Government of Western Australia

Competition BRINGS OUT THE BEST

LOCAL GOVERNMENT

CLAUSE 7

COMPETITION POLICY

STATEMENT

APPLICATION OF THE COMPETITION PRINCIPLES AGREEMENT TO LOCAL GOVERNMENT ACTIVITIES AND FUNCTIONS UNDER THE NATIONAL COMPETITION POLICY PACKAGE

DEPARTMENT OF LOCAL GOVERNMENT

WESTERN AUSTRALIAN MUNICIPAL ASSOCIATION

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GOVERNMENT OF
WESTERN AUSTRALIA

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INTRODUCTION

This publication contains the Local Government Clause 7 Competition Policy Statement (Local Government Statement) applying specific 'Competition Principles' to the activities and functions of local government pursuant to the National Competition Policy package. It also contains brief overviews of the National Competition Policy package and of local government activities which complement competition reforms.

The Local Government Statement must be published and provided to the National Competition Council by 30 June 1996 to comply with Western Australia's obligations under the National Competition Policy package (Package). Throughout this document a reference to "local government" includes local government operating collectively or individually.

The Local Government Statement has been prepared by the Local Government Competition Policy Committee (Committee). The Committee is a joint state and local government working party, comprising representatives from the Western Australian Municipal Association (WAMA), the Institute of Municipal Management (IMM), the Department of Local Government, the Ministry of Fair Trading and the State's Competition Policy Unit (Treasury).

The origins of the Local Government Statement can be found in clause 7 of the Competition Principles Agreement (CPA), which is part of the Package. Clause 7 of the CPA obliges the State, in consultation with local government, to apply, and publish the application of, the following "Competition Principles" to local government activities and functions:

- competitive neutrality;
- structural reform of public monopolies; and
- legislation review.

Whilst the Local Government Statement only imposes obligations under the National Competition Policy agreements, it is also complementary to recommendations of the Structural Reform Advisory Committee and other reform agenda that are being addressed through other state and local government reform programs.

This document is separated into three parts:

- Part A: an overview of the Package;
- Part B: an overview of micro-economic activities which are complementary to the philosophy of the Package; and
- Part C: the Local Government Clause 7 Competition Policy Statement.

PART A

OVERVIEW OF THE NATIONAL COMPETITION POLICY PACKAGE

PART A
OVERVIEW OF THE NATIONAL COMPETITION POLICY PACKAGE

1. Council of Australian Governments

Since the early 1990s State, Territory and Commonwealth Heads of Government through the Council of Australian Governments (COAG) have been committed to achieving a nationally consistent approach to competition policy in Australia.

In 1991 all Heads of Government agreed that a national approach to competition policy should give effect to the four fundamental principles set out in Table 1.

Table 1: Fundamental Competition Principles

- No participant in the market should be able to engage in anti-competitive conduct against the public interest.
- As far as possible, universal and uniformly applied rules of market conduct should apply to all market participants regardless of their form of business ownership.
- Conduct with anti-competitive potential said to be in the public interest should be assessed by an appropriate transparent assessment procedure, with provision for review, to demonstrate the nature and incidence of the public costs and benefits claimed.
- Any changes in the coverage or nature of competition policy should be consistent with, and support, the general thrust of reforms:
  - (I) to develop an open, integrated domestic market for goods and services by removing unnecessary barriers to trade and competition; and
  - (II) in recognition of the increasingly national operation of markets, to reduce complexity and administrative duplication.

In 1992 Heads of Government commissioned the Independent Committee of Inquiry into a National Competition Policy, chaired by Professor Frederick Hilmer, (Hilmer Inquiry) to review the application of the Trade Practices Act 1974 and to advise on:

(a) whether the scope of the Trade Practices Act 1974 should be expanded to deal effectively with anti-competitive conduct of persons or enterprises in areas of business currently outside the scope of the Act;

(b) alternative means for addressing market behaviour and structures currently outside the scope of the Trade Practices Act 1974; and

(c) other matters directly related to the application of the fundamental principles in Table 1.

The Hilmer Inquiry identified five specific elements of competition policy in Australia that required a national approach to enhancing competition, namely, policies that:

- limit the anti-competitive conduct of firms;
- reform regulations which unjustifiably restrict competition;
- reform the structure of public monopolies to facilitate competition;
- provide third party access to certain facilities that are essential for competition; and
- foster competitive neutrality between government and private businesses when they compete.

