REPORT TO THE NATIONAL COMPETITION COUNCIL

IMPLEMENTATION OF NATIONAL COMPETITION POLICY AND RELATED REFORMS

IN

SOUTH AUSTRALIA

APRIL 2005

CONTENTS

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 2004 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, 2002 and 2003. Also relevant are the NCC's first, second and third tranche assessment reports, supplementary reports on those assessments, and the assessment reports for the years up to and including 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.

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

In the SA NCP Report for the Calendar Year 2003, it was reported that the *Chicken Meat Industry Act 2003* contained 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, and that 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. The *Chicken Meat Industry Act 2003* was amended in 2004 to remove arbitration provisions, and the amended Act, including the Trade Practices Act exemptions, came into force on 2 September 2004.

Last year's NCP Report also referred to the review into the single-desk export aspects of the *Barley Marketing Act, 1993*. Section 33A of that Act contains a *Trade Practices Act* exemption for barley export operations carried out by ABB Grain Export Ltd pursuant to the single-desk scheme. Following the review, the *Barley Exporting Bill 2004* was introduced into Parliament on 30 June 2004 to replace the old scheme. That Bill did not contain a *Trade Practices Act* exemption. However, the *Barley Exporting Bill 2004* has now lapsed, and the Government has not yet announced any timing or intention with regard to the *Barley Exporting Bill 2004*.

Apart from the proposal in the *Barley Exporting Bill 2004* to repeal section 33A of the *Barley Marketing Act 1933*, there have been no other Acts or Bills in which Trade Practices exemptions have been revoked, or proposed to be revoked, during the reporting period.

2.2 Compliance

South Australian Government agencies are continuing to increase their awareness of the application of the *Trade Practices Act* and the Competition Code requirements to their businesses. The SA Crown Solicitor's Office provides *Trade Practices Act* advice to SA Government departments, agencies and statutory corporations. There is a steady volume of enquiries seeking general assessments of government business activities in terms of compliance with the *Trade Practices Act*, and advice on particular competition questions.

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 community service activity with some element of contribution or co-payment, rather 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 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 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.

A decision is still pending in the *Baxter Healthcare* case (Derivative Crown Immunity issues). The decision in the *Power and Water Authority* case provided some guidance as to the meaning of "carrying on a business" and reaffirmed the existence of the principle of derivative Crown Immunity, but did not assist with the difficult question of the demarcation between what is, and what is not, a business (as discussed above), nor with the application of the *Trade Practices Act* to activities where there is an inextricable intermingling of business and non-business activities (such as a TAFE course that contains full-fee-for-service students and government-funded students in the same class). These matters may need to await further judicial decision when an appropriate fact situation is presented. In the meantime, they present difficulties for the guidance of government agencies.

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 private port operators . The legislation provides for the Minister to issue a First Pricing Determination (FPD) to apply for three years from Sale (ie to 1 November 2004). The FPD essentially maintained 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 more light-handed prices monitoring in its place. In November 2004 ESCOSA issued its own triennial ports price determination establishing prices monitoring. More intrusive price controls may be re-instituted following the next review by ESCOSA, to be carried out prior to the expiry of the new ports price determination.

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. ESCOSA has reviewed the Ports Access Regime, concluding that it provides a valuable and low-cost means of dealing with access and pricing disputes, and that it should continue in operation for a further triennial cycle. In its review of the FPD, ESCOSA determined that

grain exporters were the most vulnerable category of port users. Hence, the Ports Access Regime was not only retained, but was extended to include bulk cargo services at grain berths. The Ports Access Regime and new ports price determination will be reviewed by ESCOSA concurrently.

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 **4.1 ELECTRICITY**.

3.2 COMPETITIVE NEUTRALITY

This section provides the Government's annual report for the 12 months to December 2004 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 (CN) is expressed in the *Government Business Enterprises (Competition) Act 1996* 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 last updated in May 2003[2], list those businesses subject to Competitive Neutrality and notes 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 agencies. Removal of the business from the list would not preclude a complaint being made against the business. An updated list is provided in Appendix A.

The implementation of CN principles has been completed for identified significant business activities (SBAs) within Government. The focus is now on monitoring for 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 Public Non-Financial Corporations – New Ownership Framework

In November 2004, the South Australian Government introduced new Policy Guidelines that articulate a new ownership framework for Public Non-Financial Corporations (PNFCs) (Appendix B). The objective of the new ownership framework is to improve the management and operation of South Australia's PNFCs. The framework covers three key areas of a PNFC's relationship with its owner — CSOs, dividend payments and capital structure. The Government has approved the implementation of the new ownership framework in SA Water Corporation (SA Water) and South Australian Forestry Corporation (ForestrySA) as part of the 2005-06 Budget process. Implementation in other agencies will be considered following the completion of the implementation in SA Water and ForestrySA.

In relation to the CSOs in particular, the new policy framework supersedes the Government's 1996 *Community Service Obligations Policy Framework*. CSO policy is also reflected in the

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

July 2002 *Competitive Neutrality Policy Statement*, the March 1998 *Guide to Implementation of Competitive Neutrality Policy*[3] and the *Public Corporations Act, 1993*.

Currently, specific CSO payments are only made to two agencies, SA Water and ForestrySA. However, a number of transparent subsidies are also made to other agencies. These payments are set out in Table 6.2 of the 2004-05 Budget Paper No.3 [4]

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* identified 20 Category 1 and 15 Category 2 significant business activities. Because 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 (the Act) 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 existing entity but can also be used to establish separate legal status.

The Public Corporations Act 1993 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; and
- Annual and interim reporting obligations.

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

3.2.4 Compliance Monitoring of 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

[3] http://www.premcab.sa.gov.au/pdf/competition/CompNeutpol.pdf
[4] http://www.statebudget.sa.gov.au/budget200405/pdf/bstatement/bstatement200405ch6.pdf

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.

The December 2004 review of significant business activities in portfolio shows 22 Category 1 and 13 Category 2 significant business activities.

Major Government Businesses

As at 31 December 2004, the following four major Government Businesses, all of which are Category 1 SBAs, were not associated with Departmental agencies. All four agencies are corporatised entities and fully comply with competitive neutrality principles.

South Australian Water Corporation (SA Water)

The South Australian Water Corporation 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. The Corporation declares and pays a dividend to the Government annually.

Implementation of the new PNFC ownership framework (Appendix B) is to occur from 2005-06, subject to Cabinet approval of the proposed dividend, CSOs and capital structure arrangements for SA Water in early 2005.

South Australian Forestry Corporation (ForestrySA)

The South Australian Forestry Corporation (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 develop and manage plantation forests for commercial production. Specific non-commercial activities including community use of forests, native forest management, fire protection, industry development and policy support are transparently funded by CSO payments. ForestrySA is subject to tax equivalent payments and debt guarantee fees.

Implementation of the new PNFC ownership framework (Appendix A) is to occur from 2005-06, subject to Cabinet approval of the proposed dividend, CSOs and capital structure arrangements for ForestrySA in early 2005.

South Australian Lotteries Commission (SA Lotteries)

SA Lotteries is established by the *State Lotteries Act, 1966.* The *State Lotteries Act, 1966* 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 1993*, SA Lotteries' current organisational structure and governance arrangements are consistent with the corporatisation requirement for competitive neutrality.

Land Management Corporation (LMC)

The operations of LMC have been added to the Category 1 significant business activities listing. LMC is established as a subsidiary of the Minister for Infrastructure under regulations pursuant to the *Public Corporations Act 1993* and is responsible for managing and developing South Australia's portfolio of land assets. LMC has no formal CSOs but receives subsidy payments for specific activities from time to time. LMC is subject to tax equivalent payments and debt guarantee fees and pays dividends.

Department of Health

As at 31 December 2004, the Department of Health had three Category 1 and five Category 2 SBAs. These are as follows:

- Medvet Science Pty Ltd (Category 1)
- Institute of Medical and Veterinary Services (IMVS) – Research and Diagnostic Pathology Services (Category 1)
- Metropolitan Domiciliary Care: Domiciliary Equipment Hire Services (Category 2)
- Metropolitan Domiciliary Care: Therapy Solutions (Category 2)
- 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).

With the exception of Medvet Science Pty Ltd, which is a corporatised entity, all of these government businesses have adopted cost reflective pricing as the relevant competitive neutrality measure.

Since July 2004, the Modbury Hospital and the Royal Adelaide Hospital ceased to exist as separate incorporated bodies and are now part of the Central and Northern Adelaide Health Services (CNAHS). The Flinders Medical Centre is now part of the Southern Adelaide Health Services (SAHS). However, no changes in listing of business activities are required.

Department of Families and Communities (DFC)

As at 31 December 2004, DFC has one Category 1 SBA listed.

- *HomeStart Finance*

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. HomeStart Finance is subject to tax equivalent payments and debt guarantee fees and pays a dividend to Government.

The Government is currently reviewing HomeStart Finance including its community services obligations (CSOs). The outcome of the review process will be reported in the 2005 report.

Department of Education and Children's Services (DECS)

DECS has four Category 2 SBAs at 31 December 2004.

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

The Department is proposing to include a fifth business activity, the sale of library "Bookmark" library software sales and support, as a Category 2 significant business activity.

DECS has advised that all of these SBAs comply with competitive neutrality principles through the implementation of cost reflective pricing. An independent report on "Bookmark" concluded that the activity complies with cost reflective pricing.

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

As at 31 December 2004, 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 effective 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 2004, DPC has three 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 Adelaide Festival Centre Trust 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 or 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. However, the AFCT is obliged, under the terms of the *Adelaide Festival Centre Trust Act 1971,* 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 listing of the theatre hire activities is therefore presently under review.

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 2004, PIRSA Rural Solutions is a Category 1 SBA and complies with competitive neutrality principles through the implementation of cost reflective pricing. Rural Solutions has absorbed the Seed Certification and Testing activity (a category 2 SBA) into its operations.

