REPORT TO THE NATIONAL COMPETITION COUNCIL

IMPLEMENTATION OF NATIONAL COMPETITION POLICY AND RELATED REFORMS

IN

SOUTH AUSTRALIA

MARCH 2004

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ABBREVIATIONS

ACCC	Australian Competition and Consumer Commission
ANZMEC	Australia and New Zealand Mines and Energy Council
ARMCANZ	Agriculture & Resource Management Council of Australia and New Zealand
CCA	Conduct Code Agreement
CoAG	Council of Australian Governments
CPA	Competition Principles Agreement
ESCOSA	Essential Services Commission of South Australia
GBE	Government Business Enterprise
GBE Act	Government Business Enterprises (Competition) Act 1996
GRIG	Gas Reform Implementation Group
LGA	Local Government Association
NCC	National Competition Council
NCP	National Competition Policy
NEM	National Electricity Market
NRTC	National Road Transport Commission
OLG	Office of Local Government
SAIPAR	South Australian Independent Pricing and Access Regulator
TPA	Trade Practices Act 1974

1. INTRODUCTION

This report summarises progress during calendar year 2003 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:

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

The report fulfils the formal requirements of the Competition Principles Agreement (CPA) to publish an annual report concerning implementation of competitive neutrality requirements (CPA, Clause 3.(10)) and legislation review requirements (CPA, Clause 5.(10)). Other aspects of competition policy are also covered.

It can be read in conjunction with the South Australian Government's previous annual reports to the National Competition Council (NCC) covering calendar years 1996, 1997, 1998, 1999, 2000, 2001 and 2002. Also relevant are the NCC's first, second and third tranche assessment reports, supplementary reports on those assessments, and the assessment reports for 2003.

This 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 South Australian Government, including particularly the Departments of Treasury and Finance; Justice; Primary Industries and Resources; Water, Land and Biodiversity Conservation; and Transport and Urban Planning.

Inquiries about the report may be directed to the NCP Implementation Unit, Cabinet Office, Department of the Premier & Cabinet, telephone (08) 8226 1931.

2. CONDUCT CODE AGREEMENT

The Conduct Code Agreement (CCA) obliges the South Australian Government to enact Application of Laws legislation to apply the Competition Code, without modification, in South Australia. The Competition Code (effectively the restrictive business practice provisions of Part IV of the *Trade Practices Act, 1974 (C/wth)*) is applied to all persons in South Australia, including the Crown in so far as it "carries on a business".

Clause 2.(1) of the CCA requires that written notice of all exemptions made by State law, in reliance on section 51.(1) of the *Trade Practices Act*, will be given to the Australian Competition and Consumer Commission (ACCC) within 30 days of enactment. Clause 2.(3) requires written notice to be given to the ACCC by 20 July 1998 of section 51.(1) exemptions in existence at the commencement of the CCA and which will continue to have effect after 20 July 1998.

The *Competition Policy Reform (South Australia) Act, 1996 (SA)* and the *Competition Policy Reform (South Australia) Savings and Transitional Regulations, 1996 (SA)* came into force on 21 July 1996, and have continued in operation since that date, altered only to deal with cross vesting issues and the introduction of the New Tax System Price Exploitation Code. This legislation satisfies the obligations contained in clause 5 of the CCA. It applies the Competition Code to all persons coming within South Australia's jurisdictional reach, including those unincorporated persons, not engaged in interstate or foreign trade or commerce, to whom Part IV of the *Trade Practices Act* does not apply for constitutional reasons.

2.1 Section 51(1) Exemptions

The *Chicken Meat Industry Act 2003* was enacted on 16 July 2003, and assented to by the Governor in August 2003 (although only the transitional and related provisions are presently in operation). It contains a comprehensive *Trade Practices Act* exemption for the negotiating, making, and giving effect to, agreements between each processor and its usual contracted growers for the agisting of chickens. The ACCC was notified of the exemption on 12 August 2003, within the 30 day requirement stated in clause 2(1) of the Conduct Code Agreement.

No legislated exemptions have been revoked by legislative amendments or repeals in the same period.

An independent review into the single-desk export aspects of the *Barley Marketing Act, 1993* was conducted in 2003. Section 33A of that Act contains a *Trade Practices Act* exemption for certain operations carried out by ABB Grain Export Ltd pursuant to the single-desk arrangements. The Government is considering the report and if it accepts any recommendations for change to the single-desk arrangements, the nature and extent of that exemption may need amendment.

2.2 Compliance

South Australian Government businesses are familiar with the compliance obligations imposed upon them as a result of the application of the *Trade Practices Act* to Crown statutory corporations, and the Competition Code to unincorporated Crown businesses.

However, the main difficulty has always been, and remains, the lack of delineation between a Crown business (in the full commercial, profit-seeking sense) and that large number of governmental activities where there is a fee or charge (or "co-payment" or "contribution") or some element of cost-recovery, but no intention to seek a profit, and where the activity is seen more as a governmental activity than a business. In those situations, the activity may use "business" terminology, and will of course seek to operate efficiently, but its prime motivation is not commercial.

The Crown Solicitor's Office maintains a Competition Unit that assists agencies with Trade Practices compliance and risk management. The Competition Unit maintains contact with the ACCC, both Canberra and Adelaide Regional Office, on issues that concern both the Government and the ACCC, including substantive trade practices matters and matters of mutual policy interest. The Competition Unit receives a steady volume of enquiries from a range of departments and statutory authorities, seeking both general assessments of their activities in terms of compliance with the *Trade Practices Act*, and advice on particular competition questions.

The Attorney-General for the State of South Australia (with the NSW and WA Attorney's-General) successfully sought leave to intervene in the High Court in the Power and Water Authority case (9th and 10th of March 2004), and has obtained leave to intervene in the Baxter Healthcare Pty Ltd case in the Federal Court, on matters involving, *inter alia*, the application of section 2B of the Trade Practices Act and derivative Crown Immunity. No decisions have been handed down as at the date of this Report.

3. COMPETITION PRINCIPLES AGREEMENT

The Competition Principles Agreement 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 significant 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 Essential Services Commission of South Australia (ESCOSA) was established by the *Essential Services Commission Act 2002*, taking over the regulatory responsibilities of the South Australian Independent Industry Regulator. Among other functions, ESCOSA regulates prices and performs licensing and other functions under relevant industry regulation Acts. In particular, section 25 gives the power to "make determinations regulating prices, conditions relating to prices and price-fixing factors for goods and services in a regulated industry."

The ESCOSA has regulatory independence and is not subject to the direction or control of the Minister with respect to its regulatory functions.

A "regulated industry" is defined as "a specified industry, or specified activities, consisting of, involved in or related to the provision of essential services, declared by another Act to constitute a regulated industry for the purposes of this Act". A "relevant industry regulation Act" means "another Act by which a regulated industry is declared for the purposes of this Act, and includes regulations under that other Act".

3.1.1 Port Facilities

Under Part 2 of the *Maritime Services (Access) Act 2000*, ESCOSA also has a role in price regulation for certain essential maritime services provided by the private port operator. The legislation provides for the Minister for Government Enterprises to issue a First Pricing Determination (FPD) to apply for three years from Sale (ie to 1 November 2004). The FPD essentially maintains prices at pre-sale levels for that period. In 2003, ESCOSA reviewed the impact of the FPD and recommended that the FPD be allowed to lapse and that ESCOSA institute prices monitoring in its place. Hence, ESCOSA will be responsible for price regulation from 1 November 2004.

Under Part 3 of the *Maritime Services (Access) Act 2000*, ESCOSA administers the Ports Access Regime, which provides a framework for negotiation and arbitration of prices for access to certain regulated maritime services associated with South Australia's prescribed ports. In December 2003 ESCOSA commenced a review of the Ports Access Regime, which is scheduled for completion in April 2004.

3.1.2 Rail Facilities

Pricing oversight for the Tarcoola-Darwin Railway is addressed under **3.5 THIRD PARTY ACCESS**.

3.1.3 Electricity and Gas

The *Electricity Act 1996* was amended in 1999 to declare the electricity supply industry as a regulated industry.

Given the anticipated convergence in gas and electricity markets in the event of gas FRC, one of the key principles underlying the Government's policy and legislation is consistency of gas and electricity industry regulation. In line with that principle, the following codes issued by ESCOSA, and covering both gas and electricity, took effect on 8 March 2004:

- Energy Retail Code;
- Energy Marketing Code; and
- Energy Customer Transfer and Consent Code.

As a result of such an approach, regulatory compliance costs should be reduced.

On 1 July 2003, ESCOSA gained powers under the *Gas Act 1997* to make a price determination for a gas entity operating a distribution system. Under Envestra's current Access Arrangement, ESCOSA will be required to make annual adjustments to Envestra's reference tariffs. These changes in tariffs will be effective from 1 July each year.

The Minister for Energy currently has a transitional role in fixing maximum prices for the sale and supply of gas to small customers(i.e. those with an annual consumption of less than 10 Tj).

From the commencement of gas FRC, for a certain transition period, the incumbent retailer, at the request of a small customer, must supply and sell gas to the customer at the entity's standing contract price and subject to the standing contract terms and conditions. The standing contract price is subject to a price justification process. Once section 33(1)(a) of the Gas Act is proclaimed, and Schedule 2 expires, ESCOSA would have the power to make a price determination.

Electricity pricing is discussed further in section **4.3 ELECTRICITY**.

3.2 COMPETITIVE NEUTRALITY

This section provides the Government's annual report for the 12 months to December 2003 on the implementation of the competitive neutrality policy and principles, as required by Clause 3(10) of the CPA.

3.2.1 Competitive Neutrality Policy and Principles

South Australia's approach to competitive neutrality is expressed in the *Government Business Enterprises (Competition) Act 1996* (GBE Act) and the supporting *Competitive Neutrality Policy Statement* (most recently revised in July 2002)[1]. The basic competitive neutrality principles of tax equivalent payments, debt guarantee fees and private sector equivalent regulation can be achieved through corporatisation, commercialisation or cost-reflective pricing. The mechanism chosen to achieve competitive neutrality depends on the extent to which potential benefits outweigh the costs.

The Appendices to the *Competitive Neutrality Policy Statement*, which were updated in May 2003[2], list those businesses subject to Competitive Neutrality and note that identifying and listing specific businesses is not intended to exclude other business activities being identified as significant and added to the list as required. Regular assessments are carried out by government agencies. Removal of a business from the list would not preclude a complaint being made against the business.

The implementation of CN principles has been completed for identified significant business activities (SBAs) within Government. The focus is now on monitoring ongoing compliance by way of a formal annual review process requiring responsible Ministers to confirm that Government businesses continue to operate in accordance with CN principles.

Government businesses in South Australia are generally structured either as statutory authorities or as administrative units of government departments. Corporations Law companies are seldom used as it creates difficulties in establishing appropriate accountability arrangements.

3.2.2 Community Service Obligations (CSOs)

The South Australian Government's CSO policy is set out in its December 1996 *Community Service Obligations Policy Framework*[3]. CSO policy is also reflected in the July 2002 *Competitive Neutrality Policy Statement*, the March 1998 *Guide to Implementation of Competitive Neutrality Policy*[4] and the *Public Corporations Act, 1993*.

Currently, CSO payments are only made to two agencies, SA Water Corporation and South Australian Forestry Corporation. These arrangements have not changed since the previous report. A review of the CSO policy and procedural arrangements is presently underway to simplify and improve the efficiency of current arrangements.

[1] http://www.premcab.sa.gov.au/pdf/competition/CNPolicyJuly2002.pdf
[2] http://www.premcab.sa.gov.au/pdf/competition/sig_business_activities.pdf
[3] http://www.premcab.sa.gov.au/pdf/competition/commserv96.pdf
[4] http://www.premcab.sa.gov.au/pdf/competition/CompNeutpol.pdf

3.2.3 Implementation Progress

Competitive neutrality principles have been progressively applied to the Government's SBAs since South Australia became a co-signatory to the *Inter-Governmental Agreements on Competition Policy* in 1995.

The May 2003 update of the Appendices to the *Competitive Neutrality Policy Statement* identifies 20 Category 1 and 15 Category 2 significant business activities. As a result of the regular review of agency business activities and compliance with competitive neutrality principles, further changes may be made and, subject to Cabinet approval, the Appendices updated accordingly.

A Guide to the Implementation of Competitive Neutrality (March 1998) and *A Guide to the Implementation of Cost Reflective Pricing* (October 2001) were prepared to assist agencies responsible for implementing the principles of competitive neutrality and, in particular, cost reflective pricing.

The Public Corporations Act 1993 is the preferred mechanism for implementing corporatisation reforms in South Australia. The Public Corporations Act is flexible in its application in that it can be used either partially or in its entirety to reflect differing operational requirements. The Act can be applied to an entity's existing legislation but can also be used to establish separate legal status.

The Public Corporations Act includes the following provisions that facilitate corporatisation reforms:

- establishment of a board
- formal requirement for a Charter dealing with the nature and scope of commercial operations
- formal requirement to develop performance measures (agreed to by the Treasurer)
- imposition of tax equivalents
- dividend provisions
- annual and interim reporting obligations.

Where corporatisation is not appropriate, or the potential benefits would not exceed the costs, commercialisation or cost reflexive pricing will be applied.

3.2.4 Compliance Monitoring- Identified Significant Business Activities (SBAs)

The Department of Treasury and Finance, which oversees the implementation of competitive neutrality requirements, seeks advice from all agencies annually to confirm on-going competitive neutrality compliance for each SBA and identification of any new SBAs. This regular review is consistent with the commitment in the *Competitive Neutrality Policy Statement* for regular assessment of government activities. The information provided in response to this request forms the basis of the following section, presented by portfolio. SBAs are either listed under their relevant agency or separately for the major government businesses where there is no association with a departmental agency.

Major Government Businesses

As at 31 December 2003, the following three major government businesses, all of which are Category 1 SBAs, were not associated with departmental agencies. All three are corporatised entities and fully comply with competitive neutrality principles.

South Australian Water Corporation (SA Water)

SA Water is established under the *South Australian Water Corporation Act, 1994*, with its primary role to provide water and wastewater services across the State. SA Water operates under the *Public Corporations Act, 1993*. The Corporation provides some services to the community on behalf of the Government at a lower than commercial rate of return, which are funded through CSOs. The main CSOs are for the pricing of country water and wastewater services, the administration of the pensioner concession scheme and the provision of water and wastewater concessions to exempt properties, which include charities, churches and public schools. SA Water is subject to tax equivalent payments and debt guarantee fees.

South Australian Forestry Corporation (ForestrySA)

ForestrySA is established under the *South Australian Forestry Corporation Act, 2000*. It is subject to the provisions of the *Public Corporations Act, 1993*. ForestrySA's main function is to manage plantation forests for commercial production. Other non-commercial activities are transparently funded by CSO payments.

South Australian Lotteries Commission (SA Lotteries)

SA Lotteries is established by the *State Lotteries Act, 1966*. The State Lotteries Act prescribes the distributions to be paid. The distributions, inclusive of State Gambling Tax and income tax equivalents, are directed to the Hospitals Fund and the Recreation and Sport Fund. Although not operating under the Public Corporations Act, SA Lotteries' current organisational structure and governance arrangements are consistent with the corporatisation requirement for competitive neutrality.

Department of Human Services (DHS)

As at 31 December 2003, DHS had four Category 1 and five Category 2 SBAs. These are as follows:

- HomeStart Finance (Category 1)
- Institute of Medical and Veterinary Services (IMVS) – Research and Diagnostic Pathology Services (Category 1)
- Medvet Science Pty Ltd (Category 1)
- Metropolitan Domiciliary Care: Equipment Hire (Category 1)
- Modbury Hospital: Rental Accommodation (Category 2)
- Royal Adelaide Hospital: Rental Accommodation (Category 2)
- Flinders Medical Centre: Rental of Flats (Category 2)
- Flinders Medical Centre: Southpath pathology services (Category 2)
- Metropolitan Domiciliary Care: Therapy Solutions (Category 2)

All of these government businesses have adopted cost reflective pricing as the competitive neutrality measure with the exception of Medvet Science Pty Ltd and Homestart Finance, which are corporatised entities.

HomeStart Finance is established by the *Housing and Urban Development (Administrative Arrangements) Act, 1995*. The key functions and activities of HomeStart Finance are to develop, market and manage home finance initiatives, and to increase home ownership opportunities for South Australians.

DHS has confirmed that all SBAs comply with the relevant competitive neutrality principles.

Department of Education and Children's Services (DECS)

As at 31 December 2003, DECS had four Category 2 SBAs:

- DECS Publishing
- Distribution Centre Services
- Recruitment of full-fee paying overseas students; and
- Provision of study tours to overseas students and educators.

DECS has advised that all of these SBAs comply with competitive neutrality principles through the implementation of cost reflective pricing.

Department of Further Education, Employment, Science and Technology (DFEEST)

As at 31 December 2003, DFEEST had one Category 1 SBA, namely, "Fee for service activities not required by Government in vocational education and training", which operates within TAFE Institutes.

DFEEST has advised that ongoing compliance with cost reflective pricing as the adopted competitive neutrality measure is occurring.

In addition, DFEEST has advised that business rules within TAFE Institutes are constantly under review to ensure its Category 1 SBA activity operates in accordance with the principles of cost reflective pricing and complies with competitive neutrality principles.

Department of the Premier and Cabinet (DPC)

As at 31 December 2003, DPC had two Category 1 SBAs and one Category 2 SBA. These are as follows:

- Adelaide Festival Centre Trust (AFCT)
    - BASS ticketing service (Category 1)
    - Theatre set-building workshops (Category 1)
    - Theatre hire services (Category 1)

- Artlab (Category 2)

Adelaide Festival Centre Trust (AFCT)

The AFCT is established by the *Adelaide Festival Centre Trust Act, 1971*. AFCT's key functions and activities are managing and operating the Centre, facilitating artistic, cultural and performing arts activities throughout the State and providing ticketing systems and related services. The Trust also provides advisory, consultative, managerial and support services, within areas of the Trust's expertise, to persons associated with the conduct of artistic, cultural or performing arts activities. Although the Centre receives a subsidy for operational expenses, most of its revenue is derived from commercial activities.

For the identified SBAs in particular, DPC has advised that BASS Ticketing Service and Theatre Workshops, both Category 1 SBAs, have implemented cost reflective pricing. Theatre hire is also currently listed as a Category 1 SBA. However, the AFCT is obliged, under the terms of the Adelaide Festival Centre Trust Act, to encourage and facilitate artistic, cultural and performing arts activities throughout South Australia. The AFCT's annual performance agreement with Arts SA also requires it to deliver free and low cost activities to the community to develop audiences and encourage community participation. The AFCT has expressed concern that cost reflective pricing for theatre hire would be prohibitive for community groups, and the AFCT would be unable to achieve its community outcomes. During 2004 it is therefore proposed to review the net public benefit of the community use of AFCT facilities based on current costing and pricing arrangements to ensure ongoing compliance with CN principles.

Artlab

Artlab, a Category 2 SBA, has implemented cost reflective pricing principles as its competitive neutrality measure. In April 2003, the entity undertook a competitive neutrality review with respect to cost reflective pricing implementation, which concluded that Artlab continues to meet competitive neutrality requirements.

Department of Primary Industries and Resources (PIRSA)

At 31 December 2003, PIRSA Rural Solutions was a Category 1 SBA, and Seed Certification and Testing was a Category 2 SBA. PIRSA has confirmed that for 2003, these two SBAs comply with competitive neutrality principles through the implementation of cost reflective pricing.

Department of the Environment and Heritage (DEH)

At 31 December 2003, Cleland Wildlife Park and the Discover Penguins Program were both Category 2 SBAs.

Cleland Wildlife Park (CWP)

CWP has adopted cost reflective pricing as the competitive neutrality measure and has developed a comprehensive 5 year business plan to drive the implementation process. DEH, as part of a regular monitoring mechanism, is currently undertaking a review of the implementation of competitive neutrality measures.

Discover Penguins Program

The Competition Commissioner determined in his report *Competitive Neutrality Complaint regarding penguin tour activities at Kingscote, Kangaroo Island by National Parks and Wildlife SA*, dated 19 December 2002, that the Discover Penguins Program constitutes a significant business activity (Category 2) for competitive neutrality purposes. DEH has since completed an independent audit and calculation of the costs attributable to the Discover Penguins Program activities, with the subsequent implementation of cost reflective pricing.

Department of Administrative and Information Services (DAIS)

At 31 December 2003, Supply SA (Distribution Services), which is a business unit of DAIS, is classified as a Category 1 SBA, and undertakes the buying and selling of stationery and miscellaneous goods for government. DAIS has advised that this SBA continues to comply with cost reflective pricing principles.

Department of Transport and Urban Planning (DTUP)

At 31 December 2003, DTUP had three Category 1 SBAs being TransAdelaide, West Beach Trust, and the Adelaide Cemeteries Authority. All three are corporatised entities and comply with competitive neutrality principles.

TransAdelaide

TransAdelaide is established by the *TransAdelaide (Corporate Structure) Act, 1998* and is subject to the provisions of the *Public Corporations Act, 1993*. As the sole government-owned commercial public passenger transport services operator, TransAdelaide has two significant business operations comprising the provision of tram and train services, and the management of the tram and train infrastructure in the metropolitan area. TransAdelaide receives most of its revenue under a transparent subsidy payment from the Government.

