulation.
- 6.29** The Standard was prepared by the Standards Association of Australia's Committee on Gas and Liquid Petroleum Pipeline Systems as a consolidation, rationalisation and revision of three older Australian Standards - AS 1697 - 1981, SAA Gas Pipeline Code (in part), AS 1958 - 1981, SAA Submarine Pipeline Code, and AS 2018 - 1981, SAA Liquid Petroleum Pipeline Code, and eventually to supersede those standards. This consolidation into a single standard has been made in recognition of the common technology and regulatory status applicable to transmission pipelines.
- 6.30** The Standard was implemented in NSW in 1987, and was called up in the construction of the Mobil aviation turbine pipeline at Botany that links the Mobil terminal to the Ampol Banksmeadow Plant. The Standard is referred to in the specifications for construction of that pipeline.

- 6.31** There have also been a number of variations and hot-tap connections (connecting user communities to a main pipeline) to a cross section of the pipelines (notably ICI's ethylene pipeline) and some of AGL's natural gas pipelines to Newcastle and Wollongong which were effected in compliance with the requirements of the Standard.
- 6.32** All new pipeline proponents are aware of the Standard and have been advised that the minimum requirement for licensing purposes for pipeline construction under the *Pipelines Act 1967* is compliance with the Standard.

Road Transport

6.33 In late 1995, the NSW Parliament passed the *Road Transport (Heavy Vehicles Registration Charges) Act*, with the purpose of giving effect to new national charges and abolition of excess weight permits which commenced on 1 July 1996.

6.34 The NSW Government supported the *Road Transport Reform (Vehicles and Traffic) (Cth) Act 1993*, which authorises the making of a number of regulations relating to heavy vehicles. In regard to these regulations, the Government has made the following progress:

- Heavy Vehicle Standards Regulations (which provide a set of standards for the construction and performance of heavy vehicles and trailers) were adopted in the NSW Motor Traffic regulations in October 1995;
- Heavy Vehicle Roadworthiness Regulations were adopted in NSW in mid 1996;
- Mass and Loading Regulations (dealing with heavy vehicle mass, loading and dimension limits, movement of restricted access vehicles, such as road trains and B-doubles, and arrangements for oversize and overmass vehicles) were adopted in NSW in July 1996;
- With respect to Truck Driving Hours Regulations, NSW

has participated in a national working group at CEO level to progress the regulations. The regulations have been released for comment, are expected to be finalised in 1997, and possibly adopted in NSW in late 1997;

- NSW has participated in discussions concerning Traffic Regulations (Australian Road Rules) which are still in the developmental stage;
- NSW participated in the development of, and has approved, regulations concerning the transportation of Dangerous Goods;
- NSW supported regulations concerning the registration of heavy vehicles;
- NSW has participated in the development of amendments to Driver Licensing Regulations which are expected to be finalised in mid 1997;
- NSW has participated in the development of fatigue and mass management modules and has led development of the road worthiness alternative compliance module;
- NSW participates on a national steering committee reviewing current mass limits for heavy vehicles;
- NSW has lead the development of the National Exchange of Vehicle and Driver Information System (NEVDIS); and
- NSW has adopted national medical examination standards for drivers of heavy vehicles.

1998 New South Wales Supplementary Information



THE CABINET OFFICE

NEW SOUTH WALES

Mr Graeme Samuel
President
National Competition Council
Casselden Place
Level 12, 2 Lonsdale Street
MELBOURNE VIC 3000

Dear Mr Samuel

In its June 1997 Assessment, the National Competition Council identified four NSW issues which it wished to reassess prior to July 1998, for the purposes of the second part of the first tranche assessment:

- < rice marketing arrangements,
- < evidence of application of National Competition Policy (NCP) reforms to local government,
- < casino control legislation,
- < Totalisator Agency Board privatisation legislation.

In a subsequent letter of 8 May 1998, you have proposed that unless COAG indicates to the contrary, the Council will take no account of gambling legislation in completing its first tranche assessment.