Department of the Environment and Heritage (DEH)

DEH currently has two business activities listed as Category 2 significant business activities.

Cleland Wildlife Park

Cleland Wildlife Park has adopted cost reflective pricing as the competitive neutrality measure and has developed a comprehensive 5-year business plan to drive the implementation process.

Discovering Penguins Program

DEH has advised that this activity ceased operations on 30 June 2004. This activity is therefore to be removed from the Category 2 SBAs listing.

Department of Administrative and Information Services (DAIS)

At 31 December 2004, Supply SA (Distribution Services), a business unit of DAIS, is classified as a Category 1 SBA. It 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 2004, DTUP has 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 Government.

West Beach Trust (WBT)

The West Beach Trust 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 does pay tax equivalent payments.

Adelaide Cemeteries Authority (ACA)

The Adelaide Cemeteries Authority (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 1993* and is not required to pay tax liabilities.

Justice Department

At 31 December 2004, the Justice Portfolio has two Category 1 SBAs listed, i.e. the Police Security Services Division, and the Public Trustee *(Personal Trusteeship Services)* and two Category 2 SBAs, the Contestable Legal Services, part of the Crown Solicitor's Office and the 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)

PSSD 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.

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. The Public Trustee had previously been commercialised and it currently meets the requirements of

commercialisation that are contained in the State Government's *Competitive Neutrality Policy Statement*. The Public Trustee pays tax equivalent payments and dividends.

Interpreting and Translating Centre (Multicultural SA)

Multicultural SA has advised that its Interpreting and Translating Centre is to be reclassified as a Category 1 SBA (previously a Category 2 SBA) with commercialisation as the CN measure adopted. The Centre now earns revenue from contestable clients marginally in excess of $2 million annually. It has implemented and complies with cost reflective pricing principles. Many elements of commercialisation have been also implemented with further consideration intended for the remaining elements.

Tourism Department

As at 31 December 2004, the Adelaide Convention Centre and Adelaide Entertainment Centre are both Category 1 SBAs in the Tourism Portfolio.

Adelaide Convention Centre (ACC)

The Adelaide Convention Centre 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 fully implemented cost reflective pricing measures. 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 (AEC), is established as a subsidiary to the Minister for Tourism by Regulations issued under the *Public Corporations Act, 1993.* Most of the Centre's revenue is derived from commercial activities but it also receives a subsidy for operational expenses. The AEC, a Category 1 SBA, has implemented cost reflective pricing principles.

Department of Trade & Economic Development (DTED) (previously Department for Business, Manufacturing & Trade - DBMT)

The Department has advised that it has established no new business activities. The SA Centre for Innovation, Business and Manufacturing and the Manufacturing Engineering Projects Group cease to exist in the Department (previously the Department for Business, Manufacturing and Trade) and are to be removed from the Category 2 SBAs listing.

Department of Water, Land and Biodiversity Conservation (DWLBC)

At 31 December 2004, DWLBC has only one Category 2 SBA, namely, State Flora, which has implemented cost reflective pricing. The Department has advised that the competitive neutrality measures are continually reviewed to ensure the application of cost reflective pricing principles to State Flora remain appropriate.

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 Mt Barker District Council was closed in 2004. This followed an investigation conducted by an independent consultant, which concluded that Monarto Quarries complied with three major mechanisms to implement competitive neutrality, being corporatisation, commercialisation and cost reflective pricing. A relatively minor issue on the repayment of interest was raised and the consultant recommended that the Council charge the subsidiary an annual rental. The complaints secretariat was advised that the Council accepted and implemented the recommendations in June 2003. However, the complaint was not formally closed at this time as the complainant requested that several issues be clarified. Further information was provided to the complainant on 10 June 2003. No further issues have been formally raised since that time and therefore, the complaint has been closed.

The complaint against the Adelaide Festival Centre Trust, which was lodged in 2003, was referred to the Competition Commissioner for formal investigation in July 2004. The Commissioner's investigations are ongoing.

No new competitive neutrality complaints were received in 2004.

A summary of the complaint finalised in 2004 appears in Tables 1 below.

TABLE 1: FORMAL COMPLAINTS FINALISED IN 2004

Date of receipt of complaint	*Target of complaint*	*Nature of complaint*	*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*	*Other relevant information*
July 2002	Mt Barker District Council	Activities of Monarto Quarries	An independent consultant was engaged by the Mt Barker District Council to investigate the complaint. The consultant concluded that Monarto Quarries complied with three major mechanisms to implement competitive neutrality, being corporatisation, commercialisation and cost reflective pricing. A relatively minor issue on the repayment of interest was raised and the consultant recommended that the Council charge the subsidiary an annual rental.	5/03/2003	10/02/2003	Recommendations accepted and implemented by the Council in June 2003.	The complaint was not closed as the complainant had several points that needed clarification. As no further issues have been raised the complaint has been closed.

3.3 STRUCTURAL REFORM

3.3.1 Gas and Electricity

Developments in the gas and electricity sectors during 2004 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 2004 on the review of legislation that restricts competition, as required by clause 5.(10) of the CPA.

3.4.1 Reviews being reported

There are 178 Acts scheduled for review. The outstanding reviews are being reported in these categories –

- Legislation subject to permanent reduction of competition payments
- Legislation subject to specific suspensions of competition payments
- Legislation included in the suspension pool
    - Health practitioners
    - All others
- National reviews outside of the government's control
- Legislation not subject to reduction of competition payments

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

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 accepted that the requirement for sales from premises devoted entirely to liquor sales is an intermediate restriction that can be justified on public benefit grounds. It does not require reform. 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 giving thought to whether this test could be replaced with a public-interest test as has occurred in some other jurisdictions. It has held discussions with the Australian Hotels Association and the Liquor Stores Association about this possibility.

3.4.3 Legislation subject to specific 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.

The *Barley Exporting Bill 2004* was introduced into the SA Parliament on 30 June 2004 in order to achieve the reforms that the NCC deemed necessary. However, the Bill lapsed at the end of

the Winter session of the South Australian Parliament. It was not reintroduced in the Spring session so that industry consideration of a proposal to merge ABB Grain Ltd, AusBulk Ltd and United Grower Holdings could proceed without the complication of having to contend with new legislation that may have impacted negatively on the merger. The merger was finalised on 27 September 2004.

On 5 October 2004, following a meeting with the SA Farmers Federation (SAFF), the Premier sought a meeting with the Federal Treasurer to discuss the single desk issue and its link to competition payments.

On 21 December 2004, Mr Costello endorsed the NCC's recommendation that the suspended competition payment penalty of $2.9 million for 2003/04 for barley marketing be deducted permanently. The Treasurer also announced a suspended payment of $3 million following the NCC's 2004 assessment.

By letter dated 17 March 2005, the Federal Treasurer eventually responded confirming the competition payment penalty.

Grain grower representatives then met, on 4 February 2005, and agreed there is a need for significant improvements to the current marketing arrangements, provided the best of the existing arrangements can be retained and any changes to the existing arrangements deliver benefits to the industry. Subsequent work culminated in the SA Farmers Federation Grains Council, at its AGM on 11 March 2005, being given the imprimatur to:

1. Explore and, where appropriate, negotiate with Government changes to the Barley Marketing arrangements in order to achieve:
    - Improvements in accountability and transparency of pool operations;
    - Regulated export licence(s);
    - Third party access to pools (if only one licence is issued);
    - Differentiation between grain handling, sales and related businesses so that the value from pools is not compromised;
    - Continuation of market development, QA and research; and
    - A mechanism to ensure that the necessary changes are complied with.
2. Develop and conduct a comprehensive and balanced education program from growers with respect to the nature, strengths and weaknesses of various marketing approaches.

These resolutions represent a significant shift in industry attitude to reform and present an opportunity for the Government to work with industry to achieve a legislative outcome that is NCP compliant.

3.4.4 Legislation included in the suspension pool - health practitioners

Chiropodists Act 1950

The 1999 NCP review recommended removal of ownership and advertising restrictions and limiting practice reservations.

The Podiatry Practice Bill 2005 is consistent with other health practitioner legislation in removing ownership restrictions. It was passed by both Houses of Parliament on 11 April 2005 and assented to on 21 April 2005. It is expected to be proclaimed by June 2005.

Chiropractors Act 1950

The 1999 NCP review recommended removal of ownership restrictions and the amendment of practice reservations and the advertising code.

The Chiropractic and Osteopathy Practice Bill 2005 is consistent with other health practitioner legislation in removing ownership restrictions. It was passed in House of Assembly on 11 April 2005 and is expected to be proclaimed by June 2005.

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.

The Act was assented to on 16th December 2004. Regulations are being drafted and are expected to be proclaimed by June 2005.

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.

Consultation has been completed and the Bill is expected to be tabled in Parliament by June 2005.

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.

A draft Pharmacy Practice Bill 2005 bill was released for consultation on 14 February 2005 proposing amendments to definitions of pharmacy services, ownership and operation of pharmacies, limits on the numbers of pharmacies that may be owned, proprietary and pecuniary interests, exercise of undue influence, registration , codes of conduct and professional standards. The period of consultation closed on 18 March 2005. The bill is expected to tabled in Parliament before June 2005.

The Prime Minister wrote to the Premier on 3 August 2004 advising that these reforms would be sufficient.

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 the code of ethics prior to adoption of a code of conduct.

The Physiotherapy Practice Bill 2005 is consistent with other health practitioner legislation in removing ownership restrictions to Parliament. It was passed by the House of Assembly in March 2005 and has now been tabled in the Legislative Council. It is expected to be proclaimed by June 2005.

Psychological Practices Act 1973

The review was completed in 1999. It recommended removing advertising and practice restrictions.

Public consultation was completed in March 2005. It is expected the Psychological Practices Bill will be tabled in Parliament in July 2005.

3.4.5 Legislation included in the suspension pool - all others

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.

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.

The NCP review has been completed and there are no outstanding reforms to be implemented. Any further amendments will be assessed in accordance with the "gatekeeper" provisions in the Competition Principles Agreement.