West Beach Trust (WBT)

The WBT is established by the *West Beach Recreation Reserve Act, 1987*. The WBT manages and develops the West Beach Recreation Reserve lands and environment that is now marketed as Adelaide Shores. It manages the West Beach Recreation Reserve as a sporting, cultural and recreational complex and is responsible for the control and management of the sand dune and foreshore subject to the *Coast Protection Act, 1972*. The WBT does not presently pay a dividend but this position will be reviewed in 2004.

Adelaide Cemeteries Authority (ACA)

The ACA is established by the *Adelaide Cemeteries Authority Act, 2001* and is subject to the *Public Corporations Act, 1993*. The ACA has an exemption from the Treasurer under Section 29 of the Public Corporations Act, and is not required to pay tax liabilities.

Justice Department

As at 31 December 2003, the Justice Portfolio had three listed Category 1 SBAs - Contestable Legal Services (part of the Crown Solicitor's Office), Police Security Services Division and the Public Trustee, and one Category 2 SBA - Interpreting and Translating Centre.

The Department has confirmed compliance with the adopted competitive neutrality measures for each of these SBAs.

Police Security Services Division (PSSD)

PSSB is a business unit within the SA Police. It is currently listed as a Category 1 SBA. The Department has advised that PSSB is currently compliant with the requirements of commercialisation with the exception of establishing its dividend policy, which is yet to be formalised.

Public Trustee (Personal Trusteeship Services)

The Public Trustee is established by the *Public Trustee Act, 1995*. The former Government introduced legislation to corporatise the Public Trustee but it lapsed in late 2001. For some time before that however, the Public Trustee had been commercialised and it currently meets the requirements of commercialisation that are contained in the State Government's *Competitive Neutrality Policy Statement*. The commercial obligations of the Public Trustee include a tax equivalency regime and payment of dividends.

Interpreting and Translating Centre (Multicultural SA)

Multicultural SA has advised that its Interpreting and Translating Centre has implemented and complies with cost reflective pricing principles.

Tourism Department

As at 31 December 2003, the Adelaide Convention Centre and Adelaide Entertainment Centre were both Category 1 SBAs in the Tourism Portfolio.

Adelaide Convention Centre (ACC)

The ACC is established as a subsidiary to the Minister for Tourism by regulation under the *Public Corporations Act, 1993*. The ACC, a Category 1 SBA, has implemented cost reflective pricing. ACC has advised that it annually reviews all of its services to ensure ongoing compliance with competitive neutrality principles.

Adelaide Entertainment Centre (AEC)

The Adelaide Entertainment Corporation, trading as the Adelaide Entertainment Centre, is established as a subsidiary to the Minister for Tourism by regulations issued under the *Public Corporations Act, 1993*. Most of the AEC's revenue is derived from commercial activities but it also receives a subsidy for operational expenses. The AEC has implemented cost reflective pricing principles.

Department of Business, Manufacturing and Trade (DBMT)

DBMT has advised that as at 31 December 2003 it had no SBAs. The Manufacturing Engineering Projects Group (Graduate Development Program), within the SA Centre for Innovation, Business and Manufacturing, which was a Category 2 SBA in 2002 has left the Department and re-established as a private consulting business.

Department of Water, Land and Biodiversity Conservation (DWLBC)

At 31 December 2003, DWLBC had one Category 2 SBA, namely, State Flora, which has implemented cost reflective pricing. The Department has advised that it is undertaking a review of State Flora's pricing methodology to ensure it is compliant with competitive neutrality principles.

3.2.5 Competitive Neutrality Complaints

The Government Business Enterprises (Competition) Act came into operation in August 1996. The Act provides for the appointment of Competition Commissioners who can be assigned to investigate complaints of infringement of competitive neutrality principles. In August 1997, a Commissioner was appointed by the Governor to investigate complaints referred to him by the Premier. The Commissioner was re-appointed for a further two year term in December 2001 and again in December 2003.

The Department of the Premier and Cabinet provides a secretariat for the complaints mechanism, which responds to enquiries from the public and manages the complaints process. A package of information relevant to competitive neutrality complaints is available to persons seeking further information or wishing to make a complaint.

Upon receipt of a written complaint against a State or local government business activity, and subject to it being within the scope of the GBE Act, the complaint is referred to the State agency or local government concerned for investigation, response and possible resolution. Where the complaint cannot be satisfactorily resolved, consideration is given to its assignment to the Competition Commissioner.

The complaint against Supply SA was referred to the Competition Commissioner in August 2002 and was finalised in June 2003. A summary of the Commissioner's report will be made available at www.premcab.sa.gov.au.

The complaint against Mt Barker District Council was incomplete at the end of 2003 as a result of a number of new issues needing further investigation.

One written complaint was received during 2003. The complaint, which is against the Adelaide Festival Centre Trust, has been referred to the Department of Premier and Cabinet for investigation.

A summary of the complaint finalised in 2003 appears in Tables 1 below.

TABLE 1: FORMAL COMPLAINTS FINALISED IN 2003

Date of receipt of complaint	*Target of complaint*	*Nature of complaint* [(1)]	*Findings of investigation and recommendation*	*Date of formal advice to complainant*	*Date of formal advice to target of complainant*	*Action taken or proposed following recommendation* [(2)]	*Other relevant information* [(3)]
13/05/2002	Department of Administrative & Information Services	Activities of Supply SA in relation to sales of school stationary.	The Competition Commissioner concluded that Supply SA did not infringe the competitive neutrality principles. He found that Supply SA's actions as a short-term response to competitive pressures within a market in which it has been established for some time, were not in conflict with its obligation to set cost reflective pricing.	Competition Commissioner advised complainant on 18/06/2003	Competition Commissioner advised DAIS on 18/06/2003		

3.3 STRUCTURAL REFORM

3.3.1 Gas and Electricity

Developments in the gas and electricity sectors during 2003 are reported in section 4.

3.3.2 Ports

On 16 October 2001 the Government announced the divestment of Ports Corp to the Flinders Port consortium. Settlement was completed on 2 November 2001. The consortium has commenced a 99 year lease of Ports Corp land and has purchased wharves, buildings, plant and equipment and the ongoing business. On 5 September 2002, the South Australian Ports Corporation was dissolved and the *South Australian Ports Corporation Act 1994* repealed.

Third party access in relation to port facilities is addressed under **3.1 PRICES OVERSIGHT.**

3.4 LEGISLATION REVIEW

This section provides the Government's annual report for the 12 months to December 2003 on the review of legislation that restricts competition, as required by clause 5.(10) of the CPA.

3.4.1 Reviews completed by December 2003

There are 178 Acts scheduled for review. Schedule 1 summarises the status of the legislation reviews considered in this part.

A list of review reports provided to the NCC is contained in Schedule 1. It does not include those reviews which were listed as completed in the 1998 Annual Report.

3.4.2 Legislation subject to permanent reduction of competition payments

Chicken Meat Industry Act 2003
The legislation was passed in Parliament with unanimous support in July 2003 and assented to by the Governor in August, 2003. However, its implementation has been deferred in consequence of the Federal Treasurer accepting the NCC recommendation of a permanent financial penalty of $2.93 million per annum.

The Minister for Agriculture, Food and Fisheries has met with the President of the NCC, Dr Wendy Craik, to discuss its view of the legislation. The NCC has agreed to provide the South Australia Minister with a further view on both the South Australian and Western Australian approaches. If the Minister is successful in changing the view of the NCC then the Act would immediately become competition compliant.

An immediate repeal of the legislation would achieve competition compliancy but leave the industry with a standard ACCC authorisation to collectively negotiate. As no negotiation has occurred under ACCC authorisations from 1997 to the present in South Australia (or any other State), this strategy would be satisfactory only to processors. The Government may need to consider the alternative option of amending the Act to replicate the Committee structure of the WA Chicken Meat Industry Council as a substitute for arbitration.

Options are under consideration to aid resolution of the present policy predicament. They may take considerable time to achieve an outcome satisfactory to both the State and Federal Governments.

Liquor Licensing 1997
Following the 1997 review of the Liquor Licensing Act, a further review of the two remaining restrictions, the "proof of need" test which constrains the number of outlets and the requirement that liquor can only be sold from stores devoted entirely to liquor sales has been completed. The NCC has indicated that the requirement for sales from premises devoted entirely to liquor sales is a trivial restriction and no reform is required. The "proof of needs" test enables competitors to object to the issue of licences on the ground that there is no demonstrated need and permits objections by others if there is likely to be a significant social impact. The Government is considering the report's recommendations in relation to the "proof of need" test.

3.4.3 Legislation subject to individual suspensions of competition payments

Barley Marketing Act 1993
The 2003 Round Committee's NCP review of the export barley marketing arrangements recommended examination of a licensing model similar to that adopted by Western Australia.

A comprehensive appeal was lodged in September 2003 with the Federal Treasurer against the NCC's recommendation of an annual suspension of competition payments of $2.93 million. The NCC Secretariat has since advised that it has no objection to SA's request for an extension of time in order to allow the completion of a number of legislation reforms, including barley.

A PIRSA Task Force is examining ways of reviewing current accountability and transparency issues for ABB Grain Ltd and examining the feasibility of a licensing model. Some legislative amendments are expected to be introduced in the 2004 spring session of Parliament to clarify long standing issues.

3.4.4 Legislation included in the pool of suspended competition payments

Agricultural And Veterinary Chemicals Legislation.

Agricultural and Veterinary Chemicals (SA) Act 1994
The Commonwealth is the lead legislator for the National Registration Scheme for Agricultural and Veterinary Chemicals and until its legislation is passed, the States and Territories are unable to put their legislation into effect to deal with licensing of agricultural chemical manufacturers and regulation of low risk chemicals.

Changes in the Commonwealth's *Agricultural and Veterinary Chemicals Code Act 1994* will require consequential changes in the *Agricultural and Veterinary Chemicals (South Australia) Act 1994*. Since changes in definitions are involved, changes will also have to be made to the South Australian *Agricultural and Veterinary Products (Control of Use) Act 2002*, which references some of the affected definitions in the federal Act via the South Australian mirror legislation.

Chemical assessment services are technically already contestable, though the National Registration Authority (NRA) has not chosen to utilise other possible providers, largely due to the difficulties in verifying the capabilities of non-governmental alternative providers. The SCARM working group report was endorsed by the Ministerial Council in late 2002 and a regulatory impact statement released for public comment in December 2003.

Compensation for third party access to chemical assessment data is currently being assessed by the NRA in conjunction with jurisdictions and the chemical manufacturing industries. This has been a difficult process to negotiate with major manufacturers, many of whom are based overseas. Initial drafting instructions are being prepared by the Commonwealth.

Agricultural Chemicals Act 1955
This Act will be repealed when Agricultural and Veterinary Products (Control of Use) Act 2002 is proclaimed. Proclamation of the Agricultural and Veterinary Products (Control of Use) Act 2002 is intended with the first set of regulations that are now at settling stage and

this is expected prior to 30 June 2004. If it is not completed, the Act is automatically enacted with effect from 29 August 2004, 2 years after Parliament enacted the legislation.

Stock Foods Act 1941, Stock Medicine Act 1939

Implementation of reforms to 'control of use' legislation is provided for in the *Agricultural and Veterinary Products (Control of Use) Act 2002* which was passed by Parliament in August 2002.

Both Acts will be repealed with effect from 29 August 2004 when the Agricultural and Veterinary Products (Control of Use) Act 2002 is proclaimed. Some existing components of the Stock Foods Act, which were assessed as being NCP compliant will be transferred to the Livestock Act 1997.

Architects Act 1939

A review of the Act was completed in August 1999 but was deferred pending completion of a review by the Productivity Commission of state legislation initiated in November 1999 by the Commonwealth Treasurer. The Productivity Commission report was issued on 16 November 2000 and recommended repeal of legislation and its replacement with self regulation mechanisms similar to those used by the unregulated accountancy and engineering professions. A State Officials Working Group (SOWG) with representatives from each State and Territory was set up to develop a national response to the review.

The SOWG recommended retention of registration provisions without restrictions on the practice of architecture and building design, industry and consumer representation on registration boards, accessible and transparent consumer complaints procedures and scope for contestability of certification within the Board system.

Cabinet approval to amend the Act to remove the major anti-competitive elements and to update the Act generally will be sought during April 2004. This will include removal of provisions restricting ownership of companies and limitations on advertising. It is expected that a Bill to implement these amendments will be introduced into Parliament during October 2004.

Building Work Contractors Act 1995

The Review of the South Australian legislation was completed in 2001. It recommended retention of the licensing and registration provisions and reduction of the financial resources and mandatory building indemnity insurance requirements.

The proposal to reduce financial resources and insurance requirements was referred back to the Review Panel for reconsideration in light of the collapse of HIH, one of only two providers of building indemnity insurance in SA. A Supplementary Issues Paper, dealing with financial and insurance requirements, was released for public and industry comment.

However, the Ministerial Council for Consumer Affairs (MCCA) commissioned a national review of the same issues by Professor Percy Allan. Work is now progressing on implementing these recommendations with a package of nationally consistent reforms to building legislation aimed at reducing building disputes and indemnity insurance claims. This is likely to increase the financial requirements for licensees and these will be assessed under the "gatekeeper" requirements which apply to new legislative proposals.

The NCP review of the SA legislation has been completed and it should not have been included in the 2003 assessment suspension pool.

Children's Protection Act 1993

The review report recommended that restrictions in section 6(1) were unjustified and may limit the Court's ability to appoint an officer best suited to needs of the child.

This section states:

> *Interpretation*
>
> *6. (1) In this Act, unless the contrary intention appears:*

"Care and Protection Co-ordinator" means a member of the staff of the State Courts Administration Council assigned to the position of Care and Protection Co-ordinator.

The Review report concluded that:

> *The current restriction is unjustified, and may in fact limit the Court's options unnecessarily. Alteration to Section 6 (1) of the Act should ensure there is no prohibition on other persons being appointed to fulfil the role, thereby allowing the appointing officer to best address the needs of the child.*

It appears the Review concluded that under the Act only a Court appointed person (the Care and Protection Coordinator) can represent the interests of the child. This restriction, it argues, prevents other persons who may be better suited from representing the child in a "Family Care Meeting" convened by the Minister.

The argument in the Review report is concerned with the potential for disadvantage to the child if their cultural and linguistic needs are not properly met during a family care meeting. However this argument is not well supported by the Act.

> Section 30(1)(e) provides that the coordinator can invite to the meeting *any other adult person (not being a legal practitioner) who the child or the child's guardians wish to support them at the meeting and who, in the opinion of the Co-ordinator, would be of assistance in that role.*
>
> *Section 31(1)* provides that the meeting is constituted such *that (g) any other person nominated by the Co-ordinator for the purpose of providing expert advice or information on matters relevant to the meeting; and*
>
> *(h)(i) if the child is an Aboriginal child, a person nominated by a recognised Aboriginal organisation; or*
>
> *(ii) if the child is a Torres Strait Islander child, a person nominated by a recognised Torres Strait Islander organisation.*

The Act itself therefore provides sufficient protection and support for the child which it is the coordinator's role to ensure is provided. The coordinators do not necessarily have to fulfil this role, only to ensure that is done.

Part 5 of the Act, provides that the Care and Protection Co-ordinator has a crucial role in the coordination, management, review and facilitation of "Family care meetings" as required under the Act. It is entirely appropriate that this person be familiar with operation of the Act and the Court to fulfil this role properly.

The person authorised under section 7 has an obligation to ensure that as far as practical, coordinators represent a balance of appropriate cultural diversity.

There was no argument or evidence provided by the Review about this section restricting competition although the Review suggested there was a potential for such a restriction which may not be in the best interests of the child However, as described above, this view is based on an inadequate interpretation of the Act.

The NCC 2003 assessment stated that restrictions in the Act are unjustified and may limit the ability to appoint an officer best suited to needs of the child. This assessment may have relied solely upon the Review report.

This assessment by the NCC should be revised given the lack of any evidence in the Review Report and/or argument supporting the claim that section 6(1) "Care and Protection Co-ordinator" is anti-competitive. There is sufficient support given to the needs of the child under that Act and the conclusion that the Court's options are unnecessarily restricted by the section in meeting the needs of the child is not correct.

Any amendments to the Children's Protection Act resulting from the Child Protection Review in 2002-03 will be consistent with the NCP principles and will be assessed under the "gatekeeper" provisions of the Competition Principles Agreement. The 2002-03 Child Protection Review recommended further amendments to the Act and legislation amendments are expected as a result. .

The NCP review of this Act has been completed and there are no reforms to be implemented. The inclusion of this Act in the 2003 assessment suspension pool is incorrect and should be revised.

Chiropodists Act 1950
The 1999 NCP review recommended removal of ownership and advertising restrictions and limiting practice reservations. Cabinet has approved the drafting of a Podiatrists Bill to implement these recommendations and after consultation with stakeholders, approval will be sought to introduce the Bill consistent with other health practitioner legislation in removing ownership restrictions to Parliament later in 2004.

Chiropractors Act 1991
The 1999 NCP review recommended removal of ownership restrictions and the amendment of practice reservations and the advertising code. Cabinet has approved the drafting of a Bill to implement these recommendations and after consultation with stakeholders, approval will be sought to introduce the Bill consistent with other health practitioner legislation in removing ownership restrictions to Parliament later in 2004.

Controlled Substances Act 1984
This Act which was the subject of a national review lead by the Commonwealth and final outcomes were not available at the time of the last national review. Recommendations regarding the restriction of S2 and S3 drugs to pharmacists are now being considered as part of this and other jurisdictions' reviews. A meeting of the National Coordinating Committee on Therapeutic Goods is set for the 9th March 2004 to further discuss the recommendations of the Galbally Review.

Since AHMAC is still considering the Galbally Review it would be premature for South Australia to make a decision until AHMAC arrives at its position. It is expected that final outcomes will be known in the latter half of 2004.

Conveyancers Act 1994
The non-controversial recommendations of the NCP review have been implemented. The recommendations relating to reform of the ownership restrictions remain outstanding after amendments contained in a Bill introduced by the former Government were opposed by the ALP, then in Opposition and now in Government.

A compromise proposal for reforms to the ownership provisions has been developed and the NCC has advised that implementation of these compromise reforms would be accepted as satisfactory compliance with CPA requirements. The compromise proposal is scheduled for consideration by Cabinet on 1 March 2004. If Cabinet approves the proposal it is anticipated that a Bill will be drafted for introduction as soon as possible thereafter, with the aim of having it passed and in operation before 30 June 2004.

Dairy Industry Act 1992
The *Dairy Industry Act 1992* establishes the South Australian Dairy Authority. It licenses dairy farmers, processors and vendors and since industry deregulation its key function in practice is to impose a Code of Practice primarily for food safety purposes as a condition of licence. The food safety system administered by the South Australian Dairy Authority has strong stakeholder support as it is recognised by its peers as the most cost effective system in Australia.

A government working group and an industry steering committee were established in 2000 to consider the future food safety requirements for all primary industry sectors in South Australia following the acceptance by CoAG of the inter-governmental food regulation agreement, the development of a South Australian Food Act and development of national primary production and processing standards by FSANZ. A discussion paper was released in October 2002 titled *"Legislation for implementation of Food Safety Systems in the Primary Industry Sector"*.

A Primary Produce (Food Safety Schemes) Bill was released for public consultation in November 2003. It provides for development of food safety schemes (regulations) with regulatory intervention in proportion to identified risks. The Bill creates a framework for cost effective implementation of risk-based food safety systems and is similar to the framework in the Victorian *Dairy Act 2000*. The mechanisms will include: accreditation/licensing of businesses; imposing food safety schemes/standards/codes; collection of fees from industry for those costs attributable to industry; approval of auditors.

The *Dairy Industry Act 1992* will be repealed when a Dairy Scheme is approved under the Primary Produce (Food Safety Schemes) Bill. It is planned to introduce the Bill into Parliament in late March 2004 and the Dairy Scheme is expected to be implemented in August 2004.

Dangerous Substances Act 1979
The NCP review of this Act found a net public benefit justification for the restrictions on competition contained in the Act. Therefore, no changes to the Act were recommended. The review report was provided to the NCC in 2001.

This Act should not have been included in the 2003 assessment suspension pool.

Cabinet approved the drafting of a *Major Hazard Facilities and Dangerous Goods Bill* on 27 January 2004. These are new provisions assessed under to "Gatekeeper" obligation. It is anticipated that the new legislation will come into effect early in 2005. This legislation will prohibit the importation, handling, storage and sale of white phosphorous matches.

Dentists Act 1984

The review recommended the removal of limits on ownership and the *Dental Practice Act, 2000* maintains these restrictions although providing the Minister with discretion to exempt suitable applicants. All applications for exemption received have been granted or are in the process of being considered, with the initial approvals being published in the *SA Government Gazette* on 19 June 2003. Cabinet approval to remove this remaining restriction on ownership of dental practices will be sought and amendments will be introduced into Parliament shortly.

Employment Agents Registration Act 1993

A review of the Act was completed in 2003. It raised several issues relating to competition policy, however, the majority were assessed as being low impact. In consultation with the industry, discussions are continuing in order to identify the optimal method of addressing these concerns. This may include a code of practice and a reduced level of legislation. Every effort is being made to achieve an approach that is consistent with other jurisdictions. It is anticipated that this will be resolved by mid 2004.

