South Australia

1997 South Australia Progress Report

REPORT TO THE NATIONAL COMPETITION COUNCIL

IMPLEMENTATION OF NATIONAL COMPETITION POLICY AND RELATED REFORMS

IN

SOUTH AUSTRALIA

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Contents

1. INTRODUCTION

This report provides a summary of progress to date by the South Australian Government in implementing the obligations contained in the three Intergovernmental Agreements (National Competition Policy Agreements) endorsed by the Council of Australian Governments (CoAG) on 11 April 1995, viz:

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

As well as providing information to the National Competition Council for use in its assessment of SA's progress in implementing these obligations, the report also fulfils the formal requirements of the Competition Principles Agreement (CPA) to publish an annual report concerning implementation of competitive neutrality requirements (refer CPA, Clause 3 (10)) and legislation review requirements (refer CPA, Clause 5 (10)).

The report is structured under the broad headings of Conduct Code Agreement, Competition Principles Agreement, and Related Reforms. A small bibliography provides details of relevant publications.

The report has been prepared by the Department of Premier and Cabinet, in consultation with other agencies of the SA Government, including particularly the Department of Treasury and Finance, and the Attorney General's Department. Inquiries about the report may be directed to the Microeconomic Reform Branch, Department of Premier and Cabinet, telephone (08) 8226 0903.

2. CONDUCT CODE AGREEMENT

The essential requirement of the Conduct Code Agreement was for each Party to the Agreement to enact template legislation applying the Competition Code (effectively Part IV of the Trade Practices Act) to unincorporated businesses in that jurisdiction, including Government business activities. Such application legislation was required to be in operation by July 1996.

The *Competition Policy Reform (South Australia) Act 1996*, which has the effect of applying the rules of Part IV of the *Trade Practices Act* to business activities having a connection with South Australia but which are outside the Constitutional reach of the Commonwealth, came into operation on 21 July 1996. A regulation under the Act also came into operation on that date. That regulation ensures that businesses in SA are not excluded from coverage of an existing authorisation under the *Trade Practices Act* solely as a result of the Commonwealth's lack of Constitutional capacity in relation to them. The Act is committed to the Premier.

3. COMPETITION PRINCIPLES AGREEMENT

The Competition Principles Agreement (CPA) puts in place policy elements additional to those contained in the Conduct Code which are considered essential for a comprehensive National Competition Policy. These additional policy elements are:

- *independent oversight of prices charged by monopoly Government businesses*
- *competitive neutrality, to ensure Government businesses do not enjoy any net competitive advantage simply as a result of public sector ownership*
- *structural reform of public monopolies prior to privatisation or introducing competition to the market supplied by the monopoly*
- *review of legislation which restricts competition*
- *third party access to services provided by means of significant infrastructure facilities*
- *application of these principles to Local Government.*

3.1 PRICES OVERSIGHT

The *Government Business Enterprises (Competition) Act 1996* came into operation on 15 August 1996. The Act establishes an independent prices oversight mechanism for monopoly or near monopoly Government Business Enterprises (GBEs) and provides for public consultation as part of the mechanism. SA Water Corporation was declared for prices oversight under this Act in October 1996 and an investigation commenced into water and sewerage pricing. A Background Paper to the water and sewerage pricing investigation was released at this time to facilitate consultation. A final report from that investigation is due shortly. The Competition Commissioner undertaking the investigation is not subject to direction in relation to the recommendations of the investigation.

3.2 COMPETITIVE NEUTRALITY

This section of the report constitutes the Government's annual report on the implementation of the competitive neutrality policy and principles, as required by Clause 3 (10) of the CPA.

The Government published a policy statement in June 1996 outlining the manner in which the competitive neutrality principles would be implemented in South Australia. As outlined in this Statement, it is envisaged that competitive neutrality principles will be progressively applied to the Government's significant business activities, where appropriate, in accordance with the following timetable:

June 1997 Government to have identified all significant business activities conducted by agencies and instrumentalities and to have considered which principles to apply to those activities (Category 1 activities) having revenue in excess of $2m yearly or employing assets with a value exceeding $20m. Competitive neutrality complaints mechanism to be operating by that date.

June 1998 Application of principles to initial business activities complete, and decisions announced on principles to apply to all remaining significant business activities (Category 2 activities).

June 1999 Timetable for the implementation of any outstanding decisions on the application of competitive neutrality principles to be published.

June 2000 Government to have ensured that all business activities are subject to the same regulations as those applying to the private sector, unless the community benefit requires otherwise.
Competitive neutrality policy statement to be reviewed and republished.

Progress in Implementation

Agencies already reformed include:

- South Australian Water Corporation
- Ports Corporation of South Australia
- ETSA Corporation (and subsidiaries)
- SA Generation Corporation

These agencies have been corporatised, pay debt guarantee fees and are subject to tax equivalent regimes (TER) and all significant private sector equivalent regulations.

South Australia's TER policy was implemented from July 1995 and initially applied to 18 State Trading and Financial Enterprises and their subsidiaries. From July 1997, the TER will extend to 22 Trading and Financial Enterprises and their subsidiaries as well as 12 business units of Government departments. Each of these entities will be liable for Commonwealth income and sales tax equivalents as well as the full range of State taxes or their equivalent. In addition, council rates or their equivalents are likely to be introduced in 1997-98, with initial coverage including all those entities subject to Commonwealth and State TERs.

The focus of developing a debt guarantee fee structure changed following the recommendations of the South Australian Commission of Audit in 1994. The main purpose of guarantee fees is to eliminate competitive advantages that Government businesses would receive as a result of access to cheaper finance. Guarantee fees apply to over 36 business activities. The guarantee fee is to be reviewed in 1997 to consider the appropriate credit rating interest margin for government businesses and commercial projects undertaken in government departments.

The identification of other significant business activities and the principles to be applied to Category 1 activities by 30 June 1997 is progressing in accordance with the timetable. All Government agencies are supplying detailed information in a standardised format to the Department of Premier and Cabinet. Returns from agencies are being processed on receipt and a summary of potential business activities is expected to be available shortly for

consideration by the Government. This will be followed by consideration of the applicable principles to each activity.

At this stage, all government business activities are being reviewed in the above terms and no decisions have been taken not to reform any such activity in accordance with the agreed principles.

Competitive Neutrality Complaints

The *Government Business Enterprises (Competition) Act 1996* provides not only for the oversight of prices charged by GBEs but also for the application of competitive neutrality principles to significant business activities of either State or Local Government. Competitive neutrality principles may be established under the Act through proclamation. The Act also enables competitive neutrality complaints to be lodged and investigated and provides for the appointment of a Competition Commissioner for this purpose.

The competitive neutrality principles described in the Government's Competitive Neutrality Policy Statement given effect under the Act are:

- corporatisation
- tax equivalent payments
- debt guarantee fees
- private sector equivalent regulation
- cost reflective pricing.

The Department of Premier and Cabinet will provide a secretariat for the complaints mechanism established under the Act. It will also prepare guidelines for potential complainants, and act as the coordinating agency for responding to all competitive neutrality complaints, regardless of whether or not those complaints fall within the scope of the Act.

As at the end of March 1997, the complaints mechanism established under the *Government Business Enterprises (Competition) Act 1996* had not been initiated. However, it is expected that competitive neutrality principles will be proclaimed under the Act in the near future, together with the application of

these principles to an initial set of Government business activities. A Competition Commissioner will also be appointed under the Act to investigate complaints received. Further activities will be proclaimed under the Act progressively as they are identified and decisions taken on the application of the principles to these activities.

The scope of the complaints mechanism established under the Act will extend to Local Government business activities. This issue is discussed in more detail in 3.6 below.

Several complaints have been directed formally to Government agencies over the past year, alleging (in effect) non-compliance with competitive neutrality principles. It has not been possible to deal with any of these complaints under the Act since competitive neutrality principles had not been proclaimed. Nevertheless, the Department of Premier and Cabinet has coordinated consideration of such complaints to establish whether action is possible at the present time. Major complaints received have concerned the following issues:

- Training is alleged to have been offered by a Government agency at unfair prices based on non-payment of various taxes and on-costs. The significance of the business activity concerned is being assessed.
- It has been alleged that an equipment loan service operating out of a major public hospital is competing at unfair prices. This matter is being reviewed with the Government agency covered.
- Several complaints have been received in relation to activities which, on investigation, have been shown not to be Government business activities.
- Several potential issues of competitive neutrality concern have been raised informally by Small Business interest groups, and are being reviewed as part of the process of identifying significant business activities.

Corporatisation

In the absence of special circumstances, the SA Government's preferred legislative model for corporatisation is the *Public Corporations Act 1993*.

The corporatisation reform process has the objectives of:

- clear, non-conflicting commercial objectives
- clear definition of managerial responsibility, authority and autonomy
- independent and effective performance monitoring by the owner-government
- clear accountability backed by effective sanctions.

In reforming Government businesses, a statutory entity with a board may not be established where an alternative structure is considered appropriate. In these cases, a commercialisation policy will be implemented in which only some of the elements of corporatisation would apply, including:

- consideration of pro-competitive industry structures
- definition of commercial and non-commercial operations
- removal of regulatory functions from the entity
- introduction of commercial gearing
- definition of reporting requirements
- ring-fenced (ie separate) accounts for the commercialised entity
- dividend policy based on an agreed indicative payout ratio, the cash needs of the owner-government and the business.

In addition to the matters covered in commercialisation, corporatisation entails:

- creation of a statutory entity, subject to the *Public Corporations Act 1993* or, in particular circumstances, other legislation, including Corporations Law
- definition of nature, scope and funding of non-commercial operations
- definition of nature and scope of commercial operations through a Charter
- determination of performance targets through a Performance Statement
- introduction of an independent commercial performance monitoring regime
- asset valuation based on the Deprival Value methodology

- clear duties and liabilities of the board of directors (if relevant) and/or of managers
- ministerial control over the creation of subsidiaries introduction of an internal audit committee.

Where neither commercialisation nor corporatisation is appropriate, the application of full cost attribution in pricing will be considered.

3.3 STRUCTURAL REFORM

Pipelines Authority of SA

The assets and haulage business of the Pipelines Authority of SA (PASA) were sold to Tenneco Australia (now Epic Energy) in June 1995. Much of the background work and necessary restructuring prior to this sale had already been undertaken before the National Competition Policy (NCP) Agreements of April 1995. In addition, there were no major structural impediments in PASA prior to the sale, since the organisation was not involved in any aspect of gas production or gas retailing. PASA did, however, contract with the Cooper Basin Producers for long term gas supplies on behalf of the State's major gas customers. That function was separated from PASA at the time of sale and concentrated in a new body known as the Natural Gas Authority of SA. It is the Government's intention that, through negotiations with the Producers, the existing gas supply contracts be disaggregated (ie be made direct between the Producers and customers), so that the Government be removed entirely from the gas contracting process. A further important element of the Government's reform process prior to the PASA sale was to establish a regime for third party access to gas transmission pipelines in the State under the *Natural Gas Pipelines Access Act 1995*. The characteristics of that regime are described in more detail in 3.5 below.

ETSA Corporation

The Government is committed to the introduction of competition to the electricity industry in South Australia. This will occur with the commencement of the National Electricity Market from early

1998. Substantial restructuring of ETSA Corporation, the State's monopoly electricity supplier, has occurred over the past twelve months in preparation for the competitive market. The State's electricity reforms are outlined in more detail in 4.1 below.

3.4 LEGISLATION REVIEW

This section of the report provides the Government's annual report on progress in reviewing and, where appropriate, reforming legislation that restricts competition, as required by Clause 5 (10) of the CPA.

New Legislation

Following CoAG's endorsement of the CPA, all Ministers were informed by the Premier of the requirements in relation to new legislation that restricts competition. A reference to this requirement was also incorporated into the Cabinet Handbook.

In November 1995, the Department of Premier and Cabinet provided guidance to agencies on identifying a legislative restriction on competition (relevant to both new and existing legislation). The guidance indicated that a restriction on competition could take one or more of several forms, as follows:

- create a monopoly, thus preventing any competition at all
- restrict entry by limiting the number of producers or amount of product, thus permitting competition but only within certain limits
- restrict entry based on the qualifications or standards of the providers of the goods and services, thus permitting competition but again only within certain limits
- restrict entry based on the quality or standard of the product
- restrict entry by goods or services from interstate or overseas, giving a competitive advantage to local producers
- limit competitive conduct by those who have gained entry to the market by restricting ordinarily acceptable forms of competitive behaviour such as advertising, competition on the basis of price, use of efficient equipment or restrictions on hours of operation

- provide for administrative discretion which has traditionally been exercised to inhibit competition, such as favouring incumbents, treating public and private sector providers differently, or setting technical specifications that are only available from a single supplier.

A formal requirement for legislative proposals to be supported by an assessment of costs and benefits has existed in South Australia since 1 January 1991 when Treasurer's Instruction No. 9105 came into effect. In order to ensure that the evidence contained in the assessment is put before Cabinet, the Government recently decided that a Regulatory Impact Statement would in future be attached to Cabinet submissions concerning legislative proposals.

Thus the SA Government now requires that a proposal for legislation which restricts competition is to be accompanied by evidence that the restriction is in the public interest.

Moreover, a project has been instituted to identify restrictions on competition in Acts or Regulations passed between 11 April 1995 and 31 March 1997 and to identify whether legislative review had been undertaken in the relevant cases.

The Crown Solicitor's Office, which has undertaken the project, has identified various restrictions and has categorised them as either 'serious', 'intermediate' or 'trivial', depending on the assessment of the effect that the particular restriction has on competition in relevant markets. Most restrictions have been found to belong in the 'trivial' category.

The legislation identified by the project will be considered by the Government for inclusion in the updated legislation review timetable.

Existing Legislation

In June 1996, the Government published a timetable for the review of existing legislation which restricts competition. The timetable requires all reviews to be completed, and necessary reforms implemented, by the end of the year 2000. A set of

guidelines was developed for Ministers and agencies in the conduct of such reviews.

Some legislative restrictions on competition are quite subtle, and it is possible that the Government will wish to add other legislation to the timetable as agencies, through their experience of reviewing legislation which restricts competition, develop greater understanding of the purpose and intent of this aspect of the CPA.

Table 1 summarises progress in the conduct of those reviews which were scheduled in the June 1996 timetable to be completed in either 1996 or 1997.

Substantial progress has been made with a number of these reviews. In some instances, consideration of restriction on competition has been undertaken as part of a broader legislative review process. While, in some cases, reviews have been deferred, in others they have been undertaken ahead of schedule. Overall, the amount of review activity in 1996 was as planned, and legislative review in SA remains on schedule. The experience of 1996 has, however, demonstrated the need for substantial guidance to be provided to agencies in the conduct of reviews of legislation which restricts competition.