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.

Cabinet has approved the preparation of a public consultation draft Fisheries Management Bill. The Bill is scheduled to be ready for release for public comment in late April 2005 and to be presented to parliament for debate in August 2005. It is intended that the Bill will therefore be passed in September 2005, with effective implementation being rolled out over the following 12 months.

Opal Mining Act 1995

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. 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.

Approval to draft the Bill has not yet been received. Approval is expected June 2005 with submission to Parliament by August 2005. The repeal of section 13 should be in force by December 2005.

Motor Vehicles Act 1959 – Tow Trucks

The Accident Towing Roster Scheme review was completed in 2000. The review was released in November 2003 for public consultation with industry and key stakeholders on the recommendations. The Government response to the review and the consultation was released in July 2004 and released to the National Competition Council, members of the accident towing industry and key stakeholders who made submissions during the consultation period, and placed on the Transport SA website. Regulations to implement the Government Response have been developed and discussed with the towing industry associations. As a result of these discussions,

suggested modifications to the scheme are being investigated. This will delay the finalisation and implementation of the regulations.

Passenger Transport Act 1994 – Taxis

Section 47 of the Passenger Transport Act 1994 (the Act) provides for the release of taxi licences as required by the Minister for Transport. To assess taxi needs for the people of South Australia and identify the need for additional licences, the Government has undertaken to review the taxi industry (part of its election policy on transport: see http://www.sa.alp.org.au/policy/transport/taxi_industry.html). It is expected that this review will be undertaken before the next election in 2006 in line with stated policy. The proposed review, which has the support of the taxi industry, will form an open and transparent evaluation of existing services and future demand.

The Premier's Taxi Council, which is the primary advisory mechanism to the government on taxi issues, supported a Review of the Taxi Industry at its meetings in March and June 2004. A Review of the Taxi Industry with the following Terms of Reference be undertaken:

1. Assess the present and future need for (additional) taxi licences in South Australia, with regard to:
2. Benefits to the public, including customer satisfaction with level and quality of service;
3. Competition for taxis with other passenger transport modes (e.g. small passenger vehicles);
4. The impact on the existing taxi industry, with particular regard to economic viability and service quality issues;
5. Non-metropolitan taxi service provision; and
6. Roles of different licence and service categories (e.g. general, wheelchair accessible, premium service).

In 1991 the South Australian Government removed the restrictions on the number of hire cars. Hire cars are no longer licensed however accreditation standards must be met for operators, drivers and vehicles. Given unrestricted numbers hire cars provide a well-established alternative source of transport competing directly with taxis for pre-booked passenger transport services. The pre-booked market has been estimated at 80% of the taxi business prior to the development of hire car services and now represents approximately 55% of taxi services. This reflects the impact of competition from hire cars and also confirms the view that hire cars if required would readily meet unmet demand by the taxi industry in this area.

The area of most relevance for taxi licence restrictions therefore becomes the ply for hire (taxi rank and/or hail) services provided by taxis and this will be a key focus for the review of taxi licensing.

Regarding response times for pre-booked taxi services, all taxi centralised booking services for general taxis report that they are currently operating within the prescribed services standards for waiting time (12 minute average) Adelaide Access Taxis which coordinates work for accessible taxis are slightly above the prescribed standard but only during the night period (16 minutes average).

The *Productivity Commission, Review of National Competition Policy Reforms, Discussion Draft October 2004*, recognised taxi industry concerns and international experience. It

recommended that there needed to be better understanding of the consequences for deregulation of entry to the taxi industry. It is proposed that the review of the taxi industry will ensure that findings of the Productivity Commission are considered as part of the process.

The following relevant documentation is attached to this Report:

Appendix B: History of Taxis and SPV industry to 2000
Appendix C: Table 1 - Numbers of Hire Cars (2002-2004) - a six monthly report of hire car numbers for the period June 2002 - June 2004.
Appendix D: Taxi Licence Transactions in 2003-2005 *(information provided by Taxi Council of SA)*

- Table 2 - Taxi Licence Transfers December 2003 to February 2005
- Table 3 - Taxi Lease Reissues (Weekly) December 2003 to February 2005
- Table 4 - New Taxi Leases (Weekly) December 2003 to February 2005

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 abolish the Petroleum Products Retail Outlets (PPRO) Board and make other consequential amendments.

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.

The 2003 amendments significantly extended the hours during which retailers could trade, regardless of their size. It is very difficult to accurately estimate the proportion of retailers in the Adelaide metropolitan area who are constrained by the new extended trading hours. However, the number is assessed as being relatively low . Some, such as furniture, hardware, floor covering and motor vehicle parts and accessories stores have very a low level of constraint. Others can trade all days of the year, excluding Christmas Day and Good Friday.

Nevertheless, all of these retailers may seek exemption for specific periods. The Minister approved widespread exemptions during the pre and post Christmas period from November 2004. However, since the amendments came into effect in 2003, very few retailers have sought

exemptions for other periods. This suggests these are times when low-volume sales do not justify opening for trade.

Retailers located within close proximity may also seek exemption for their area. Typically this is a tourism precinct where longer trading hours may be profitable. However, only a few of the more prominent regions, such as Port Lincoln, have sought exemption, which again suggests that extended periods of trading may not be profitable or attractive to many retailers.

In light of the situation described above it is assessed that the actual impact of the remaining constraints is minimal, particularly given that retailers may seek exemption at any time. For these reasons there is no longer any justification for the NCC recommending a reduction in competition payments.

3.4.6 National reviews outside of the government's control

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.

SA has been assessed to have not met its NCP obligations with respect to the Agricultural and Veterinary Chemicals (South Australia) Act 1994 because the Australian Government has not completed reform of the national code that this legislation automatically adopts.

The outstanding issues are:

1. Cost recovery for Australian Pesticides and Veterinary Medicines Authority (APVMA). The bill was passed in the House of Representatives on February 9 2005 and is currently before the Senate.

2. Data protection. Some elements of data protection were introduced as part of the Free Trade Agreement with the US. The remaining elements are being drafted at present to complete the measure in its entirety.

Legal advice from APVMA indicates neither of these changes should require amendment to South Australian legislation.

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 met on 9 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 part of 2005.

The National Coordinating Committee on Therapeutic Goods is progressing the recommendations of Galbally Review. South Australia is dependent on outcomes of this working group.

Removal of manufacture and wholesaler licensing for S5 and S6 poisons is to be progressed by amending the Regulations. This is expected to be completed before June 2005.

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 would be 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.

The Standing Committee of Attorneys-General project has resulted in the endorsement of a national model Bill and the signing of a memorandum of understanding among all Australian Attorneys-General agreeing to adopt the model. The model includes provision for multi-disciplinary practices and incorporated legal practices. However, South Australia has not given a commitment to adopt that aspect of the model because it remains unsatisfied that professional ethical obligations can be adequately protected in these structures.

Trade Measurement Act 1993

The Trade Measurement Act is national template legislation that was reviewed nationally with Queensland as lead agency. The second and final stage of the review was completed in April 2004. This Act should be removed from the suspension pool.

Trade Measurement Administration Act 1993

This is SA legislation which was not originally scheduled for review. However, in response to an NCC query in 2003, a 'desktop review' was undertaken. This review concluded that the Act does not contain any restrictions on competition as it merely provides for the administration of the Trade Measurement Act 1993, which is part of the national scheme legislation. This Act should be removed from the 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.

The harmonisation of qualifications is being overseen by WA on a national basis and has not yet been finalised. Regulations to increase the threshold exemption amount in SA to $50,000 were made on 6 May 2004 and came into operation on 1 June 2004. The Crown Exemption issue remains as last reported i.e. the Government has decided not to proceed with the recommendation to remove the Crown exemption.

3.4.4 Legislation not subject to reduction of competition payments

Primary Industries Legislation

Agricultural Chemicals Act 1955

This Act was repealed when the Agricultural and Veterinary Products (Control of Use) Act 2002 was proclaimed on in 2004.

Stock Foods Act 1941
Stock Medicine Act 1939

Both Acts were repealed when the Agricultural and Veterinary Products (Control of Use) Act was proclaimed in 2004. Some existing components of the Stock Foods Act, which were assessed as being NCP compliant were transferred to the Livestock Act 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 2005.

Chicken Meat Industry Act 2003

During 2004 the SA Government amended the Chicken Meat Industry Act 2003 in 2004 to overcome concerns expressed by the National Competition Council. In particular, the Act has been amended to remove the possibility of arbitration in the event of disputation between contracted growers and their processor about the terms of contract in a new contract to follow the expiry of an existing contract.

The amendments were:
Section 5 – Intention of the Act
This amendment was consequential on the removal of the right to seek arbitration in relation to disputes under Part 5 of the Act.

Section 9 – Registrar's obligation to preserve confidentiality
The amendment allows the Registrar to provide a mediator mediating a dispute under the Act with information that would otherwise be confidential.

Section 21 – Mediation
Amendments to this section removed the right of a grower group to seek arbitration if a negotiating group failed to agree a growing agreement within a certain period and instead provided for such a dispute to be referred to mediation.

Section 28 – Interpretation and application
This amendment restricted the application of Part 8 to disputes relating to the exclusion from collective negotiations for a further growing agreement of growers to those growers who were, immediately before the commencement of Part 8, party to a growing agreement collectively negotiated with the processor, or party to such an agreement when it expired.

Schedule 2 – Arbitration
This amendment was consequential on the removal of the right to seek arbitration in relation to disputes under Part 5 of the Act.

The amended Act also includes reference to its expiry, due to occur on 21 August 2009 unless postponed by proclamation.

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.

A draft Bill to provide for removal of anti competitive elements of the Citrus Act by 30th June 2005 was taken through a community consultation process in early 2004. Industry responded requesting that total deregulation not occur immediately, and that some form of citrus industry legislation should be retained.