Fisheries Act 1982

The NCP review of the Act was completed in 2002. The review found that:

- without some form of control, the market demand for fish will lead to unsustainable harvesting of those fish.
- The *Fisheries Act 1982* provides a legal framework for protecting the living resources of the waters to which it applies. Primarily this translates to sustainable exploitation of the State's wild fish resources. As such the Act is restrictive in nature.
- The mechanisms by which effective management of a wild fishery can be achieved vary in their impact on competition from minor to significant. The aim is to utilise those mechanisms that have the minimum impact.
- The management arrangements that the Act provides for allow limits on the extraction arrangements from a fishery, allocation of fish resources across competing uses, and the widest possible range of choices about how to catch fish. Each fishery is managed according to its particular circumstances, with a mix of access, output and input controls, as appropriate. This ensures the taking of no more, and usually less, than the maximum biological yield at the lowest cost.

It was the view of the Review Panel that the restrictions that were examined during the NCP review are justified on the basis that the benefits to the community outweigh the costs to the community. Furthermore, legislation that limits effort and catch for fisheries in this State is widely supported by the community, including commercial and recreational fishers.

Several provisions in the Act and its Regulations considered to have anti-competitive elements were further considered in a general review of the Act during 2003. A discussion paper was issued in February 2003 and further consultations undertaken during May 2003.

The general review of the Fisheries Act has been completed and public consultation on direction of new legislation has occurred. The Government's responses to the recommendations in the NCP review dealing with restrictions on competition were -

- The Owner/Operator restrictions in the marine scalefish fishery will be maintained at this stage while a further restructure of the industry is being implemented.
- The one-person/one-license restrictions have been removed.
- Management restrictions in the schemes of management have been removed excepting those that are required for sustainability outcomes and others where the industry will not agree to their removal. The Government will not remove these latter without industry agreement (e.g. rock lobster pot restrictions on licenses).
- Corporate ownership has been allowed.
- Other issues include stronger property rights, licence tenure, foreign ownership of commercial fishing licences, permanent transfer of quota and the provision of industry services are subject to policy and drafting instructions for a new Fisheries Bill.

A Cabinet submission is scheduled for March 2004 to seek Cabinet approval for the development of a Consultation Draft Bill for further public release. This Draft Bill is expected to be released in June 2004 for a period of 60 to 90 days. A new Act could be tabled in Parliament before 31 December 2004 for assent on 1 July 2005.

Fisheries (Gulf St Vincent Prawn Rationalisation) Act 1987
The Act can be rescinded as the last licence holder has settled their buyback debt with the Crown. A Cabinet submission will go forward in March 2004 seeking approval to rescind the Act.

Gambling legislation

Authorised Betting Operations Act 2000
A Bill to amend the Act to allow the provision of fixed odds betting for the TAB, allowing bookmakers to be a body corporate and clarifying criteria for issuing permits to bookmakers has been introduced into Parliament and were passed on 5 May 2004. This completes the review and reform process in relation to this Act.

A phase out period for the removal of minimum telephone bets for bookmakers is already contained in the bookmakers' rules and will be complete by 1 July 2004.

This Act was not scheduled for review and is subject to the "gatekeeper" obligations in the CPA. Therefore, it should not have been included in the 2003 assessment suspension pool.

Gaming Machines Act 1992
The NCC noted that the Government has not yet amended the Act to remove the State Supply Board's exclusive Gaming Machine Service Licence. That amendment has been approved by Cabinet and is contained in technical amendments that are currently being finalised. It is expected that this Bill will be considered by Parliament when it resumes in May 2004.

The NCC also noted that the Government has not yet responded to the issue of transferability of gaming machines within the existing cap arrangements. The recently released Independent Gambling Authority report of its *Inquiry into the Management of Gaming Machine Numbers* recommends a number of measures including the introduction of a transfer system for gaming machine entitlements. Legislation has been drafted and will need to be considered by Parliament prior to the expiration of the current freeze on gaming machine numbers on 31 May 2004.

Lottery and Gaming Act 1936
The outstanding issues relate to the recommendation to restrict participation in bingo and instant lottery tickets to persons 18 years of age and over, and that the IGA should approve events subject to sweepstakes and Calcutta sweepstakes. The proposal with respect to age restriction should await the outcome of a decision on lifting the age for SA Lotteries products from 16 to 18 years.

The issue of sweepstakes and Calcutta sweepstakes is correctly identified as minor. It will be addressed at an appropriate opportunity. Since the competition restrictions have been assessed as trivial, this Act should not be included in any reduction of competition payments.

State Lotteries Act 1966
The NCC did not accept the Government's public benefit argument for retaining the South Australian Lotteries Commission as a statutory sole provider. The Government maintains the position that the current arrangements provide an adequate level of service and that the community obtains a net financial benefit from the current arrangements.

The new development since the last advice on this matter is that Victorian Government officials have written to States and Territories noting the various commitments to review the lotteries industry structure that has arisen from NCP requirements. In particular some States have commenced processes or are further considering issuing public lottery licences. That correspondence proposes the establishment of a national working group to exchange information and discuss issues around the commercial arrangements in this area including the implications for the existing cross border arrangements. South Australia has indicated that it will participate in those discussions.

The gambling NCP review also proposes that the age restriction for the purchase of Lotteries Commission products should be increased from 16 to 18 years. Firstly, it is noted that this is considered a social matter and not a matter for competition policy consideration. At the time of the response the Government noted that there was currently a Bill (Private Members) before Parliament on this issue. That Bill has subsequently lapsed, but the issue is again being raised for consideration.

Harbors and Navigation Act 1993
There has been an intergovernmental agreement to develop nationally consistent legislation. This agreement has been extended until 2005 at which time the national reform should be complete. Possible amendments to the SA legislation to adopt as completed nationally agreed standards will be progressively prepared as necessary.

However, the NCP review was completed in 1999 and no reforms were required. This Act should not have been included in the 2003 assessment suspension pool.

Land Valuers Act 1994
An NCP Review of this Act recommended that the Act and the requirement for land valuers to hold prescribed qualifications be retained. However, it was also recommended that consideration be given as to whether the completion of subjects other than the professional sequence should be removed from the training requirements in relation to all post-graduate courses and that, if the Advanced Diploma in Property (Valuation) is offered in South Australia, this course is considered for recognition as a prescribed qualification.

As the trend in this and other jurisdictions has been to move away from qualifications and to prescribe units of competency, review of the current qualification requirements for land valuers had been deferred until the national training package incorporating competencies for valuers has been developed and endorsed (scheduled to be in 2005). The Advanced Diploma in Property (Valuation) is not presently offered in South Australia.

The Competition Principle Agreement (CPA) obligations with respect to review and reform of this Act have been satisfied. Any consideration given to changes in the prescribed qualifications is being undertaken separately from the NCP review.

The Act should be removed from the 2003 suspension pool.

Legal Practitioners Act 1981
In October 2000 the Government adopted the review recommendations in full, including the recommendation to keep the issue of multi-disciplinary practices under review and that there is no change to the professional indemnity insurance provisions provided premiums remain competitive.

However, the issue of multi-disciplinary practices is on the Standing Committee of Attorney-General's agenda, and is being progressed as part of the project to devise national model laws for the legal profession. Other amendments have been incorporated into a draft Miscellaneous Amendment Bill which received Assent on 4 December 2003.

Meat Hygiene Act 1994
The review was completed in September 2000. Progress was delayed due to the development of the new South Australian Food Act 2001 which impacts on the recommendations of the review, and came into operation in December 2002. Cabinet approved the drafting of amendments to the Act in response to the recommendations of the review on 10 February 2003.

A Memorandum of Understanding between the Department of Human Services, the Local Government Association and the Department of Primary Industries and Resources, SA has been developed to define areas of responsibility for inspections.

The recommendations of the NCP Review of the Meat Hygiene Act which require legislative amendment are:-

- broadening the scope of the Act to include retail meat processing, and
- including 'rabbit' within the definition of 'meat'.

Amendments to the Meat Hygiene Regulations which address the inclusion of 'rabbit' within the definition of 'meat' have been approved by Cabinet sub-committee and have been published in the SA Government Gazette and will come into effect on 5 June 2004.

The Meat Hygiene Miscellaneous (Amendments) Bill 2004 has been introduced into Parliament and the key change will be the addition of retail butchers to the Act. The Bill is expected to be proclaimed with an operative date around 1 July 2004 thereby making the Act NCP compliant. Once it is compliant, the regulations will be transferred to a Scheme under the proposed Primary Produce (Food Safety Schemes) Act. (See Dairy Act above.) This will have no NCP implications.

Medical Practitioners Act 1983
The review recommended removing ownership restrictions, registering medical students, requiring declaration of commercial interests and requiring professional indemnity insurance.

The Medical Practice Bill 2001 was introduced into the SA Parliament in May 2001 but lapsed following the calling of the State election. A new Bill, the Medical Practice Bill 2004 was introduced into the House of Assembly on 23rd March 2004 by the Minister for Health. This Bill removes existing ownership restrictions and includes provisions which protect the public but do not restrict entry into the market.

Mining Acts
The review of the Mining Act 1971, Opal Mining Act 1995 and Mines and Works Inspection Act 1920 and the respective Regulations was completed in December 2002.

Mining Act 1971
The NCP review did not identify any restrictions on competition that should be reformed. For this reason, the Act should not have been included in the 2003 suspension pool.

Opal Mining Act 1995
Section 13 of the Act denies corporations' entry to the Major Working Area at Coober Pedy for the purposes of exploration and mining and the NCP review report recommends its repeal. The proposal to repeal this section will be forwarded to Cabinet for approval in April 2004 and it is expected to be in effect by 1 December 2004.

Mines and Works Inspection Act 1920
The NCP review did not identify any restrictions on competition that should be reformed and the Act should not have been included in the 2003 suspension pool.

The report recommends that although the health and safety provisions in the *Mines and Works Inspection Act* are not provisions that contain restrictions on competition, they should be repealed as the *Occupational Health, Safety and Welfare Act* now deals with all of the matters they cover. The report also recommends that the provisions be repealed when amendments arising from the current review of the *Mining Act* are made and that the remaining provisions of the *Mines and Works Inspection Act* be incorporated into other appropriate legislation (eg. the *Mining Act*) at the same time.

The Government is considering the removal of the occupational health and safety provisions from the *Mines and Works Inspection* Act and incorporating the remaining provisions in to the *Mining Act* for administrative purposes only. It is not an obligation arising from the NCP review of the legislation or one required by Clause 5 of the CPA.

Motor Vehicles Act 1959 – Tow Trucks
The Accident Towing review was completed in 2000. The review was released in November 2003 for public consultation with industry and key stakeholders on the recommendations. It is available at www.transport.sa.gov.au.

Motor vehicle compulsory third party insurance
Motor Accident Commission Act 1992
Motor Vehicles Act 1959
This review has been completed and amendments to the legislation passed in October 2002. The Government released an Indicative Response to the NCP review of Compulsory Third

Party bodily insurance arrangements for public comment in February 2001. The decision to retain the Motor Accident Commission as the sole provider of CTP insurance in South Australia was reaffirmed in September 2001. The Government considered that the review demonstrated that a sole provider scheme is cheaper for motorists than a multi-provider scheme and that the objectives of CTP legislation – universal coverage, fair claims settlement, (maximum) affordability of premiums, fairness and community acceptability as well as minimum financial risk to the Government – cannot be achieved except by restricting competition through compulsion, community rating and provision by a single statutory authority. Amendments giving effect to the Government's response came into operation on 3 October 2002.

Occupational Therapists Act 1974

The NCC has been provided with a copy of the review, which contains the public interest arguments for retaining registration. Cabinet has approved the drafting of a Bill to implement these recommendations consistent with other health practitioner legislation and after consultation with stakeholders, approval will be sought to introduce the Bill to Parliament later in 2004.

Optometrists Act 1920

The Review was completed in April 1999. The recommendations include extending coverage to include optical dispensers, removal of restriction on training providers and the introduction of a code of conduct. Consultation on a proposal to grant prescribing rights to optometrists concluded in March 2004. Recommendations to the Minister regarding provisions for prescribing rights and the ongoing registration of optical dispensers are currently in progress and Cabinet approval to draft a bill consistent with other health practitioner legislation in removing ownership restrictions and implementing these amendments will be sought shortly.

Passenger Transport Act 1994 – Taxis

The 1999 review report by consultants Halliday-Burgan was released by the Minister for Transport and Urban Planning on 8 November 2000. The Government is committed to review the taxi industry by 2006.

Petroleum Products Regulation Act 1995

The review of this Act found that the current licensing system, namely the requirement for approval for an authority to make prescribed retail sales, provided the main restriction on competition in the petroleum retailing industry, creating a barrier to entry and protecting existing industry participants (large and small) without providing a net public benefit. The review's main recommendation therefore related to the abolition of the Petroleum Products Retail Outlets (PPRO) Board.

It is expected that the *Statutes Amendment Petroleum Products Bill* will be tabled in the 2004 Spring session of Parliament.

The Bill will abolish the Petroleum Products Retail Outlets (PPRO) Board and make other consequential amendments. Although the original timeframe for the abolition of the PPRO Board was 30 June 2004, time delays in introducing the Bill will require the extension of the transitional arrangement, until 31 December 2004. This date will be enacted through Gazettal.

Pharmacists Act 1991
A national review of the Pharmacy Regulation was completed in February 2000 (the Wilkinson Review). The review recommended retaining registration, the protection of title, practice restrictions and disciplinary systems (although with minor changes to the registration systems recommended for individual jurisdictions). Further, the review recommended maintaining existing ownership restrictions, and removing business licensing restrictions. CoAG considered a report in response to the review prepared by a senior officials' working party (the Borthwick report) and agreed limits on FSMA pharmacies and advertising restrictions should be lifted. The Government is considering its response to these reports.

Physiotherapists Act 1991
The review was completed in February 1999. Consistent with other health practitioner legislation in removing ownership restrictions the Bill will include publication of a code of conduct without advertising restrictions, amended definitions of areas of practice protected, removal of the requirement to register business names, removal of ownership restrictions, prohibition of undue influence, demonstration of continuing competence and removal of advertising and unprofessional conduct provisions from code of ethics prior to adoption of a code of conduct.

Cabinet has approved the drafting of a Bill to implement these recommendations and after consultation with stakeholders, approval will be sought to introduce the Bill to Parliament later in 2004.

Psychological Practices Act 1973
The review completed in 1999. It recommended removing advertising and practice restrictions. Cabinet has approved the drafting of a Bill to implement these recommendations and after consultation with stakeholders, approval will be sought to introduce the Bill consistent with other health practitioner legislation to Parliament later in 2004.

Shop Trading Hours Act 1977
Significant amendments were made to the Act in June 2003 to extend weeknight trading to 9pm (from July 2003) and to allow Sunday trading from 11am to 5pm for stores in the metropolitan area from October 2003. Further amendments are not proposed, however, the Act will be reviewed after three years of operation.

Southern State Superannuation (SSS) Act 1987
A desktop review of the Act (undertaken by the Crown Solicitor's Office) recommended no reform. This was considered by the NCC not to have met CPA obligations.

In its 2003 assessment the NCC considered that SA "had not established that the benefits of the restriction on choice of superannuation fund for providers and members exceed the costs".

The restriction in relation to the State Government not providing 'scheme choice' to members of the Triple S Scheme is considered trivial to negligible because:

- In relation to administration fess, a recent report by '*SuperRatings*', an independent research company, states that based on a survey of <u>all</u> Australian superannuation schemes, the Triple S Scheme had the lowest administration expenses of any scheme in Australia. The Non Investment Related Management Expense Ratio of Triple S was 0.28% per annum compared to the industry average of 1.16%. The research also showed that the average administration cost per member of Triple S was $30.69

(across the total membership). This compared against an industry low of $26.60 and an average of $199.53 per annum.

- Members of the scheme have the option to chose between several different investment strategies. The returns of the core investment strategy over the last 7 years have exceeded the median returns on funds in the Mercer Australian wide survey by 0.7% per annum (on a comparative tax basis).
- Insurance premiums in the self-funded arrangement are on a par with the most competitive of the big private sector industry funds.

The 2003 NCC Assessment report states that "the main outcomes of the restricted choice of fund provider are that contributors cannot take advantage of higher returns that they believe other superannuation funds could provide and the market presence of alternative service providers is constrained". Against the fact that the *SuperRatings* group has found Triple S to have the lowest administration fees in Australia and Triple S returns have been better that the median over the last 7 years, it is not valid for the NCC to conclude that contributors are in some way disadvantaged by the restriction on choice of fund provider. The economies of scale in Triple S, which bring these benefits to members, could be put under pressure if members had a choice of fund or scheme.

Super SA, the tied service provider to SA Government employees for their Guarantee Levy money, only provides superannuation scheme administration services. Super SA has approximately 6 FTEs dedicated to this task, thus representing an insignificant level of economic activity.

Funds SA, however, administers the investing of Super SA's Guarantee Levy money. Funds SA is not an investor itself, but manages the outsourcing of the investments to a range of private sector investment managers. Funds SA regularly assesses its private sector investment managers on the basis of their recent performance. Thus, the actual investment of the funds has no anticompetitive impact in the equities or financial markets.

Survey Act 1992

The review recommended current restrictions on companies and partnerships be removed and new provisions be added to make it an offence for any person to exert undue influence over a licensed surveyor to provide a service in an inappropriate or unprofessional manner. The Bill containing these reforms was assented to on 11 December 2003 and will come into operation on 1 April 2004.

Trade Measurement Act 1993

The Trade Measurement Act was reviewed nationally with Queensland as lead agency. The review was completed in late 2003. The review, incorporating a Public Benefit Test of the requirement to unit price non pre-packed meat, concluded that all restrictions contained in the legislation are justified as delivering net public benefits. While the review recommends a further review to standardise and clarify the definition of meat for the purposes of a requirement to unit price all non pre-packaged meat, this would only increase the present net benefit. Therefore, once the Office of Regulatory Review and the NCC are provided with a copy of the final report, our CPA obligations should be met. The lead agency advised in November 2003 that it intended to advise the NCC and ORR of the completion of the review and reform project.

This Act should be removed from the 2003 assessment suspension pool.

Travel Agents Act 1986
A National review was conducted of this legislation with WA as lead agency. Significant delays were experienced with the conduct of this review, due mainly to concerns about an initial report prepared by external consultants. The Ministerial Council for Consumer Affairs endorsed the Review Recommendations. It resolved to defer implementation of a recommended review of the Travel Compensation Fund (TCF) pending completion of existing joint industry working group reviewing the TCF in light of the effects on the TCF of the Ansett collapse. The remaining recommendations were:

- To review the qualification requirements for travel agents and make these uniform throughout Australia;
- To increase the turnover threshold amount under which persons are exempt from the licensing requirement to $50,000;
- To remove the exemption for Crown-owned businesses.

Implementation is being overseen by a national working party with WA as lead agency. The qualification requirements have been reviewed and work is progressing towards legislating to implement the new uniform requirements by 30 June 2004.

Cabinet has approved the increase in the exemption threshold amount and Regulations are currently being drafted with a view to having them gazetted and in operation prior to 30 June 2004.

After consultation with the Minister for Tourism regarding the recommendation to remove the Crown exemption, the Minister for Consumer Affairs has determined not to implement this recommendation. This is because the South Australian Tourism Commission does not engage in competitive commercial activity therefore does not attract competitive neutrality requirements. The conclusion that the Crown exemption need not be removed in South Australia was endorsed by the Director, NCP Implementation Unit, Department of Premier and Cabinet. It is also understood that other States are also deferring implementation of this recommendation, possibly on the same grounds. Other States have been revoking exemptions that apply to interstate Crown-owned businesses promoting tourism to those interstate destinations. There is no such legislative exemption in SA, although OCBA has received legal advice to the effect that the Queensland Tourism Commission, which carries on business in SA, does not require a licence in SA due to the operation of the common law.

Veterinary Surgeons 1985
The NCP review was completed in May 2000 and approved by Cabinet in September 2000. A Veterinary Practices Bill was passed in 2003. Consultation on new Regulations commenced with the issue of a discussion paper on 11 March 2004. It is expected that Regulations will be completed in time to enable proclamation of Act by 30 June, 2004.

Occupational Health, Safety and Welfare Act 1986
At the time of the last report a legislative review of the Act was being conducted and the NCP review of the Act could not be finalised until that was complete. The review of the Act (part of the review of occupational health and safety and workers' compensation and rehabilitation by Brian Stanley in 2002) has been followed by the *Occupational Health, Safety and Welfare (SafeWorkSA) Amendment Bill 2003*, presently before Parliament.

The major finding of the NCP review was that the benefits of the existing system outweigh the costs of the restriction on competition and therefore should be retained. The review did

raise some concerns in relation to market entry for health and safety representatives (because of accreditation processes) and in relation to public access to Australian Standards referred to in the *Occupational Health, Safety and Welfare Regulations, 1995*.

The proposed SafeWorkSA Authority will consider these issues. In the event the Authority is not established, the matters will be dealt with by the existing ministerial Occupational Health, Safety and Welfare Advisory Committee (OHSWAC).

It is anticipated that the relevant group will propose any changes in relation to these issues by June 2005.

Workers Rehabilitation and Compensation Act 1986
The NCP legislative review of the Act was completed in mid 2002 under the guidance of an inter-agency Steering Committee. Prior to the completion of the final report, an Issues Paper and a Draft Report were released for comment, with 12 and 13 submissions received respectively. Meetings were also held with some of the interested parties.