The following subsections briefly outline progress made in relation to a number of reviews initiated over the past twelve months. Some of these Acts do not feature in Table 1, since they had not been scheduled in the June 1996 timetable for review by either 1996 or 1997.

Cooper Basin (Ratification) Act 1975

This review was advanced from 1998 and commenced late in 1996. Refer 4.2 below for a status report.

Natural Gas (Interim Supply) Act 1985

This review was advanced from 1997 to 1996. The Act was substantially repealed late in 1996. Refer 4.2 below for a more detailed description.

Water Resources Act 1990

In July 1995, Cabinet approved a review of the *Water Resources Act 1990* to be undertaken by the Department of Environment and Natural Resources using a highly consultative review process. In March 1997, the Water Resources Bill 1997 was passed by the SA Parliament. The Bill provides a framework to meet broad water resource management objectives, and will repeal the *Water Resources Act 1990* and the *Catchment Water Management Act 1995* upon its proclamation later this year.

The scope of activities regulated by the Bill includes

- controlling the taking of water through a licensing regime, including reductions in water allocations for over committed resources
- temporarily restricting the taking of water by Ministerial direction
- restricting the taking of water through operation of a Board's water resources management plan
- restricting activities relating to degradation of watercourses, or to the capturing of water resources (dam building and well drilling), through a permit system
- occupational licensing (well drillers licences).

The Bill also supplements these regulatory mechanisms with economic instruments, including a water resources levy and a discount or refund scheme to provide financial incentives.

A preliminary assessment of the costs and benefits of the expected impact of the draft Water Resources Bill was provided to Cabinet in May 1996, and the SA Centre for Economic Studies was commissioned to undertake a cost benefit analysis of the final version of the Bill.

Due to the Bill's broad nature, the Centre for Economic Studies found it necessary to express the net economic benefits in qualitative rather than quantitative terms. The Centre's conclusions were that, subject to certain assumptions,

- the Bill's more explicit allocation of water to environmental uses, which is intended to reduce and in some cases reverse the detrimental environmental impacts of consumptive water

use, has the potential to lead to gains in economic efficiency
- the Bill's clearer definition of property rights has the potential to assist trade in water rights with substantial economic benefit as water moves to its most profitable uses, to reduce costs associated with disputes over water use, and, in the longer term, to provide environmental benefits as water is traded away from areas which are prone to high, saline water tables and are therefore less profitable
- the greater integration of resource management legislation represented by the Bill should be environmentally beneficial by facilitating coordination of the management of natural resources and
- the delegation of responsibility for managing water resources from the State Government to community based boards will not involve any material hidden social costs.

Liquor Licensing Act 1985

During 1996 the *Liquor Licensing Act 1985* was reviewed as scheduled. The review was commissioned by the Attorney-General, with terms of reference that included examination of restrictions on competition. The review was publicly advertised and submissions invited, the review report was circulated as a basis for further public discussion, and a draft Bill was prepared by a working group comprising key industry representatives and community groups.

The review took the primary purpose of liquor licensing to be the minimisation of the harm associated with abuse of alcohol. With that as the main objective, the review weighed the removal of many of the anti-competitive aspects of the existing Act against the consequences which might flow from removing the restrictions.

Several of the existing restrictions were found to be anti-competitive and not in the broader public interest. Accordingly the Bill introduced into Parliament in March 1997 includes the following provisions:
- the licensing authority must not take into account the economic impact of a new licence on existing licensees in the area

- though there are still compulsory trading hours for certain licences, the licensing authority may exempt a licensee from trading within the compulsory hours
- the requirement for entertainment as a prerequisite for late night trading is discontinued
- the holder of a restaurant licence is able to seek endorsement to supply liquor without a meal, on satisfaction of certain conditions
- the condition that a club must purchase liquor from an hotel or bottle shop is repealed.

The Bill does, however, retain, as recommended by the review, the restriction on the types of outlets which can sell liquor, in order to prevent an increase in availability of liquor. The review judged that an undue proliferation of liquor outlets could lead to harmful practices as the outlets responded to increased competitive pressures. This judgment was qualified by the recommendation that the restriction be reviewed again in three or four years' time, when there should be evidence available from interstate experience which will show whether there has been any increase in liquor abuse as a result of allowing sales in supermarkets in those jurisdictions.

The Bill also retains, as recommended by the review, the concept of proof of need in relation to certain types of licence (hotels and bottle shops) so as to contain any proliferation of liquor outlets. The qualification is, again, that this retention be for the short term only, to give the community time to adjust to the partial deregulation represented by the above changes. The review recommended that the need test should be reviewed again in three or four years' time.

Livestock Act 1997

The *Livestock Act 1997* results from a review of 10 SA Acts that deal with livestock health, animal identification and compensation. The review used an analytical framework that involved clarification of public good and private good activities within the various livestock industries. It was undertaken by departmental officers with extensive consultation. A Green Paper outlining options was circulated for public comment in February

1996 and a White Paper containing legislative proposals in September 1996. The Act will come into operation later in 1997 following preparation of regulations.

The three core elements of the new Act are as follows.

Disease, residue and contaminant provisions. The ineffective control of certain diseases, residues or contaminants in a single producer's livestock has the potential to affect the economic viability of all other livestock producers, livestock processors and service providers to the livestock sector in SA, and to impact on other States. While there is a move in the new Act towards industry self-regulation through quality assurance and the introduction of vendor liability provisions, the State's trading partners are still stipulating that Government provide disease monitoring and surveillance and lead the control programs.

Vendor liability and vendor declarations. Importers of livestock products produced in Australia have specified standards for certain products. Detection of a disease, residue or contaminant in livestock products has the potential to close off access to export markets. The contaminant or residue is, however, often not detected until after the animal has been processed and the producer paid. Similarly, diseases in livestock purchased for fattening or breeding are often not detected prior to the arrival of the animals on-farm. Common law has proven ineffective in providing redress to purchasers of stock that is subsequently found to be unfit for domestic or export markets. In consequence, there has often been limited or nil penalty suffered by vendors of livestock that do not meet specification. The inclusion of vendor liability and vendor declaration provisions in the Act is designed to reduce the probability of livestock products not meeting market specifications.

Industry self-funding. The resources required to correct effectively problems in livestock industries are beyond the capacity of a single producer, and the results of a problem investigation generally tend to be public property. Collective action is therefore required. Previously the resources were supplied jointly by Government and by industry (through compensation funds or registration fees). The new Act provides

a legislative provision whereby participants in a livestock industry can voluntarily contribute funding, Government's role becoming that of a facilitator and service provider only.

Each of these core elements was the subject of a regulatory impact statement that described the type of market failure, its magnitude and risk of occurring, the role of Government in correcting the problem, and an indication of the benefit cost ratio of the recommended intervention.

Several Acts are repealed by the *Livestock Act 1997*, including the *Apiaries Act 1931, Branding of Pigs Act 1964, Brands Act 1933, Cattle Compensation Act 1939, Deer Keepers Act 1987, Foot and Mouth Disease Eradication Fund Act 1958, Stock Act 1990* and the *Swine Compensation Act 1936*. Of these Acts, only the *Stock Act 1990* and the *Brands Act 1933* had not been included in the Government's June 1996 timetable for review of existing legislation that restricts competition. The *Fisheries Act 1982* and *Stock Foods Act 1941* were considered in this review and will be reviewed separately at a later date.

Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986, Soil Conservation and Land Care Act 1989

The Review of the *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986* and *Soil Conservation and Land Care Act 1989* began in late 1994. The Review of *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986* was required by the provisions of the *Subordinate Legislation Act 1978*, whereas the Review of the *Soil Conservation and Land Care Act 1989* complied with requirements within that Act to do so by 30 June 1996. The Acts were reviewed together to encourage the integration of land management strategies in SA.

The approval of drafting instructions was delayed in mid 1996 by consideration of the then recent 'Guidelines to Ministers on the Review of Legislation which Restricts Competition'. Subsequently a report detailing the objectives of both sets of legislation, compliance with the guiding principles of competition

policy, lessening of restrictions and evaluation of remaining restrictions was submitted to Cabinet in August 1996.

Essentially the review principles were to promote the economic development of South Australia by

- eliminating unwarranted restrictions to competition, innovation and development
- reducing the costs of delays imposed by unnecessary controls on the private sector
- cutting the costs of regulation to the government by the repeal of obsolete laws, rationalising ares of overlap in regulation and streamlining the administration of the remaining controls.

Changes to the legislation strengthen the objectives of the Acts, of ensuring the sustainability of the land and the protection of the natural resources of the State into the future, including the effective integration of the control of animal and plant pests with other land management activities. Legislative amendments for both Acts are currently being drafted.

National Reviews of Existing Legislation

Table 2 summarises progress in relation to reviews which may be conducted jointly with other jurisdictions. The number of Acts which may be the subject of a full national review has been reduced substantially from the list provided in the June 1996 timetable. This reflects the fact that some jurisdictions have already commenced separate reviews in these areas. Acts which were suggested as potential candidates for national review in the June 1996 timetable which do not appear in Table 2 will be scheduled for state - based review at a date to be determined by the Government.

The *Barley Marketing Act 1993* is joint South Australian and Victorian legislation and is subject to a joint review by both Governments. Terms of Reference incorporating competition principles have been approved and processes are underway to commission independent consultants to undertake the review, which is scheduled for completion in 1997.

TABLE 1

REVIEWS TO BE CONDUCTED BY SOUTH AUSTRALIAN GOVERNMENT

Regulations and other subordinate legislation will be reviewed at the same time as the primary Act under which they are made, unless otherwise indicated.The timetable outlines the nature of the primary restriction on competition for each Act.

1996

Portfolio	Act	Nature of Restriction	Notes
Attorney-General	*Friendly Societies Act 1919*	Restricts market conduct	To be repealed and replaced by Friendly Societies (SA) Bill 1997 currently before Parliament.
Consumer Affairs	*Liquor Licensing Act 1985*	Barrier to market entry and restricts market conduct	Review using competition principles completed 1996. Partial deregulation approved by Cabinet. Bill introduced to Upper House in March 1997.
Environment & Natural Resources	*Water Resources Act 1990* *Catchment Water Management Act 1995*	Both restrict market conduct	These Acts have been repealed by the Water resources Act 1997, as part of a review in which competition principles were applied.
Health	*South Australian Health Commission Act 1975*	Barrier to market entry and restricts market conduct of private hospitals	Currently under review. Discussion Paper being drafted.

Portfolio	Act	Nature of Restriction	Notes
Health	*Tobacco Products Control Act 1986*	Restricts market conduct	Repealed by Tobacco Products Regulation Act 1997.
Industrial Affairs	*Mines and Works Inspection Act 1920*; OHSW aspects (remainder of Act committed to Minister for Mines)	Restricts market conduct	Review completed. Industrial Affairs elements repealed. Occupational Health, Safety and Welfare Act amended to incorporate this area of responsibility.
Industrial Affairs	*Shearers Accommodation Act 1975*	Restricts market conduct	Regulations revoked in 1996. Department is presently consulting with the view of addressing the area of responsibility under the Occupational Health, Safety and Welfare Act as subordinate legislation. When this course of action is complete, the Department will seek to repeal the Act.
Information & Contract Services	*State Clothing Corporation Act 1977*	Protects sheltered work shops	Corporation sold in 1995-96 by Asset Management Taskforce. Act has been amended to allow 'winding up'. Act not expected to be repealed until lease on building asset concluded.

Portfolio	Act	Nature of Restriction	Notes
Primary Industries	*Poultry Meat Industry Act 1969*	To be repealed	Before Parliament. Processors have agreed to make application for appropriate authorisations to the Australian Competition and Consumer Commission.
State Development	*Industries Development Act 1941*	Section 24 will need to be reconsidered in the light of amendments to the TPA.	Terms of Reference being formulated.
Tourism	*Australian Formula One Grand Prix Act 1984*	The Board is not subject to the same laws as private sector competitors.	Authority dormant. No further projects or action expected of it. The Act should not be repealed until last money paid by Victoria in July 2000.
Treasury	*Public Corporations Act 1993*	Regulates incorporation of GBEs differently from private sector competitors.	Terms of Reference being formulated.

1997

Portfolio	Act	Nature of Restriction	Notes
Arts	*South Australian Museum Act 1976*	Restricts market conduct in relation to meteorites	Review not started.
Attorney-General	*Legal Practitioners Act 1981*	Barrier to market entry and restricts market conduct	Standing Committee of Attorneys-General working on implementation of national practicing certificate. Further agreement required for more progress.
Employment, Training & Further Education	*Construction Industry Training Fund Act 1993*	Restricts market conduct	Review started in March 1997. Terms of Reference approved by Cabinet.
Energy	*Gas Act 1988*	Restricts market conduct	This Act has been repealed and replaced by Gas Act 1997. See Section 4.2 below.
Energy	*Natural Gas (Interim Supply) Act 1985*	To be repealed	See Sections 3.5 and 4.2 below.
Energy	*Natural Gas Pipelines Access Act 1995*	Does not apply equally to all pipelines	See Sections 3.5 and 4.2 below.
Environment & Natural Resources	*Coast Protection Act 1972*	Restricts market conduct	Terms of Reference review being formulated.
Environment & Natural Resources	*Heritage Act 1993*	Restricts market conduct	Terms of Reference review being formulated.
Finance	*Advances to Settlers Act 1930*	Restricts market conduct	Review not started.
Finance	*Benefit Associations Act 1958*	Restricts market conduct	Review not started.

Portfolio	Act	Nature of Restriction	Notes
Finance	*Loans for Fencing and Water Piping Act 1938*	Restricts market conduct	Review not started
Finance	*Loans to Producers Act 1927*	Restricts market conduct	Review not started
Health	*Supported Residential Facilities Act 1992*	Barrier to market entry and restricts market conduct	Review not started.
Industrial Affairs	*Employment Agents Registration Act 1993*	Barrier to market entry	Terms of Reference being formulated.
Industrial Affairs	*Explosives Act 1936*	Barrier to market entry and restricts market conduct	Review being combined with that for the Dangerous Substances Act 1979. Terms of Reference being formulated.
Industrial Affairs	*Manufacturing Industries Protection Act 1937*	Exempts some industries from legal requirements applying to competitors	Overtaken by Environment Protection Act. Review for possible repeal not started.
Industrial Affairs	*White Phosphorus Matches Prohibition Act 1915*	Restricts product entry to market place	Review being combined with that for the Dangerous Substances Act 1979. Terms of Reference being formulated.
Infrastructure	*Sewerage Act 1929 South Australian Water Corporation Act 1994 Water Conservation Act 1936 Waterworks Act 1932*	Barrier to market entry and restricts market conduct; product or service standards	Review underway. Terms of Reference incorporating competition principles approved by Cabinet November 1996.