In 1993 the Hilmer Inquiry reported to COAG which then established a Micro-Economic Reform Working Group to develop the recommendations of the Hilmer Report into the Package. The Package was accepted and endorsed by COAG at its April 1995 meeting.

The Package comprises of the following:

1. Competition Policy Reform Act (Cth) 1995 (CPR Act);
2. Conduct Code Agreement (CCA);
3. Competition Principles Agreement (CPA);
4. Agreement to Implement Competition Policy and Related Reforms (Financial Agreement); and
5. Competition Policy Reform Act (WA) 1996 [to be enacted by 21 July 1996.

The Package provides uniform protection of consumer and business rights and increases competition in many sectors of the economy previously protected from a consistent and coherent approach to competition principles and regulation.

In agreeing to the Package, Heads of Government accepted that a nationally integrated approach to the promotion of competition and business regulation is crucial to Australia's future economic prosperity.

Consumers are expected to benefit from lower prices for goods and services, while businesses will benefit from a more 'level playing field' between the public and the private sector in markets in which they compete.

The Package embodies the common sense philosophy that businesses, public or private, should not be permitted to engage in anti-competitive conduct unless that conduct is justifiable against a transparent public benefit analysis. As stated in the second reading speech to the Competition Policy Reform Act (Cth) 1995:

> *"it is not a radical notion that consumers generally benefit from greater competition and that, where possible, greater competition should be encouraged."*

Specifically, the Package implements the competition policy reform strategies outlined in Table 2.[1]

Table 2: Competition Reforms under the National Competition Policy Package

Policy Element	Purpose	Example
1. Extension of the coverage of the Trade Practices Act	To limit the anti-competitive conduct of persons carrying on a business, including local government, regardless of their ownership	- Coverage of Part IV of the Trade Practices Act is extended to the unincorporated sector (including the professions) and to government - WA Competition Policy Reform Act 1996 puts beyond doubt the application of Part IV of the Trade Practices Act to local government, where it is carrying on a business
2. Third party access	To provide access to a third party, at fair prices and conditions, to facilities essential for competition (ie someone other than the owner/supplier of the facility - eg a potential new user or existing user)	- Access by a third party to facilities such as telecommunication cables, gas/water pipelines and railway tracks or other facilities that are nationally significant - Commercial negotiations in the first instance failing which binding arbitration
3. Prices oversight	To prevent the misuse of monopoly powers of government business activities	- Consideration of the introduction of independent prices oversight mechanisms to oversight pricing policies
4. Structural reform	To reform the structure of government-owned monopoly businesses where it is proposed to introduce competition	- Restructure of the monopoly or near monopolies into separate entities, actually or nominally, to increase the potential for competition in those markets.
5. Competitive neutrality	To remove benefits (and costs) which accrue to government business activities as a result of their public ownership	- Requirement for significant government business activities to pay taxes (or tax equivalent) - Removal of regulations which provide special advantages for government business activities when competing with the private sector
6. Legislation review	To review government regulation which restricts competition	-Review of all legislation and regulations (including By Laws and Local Laws) that restrict competition - Ensuring that new legislative proposals are considered with respect to their effect on competition
7. Reform packages for individual markets	To further reform key sectors of the economy already subject to CCIAG reforms	- Restructuring and/or introducing further competition into the electricity, gas, road and water industries

1 Adapted from Table 2 National Competition Policy at a Glance: Qld Government Issues Paper No 2, 1996

2. Application of the Package to Local Government functions and activities

While local government is not a party to the Package, representatives from the Australian Local Government Association (ALGA) were involved in the COAG process leading to the development of the Package. ALGA was also a member of the Micro-Economic Reform Working Group.

Under clause 7 of the CPA, Heads of Government agreed to publish this statement, by June 1996, specifying the application of the structural reform, legislation review and competitive neutrality Competition Principles to local government activities and functions.

3. What does National Competition Policy oblige Local Government to do?

For immediate purposes, local government should make sure that it is familiar with the Package and understand some of the changes that will apply to it from as early as July this year.