The review identified a number of restrictions to competition in the Act but only proposed minor legislative changes. The majority of the identified restrictions were considered appropriate as they are consistent with the Act's objectives and there are net public benefits from their retention. The two most significant restrictions identified by the review are compulsory coverage and sole scheme administrator (statutory monopoly provider). The review found both to be of a net public benefit and recommended their retention. The NCC has previously accepted the arguments for compulsory coverage.

In mid 2002, the South Australian Government announced two separate investigations of aspects of the workers rehabilitation and compensation arrangements in South Australia. These two investigations related to, firstly a report on the financial, risk management and governance arrangements of the WorkCover Corporation, and secondly, a review of the South Australian workers compensation and occupational health, safety and welfare systems. The Minister received reports on these two investigations for consideration in late 2002 and early 2003.

In early 2003, the Minister for Industrial Relations released the report on the 'Review of Workers Compensation and Occupational Health, Safety and Welfare' (the 'Stanley' review) for public consultation. As both of these reviews were to consider issues raised in the NCP legislative reviews, and there was a strong likelihood that legislative changes would be identified, further action on the NCP review recommendations was not progressed on the basis that the NCP review recommendations would be considered as part of the Government's broader review of the workers rehabilitation and compensation arrangements in South Australia.

3.4.4 Legislation not subject to reduction of competition payments

Advances to Settlers Act 1930
Loans for Fencing and Water Piping Act 1938
Loans to Producers Act 1927
These Acts were defunct and a review was not undertaken. The *Statutes Amendment and Repeal (National Competition Policy) Bill 2002* combined the repeal or minor amendment of

a number of Acts to give effect to the recommendations of NCP legislation reviews. The above three Acts were repealed as part of this process in 2002.

Branding of Pigs Act 1964
Brands Act 1933
It is proposed to introduce Mandatory Registration Regulations under Section 17 of the Livestock Act requiring that persons must be registered if they keep livestock of a prescribed class. Such a requirement is already in place for persons keeping deer and bees and the proposal is to include persons who keep sheep, cattle, buffalo, goats and alpaca.

When the regulations are drafted, Parliamentary Counsel will be requested to draft a proclamation bringing parts 1 (b) & (c) of Schedule 2 of the Livestock Act into operation, resulting in the repeal of the Brands Act and the Branding of Pigs Act. The changes are expected to be proclaimed by 30 June 2004.

Citrus Industry Act 1991
The NCP review of the Act was completed in 2001. It recommended that an association representative of the citrus industry in South Australia be nominated under the *Primary Industry Funding Schemes Act, 1998* as the administrator of a fund established under that Act to undertake those functions performed by the Board which provide industry benefit. The Act would then be repealed.

The draft Citrus Industry (Competition Policy Reform) Amendment Bill 2004 to remove major anti competitive elements from the *Citrus Industry Act 1991* has been released for public comment following extensive consultation with the industry via the Citrus Industry Implementation Committee.

The amendments provide for:

- Setting a sunset date for the Act to expire (30th April 2005)
- Retention of registration of industry participants remains but tests for licensing are removed.
- Simplification of the "preparation and packing" requirements for fruit moving through the chain – tying these requirements to provisions of the proposed food safety laws in SA.
- Retention of maturity standards and other key food safety requirements in the conditions of fruit preparation and packing.
- Retention of powers to raise levies from all sectors.
- Retention of the powers to collect information and of inspection.
- Removal of powers and administrative functions which govern settlement of payments made by wholesalers to packers.
- Removal of powers to regulate the movement, handling and marketing of fruit.
- Removal of powers to make marketing orders.
- Board representation changed to represent all sectors, as requested by industry.

The Amending Bill provides a sunset date of 30th April 2005 for the Citrus Act, with affairs of the Citrus Board to be wound up by 31st July 2005. It is expected by have passed through parliamentary processes by July 2004.

Crown Lands Act 1929
The NCP review was completed in 1999 following public consultation. No NCP reforms were required and this review is now complete.

Following completion of the review, Cabinet approved the drafting of a rewrite of the Act to rationalise leasing and licensing arrangements. There are no outstanding NCP issues.

Discharged Soldier Settlement Act 1934
Repeal of the Act approved by Cabinet. Bill to repeal to be introduced into Parliament in September 2004.

Dried Fruits Act 1993
An Act to repeal the Dried Fruits Act was passed by Parliament in November 2003. This repealing legislation included provisions for transfer of remnant funds of the Dried Fruits Board to SA Dried Tree Fruit Growers Association. The agreement between the Minister and the SA Dried Tree Fruits Association for transfer and management of these funds is currently being finalised by Crown Solicitor's Office. Once transfer of funds occurs, approval will be sought from Cabinet for the Dried Fruits Repeal Act to be proclaimed.

Closing of Dried Fruits Board accounts and transfer of funds to the SA Dried Tree Fruits Association should be completed by 30th April 2004. Proclamation of the Dried Fruits Repeal Act should be completed by 31st May 2004.

Fair Trading Act 1987
In response to comments by the NCC in the Third Tranche Assessment, the relevant agency reviewed the Act to ensure that any provisions beyond those which duplicate parts of the Trade Practices Act were reviewed according to the clause 5(1) principles. The review report recommends the retention of all provisions, which are justified on the basis of a net public benefit, with further review during a forthcoming general review of Act of the following matters:

- increasing the door to door sales threshold from $50 to $100
- reviewing the need for retention of fair reporting provisions when sufficient time has elapsed, to ascertain adequacy of Commonwealth Privacy Act
- considering the repeal of the s.40 price ticket requirements which is a trivial restrictions on competition
- repealing or increasing the level of certainty in third party trading scheme provisions.

The NCP review of this Act has been completed.

Family and Community Services Act 1972
The 1999 NCP review report recommended removal of provisions preventing for-profit organisations entering into grant allowance agreements for the provision of long term care.

The Government considers the recommendation is not in the public interest and should be rejected for these reasons -

- The not-for-profit sector subsidises the cost of these services considerably and it is therefore very unlikely that for-profit agencies would enter this market.
- There are no reliable and consistent benchmark standards against which a for-profit agency could be held accountable.
- There is a considerable risk that a for-profit agency would need to cut services in order for it to be financially viable.
- Given that financial margins are slim:

- Any reserves accumulated by agencies from prudent management should be returned to clients; and
- In the provision of this service the needs of the client should always take precedence over profits. For-profit agencies, by their nature would not be able to meet this principle as effectively as not-for-profit agencies.
- The current provision does not preclude the for-profit sector, but provides that the Minister can always ensure the needs of the client are met before the needs of a commercial principle or enterprise.
- At the time of the proposed amendment, SACOSS, the Child and Family Welfare Association of SA the Association of Major Community Organisations (SA) all were opposed to it.

There is no strong case supporting the proposition that competitive interests are being unnecessarily restricted from entering this market and a strong community benefit argument exists for the maintenance of this provision. Essentially these arguments are that:

- There is no evidence that demonstrates the barrier to competition is significant.
- There is a considerable public benefit in terms of the assurances to the client and the care provider that their interests are the primary focus of the agency and the Government.
- The Act does not preclude the Minister from considering a for-profit agency if it is in the interests of the client group to do so.
- Given the vulnerability of these clients, it is in the public interest that the Minister be given the discretionary ability to have a preferred provider sector, which has as its primary focus the interests of the client and this focus is not put at risk with a need for financial gain.

The NCP review has been completed and the Government has concluded, for the reasons stated above, that no reform is necessary.

Food Act 2001
The Act is based on the national model Bill and there are no additional provisions in the Act unique to South Australia. Implementation of food safety provisions in relation to primary produce is being applied under the *Dairy Industry Act 1992* which is also included in the suspension pool.

Fruit and Plant Protection Act 1992
The NCP review was been completed in April 2003 and no reforms were recommended. No further action is required.

Impounding Act 1991
The 2001 NCP review has been completed. The Act does not contain any restrictions on competition.

Irrigation (Land Tenure) Act 1930
NCP review completed but no reforms recommended. The Act has been repealed.

Local Government Act 1934
The provisions relating to cemeteries were repealed in 2002 and this completed the NCP obligation to review and reform the Act.

Motor Vehicles Act 1959 – Driving Instructors
The review of Motor Driving Instructors recommends minor amendments to the legislation to reflect the terminology used by the industry and these are not competition issues. The Government is considering the report.

Pastoral Land Management and Conservation Act 1989
NCP review completed in 1999 but no NCP reforms were required. Review has been completed.

Subsequent amendments implementing protocols enabling public access to pastoral leases by members of the public did not involve any competition issues.

Petroleum (Submerged Lands) Act 1982
An inter-governmental agreement of 16 October 1967 by Australian Governments requires that petroleum legislation in Australian waters be, as far as practicable, common.

South Australia has agreed to the Ministerial Council Minerals and Petroleum Resources (MCMPR) proposal to create a National Offshore Petroleum Safety Agency (NOPSA) for Minerals and Petroleum.

However, there are neither current licences nor current plans to promote petroleum acreage releases in SA's adjacent, offshore waters. For the sake of legislative efficiency and in the absence of any operational need to amend the Act at this time, South Australia intends to amend the legislation to achieve 'harmonisation' with the Commonwealth Act after the completion of major amendments now being developed nationally for the creation of the National Offshore Petroleum Safety Authority (NOPSA). The timing of amendments of the South Australian Act will follow the Commonwealth's timelines for incorporating the NOPSA into the Commonwealth legislation. This plan ensures for all practical purposes that South Australia's Act is on track to be amended before any licensed petroleum activities are undertaken.

The new Commonwealth Act will contain some changed terminology, thus required consequential amendments to other State legislation, including the Gas Pipelines Access (South Australia) Act 1997. PIRSA's Petroleum Group is working with Parliamentary Counsel to meet the timelines set by the Commonwealth Government for its amendments to offshore petroleum legislation. It is proposed to introduce the Bill in the September Parliamentary sittings. Amendments to the Act, at least in respect to NOPSA and common nomenclature in respect to the proposed Commonwealth "Offshore Petroleum Act" are required to come into operation on 1 Jan 2005 (date of commencement of NOPSA under Commonwealth Act).

These new legislative proposals are assessable under the "gatekeeping" provisions of the CPA.

Plumbers, Gas Fitters and Electricians Act 1995
The NCP review of this Act identified certain trivial restrictions on competition but these changes were assessed by the NCC as not being required for CPA clause 5 purposes and in its 2003 Assessment the NCC assessed SA has not having completed its CPA obligations with respect to this Act.

All of the recommendations of the review have now been implemented, apart from the recommendation that the business competency and financial resources requirements be reduced where a person proposes only to subcontract to other contractors. It was decided that these requirements were necessary to ensure that subcontractors are better able to protected themselves from exploitation by contractors and that consumers are protected from the potential for subcontractors in financial trouble to cut corners. Also, the proposal was thought to be inconsistent with measures designed to decrease insolvency rates of building contractors, because they would suffer the impact of subcontractor insolvencies. The remaining recommendations were implemented by Regulations that came into operation on 31 January 2004.

Public and Environmental Health Act 1987
The 2000 NCP review of the Act concluded that the provisions relating to public health standards and communicable diseases and monitoring of these were justified by the public benefits derived by the community. No reforms are required and the NCP review obligation has been completed.

Following the completion of the NCP review, discussions occurred with educational bodies and professional organisations on alternative courses providing qualifications for authorised officers which might be approved.

Radiation Protection and Control Act 1982
National review of legislation recommended several amendments relating to environmental protection, non-ionising radiation and certification of third party testing of x-ray machines. AHMAC has accepted the recommendations and the implementation plan. South Australia will implement the recommendations according to the agreed timetable which extends to June 2005.

Security and Investigation Agents Act 1995
The NCP review of this Act was completed in May 2003. It made a number of recommendations for minor changes to the Act that have been assessed by the NCC as not being restrictions on competition for the purposes of clause 5 of the CPA. Consultation is occurring within Government regarding a number of the proposals prior to seeking Government approval to implement the review recommendations. In light of competing priorities it is unlikely that the recommendations will be implemented by 30 June 2004

South Australian Health Commission Act 1976
The NCP review completed in 1999 reviewed the provisions restricting market conduct by private hospitals. Amendments to the Act for non-NCP and NCP issues are currently being considered as part of the health reform process arising from the Generational Health Review..

South Australian Motor Sport Act 1984 (formerly Australian Formula One Grand Prix Act)
Until the end of 2002 this legislation was committed to the Premier. Reflecting the previous Ministerial arrangements the Department of the Premier and Cabinet (DPC) commenced the NCP review of the Act. Notwithstanding that the Act is now committed to the Deputy Premier, DPC offered to complete the review process, subject to the Deputy Premier's approval. Such approval was granted in early 2003.

The NCP Review of the Act has been completed. An assessment of the restrictions contained in the Act found that they range from trivial to intermediate in severity. The restrictions relate

primarily to the provisions that provide the SA Motor Sport Board with access to facilities or other powers that are either not available to its competitors or are only available at a higher cost. However, the Act does not prevent competitors from staging events and in the context of a national market for attracting and staging major motor sport events, the adverse effect of the restrictions on competition is considered to be relatively minor.

In assessing the costs and benefits associated with the restrictions on competition contained in the Act, the Review found that there are costs to the community including inconvenience to the public and some businesses as a result of the lack of public access to a small part of the Adelaide Parklands, noise and restrictions that occur due to road closures. However, this inconvenience is considered to be more than outweighed by the significant economic and tourism benefits generated by the staging of motor sport events. This finding is supported by independent economic studies. Therefore, on the basis that the restrictions on competition contained in the Act provide a net public benefit to the community as a whole, no changes to the legislation are recommended.

Starr-Bowkett Societies Act 1975
Payments through these societies now completed. Last Starr Bowkett Society recently deregistered. The Act is to be repealed.

Water Legislation
A report on the review of the *Waterworks Act 1932, Sewerage Act 1929* and the *South Australian Water Corporation Act 1994* was completed prior to the change in Government in February 2002. The report concluded that the primary restrictions to competition and constraints on market entry for alternative suppliers in areas already supplied by SA Water appear to arise from the inherent natural monopoly of the infrastructure rather than specific provisions of the legislation.

The majority of the identified restrictions to competition were considered appropriate in the context of the Acts' objectives and that there are net public benefits from their retention. Although the review report identified a number of trivial and intermediate restrictions in the Act and consequently recommended some minor amendments to the Acts, the existing arrangements are considered to adequately address the issues raised in the review report, and accordingly no legislative changes are proposed.

White Phosphorous Matches Act 1915
This Act will be repealed after the introduction of the *Major Hazard Facilities and Dangerous Goods Bill* as described in 3.4.3 above.

Wine Grapes Industry Act 1991
The Wine Grapes Industry Act has been the subject of a National Competition Policy review by KPMG Management Consulting (completed in 1999) and a legislative review by PIRSA (completed in 2001).

KPMG concluded that the indicative price arrangements that the Act provides for do not have the effect of fixing, controlling or maintaining prices, are unlikely to give rise to a breach of the Trade Practices Act and are not presently operating to restrict competition in the market for the supply of wine grapes. Nevertheless, KPMG recommended that the Act be repealed because it is not achieving its apparent objectives. However, such a recommendation was beyond the scope of the review.

Rather than implement the recommendation to repeal the Act in isolation, the Government's preferred path was to work with industry stakeholders, particularly wine grape producers and processors, to explore alternative mechanisms for achieving desired outcomes. Primary Industries and Resources SA (PIRSA) established a departmental Review Team to manage the process.

Section 9(1) of the Wine Grapes Industry Act 1991 states that a processor must not accept delivery of wine grapes grown in the production area for processing unless all amounts that have previously fallen due in a previous season have been paid in full, or the processor has been granted an exemption.

It is proposed to issue a statement along the lines that unless it can be demonstrated that a processor is insolvent and provided that interest on outstanding payments is paid, a processor will be granted an exemption under Section 9(3) allowing the processor to accept delivery of fruit without having paid all amounts that have fallen due in previous vintages. It is necessary to canvass the views of grape and wine industry stakeholders before the statement is released. Release of the statement will complete the changes necessary to make the Wine Grapes Industry Act NCP compliant.

3.4.6 New legislation

Clause 5(5) of the Competition Principles Agreement requires proposals for new legislation containing restrictions on competition to be accompanied by evidence that the legislation is consistent with the principles in clause 5(1).

The Department of the Premier and Cabinet has produced two documents, *Guidelines paper for agencies conducting a legislation review under the CoAG Competition Principles Agreement*, February 1998 and *Proposals for New Legislation - National Competition Policy Review Obligations*, November 2001 (endorsed by Senior Management Council in December 2001), reminding South Australian portfolio agencies of this obligation. The documents are published on the Department of the Premier and Cabinet internet site at www.premcab.sa.gov.au.

The Department of the Premier and Cabinet's *Circular 19 - Preparing Cabinet Submissions* was approved by Cabinet in July 2003 and describes the processes and requirements involved in preparing Cabinet submissions. It requires the provision of information on community impacts, specifically family and society, small business, regional and regulatory (including NCP issues) impacts, in all Cabinet submissions. This process ensures that all of the "gate keeping" obligations contained in Clause 5 of the Competition Principles Agreement in relation to existing scheduled legislation reviews and for new legislation are met as Cabinet must approve all proposals for changes to legislation.

The circular encourages early consultation on proposals among those in the community who are likely to be affected and relevant Government agencies. A risk management assessment and an implementation strategy are required, where these are appropriate. The circular indicates the type of proposals where a regulation assessment is appropriate and provides a checklist of questions to focus upon relevant considerations.

The NCP Implementation Unit in the Department of the Premier and Cabinet provides advice to agencies on regulation impact statements and NCP requirements. It also advises Cabinet

Office on the adequacy of the regulation impact statements in Cabinet submissions. The NCP Implementation Unit provided comments on 297 regulatory impact statements in Cabinet submissions during 2003.

Cabinet Office is now assessing whether or not each Cabinet submission has considered the range of community impacts described above and if these are considered to be adequate. A summary of the results will be published annually.

3.4.7 Ten Year Review

Following the completion of the scheduled legislation reviews, clause 5(6) requires the systematic review of legislation which restricts competition at least every ten years. The first review of a scheduled Act was completed in 1997.

It should be noted that in South Australia subordinate legislation lapses at the end of ten years, and must be remade. This will bring into play the processes for the review of new legislation described above.

THIRD PARTY ACCESS

3.5.1 Port Facilities

Third party access in relation to port facilities is addressed under **3.1 PRICES OVERSIGHT**.

3.5.2 Rail Facilities

The South Australian Government, in conjunction with the Northern Territory and Commonwealth Governments, supported the AustralAsia Railway project. One of the fundamental features of that project was the rail access regime for the line from Tarcoola to Alice Springs, which now extends to Darwin, established by the complementary *Australasia Railway (Third Party Access)* legislation of South Australia and the Northern Territory.

This regime was certified by the Commonwealth Treasurer as effective under section 44N of the *Trade Practices Act 1974* on 23 March 2000. The certification is for a period ending on 31 December 2030.

ESCOSA has the role of regulating third party access to the Tarcoola to Darwin railway.

Central to the rail access regime is the *AustralAsia Railway (Third Party Access) Code* ["the Code"], which is a schedule to the *AustralAsia Railway (Third Party Access) Act 1999*.

The extension of the railway line to Darwin has been completed, with the service to Darwin commencing operations in January 2004. To coincide with the commencement of operations on the Tarcoola-Darwin railway, the Governments of South Australia and the Northern Territory declared the Code, by way of a joint ministerial notice. The Code took effect at 3pm Central Summer Time, on Thursday 15 January 2004.

In July 2003, ESCOSA made a Provisional Determination under the Code in relation to Regulated Rates of Return for the Tarcoola-Darwin railway. The Provisional Determination relates only to certain regulated rates of return to be applied by an arbitrator in the event of an access dispute.

ESCOSA issued the following two guidelines under the Code in February 2004, both of which took effect on Monday 16 February 2004 -

- *Rail Industry Guideline No. 1 (Final) Access Provider Reference Pricing and Service Policies*, which sets out the pricing and service policy obligations placed upon the access provider (Asia Pacific Transport Pty Ltd).
- *Rail Industry Guideline No. 2 (Final) Arbitrator Pricing Requirements*, which sets out certain pricing principles and methods that an arbitrator would need to apply were an access dispute to arise and reach arbitration.

The provisional determination and guidelines may be obtained from ESCOSA's website at: www.escosa.sa.gov.au.

With regard to intrastate rail regulation, responsibility for access regulation will be transferred from Transport SA to ESCOSA in 2004. Technical and safety regulation will remain with Transport SA.

***Railways (Operations and Access Act) 1997* - Intrastate railways:**

Intrastate railway operators are providing the regulator with six monthly reports of their costs associated with providing railway services in accordance with Part 7 of the Act. There have been no access disputes referred to the regulator under section 35 of the Act for reference to arbitration during the year 2003.

***Australasia Railway (third Party Access) Code*:**

On 10 March 2003 the Australian Competition Tribunal overturned the decision by the Commonwealth Minister (Senator Ian Campbell) to declare the line between Tarcoola and Wirrida under section 44H of the *Trade Practices Act 1974 (Cth).* As a result of this decision access to the line from Tarcoola to Wirrida reverted to being subject to the Code.