Portfolio	Act	Nature of Restriction	Notes
Local Government	*Local Government Act 1934*	Restricts market conduct and product and service standards	Review underway. Review of by-laws to follow. See Section 3.6 below.
Local Government	*Outback Areas Community Development Trust Act 1978*	Restricts market conduct	Review not started.
Primary Industries	*Agricultural Chemicals Act 1955 Stock Medicines Act 1939 Stock Foods Act 1941*	Barrier to market entry and restricts market conduct	Green Paper on review of legislation using competition principles to Cabinet in April 1997.
Primary Industries	*Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986*	Barrier to market entry and restricts market conduct	Review combined with that of the Soil Conservation and Land Care Act 1989. Report submitted to Cabinet August 1996.
Primary Industries	*Soil Conservation and Land Care Act 1989*	Restricts market conduct	Review combined with that of the Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986. Report submitted to Cabinet August 1996. Appropriate amendments to be made under the Soil Conservation and Land Care Act 1989 when amended.

Portfolio	Act	Nature of Restriction	Notes
Primary Industries	Regulations under the *Fisheries Act 1982* • Scheme of Management (Miscellaneous Fishery) 1984 • Exotic Fish, Farming and Fish Diseases 1984 • Scheme of Management (Gulf Waters Experimental Crab Fishery) 1988	Barrier to market entry and restricts market conduct	Review not started.
Transport	*Harbors and Navigation Act 1993*	Restricts market conduct	Review will start in late 1997.

TABLE 2

REVIEWS WHICH MAY BE CONDUCTED **JOINTLY** WITH OTHER JURISDICTIONS

Reviews will be conducted jointly where appropriate and where satisfactory arrangements are agreed. If there is no agreement on joint reviews, the South Australian Government will conduct its own review of restrictions on competition in the State legislation, taking into account developments in other jurisdictions where relevant.

Portfolio	Act	Notes
Attorney-General	*Business Names Act 1996*	Financial legislation(companies, securities, futures, consumer credit.
	Financial Institutions (Application of Laws) Act 1992 Starr-Bowkett Societies Act 1975	Potential national review area. Await outcome Wallis Inquiry.
Attorney-General	*Trustee Companies Act 1988*	Under Standing Committee of Attorneys-General, Parliamentary Counsel Committee with New South Wales as the lead agency.
Consumer Affairs	*Consumer Credit (South Australia) Act 1995*	National Review under consideration possibly involving the Standing Committee of Consumer Affairs Ministers.
Consumer Affairs	*Trade Measurement Administration Act 1993*	National Review under consideration possibly involving the Standing Committee of Consumer Affairs Ministers.
Consumer Affairs	*Trade Standards Act 1979*	National Review under consideration possibly involving the Standing Committee of Consumer Affairs Ministers.
Consumer Affairs	*Travel Agents Act 1986*	National Review under consideration possibly involving the Standing Committee of Consumer Affairs Ministers.
Health	*Food Act 1985*	National Review scheduled to commence.
Health	*Pharmacists Act, 1991*	National Review under consideration.
Industrial Affairs	*Occupational Health, Safety and Welfare Act 1986*	Referred to Labour Ministers' Council for consideration
Primary Industries	*Agricultural and Veterinary Chemicals (South Australia) Act 1994*	National Review to commence in 1997. The use of such chemicals to be reviewed at the state level.
Primary Industries	*Biological Control Act 1986*	National Review under consideration.

Updating the Timetable

The Government will periodically review progress on the conduct of reviews, and publish timetable updates which reflect such progress. Following completion of this first annual report, the Government will update the timetable published in June 1996 to reflect progress during 1996, as well as the latest thinking in relation to proposed national or joint jurisdiction reviews.

The Government confirms that all reviews will be completed, and necessary reforms implemented, by the end of the year 2000.

Progress within the Local Government sector in the implementation of the legislation review requirements of the CPA is detailed in 3.6 below.

3.5 THIRD PARTY ACCESS

The South Australian Government has introduced legislation to provide for third party access to services provided by means of significant infrastructure facilities in three instances over the past two years.

Gas Transmission Pipelines

The *Natural Gas Pipelines Access Act 1995* was developed to provide the third party access regime for natural gas transmission pipelines prior to the sale by the Government of the operational arm of the Pipelines Authority of South Australia (PASA). At the time of developing the legislation the national Competition Principles Agreement was still at the discussion stage. However, comments were sought from the then Trades Practices Commission and incorporated into the Bill.

Natural gas pipelines licensed under the *Petroleum Act 1940* and declared by regulation under the *Natural Gas Pipelines Access Act 1995* are subject to the provisions of the latter Act. All natural gas transmission pipelines in South Australia, including all branches and laterals, are subject to the *Natural Gas Pipelines Access Act 1995*.

The Act is designed to:

- facilitate competitive markets in the gas industry
- promote the efficient allocation of resources in the gas industry and
- provide for access to pipelines on fair commercial terms and on a non-discriminatory basis.

The Act requires legal separation of the haulage service from other gas related activities, eg retailing in gas. Such separation applies to accounts and records and officers. The Service Provider must prepare, and keep up to date, a Brochure containing information on access and price to the pipeline. A framework is provided which encourages commercial negotiation for access and establishes the procedures to be followed where an access dispute arises, including the nature of the arbitration process to be followed.

The access regime is overseen by the Regulator who is appointed by proclamation. The current Regulator is the Chief Executive Officer of the Office of Energy Policy.

South Australia is presently working with other jurisdictions to develop a National Access Code for gas pipelines, both transmission and distribution (refer also 4.2 below). The Code would be applied across participating jurisdictions by legislation which, in South Australia, would require substantial amendment of the *Natural Gas Pipelines Access Act 1995*.

Bulk Handling Facilities

During 1996 the Government resolved to proceed with the sale of the bulk handling facilities owned and operated by the SA Ports Corporation and situated at various sites around the State's coastline. The *South Australian (Bulk Handling Facilities) Act 1996* is designed to facilitate the sale process, and was introduced into the Parliament in the 1996 Spring session.

Part 3 of the Act makes provision for an access regime, enabling a party who seeks access to a bulk handling facility to negotiate with the operator of that facility in the first instance and, if that is unsuccessful, to refer the dispute involved to arbitration. The

access regime is similar in effect to that which was embodied in the *Natural Gas Pipelines Access Act 1995*. Discussions were held with the Australian Competition and Consumer Commission (ACCC) during preparation of the Act. Every effort was made to ensure that the access regime as established under the Act conforms to the principles for an effective access regime as set out in Clause 6(4) of the CPA.

Electricity Grid

Access to the State's electricity transmission and distribution network is provided for under the terms of the National Electricity Code and will operate from the commencement of the State's participation in the National Electricity Market (refer also 4.1 below). The *Electricity Act 1996* contains provisions designed to support such access, including the provision for transmission and distribution licence conditions requiring third party access to be mandated.

3.6 LOCAL GOVERNMENT

The Government published a statement in June 1996 which described the manner in which the competition principles would be applied to local government. This included the requirements of legislation review, competitive neutrality and structural reform. This Statement had been prepared in conjunction with the Local Government Association.

Detailed reporting of the achievements of specific Local Government authorities in implementing these activities is made difficult at present by the extensive reform process currently underway in local government in SA. A substantial program of Council amalgamations over the past year has seen the number decline from 118 to about 75 in March 1997. Further amalgamations are being planned, and elections under the new boundaries are scheduled for May 1997. Once the new Councils are in place, it will be possible for more detailed reporting to occur.

Nevertheless, the following activities should be highlighted.

Review of *Local Government Act 1934*

The comprehensive review of the *Local Government Act 1934* is a key element of the South Australian Government's Local Government Reform Program, complementary to the initiatives being undertaken for boundary reform.

The major objective of the review is to establish a cohesive and modern legislative framework for Local Government that is easier to understand and use. The time at which the review is being undertaken has enabled careful attention to be paid to the requirements of competition policy, de-regulation and public sector reform generally.

Currently draft Bills for a new Local Government Act, a Local Government (Lands) Act and a Consultation Paper on Associated Repeals and Amendments are under consideration by the Government.

Copies of the draft Bills and associated Consultation Paper have been provided to the Local Government Association on a confidential basis. The Government is now seeking to reach agreement with the Association on the provisions to be included in the exposure draft Bills prior to their release for public consultation.

An extensive Community Consultation Program is planned for the period when the draft Bills are generally released, involving Local Government, industry, community groups, interested organisations and individuals.

The draft Bill contains the following enabling provisions:

- to permit a council or regional grouping of councils to corporatise significant business activities by legal incorporation
- payment of taxation equivalents and guarantee fees by Local Government subsidiaries
- separation of regulatory and service activity and identification of costs of significant business activities
- requirement for the separate budget identification of each significant activity

- requirements for councils to establish a grievance procedure through which decisions can be reviewed, including competition complaints
- principles applying to by-laws (see also section on by-law review).

In addition the Local Government Legislation Review Consultation paper on Associated Repeals and Amendments contained a substantial explanatory section on the Competition Principles Agreement in relation to licensing systems, professional qualification requirements and by-law making.

It should be noted that Local and State Governments are currently involved in detailed negotiations on the draft Bill, the outcome of which will be fundamental in establishing future arrangements.

Review and Reform of Local Government By-Laws

The draft of the new Local Government Bill contains principles which require that a by-law made by a council must, among other things, avoid restricting competition to any significant degree unless the council is satisfied that there is evidence that the benefits of the restriction to the community outweigh the costs of the restriction, and that the objectives of the by-law can only reasonably be achieved by the restriction.

In fact the Local Government legislative review has resulted in Local Government by-law making powers being totally revised. Numerous specific powers have not been retained in the draft Local Government Bill including those providing for the licensing of lodging houses, restaurants, fish shops, sale yards and bazaars. Current by-laws on these matters will either expire on 1 January 2000 or will be rendered ineffective earlier by comprehensive reviews of State laws covering their fields.

Under the South Australian Statement on the Application of Competition Principles to Local Government, Councils are committed to identifying existing by-laws which restrict competition by 1 June 1997 and formulating by that date a time table to address their reforms.

In July 1996 the Legislative Review Committee of the South Australian Parliament revised the process for Parliamentary review of Local Government by-laws to include a requirement that the Council's report to the Committee accompanying any new by-law must outline the Council's consideration of its obligations under the National Competition Policy. SA Councils must forward by-laws for tabling in both Houses of Parliament and review by the Committee. An incomplete Report risks a motion of disallowance in either or both Houses.

To facilitate the review of by-laws, the Local Government Association of SA is using a Focus Group including two State Government representatives to assist in preparing detailed Guidelines for use by Local Councils. The Guideline document is being prepared for the Focus Group by a private legal consulting firm and is planned to be finalised shortly.

Competitive Neutrality

A Local Government Focus Group, with representatives from a number of metropolitan Adelaide and regional Councils as well as the State Government, is oversighting the production of detailed guidelines for use by Local Councils on the identification of significant business activities and the application of competitive neutrality principles to those activities. The guidelines are programmed to be finalised shortly.

The scope of the competitive neutrality complaints mechanism established under the *Government Business Enterprises (Competition) Act 1996* does extend to Local Government. However, it is the Government's preference that each Local Government authority establish its own complaints mechanism, and that only if the matter had not been resolved at that level would the matter be considered for possible investigation under the Act.

4 RELATED REFORMS

The Agreement to Implement National Competition Policy and Related Reforms makes provision of specified financial assistance by the Commonwealth conditional on the States making satisfactory progress with the implementation of the requirements of the Conduct Code Agreement and Competition Principles Agreement and also with implementation of related reforms which have been the subject of separate CoAG agreements. These related reforms include:

- *establishment of competitive national electricity market*
- *national framework for free and fair trade in gas*
- *strategic framework for the efficient and sustainable reform of the Australian water industry*
- *road transport reforms.*

4.1 ELECTRICITY

The following is a brief summary of electricity reforms introduced in South Australia since 1994. These reforms are consistent with CoAG commitments in relation to the electricity sector.

Market Arrangements

South Australia is committed to joining the National Electricity Market (NEM) when full implementation of the market arrangements as specified in the National Electricity Code (the Code) is possible. This will require, in particular, that the ACCC review of the Code is complete, and that the information technology systems required for market operation have been successfully installed and tested. Market commencement by early 1998 is anticipated.

South Australia took the role of lead legislator in relation to the legislation required to establish the NEM and apply the Code in participating jurisdictions. The *National Electricity (South Australia) Act 1996* was passed by the SA Parliament in mid-1996, and will be progressively applied by other participating jurisdictions during 1997.

South Australia subscribed to the National Electricity Code Administrator (NECA) and National Electricity Market Management Company (NEMMCO) during 1996.

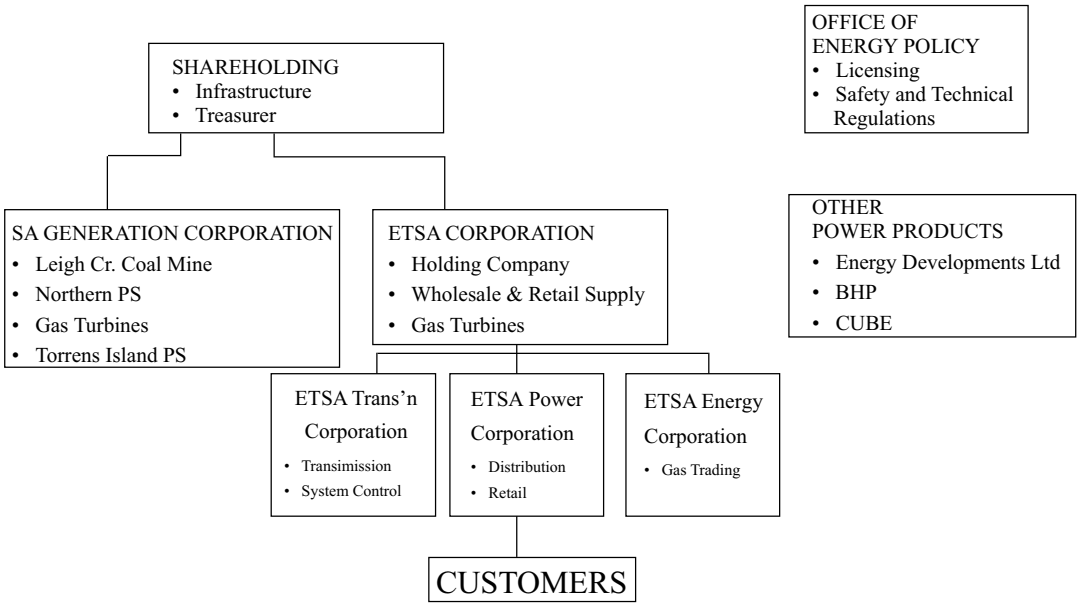
Structural Reforms

From 1 July 1995, the Electricity Trust of SA (ETSA) was corporatised pursuant to the *Public Corporations Act 1993*. The enabling legislation for ETSA Corporation is the *Electricity Corporations Act 1994*.