Subsequently a further round of drafting of new citrus industry legislation has been undertaken. The Bill and Regulations (Citrus Industry Bill 2005, Draft Citrus Industry Regulations 2005, Draft Primary Produce (Food Safety Schemes) (Citrus Industry) Regulations 2005, and Draft Primary Produce (Food Safety Schemes) (Citrus Industry Advisory Committee) Regulations 2005) were taken to a public consultation process in late January (closed 21st February 2005). Final negotiations are currently being undertaken with to address specific issues with various industry groups.

The amendments change the focus of the legislation from marketing to industry development, and provide for:

- 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.
- Ensuring food safety requirements in the conditions of fruit preparation and packing are met.
- Retention of powers to raise levies from all sectors.
- Retention of the powers to collect information and distribution of information to industry.
- 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.
- Reduced Board size.
- Progress a range of industry development activities including export market development, strategic planning, identification of biosecurity issues and R & D strategies.
- The Bill also provides for a major review of the new Citrus Act in 2006.

This draft legislation is scheduled for consideration in the Parliamentary process in March/April 2005, with the new legislation proposed to come into effect from 1st July 2005.

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 includes regulatory options such as accreditation of businesses; imposing food safety standards/codes; collection of fees from industry for those costs attributable to industry; approval of auditors. Parliament assented to the Act on 1 July 2004.

The Dairy Industry Act 1992 will be repealed when Dairy Scheme approved under the Primary Produce (Food Safety Schemes) Act 2004.

Dairy Scheme regulations have been prepared but an issue related to collection of fees has not been able to be resolved under the current Act and a Bill to amend the Act was introduced to Parliament in March 2005. It is anticipated that public consultation on the regulations will follow approval of the Act amendment in April 2005, with a target for approval of the regulations being July 2005.

Gambling Legislation

Gaming Machines Act 1992

The NCC has previously noted that the Government has not amended the Act to:

1. Remove the State Supply Board's exclusive Gaming Machine Service Licence; and
2. Responded to the issue of transferability within the cap on gaming machines.

The Government has now addressed these issues with the passage of the Gaming Machines (Miscellaneous) Amendment Act 2004 (passed December 2004).

With respect to the gaming machine service licence the provisions of the Amendment Act remove the exclusive licence arrangement and provide for service licences to be issued by the Liquor and Gambling Commissioner to applicants who meet appropriate probity and skills criteria. This provision is to commence operation at the expiry of the existing service agent contracts held by the State Supply Board (on 1 July 2006).

The Amendment Act has also removed the freeze on gaming machine licences in South Australia (effective 1 February 2005) and provided for trading in gaming machine entitlements (i.e. the right to operate the machine). The details of the trading scheme are established in the Gaming Machines Regulations 2005 with the first round of trading in May 2005.

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.

South Australia will continue to monitor reviews and developments in other jurisdictions with respect to lottery licensing arrangements.

The gambling NCP review also proposed 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. The increase in age has the support of SA Lotteries and is expected to be addressed shortly.

Other

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.

On 20 July 2004 Parliament passed amendments to Act contained in the Conveyancers (Corporate Structures) Amendment Bill 2004. The amendments came into effect on 1 December 2004. The Bill contained the amendments that the NCC had advised as being "likely to satisfy the CPA." This has completed the implementation of NCP reforms.

Dental Practice Act 2001

The review recommended the removal of limits on ownership and the Dental Practice Act 2001 maintained 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.

Schedule—Exempt dental services providers

BHAS Dental Clinic Incorporated
Duggan Dental Castings Pty Ltd trading as *Total Denture and Dental Care*
GW Evans Dental Laboratory Pty Ltd trading as *Performance Mouthguards* and *Holdfast Dental Clinic*
Health-Partners Incorporated
Inkata Pty Ltd trading as *Brighton Denture and Dental Clinic*
Allan Joslin trading as *Marion Denture and Dental Clinic*
Derek Robert Juers trading as *Natural Denture Clinic (Port Noarlunga)*
Timothy Martin trading as *Elizabeth South Dental Clinic* and *Grange Jetty Street Denture and Dental Clinic*
Robert Gerrit Storm and Leonard Stuart Storm trading as *Storm's Dental Laboratory*

Further exemptions are being considered, but proposed amendments to Act will make consideration of these redundant. These applications will be progressed in the interim but may be overtaken by amendments to Act.

Cabinet approval to remove this remaining restriction on ownership of dental practices will be sought and amendments will be introduced into Parliament shortly.

Amendments proposed to the Dental Practice Act 2001 to remove ownership restrictions are consistent with the amended Medical Practice Act. It is expected these will be tabled in Parliament before June 2005.

Discharged Soldier Settlement Act 1934

Repeal of the Act approved by Cabinet. A Bill to repeal the Act will be introduced into Parliament in September 2005.

Dried Fruits Act 1993

Affairs of the Dried Fruits Board were wound up at 30th June 2004. Assets of the Dried Fruits Board have been transferred to the SA Dried Tree Fruits Association via an agreement with the Minister for these funds to be used on industry development activities. The Dried Fruits Act has been repealed.

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 amendments to the Act to rationalise leasing and licensing arrangements. It is anticipated that a new Crown Lands Act will be introduced into Parliament in September 2005. There are no outstanding NCP issues.

Note: Both the *Irrigation (Land Tenure) Act* 1930 and the *Discharged Soldier Settlement Act 1934* will be repealed with the introduction of the new *Crown Lands Act.*

Irrigation (Land Tenure) Act 1930

NCP review completed and no reforms recommended. A Bill to repeal the Act will be introduced into Parliament in September 2005.

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.

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.

The Meat Hygiene (Miscellaneous Amendments) Act was proclaimed with an operational date of 29 July 2004. The proclamation extends the scope of the Meat Hygiene legislation to ‘all of

chain' by including retail meat processing. 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.

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. This review has been completed.

Occupational Health, Safety and Welfare Act 1986

The NCP 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 completed.

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 Occupational Health, Safety and Welfare (SafeWorkSA) Amendment Bill 2003, presently before Parliament, will implement a range of reforms. Following its expected passage in April 2005, there will be no outstanding NCP issues.

The proposed SafeWorkSA Authority will consider any other outstanding issues and these will be assessed in accordance with the "gatekeeper" provisions in the Competition Principles Agreement.

Occupational Therapists Act 1974

The NCC has been provided with a copy of the review, which contains the public interest arguments for retaining registration.

Public consultation has been completed. The Occupational Therapy Practice Bill 2005 is consistent with other health practitioner reforms is expected to be tabled in Parliament by June 2005.

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.

In keeping with South Australia's commitment to maintain mirror offshore legislation in South Australian coastal waters, amendments were required to the Petroleum (Submerged Lands) Act 1982 to mirror amendments made by the Commonwealth to the Petroleum (Submerged Lands)

Act 1967 in 2002. The amendments to the Commonwealth legislation resulted from a review of the legislation against national competition policy principles.

Consequently on 16 December 2004 the Petroleum (Submerged Lands) (Miscellaneous) Amendment Act 2004 was enacted. Amongst other things, the Amendment Act made the necessary amendments to fulfil the State's obligations under the provisions of the CPA. This was done in conjunction with amendments establishing the National Offshore Petroleum Safety Authority (NOPSA) which will provide a national regulatory regime for occupational health and safety on offshore petroleum facilities.

Radiation Protection and Control Act 1982

A National review of legislation resulted in several recommendations relating to amendments that should be made to the Act and its regulations, including amendments to provide for protection of people and the environment from harmful effects of ionising and non-ionising radiation. It was also recommended that jurisdictions participate fully and unconditionally in the formulation and implementation of a National Directory for Radiation Protection to provide an agreed framework for radiation safety and clear regulatory statements to promote national uniformity in legislation. AHMAC has accepted the recommendations and the implementation plan which has a time-table that extends to June 2005.

The Australian Radiation Protection and Nuclear Safety Agency published Edition 1 of the National Directory for Radiation Protection in August 2004. South Australia will incorporate the provisions of the National Directory in its review of the Act and regulations, to be completed by June 2006.

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.

Starr-Bowkett Societies Act 1975

The Act was repealed by the *Statutes Amendment and Repeal (Starr Bowkett Societies) Act 2003* on 2 October 2003.

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.

Cabinet has approved the drafting of Regulations for this Act and the new Act can be proclaimed by July 2005.

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 has been repealed.

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.

3.4.6 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.

Cabinet Office now regularly assesses whether or not each Cabinet submission has considered the range of community impacts described above and if these are considered to be adequate. Detailed analysis of the adequacy of regulation (and other) impact assessments began in March 2004.

Figures for two quarters were available at the end of the reporting periods March - May 2004 and June - August 2004 and are summarised as follows –

Period	March – May 2004	June – August 2004
Total submissions	265	171
Regulatory impacts assessed	111 (42%)	91 (53%)
Regulatory impacts assessed as adequate	87 (78%)	72 (79%)

During the first quarter (March to May) 42% (111 in number) of the 265 submissions considered by SA's Cabinet included a regulation impact assessment. Analysis by Cabinet Office staff estimated that 78% (87) of these assessments were of the standard expected by Cabinet when it revised its guidelines in 2003.

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.

3.5 THIRD PARTY ACCESS

3.5.1 Port Facilities

Regulated Services are subject to the Ports Access Regime set out in Part 3 of the *Maritime Services (Access) Act 2000*. The following Regulated Services have been proclaimed in accordance with that Act:

- providing, or allowing for, access of vessels to the port;
- pilotage services facilitating access to the port;
- providing berths for vessels at the following common user berths –
    - Port Adelaide Outer Harbour berths numbers 1 to 4 (inclusive), 16 to 20 (inclusive) and 29;
    - Wallaroo berths numbers 1 South and 2 South;
    - Port Pirie berths numbers 5 and 7;
    - Port Lincoln berths numbers 6 and 7; and
    - berths adjacent to the loading and unloading facilities referred to 2 points below;
- providing port facilities for loading or unloading vessels at berths adjacent to the loading and unloading facilities referred to in the next point;
- loading or unloading vessels by means of facilities that –
    - are bulk handling facilities as defined in the *South Australian Ports (Bulk Handling Facilities) Act 1996*; and
    - involve the use of conveyor belts;
- providing access to land in connection with the provision of the above maritime services.