Construction of the new railway from Alice Springs to Darwin was completed on 14 January 2004. The Code was applied to the railway from Tarcoola to Darwin by joint Ministerial notice made under clauses 2 and 49 of the Code. This application of the Code to the railway took effect at 3 PM *Central Summer Time* on 15 January 2004. As a result of this notice the Code applies to the railway from the southern boundary of the land leased to Asia Pacific Transport Consortium Pty Limited to the point where the railway ends on the wharf at East Arm in Darwin. Associated sidings, crossing loops and the railway within any terminal, or any intermodal cargo handling or port facility between those two points are also subject to the Code.

3.5.3 Gas Issues

National Gas Pipelines Advisory Committee

The Seventh and Sixth Amending Agreements for the Gas Code came into operation on 17 April 2003 and 24 April 2003 respectively. Due to South Australia's role as the lead legislator for the Gas Access Regime, such agreements take effect in all Australian States and Territories upon publication in the South Australia Government Gazette.

The Seventh Amending Agreement included:

- Increasing the scope of a New Facility to include an asset providing services ancillary to haulage services, such as facilitating competition in retail markets.
- A revision to provide the Regulator with the means to change the capital base, if the forecast capital expenditure meets certain efficiency criteria. That change still permits the Regulator at the next regulatory review to decide if the actual expenditure meets these criteria, and to determine how much of this change will be brought into the capital base.

The Sixth Amending Agreement permitted greater flexibility in establishing the scope of access arrangements for gas pipeline services. Previously, if a pipeline service was provided by the same entity through more than one covered pipeline then each pipeline required a separate access arrangement. The Agreement changed the Code to permit such access arrangements to be rationalised to, for example, just one access arrangement, subject to the proviso that the regulator is the same. The change will permit a reduction in the cost of regulation, by lowering the administrative costs to both the regulator and service provider.

Envestra Access Arrangement for the South Australian Gas Distribution System

On 17 April 2003, the South Australian Independent Pricing and Access Regulator (SAIPAR) released its Final Approval with respect to Envestra Limited's Access Arrangement. The Access Arrangement sets out default terms and conditions on which access to Envestra's distribution system is provided to retailers.

The regulatory functions of SAIPAR were transferred to ESCOSA on 1 July 2003 (see section **4.2 GAS**). From that date, ESCOSA commenced its role as regulator of access to the distribution system in South Australia, which includes the Envestra Access Arrangement.

Regulation of Natural Gas Transmission Network

The report to the NCC for the calendar year 2002 mentioned that the Australian Competition and Consumer Commission (ACCC), the Relevant Regulator for the Moomba to Adelaide Pipeline (MAP), drafted and approved its own Access Arrangement for the MAP, after it did not approve the revised Access Arrangement submitted by Epic Energy. The report also noted that Epic Energy had appealed to the Australian Competition Tribunal (ACT) against the ACCC's decision.

The ACT issued its orders with regard to Epic Energy's appeal on 10 December 2003:

- Increasing the initial capital base; and
- Rescinding the inclusion of the expansion in pipeline capacity arising from the addition of Pelican Point Power Station as a customer, as the Tribunal did not believe that it provided Epic with the ability to exercise market power of a significant nature.

Productivity Commission Review of the Gas Access Regime

The Commonwealth Government referred a review of the Gas Access Regime to the Productivity Commission in June 2003. The Productivity Commission invited initial submissions to the Review and released an Issues Paper to assist individuals and organisations with preparing submissions. The South Australian Government forwarded a submission in response to the Issues Paper to the Productivity Commission in September 2003.

The Productivity Commission released a Draft Report on the Review in December 2003, inviting written responses on the report. The South Australian Government has responded to the Draft Report, with its response being available on the Productivity Commission's website.

3.6 LOCAL GOVERNMENT

The application of competition principles to the Local Government sector in South Australia is continuing, consistent with the Statement on the Application of Competition Principles to Local Government (the so-called Clause 7 Statement).

Reporting Period

Information from Councils 2002/2003 annual reports has been used as the basis for the following report. As a consequence, the reporting period for Local Government in this report is for the 2002/2003 financial year. This is consistent with reporting in previous years.

Significant Business Activities

It has been previously reported that councils have identified all significant business activities and determined which competitive neutrality principles are to apply to them. Councils continue to review these arrangements and, as a consequence, there has been a slight change in the reporting of significant business activities from the last report.

The pattern established since the commencement of NCP implementation and reporting in South Australian Local Government continued during the reporting period. Generally speaking, councils are only involved in small-scale business activities and cost reflective pricing is the most common principle being applied to achieve competitive neutrality.

There are seven councils conducting Category 1 business activities:

- The Adelaide City Council;
- The City of Burnside;
- The City of Mitcham;
- The District Council of Mount Barker;
- The City of Norwood Payneham & St Peters;
- The City of Unley; and
- The Corporation of the Town of Walkerville.

The Adelaide City Council has five Category 1 business activities:

- Adelaide Aquatic Centre;
- Central Market Authority;
- North Adelaide Golf Links;
- Off Street Parking (U-Park); and
- Wingfield Waste Management Centre.

An organisational structure has been implemented in the Adelaide City Council that separates its business activities from its other activities, and commercialisation principles are being applied.

The District Council of Mount Barker conducts the Monarto Quarries, which was classified as a category 1 business in the second year of its operation. Commercialisation is the competitive neutrality principle being applied.

The City of Mitcham and the City of Unley jointly run a fully commercial cemetery operation as a Category 1 business via a separately incorporated subsidiary.

The City of Burnside, the City of Norwood Payneham & St Peters and the Corporation of the Town of Walkerville have established 'Eastern Waste Management', a joint subsidiary for waste collection. The 2003 report is the first time that this joint subsidiary has been included as a significant business activity.

Councils reported on a total of 36 Category 2 business activities. These are almost exclusively small scale, with caravan parks occurring most frequently. Table X summarises the Category 2 activities and the principles being applied to them – cost reflective pricing (CRP), commercialisation (COM) or corporatisation (COR).

In the majority of cases, cost reflective pricing is the principle being employed to achieve competitive neutrality.

TABLE – Category 2 significant business activities

Nature of Activity	Number	CRP	COM	COR
Caravan Parks	20	17	2	1
Works/Development	5	5		
Recreation centres	3	3		
Waste management	1	1		
Function centres/Cafes	2		1	1
Saleyards	1	1		
Small tourist facility	2	2		
Rural Transaction Centre	1	1		
Multipurpose recreational, sport and tourism facility management	1			1
Total	**36**	30	3	3

By-laws

As previously reported, each council has identified by-laws that may restrict competition and, where appropriate, initiated reform of the by-laws.

All by-laws in South Australia are subject to a sunset clause - after seven years of operation they lapse. Under the terms of the new *Local Government Act 1999*, any new by-laws made must not restrict competition to any significant degree unless there is evidence that the benefits of the restriction outweigh the costs and that the objectives of the by-law can only be reasonably achieved by the restriction.

All council by-laws, when made, are also examined by the Legislative Review Committee of Parliament, which must ensure that they are in accordance with the general objects and intent of the legislation under which they are made. The Committee may move for the disallowance of a by-law.

Competitive Neutrality Complaints

The State Government competitive neutrality complaints mechanism in the Department of Premier and Cabinet was established to receive and consider competitive neutrality complaints against both State and Local Government business activities.

Before a complaint is assigned to an independent Competition Commissioner for investigation, the matter must have been referred to the Local Government agency for investigation and report, but not have been resolved by agreement between the parties during that process. The Clause 7 Statement advises councils to establish their own formal mechanism to handle complaints, and a draft model was prepared to provide guidance.

No new competitive neutrality complaints were lodged against Local Government businesses in 2003. However, there is an ongoing complaint against the District Council of Mount Barker.

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 a 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

Under the *Agreement to Implement the National Competition Policy and Related Reforms*, the third tranche obligations for the relevant jurisdictions (New South Wales, Victoria, South Australia and the ACT) are to:

- have given full effect to, and continue to observe fully, the Competition Policy Inter-governmental Agreements;
- have fully implemented, and continue to observe fully, all COAG agreements with regard to electricity, gas, water and road transport.

With respect to electricity, this refers to aspects such as:

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

With the introduction of electricity Full Retail Contestability (FRC) on 1 January 2003, South Australia has fully met its NCP obligations in relation to electricity.

The electricity market in South Australia has undergone significant structural reforms, with a disaggregated structure put in place, oversighted by a strong independent regulatory framework. This reform was introduced consistent with the South Australian Government's Clause 4 (of the Competition Principles Agreement) review of the South Australian electricity supply industry which made recommendations as to how best to introduce competition into the electricity industry. The resulting report was assessed by the NCC as being "rigorous and independent" (Second Tranche Assessment, page 187).

South Australian Derogations

South Australia notes the NCC's continued concerns regarding jurisdictions seeking any further derogations to the National Electricity Code, notwithstanding the extensive 'public benefit' test applied by the ACCC.

At this stage, South Australia has no intention to seek further derogations, however, we reserve the right to seek further derogations, or extensions to current derogations, if it is considered to be in the public interest to do so.

Regulation

As was noted last year, consistent with the South Australian Government's commitment to introduce a strong consumer protection framework, ESCOSA was established in late 2002.

The ACCC, in accordance with its responsibilities under the National Electricity Code (Code), commenced regulation of the transmission network in South Australia, operated by ElectraNet SA, from 1 January 2003.

The South Australian Government has maintained the Office of the Technical Regulator under the *Electricity Act 1996* and the *Gas Act 1997* to monitor and regulate safety and technical standards in the energy supply industry.

The former Electricity Industry Ombudsman Scheme has been expanded to encompass gas entities. The newly formed Energy Industry Ombudsman is responsible for a free dispute resolution process between the electricity and gas entities and customers. Mr. Nick Hakof, originally appointed in January 2000 as Electricity Industry Ombudsman, is continuing as Energy Industry Ombudsman.

The ombudsman is independent, and has a broad discretion to deal with complaints. The ombudsman has a jurisdictional limit of $20,000 but this can be increased to a maximum of $50,000 with the consent of the parties to the dispute.

Full Retail Contestability

The South Australian Government has made a range of legislative changes to ensure that there are adequate consumer protection measures in place to support electricity FRC.

Through the *Electricity (Miscellaneous) Amendment Act 2002*, which amended the *Electricity Act 1996*, ESCOSA was given the power to require that retailers justify any price increases and has reserve powers to cap retail prices if ESCOSA finds that electricity tariffs are excessive and unjustifiable.

ESCOSA undertook a second price justification review for AGL SA's prices from 1 January 2004. ESCOSA concluded that a small reduction in the allowance for wholesale energy costs was appropriate. However, this reduction was offset by increases in ETSA Utilities' costs.

The commencement of FRC necessitated the integration of a number of complex computer systems required for processing customer transfers, for meter reading and for dispatching information to NEMMCO and other retailers. The necessary system upgrades to allow customers to transfer between retailers have now been completed by ETSA Utilities.

The Government is encouraged by recent reports from ESCOSA indicating that an increasing number of consumers are transferring to market contracts. The Government is further encouraged by the recent retail licence applications by Aurora Energy and International Power. If approved, Aurora Energy and International Power will join AGL SA, Origin Energy, TXU, PowerDirect, EnergyAustralia, ActewAGL, Country Energy, Energex, NRG, Tarong Energy and AusPower as licensed retailers. The Government notes that currently AGL SA, Origin, TXU, EnergyAustralia and PowerDirect are offering market contracts to small customers.

In terms of regulation of distribution and transmission pricing, it should be noted that the Electricity Pricing Order (EPO), issued on 11 October 1999, will continue to regulate the prices charged by the distribution business until 2005 and provide guidance for future regulatory periods. However, as of 1 January 2003, the EPO no longer regulated retail or transmission prices.

Ministerial Council on Energy

The Government has continued to work closely with other NEM jurisdictions in pursuing energy reforms through the Ministerial Council on Energy.

The Government has committed to continuing to address issues arising from the CoAG Energy Market Review such as the role and form of electricity transmission and market governance arrangements. See under **4.3 FURTHER ENERGY MARKET REFORMS**.

4.2 GAS

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. In July 1997, the pipeline networks previously owned by Boral in South Australia (e.g. Adelaide, Mt Gambier, and Berri) were sold to Envestra Limited, an energy infrastructure company. This sale meant that the former pipeline and retail parts of Boral within South Australia had been legally separated. Neither Epic Energy nor Envestra have been issued with a licence to enable them to retail or sell natural gas. Origin Energy (formerly Boral), the main natural gas retailer in South Australia, along with other entities, including Terra Gas Trader, have been issued with licences to retail natural gas, but not for the operation of gas pipelines.

It is the South Australian government's view that such structural separation, along with the provisions of the South Australian Gas Access Regime, ensures the continued separation of the natural monopoly element of the gas industry, namely the pipelines from the retailing element.

The structural separation of the competitive retailing aspect of the gas industry from the natural monopoly pipeline element is seen as consistent with National Competition Policy. The 1997 CoAG Natural Gas Pipelines Access Agreement states that the access regime applies to both transmission and distribution pipelines, rather than just transmission pipelines as noted in the February 1994 CoAG communiqué. It would appear inconsistent with the seamless approach to pipeline access, that ownership of transmission pipelines should preclude ownership of distribution pipelines. From this it is concluded that clause 10 of the

February 1994 communiqué is satisfied as long as the above structural separation is maintained.

The *Gas Pipelines Access (South Australia) Act 1997* originally established the South Australian Independent Access and Pricing Regulator (SAIPAR) for gas distribution pipelines in South Australia. The Government established ESCOSA in September 2002. In accordance with the *Statues Amendment (Gas and Electricity) Act 2003*, the regulatory functions of SAIPAR were transferred to ESCOSA on 1 July 2003. The Act amended both the *Gas Act 1997* and the *Gas Pipelines Access (South Australia) Act 1997*. SAIPAR has been dissolved and ESCOSA is currently the economic and commercial regulator for the gas industry, as well as the Local Regulator for access issues on the distribution system.

Pursuant to the national access regime, the ACCC is the national regulator for transmission pipelines. The ACCC established the Moomba to Adelaide pipeline access arrangement on 15 August 2002. Epic Energy appealed this decision to Australian Competition Tribunal, and the Australian Competition Tribunal handed down a decision on the Epic Energy Access Arrangement appeal on 10 December 2003 (see section 3.5.3 above).

Retail Contestability

Pursuant to the 1997 CoAG Natural Gas Pipelines Access Agreement, the legal barriers to contestability of gas retailers have been removed according to the following timetable.

Date	April 1998	1/7/1999	1/7/2000	1/7/2001
Annual TJ	>100	10-100	< 10 (non domestic)	All customers

All natural gas consumers have been legally contestable since 1 July 2001. It is the South Australian Government's view that removing legal impediments to retail competition in gas is sufficient to satisfy the 1997 inter-governmental agreement.

However, the South Australian Government is continuing to work to overcome the impediments to gas Full Retail Contestability (FRC), as domestic households and small businesses using less than 10 terajoules gas per anum have been unable to switch gas retailers due to a number of technical and administrative reasons.

During 2003, the South Australian Government amended the *Gas Act 1997* to address the establishment of a Retail Market Administrator, facilitate FRC systems and establish consumer protection arrangements suitable for a multiple retailer environment.

An update on the impediments to full retail competition, as highlighted in the previous 2002 report to the NCC, is as follows:

- **Access to infrastructure.** As mentioned under section 3.5.3 above, SAIPAR approved the Envestra Access Arrangement on 17 April 2003 further resolving potential access impediments to gas FRC.

- **Gas supply**. This is no longer an issue as the SEA Gas pipeline has been built and commissioning commenced on 1 January 2004. The presence of the second pipeline will provide additional gas into the State.

- **Retail Market Administration**. South Australian gas industry participants have established with Western Australian gas industry participants the Retail Energy Market Company (REMCo). REMCo has been given a licence by ESCOSA to operate as a gas retail market administrator in South Australia. REMCo is currently establishing the required IT systems and retail market rules, which are anticipated to be operational in mid 2004.

These measures will assist competition between gas and electricity retailers to be on a more equal footing and dual fuel marketing strategies, offering both gas and electricity, are expected.

4.3 FURTHER ENERGY MARKET REFORMS

In June 2001, the Council of Australian Governments (CoAG) recognised that effective operation of an open and competitive national energy market will contribute to improved economic and environmental performance and deliver benefits to households, small business and industry, including in regional areas, and established the Ministerial Council on Energy (MCE) to provide oversight and coordination of energy policy development.

As a substantial response to the COAG Energy Market Review and other matters, the MCE provided a detailed report to CoAG on *Reform of Energy Markets* on 11 December 2003. The proposed reforms are not part of the requirements of the Conduct Code Agreement, Competition Principles Agreement and related reforms, which have been the subject of separate CoAG agreements. This information is provided to indicate the current state of progress with these further reforms, rather than as evidence for compliance with National Competition Policy and related reforms. These reforms provided for a new governance framework, which includes the establishment of two new energy institutions:

- the Australian Energy Market Commission - the body with primary responsibility for market development and rule-making in respect of the National Electricity Code and the National Gas Access Code; and
- the Australian Energy Regulator - the body with primary responsibility for regulation of the electricity and natural gas industries and compliance with the Codes.

These and the associated legislative reforms are being progressed by the MCE with a view to improving energy market governance and streamlining the energy code change processes to deliver long-term benefits to energy consumers.

The South Australian Government will continue working with other jurisdictions to implement reforms that are in the public interest.

4.4 WATER

South Australia's report on implementation of CoAG water reforms in South Australia forms an attachment to this report.

4.5 ROAD TRANSPORT

The set of national road transport reforms considered under National Competition Policy originate from the Heavy Vehicles Agreement 1991 and Light Vehicles Agreement 1992. The reform programs envisaged under these agreements were subsequently included in the

third of the three agreements underpinning NCP, the *Agreement to Implement the National Competition Policy and Related Reforms*.

The NCC reported in 2002 assessment of jurisdictions' progress in 2001, published in December 2002, that it was satisfied that, as at 30 June 2002, South Australia had completed all NCP road transport reform obligations.

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 documents summarise the NCC's assessments for all jurisdictions:

- *Assessment of State and Territory Progress with Implementing National Competition Policy and Related Reforms* - June 1997
- *National Competition Policy and Related Reforms: Supplementary Assessment of First Tranche Progress* - June 1998
- *Second Tranche Assessment of Governments' Progress with Implementing National Competition Policy and Related Reforms* - June 1999
- *Supplementary Second Tranche Assessment Report* - December 1999
- *Assessment of Governments' Progress in Implementing National Competition Policy and Related Reforms, (Third Tranche Assessment), June 2001*
- *Assessment of Governments' Progress in Implementing National Competition Policy and Related Reforms - Water Reforms, June 2001*
- *Assessment of Governments' Progress in Implementing National Competition Policy and Related Reforms – Volume 1: Assessment, August 2002*
- *Assessment of Governments' Progress in Implementing National Competition Policy and Related Reforms – Volume 2: Water Reforms, August 2002*

Copies of these and other documents on aspects of NCP are available from the NCC in Melbourne, telephone (03) 9285 7474, and can be downloaded from the Council's website at: http://www.ncc.gov.au.

Relevant documents concerning NCP implementation in SA include:

- *Report to the National Competition Council - Implementation of National Competition Policy and Related Reforms in SA* - March 1997
- *Report to the National Competition Council - Implementation of National Competition Policy and Related Reforms in SA* - April 1998
- *Report to the National Competition Council - Implementation of National Competition Policy and Related Reforms in SA* - March 1999
- *Report to the National Competition Council - Implementation of National Competition Policy and Related Reforms in SA* - March 2000
- *Report to the National Competition Council - Implementation of National Competition Policy and Related Reforms in SA - March 2001*
- *Report to the National Competition Council - Implementation of National Competition Policy and Related Reforms in SA - March 2002*
- *Report to the National Competition Council - Implementation of National Competition Policy and Related Reforms in SA - March 2003*
- *Review of Legislation which Restricts Competition - timetable*, June 1996 (updated May 1997, May 1998, December 1999, March 2001, March 2002)

- *Guidelines Paper for Agencies conducting a Legislation Review under the CoAG Competition Principles Agreement* - February 1998
- *Proposals for New Legislation - National Competition Policy Review Obligations* - November 2001
- *Clause 7 Statement on the Application of Competition Principles to Local Government* – September 2002
- *Structure of Government Business Activities*, March 1995
- *Community Service Obligations - Policy Framework*, December 1996
- *Water and Sewerage Pricing for SA Water Corporation*, December 1996
- *Water and Sewerage Pricing for SA Water Corporation - Final Report of investigation under the Government Business Enterprises (Competition) Act 1996* - June 1997
- *Competitive Neutrality Policy Statement,* July 2002
- *A Guide to the Implementation of Competitive Neutrality Policy* - March 1998
- *A Guide to the Implementation of Cost Reflective Pricing – A part of Competitive Neutrality Policy*, October 2000

Copies of each of these publications are available from the NCP Implementation Unit, Cabinet Office, Department of the Premier and Cabinet, telephone (08) 8226 1931. Some can be downloaded from the Department's website at:
http://www.premcab.sa.gov.au/publications/nationalcompetition policy

Schedule 1 – Summary of legislation in 3.4 *Legislation Review*

Note – these appear in the same sequence in which they appear in the report.