Following a review of the structure of the South Australian electricity industry, the *Electricity Corporations (Generation Corporation) Amendment Act 1996* provided for the separation of electricity generation activities from ETSA Corporation. The new SA Generation Corporation (SAGC) commenced trading on 1 January 1997.

ETSA Corporation (and its three subsidiaries) and SAGC are the main participants in the South Australian electricity supply industry. Excluding certain councils and building owners and remote area suppliers, ETSA Power Corporation is the single distributor/retailer to the South Australian market and ETSA Transmission Corporation is the sole transmission network provider (and has responsibility for system control). SAGC is the major generation source. However, 30% of SA's electricity is currently sourced through interconnection to the eastern states.

Diagrammatically, the South Australian electricity industry structure from January 1997 is:



The *Electricity Act 1996* came into operation on 1 January 1997. It provides the underlying regulatory support for the NEM within South Australia. It also establishes a Technical Regulator (Office of Energy Policy) separate from ETSA Corporation.

Separation of Distribution and Retail functions

The Government is committed to ensuring appropriate separation of activities associated with retailing from those associated with distribution in order to encourage competition within the contestable retail market.

The Technical Regulator appointed under the *Electricity Act 1996* establishes the licence conditions for the electricity supply industry in South Australia including retailing. Section 21 (2) (b) of the Act provides that "The Technical Regulator may make the licence or licences subject to conditions requiring that the person's affairs in relation to the operation of the transmission or distribution network be kept safe from the person's affairs in relation to the retailing of electricity". The methodology for accounting for the ring-fencing applied by ETSA Power will be considered in accordance with the relevant requirements of the *Electricity Act 1996*.

ETSA Power has established retail activities in the Victorian and NSW contestable electricity markets. A subsidiary company has been established for the Victorian operation as required by the retail licence for that market while the ring-fencing of accounts is being used to comply with the requirements of the NSW market. The ETSA Power Board receives profit and loss information on the retailing activities in each of these two markets separated from the other activities of this Corporation.

4.2 GAS

The following section describes progress in SA in implementing gas reforms as endorsed by CoAG in February 1994, and subsequently in June 1996.

National Access Framework

South Australia has consistently emphasised its commitment to the concept of third party access for gas pipelines, based on commercial negotiation between the parties involved, with an arbitration process to be applied if necessary. This model is embodied in the *Natural Gas Pipelines Access Act 1995* (refer 3.5 above).

South Australia participated actively in the deliberations of the Gas Reform Task Force (GRTF) during 1996, seeking to develop a nationally applicable Access Code for gas pipelines. This matter was the subject of correspondence between the Prime Minister and the Premier/Chief Ministers over the past few months.

The SA Government reaffirms its commitment to the development of an appropriate National Access Framework, and in particular:

- endorses the substance of the GRTF recommendations
- agrees that the National Access Code, when finalised, should apply both to transmission and distribution pipelines
- agrees to the establishment of a national regulator for transmission pipelines (an appropriate basis for this would be the ACCC operating with associate commissioners appointed from various jurisdictions), while noting that distribution pipelines will be subject to State-based regulation.
- will work towards establishing the basis of the Framework in legislative form by 1 July 1997 (a date proposed by the Prime Minister), noting however that full implementation of the Framework by that date is impracticable.

South Australia is also contributing to the work of an implementation group formed in February 1997 to finalise the Code and associated legislation. This group, while recognising the difficulties associated with the target date of 1 July 1997, expects to have made substantial progress by that date. South

Australia has indicated recently its preparedness to take on the role of lead legislator, as it did for electricity reform, in use of an applications law model for the National Access Framework. This will provide for a more streamlined implementation of the legislation which underpins the Framework.

Removal of Legislative/Regulatory Barriers

Work undertaken by the Gas Reform Working Group of CoAG Officials in 1994 had highlighted potential South Australian legislative/regulatory barriers to free and fair trade in gas. The major such barrier was perceived to be the *Natural Gas (Interim Supply) Act 1995*. Other, less significant, barriers were identified, and it was recognised that aspects of the *Gas Act 1988* might need review in the context of the reform agenda for free and fair trade in gas. Subsequently, in 1995, the ACCC, in its review of the AGL authorisation, expressed the view that the *Cooper Basin (Ratification) Act 1975* also constituted such a barrier. The Government is unaware of any other potential South Australian legislative/regulatory barriers to free and fair trade in gas. This matter will be monitored as part of this State's program to review and, where appropriate, reform legislation which restricts competition.

Action taken in relation to those potential barriers identified above is as follows:

Natural Gas (Interim Supply) Act 1985

A review of this Act had been scheduled for 1997 as part of the State's comprehensive review of existing legislation which restricts competition (refer 3.4 above). In the event, the review was brought forward to 1996, and recommended that substantial parts of the Act, which either restricted competition and/or were redundant, should be repealed. Amendments to the *Natural Gas (Interim Supply) Act 1985* were assented to in August 1996 and repealed the following sections:

S.6 Discharged the Gas Sales Contracts.

S.8 Reserved ethane in the reserves of petroleum in the Cooper Basin for use in the industrial, commercial and domestic sectors.

S.9 Required the Authority to apply gas received under the Act to satisfy the needs of the industrial, commercial and domestic customers.

S.10 Made the PASA Future Requirements Agreement void.

S.11 Restricted the production of natural gas under a petroleum production licence.

The Amendments also provided for repeal of the remainder of the Act by proclamation. The timing of such a proclamation is currently under review.

Regulation 244 of the *Petroleum Act 1940*

This regulation provided that use of gas for purposes other than recovery of petroleum, or for light or use as a fuel, required Ministerial consideration. The regulation was repealed in January 1996.

Section 80L of the *Petroleum Act 1940*

SA is currently reviewing the *Petroleum Act 1940*. An Issues Paper was released in early 1996 which, inter alia, addressed third party access to pipelines. A Green Paper on the Petroleum Sector is scheduled for release in the 2nd quarter of 1997.

Exclusive franchise arrangements

The *Gas Act 1988* was repealed and replaced in March 1997 by the *Gas Act 1997.* The *Gas Act 1997* continues the provisions of the previous Act in that it does not establish exclusive franchises. Thus, the incumbent supplier of natural gas, The Gas Company, is not provided any protection from competitors under the Act, since other entities can apply for a licence to supply natural gas, and subject to certain technical and environmental standards, are able to construct pipelines and supply natural gas to consumers. In short, the Act allows entities the ability to by-pass the current pipeline system in order to supply customers. As customers become “contestable” they will be able to purchase their natural gas via their current connection point from retailers other than the Gas Company. The recent legislative changes also make

provision for a licence to operate a distribution system, and a separate licence to retail natural gas.

It should be noted that a major bypass of the existing gas distribution network was approved in 1996 when approval was given to extend Pipeline Licence No. 1 (the main Moomba to Adelaide gas pipeline) to deliver gas to the CU Power/Boral electricity cogeneration plant currently under construction.

Cooper Basin (Ratification) Act 1975

In late 1996 the Government resolved to initiate an immediate review of the *Cooper Basin (Ratification) Act 1975* and associated Indenture. This review had previously been scheduled for 1998 under the Government's program for review of existing legislation which restricts competition (refer 3.4 above). However, after discussions with the National Competition Council, the review was brought forward and its scope expanded to include consideration of the impact of the legislation on the CoAG objective of free and fair trade in gas.

Draft terms of reference have been prepared and comments sought from a wide cross section of interested parties, including the gas industry and relevant jurisdictions. The terms of reference are expected to be finalised by April 1997. The review will be undertaken by an independent investigator with wide experience in commercial and marketing issues affecting the Cooper Basin in South Australia, assisted by officers of the SA Department of Mines and Energy Resources.

An issues paper will be released, and public submissions sought, during the course of the review, which is expected to be completed by the end of 1997.

Other

Other gas reform requirements established by the February 1994 CoAG gas reform agenda relate to application of Australian Standard 2885, price regulation arrangements, and structural reforms (including corporatisation) within the gas sector.

AS 2885

This Australian Standard applies to transmission gas pipelines, and is reflected in the *Petroleum Act 1940* regulations. Petroleum Regulation 245 requires that, unless otherwise approved by the Minister (and such approval has not been given), the design, manufacture, construction, operation, maintenance and testing of pipelines must be carried out in accordance with the relevant requirements of Australian Standard 2885 "Gas and Liquid Petroleum Pipelines". Petroleum Regulation 250 provides additional requirements on the positioning of signage on pipelines. To reinforce this, every pipeline licence contains a clause which is worded along the lines of:

> "The Licensees must ensure that any modifications which they wish to make to the pipeline must be designed, constructed, maintained and operated in accordance with the *Petroleum Act 1940*, the Petroleum Regulations 1989, AS 2885 and the Code of Environmental Practice".

Price Control and Maintenance

The *Gas Act 1997* provides for a Price Regulator to fix a range of prices for non-contestable customers. This is a transitional provision until all customers are contestable. The only current gas supplier The Gas Company, is a private entity. Currently, both upstream gas and transmission haulage prices are subject to commercial contracts, and are not under price control.

Structural Reforms, including Corporatisation

Gas distribution services are provided by The Gas Company, part of Boral Energy. Similarly, gas transmission services are currently provided by Epic Energy, formerly the SA Government entity Pipelines Authority of South Australia (refer also 3.3 above). As such, SA has no public enterprises providing these services. It should be noted that, even prior to its takeover by Boral Energy in 1993, the Gas Company was a fully corporatised entity.

4.3 WATER

Substantial progress is being made in South Australia in implementing the water reform commitments of CoAG, in particular those embodied in the strategic Water Reform Framework as set out in the CoAG Water Resource Policy Communique of February 1994. Much of this work is proceeding jointly with other jurisdictions through the Agriculture and Resource Management Council of Australia and New Zealand.

In brief, progress in SA has included:

- Significant reforms to the structure of water prices, in particular the elimination of free water allowances; an independent review of water and sewerage prices in SA is presently underway (refer 3.1 above).
- Corporatisation of SA Water in July 1995 under the *Public Corporations Act 1993*; water resources management functions have been separated from the water service provision functions of SA Water and now rest with the Department of Environment and Natural Resources.
- All Government Highland Irrigation Districts are to be transferred to self-management in 1997.
- Enactment of the *Water Resources Act 1996*, which provides for:
    - devolution of greater water resources management responsibilities to local communities
    - a more holistic and ecologically sustainable approach to water resources management
    - management of water resources through a hierarchy of water plans prepared and regularly reviewed through a comprehensive process of consultation
    - establishment of a property rights system for water licence.
- Enactment of the *Water Resources (Imposition of Charges) Amendment Act 1995*, which enables charges based on water allocation and/or use to be raised; the charge was applied first to all users of River Murray water from 1 July 1996.

4.4 ROAD TRANSPORT

South Australia has implemented the national regime of heavy vehicle charges through amendments to the *Motor Vehicles Act 1959* and *Motor Vehicles Regulations 1960*; the new charges took effect during 1996.

South Australia is currently working on the implementation of other reforms agreed by the Ministerial Council on Road Transport, according to the timetable established by the Council at its 14 February 1997 meeting. The Government will continue to implement these reforms according to that timetable, as amended by agreement of the Ministerial Council from time to time.

5. BIBLIOGRAPHY

The following three Intergovernmental Agreements were endorsed by Heads of Government on 11 April 1995:
"Conduct Code Agreement"
"Competition Principles Agreement"
"Agreement to Implement the National Competition Policy and Related Reforms".

Copies of these Intergovernmental Agreements are available from the Federal Department of Prime Minister and Cabinet.

Relevant documents released by the SA Government include:
"Structure of Government Business Activities", March 1995
"Competitive Neutrality Policy Statement", June 1996
"Review of Legislation which Restricts Competition - timetable", June 1996
"Clause 7 Statement on the Application of Competition Principles to Local Government under the Competition Principles Intergovernmental Agreement", June 1996
"Water and Sewerage Pricing for SA Water Corporation", December 1996.

Copies of each of these publications are available from the Microeconomic Reform Branch, Department of Premier and Cabinet, telephone (08) 8226 0903.

1998 South Australian Supplementary Information

1. INTRODUCTION

This report summarises recent progress by the South Australian Government in implementing the obligations contained in the three Intergovernmental Agreements (National Competition Policy Agreements) endorsed by the Council of Australian Governments (CoAG) on 11 April 1995, viz:

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

It effectively updates the report provided by the Government to the National Competition Council (NCC) in March 1997.

In mid-July 1997, the NCC made its first assessment of progress by South Australia (and other jurisdictions) in implementing these obligations. That assessment indicated a number of areas where progress by South Australia was considered to require further review in 1998. This report provides further information to assist the NCC in undertaking this additional assessment. The report also fulfils the formal requirements of the Competition Principles Agreement (CPA) to publish an annual report concerning implementation of competitive neutrality requirements (refer CPA, Clause 3 (10)) and legislation review requirements (refer CPA, Clause 5 (10)).

The report is structured under the broad headings of Conduct Code Agreement, Competition Principles Agreement, and Related Reforms. A small bibliography provides details of relevant publications.

The report has been prepared by the Department of the Premier and Cabinet, in consultation with other agencies of the SA Government, including particularly the Department of Treasury and Finance, and the Attorney-General's Department. Inquiries about the report may be directed to the Microeconomic Reform Branch, Department of the Premier and Cabinet, telephone (08) 8226 0903.

2. CONDUCT CODE AGREEMENT

The essential requirement of the Conduct Code Agreement was for each Party to the Agreement to enact template legislation applying the Competition Code (effectively Part IV of the Trade Practices Act) to all persons in that jurisdiction, including Government business activities. Such application legislation was required to be in operation by July 1996.

The *Competition Policy Reform (South Australia) Act 1996*, which has the effect of applying the rules of Part IV of the *Trade Practices Act* (TPA) to business activities having a connection with South Australia but which are outside the constitutional reach of the Commonwealth, came into operation on 21 July 1996.

Government agencies in South Australia are now well advanced in the process of assessing risks associated with this new regime and implementing effective TPA compliance programs. In this respect, assistance is being provided to agencies through the Crown Solicitor's Office, in particular through training and providing briefings to key management personnel.

Since July 1996, it is understood that a small number of potential breaches of the TPA by SA Government agencies have been identified and resolved. These instances have reinforced the need for appropriate risk management procedures to be implemented by individual agencies, and for a comprehensive whole-of-government approach to be established to review progress in this area.