The Ports Access Regime seeks to have access to Regulates Services occur on fair commercial terms.

Pursuant to the *Maritime Services (Access) Act*, the Essential Services Commission ("**ESCOSA**") was required to review the Ports Access Regime in order for it to be continued, and on April 2004 recommended that the Regime be extended for another three years. This was achieved by a Regulation under the Act on 28 October 2004, with the three year extension commencing on 31 October 2004.

There have been no disputes under the Ports Access Regime.

ESCOSA has published two Ports Industry Guidelines: *Guideline No. 1 on Access Price Information*, last updated on 1 January 2005, and *Guideline No. 2 on Regulatory Accounting*, last updated in June 2003 - both available on the ESCOSA web-site at: www.escosa.sa.gov.au.

3.5.2 Rail Facilities - Australasia Railway (third Party Access) Code:

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. The *AustralAsia Railway (Third Party Access) Code*, ("**the Code**"), is a schedule to that Act.

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.

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, by way of a joint ministerial notice, that the Code took effect at 3pm Central Summer Time, on Thursday 15 January 2004.

As a result of this joint ministerial 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.

ESCOSA has issued the following guidelines under the Code -

- *Rail Industry Guideline No. 1 (Final) Access Provider Reference Pricing and Service Policies*, of February 2004.
- *Rail Industry Guideline No. 2 (Final) Arbitrator Pricing Requirements*, of February 2004.
- *Rail Industry Guideline No. 3 - Regulatory Information Requirements*, of June 2004.

A fourth Guideline on Compliance Systems is near finalisation and will be available for public comment in February / March 2005.

The Guidelines, and supplementary documents such as the *Tarcoola-Darwin Railway: Regulated Rates of Return - Provisional Determination* of July 2003, are available from ESCOSA's web-site.

There have been no disputes under this access regime, although a small number of access requests have been notified to ESCOSA by the operator, Asia Pacific Transport, as required by the Code, and there have also been a small number of enquiries made to ESCOSA by potential users.

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

On 18 March 2004, ESCOSA was proclaimed the Access Regulator for South Australia's Rail Access Regime - the ***intra-state*** system - as set out in the *Railways (Operations and Access) Act 1997* (the "**ROA Act**"). This role had been previously assigned to the Executive Director, Transport SA. Technical and safety regulation will remain with Transport SA.

The South Australian Rail Access Regime applies to Railway Services as defined under the ROA Act. This covers the TransAdelaide broad gauge network within metropolitan Adelaide, the Australia Southern Railroad lines in the Murray-Mallee, Mid-North and Eyre Peninsula, and the Great Southern Railway passenger terminal at Keswick.

ESCOSA is reviewing existing procedures established under the ROA Act to determine whether any changes are required. ESCOSA published a 37 page Information Kit on the ROA Act scheme in May 2004, available on the ESCOSA web-site.

There have been no access disputes referred to ESCOA under section 35 of the Act for reference to arbitration during the year 2004.

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.

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 2003/2004 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 2003/2004 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 eight 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 Rural City of Murray Bridge;
- 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 with Commercialisation being 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 Rural City of Murray Bridge runs the Lerwin Nursing Home (wholly council owned) using Cost Reflective Pricing. The 2004 report is the first time that this has been included as a significant business activity.

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. Commercialisation is the competitive neutrality principle used.

Councils reported on a total of 34 Category 2 business activities. These are almost exclusively small scale, with caravan parks occurring most frequently. Table 1 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 1 – Category 2 significant business activities

Nature of Activity	Number	CRP	COM	COR
Caravan Parks	18	15	2	1
Works/Development	5	5		
Recreation centres	1	1		
Waste management	2	2		
Function centres/Cafes	1		1	
Saleyards	1	1		
Small tourist facility	2	2		
Cemeteries	1			1
Rural Transaction Centre	1	1		
Multipurpose recreational, sport and tourism facility management	2	2		
Total	34	29	3	2

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 Secretariat in the Department of the 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.

One complaint was recorded during the 2003/2004 financial year regarding a country market in the City of Victor Harbor. The following details were provided:

"The owner of one of the businesses in Victor Harbor lodged a complaint with the Ombudsman that Council was breaching the National Competition Policy in relation to issuing a licence for a Country Market to operate in Victor Harbor twice a month. The complainant felt that the operation of the Market should be subject to open tender. (The majority of stall holders at the market are from outside of Victor Harbor and sell goods in direct competition to the local traders). The matter was investigated by the Ombudsman and referred to the ACCC. Neither organisation felt that Council had breached the National Competition Policy. Documents were forwarded to the complainant on the process by Council in issuing the Licence. No further contact has been made by the complainant to Council."

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).

Regulation

The South Australian Government established the Essential Services Commission of South Australia (ESCOSA) as a powerful regulator with a key objective of protecting the long term interests of small energy customers. The Government amended the *Electricity Act 1996* and *Gas Act 1997* to empower ESCOSA to ensure that retailers justify price increases to small customers and establish a three-year price path thereby providing small customers with greater price certainty over the medium term.

ESCOSA subsequently issued a Final Determination, following an extensive consultation period, that allowed for an average price increase of 1.2 percent on 1 January 2005, for small customer's bills and annual real decreases in AGL's controllable costs going forward.

In accordance with the Electricity Pricing Order (EPO) and the National Electricity Code, ESCOSA has released a Draft Determination with regard to electricity distribution prices for the period 1 July 2005 to 30 June 2010. The ETSA Utilities Draft Price Determination provides for further real annual decreases in electricity prices for small customers from 1 July 2005.

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

As noted in previous years, South Australia has met its obligations in full with regard to the introduction of competition in the electricity retail market for all customers.

South Australia now has a number of competing retailers in all sectors of the market. Importantly, this includes a number of retailers competing in the small customer sector of the market. The Government is encouraged by recent reports from ESCOSA indicating that over a third of the small electricity customer base, in excess of 250,000 customers, have transferred to a market contract.

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

The *Gas Act 1997* 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 The Access Arrangement for the Moomba to Adelaide Pipeline on 15 August 2002. Epic Energy appealed this decision to the 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).

Full Retail Competition

South Australia has met its obligations in full with regard to the introduction of competition in the gas retail market for all customers.

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. The South Australian Government has continued to work to overcome the impediments to gas Full Retail Competition (FRC).

In 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.

On 28 July 2004 REMCo, the retail market administrator in South Australia and Western Australia, commenced operation of retail market systems. The operations of these systems meant that all customers could readily change from one retailer to another.

As of December 2004, the number of small customers who have changed from the standing contract to a market contract, either with the incumbent retailer or a new entrant, was 37,634 or 10.3% of the customer base.

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 - was established with the passage of the *Australian Energy Market Commission Establishment Act 2004* through the South Australian Parliament; and
- the Australian Energy Regulator - the body with primary responsibility for regulation of the electricity and natural gas industries and compliance with the Codes - will be established upon the proclamation of the *Trade Practices Amendment (Australian Energy Market) Act 2004*.

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. All jurisdictions have agreed to the legislative framework for these reforms through the execution of the COAG Australian Energy Market Agreement on 30 June 2004.

The Australian Energy Market Commission and the Australian Energy Regulator will be provided with the ability to carry out their functions and powers within the NEM through the *National Electricity (South Australia) (New Electricity Law) Amendment Bill 2005*. This Bill is currently before the South Australian Parliament.

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

4.4 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 the 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 documents summarising the NCC's assessments for all jurisdictions 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:

ANNUAL REPORTS

- *Annual reports to the National Competition Council - Implementation of National Competition Policy and Related Reforms in SA* - March 1997 – March 2005 inclusive

LEGISLATION REVIEW GUIDELINES

- *Guidelines for Establishing Review Panels*
- *Guidelines Paper for Agencies conducting a Legislation Review under the CoAG Competition Principles Agreement* - February 1998
- *Proposals for New Legislation - NCP Review Obligations* - November 2001

LEGISLATION REVIEWS

- *SA Motor Sport Act 1984*
- *Gambling Legislation - findings of the Competition Policy Review of Gaming Legislation and Interim Response of the State Government*
- *Media Release - Call for further submissions to Independent Gambling Authority*
- *Proposal to Licence Hydroponic Equipment Retailers – Review report January 2002*

COMPETITIVE NEUTRALITY

- *List of Category 1 and 2 Significant Business Activities May 2003*
- *Competitive Neutrality Policy Statement July 2002*
- *Clause 7 Statement on the Application of Competition Principles to Local Government Under the Competition Principles Intergovernmental Agreement September 2002*
- *A Guide to the Implementation of Cost Reflective Pricing*
- *A Guide to the Implementation of Competitive Neutrality Policy, March 1998*
- *Public Non Financial Corporations (Community Service Obligations and Dividends - Capital Structure), October 2004*

COMPETITIVE NEUTRALITY COMPLAINTS

- *National Parks and Wildlife SA Complaint - Summary of Investigation*
- *State Flora Complaint - Summary of Investigation*
- *Passenger Transport Board Complaint - Summary of Investigation*

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. Alternatively they may be downloaded from the Department's website at:
http://www.premcab.sa.gov.au/publications/nationalcompetition policy

Schedule 1 - 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 Disposal) Regulations 1999	25 September 2001 (by email)
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)
Motor Vehicles Act 1958 *	29 March 2005 (Tow Trucks)
Murray Darling Basin Act 1993	24 August 2001
National Electricity (South Australia) Act 1996 *	25 September 2001
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 Motor Sport Act 1984*	23 March 2005
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