Matters incorrectly penalised in 2003 suspension pool

Building Work Contractors Act 1995
Children's Protection Act 1993
Dangerous Substances Act 1979
Lottery and Gaming Act 1936
Harbors and Navigation Act 1993
Land Valuers Act 1994
Mining Act 1971
Mines and Works Inspection Act 1920
Trade Measurement Act 1993

Legislation reviews completed

Crown Lands Act 1929
Survey Act 1992
Veterinary Surgeons 1985
Dried Fruits Act 1993
Fair Trading Act 1987
Family and Community Services Act 1972
Food Act 2001
Fruit and Plant Protection Act 1992
Impounding Act 1991
Pastoral Land Management and Conservation Act 1989
Plumbers, Gas Fitters and Electricians Act 1995
Public and Environmental Health Act 1987
South Australian Motor Sport Act 1984 (formerly Australian Formula One Grand Prix Act)
Waterworks Act 1932
Sewerage Act 1929
South Australian Water Corporation Act 1994

Legislation repealed

Advances to Settlers Act 1930
Loans for Fencing and Water Piping Act 1938
Loans to Producers Act 1927
Irrigation (Land Tenure) Act 1930
Local Government Act 1934

Legislation repealed with effect from August 2004

Agricultural Chemicals Act 1955
Stock Foods Act 1941
Stock Medicine Act 1939

Uncompleted reviews lead by Commonwealth

Agricultural and Veterinary Chemicals (SA) Act 1994
Controlled Substances Act 1984
Petroleum (Submerged Lands) Act 1982

Disputed assessments

State Lotteries Act 1966
Motor vehicle compulsory third party insurance (Motor Accident Commission Act 1992 & Motor Vehicles Act 1959)
Shop Trading Hours Act 1977
Southern State Superannuation (SSS) Act 1987

Legislation reforms scheduled for completion by 31 December 2004

Architects Act 1939
Chiropodists Act 1950
Conveyancers Act 1994
Dairy Industry Act 1992
Dentists Act 1984
Employment Agents Registration Act 1993
Fisheries (Gulf St Vincent Prawn Rationalisation) Act 1987
Authorised Betting Operations Act 2000
Meat Hygiene Act 1994
Medical Practitioners Act 1983
Opal Mining Act 1995
Occupational Therapists Act 1974
Optometrists Act 1920
Petroleum Products Regulation Act 1995
Physiotherapists Act 1991
Psychological Practices Act 1973
Travel Agents Act 1986
Branding of Pigs Act 1964
Brands Act 1933
Discharged Soldier Settlement Act 1934
Security and Investigation Agents Act 1995
South Australian Health Commission Act 1976
Starr-Bowkett Societies Act 1975
White Phosphorous Matches Act 1915
Wine Grapes Industry Act 1991

Legislation reforms scheduled for completion by 30 June 2005

Fisheries Act 1982
Occupational Health, Safety and Welfare Act 1986
Citrus Industry Act 1991
Radiation Protection and Control Act 1982

Legislation reviews with no scheduled date of completion

Chicken Meat Industry Act 2003
Liquor Licensing 1997
Barley Marketing Act 1993
Gaming Machines Act 1992
Legal Practitioners Act 1981
Motor Vehicles Act 1959 – Tow Trucks
Passenger Transport Act 1994 – Taxis
Pharmacists Act 1991
Workers Rehabilitation and Compensation Act 1986
Motor Vehicles Act 1959 – Driving Instructors

Schedule 2 - LEGISLATION REVIEW REPORTS PROVIDED TO NCC

Legislation	Date provided (* denotes electronic version provided)
Agricultural and Veterinary Chemicals (South Australia) Act 1994	18 June 2001
Agricultural Chemicals Act 1955	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Agricultural Holdings 1891 (The)	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Authorised Betting Operations Act 2000	March 2003
Barley Marketing Act	3 July 2003
Building Work Contractors Act 1995	15 July 2002
Business Names Act 1996	18 June 2001
Casino Act 1997	March 2003
Children's Services Act 1985	24 August 2001
Chiropodists Act 1950*	18 June 2001
Chiropractors Act 1991*	18 June 2001
Citrus Industry Act 1991	3 October 2002
Coast Protection Act 1972	4 March 2002
Construction Industry Training Fund Act 1993	18 June 2001
Controlled Substances Act 1984	Not provided - publicly released national reviews (advice 18 June 2001)
Conveyancers Act 1994	18 June 2001
Cremation Act 1891	18 June 2001
Crown Lands Act 1929	4 March 2002
Dairy Industry Assistance (Special Provisions) Act 1978	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Dangerous Substances Act 1979	18 June 2001
Dentists Act 1984*	18 June 2001
Development Act 1993	18 June 2001
Discharged Soldiers Settlement Act 1934	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Education Act 1972	24 August 2001
Electricity (General) Regulations 1997	25 September 2001 (by email)
Electricity (Miscellaneous) Amendment Act 1999	25 September 2001 (by email)
Electricity Act 1996	25 September 2001 (by email)
Electricity Corporations (Restructuring & Disposal) Act 1999	25 September 2001 (by email)
Electricity Corporations (Restructuring and	25 September 2001 (by email)

Disposal) Regulations 1999	
Electricity Corporations Act 1994	25 September 2001 (by email)
Electricity Corporations Regulations 1997	25 September 2001 (by email)
Emergency Powers Act 1941	26 November 2001
Enfield General Cemetery Act 1944	18 June 2001
Environment Protection Act 1993	4 March 2002
Explosives Act 1936	18 June 2001
Financial Institutions (Application of Laws) Act 1992	No review undertaken. Act has been repealed.
Firearms Act 1977	18 June 2001
Fisheries Act 1982	23 July 2003
Fisheries (Gulf St Vincent Prawn Fishery Rationalisation) Act 1987	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Fisheries (Southern Zone Rock Lobster Fishery Rationalisation) Act 1987	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Flinders University of South Australia Act	3 February 2002
Fruit and Plant Protection Act 1992	23 July 2003
Freedom of Information Act	24 August 2001
Fruit and Vegetables (Grading) Act 1934	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Garden Produce (Regulation of Delivery) Act 1967	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Groundwater (Border Agreement) Act 1985	24 August 2001
Hairdressers Act 1988	18 June 2001
Heritage Act 1993	4 March 2002
Highways Act 1926	18 June 2001
Independent Gambling Authority Act 1995	March 2003
Independent Industry Regulator Act 1999	25 September 2001 (by email)
Industries Development Act 1941	22 August 2002
Irrigation (Land Tenure) Act 1930	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Land Agents Act 1994 (and supplementary report)	24 August 2001
Land and Business (Sale and Conveyancing) Act 1994	18 June 2001
Land Valuers Act 1994	18 June 2001
Landlord and Tenant Act 1936	Not provided as restrictive sections have been repealed.
Legal Practitioners Act 1981	9 October 2001
Local Government Act 1934	24 August 2001
Lottery and Gaming Act 1936	March 2003
Margarine Act 1939	Not provided as repeal of the Act is recommended (advice 18 June 2001)

Marginal Dairy Farmers (Agreement) Act 1971	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Meat Hygiene Act 1994	18 June 2001
Medical Practitioners Act 1983*	18 June 2001
Motor Accident Commission (CTP)	25 September 2001
Motor Vehicles Act 1958	25 September 2001 (CTP)
Murray Darling Basin Act 1993	24 August 2001
National Electricity (South Australia) Act 1996	25 September 2001 (by email)
National Parks and Wildlife Act 1972	4 March 2002
Native Vegetation Act 1991	4 March 2002
Natural Gas Pipelines Access Act 1995	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Noxious Insects Act 1934	18 June 2001
Occupational Therapists Act 1974*	18 June 2001
Optometrists Act 1920*	18 June 2001
Passenger Transport Act	NCC obtained from website
Petroleum (Submerged Lands) Act 1982	Not provided - publicly released national reviews (advice 18 June 2001)
Petroleum Act 1940	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Petroleum Products (Regulation) Act 1995	March 2003
Pharmacists Act 1991	Not provided - publicly released national reviews (advice 18 June 2001)
Phylloxera and Grape Industry Act 1995	18 June 2001
Physiotherapists Act 1991*	18 June 2001
Poultry Meat Industry Act 1976	mid-December 2002
Prevention of Cruelty to Animals Act 1985	4 March 2002
Prices Act 1948	18 June 2001
Psychological Practices Act 1973*	18 June 2001
Public Trustee Act 1995	18 June 2001
Radiation Protection and Control Act 1982	Not provided - publicly released national reviews (advice 18 June 2001)
River Murray Waters Agreement Supplemental Agreement Act 1963	24 August 2001
Roxby Downs (Indenture Ratification) Act 1982	21 January 2002
Rural Industry Adjustment (Ratification of Agreement) Act 1990	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Rural Industry Adjustment and Development Act 1985	18 June 2001
Rural Industry Assistance Act 1985	Not provided as repeal of the Act is recommended (advice 18 June 2001)

Sandalwood Act 1930	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Second-hand Dealers and Pawnbrokers Act 1996	15 July 2002. Assessed as meeting CPA obligations by NCC June 2001.
Second Hand Vehicle Dealers Act 1995	24 August 2001
Seeds Act 1979	Not provided as repeal of the Act is recommended (advice 18 June 2001)
South Australian Film Corporation Act 1972	18 June 2001
South Australian Museum Act 1976	18 June 2001
Southern State Superannuation Act	Annual Report 1999
South Eastern Water Conservation and Drainage Act 1992	24 August 2001
State Lotteries Act 1966	March 2003
State Supply Act 1985	22 August 2002
Stock Foods Act 1941	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Stock Medicines Act 1939	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Stony Point (Liquids Project) Ratification Act 1981	21 January 2002
Survey Act 1992	13 June 2002
Unauthorized Documents Act 1916	26 November 2001
University of Adelaide Act	3 February 2002
University of South Australia Act	3 February 2002
Vocational Education, Employment and Training Act 1994	18 June 2001
War Service Land Settlement Agreement Act 1945	Not provided as repeal of the Act is recommended (advice 18 June 2001)
White Phosphorus Matches Prohibition Act 1915	18 June 2001
Wilderness Protection Act 1992	4 March 2002
Wine Grapes Industry Act 1991	7 March 2002

REPORT TO THE NATIONAL COMPETITION COUNCIL

ON THE

IMPLEMENTATION OF CoAG WATER REFORMS

IN

SOUTH AUSTRALIA

April 2004

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Attachments

Water Reform in South Australia

South Australia has made significant progress in implementing the COAG strategic water reform framework. Importantly the legislative, policy, and institutional reforms have seen the continued achievement of many on-ground outcomes through to 2004.

The reforms are resulting in improved decision making with the community and better balancing of the competing demands on water resources. Catchment water management boards are now playing a very important role in community education and involvement, as well as linking organizations involved with managing land and water across the catchment, through their planning processes.

The formation of the Department of Water, Land and Biodiversity Conservation has brought together the many aspects of Natural Resource Management and enabled the integration of the many aspects of natural resource management, including water resource issues. The Department continues its key focus on water resource management, through raising the profile of water, and providing improved coordination across government through its lead role.

The South Australian State Government is leading strategic planning for future water resources management for Adelaide through the “Waterproofing Adelaide Strategy”. A principal aim is to continue to foster and initiate innovative water source and supply strategies and ensure the strategic use of existing water infrastructure in order to enhance our water supplies.

South Australia introduced Level 2 water restrictions mid-year to the customers served from the River Murray and from Myponga Reservoir. These were lifted in October and replaced with permanent water conservation measures that will apply to all SA Water supplies. A Community Education Campaign has been undertaken in relation to these measures, with associated funding in 2003-04 of $1.2 million as a Community Services Obligation.

The campaign was launched to notify the community about water restrictions and conservation measures, why a reduction in water consumption was necessary and how the restrictions would be implemented. The campaign was designed to build an understanding of the scope of the restrictions and applicable penalties, how they impact on South Australia and to educate the community to bring about behavioral change and longer-term water conservation

A report on the issues raised by the National Competition Council in its 2004 Assessment Framework follows. It should be noted that many of these reforms have been completed in previous assessments, as South Australia was already undertaking significant reforms in the water arena when the CoAG water reforms were agreed.

1. Water and wastewater pricing

Rural water pricing

Cost-recovery and consumption based pricing: irrigation schemes and bulk water supply.

Demonstrate that any remaining government-owned irrigation schemes or bulk water suppliers to irrigation schemes are achieving full cost recovery, and that prices are set on a consumption basis.

Where a service provider will not achieve full cost recovery by 30 June 2004, SA should provide evidence that the service provider has made substantial progress towards this objective (with any transitional CSOs made transparent) or demonstrate a price path in place that is likely to achieve full cost recovery within a short period of 30 June 2004. Identify schemes unlikely to achieve full cost recovery, with the CSOs supporting these schemes made transparent. Any remaining cross subsidies should also have been made transparent.

All irrigation districts have been transferred to private ownership except for the Lower Murray and are financially self-sufficient.

A financial package was announced for the funding of the rehabilitation of the Lower Murray swamps which includes $2.7 million through the National Action Plan for Salinity and Water Quality and Natural Heritage Trust. Information can be found at

http://www.pm.gov.au/news/media_releases/media_Release755.html

Marsden Jacob has completed a consultancy report in relation to cost recovery levels for River Murray users in SA, NSW and Victoria. The study:

- identifies the beneficiaries of each expenditure component,
- provides a comparison of each State's water charging policies
- comments on the extent to which externalities are accounted for, and
- discusses the effect of different policy, regulatory or administrative components in each state.

Urban water and wastewater sector

Provide evidence that SA Water's 2004-5 and wastewater process and related matters (such as the level of dividend) satisfy the requirements of the CoAg water agreement and the CoAG pricing principles.

Water Pricing

In setting 2004-05 urban water prices, the Government has adopted an approach that more explicitly addresses CoAG pricing principles. The methodology adopted in setting water prices has specifically taken into account the *Guidelines for the Application of Section 3 of the (CoAG) Strategic Framework and the Related Recommendations in Section 12 of the Expert Group*. Accordingly, when setting water prices, Cabinet specifically considered maximum and minimum revenue bounds, consistent with avoiding monopoly rents and maintaining commercial viability. Cabinet also considered efficient resource pricing principles. Community Service Obligations are provided to SA Water, in support of the Government's Statewide pricing policy.

The Government considers that it has achieved a balance between economic efficiency and community benefits, equity, social justice and environmental and regional policies in its 2004-05 urban water pricing decision and has complied with CoAG principles to the extent possible at this time.

The Government has published the first annual Transparency Statement (Part A) that demonstrates the relationship between 2004-05 urban water prices and CoAG pricing principles, provides information of SA Water's financial performance in the context of pricing decisions and past and future expenditures, addresses details of estimates of revenues, community service obligations, profit and its distribution.

The Treasurer has issued a Notice of Referral to the independent regulator, the Essential Services Commission of South Australia (the Commission) pursuant to section 35(1) of the *Essential Services Commission Act 2002.* The Terms of Reference of the Referral specify:

(a) The Commission is to inquire into the processes undertaken in the preparation of advice to Cabinet, resulting in Cabinet making its decision on the level and structure of SA Water's urban water prices for 2004-05, with respect to the adequacy of the application of CoAG pricing principles;

(b) In undertaking this inquiry, the Commission is to consider the "Transparency Statement – (Part A) Urban Water Prices in South Australia 2004-05" dated January 2004;

(c) In considering the processes undertaken for the preparation of advice to Cabinet, the Commission is to advise on the extent to which information relevant to the CoAG principles was made available to Cabinet.

The Treasurer made the formal Notice of Referral to the Commission by letter dated 25 February 2004. The Commission is due to report to the Government by 7 April 2004 and its report will become Part B of the Transparency Statement. It is intended that Parts A and B of the Transparency Statement will be tabled in Parliament.

The Transparency Statement and the Notice of Referral to ESCOSA are available on the Government's website at www.treasury.sa.gov.au. ESCOSA's final report will soon be available at http://www.escosa.sa.gov.au/site/

Wastewater Pricing

The Government will make a decision on 2004-05 wastewater pricing in April/May 2004 and, therefore, the related Transparency Statement on 2004-05 wastewater pricing will be available in mid 2004. It is intended that a process similar to that undertaken when considering 2004-05 urban water prices would be adopted with respect to 2004-05 wastewater prices.

Other Specific Issues

In its 2004 Assessment Framework, the NCC has raised a number of other specific issues related to pricing, viz:

- full cost recovery;
- efficient resource pricing;
- asset valuation;
- dividends;
- externalities;
- cross subsidies/CSOs; and
- consumption based tariffs.

With respect to 2004-05 urban water prices, the above issues are fully discussed in the Transparency Statement (Part A), copy attached and in ESCOSA's final report.

With respect to 2004-05 wastewater prices, the above issues will be discussed in the forthcoming Transparency Statement on wastewater. This is expected to be drafted over the next few months. A copy of the wastewater pricing Transparency Statement will be forwarded to the NCC as soon as it is available.

2. Water management: water entitlements and provision to the environment

Establishment of water entitlement systems

Demonstrate continuing progress on the conversion process in the South East Catchments and provide information on the proportion of allocations, for the water resources on its agreed implementation program, that will not be specified in volumetric terms by 2005

Progress on volumetric conversion in the South East of SA has continued to schedule and will be completed in 2006. Recent progress includes:

- Draft reports 'Definition of Net Irrigation Requirements in the South East of South Australia' and 'Climatic Variability and Volumetric Allocations in the South East' have been delivered and will be consulted on with key industry stakeholders.

- Installation of monitoring equipment for the Field Irrigation System Trial sites is 98% complete with only two seasonal installations yet to be connected to the Agrilink telemetry system.

- A monitoring process, including both web site and on-ground inspections, has been developed to ensure that all trial sites are operating effectively.

- Communication of project requirements and progress on local TV news, three metering trade days, Water Week Local Government tours, information sheets and DWLBC Web site.

The percentage of entitlements that will remain area-based in June 2005 is approximately 56% (about 2,300 licences), but 100% by December 2006.

Provide an update on the upgrade of its water licence register.

Development of the Water Information and Licensing Management Application (WILMA) is progressing within current funding approvals, with a likely initial implementation date of July 2004.

WILMA incorporates the major business processes which support administration of the *Water Resources Act 1997*, including the processing of water licence and permit applications, transfer of water licences and water allocations, and the calculation and collection of levies, fees and charges.

Data integrity, assessments of the salinity and other impacts on the water resource of water use activities and transfers (spatially) and reporting for planning and other purposes will be vastly improved.

WILMA will provide an Internet based "public register" of water licences and permits and interests in water licences. Customers will be able to download application forms and licence data from the Internet.

A Water Trading facility, providing the administrative information required to support trading will be incorporated into WILMA and the collection of price information and stamp duty for water transfers improved.

Further stages in this project will include the development of a spatial interface, e-commerce facilities, further modifications and enhancements to meet changing legislative requirements.

Provision of water for the environment

Scientific information relating 'environmental flows' to 'river health'

As previously reported, in developing all water allocation plans the *Water Resources Act 1997* requires that there be an assessment of the water needs of ecosystems. This has been completed for all 16 completed water allocation plans. Another three prescribed areas have plans in various stages of development. Note also that the majority of South Australia's water resources are groundwater with a number of prescribed areas also containing seasonal streams. The only large permanent 'river' is the Murray, which is prescribed.

A range of methods have been used to identify environmental water requirements in different prescribed areas. In a previous report, the science behind the assessment of environmental water needs was described for two example areas, namely the Musgrave Prescribed Wells area and the Clare Valley Prescribed Water Resource Area.

The Marne-Saunders Prescribed Water Resource Area was prescribed after it was identified as possibly being stressed due to water extraction. The River Murray Catchment Water Management Board is in the process of developing a water allocation plan for the area. As part of that planning process a detailed scientific assessment of environmental water requirements for this area has recently been completed. The Executive Summary and Summary conclusions of that report are attached (attachment 1). The full report of approximately 100 pages is available on request. This report is a very useful example of this type of investigation as it addresses a catchment that consists of predominately seasonally flowing streams, which are common in South Australia.

Open and consultative processes in developing environmental water provisions

Earlier reports described in some detail the statute-based processes used in developing water allocation plans and catchment water management plans. These processes in themselves provide for a large amount of consultation with all stakeholder groups. In practice, water allocation and catchment water management plans are generally developed with even more consultation than that prescribed in the *Water Resources Act 1997*.

Key elements of these processes are reports prepared by the Minister assessing the need for water of ecosystems dependent on the relevant resource for water (Water Resources Act 1997 section 36 (4)). These reports are required under the Act for all water resources that have been prescribed since the commencement of operation of the 1997 Act. These reports are used in determining the capacity of the resource.

All plans set out environmental objectives and how environmental water provisions seek to meet those objectives.

In regard to decision-making bodies, the catchment water management boards develop these plans, which subsequently must be adopted by the responsible Minister before they became statutory plans. The membership of the boards are skills-based rather than representative-based. The *Water Resources Act 1997* identifies a diverse range of skills required on boards, which, amongst others, includes regional development, use of water resources, and conservation of ecosystems.

Program and timetable for meeting environmental objectives / adaptive management

South Australia's water allocation and management program is based on an adaptive management approach that uses five-yearly time steps. All plans are required to be reviewed at least every five years. This process addresses the issues raised by the NCC in regard to the timetable for meeting environmental objectives.