The Crown Solicitor's Office maintains regular contact with the Adelaide Regional Office of the Australian Competition & Consumer Commission (ACCC) on issues that concern both the Government and the ACCC, matters of mutual policy interest, and substantive Part IV TPA issues.

Within the reporting period, the SA Parliament has not enacted any new Section 51 TPA exemptions that would need to be notified to the ACCC pursuant to Clause 2(1) of the Conduct Code Agreement.

3. COMPETITION PRINCIPLES AGREEMENT

The Competition Principles Agreement (CPA) puts in place policy elements additional to those contained in the Conduct Code which are considered essential for a comprehensive National Competition Policy. These additional policy elements are:

- *independent oversight of prices charged by monopoly Government businesses*
- *competitive neutrality, to ensure Government businesses do not enjoy any net competitive advantage simply as a result of public sector ownership*
- *structural reform of public monopolies prior to privatisation or introducing competition to the market supplied by the monopoly*
- *review of legislation which restricts competition*
- *third party access to services provided by means of significant infrastructure facilities*
- *application of these principles to Local Government.*

3.1 PRICES OVERSIGHT

The *Government Business Enterprises (Competition) Act 1996* came into operation on 15 August 1996. The Act establishes an independent prices oversight mechanism for monopoly or near monopoly Government Business Enterprises (GBEs) and provides for public consultation as part of the mechanism. SA Water Corporation was declared for prices oversight under this Act in October 1996 and an independent investigation commenced into water and sewerage pricing. The final report of that investigation was delivered to the Government in April 1997 and gazetted, after tabling in Parliament, in June 1997. It recommended a series of principles to be adopted in relation to future water and sewerage pricing in South Australia. For further discussion see section 4.3.

3.2 COMPETITIVE NEUTRALITY

This section provides the Government's annual report for the 12 months to December 1997 on the implementation of the competitive neutrality policy and principles, as required by Clause 3 (10) of the CPA.

As outlined in the Government's competitive neutrality policy statement of June 1996, competitive neutrality principles will be progressively applied to the Government's significant business activities.

The basic competitive neutrality principles to be applied are corporatisation, tax equivalent payments, debt guarantee fees and private sector equivalent regulation. Where application of these four principles is inappropriate, the CPA specifies that prices charged by significant Government business activities should reflect full cost attribution. Competitive neutrality principles are to be applied to the extent that the benefits of so doing outweigh the costs.

Progress in Implementation

South Australia's Tax Equivalent Regime (TER) policy now extends to 21 Trading and Financial Enterprises and their subsidiaries as well as 16 business units of Government departments. Each of these entities is liable for Commonwealth income and sales tax equivalents as well as the full range of State taxes or their equivalent. In addition, Council rates or their equivalents will be introduced in 1998-99 to all entities subject to Commonwealth and State TERs.

It is not proposed at this stage to extend TER arrangements beyond the existing coverage in respect of non legally separate significant business activities. The Reciprocal Taxation Working Party (which supersedes the previous TER Standing Committee) has concluded that income tax does not have an important role in competitive neutrality. Further, in respect of sales tax, it is likely that reciprocal taxation arrangements will be introduced within two years for all governments, which would override NCP TER requirements for business activities.

Debt guarantee fees now apply to over 36 business activities. The guarantee fee is to be reviewed in 1998 to consider the appropriate credit rating interest margin for government businesses and commercial projects undertaken in government departments.

Work proceeded during 1997 on identification of significant business activities for competitive neutrality purposes and on application of relevant competitive neutrality principles. Table 1 summarises the status of application of particular competitive neutrality principles to specified public trading or financial enterprises in South Australia as defined by the Australian Bureau of Statistics. Commercial reforms are being considered for enterprises marked with an asterisk (*).

TABLE 1

Business enterprise	Tax Equivalent Regime	Debt Guarantee Fees	Corporatisation
ETSA Corporation (and subsidiaries)	Yes	Yes	Yes
SA Generation Corporation (trading as Optima Energy)	Yes	Yes	Yes
SA Water Corporation	Yes	Yes	Yes
SA Ports Corporation	Yes	Yes	Yes
Public Trustee - *Personal Trusteeship*	Yes	No debt	*
SA TAB - *totalizator betting*	Yes	No debt	to be considered for sale
Lotteries Commission of SA -- *Conduct of lotteries*	Yes	Yes	to be considered for sale
Homestart Finance	Yes	Yes	to be considered for sale
Enfield Cemetery Trust	to be considered	to be considered	*
West Beach Trust	Yes	Yes	*
SA Health Commission - IMVS	No	No debt	*
SA Health Commission - Medvet Science	No	No debt	Yes
SAGRIC International Pty Ltd	Yes	Yes	Yes
Dept for Administrative & Information Services - Forestry Plantation Products	Yes	No debt	*
Trans Adelaide	Yes	Yes	*
Trans Adelaide - *Austrics Subsidiary*	Yes	No debt	Yes
Trans Adelaide - *Hills Transit Subsidiary*	Yes	Yes	Yes
Adelaide Festival Centre Trust - *Theatre Hiring, Set Building, Bass Ticketing*	No	No debt	*
Adelaide Entertainment Centre	No	No debt	*
Adelaide Convention Centre	Yes	No debt	*

A range of other significant business activities within Government are being considered for application of competitive neutrality principles.

Competitive Neutrality Complaints

The *Government Business Enterprises (Competition) Act 1996* enables competitive neutrality complaints to be lodged and investigated and provides for the appointment of an independent Competition Commissioner for this purpose. In June 1997, principles of competitive neutrality were proclaimed under the Act. Subsequently, in August 1997, a Commissioner was appointed to investigate complaints referred to him by the Premier. In early 1998, the first such formal investigation under the Act commenced.

The Department of the Premier and Cabinet provides a secretariat for the complaints mechanism. It has prepared guidelines for potential complainants, and acts as the coordinating agency for responding to all competitive neutrality complaints across Government.

A relatively small number of written complaints has been received during 1997. There have also been telephone calls which did not proceed to a written complaint. Most complaints have involved relatively minor activities within large Government agencies. No complaints have been received thus far about the activities of the major State trading corporations (electricity, water etc). Table 2 provides details of written complaints received thus far.

TABLE 2

Complainant	Agency	Nature of Written Complaint	Status
Private home care provider	Office for the Ageing	Different requirements for volunteers versus private providers	Closed: falls outside guidelines
Magazine publisher	Arts	Insert into rival magazine without tender	Closed: falls outside guidelines
Consultant	SAGRIC Ltd	Pricing not cost reflective	Closed: appropriate competitive neutrality principles are applied
Health care provider	Human Services	Use of FBT exemption to arrange salary sacrificing in hospitals	Closed: very limited application in SA
Private plant nursery	Primary Industries	Plant propagation/sales	Competitive Neutrality principles to be applied consistent with policy statement

Complainant	Agency	Nature of Written Complaint	Status
Private child day care centre	Education, Training and Employment	Family day care competing with child care	Closed: Family day care is not a Government activity
Private gym	Industry and Trade	SA Sports Institute letting use of facilities to public	Advice prepared by the agency in response to the complaint is presently under consideration
Private animal sanctuary	Environment	Public nature reserve undercutting price	Formal reference to Competition Commissioner in early 1998

3.3 STRUCTURAL REFORM

No structural reform investigations, pursuant to Clause 4 of the CPA, were required to be undertaken in South Australia during 1997.

In February 1998, the South Australian Government announced a comprehensive asset sales program for Government business activities over the next few years. The sale of ETSA Corporation and Optima will involve changes to the market structure of the electricity industry and the implementation of a regulatory framework. The new arrangements will be consistent with the principles of National Competition Policy.

The Government is also considering the sale of other businesses including SA Lotteries Commission, the TAB, SA Ports Corporation, Homestart Finance, WorkCover and the Motor Accident Commission. NCP implications will be taken into account and appropriate structural and regulatory arrangements will be put in place as part of any proposed changes.

A scoping review of the Motor Accident Commission has been announced and a consultancy has been sought to provide advice on structural and other arrangements for Compulsory Third Party insurance provision in South Australia.

3.4 LEGISLATION REVIEW

This section provides the Government's annual report for the 12 months to December 1997 on the review of legislation that restricts competition, as required by clause 5(10) of the CPA.

Highlights

- completion of 33 reviews to date
- updating of review timetable
- distribution of guidelines for agencies
- identification of possible joint reviews

Reviews completed by December 1997

Table 3 lists the reviews that were scheduled to be completed in 1996 and 1997, and indicates whether the review has been completed and the status of any follow up action. Within each year, Acts are listed by portfolio. Of the 177 separate Acts in the current (May 1997) timetable, 43 were scheduled to have been reviewed by December 1997, and 33 such reviews have been completed. The 10 reviews outstanding need to be added to the 80 reviews due to be completed in 1998, the 36 in 1999 and 6 in 2000. A further 11 Acts have no year designated, in most cases because arrangements for joint or national reviews are still being negotiated. The *Biological Control Act 1986* has been removed from the timetable in consultation with the NCC and other jurisdictions because it contains no restrictions on competition.

Of the 10 reviews that are currently behind schedule, several are minor, underway, or are delayed due to factors outside South Australia's control (eg State review not commenced because potential for national review still being explored). Nevertheless, the slippage in the timetable is of concern given the magnitude of the review task scheduled for the remaining years. Steps are being taken to get the review program back on track.

Notwithstanding the slippage, several significant reviews were completed during the year, some of which are described below.

Cooper Basin (Ratification) Act 1975

An independent reviewer was appointed in April 1997 to review the Act and Indenture agreement. In addition to competition principles, the review was, in accordance with the CoAG Agreement of February 1994, to determine whether the Act and Indenture agreement constitute a barrier to free and fair trade in gas. The ACCC had previously expressed a view that the Act was anti-competitive and potentially in breach of the February 1994 Agreement due to the Act providing *Trade Practices Act* exemption to the AGL Letter of Agreement.

The legislative framework established by the Act and Indenture has underpinned commercial development of Cooper Basin gas reserves. Among other things, the Act provides *Trade Practices Act* exemption for a number of agreements; establishes rights with regard to construction of facilities and a particular form of production tenement; establishes the method for royalty calculation; and provides freehold title to land at Moomba.

In contrast to now, the gas industry in SE Australia in 1975 consisted of a monopoly supplier and a monopsonist purchaser, the State, in each of Adelaide and Melbourne. The States were heavily involved in the ownership of transmission, distribution, retail and producing assets.

An underlying issue in the review was the obligation of the State to honour existing contractual commitments (sanctity of contract) and the detriment suffered by the State in not honouring its obligations (sovereign risk). The review noted that the assessment of public benefits is not straightforward in the case of legislation which gives effect to, and is the result of, an agreement, as the benefits may have been enjoyed by the time of the review.

The purpose of the Act was to facilitate a major development in SA's Cooper Basin to exploit the State's petroleum reserves. That objective has been achieved, and it could be said that the benefits are past or historic. The review found, however, that even though the objective of the legislation has been achieved, there are substantial public benefits in continuing concessions and exemptions that have been granted previously. This is because to do otherwise can create uncertainty and lack of confidence in business dealings with Government. The agreement reached in 1975 reflected both the then Government's and

the Producers' assessment of the protections and due reward that should be given to the Producers for bearing the risk of the immense investment involved in the Cooper Basin development. For the Government to now resile from significant elements in the Act would be to unilaterally breach its solemn agreement.

These considerations of sanctity of contract and sovereign risk were crucial to the review's assessment and balancing of restrictions on competition in terms of the public interest.

The review report is now with the Government.

Barley Marketing Act 1993

Australia has a number of statutory marketing authorities with compulsory acquisition powers over certain crops in certain States. Under the *Barley Marketing Act*, the Australian Barley Board (ABB) controls barley and oats in SA and barley in Victoria. The Governments agreed that the review and reform of the *Barley Marketing Act* would be undertaken in two stages. Stage 1 was an independent review commissioned jointly by the SA and Victorian Governments from the Centre for International Economics, which produced a report that was released in December 1997.

The rationale for marketing crops through a producer-focused single desk is that it is expected to provide greater market power. The report reviewed the impact on export markets, and the community as a whole, of the current marketing arrangements. On the basis of its analysis it recommended

- deregulation of the domestic market for feed barley in SA and Victoria;
- deregulation of the domestic market for malting barley in SA and Victoria;
- retention of the ABB single desk for export barley sales for the shortest practicable transition period while new marketing arrangements are made;
- and deregulation of the oats market in SA.

As at 31 December 1997, negotiations were underway between the SA and Victorian Governments on terms of reference for stage 2. Since

then, as the single desk powers under the Act were due to sunset in June 1998, the two Governments have agreed to amend their respective Acts to continue the existing provisions for 12 months. Both Governments have indicated that the recommendations on domestic deregulation will be implemented at an early stage.

Casino Act 1997

During 1997, the legislation governing the Adelaide Casino was updated in preparation for the Casino's intended sale. The new Act maintained the existing restrictions on competition, namely that there can only be a single casino licence at any one time, and strict controls on equipment and staff. The latter are regarded as standard regulatory provisions given the cash-intensive nature of the business, and this summary focuses on the rationale established by the review for a monopoly licence.

The review was conducted by the Department of Treasury & Finance. It was based on a market analysis but also took account of social policy considerations which are fundamental to legislative issues associated with gambling.

The Adelaide Casino was established in 1985 as a central part of a high quality hotel and convention centre complex intended to provide new life to the city at night. Promotion of tourism has been a principal factor in the establishment of casinos by State and Territory Parliaments in Australia. An operator would be reluctant to commit significant resources to such a complex if the value of that investment could be reduced by entry of a competitor. Given the highly urbanised nature of SA, its low population growth and relatively weak drawing power for international tourists, it is highly unlikely that another substantial casino operation would be viable. If the market were left open with multiple licences available, penetration of the market by other operators might leave the State with the problem of absorbing the negative externalities created by a failed venture of the scale of the casino.

From a national perspective the Adelaide Casino operates in a market with many alternative gambling outlets. Not counting other forms of legal gambling, there were (as at 30 June 1997) 14 casinos and 138,000 gaming machines operating nationally. The per capita availability of casino and gaming machine product in SA is the third highest in

Australia, behind only NSW and the ACT where gaming machines have been allowed in hotels and clubs for a number of decades.