APPENDIX A

CATEGORY 1 SIGNIFICANT GOVERNMENT BUSINESS ACTIVITIES

Significant Business Activity	CN Measure adopted	Responsible Minister
• Adelaide Convention Centre*	Cost Reflective Pricing	Minister for Tourism
• Adelaide Entertainment Centre*	Cost Reflective Pricing	Minister for Tourism
• Adelaide Festival Centre Trust* - Bass ticketing service - Set building workshops - Theatre hire services	Cost Reflective Pricing	Minister for the Arts
• Forestry SA	Corporatisation	Minister for Forests
• Land Management Corporation	Corporatisation	Minister for Infrastructure
• Department for Administrative and Information Services - Supply SA (distribution services)	Cost Reflective Pricing	Minister for Administrative and Information Services
• Department of Further Education Employment and Science and Technology - Fee for service activities not required by government in vocational education and training.	Cost Reflective Pricing	Minister for Economy Employment, Training and Further Education
• Adelaide Cemeteries Authority*	Corporatisation	Minister for Urban Development and Planning
• Lotteries Commission of South Australia* - Conduct of lotteries	Corporatisation	Treasurer
• PIRSA Rural Solutions (includes Seed Services Australia)	Cost Reflective Pricing	Minister for Agriculture, Food and Fisheries
• The Public Trustee* - Personal trusteeship services	Commercialisation	Attorney-General
• Department of Justice - Interpreting and Translating Services	Commercialisation	Minister for Multicultural Affairs
• SA Water Corporation*	Corporatisation	Minister for Administrative Services
• Department of Health - Medvet Science Pty Ltd - IMVS Research and Diagnostic Pathology Services	Medvet, IMVS: Commercialisation	Minister for Health
• Department of Families and Communities - Homestart Finance	Commercialisation	Minister for Families & Communities
• South Australian Police Department	Commercialisation	Minister for Police

Significant Business Activity	CN Measure adopted	Responsible Minister
- Security Services Division		
• TransAdelaide*	Corporatisation	Minister for Transport
• West Beach Trust*	Corporatisation	Minister for Urban Development and Planning

- * falls within the ABS' classification of PTE or PFE.

CATEGORY 2 OTHER SIGNIFICANT GOVERNMENT BUSINESS ACTIVITIES

Significant Business Activity	CN Measure adopted	Responsible Minister
• Department of the Premier and Cabinet - Artlab	Cost Reflective Pricing	Minister for the Arts
• Attorney General's Department - Contestable legal services	Cost Reflective Pricing	Attorney-General
• Department of Health - Modbury Hospital rental accommodation - RAH rental accommodation - Flinders Medical Centre - Rental of flats - Flinders Medical Centre - Southpath SA pathology services - Metropolitan Domiciliary Care – Therapy Solutions - Metropolitan Domiciliary Care – Domiciliary Equipment Services	Cost Reflective Pricing	Minister for Health
• Department for Environment and Heritage - Cleland Wildlife Park	Cost Reflective Pricing	Minister for Environment and Conservation
• Department for Water, Land, and Biodiversity Conservation - State Flora	Cost Reflective Pricing	Minister for Environment and Conservation
• Department of Education and Children's Services - DECS Publishing - Distribution Centre Services - International Program - Recruitment of full-fee paying overseas students - Provision of study tours to overseas students and educators - Bookmark" library software	Cost Reflective Pricing	Minister for Education and Children's Services

Corporatisation

- ❑ Confirm that appropriate structural and regulatory arrangements continue to apply to the Corporation (eg pricing, access)
- ❑ Ensure that the Corporate Structure is still suitable for the entity and its scope of operations
- ❑ Ensure that assets and activities that reside in the entity are still appropriate given the current scope of operations
- ❑ Ensure that board arrangements are operating effectively
- ❑ Ensure that enabling legislation is still appropriate
- ❑ Ensure that separation/transfer of regulatory functions that conflict with commercial operations has not altered
- ❑ Ensure that the following financial arrangements are up-to-date and reflect current operations:-
- ❑ Valuation of assets based on fair value basis
- ❑ Identification and costing of CSO requirements
- ❑ Appropriate debt and equity structures are in place
- ❑ Charter adequately reflects the current scope of operations
- ❑ Annual performance statements are appropriate
- ❑ Performance monitoring system ensures that commercial returns are being achieved.
- ❑ Dividend policy is appropriate for the entity considering the scope of operations and specific industry conditions
- ❑ Internal transfer pricing regimes are still appropriate

Commercialisation

- ❑ Commercial activities identified and recognised in strategic/business plans
- ❑ Where applicable, an appropriate strategy is in place to reconcile the overall commercial focus of the entity while still providing non-commercial goods/services.
- ❑ Confirm regulatory functions, that may conflict with commercial operations, continue to be removed from the organisation
- ❑ Assets to be valued on fair value basis
- ❑ Appropriate commercial gearing is in place
- ❑ Appropriate performance targets and measures are in place
- ❑ Tax equivalents are paid to the Treasurer, where appropriate
- ❑ Debt guarantee fees are paid to the Treasurer, where appropriate
- ❑ Accounts continue to be ring fenced from any host entity
- ❑ A dividend policy is in place to reflect the payout ratio expectations of the owner government and the cash needs of the business

Cost Reflective Pricing

- ❑ Outputs are clearly identified
- ❑ Costs are determined for each output
- ❑ Target rate of return included in competitively neutral cost
- ❑ Assets measured on fair value basis
- ❑ Potential advantages and disadvantages of government ownership included in cost base, including:
- ❑ exemptions from various taxes such as FBT, stamp duties, land tax and council rates
- ❑ exemptions from compliance with regulations applying to the private sector
- ❑ access to corporate overheads at less than a market rate
- ❑ financial effect of having tied clients
- ❑ onerous accountability requirements beyond those applying in the private sector
- ❑ restrictions on financial structure
- ❑ lack of flexibility in management
- ❑ higher levels of superannuation contributions
- ❑ Competitively neutral cost determined (full output cost adjusted for advantages/disadvantages listed above) for the outputs
- ❑ Price levels recover fully distributed or avoidable cost base in the medium to long term
- ❑ Alternative strategies are in place where competitively neutral cost exceeds market prices

APPENDIX B - History of Taxis and SPV industry to 2000

BRIEF HISTORY OF REFORM IN THE *TAXI AND SMALL PASSENGER VEHICLE* INDUSTRIES

PREPARED BY:
PASSENGER TRANSPORT BOARD
14 NOVEMBER 2000

INTRODUCTION

Information detailed below provides a brief history of reform within the taxi and small passenger vehicle industries in South Australia and includes attachments detailing the average market value of taxi licences for the past eight years and the number of small passenger vehicles over a five year period.

Taxi Industry

The licensing of taxis in Adelaide began with the introduction of the Metropolitan Taxi–Cab Act 1956 and the establishment of the Metropolitan Taxi-Cab Board.

Under the Act a two plate system for taxi plates was established which separated services operating in the Adelaide CBD and those operating is the suburban areas.

Due to a number of service and enforcement issues arising from the two plate system, legislation was amended to the current system whereby all taxi licences within the Adelaide metropolitan area are licensed and regulated under the same system.

Regulations introduced to enable the licensing of Standby Taxis for use when another licensed taxi is temporarily out of service.

Minister for Transport announced the release of 50 General Taxi Licences by ballot

1990 Leasing policy for taxi licences was reviewed and amended to enable taxi licence holders to lease the licence immediately after purchase. Previously leasing was restricted until the owner had held the licence for a minimum of 5 years.

Mandatory training for taxi drivers was introduced from 1 September

The tender process of taxi licences was initiated in January with 15 General Taxi Licences released. The range of tender prices for licences taken up was $93,555 - $89,800.

A further 15 General Taxi Licences were released by tender in January with the range of tender prices for licences taken up between $116,257 - $115,101.

1993 In September five Special Vehicle Licences (non-transferable and wheelchair accessible) were issued through an Expression of Interest.

The tender for 15 General Taxi Licences instigated in January saw the range of tender prices for licences taken up between $127,125 - $123,500.

1994 The introduction of the Passenger Transport Act and Regulations, 1994, saw significant changes regarding the accreditation for all taxi operators and drivers. The accreditation system provided minimum standards regarding fitness and propriety of members of the industry as well as service and vehicle standards for operators of public passenger vehicles. Accreditation requirements were also introduced for Centralised Booking Services responsible for taking bookings and despatching taxis, which prescribed minimum service and safety standards, including Global Positioning Systems and minimum waiting times.

1994 In August, a further six Special Vehicle Licences were issued through an Expression of Interest

1994 In January the Passenger Transport (General) Regulations were amended which included the reduction of the statutory age limit for taxis from 10 years to 8 years from the date of manufacture. In September the requirement for taxi drivers to wear an approved uniform was introduced.

In January, a further five Special Vehicle Licences were issued through an Expression of Interest.

Minister for Transport committed to releasing 15 General Taxi Licences each year for the three years (1995 – 1997). At the time the Minister also foreshadowed a review of the system in 1997.

In May a tender of 15 General Taxi Licences was instigated with 163 tenders received, with tender prices of licences taken up ranging from $146,000 to $141,500.

1996 In May the tender process for the issue of 15 General Taxi Licences was reviewed with additional conditions and restrictions imposed to prevent the practice of multiple tenders and manipulation of the tender process. A total of 169 tenders were received with the range of tender prices for licences taken up between $155,500 - $151,000.

1996 In November a 1% safety levy was introduced and was included in all metered fares. The objective of the safety levy was to fund safety initiatives for the taxi industry to improve the overall safety of drivers.

1996 In December, the Video Surveillance Review Group was formed to oversee the trial of video surveillance systems in taxis. This SA initiative was an Australian first and enabled the review Group to assess various systems and determine minimums standards and specifications for video surveillance systems.