South Australia's program is, amongst other things, based on the concept that our understanding of environmental water requirements will in fact change as more data and information becomes available. This means that there will be continuous refinement in the scientific understanding of these requirements as well as adaptation of water use and management.

The *Water Resources Act 1997* provides several mechanisms to change allocations if required.

The five yearly cycle is robust in that it allows for a reasonable period of data collection, provides some level of certainty for water users, but is not so long as to be inflexible in the face of environmental change.

The status of water allocation plans and schedule for review are shown in Table 2-1 and Table 2-2 over.

Table 2-1. The status of water allocation plans and schedule for review

Water Allocation Plan	Status of Plan	Deadline for Review
McLaren Vale	Adopted on 6 November 2000	November 2005 (draft review complete)
Mallee	Adopted on 21 December 2000	December 2005
Barossa	Adopted on 22 December 2000	December 2005
Northern Adelaide Plains	Adopted on 22 December 2000	December 2005
Southern Basins	Adopted on 31 December 2000	December 2005
Angas Bremer	Adopted on 2 January 2001	January 2006
Noora	Adopted on 2 January 2001	January 2006
Musgrave	Adopted on 2 January 2001	January 2006
Clare	Adopted on 22 December 2000	February 2006
Padthaway	Adopted on 29 June 2001	June 2006
Comaum-Caroline	Adopted on 29 June 2001	June 2006
Tatiara	Adopted on 29 June 2001	June 2006
Lacepede Kongorong	Adopted on 29 June 2001	June 2006
Naracoorte Ranges	Adopted on 29 June 2001	June 2006
River Murray	Adopted on 1 July 2002	July 2007
Tintinara Coonalpyn	Adopted on 22 January 2003	January 2008
Morambro Creek	Plan being drafted currently, expected adoption early 2005	Not applicable yet
Marne/Saunders	Proposal statement being drafted. Adoption expected late 2005.	Not applicable yet
Far North Wells	Proposal statement being drafted. Adoption probably late 2005	Not applicable yet
Eastern Mount Lofty Ranges	Prescription process underway – prescription expected second half 2004	Not applicable yet

Table 2-2. The status of catchment water management plans and schedule for review

Catchment water management plans	Comment	Scheduled review
Torrens	Adopted May 2002	May 2007
Patawalonga	Adopted May 2002	May 2007
River Murray	Adopted March 2003	March 2008
Northern Adelaide and Barossa	Adopted March 2001	March 2006
Onkaparinga	Adopted December 2000	December 2005
South East	Adopted May 2003.	May 2008.
Arid Areas	Plan being prepared, adoption expected early 2005	First plan being prepared
Eyre Peninsula	Plan being prepared, adoption expected early 2005	First plan being prepared

All completed plans can be accessed via the web page http://www.catchments.net/ . Note that the water allocation plans are considered a part of the catchment water management plan and so may be linked via them.

Details of how the South Australian approach to water for the environment addresses the AMCANZ/ANZECC principles was provided for the 2001 report, as was detail on the approach for providing water for the environment for two specific areas, namely the Clare Valley and County Musgrave.

Report on the water allocation plan for the Tintinara Coonalpyn prescribed wells area.

The Water Allocation Plan for the Tintinara Coonalpyn Prescribed Wells Area addresses the issue of provision of water for ecosystems.

The hydrogeology of this area is very different to many groundwater areas. The area is underlain by groundwater that is rising as a result of broad-scale clearance of native vegetation that occurred predominately in the 1950's to 1970's.

In preparing this water allocation plan an assessment of the water needs of ecosystems was conducted by private consultants for the South East Catchment Water Management Board. This assessment identified groundwater dependent ecosystems (GDE) and risks to the health of these ecosystems. For all but one type of GDE identified by this assessment, the greatest risk to their ecological health is rising water tables and potential salinisation at a landscape scale.

For the ecosystems at risk (a number of wetlands types and the phreatophytic vegetation), the taking and use of water will have no impact on these systems. The critical issues to be addressed are broad scale land use and management so as to reduce rising water tables. This issue is addressed in the complementary South East Catchment Water Management Plan.

The perched wetlands in the eastern part of the area are not threatened by the taking of water but could be by poor irrigation practices leading to localised irrigation drainage problems. Irrigation in this area is managed to prevent waterlogging which is limiting for agricultural production. Hence these wetlands are also unlikely to be impacted.

Progress with its stressed resources review and the complementary review of water monitoring programs.

The key tasks for the Stressed Resources project were completed during 2003, which were in addition to those previously reported for the last assessment. These include:

- A spatial classification tool for surface water systems has been developed based on the *River Styles* ® methodology.
- The groundwater stress assessment criteria were refined and trialed in two groundwater systems
- A draft set of surface water stress assessment criteria have been developed

During 2004 it is intended to complete and validate the surface water stress assessment criteria, trial these criteria in some catchments, identify the data gaps and make recommendations regarding the application of the methodologies.

The State Water Monitoring Review has, to date, conducted a state-level review of monitoring design, criteria and priorities, and reporting protocols. Work on data-sharing and cost-sharing arrangements is underway.

The Monitoring Review Program has now commenced a regional and catchment scale review to identify gaps and prepare integrated water-monitoring strategies at that level.

The regional water monitoring reviews will be informed by the existing and proposed work in the Stressed Resources project during 2004.

3. Water Trading

Provide information on current trading rules and zones (including the trading rules in water management plans).

The current trading zones are:

Angus Bremer	http://www.rivermurray.sa.gov.au/about/pdfs/angus_bremer_wap.pdf
Clare Valley	http://www.dwlbc.sa.gov.au/publications/pdfs/clare_wap.PDF
Barossa	http://www.nabcatchment.net/
North'n Adelaide Plains	http://www.nabcatchment.net/
McLaren Vale	http://www.onkaparinga.net/
Mallee	http://www.rivermurray.sa.gov.au/about/pdfs/final_malleeplan.pdf
River Murray	http://www.rivermurray.sa.gov.au/work/pdfs/wapfinal_lowres.pdf
Tintinara-Coonalpyn	http://www.secatchment.com.au/water_allocation_plan.html
Tatiara	http://www.secatchment.com.au/water_allocation_plan.html
Padthaway	http://www.secatchment.com.au/water_allocation_plan.html
Naracoorte Ranges	http://www.secatchment.com.au/water_allocation_plan.html
Lacepede – Kongorong	http://www.secatchment.com.au/water_allocation_plan.html
Coman – Caroline	http://www.secatchment.com.au/water_allocation_plan.html

Different water trading policies and practices apply in different prescribed areas. Details of these polices are contained in the relevant Water Allocation Plan, at the sites shown above. Further water trading information is available at: http://www.dwlbc.sa.gov.au/water/trading/index.html

Provide information on legislative and institutional arrangements;

See *Water Resources Act.*

Provide information on the mechanisms in place to avoid adverse environmental impacts from trade on river and groundwater health.

This information is contained in the Water Allocation plans for each district. See www.catchments.net

Provide information on restrictions on trade (including restrictions in water management plans) including:

- the physical, social or ecological reasons for the restrictions and
-a robust public benefit case for restrictions that are not aimed at protecting the environment or ensuring that practical management of trading;

This information is contained in the Water Allocation plans for each district. See www.catchments.net and associated documents.

Provide information on recent (intrastate and interstate) trade, including the value, volume, location and nature (for example, permanent versus temporary trades, transfers from lower to higher values) of trades

Table 3-1. Transfers for 2002-03 Water Use Year.

PWA	Licence Transfers		Permanent Alloc Transfer		Temporary Alloc Transfers	
	Number	Volume ML	Number	Volume ML	Number	Volume ML
Lacepede Kongorong	88	16,294	26	2,630	3	140
Comaum Caroline	16	1,760	26	1,000	6	712
Naracoorte Ranges	36	7,568	14	1,919	13	936
Padthaway	2	545	1	36	2	219
Tatiara	16	4,262	11	1,547	6	534
Tintinara Coonalpyn	12	6,973	12	6,973	0	0
Totals	170	37,402	78	7,132	30	2,541

Table 3-2. Total Transfers for 2002/03 Water Use Year.

	TOTAL ALLTRANSFERS	
PWA	Number	Volume kL
Lacepede Kongorong	117	19,064
Comaum Caroline	48	3,472
Naracoorte ranges	63	10,423
Padthaway	5	800
Tatiara	33	6,343
Tintinara Coonalpyn	12	6,973
Total	278	47,075

Table 3-3. Summary of water allocation transfers for the River Murray for 2002/03.

Intrastate Transfers **2001/02** **2002/03** **Numbers of Trades** **Megalitres Traded** **Numbers of Trades** **Megalitres Traded**

Permanent transfers 94 8,022 205 12,999

Temporary transfers 238 63,520 300 48,738

Total Intrastate Transfers ***332*** ***71,542*** ***505*** ***61,737***

2001/02 **2002/03** **Numbers of Trades** **Megalitres Traded** **Numbers of Trades** **Megalitres Traded**

Permanent transfers 94 8,022 205 12,999

Temporary transfers 238 63,520 300 48,738

Total Intrastate Transfers ***332*** ***71,542*** ***505*** ***61,737***

2002/03 **Numbers of Trades** **Megalitres Traded** **Numbers of Trades** **Megalitres Traded**

Permanent transfers 94 8,022 205 12,999

Temporary transfers 238 63,520 300 48,738

Total Intrastate Transfers ***332*** ***71,542*** ***505*** ***61,737***

Numbers of Trades **Megalitres Traded** **Numbers of Trades** **Megalitres Traded**

Permanent transfers 94 8,022 205 12,999

Temporary transfers 238 63,520 300 48,738

Total Intrastate Transfers ***332*** ***71,542*** ***505*** ***61,737***

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Total Transfers combined 391 91,817 624 83,736

391 91,817 624 83,736

91,817 624 83,736

624 83,736

83,736

Table 3-4. Transfers for the Mallee prescribed wells area

2001/2002 2002/2003

2001/2002 2002/2003 Num
ber Volume of water
(megalitres) Number Volume
of water
(megalitres) Permanent
Transfers 4 1,499 4 1,03
8 **Temporary**
Transfers 7 1,268 2
86

2002/2003 Number
Volume of water
(megalitres) Number Volume
of water
(megalitres) Permanent
Transfers 4 1,499 4 1,03
8 **Temporary**
Transfers 7 1,268 2
86
Number Volume of water
(megalitres) Number Volume
of water
(megalitres) Permanent
Transfers 4 1,499 4 1,03
8 **Temporary**
Transfers 7 1,268 2
86

Number Volume of water
(megalitres) Number Volume
of water
(megalitres) Permanent
Transfers 4 1,499 4 1,03
8 **Temporary**
Transfers 7 1,268 2
86

Number Volume of water
(megalitres) Number Volume
of water
(megalitres) Permanent
Transfers 4 1,499 4 1,03
8 **Temporary**
Transfers 7 1,268 2
86

Volume of water
(megalitres) Number Volume
of water
(megalitres) Permanent
Transfers 4 1,499 4 1,03

8 T**emporary**
Transfers 7 1,268 2
86

Number Volume of water (megalitres) P**ermanent**
Transfers 4 1,499 4 1,03
8 T**emporary**
Transfers 7 1,268 2
86

Volume of water (megalitres) P**ermanent**
Transfers 4 1,499 4 1,03
8 T**emporary**
Transfers 7 1,268 2
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P**ermanent**
Transfers 4 1,499 4 1,03
8 T**emporary**
Transfers 7 1,268 2
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Permanent
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1,499 4 1,038 T**empo**
rary Transfers 7 1,268 2
86

4 1,038 T**emporary**
Transfers 7 1,268 2
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1,038 T**emporary**
Transfers 7 1,268 2
86

T**emporary**
Transfers 7 1,268 2
86

Temporary
Transfers 7 1,268 2
86

7 1,268 2 86

1,268 2 86

2 86

86

Table 3-5. Price paid and type of water transfer (KL)

Area		Lowest	Highest
Baroosa	Perm	$4.50	$5.40
Comaum	Perm	$0.01	$0.31
Lacepede Kongorong	Perm	$0.01	$0.05
Lower Murray	Perm	$1.53	$2.01
McLaren Vale	Perm	$16.88	$20.73
Naracoorte	Perm	$0.05	$0.50
Mallee	Perm	$0.15	$0.15
River Murray	Perm	$0.93	$2.00
	Temp	$0.10	$1.10
South East	Perm	$0.01	$0.40
	Temp	$0.01	$0.01

Provide information on the availability of market information (including on price) and trading mechanisms (such as water exchanges).

DWLBC has a water trading website which has been developed to facilitate water trading activity and to provide market information. The site has three primary components:

1. Year to date trades - trades are listed individually with the date of approval, expiry date (if temporary), volume traded, allocation type (holding or taking).
2. Trading history - Summary of trades in each prescribed area detailing the year, number of transactions, total volume traded, the average volume traded and allocation type (3 years of data at the moment).
3. Trading Notice Board - where potential buyers and sellers can contact each other (actual trade does not occur on the website and application forms must be submitted in the usual manner for the Minister to consider).

There is also provision for the price of the water transferred to be included in 1 & 2 above but this information has yet to be included on the website for the following reasons:

1. The price information is collected on the application to transfer form but many applicants do not complete the form correctly or understate the amount paid, which places a question mark over data integrity. While we endeavour to get the information, there is no legal requirement under the Water Resources Act 1997 for the information to be provided to us on the application form and any failure to provide the information has to be followed up under the Stamp Duties Act.

2. The price information is provided to RevenueSA for stamp duty purposes and verification. It is intended that the verified/adjusted information be placed onto the website.

Provide details of the trading rules of each irrigation trust; particularly rules that limit permanent or temporary trade out of irrigation districts.

In 2002 the Minister John Hill sent a letter to all Irrigation Trusts seeking advice on each Trust's rules in relation to water trading. A copy of this letter and the responses received from the trusts are presented in Attachments 2 and 3.

Show that it had made substantive progress towards removing constraints on trade out of irrigation districts, or replacing them with less-restrictive alternatives, accounting for the Murray-Darling Basin Commission's work on trading restrictions.

As stated in the assessment report, "the trading restrictions reflect the social constraints on the trust". The rules have been "applied using the articles of association of the private irrigation trusts and is not State Government policy". Therefore we consider that we have conformed to obligations as set out in the 1994 Strategic Framework .

Report on the trading rules in recently completed water allocation plans.

No plans have been completed since January 2003.

Demonstrate that the reduction factors on water allocations that are traded in some areas are consistent with CoAG obligations.

Restrictions on trade - refer WAPS and section 39 (3)(b) of WRA 97, which allows the Minister to impose a reduction in the volume received in a transfer - currently the Northern Adelaide Plains Groundwater transfers (both absolute & temporary) are reduced by 20% e.g. if 100 ML transferred the purchaser receives only 80 ML. If it is a limited transfer the 20% is returned when the term of the transfer expires.

Provide data on the timeliness of trading approvals.

The timeliness of trading approvals is a very subjective question because there are no standard timelines set for trades and every prescribed water resource has different rules defined in the WAP for the assessment of the trade and the subsequent taking and use of water. In most areas, an assessment is required for both the seller and buyer's point of extraction and use.

Where trades involve water (taking) allocations the time taken to approve a trade can vary considerably depending on the complexity of the technical assessment. In some areas, particularly underground water areas, but increasingly on the River Murray where salinity impacts have to be assessed, this timeframe can extend to 6 months to fully assess the impact. The Department aims for an 8 - 10 week turnaround but this is not always possible.

Generally trades of water (holding) allocations are processed expeditiously as there is no technical assessment required (often within 10-15 working days) but this can blow out if the number of trades is significant eg at the end of each financial year. The only areas that provide for water (holding) allocations are the River Murray and the South East.

DWLBC is developing/improving systems to track the time taken for trades and to identify where delays are occurring so as to improve customer service delivery, while not compromising resource management.

4. Institutional reform

Institutional separation

For institutional role separation, governments should — at a minimum — separate the responsibility for the provision of water and wastewater services from the responsibility for regulation, water resource and environmental management and standards-setting in areas such as health and plumbing.

In accordance with the separation principle, the Minister for Administrative Services is responsible for SA Water providing water and wastewater services. The Minister for the Environment and Conservation and for the River Murray is responsible for water resource management policy. These arrangements, or equivalent arrangements providing similar role separation, have been in place for some years. In addition, although responsibility for setting water and wastewater prices lies with the Minister for Administrative Services, the actual water and wastewater pricing decisions are made by the Government and in particular Cabinet.

This year the Government has established arrangements for review of the price setting processes. The Minister for Administrative Services, as the Minister responsible for SA Water, brought to Cabinet matters relating to urban water price setting, including the methodology.

The Department of Treasury and Finance prepared the Transparency Statement on behalf of the Government. The Department of the Premier and Cabinet and the Department of Water Land and Biodiversity Conservation were consulted in its preparation. SA Water was involved but only to the extent that it provided factual and contextual advice.

In addition, whilst the Government considers that it has achieved appropriate separation, the Essential Services Commission of South Australia has reviewed the processes undertaken in the preparation of advice to Cabinet, resulting in Cabinet making its decision on the level and structure of SA Water's urban water prices for 2004-05, with respect to the adequacy of the application of CoAG pricing principles.

Devolution of irrigation scheme management

Report on progress with devolving management in the lower Murray Reclaimed Irrigation Areas

The Lower Murray Reclaimed Irrigation Areas (LMRIA) require improved management and rehabilitation in order to reduce their environmental impact on the River Murray and improve farm productivity. A major 'Options Study' assessed the environmental sustainability and economic viability of flood-irrigated dairying in these areas. It included an evaluation of the benefits and costs of alternative management options for the LMRIA (eg abandonment, rehabilitation, conversion to other use, etc). The Study concluded the best outcome to be the rehabilitation of the most viable parts of the irrigation areas after a period of restructuring.

Restructuring and rehabilitation funding assistance was made available to industry in February 2003. The restructure assistance aims to rearrange farms into more viable units, with the retirement of unviable areas from irrigation. Rehabilitation assistance aims to upgrade the water delivery infrastructure to include metering and introduce runoff prevention works to prevent irrigation and stormwater runoff return to the River. The impact of the drought and extensive irrigator consultation, has delayed the expected commencement date for on ground works to the end of 2004. $22m of funding is being sourced from the National Action Plan for Salinity and Water Quality for this program. A significant private contribution from irrigators will also be required.

From 1 January 2003 the operation and maintenance of the irrigation infrastructure has been performed by Lower Murray Operations Pty. Ltd., a company formed by the irrigators, under a contract with the Minister for the River Murray. This is an interim step towards self-management which is a formal process covered by the Irrigation Act, 1994. The contract replaces previous arrangements under which SA Water performed the function. It provides irrigators with an opportunity to control the costs by determining the work program that is required.

Demonstrate the Government retains appropriate regulatory responsibility to ensure that water trading out of the Lower Murray Reclaimed Irrigation Areas is not unjustifiably restricted.

Water licenses for Government Irrigation Districts are held by the Minister (as the authority responsible for the district). The Minister has established a process to allow individual irrigators to trade water, and this has been happening over the last year. The process involves the Minister acting as an intermediary in the sale of some of the water from the allocation he holds for the district.

Two key conditions apply to these water trades to safeguard the resource and other irrigators. The first is that, unless the irrigator installs a water meter (these being un-metered users at present), the whole allocation must be sold and the authorized area of land must be retired from irrigation. The second is that the irrigator must pay a one-off fee of $2/ML, which is accumulated in a fund to be used for works to physically isolated retired land from the remaining irrigated land, where necessary. (This is based on an expectation that side drains may be required in some locations to minimize problems from rising saline groundwater.)

Integrated catchment management

South Australia should report on progress in enacting its proposed NRM reforms

Legislation that will overhaul natural resource management in South Australia resulting in more effective and efficient delivery has been tabled in State Parliament in February 2004. The Natural Resources Management Bill 2003 was drafted after more than 18 months of public consultation across South Australia. The Bill provides for a new structure which includes a peak advisory NRM Council and eight regions, each with a skills-based regional NRM Board with direct access to the Minister. Sub-regional NRM Groups will ensure that local communities remain engaged and that real outcomes are achieved. This replaces the

current system of 71 boards, which separately manage issues relating to water, pest plants and animals and soil conservation. Parliament is currently debating this Bill.

See: http://www.dwr.sa.gov.au/nrm_reform/index.html

5. National water quality management strategy

The Environment Protection (Water Quality) Policy 2003 (Water Quality Policy) was approved on 10 April 2003. It aims to protect South Australia's waters from pollutants. In the past, South Australian laws protecting the State's water resources from pollution were inconsistent and had little to do with the environmental value of our waters. This meant that the State's rivers, marine and ground waters were in danger of being degraded, raising potential negative impacts for the economy, community and the environment. The new Water Quality Policy addresses these issues and brings South Australia in line with the National Water Quality Management Strategy.

Further information can be found on
http://www.environment.sa.gov.au/epa/pdfs/epwq_report.pdf

6. New Rural water infrastructure

Report on how SA has acted to address the matters raised in the ecological study for the Clare Valley project

Substantial progress has been made on the Clare Valley Water Supply Scheme. This scheme has three key objectives:

- To provide reticulated supply of high quality, filtered water to the townships of Watervale, Penwortham, Sevenhill, Leasingham and Mintaro and improve the supply to Clare and Auburn;

- To enable improved water supplies to other areas of the Mid-North region, particularly Yorke Peninsula; and

- To provide a supply of water to the Clare Valley region for irrigation and other bulk water purposes.