The gaming activities provided by the casino can be divided into three categories: gaming machines, gaming tables and the junket trade. The Adelaide Casino ceased its junket trade in 1996 in response to increased competition from overseas and interstate casinos. Most of the casino's current customers are local residents, for whom it is only one of many possible gambling or entertainment venues. Since 1994 it has faced very strong competition in its gaming machine operations from hotels and clubs which have quickly established their gaming machines as the largest segment of the gambling market in SA. The Adelaide Casino competes with 10,451 gaming machines in hotels and clubs across the State, with lotteries, the TAB and other forms of entertainment. The competitive pressures on the casino are clearly reflected in falls over the last few years in its employment and profitability, with expenditure on this form of gambling falling by $40 million between 1993/4 and 1995/6, a period in which expenditure on all forms of gambling increased by $237 m.

While the single licence provision is a barrier to entry to a segment of the market, whether it is also a barrier to competition is arguable. Barriers to competition occur when legal restrictions reduce the number of competitors below the number that would survive on the basis of efficient cost structures. Based on population, attendance, earnings and cost information contained in the review, it is likely that the market could not successfully sustain another casino operation within the State. Questions have already been raised about the financial viability of some of Australia's regional casinos.

The maintenance of a single licence in the *Casino Act 1997* clearly reflects community sentiment. Arrangements to control gambling are, in fact, not designed to be pro-competitive, ie, they do not seek to achieve the emergence of a free market in gambling services where the level of, types of and participants in gambling activity would be determined by commercial forces of supply and demand. Nevertheless the analysis showed that the restriction to a single licence does not result in significant diminution of competition in the relevant market.

Updating of timetable

In May 1997 the Government published an updated version of the timetable that was first published in June 1996. The revised version took account of

- changes to the timing of reviews;
- redesignation of some potential national reviews as State reviews;
- addition of four pieces of legislation passed between April 1995 and March 1997 which contained non-trivial restrictions on competition that had not been subject to a public interest test.

Following submission of this report, the timetable will again be updated to reflect further changes to the timing of reviews and to administrative arrangements following the October 1997 State election.

Guidelines for agencies

Guidelines to assist agencies with competition policy reviews of legislation were prepared by the Crown Solicitor's Office in conjunction with the Department of the Premier & Cabinet, and distributed in February 1998. The guidelines provide more detailed advice than was contained in the Guidelines for Ministers dated June 1996, and in that sense complement rather than replace the earlier guidelines.

While the Competition Principles Agreement makes no distinction between serious restrictions and those which are of a minor nature, the State has adopted a pragmatic, policy approach to the reform of trivial restrictions. The guidelines also take a pragmatic approach to the issue of review independence, and suggest agencies consider carefully the value that will be added to the review process by using external consultants before committing themselves to the expense. Experience has shown that the legislation review timetable includes Acts which are of minor significance in terms of effect on competition, and it is important that scarce review resources are used to best effect. Though written to assist agencies to conduct reviews under Clause 5 of the Competition Principles Agreement, much of the advice in the guidelines is expected to be of more general applicability.

Identification of possible joint reviews

National reviews have obvious scope to make more efficient use of resources and produce more consistent outcomes than is the case if each of up to nine jurisdictions conduct separate reviews. The efficiency gains are of particular interest to a smaller jurisdiction like South Australia.

In its June 1996 timetable, SA identified 47 Acts which it was understood might be reviewed with other jurisdictions. It has, however, proven a slow and difficult process for jurisdictions to reach agreement on national reviews. In retrospect, it is perhaps unfortunate that, at the start of the implementation of national competition policy, the National Competition Council did not play a more active role in encouraging joint legislative reviews. The reality is, however, that the review program is now well underway, and coordination between jurisdictions becomes more rather than less difficult as time progresses and particular reviews are completed.

In the absence of a strong program of national reviews, South Australia has explored other ways to provide some consistency of review outcomes, and use resources efficiently. Proposals are being considered to group together within a single review: 11 Acts governing professional occupations; 3 Acts governing gambling; 2 trade licensing Acts; and 3 Acts concerning real estate occupations.

TABLE 3

1996

Portfolio	Acts	Nature of Restriction	Comment
Consumer Affairs	Liquor Licensing Act 1985	Barrier to market entry and restricts market conduct.	Partial deregulation. This Act repealed by Liquor Licensing Act 1997.
Environment and Heritage	Catchment Water Management Act 1995	Restrict market conduct.	This Act repealed by Water Resources Act 1997.
Environment and Heritage	Water Resources Act 1990	Restrict market conduct.	This Act repealed by Water Resources Act 1997.
Government Enterprises	State Clothing Corporation Act 1977	Protects sheltered workshops.	Corporation sold in 1995-96. Amendment Act to allow 'winding up' has been assented to. Amendment Act repeals most of original Act including all reference to sheltered workshops.
Health	Tobacco Products Control Act 1986	Restricts market conduct.	Repealed by Tobacco Products Regulation Act 1997.
Industry, Trade and Tourism	Australian Formula One Grand Prix Act 1984	The Board is not subject to the same laws as private sector competitors.	Authority dormant. No further projects or action expected. The Act should not be repealed until last money paid by Victoria in July 2000.
Industry, Trade and Tourism	Industries Development Act 1941	Section 24 may be in conflict with Trade Practices Act.	Review underway.
Primary Industries, Natural Resources & Regional Development	Apiaries Act 1931	Barrier to market entry and restricts market conduct.	This Act will be repealed by Schedule 2 Livestock Act 1997 when it is proclaimed.
Primary Industries, Natural Resources & Regional Development	Branding of Pigs Act 1964	Barrier to market entry and restricts market conduct.	This Act will be repealed by Schedule 2 Livestock Act 1997 when it is proclaimed.

TABLE 3

1996

Portfolio	Acts	Nature of Restriction	Comment
Primary Industries, Natural Resources & Regional Development	Brands Act 1933	Barrier to market entry and restricts market conduct.	This Act will be repealed by Schedule 2 Livestock Act 1997 when it is proclaimed.
Primary Industries, Natural Resources & Regional Development	Cattle Compensation Act 1939	Barrier to market entry and restricts market conduct.	This Act will be repealed by Schedule 2 Livestock Act 1997 when it is proclaimed.
Primary Industries, Natural Resources & Regional Development	Deer Keepers Act 1987	Barrier to market entry and restricts market conduct.	This Act will be repealed by Schedule 2 Livestock Act 1997 when it is proclaimed.
Primary Industries, Natural Resources & Regional Development	Electrical Products Act 1988	Identified at a national level.	Regulations consistent with model Regulations developed by national body proclaimed and operating.
Primary Industries, Natural Resources & Regional Development	Foot and Mouth Disease Eradication Fund Act 1958	Barrier to market entry and restricts market conduct.	This Act was repealed by Livestock Act 1997.
Primary Industries, Natural Resources & Regional Development	Poultry Meat Industry Act 1969	In conflict with Trade Practices Act.	Processors applied for authorisation from the ACCC. Process nearing completion.
Primary Industries, Natural Resources & Regional Development	Stock Act 1990	Barrier to market entry and restricts market conduct.	This Act was repealed by Livestock Act 1997.
Primary Industries, Natural Resources & Regional Development	Swine Compensation Act 1936	Barrier to market entry and restricts market conduct.	This Act will be repealed by Schedule 2 Livestock Act 1997 when it is proclaimed. Compensation Fund can run for 2 years after assent.

1997

Portfolio	Acts	Nature of Restriction	Comment
Arts	South Australian Museum Act 1976	Restricts market conduct in relation to meteorites.	Review complete.
Attorney-General	Friendly Societies Act 1919	Restricts market conduct.	Repealed and replaced by Friendly Societies (SA) Act 1997.
Attorney-General	Starr-Bowkett Societies Act 1975	Identified at national level.	Payments through these societies almost complete. It is expected the Act will be repealed upon dissolution of 2 remaining societies.
Education, Children's Services and Training	Construction Industry Training Fund Act 1993	Restricts market conduct.	Report of Review of Act tabled in Parliament 26/2/98. Some outstanding issues under consideration.
Education, Children's Services and Training	Vocational Education, Employment and Training Act 1994	Identified at national level.	No longer a national review, needs to be re-scheduled for state review for 1998.
Environment and Heritage	Heritage Act 1993	Restricts market conduct.	Review underway.
Government Enterprises	Employment Agents Registration Act 1993	Barrier to market entry.	Review underway.
Government Enterprises	Manufacturing Industries Protection Act 1937	Exempts some industries from legal requirements applying to competitors.	Overtaken by Environment Protection Act 1993. Cabinet Submission for repeal underway.
Government Enterprises	Shearers Accommodation Act 1975	Restricts market conduct.	Cabinet Submission for repeal underway.
Industry, Trade and Tourism	Local Government Act 1934	Restricts market conduct and product and service standards.	Review underway.
Industry, Trade and Tourism	Outback Areas Community Development Trust Act 1978	Restricts market conduct.	Crown Solicitor's Office found **no** restrictions to competition.

1997

Portfolio	Acts	Nature of Restriction	Comment
Primary Industries, Natural Resources & Regional Development	Agricultural and Veterinary Chemicals (South Australia) Act 1994	Identified at national level.	A national review for national registration issues and a state review for issues related to use. State review includes Stock Foods Act 1941 and Stock Medicines Act 1939.
Primary Industries, Natural Resources & Regional Development	Agricultural Chemicals Act 1955	Barrier to market entry and restricts market conduct.	Review report complete.
Primary Industries, Natural Resources & Regional Development	Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986	Barrier to market entry and restricts market conduct.	Review completed and combined with Soil Conservation and Land Care Act 1989. Report to CabinetSeptember 1996. Draft amending legislation under consideration by government.
Primary Industries, Natural Resources & Regional Development	Barley Marketing Act 1993	Monopoly powers to the Australian Barley Board.	Review complete.
Primary Industries, Natural Resources & Regional Development	Cooper Basin (Ratification) Act 1975	Authorises behaviour contrary to Trade Practices Act.	Review complete.
Primary Industries, Natural Resources & Regional Development	Natural Gas (Interim Supply) Act 1985		To be repealed.
Primary Industries, Natural Resources & Regional Development	Natural Gas Pipelines Access Act 1995	Does not apply equally to all pipelines.	The National Gas Access legislation repeals this Act.
Primary Industries, Natural Resources & Regional Development	Soil Conservation and Land Care Act 1989	Restricts market conduct.	Review combined with Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986. Report to Cabinet September 1996. Amendments made under the Soiland Land Conservation Care Act (Amendment) Act.

1997

Portfolio	Acts	Nature of Restriction	Comment
Primary Industries, Natural Resources & Regional Development	Stock Medicines Act 1939	Barrier to market entry and restricts market conduct.	Review report complete.
Transport and Urban Planning	Architects Act 1939	Identified at national level.	To be re-scheduled for review in 1998.
Transport and Urban Planning	Commercial Motor Vehicles (Hours of Driving) Act 1973	Identified at national level.	Review complete. South Australia will implement national legislation.
Treasurer	Advances to Settlers Act 1930	Restricts market conduct. This is expected later than 2000.	No new business. Act for repeal when last repayment made.
Treasurer	Benefit Associations Act 1958	Restricts market conduct.	Review not started.
Treasurer	Loans for Fencing and Water Piping Act 1938	Restricts market conduct.	No new business. Act for repeal when last repayment made. This is expected in 2000.
Treasurer	Loans to Producers Act 1927	Restricts market conduct.	No new business. Act for repeal when last repayment made. This is expected in 2000.

3.5 THIRD PARTY ACCESS

The South Australian Government has introduced or enacted legislation to provide for third party access to services provided by means of significant infrastructure facilities in three instances during 1997.

Bulk Loading Plants

To facilitate the sale of the SA Government's Bulk Loading Plants at the ports of Adelaide, Port Lincoln, Port Pirie, Port Giles and Thevenard, the Government enacted the *South Australian Ports (Bulk Handling Facilities) Act 1996*. This Act, and the terms of the sale, provide that the purchaser must provide access to the plants to other shippers of non-toxic, safe bulk products on terms to be agreed or, failing agreement, on fair commercial terms to be determined by arbitration.

The regime established also provides for any disputes over access to be referred to arbitration, and for any decision of an arbitrator to grant access to the bulk loading plants, and the terms and conditions of that access, to be enforced as if there was a contract between the parties.

Gas Pipelines

South Australia has worked closely with other jurisdictions over several years to develop an acceptable national framework for access to gas pipelines, both transmission and distribution. This framework is embodied in the Natural Gas Pipelines Access Agreement, endorsed by CoAG in November 1997. More details about this framework are contained in Section 4.2 of this report. It is noted that commencement of the national regime (expected prior to June 1998) will override the existing State-based access regime for transmission pipelines, established through the *Natural Gas Pipelines Access Act 1995*. That Act will be repealed after a transitional period.

Rail Facilities

At the time that the Federal Government moved to sell Australian National Railways, the South Australian Government resolved to bring forward legislation to, inter alia, establish an access regime which encouraged "best practice" service quality and price through

competition, and reduced the possibility of exploitation of monopoly powers by a privatised owner or operator of railway services.

The access regime established in the *Railways (Operations and Access) Act 1997* adopts a similar approach to that of the *Natural Gas Pipelines Access Act 1995*, namely a "light handed" administrative approach aimed at efficient resolution of disputes. While tailored to the specific needs of railways, it draws on the administration and arbitration processes of the gas legislation.

3.6 LOCAL GOVERNMENT

Significant progress was made during 1997 in application of competition principles to the Local Government sector in South Australia, consistent with the Statement on the Application of Competition Principles to Local Government (the so-called Clause 7 Statement) published in June 1996. This progress has been made in the midst of a significant boundary reform program in Local Government in this State, which has seen the number of Councils fall from 118 to 69 at the end of 1997.

Competitive Neutrality in Local Government

Analysis of information provided by Councils indicates that the South Australian Local Government sector is not generally involved in large scale business activities, with the exception of the Adelaide City Council.

A total of six significant business activities with revenue greater than $2m per annum have been identified. Five of these businesses are conducted by the Adelaide City Council. The relevant competitive neutrality principle to be applied to these activities is full cost attribution pricing.

A larger number of smaller business activities has also been identified, covering a wide range of activities, including caravan parks, recreation centres and aged care facilities. The relevant principle to be considered for application to these smaller activities is full cost attribution pricing.

A mechanism has also been established to handle any competitive neutrality complaints received in relation to Local Government business activities, consistent with the Clause 7 statement of June 1996.

Any complaints about the activities of a Council in relation to competitive neutrality will be referred to that Council in the first instance. It is understood that no formal written complaints were received in 1997. If, after investigation by either the Council or, where necessary, a panel of independent experts established by the Local Government Association, the complainant is dissatisfied with the response, the matter can be referred to the State Government and investigated under the State competitive neutrality complaints mechanism described in section 3.2 of this report.

The linkage between the State and Local Government complaints mechanisms was made explicit in the proclamation of competitive neutrality principles made on 12 June 1997 pursuant to the *Government Business Enterprises (Competition) Act 1996*. As Councils become accountable for their decisions through the implementation process, they are expected to keep detailed records of complaints made about competitive neutrality, the steps taken and the outcome of any investigation.