Rice marketing arrangements will be the subject of separate correspondence, and I would like to deal with the remaining issue, local government NCP application.

The Council indicated in its June 1997 assessment of NSW's performance that it was not convinced on the basis of the available evidence that the objectives outlined in the NSW policy statement on the *Application of National Competition Policy to Local Government* have been achieved, particularly in relation to competitive neutrality reform. During follow-up discussions, Council staff have indicated that the Council is seeking evidence that significant businesses are being identified and are being made subject to the corporatisation principles.

In response, the NSW Government surveyed all councils in January 1998 to assess progress in applying competitive neutrality principles to local government businesses. A copy of the survey and a progress report on the expected findings and proposed actions is attached.

Based on returns received as at 6 March, the results indicate major progress is being made in applying the principles to local government businesses. To date, some 90 Category 1 businesses (\$2M and above) and 318 Category 2 businesses (less than \$2M) have been identified. Eighty per cent of the Category 1 businesses already have corporatisation models in place.

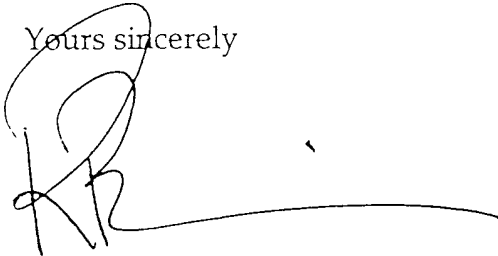
The findings also indicate areas where follow-up action by the Government is needed, including the establishment of complaints mechanisms. The Government intends to make reporting on competitive neutrality complaints in annual reports a regulatory requirement as from 1997-98.

The Department of Local Government, in conjunction with the Institute of Municipal Management, conducted workshops on competitive neutrality in April and May of this year, and the Department is following up with individual councils.

Noting that the NSW Government's timetable for applying competitive neutrality principles to local government businesses provides for staged implementation during 1997/98, the Government intends to conduct a follow-up survey as soon as practicable after 1 July 1998 to gauge the extent of implementation at that time. A further report will be provided to the Council around September 1998. It is envisaged that this report will demonstrate a very high level of compliance.

If the Council wishes to follow up on the issues discussed above, the contact officer in the Cabinet Office is Mr Jim Booth, who can be contacted on (02) 9228 4324.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a long horizontal line extending to the right.

Roger B Wilkins
Director-General

Department of Local Government

REPORT

on

COMPETITIVE NEUTRALITY IMPLEMENTATION

IMPLEMENTATION PROGRESS IN LOCAL GOVERNMENT

As part of the process of monitoring implementation, the New South Wales Department of Local Government in January 1998 surveyed all councils in the State on progress with the implementation of National Competition Policy at the local government level. The survey was issued to some 177 councils throughout the State, as well as a further 20 special purpose councils, giving a total of 197 local government bodies.

By the end of the first week of March 1998 responses had been obtained from some 138 councils. The following is a summary of the analysis, so far, of the data obtained from those responses. The analysis will continue, as further data is collected. Given that implementation of most activities would commence from 1 July and continue through the 1997/98 year, the outcome of the survey provides a progress report on expected completion and will be used to target further work this year.

The Department proposes to conduct a further survey as soon as practicable after 1 July 1998, and a further and more complete report on, giving a clearer and more reliable picture of, the progress of implementation at that time will be presented in about September 1998.

For itself the Department has issued, for the assistance of Councils, various guidelines. *Competitive Tendering Guidelines* (January 1997) *Pricing and Costing for Council Businesses: A Guide to Competitive Neutrality* (July 1997) and *Guidelines on the Management of Competitive Neutrality Complaints* (November 1997).

CONSISTENT WITH THE NSW GOVERNMENT POLICY STATEMENT

The *Pricing and Costing Guidelines* indicated that Category 1 businesses (\$2 plus million annual sales turnover/ annual gross operating income) are expected to comply with certain minimum standards, but for Category 2 businesses (less than \$2 million) there is more flexibility. For both Category 1 and Category 2 Businesses the timetable for implementation was stated in the *Pricing and Costing Guidelines* to be as follows.