The Environmental Assessment Report undertaken for the project raised 5 key environmental risks in using this water for irrigation. These are as follows:

1. potential waterlogging and drainage hazard formation
2. potential higher stream baseflow and baseflow salinity
3. potential groundwater salinisation
4. potential impacts from release of chloraminated water to the environment
5. potential impacts from pipeline construction

Irrigation environmental management regime

The first 3 environmental risks listed above are being addressed by the environmental management regime being jointly established by the Department of Water, Land and Biodiversity Conservation and SA Water. The environmental management regime will be applied at two levels, regional and property.

At the regional level this will include determining the sustainable volume of imported water that may be applied in each sub-catchment of the Clare Valley without adversely impacting on ecosystem health, land productivity, water resource quality and/or downstream catchments. The sustainable volume for each sub catchment will be determined with the assistance of an 'Imported Water Study', which is currently under review, and the existing Water Allocation Plans for the Clare Valley and the River Murray.

In addition, a regional monitoring program is being implemented. An adaptive management approach is proposed, such that if monitoring indicates that environmental impacts are arising, the use of imported water may need to be reduced or cease on particular properties or in some sub-catchments. Baseline monitoring has commenced for groundwater, surface water quality and in-stream biota. Stream flow monitoring has not yet commenced.

At the property level detailed mapping data will be used to aid in the assessment of permit and licence applications. Depending on particular property conditions, different risks may need to be assessed and conditions applied to permits/licences.

Irrigation users of peak irrigation period water will require a permit from DWLBC. Users of off-peak irrigation period water will require a River Murray licence to take water. Both the permits and licences will have conditions on the use of this water, as well as ongoing annual reporting to monitor catchment condition.

Treated water release impacts

The release of treated (chloraminated or chlorinated) water will be addressed by standard SA Water environmental impact assessment procedures for operational releases, including required release(s) for the commissioning of the pipelines.

Construction impacts

Potential environmental impacts associated with pipeline construction is being addressed by:

- planning and design of the pipeline route and associated infrastructure to avoid significant areas and minimise impacts to vegetation;
- management of construction activities through the requirement for construction contractor's to work in accordance with construction Environmental Management Plans and periodic auditing of construction works by SA Water environmental officers.

Report on the initial outcomes from the regional monitoring of groundwater and surface water.

The full regional monitoring program will not commence until the project commences in later this year. However, groundwater wells have been installed and samples taken.

7. Public Education and Consultation

Report on implementation for education and consultation commitments relating to:
Rural cost recovery

Details for this section have been provided earlier in the report

Water management arrangements

In accordance with the South Australian Government's Honesty and Accountability Policy the Government through its *Transparency Statement - Urban Water Prices in South Australia 2004-05* has increased the information available to the general public on how the Government sets its urban water prices.

SA Water provides information to the general public on a range of issues with regard to water conservation and the environment, the operation of the water and wastewater systems and daily reports of reservoir levels and water consumption via its website, www.sawater.com.au.

Water trading arrangements

Details for this section have been provided earlier in the report

New rural water infrastructure

A comprehensive communication and consultation program has been implemented to inform the community about the benefits of the Clare Valley Water Supply Scheme, the availability of water to townships and irrigators and the possible environmental impact of imported water in the region.

The program includes media releases and public notices, radio interviews, community information days, brochure and displays, face to face stakeholder briefings, letters to residents and irrigators, regular information updates in four regional newspapers and inclusion of relevant information on the SA Water website.

8. Water legislation review and reform

Confirm that two Acts Irrigation (Land Tenure) Act 1930, and the Loans for Fencing and Water Piping Act 1938) have been repealed.

On 20 January 2003 Cabinet approved a rewrite of the Crown Lands Act 1929 and the repeal of a number of associated Acts, including the Irrigation (Land Tenure) Act 1930, with transitionary provisions. It is proposed that all tenure matters associated with Crown land will be dealt with under one piece of legislation in future. Cabinet also approved that Parliamentary Counsel be requested to prepare a draft Bill to be used for agency and public consultation. A draft Bill entitled 'Crown Land Management Bill 2004' has been prepared and a consultation program is about to be commenced. It is planned to introduce a settled Bill to Parliament in September/October.

The Loans for Fencing and Water Piping Act (1938) was repealed by Statutes amendment and repeal (National Competition Policy) act (2003) on 1.7.2003.

Attachment 1

Scientific assessment of Marne-Saunders prescribed Water Resource Area.

Executive Summary

In 1999, water resource development in the Marne River catchment was restricted to stock and domestic supplies when a Notice of Restriction (pursuant to *Water Resources Act, 1997*) was placed over the catchment. This study was conducted to provide technical advice to the River Murray Catchment Water Management Board for use in preparing a Water Allocation Plan for the Marne-Saunders Prescribed Water Resources Area. It describes the water regime requirements of environmental assets in the Marne River catchment.

The Marne River is an ephemeral tributary of the River Murray in South Australia, rising in the Springton/Eden Valley/Keyneton region of the eastern Mount Lofty Ranges and flowing to join the River Murray at Wongulla. The catchment can be divided into two main zones – the "Hills Zone" of the Mount Lofty Ranges and the "Plains Zone" of the Murray Plains. The two zones are separated by the Marne Gorge.

The catchment can be further divided into nine reaches, based on changes in geomorphic character along the river length. The Hills Zone can be divided into the Marne and North Rhine Rivers headwaters and main channels, and the Marne Gorge. The Plains Zone can be divided into the alluvial fan immediately downstream of the Marne Gorge, a channel/floodplain section, and the Blackhills spring fed section. A final reach is the pool at the mouth of the Marne River under River Murray influence.

Year to year rainfall is highly variable in the hills which results in a highly variable stream flow. Seasonal rainfall is also variable, so that long periods of no flows are recorded in the drier months. The only persistent aquatic habitats in the upper catchment are isolated pools which retain water during periods of no flow.

The only persistent water in the lower catchment is downstream of Blackhill in the pools of the Blackhill Springs system, fed mainly from groundwater.

In 1999, the upper catchment contained a total of 640 farm dams (with a total capacity of 2,433 ML). This volume had approximately doubled since 1991 (1,123 ML).

It is estimated that the farm dams have had a dramatic impact on the flow regime of the Marne River, particularly:

- a decrease in the median annual flows out of the Western Slopes subcatchment by 76% and through Marne Gorge by 25%;
- an increase in the length of no flow periods in the Western Slopes subcatchment from 20% to 73% of the time, and in Marne Gorge from 13% to 45% of the time;
- a reduction in the volume and frequency of summer freshes;
- a delay in the onset of natural winter flows.

In the Plains Zone, groundwater extraction is the major source of water for stock, domestic, irrigation and other industrial uses. Between 1976 and 1999, 129 bores were drilled on the Murray Plains mostly within 1 km of the Marne River. The rate of groundwater extraction in this region was estimated to be 1,650 ML per year from irrigator surveys in 1999. A lack of understanding of groundwater dynamics in the lower catchment currently prevents quantification of the impact of irrigation on flows in the system.

Significant environmental assets in the catchment include:

- populations of the fish species *Galaxias olidus* (Mountain galaxias) in the upper Marne River and gorge, populations of *Gadopsis marmoratus* (River blackfish) in the lower Blackhills springs, and a diverse fish fauna in the lower pool at the mouth of the river;
- significant macroinvertebrate species in various reaches;
- high diversity in-stream and riparian plant communities in various reaches;
- riparian and floodplain River red gum communities;
- various geomorphic or local features such as Boehm's Springs, the Marne Gorge, the Marne Conservation Park and the Blackhills Springs.

For each of these assets, environmental water regime requirements were identified to maintain or improve the current condition of the asset. These requirements were described in terms of required flow bands or components (low flows, freshes, floods etc). The relevant flow bands or components were then analysed for deviance from the natural condition.

It was concluded that environmental water regime requirements of the Marne catchment are not being met in any one of the eight reaches reliant solely on groundwater or surface waters in the Marne River catchment (all reaches apart from the Marne mouth). All eight of these reaches exhibited adverse impacts of reduced flows, particularly in the low and medium flow bands.

The analysis of environmental water regime requirements suggests that if low and medium flows were restored to the Marne River, and thus connectivity between refuge pools was improved, it would be possible to restore self-sustaining populations of most species currently represented in the Marne catchment in most reaches. Some assets, however, are unlikely to ever be restored to this level.

Summary/Conclusions

This study was conducted to provide technical advice to the River Murray Catchment Water Management Board on the environmental water requirements of environmental assets in the Marne River catchment. The information in this report will be used in preparing a Water Allocation Plan for the Marne-Saunders Prescribed Water Resources Area. In summary, this report shows that the environmental water requirements of the Marne River are not currently being met, and that the water-dependent ecosystems in the Marne River catchment are likely to degrade further in response to current levels of water resource development.

The Marne River is an ephemeral tributary of the River Murray in South Australia. It rises in the Springton/Eden Valley/Keyneton region of the eastern Mount Lofty Ranges and flows across the Murray Plains to join the River Murray at Wongulla. It has a catchment of 240 km^2 and a median annual flow of 4,774 ML. The catchment can be divided into two main zones – the "Hills Zone" of the Mount Lofty Ranges and the "Plains Zone" of the Murray Plains. The two zones are separated by the Marne Gorge.

Most of the stream flow in the Marne River, and its main tributary the North Rhine River, is generated in the Hills Zone where the rainfall is relatively high (an annual average of 815 mm at Springton). The rainfall is much lower (average 350mm per year at Cambrai) on the Murray Plains. Year to year rainfall is highly variable in the hills which results in a highly variable stream flow (for example, total flow of 33,500 ML in 1974 compared with 80 ML in 1982). Seasonal rainfall is also variable, so that long periods of no flows are recorded in the drier months.

The only persistent aquatic habitats in the upper catchment are isolated pools which retain water during periods of no flow.

Runoff from the Hills Zone is lost to groundwater as the river traverses the Plains Zone downstream of the Marne Gorge. This loss, as well as leakage through the Palmer Fault line, which runs along the base of the hills, provides a major groundwater recharge mechanism, into the unconfined plains aquifer. Thus, the distance any flow travels along the plains channel is dependent on the previous moisture content of the streambed, as well as the magnitude of the flow event.

The only persistent water in the lower catchment is downstream of Blackhill in the remaining pools of the Blackhill Springs system. These are fed from upwelling groundwater from the unconfined aquifer, groundwater flow from the catchment slopes and local rainfall.

The rest of the lower Marne River channel is dry except for during intermittent flow periods when flows may overtop the banks and inundate the floodplain.

Further water resource development was restricted to stock and domestic supplies in 1999 when a Notice of Restriction (pursuant to *Water Resources Act, 1997*) was placed over the catchment. In the upper catchment, there was a total of 640 farm dams holding an estimated 2,433 ML when the catchment was restricted. The volume of water held in dams had approximately doubled between 1991 (1,123 ML) and 1999 (2,433 ML).

It is estimated that the capture of stream water in farm dams have had the following impacts upon the flow regime of the Marne River:

- increased length of no flow periods in the wettest subcatchment from 20% to 73% of days, and in Marne Gorge from 13% to 45% of days;
- decreased the median annual flows out of the wettest subcatchment by 76% and through Marne Gorge by 25%;
- reduced the volume and frequency of, or completely removed, summer freshes;
- delayed the onset of winter flows by capturing flows during the break in season;
- reduced the frequency, height, duration and, hence, coverage of low, medium and high flows.
-

It is important to note that these impacts have been modelled and that the model assumes that annual water usage was 30% of the dam capacity. If greater usage rates are being employed, impacts may be greater than modelled. Given the magnitude of this hydrological change (and the recent increase in dam construction since 1991), it is likely that the ecological and geomorphological impacts are yet to be fully expressed. Furthermore, the model does not account for evaporation from the dam surfaces, leakage through the dam walls or direct pumping of surface water into dams or bores all of which would add to the impact on flow regime.

Groundwater extraction in the Hills Zone is from fractured rock aquifers and the impacts on permanent pool levels and stream flow are difficult to quantify. In the Plains Zone, groundwater extraction is the major source of water for stock, domestic, irrigation and other industrial uses. Between 1976 and 1999, 129 bores were drilled on the Murray Plains mostly within 1 km of the Marne River. The rate of groundwater extraction in this region was estimated to be 1,650 ML per year from irrigator surveys in 1999. A lack of understanding of groundwater dynamics in the lower catchment currently prevents quantification of the risk irrigation from groundwater poses to key assets such as the Blackhill Springs system.

As part of this project, the Marne River catchment was divided into nine reaches based on changes in geomorphic character along the river length. The upper catchment was divided into the Marne and North Rhine Rivers headwaters and main channels, and the Marne Gorge. The lower catchment was divided into the alluvial fan immediately downstream of the Marne Gorge, a channel/floodplain section, and the Blackhills spring fed section. The final reach was the pool at the mouth of the Marne River under River Murray influence.

The present conditions of key ecological assets were identified in each reach. The selection of ecological assets was confined to those organisms that are highly dependent on water and that cannot opportunistically move to other catchments which may provide better aquatic habitats when conditions are poor in their resident catchments (eg. fish and plants).

The small native fish and submerged aquatic plants of the Marne River catchment were found to be under immediate conservation threat. Of the 19 small native fish species that once inhabited the Marne River, only nine species remain. No fish were recorded in the North Rhine River, and Mountain galaxias were the only fish found in and upstream of the Marne Gorge in the Marne River. Mountain galaxias populations in these locations

showed potential impacts of inadequate flow regime by either having only large or small individuals present.

No fish were found below the Marne Gorge until the fourth spring in the chain at Blackhill Springs. This spring was the only one with permanent flowing water and contained a range of sizes of River blackfish, Murray-Darling carp gudgeons, Dwarf flathead gudgeons and Mountain galaxias. Most of the other springs in the chain between Blackhill and Wongulla stopped flowing between 1996 and 2001, causing many to dry up completely.

No exotic predator fish, such as trout or redfin, were found in the Marne catchment, and no exotic fish were found upstream of Blackhill.

Submerged aquatic plants, like native fish, require permanent water or only tolerate short periods of exposure and thus may be impacted greatly upon by the observed changes in flow regime. Very few aquatic plants now occur in the Marne catchment. The Marne Mouth wetland at Wongulla contained waterlilies (presumably *Ottelia ovalifolia* and *Villarsia reniformis*) until 1995 but these now appear to be locally extinct. *Triglochin procerum* stands upstream of the Marne Gorge were seeding profusely in October 2001 suggesting they were receiving adequate water but the absence of this plant from areas such as the temporary wetland habitats in the Marne Conservation Park, suggests that the periods of inundation are too brief or ill-timed in the lower parts of the catchment. The Marne Conservation Park was also devoid of any semi-emergent or submerged vegetation which strengthens this suggestion. Similarly, there was no evidence that the resident River red gum had recruited since 1996.

In and above the Marne Gorge, River red gum seedlings, flowering *Typha domingensis*, semi-emergent/submerged aquatic vegetation, small native fish (Mountain galaxias) and macroinvertebrates with fully aquatic life cycles were present in and around permanent pools. These assets were not found downstream of the Marne Gorge except in the remaining pools of Blackhill Springs.

For each environmental asset, environmental water regime objectives were developed to maintain or improve their condition. The water requirements to achieve these objectives were identified, in terms of required flow bands or components (low flows, freshes, floods etc). The relevant flow bands or components were then analysed for deviance from the natural condition.

It was concluded that environmental water regime requirements of the Marne catchment are not being met in any one of the eight reaches reliant solely on groundwater or surface waters in the Marne River catchment (all reaches apart from the Marne mouth). All eight of these reaches exhibited adverse impacts of reduced flows, particularly in the low and medium flow bands. The healthiest reach contains the remaining pools of the Blackhill Springs, which have been reduced from a series of more than seven active springs between Christian's Reserve and the Swan Reach Rd ford in 1999 to only two active springs in this region in 2001.

The analysis of environmental water regime requirements suggests that if low and medium flows were restored to the Marne River, and thus connectivity between refuge pools was

improved, it would be possible to restore self-sustaining populations of most species currently represented in the Marne catchment in most reaches.

In the Marne and North Rhine Rivers headwaters, however, stream flow is rainfall dependent, with extended periods of zero flow expected between pools under natural conditions during the summer months. Farm dams in these upper reaches have now replaced or greatly modified in-stream habitat by inundating remnant pools and reducing flows high enough to produce and maintain pools in undammed sections. Improved water resource management may allow colonisation of these upper reaches by plants and macroinvertebrates but it is unlikely that self-sustaining populations of native fish will ever be restored.

Given the rapidity of farm dam development and the knowledge that most water dependent assets now only occur in the upper catchment, it is reasonable to suggest that the health of the Marne River will continue to decline due to the adverse impacts of the 1999 level of farm dam development, even without further water resource development pressures.

In conclusion, the Environmental Water Requirements of the assets of the Marne River catchment need urgent management attention. Current water resource management is failing to meet requirements of these assets in any of the eight reaches dependent on Marne River catchment water. It is critical that changes to flow management are implemented immediately to deliver key flow bands, such as the low flows over summer and medium flows early in the rainy season, in order reverse the trend towards declining ecological health of the catchment.

Attachment 2.

Letter to Irrigation Trusts seeking advice on Trust rules.

Date

«Name»
«Trust»
«Address»

Dear «Title»

I am writing to all South Australian Irrigation Trusts seeking advice on each Trust's rules in relation to water trading.

The National Competition Council (NCC) assesses compliance with the 1994 Council of Australian Governments (CoAG) water reforms. Trade in water is an important aspect of the water reforms, as it provides an incentive for irrigators to improve their water use efficiency. The NCC raised concerns in its 2002 annual report regarding the restrictions on trade from Irrigation Trusts, such as imposing trading 'ceilings' that limit the volume of permanent transfers out of Irrigation Trusts.

The NCC has raised the potential for reductions in South Australia's National Competition Payments if action is not taken to ensure free trade in water entitlements. This is a concern to the State Government, with South Australia receiving in excess of $55 million per year in National Competition Payments from the Commonwealth. In addition, the successful implementation of the water reforms provides South Australia a sound negotiating position with other States in discussions on shared water resources such as in the Murray-Darling Basin.

I am seeking information on the current arrangements for trade in and out of the irrigation district(s) operated by your Trust, and any restrictions placed on individual members of the Trust in temporarily or permanently transferring all or part of their water entitlement. If there are limitations to trade, could you explain why these restrictions were developed, and provide suggestions on how these limitations could be lifted.

Your response is requested by 30 November 2002.

Further information regarding the CoAG water reform requirements can be obtained from Mr Martin Fidge, Policy Officer, Department of Water, Land and Biodiversity Conservation ph(08) 8463 6933.

Yours sincerely

John Hill

Attachment 3.

Irrigation Trust replies

Irrigation Trust	Summary of Comments from Letter
Long Flat Irrigation District	Currently no trade arrangements
Jubilee Almonds	Has purchased all its water allocations and actively involved in leasing water to match allocation and water use. Trust operates on behalf of members in trading water
Century Orchards	Leases majority of water, reliant on short term trading market to operate.
Media Irrigation Trust	Trust holds allocation and sold water when rehabilitating irrigation system with pipes to offset costs
Renmark Irrigation Trust	Water allocation for irrigation on an area basis. The Trust holds the water licence and actively leases water on behalf of the trust members.
Sunlands Irrigation Trust	Annual temporary transfers in and out, permanent transfers in to match expansions in area. Annual irrigation limits are set depending on conditions and rainfall to ensure high irrigation efficiency. There have been no requests for transfers out of the district
Golden Heights Irrigation Trust	"
Pyap Irrigation Trust	Transfers out are possible, however the last permanent transfer was in 1979!! Noted that land in the trust area is decreased in value without access to water.
Lock 4 Irrigation Trust	Transfers out are allowed, however the only condition is that other current members are given the first option to purchase the water.
Woods Point	No restrictions on trade in or out of district
Greenways Irrigation Trust	Highland district with trust setting limits on water use dependent on crop, soil, area and irrigation efficiency. Improved irrigation efficiencies have allowed an increase in trust area. High pumping costs provide an incentive for irrigators to improve efficiency to reduce costs.
Lyrup Village Settlement	Currently surplus water is leased externally by the trust. Internally irrigators can transfer water to other growers. Currently reviewing trade arrangements.
Riverglades Irrigation Trust	Has permanently transferred water, and currently leases water. Encourages members to permanently transfer water within the trust.
Central Irrigation Trust	Was the first irrigation trust on the Murray to introduce both pay for use and the ability to trade water. CIT controls 9 irrigation districts and places no restrictions on permanent transfers between its districts. Encourages annual and short term transfers, and while setting a limit on these volumes has yet to reach this limit. Has increased the allowable level of net permanent transfers out of the district by 100% since the introduction of permanent trading. Can further increase this limit with the support of members of the trust, however 95% do not engage in water trading and many oppose it in principle therefore it is unlikely to be supported. If relaxed trade rules become essential, then mentioned that trust would look at exit fees to ensure the capital investment in irrigation and drainage infrastructure is paid out. This could be up to $1,500 per megalitre effectively preventing any trade.