Other Activities

By the end of 1997, each Council had identified any by-laws that may restrict competition and informed the State of its timetable for the review of those by-laws, consistent with the Clause 7 Statement. Guidelines for the review of by-laws were issued to Councils in May 1997. All by-laws in South Australia are subject to a seven year sunset clause. This requires a comprehensive review at the time of sunsetting, including the issue of compliance with National Competition Policy.

The Local Government Association has conducted a survey of all Councils to ascertain their training requirements in relation to competition policy. The feedback from the survey will be used to design a series of workshops for elected members, managers and practitioners in the first half of 1998 to assist Councils fulfil the requirements of the Clause 7 statement.

Proposals for the comprehensive review of the *Local Government Act 1934* continued in preparation during 1997. Features of the proposed new legislation relating to competition policy implementation are as previously reported.

Consultation drafts will be released for public comment in the first half of 1998. A brief consultation paper has been prepared for issue with the draft Local Government Bills, identifying those aspects of the legislation which may have the potential to restrict competition, namely licensing the use of public land, requiring external auditors and valuers to be qualified, and the powers and processes for making by-laws, and inviting public comment.

The effectiveness and implementation of the arrangements set out in the Clause 7 Statement will be reviewed by State and Local Government before December 1998.

4. RELATED REFORMS

The Agreement to Implement National Competition Policy and Related Reforms makes provision of specified financial assistance by the Commonwealth conditional on the States making satisfactory progress with the implementation of the requirements of the Conduct Code Agreement and Competition Principles Agreement and also with implementation of related reforms which have been the subject of separate CoAG agreements. These related reforms include: establishment of competitive national electricity market national framework for free and fair trade in gas strategic framework for the efficient and sustainable reform of the Australian water industry road transport reforms.

4.1 ELECTRICITY

Further significant progress was made during 1997 in preparing the State's electricity supply industry for the National Electricity Market (NEM), due to commence in 1998 (currently scheduled for 24 May).

Major activities included:

- Commencement of trading of SA Generation Corporation (trading as Optima Energy) from 1 January 1997, following its separation from ETSA Corporation.

- Establishment of the Technical Regulator, pursuant to the *Electricity Act 1996*, from January 1997. The regulatory functions are performed by the Office of Energy Policy. Licences will be issued by the Regulator to those intending to be involved in electricity generation, transmission, distribution and retailing. Interim licences have already been issued to ETSA and Optima Energy, and full licences to Western Mining Corporation as well as to various local suppliers to country areas not connected to the regional grid. Licensees must meet the necessary safety, technical and commercial criteria, including prudential requirements. The regulations are designed to encourage entrants into the new competitive industry.

Those electricity entities which achieve registration with the National Electricity Market Management Company as wholesale market participants can expect a 'fast track' to a South Australian licence with the minimum of additional requirements.

- Enactment in late 1997 of amendments to the *Electricity Act 1996* to establish price regulation provisions including establishment of a Price Regulator for electricity network prices.

- Announcement of a timetable which reflects the Government's commitment to rapid contestability in the electricity market:

Date:	24/5/98 or start of NEM	1/7/98	1/1/99	1/1/2000
Annual GWh:	>20	4-20	0.75-4	0.16-0.75

- Reviewed various options for the supply of additional peaking capacity (200 MW required by 1999/2000) including a possible new interconnect between SA and NSW, expansion of capacity at Torrens Island Power Station through combined cycle conversion investment, and new ventures (eg cogeneration) by energy enterprises currently operating in the State.

In early 1998, the Government announced its intention to proceed with the sale and reform of ETSA and Optima, with the likelihood of further structural change associated with the sale process. At the same time, the Government announced its commitment to the establishment of an independent price regulator.

4.2 GAS

As outlined in Section 3.5, CoAG endorsed the Natural Gas Pipelines Access Agreement (the Agreement) in November 1997. The Agreement establishes the basis for a National Third Party Access Code (the Code) for Natural Gas Pipeline systems, both transmission and distribution. The Agreement stipulated that the Code was to be given legal effect by a uniform Gas Pipelines Access Law, with South Australia as the lead legislator.

The *Gas Pipelines Access (South Australia) Act 1997* was enacted by the South Australian Parliament and received the Governor's assent in

December 1997. The Gas Pipelines Access Law and the Code are set out in schedules to that Act. Other jurisdictions will seek to enact legislation in the first half of 1998 which applies the Gas Pipelines Access Law as a law of that jurisdiction. In the case of Western Australia, the legislation will have an essentially identical effect to the Gas Pipelines Access Law.

The *Gas Pipelines Access (South Australia) Act 1997* is scheduled to come into operation after the Commonwealth legislation has received the Governor-General's assent. The Commonwealth legislation is integral to the operation of the National Access Regime.

In July 1997, the *Gas Act 1997* came into effect, establishing a new regulatory regime for the gas industry. The Act provides for separate licences to operate pipelines and to undertake gas retailing, thereby ensuring effective separation of these activities. Again, the Office of Energy Policy performs the role of Technical Regulator. A contestability timetable has been established for the gas sector, similar to that for electricity, as follows:

Date:	April 1998	1/7/99	1/7/2000
Annual TJ:	>100	10-100	<10 (non domestic)

The *Gas Pipelines Access (South Australia) Act 1997* establishes an independent pricing and access regulator for gas distribution pipelines in South Australia. The Australian Competition and Consumer Commission will provide for national regulation of transmission pipelines.

Section 3.4 of this report summarises progress in reviewing the *Cooper Basin (Ratification) Act 1975*. This review was undertaken in fulfilment of CPA legislative review obligations and to establish whether or not the Act established barriers to free and fair trade in gas.

4.3 WATER

Further progress has been made in South Australia in implementing the water reform commitments of CoAG, in particular those embodied in the strategic Water Reform Framework as set out in the CoAG Water Resource Policy Communique of February 1994.
In brief, progress in SA has included:

- The South Australian Government transferred all of the Government Highland Irrigation Districts to the self-managing Central Irrigation Trust on 1 July 1997.

- The *Water Resources Act 1997* came into operation on 2 July 1997. The new Act, which repealed both the *Water Resources Act 1990* and the *Catchment Water Management Act 1995*, provides for a comprehensive system of transferable property rights for water allocations in accordance with the CoAG requirements. It incorporates principles of ecologically sustainable development, and provides for:

  holistic water resources management;

  water for the environment;

  devolving greater responsibility for water resources management to local communities;

  management of all water resources through a hierarchy of water management plans.

- The SA Environment Protection Authority is currently preparing an Environment Protection (Water Quality) Policy under the *Environment Protection Act 1993,* consistent with the national framework provided by the National Water Quality Management Strategy. This policy will apply to South Australia's inland (surface and ground), estuarine and marine waters.

- Two projects, on which substantial progress was made during 1997, address the sustainable use of urban water, including stormwater. These are the *Spencer Region Strategic Water Management Plan* and the *Water Sustainability in Urban Areas Project.*

- Construction work commenced in early 1998 on the Bolivar-Virginia pipeline project which will result, in the first instance, in the reuse of up to 30 000 megalitres of sewerage effluent (or approximately 35% of Adelaide's total effluent) from the Bolivar Wastewater Treatment Plant for irrigation.

- The feasibility of using effluent from the Christies Beach Wastewater Treatment Plant for irrigation in the Willunga Basin has been investigated, and in December 1997, the South Australian Government approved the terms and conditions of an agreement with

a private consortium to take treated effluent from the treatment plant for irrigation purposes in the Willunga area.

- *Watercare - A Curriculum Resource for Schools* is a three stage project being undertaken by the Department for Environment, Heritage and Aboriginal Affairs and the Department of Education, Training and Employment to develop curriculum material for Reception through to Year 12.

As noted in section 3.1, in response to the National Competition Policy and as provided for in the *Government Business Enterprises (Competition) Act 1996,* SA Water Corporation was declared for independent prices oversight investigation in October 1996. A detailed report outlining the recommendations of the Competition Commissioner relating to water and sewerage pricing was released on 14 April 1997.

The Government has responded to the report's recommendations as follows :

- A two tier pricing system has replaced the three tier system for 1998-99 for residential and business customers.

- Property values are being phased out for commercial customers.

- The water price structure adopted for 1998-99 reflects an improved balance between fixed and variable charges.
- Cross-subsidies between residential customers and commercial customers which have characterised more traditional water and sewerage pricing schemes across Australia are gradually being removed.

The following table clearly identifies the changes in the water pricing structure that have been enacted for 1998-99.

WATER PRICES ($)		
Residential Customers	1997-1998	1998-1999
Annual Access Charge	131	119
Water Use ($/ KL)		
0-125 KL	0.25	0.35
125-400KL	0.90	0.89
400KL plus	0.92	0.89
Business Customers		
Annual Access Charge	131	131
Water Use ($/KL)		
0-125KL	0.25	0.35
125KL plus	0.90	0.88

4.4 ROAD TRANSPORT

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

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

As previously reported, South Australia implemented the national regime of heavy vehicle charges during 1996. During 1997, progress on the other agreed modules has occurred in relation to

- passage of dangerous goods legislation;
- implementation of administrative arrangements for permitting vehicles 4.6 m high on roads (vehicle operations);
- introduction of road trains into northern Adelaide (vehicle operations);
- development work on national driver licence classes (should be in operation by May 1998).

In February 1997, the Ministerial Council on Road Transport (MCRT) considered a further package of reforms, known as the Second Heavy Vehicle Package. This consists of a range of issues for further policy development. Jurisdictions are continuing to develop the details of

these proposals. At the time of the MCRT meeting, notional implementation dates were assigned to these reforms, but it is not possible at this stage to predict firm implementation dates, given that the final details of the reforms have not yet been agreed.

These reforms are not considered to be part of the "agreed package of road transport reforms", as described in the Conditions of Payment attached to the Agreement to Implement the National Competition Policy and Related Reforms, since the reforms to be implemented (if any) are still under investigation and have not yet been agreed. They are set out here simply for information.

South Australia has taken the following steps in relation to these further reforms

- increased truck and dog trailer mass ratios and mass limits;
- short term registration;
- information on driver offences and licence status (with driver consent, as required for privacy reasons).

5. BIBLIOGRAPHY

The following three Intergovernmental Agreements were endorsed by Heads of Government on 11 April 1995:

Conduct Code Agreement

Competition Principles Agreement

Agreement to Implement the National Competition Policy and Related Reforms.

The following document summarises the NCC's 1st Tranche Assessment for all jurisdictions.

Assessment of State and Territory Progress with Implementing National Competition Policy and Related Reforms - June 1997

Copies of these and other documents on aspects of NCP are available from the National Competition Council in Melbourne, telephone (03) 9285 7474.

Relevant documents concerning NCP implementation in SA include:

Competitive Neutrality Policy Statement, June 1996

Structure of Government Business Activities, March 1995

Review of Legislation which Restricts Competition - timetable, June 1996 (updated May 1997)

Community Service Obligations - Policy Framework, December 1996

Clause 7 Statement on the Application of Competition Principles to Local Government under the Competition Principles Intergovernmental Agreement, June 1996

Water and Sewerage Pricing for SA Water Corporation, December 1996.

Report to the National Competition Council - Implementation of National Competition Policy and Related Reforms in SA - March 1997

Water and Sewerage Pricing for SA Water Corporation - Final Report of investigation under the Government Business Enterprises (Competition) Act 1996 - June 1997

Government Business Enterprises (Competition) Act 1996, Section 16: Principles of Competitive Neutrality Proclamation by the Governor - June 1997

A Guide to the Implementation of Competitive Neutrality Policy - February 1998

Guidelines paper for agencies conducting a legislation review under the CoAG Competition Principles Agreement - February 1998.

Copies of each of these publications are available from the Microeconomic Reform Branch, Department of the Premier and Cabinet, telephone (08) 8226 0903.

Additional Information Supplied by South Australia in March 1998

Report on Implementation of the Competition Principles Agreement in Local Government in South Australia

Office of Local Government - March 1998

1 INTRODUCTION - THE CLAUSE 7 STATEMENT

Under Clause 7 of the Competition Principles Agreement (CPA), each State and Territory is responsible for applying competition principles to local government, in consultation with local government.

In this State, the Department of Premier and Cabinet (DPC) has carriage of coordinating compliance with the CPA, and reporting on implementation to the National Competition Council (NCC). The Office of Local Government (OLG) is providing assistance in gathering information about implementation by local government.

A joint State and Local Government working group developed the "Clause 7 Statement" (the Statement on the Application of Competition Principles to Local Government), which was published in June 1996. This approach is consistent with the principles set out in the Memorandum of Understanding between the State Government and the Local Government Association (LGA), as is the prominent role of the LGA in the implementation process.

The Clause 7 Statement anticipates that most decisions on the implementation of the CPA will be taken by individual Councils. The most important areas for Councils are the application of competitive neutrality principles to significant business activities, and the review and reform of by-laws that may restrict competition.

The Statement contains an implementation timetable. In recognition of the remarkable success of the Local Government structural reform program initiated in South Australia in 1995, and the resulting workload for newly amalgamated Councils, the completion date for the first tasks was extended, with the agreement of the NCC, from June 1997 to September 1997.

2 PUTTING THE CLAUSE 7 STATEMENT INTO EFFECT

2.1 Significant Business Activities

By 30 September 1997 each Council identified all significant business activities which it conducts and determined which competitive neutrality principles were to be applied to any category one business activities (those with an annual revenue over $2 million, or deploying assets with a value over $20 million).

The LGA is responsible under the Clause 7 Statement for developing guidelines to assist Councils and, consistent with the joint and consultative approach adopted within the State, has played a key role in providing information and support to Councils.

A consulting firm with relevant expertise was engaged to assist, with input from relevant State agencies, in the preparation of a comprehensive set of guidelines to assist Councils to identify significant business activities and apply principles of competitive neutrality to those activities. The guidelines included background information, guidance on process, and models for application of the principles.

An additional service to Councils was provided in the form of a consultant retained to provide telephone advice and undertake site visits as required. Over 90 percent of Councils sought and received advice from this source.

A circular was developed, with assistance from the consultant, by the LGA, OLG and DPC relating to the requirements for the current reporting period. The circular also contained a draft model competitive neutrality complaints mechanism suitable for councils to adapt or adopt in full, and suggested formats for the recording and reporting of action taken in response to complaints.

The OLG is assisting DPC by receiving and monitoring Council reports and consolidating this information into a suitable form for incorporation into the whole of State report. The Office also has a role in assisting DPC to understand the practical implications of these reforms for Councils in the context of the overall Local Government reform program.