Type of Business Activity		Timeframe
<i>Category 1 – annual sales turnover \$2M pa and above</i> Separate internal reporting for business activity (ie corporatisation model).	<i>Category 2 - annual sales turnover less than \$2M pa.</i> Council may determine the extent of separation of the activity.	From 1 July 1997
Apply full cost attribution, including: <ul style="list-style-type: none"> • tax equivalent payments • debt guarantee fees • return on capital. 	Adopt where practicable. Can use % 'rule of thumb' margin.	From 1 July 1998
Make subsidies to business activities an explicit transaction.	Make subsidies to business activities explicit.	From 1 July 1998
Comply with the same regulation as the private sector.	Comply with the same regulation as the private sector.	Councils already comply. Not applicable.
Establish a complaints handling system for competitive neutrality issues.	Establish a complaints handling system for competitive neutrality issues.	From 1 July 1997.

CATEGORY 1 BUSINESSES

Some 56 Councils have completed the task of identifying their business operations and classifying them as Category 1 or 2, and a further 44 have partially completed the exercise. A substantial majority of both those councils which have only partially completed and of those which have not yet identified any businesses and categorised them have indicated that they plan to have the process completed by the end of June 1998, with many promising a much earlier date.

To date, some 90 Category 1 businesses have been identified. Some 21 councils indicated that they each had between 2 and 4 Category 1 businesses, with a further 4 councils each having 5 Category 1 businesses (the largest number per council).

The size of the Category 1 businesses so far identified by turnover, gauged by turnover, is as follows:

TURNOVER RANGE (\$ million)	NUMBER OF BUSINESSES
2 - 5	46
5 - 10	22
10 - 20	10
Over 20	6

The four largest Category 1 businesses were:

1. Bankstown Civic Services (\$44 million - this council places all its business operations in the one business category, with no Category 2 businesses separately identified)
2. Gosford sewerage (\$28.6 million)
3. Shoalhaven sewerage (\$25.8 million)
4. Lake Macquarie infrastructure construction and maintenance (\$24.18 million).

Of the 90 Category 1 businesses so far identified, some 44, or approximately 50%, related to water and sewerage operations conducted by councils. Other businesses that were commonly identified as Category 1 businesses comprised:

- Waste/domestic waste (12)
- Caravan and holiday parks (6)
- Childcare (4)
- Leisure and swimming centres (4).

PROGRESS IN ADOPTION BY CATEGORY 1 BUSINESSES OF COMPETITIVE NEUTRALITY PRINCIPLES

Of the 90 Category 1 businesses so far identified, some 71, or nearly 80%, have established corporatisation models.

27 of these businesses have so far factored into prices charged or quoted by them a return on the capital invested in them.

52, or nearly 60%, of these businesses are so far making subsidies explicit, though other negative responses may be because there is no subsidy, and accordingly the adoption rate is believed to be much higher. As for debt guarantee fees, the Department is taking steps to clarify the matter.

8 of these businesses were reported as including debt guarantee fees in pricing. The Department is following this up to clarify whether there is no debt, the borrowing attracts no guarantee fee or it is yet to be calculated.

Local government businesses are already required to pay State taxes such as payroll tax. 23 of the businesses are already factoring other taxes into their prices

CATEGORY 2 BUSINESSES

Some 87 councils have so far identified 318 Category 2 businesses. Some 5 councils indicated that they each had 10 or more Category 2 businesses, with one council identifying as many as 19 businesses (Gosford). Some 19 councils stated that they each had between 5 and 9 Category 2 businesses. Those councils having large numbers of Category 2 businesses were not always the same as the ones identifying a relatively large number of Category 1 businesses.