1997 Regulation amendments were introduced in April in respect to wheelchair accessible licences to redefine this grade of licence and to remove the prohibition of the transfer of these licences. New grades of licences were introduced, General Licences with Special Conditions and Special Licences with Special Conditions which enable the Board to impose certain conditions regarding vehicle design and minimum service standards for people with disabilities. The Special Allocation Procedure for the tendering of licences was also amended to enable the tendering of such licences.

1997 In May the PTB released 15 General Taxi Licences with Special Conditions by tender. The licences were subject to special conditions regarding wheelchair accessibility and hours of dedicated service. The range of tender prices for licences taken up was $55,000 - $24,000.

1997 In December the PTB instigated a strategy in December to standardise all wheelchair accessible taxi licences in operation. This strategy was in line with the regulation amendments introduced in April 1996 which redefined conditions and requirements for wheelchair accessible taxi licences.

At this time there were 51 Special Vehicle Licences (wheelchair accessible) which were initially issued through Expressions of Interest and were not transferable. In addition, there were a further 15 General Licences with Special Conditions which were wheelchair accessible and transferable as a result of the May 1997 tender.

This strategy included an offer to all current operators and lessees of Special Vehicle Licences to purchase transferability of their licence for $20,000. The purpose of this strategy was to bring these licences in line with the 15 General Licences with Special Conditions,

ensuring all wheelchair accessible licences were operating under the same conditions. A total of 45 licences were converted through this offer, with the remaining licences required to operate under the same conditions, however without transferability.

1998 In January, the Minister for Transport established the Taxi Safety Taskforce to devise the most effective means for the industry to apply the 1% safety levy. The Taskforce recommended the installation of video surveillance systems in taxis, an initiative which was announced by the Minister at the SA Taxi Conference in July 1999 for installation in all taxis by July 2001.

Following the moratorium on the issue of Operator Accreditations and the Addition of Vehicles for Large and Small Passenger Vehicles a range of amendments were introduced. Those relating specifically to the taxi industry are as follows:
Reduction in age limit for taxis from eight years to 6.5 years;
Vehicle entry age of 3.5 years introduced
Requirements for all taxi operators to have in place a minimum $5 million of Public Liability Insurance
Introduction of standardised livery including requirement that all taxis must be white in colour
Location and type of advertising permitted on taxis, including uniform company livery and signage
Compulsory six monthly testing of taxi meters
Standardisation of roof signs

1999 In June, the Passenger Transport (General) Regulations were amended to remove the prohibition on non-residents of SA purchasing a taxi licence as this requirement was deemed unconstitutional. In addition, there were further regulation amendments regarding prescribed age limits for taxis.

Small Passenger Vehicle Industry

The Metropolitan Taxi-Cab Act was introduced which provided for the licensing of Hire Vehicles operating in the Adelaide metropolitan area.

The Metropolitan Taxi-Cab Board established under the Act was responsible for issuing and administering hire car licences with a seating capacity of up to eight seats. Vehicles with a seating capacity of more than 8 seats were licensed under the Road Traffic Act through the Office of Transport Policy and Planning. The average number of hire cars operating under licences issued by the Metropolitan Taxi Cab Board from 1956 to 1990 was 58. Conditions attached to hire cars required all services to be pre-booked.

1980 Following an enquiry into the Hire Car Industry the Board approved the issue of twelve non-transferable, "wedding only" hire cars. Licences previously issued were "open" licences for general hire work. However, statistics on the types of vehicles licensed during that time (eg Jaguars, Mercedes, Chevrolets, Bentleys etc) indicate that these vehicles were not used for general work, but rather relied on weddings and special occasions etc. The issue of the 12 wedding only licences was the last issue of licences until May 1987.

The Legislative Council appointed a Select Committee to report on the taxi and hire car industries. The Report, tabled in May 1985 highlighted the demand from tourists, business people etc for traditional taxi services. An additional five non-transferable hire car licences were issued to a Chauffeured Vehicle company.

The Board established a Committee to investigate all aspects of the hire car industry, including the types of services currently being provided, the type of vehicles used, operations of unlicensed vehicles etc.

The Board approved Hire Cars to pick up passengers without pre-bookings in designated areas on New Years Eve.

Restrictions on the existing 11 "Wedding Only" licences were lifted, enabling the vehicles to provide general hire services. A system of temporary wedding licences was introduced providing approval for vehicles to participate in weddings for 2 consecutive days.

In April the Minister for Transport (Hon Frank Blevins) announced a strategy to release 25 new Hire Car Licences. This strategy was approved by the Board in June 1991.

1991 The Minister for Transport announces the lifting of restrictions on the numbers of hire cars allowing for a system of open-entry to the hire car industry. Goodwill value of licences (at the time approximately $30,000) disappeared immediately following the public announcement of the decision. This effectively removed entry restrictions for operators involved with pre-booked services. Small Passenger Vehicles could now compete with taxis for pre-booked services but only taxis could undertake rank and hail services.

With the introduction of the Passenger Transport Act, 1994 licensing provisions for small passenger vehicles (hire cars) were removed and replaced with a system of accreditation. All vehicles, including those previously licensed by the Office of Transport Policy and Planning came under the control of the Passenger Transport Board. The Passenger Transport Act provided for minimum vehicle requirements including a prescribed age limit. Applications for approval beyond this age limit were considered on the basis on the type of vehicle and the nature of work provided. The Passenger Vehicle Review Committee was established, with delegated authority of the Board to consider applications of this nature.

In November, the Passenger Transport (General) Regulations were amended to include the following provision:
prohibit the practice of "endorsed establishments". The use of "endorsed establishments" was instigated by various small passenger vehicle operators to allow for bookings for service to be directed to a place other than their registered office, such as hotels, restaurants, nightclubs etc. As this practice enabled manipulation of requirements regarding pre-bookings, the regulation amendments required all bookings to be directed to a booking office approved by the PTB only.
Prohibition of advertising of non-taxi services in public directories under the heading "Taxis"
requirement for small passenger vehicles to display a "Not for Hire" sign when standing on a public street, road or place to avoid being approached by the public seeking a casual hiring.

1997 In July the Passenger Transport Board imposed a six month moratorium on the issue of Operator Accreditation and the Addition of Vehicles for the Small and Large Passenger Vehicle industries. The objective of the restrictions was to support initiatives being undertaken by the Passenger Transport Board to develop improved standards of vehicles and issues of passenger comfort and safety. Special exemption provisions were introduced for exceptional circumstances.

1997 In November, the Passenger Transport Board extended the moratorium on the issue of Operator Accreditations and the Addition of Vehicles for the Small and Large Passenger Vehicle industries. The extension for a further two months enabled the evaluation of industry submissions and the finalisation of regulation amendments for the passenger transport industry as a whole.

1998 On 1 February regulation amendments were implemented to more appropriately demarcate between the types of services being offered by the small passenger vehicle industry and provided for improvements in service and vehicle standards across the industry. In regard to the small passenger vehicle industry, the amendments included:
Introduction of four categories for Small Passenger Vehicle Operator Accreditation to clearly define the types of services being offered. The four categories are Metropolitan, Traditional, Special Purpose and Non Metropolitan
Provided for prescribed age limits for small passenger vehicles, including 6.5 years for Metropolitan, 15 years for Traditional and Special Purpose, and 6.5 years for Non-Metropolitan. The regulations prescribed specific exemption criteria for vehicles operating in the Traditional and Special Purpose categories.
Minimum wheelbase specifications and engine capacity for small passenger vehicles in the Metropolitan and Traditional categories
Vehicle entry age limit (3.5years) for vehicles in the Metropolitan category
Maximum annual and overall kilometres for Traditional and Special Purpose vehicles
Minimum fares for vehicles in the Traditional and Special Purpose categories
Introduction of an annual vehicle fee for all small passenger vehicles.

In June, the Passenger Transport (General) Regulations were amended to prohibit the use of left-hand drive vehicles as small passenger vehicles on the basis of safety issues. Another amendment related to the requirement for the approval of vehicles over the prescribed age limit based on type of vehicle and nature of work undertaken.

Attachments:
Attachment 1: Taxi Plate Transfers for 1997 – 2000
Attachment 2: Average Taxi Plate Market Values for 1992 – 1996
Attachment 3: Registered Small Passenger Vehicles
Attachment 4: Taxi Licences in Metropolitan Adelaide

ATTACHMENT 1
Taxi Licence Transfer Values[5]

	1997 (,000)	1998 (,000)	1999 (,000)	2000 (,000)
JANUARY	1 @ 150 1 @ 153 1 @ 154	1 @ 155 1 @ 156	1 @ 147 1 @ 152	1 @ 125
FEBRUARY		1 @ 155 1 @ 157 1 @ 158	2 @ 149	1 @ 110
MARCH		1 @ 156 2 @ 158 1 @ 160	1 @ 140 1 @ 157	1 @ 115 3 @ 150
APRIL	1 @ 153.5 1 @ 155	1 @ 150 2 @ 160	1 @ 141.5	1 @ 120
MAY	1 @ 154 1 @ 155	1 @ 159 2 @ 160 1 @ 164		1 @ 117
JUNE	1 @ 156 1 @ 157 1 @ 158	1 @ 140 1 @ 164	1 @ 145	1 @ 107.5 1 @ 112 1 @ 113.5 1 @ 115 1 @ 120
JULY	1 @ 151 1 @ 155 1 @ 157 1 @ 158	2 @ 160 1 @ 161 1 @ 164 1 @ 165	1 @ 142 1 @ 130	

[5] Figures provided by South Australian Taxi Association Journal 1997 - 2000

	1 @ 159			
AUGUST	1 @ 130 1 @ 151 1 @ 156 1 @ 157	1 @ 130 1 @ 166	1 @ 142 1 @ 141	1 @ $105
SEPTEMBER	2 @ 155 1 @ 156 1 @ 157	1 @ 150 1 @ 161 1 @ 166 2 @ 160 2 @ 164	1 @ 133	1 @ $102 1 @ $105
OCTOBER		1 @ 150 1 @ 165	1 @ 128	
NOVEMBER	3 @ 155 2 @ 156 1 @ 157	1 @ 150 1 @ 167	2 @ 130 1 @ 132 1 @ 131 1 @ 127	
DECEMBER	1 @ 155 1 @ 157 1 @ 156	1 @ 159 1 @ 163	3 @ 130 1 @ 119	

ATTACHMENT 2

Average Market Values for Taxi Licences6

	1992	1993	1994	1995	1996
JANUARY	$82,500	$111,500	$121,500	$137,500	$142,200
JUNE	$104,469	$123,500	$122,938	$140,000	$150,967

[6] Figures obtained from Transfers of Taxi Licences approved by the Passenger Transport Board from January 1992 – June 1996

ATTACHMENT 3 - Registered Small Passenger Vehicles

The information below outlines the numbers of small passenger vehicles in South Australia over a five year period and highlights market demand for pre-booked small passenger vehicle services. Whilst the removal of entry restrictions saw an initial increase in the numbers of small passenger vehicles, the figures below confirm that the market has now stabilised with approximately 100 vehicles servicing the SPV Metro market. This is not a static figure as many of these vehicles have changed hands, although the numbers have not significantly changed.