2.2 By-laws

By 30 September 1997 each Council identified by-laws that may restrict competition and informed the State of its timetable for the review and, where appropriate, reform of the by-laws so identified before the end of the year 2000.

The LGA's responsibility under the Clause 7 Statement for developing guidelines includes the review of by-laws. The 'Guidelines for the Review of By-laws' were issued in May 1997 and covered tasks required for the entire review period. An additional circular in August 1997 covered the immediate tasks and included suggestions as to which common by-laws were likely to restrict competition, a standard reporting format, and advice about further assistance available to Councils, including legal advice.

2.3 Complaints mechanism

The State Government has established a competitive neutrality complaints mechanism (with Secretariat in the Department of Premier and Cabinet) to receive and consider complaints made about the implementation of national competition policy by both State and Local Governments.

The Secretariat for the complaints mechanism provides information and advice to members of the business community about the implications of the policy. Formal complaints about competitive neutrality are referred, as appropriate, to an independent Commissioner, created under the Government Business Enterprises (Competition) Act 1996, for review.

It was agreed between State and Local Government that any complaints about the activities of a Council in relation to competitive neutrality would be referred to that Council in the first instance.

The Clause 7 statement advises Councils to establish their own formal mechanism to handle complaints, and a draft model was prepared to provide guidance. It is envisaged that the model complaints mechanism will be subject to continuous improvement over time.

In circumstances where a review of a decision or investigation of a complaint within a Council is impossible, due, for example, to its small

size and consequent lack of distance of the reviewer from the original decision maker, the LGA has established a panel of independent experts to which complaints can be referred with the consent of the complainant.

If, after investigation by either the Council or, where necessary, the independent panel, the complainant is dissatisfied with the response, the matter can be referred to the State Government and investigated under the process mentioned above.

The linkage between the State and Local Government complaints mechanisms was made explicit in a proclamation made on 12 June 1997 pursuant to the Government Business Enterprises (Competition) Act 1997 (refer Attachment 1).

Councils become answerable for complaints about competitive neutrality progressively as implementation occurs in accordance with the timetable.

The establishment of complaints mechanisms or grievance procedures is not new to local government in this State and there are good examples operating which will help inform the preparation of future model mechanisms. This practice is being given due recognition in the current review of the Local Government Act 1934. The consultation draft for replacement legislation seeks to entrench legislatively a requirement that all Councils establish formal grievance procedures, which would include procedures for addressing competition related-complaints.

3 OUTCOMES OF THE PROCESS TO DATE

All Councils responded professionally and promptly with the requested material for both by-laws and business activities. Reports on progress as at December 1997 are set out below.

3.1 Business Activities

Analysis of the reports submitted by Councils confirms the picture painted by Australian Bureau of Statistics (ABS) data that the South Australian Local Government sector is not generally involved in large

scale business activities, with the exception of the Adelaide City Council (the local governing body for the central business district in Adelaide).

During this reporting period, a total of six Category One businesses have been identified. Five of these businesses are conducted by the Adelaide City Council. The relevant competitive neutrality principles to be applied to these activities is full cost attribution pricing. The remaining Category One activity is a fully commercial cemetery operation run jointly by two Councils via a separately incorporated controlling authority. Further information about these business activities and the principles of competitive neutrality to be applied to them is at Attachment 2.

Clause 4 of the proclamation at Attachment 1 makes reference to the Local Government Finance Authority. This body is a statutory authority incorporated under the *Local Government Finance Authority Act 1983.* It is subject to a tax equivalent regime and pays debt guarantee fees to the State Treasurer.

A total of 49 Category Two business activities were identified by thirty councils covering a wide range of activities, with caravan parks, private works, recreation centres and aged care facilities occurring most frequently. A table summarising Category Two activities is at Attachment 3. The relevant principle to be considered for application to the identified Category 2 activities is full cost attribution pricing, consistent with the timetable outlined in the Clause 7 Statement.

Attachment 4 comments on the current status of various minor electricity undertakings in South Australia which at one time were under Local Government control.

3.2 By-laws

Of the 69 Councils in this State, 6 do not have any by-laws. Attachment 5 summarises, for all Councils, the number of by-laws as at December 1997, the number of by-laws which may restrict competition, and the year or years the Council plans to review all by-laws.

Two councils are allowing their by-laws to lapse on 1 January 1998, under the sunset clause of the *Local Government Act 1934,* and have indicated that they will ultimately draft new by-laws.

There was an apparent inconsistency in the return with some Councils identifying particular by-laws as potentially affecting competition and others not. This was pursued with a number of Councils, all of which responded by confirming their original decision.

This can be explained by the titles used for by-laws; the same generic title does not necessarily mean the same content, practice or application. For example, a "Moveable Signs" by-law for one Council may focus upon the size, position and content of signs, and therefore have the potential to restrict competition. Alternatively, another Council's "Moveable Signs" by-law may be primarily concerned with pedestrian safety and therefore unlikely to possess implications for restriction of competition.

All by-laws in South Australia are subject to a sunset clause after seven years. They are then legislatively reviewed at which time the issue of complying with National Competition Policy must be addressed.

4 THE NEXT STEPS IN LOCAL GOVERNMENT

4.1 Training

The LGA has conducted a survey of all Councils to ascertain their training requirements in relation to competition policy. The feedback from the survey will be used to design a series of workshops for elected members, managers and practitioners in the first half of 1998 to assist Councils fulfil the requirements of the clause 7 statement.

It is anticipated that the workshops will be addressed by officers from relevant State Government Departments, the LGA and expert consultants.

4.2 Newsletters

A series of newsletters for Councils is to be produced jointly by the LGA and the OLG to provide a forum for information dissemination and sharing.

4.3 Reporting

The expert consultant has been retained to continue to provide a telephone service to Councils and to review and revise the reporting formats though which councils provide information to the State. This will include, for the next reporting period, the principles of competitive neutrality to be applied to category 2 business activities.

4.4 Complaints

As Councils become accountable for their decisions through the implementation process, they are expected to keep detailed record of complaints made about competitive neutrality, the steps taken and the outcome of any investigation. The reporting formats will require Councils to provide an account of complaints and outcomes to the OLG. In addition to fulfilling reporting requirements, this information can be used in an appropriate form for Councils as a resource on how to deal with complaints.

5 *THE LOCAL GOVERNMENT ACT REVIEW*

Proposals for the comprehensive review of the *Local Government Act 1934 (SA)* continued in preparation during 1997. Features of the proposed new legislation relating to competition policy implementation are as previously reported.

Consultation drafts will be released for public comment in the first half of 1998. A brief consultation paper has been prepared for issue with the draft Local Government Bills, identifying those aspects of the legislation which may have the potential to restrict competition, namely licensing the use of public land, requiring external auditors and valuers to be qualified, and the powers and processes for making by-laws, and inviting public comment.

The effectiveness and implementation of the arrangements set out in the Clause 7 Statement will be reviewed by State and Local Government before December 1998.

List of Attachments

Attachment 1	Proclamation of Competitive Neutrality Principles, 12 June 1997
Attachment 2	Category One business activities.
Attachment 3	Category Two business activities
Attachment 4	Electricity undertakings and Local Government in SA.
Attachment 5	By-laws with the potential to restrict competition

Attachment 2 Category One business activities identified by Councils.

During this reporting period, a total of six Category One businesses were identified.

Five of these businesses are conducted by the Adelaide City Council. They are:

the Central Market Authority;
the North Adelaide Golf Links;
off-street car parking stations;
property management (of retail tenancies under the parking stations); and
the Wingfield waste depot.

The 1997 corporate plan for the Council sets out the activities to be undertaken to implement national competition policy. The Council has provided the following information about progress towards implementation.

Action: Determine the most appropriate business structure for Category 1 business activities.

Progress: Council has made significant progress in the development of a "business unit" structure for management of the activities. Two of the activities (the Central Market Authority and the Wingfield waste depot) are already managed as separate businesses within the organisational structure of the Corporation. Further action on organisational matters is being delayed due to the review, at the instigation of the State Government, of overall governance arrangements for the City of Adelaide(1).

Action: Develop a system of full-cost attribution and net competitive advantage measurement with a tax equivalent regime

Progress: A 'net competitive advantage' financial model has been developed to quantify all factors considered to be either an

advantage or a disadvantage of ownership or operation of an activity by the council. This is an extension of council's full-cost attribution financial model and includes a determination of notional tax liabilities.

The competitive advantages and disadvantages of each Category 1 business activity have been identified and work is progressing on the quantification of these factors.

A long term business plan for the Wingfield waste depot is being prepared to include an analysis of long term operating and risk costs, a key input to the assessment of the viability of the activity.

The Council's Corporate Plan also sets out the objectives for each of its activities including those that have been identified as significant business activities. This provides a clear indication where prices are driven by forces other than market forces, such as community service obligations.

The sixth Category 1 activity is a cemetery operation run jointly by the Cities of Mitcham and Unley via a separately incorporated controlling authority. The cemetery is already operated on a fully commercial basis.

In addition to these six, the District Council of Coober Pedy listed its electricity undertaking as a Category 1 business activity, and determined that the costs of applying competitive neutrality principles would outweigh the benefits. The Coober Pedy Council is small and extremely remote, being one of only two councils located in the large otherwise unincorporated area of South Australia.

The undertaking has not been included in this list of Local Government category 1 business activities because it is primarily directed at meeting a community need that would not otherwise be met, rather than earning a return for the Council.

Indeed, it receives a substantial subsidy from the State Government, whose Office of Energy Policy keeps its operations under continuing review for cost effectiveness. The undertaking therefore fails outside the definition of business activity set out in the Clause 7 Statement.

(1) The Governance Review Advisory Group was established in March 1997 to advise on governance arrangements for the Adelaide City Council to ensure proper management of the city and enable the Council to provide leadership as the capital city Council of South Australia. The Government released the report on 26 February 1998. Negotiations between the Government and the Council are to commence in the immediate future.

Attachment 3 Category Two business activities identified by Councils

A total of 49 Category Two business activities were identified by thirty Councils covering a wide range of activities.

The breakdown of activities and the number of Councils reporting them are as follows.

Nature of activity	Number of Councils
Caravan Parks	17
Private/other government works	7
Recreation centres	4
Aged care facilities	4
Waste management	2
Function centres	2
Cemeteries	2
Water supply	1
Electricity supply	1
Nursery	1
Tourist operation	1
Swimming pool	1
Golf course	1
Quarry	1
Saleyards	1
Child care	1
Joint venture	1

Councils have until June 1998 to consider which principles of competitive neutrality will be applied to category 2 activities.

Attachment 4 Electricity Undertakings and Local Government in SA

The NCC report, "Competitive neutrality reform: issues in implementing Clause 3 of the Competition Principles Agreement, January 1997", listed (Appendix D) various Local Councils in South Australia considered at the time to be engaged in a business enterprise (mostly electricity undertakings).

Inquiries to the Australian Bureau of Statistics indicated that the source was the ABS Public Finance Units Register, which has been replaced, and from which old records are not deleted.

The list for South Australian Local Government is as follows:

Name	Nature of business
Peterborough Corporation	Electricity Undertaking
Cleve District	Electricity Undertaking
Coober Pedy District	Electricity Undertaking
Elliston District	Electricity Undertaking
Hawker District	Electricity Undertaking
Kanyaka Quorn District	Electricity Undertaking
Le Hunte District	Electricity Undertaking
Murat Bay District	Electricity Undertaking
Roxby Downs Municipality	Water supply

Of the electricity undertakings only Coober Pedy remains under the control of the Council, and is not considered to be a business activity for the purposes of the Competition Principles Agreement (refer Attachment 1). The remainder were taken over by the Cowell Electric Company and ultimately by the Electricity Trust of South Australia.

The Roxby Downs Municipality has listed its water supply as a category 2 business activity (and its electricity undertaking).

Attachment 5 **Summary of by-laws with the potential to restrict competition**

Council	Number of by-laws	Number which may restrict competition	Years in which by-laws will be reviewed
Adelaide City	12	8	1997
Adelaide Hills	15	14	1999
Alexandrina	27	5	1999
Barossa	15	10	1999
Barunga West District	8	2	2000
Berri Barmera	12	5	1998
Bumside City	12	11	1997
Campbelltown City	15	15	1999
Ceduna District	8	6	1998
Charles Sturt City	10	7	1998
Clare and Gilbert Valleys	11	-	1998
Cleve District	6	5	1998,2000
Coober Pedy District	Nil		
Coorong District	3	2	1998
Copper Coast District	9	7	1998,2000
Elliston District	9	8	1999
Flinders Ranges	Nil		
Franklin Harbour District	4	2	2000
Gawler Town	5	5	2000
Goyder Region	3	3	1999
Grant District	5	5	1999
Onkaparinga City	19	16	1998,1999
Holdfast Bay City	17	14	1998
Kangaroo Island	14	11	1999
Kapunda & Light District	6	2	1999
Karoonda/EastMurray District	5	5	1999
Kimba District	4	3	1997
Lacepede District	9	9	1997
Le Hunte District	1	-	2000

Lower Eyre Peninsula District	Nil		
Loxton Waikerie District	10	9	1998
Lucindale District	Nil		
Mallala District	9	9	2000
Marion City	7	7	2000
Mid Murray	16	14	2000
Mitcham City	7	7	2000
Mt Barker District	14	13	2000
Mt Gambier City	6	6	1999
Mt Remarkable District	6	-	1998
Murray Bridge Rural City	11	8	1999
Naracoorte District	9	1	1998,2000
Northern Areas	Nil		
Norwood, Payneham & St Peters City	22	5	1998
Orroroo/Carrieton District	Nil		
Peterborough District	18	13	1998
Playford City	9	9	1998
Pt Adelaide Enfield City	15	14	1998
Pt Augusta City	43	26	Lapsing 1/1/98
Pt Lincoln City	11	7	1998
Pt Pirie City & Districts	5	-	Lapsing 1/1/98
Prospect City	10	9	2000
Remnark Paringa District	12	11	1998
Robe District	6	4	1999
Roxby Downs Municipality	6	1	1998
Salisbury City	9	3	1999
Southern Mallee District	3	3	1998
Streaky Bay District	9	6	2000
Tatiara District	8	6	1998,1999
Tea Tree Gully City	10	8	2000
Tumby Bay District	11	8	2000
Unley City	22	17	1997
Victor Harbor District	14	11	2000
Wakefield Regional	9	9	1999
Walkerville Town	10	7	1998
Wattle Range	11	11	1999

West Torrens City		10	10	2000
Whyalla City		34	25	2000
Yankalilla District		18	16	1999
Yorke Peninsula District		7	7	1999
	TOTALS	**701**	**499**	**1997 5** **1998 23** **1999 20** **2000 19** **Lapse 1/1/98 2**