The size of the Category 2 businesses identified, gauged by turnover (where disclosed), is as follows:

TURNOVER RANGE (\$'000)	NUMBER OF BUSINESSES
0 – 50	40
50 - 100	24
100 - 1,000	175
1,000 plus	60

A substantial number of very small council service operations are being classified as businesses, and to which councils are seeking to apply competitive neutrality principles, with the attendant time, cost and effort, and allocation of scarce resources, that this inevitably entails. Some of the business turnovers were as low as \$2,237 (sullage operations) \$3,000 (two separate small rural water supply operations), \$3,000 (cemeteries), \$5,000 (cemetery) and \$7,000 (rural gas sales). Even in rural or isolated communities such businesses must be regarded as small in scale, and not significant.

Of the 318 Category 2 businesses so far identified, some 103 (or nearly one third) related to water and sewerage operations. Other businesses so far identified commonly comprise the following:

- Waste/domestic waste (20)
- Trade waste and commercial waste (8)
- Caravan parks (13)
- Child care (19, of which 8 come from one council)
- Leisure and swimming centres (14).

Some services provided by councils have been classified by a small number of councils as businesses, notwithstanding that they might in some circumstances come under the heading of community service obligations. Amongst these are the provision of a youth centre, and (for 2 councils) meals on wheels (in neither case is the council yet making subsidies explicit).

In other cases it appears that some councils are seeking or proposing to classify as businesses operations where the activities undertaken would be expected in most instances to be principally, if not wholly, regulatory, rather than service functions.

PROGRESS IN ADOPTION BY CATEGORY 2 BUSINESSES OF COMPETITIVE NEUTRALITY PRINCIPLES

In the context of the freedom of councils as to the extent to which they may adopt a corporatisation model for Category 2 businesses, it is noted that of the 318 Category 2 businesses so far identified, some 39 already have full cost attribution applied to them, with a further 68 having partial cost attribution.

Approximately 48% or 151 out of the identified Category 2 businesses already have their subsidies, if any, made explicit.

COMPLAINTS HANDLING

A high number of councils (86) has indicated that they do not yet have in place a formal written complaints handling mechanism for competitive neutrality complaints which enables separate reporting of competitive neutrality complaints in the council's annual report.

Only one council formally reported having received a competitive neutrality complaint in the six month period between 1 July 1997 and 31 December 1997. This complaint remains outstanding. The issues arising in this complaint have also been the subject of complaints to the Department of Local Government.

The Department will actively be pursuing the complaints handling issue throughout the State in the coming months,

OTHER COMMENTS

- A number of councils appear to have implemented well and have achieved a significant level of separation of their businesses.
- There are a number of councils which are still in the implementation phase but which have at least made considerable progress in doing so.
- Contact is now being made with those councils which have not yet responded to the survey to establish their position.

- Contact is being made with those councils whose progress is not as advanced as others to ensure that plans are in place to deal with any outstanding classification issues.
- An analysis of both Category 1 and Category 2 businesses shows that a significant component of those businesses comprise water and sewerage operations. These are already separated operations which are required by the Accounting Code to have separate accounting arrangements and separate reporting arrangements. Pricing of water and sewerage services is subject to pricing principles issued by the independent Pricing and Regulatory Tribunal. It is likely that a number of those businesses which have not yet been categorised will again be water and sewerage operations in country councils.
- Professional education is continuing and a series of workshops are planned for April/May, which will include accounting arrangements to apply from 1 July 1998 to all Category 1 businesses and which can be used for Category 2 businesses with separate reporting. Application to Category 2 businesses will be encouraged in order to provide consistent application.
- Accounting frameworks are in place for use by councils from 1 July 1998, and a further series of workshops will be conducted on these in the period leading up to that date.
- Complaint handling mechanisms should be in place in all councils whether they are currently separated from other processes or not. The number of complaints at this stage still appears small at State level. A whole of State approach will be taken to accelerate this process.
- Local Government related organisations, including the Local Government and Shires Associations and the Institute of Municipal Management, are putting in place development programs in order to accelerate those councils which have not yet espoused the principles. The Department is participating in these, in addition to its own initiatives.

Department of Local Government
17 March 1998