1995/96 284 (only metropolitan vehicles previously managed by the MTCB)
1996/97 964 (includes all public passenger vehicles 12 seats or less excluding metro taxis)
1997/98 869 Figures for 1996/97 and 97/98 were the best available at the time. Due to database limitations this number includes some vehicles which should not have been included and would not be considered SPV under current criteria. Further investigations into these figures also indicated that a number of private vehicles were inappropriately registered in the "Public Passenger Vehicle" insurance category due to financial benefits of lower insurance premiums. SGIC have since reviewed the insurance categories and premiums and rectified this anomaly.

From 1 February 1998 new categories for small passenger vehicles (SPV's) were introduced to enable demarcation between the services offered. These categories include:

Metropolitan (MV) Applies to fast response, low fare, pre-booked service without restriction on distance travelled but with controls on vehicle age and inspection frequency the same as for a taxi service. The category only applies to vehicles operating within the Adelaide metropolitan area.
Traditional (TV) Applies to services provided at greater than a minimum fare and with a limit on the distance travelled (both per annum and overall). It may include vehicles up to 15 years based on a limited Plan of Operation.
Special Purpose (SV) Applies to services based on a limited Plan of Operation that reflects the vehicle type as an integral component of the service eg weddings, special occasions. It could include classic vehicles (SV3), novelty type or specialised vehicles (SV4) eg Porsche, Motor Trike or Fiat Bambino), off-road 4WD vehicles (SV1) and motor cycles (SV2). Approval may be granted for extended age limits.
Non-Metropolitan (NV) Applies to services outside the metropolitan area that exhibit the operational characteristics similar to SPV Metropolitan.

Information below outlines the total number of SPV's registered in each accreditation category

	MV	TV	SV1	SV2	SV3	SV4	NV	No Cat.*	Total
Dec 1998	62	140	41	24	152	12	51	55	537
May1999	85	131	30	9	141	7	30	14	447
Mar 2000	96	89	41	12	70	10	32	1	351
Aug 2000	94	102	56	12	57	9	31	1	362

* Vehicles Not Categorised must be taken into account when comparing figures in each category over the 2 year period. Patterns would suggest many were Metropolitan (MV) and this may be due in part to operators attempting to avoid the $1000 annual vehicle fee.

ATTACHMENT 4

Taxi Licences in Metropolitan Adelaide

There are 1047 taxi licences issued in metropolitan Adelaide as detailed below:

920 General Licences
22 General Licences with Special Conditions (Wheelchair Accessible)
42 Special Licences with Special Conditions (Wheelchair Accessible)
3 Special Vehicle Licences – non-transferable (Wheelchair Accessible)
3 Temporary Special Vehicle Licences – non-transferable (Wheelchair Accessible)
57 Standby Licences (including three accessible vehicles)

APPENDIX C

Table 1
Numbers of Hire Cars (2002-2004)

A six monthly report of hire car numbers for the period June 2002 - June 2004.

Hire Car Numbers from 2002-2004

Hire Car Category	Jun-02	Jan-03	Jun-03	Jan-04	Jun-04
Metropolitan (MV)	93	85	80	79	89
Non Metro (NV)v	107	97	108	123	137
Special Purpose (SV1)	105	105	93	94	85
Special Purpose (SV2)	15	13	8	12	8
Special Purpose (SV3)	141	140	115	128	110
Special Purpose (SV4)	17	16	18	16	15
Traditional (TV)	145	129	119	119	118
Total	623	585	541	571	562

SV1 = 4WD Off Road
SV2 = Motorcycle
SV3 = Veteran Vintage Classic
SV4 = Novelty

APPENDIX D – Taxi Licence Transactions
(information provided by Taxi Council of SA)

TABLE 2
Taxi Licence Transfers December 2003 to February 2005

Details the value of all taxi licence transfers. It should be noted that licences under $100,00 generally have special conditions related to accessible taxi services.

Transfers	Dec-03	Jan-04	Feb-04	Mar-04	Apr-04	May-04	Jun-04	Jul-04	Aug-04	Sep-04	Oct-04	Nov-04	Dec-04	Jan-05	Feb-05
$20,000												2			
$22,000			1			1				1					
$22,800			1												
$25,000						1			1	1					
$30,000				1								1			
$75,000				1											
$130,000				1											
$140,000									1						
$144,000					1										
$147,000	1														
$148,000	1														
$149,000	2														
$150,000	1			1				1							
$152,000		1			1										
$153,000	1														
$155,000			1		1	1									
$158,000					1										
$159,000					1			1							
$160,000			1	1		1									

Transfers	Dec-03	Jan-04	Feb-04	Mar-04	Apr-04	May-04	Jun-04	Jul-04	Aug-04	Sep-04	Oct-04	Nov-04	Dec-04	Jan-05	Feb-05
$162,000								1							
$165,000					1		1			2					1
$167,500													1		
$168,000							1								
$168,500							1								
$170,000								1							
$172,500										1					
$175,000										1	1				
$177,000												1			
$180,000											1				
$185,000												2			
$190,000															1
$192,500													1		
$195,000														1	
	Average Plate Sale Price for Calendar Year 2004 =							$162,900							

TABLE 3
Taxi Lease Reissues (Weekly) December 2003 to February 2005

This table indicates weekly lease rates for taxis. It provides an indication of the return on investment for a licensee that does not operate the licence. Reissued leases are long-term leases that have been renegotiated between the parties. It should be noted that the term of a lease is generally for a 12 month period. Tables 3 & 4 indicate the current trend is for existing lessees to want to renew leases with significantly fewer new licences being taken.

Reissues	Dec-03	Jan-04	Feb-04	Mar-04	Apr-04	May-04	Jun-04	Jul-04	Aug-04	Sep-04	Oct-04	Nov-04	Dec-04	Jan-05	Feb-05
$35										1					
$50				1											
$96										1					
$110								1							
$160	1														
$170												1			
$190												1			
$200	1	3	4	2	1	1		1		1		1			
$205			1												
$210	1	1	1	1	1										
$215						1									
$220	4	4	1	1	1				2		1		3	2	1
$225	1	1	1				1								
$227		1		1											
$230	3	12	5	4	3	4	1	2	4		2			1	
$231				1											
$235	2		1	1								1		1	
$240	6	16	30	22	12	5	2	3	4	4	4	3	1	2	3
$242														1	

Reissues	Dec-03	Jan-04	Feb-04	Mar-04	Apr-04	May-04	Jun-04	Jul-04	Aug-04	Sep-04	Oct-04	Nov-04	Dec-04	Jan-05	Feb-05
$245			1	2	2		3							1	
$250	12	6	12	17	18	20	10	9	2	10	8	11	5	9	4
$253				1											
$255					1			3	2	3		2			
$260			1	2	6	3	5	18	21	13	6	11	8	9	10
$264					1			1							
$265							1	1			1	2		2	1
$270				2	1	2	1	8	4	7	8	10	9	19	15
$275											1	2	1	1	3
$280										1		1		1	4
$286														1	
$290													1		2
$300									1					1	
Total	31	44	58	58	47	36	24	47	40	41	31	46	28	51	43
Average	$235	$233	$237	$238	$246	$246	$250	$253	$254	$246	$255	$254	$258	$260	$265

TABLE 4 - New Taxi Leases (Weekly) December 2003 to February 2005

This table indicates weekly lease rates for taxis. It provides an indication of the return on investment for a licensee that does not operate the licence. It should be noted that the term of a lease is generally for a 12 month period.

New	Dec-03	Jan-04	Feb-04	Mar-04	Apr-04	May-04	Jun-04	Jul-04	Aug-04	Sep-04	Oct-04	Nov-04	Dec-04	Jan-05	Feb-05
$150										1					
$200				1											
$205															
$210	1														
$215															
$220	1	2	1		1				1		1				1
$222	1														
$225												1			
$227															
$230	4	3	1		1		1								
$231	1														
$235	1				1										
$236											1				
$240	3	8	8	11	3	1			2			1			
$245	1						1								
$250	13	3	8	7	11	8	12	3	10	1	1	1	2		
$255							1	1	1						
$260			1	3	3	4	6	4	19	9	8	3	2	1	
$264												1			
$265				1		1		1	1		1	1			
New	Dec-	Jan-	Feb-	Mar-	Apr-	May-	Jun-	Jul-04	Aug-	Sep-04	Oct-	Nov-	Dec-	Jan-	Feb-

	03	04	04	04	04	04	04		04		04	04	04	05	05
$270					1	3	1	1	4	3	6	7	5	4	10
$272											1				
$280						1				1		1	1	1	2
$285													1		
$290									1	1				1	1
$300												1			1
Total	26	16	19	23	21	18	22	10	39	16	19	17	11	7	15
Average	$241	$238	$244	$245	$248	$258	$253	$258	$257	$258	$260	$264	$267	$273	$271