While this document only covers the application of the three Competition Principles (see Introduction), there are other important changes that will affect the way that local government carries out its business functions and activities. Those aspects of the Package will also need to be understood and appropriate action taken.

For example, historically there has been confusion regarding the application of the Trade Practices Act to local government business activities. From 21 July 1996 that confusion will be put to rest, by virtue of the Western Australian Competition Policy Reform Act 1996, which will extend coverage of Part IV of the Trade Practices Act 1974 (the 'competitive conduct rules') to all "persons" that are "carrying on a business" in Western Australia. This will include local government business activities. Although the Local Government Statement does not cover the extended application of the Trade Practices Act to local government activities, local government must take steps to comply with the competitive conduct rules and avoid any possible breaches of the Act.

In addition to the extension of Part IV of the Trade Practices Act, local government should be aware of other significant reforms which are detailed at sections 1, 2, 3 and 7 of Table 2.

Bodies such as WAMA's Competition Policy Reference Group, the IMM, the Department of Local Government, the Ministry of Fair Trading and the State's Competition Policy Unit will be undertaking various educatary roles to ensure that local government is aware of the implications of the Package on its activities. Further information, in the first instance, can be sought from either WAMA or the Department of Local Government.

4. Compliance with the Local Government Statement

It is primarily the responsibility of local government to ensure that it complies with the Local Government Statement. Provided that the principles are embraced and implemented in a consistent manner, it will be left to local

government to determine its own priorities and policies for implementation of the obligations.

To ensure that the Competition Principles are being implemented, local government will be required in their annual reports to verify compliance with this statement. This process is consistent with the new reporting requirements under the Local Government Act (1995). The annual reports must include sufficient information to allow interested parties to ascertain whether or not the principles have been complied with. This will include a requirement that local government also indicate areas where it does not intend to implement the Competition Principles, accompanied by evidence of a transparent and open analysis supporting that conclusion.

PART B

LOCAL GOVERNMENT ACTIVITIES WHICH COMPLEMENT THE COMPETITION REFORMS

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1. Local Government Commitment to Micro-Economic Reform

Local government in Western Australia employs around 10,000 people, which is approximately 7% of the public sector work force in the State. This is a significant area of public activity that is pursuing management best practice and other innovative approaches to better service delivery in order to increase efficiency and achieve lower prices in the delivery of services to its constituents.

Individually, and collectively through organisations such as WAMA and the IMM, local government embraces the philosophy underpinning the Package and is committed to the added impetus that the package places on further micro-economic reform.

Local government commitment to micro-economic reform and better service delivery can be seen in a variety of far reaching reform programs. It is the development of such reform programs that will naturally complement the national competition principles embodied in the Package. Implementation of the Package in Western Australia is therefore a natural extension of local government commitment to further micro-economic reform.

Section 2 of Part B sets out a variety of reforms already under way in Western Australia that demonstrate the strong commitment of local government to micro-economic reforms.

2. Local Government Achievements and Policies in Micro-Economic Reform

The implementation of the Competition Principles is not a distinctly new and different requirement for local government. A number of the principles have been adopted in other reform processes currently occurring in local government. These reform processes are considered in more detail below. In summary they include:

- enactment of the new Local Government Act (1995) giving local government more scope to undertake activities for the good of the district and requiring greater transparency and accountability in their operations;
- the development of reform programs such as Local Government Competition Policy Reference Group established through WAMA;
- the ongoing production of detailed statistical profiles for local government which will be used as a basis for benchmarking;
- changes to the financial operating system of local government including the introduction of AAS27;
- the release of the *Contemporary Issues in Local Government* document, drawing local government attention to contemporary management and organisational issues;
- the establishment of the Structural Reform Advisory Committee (SRAC) to promote greater efficiencies in local government operations; and

- studies to identify the possible allocation of administration costs to specific local government program areas.

(A) The Local Government Act (1995)

The Local Government Act 1995 (Act) is enacted on the principle of increased accountability to local people and transparency in local government operations. While the Act allows local government to undertake activities "for the good of the district", with a general increase in their legislative autonomy, their operations and actions must be open to public scrutiny at all appropriate times. In a range of activities local government is required to consult and obtain feedback from the community, including in the development of local laws, principal activity plans and differential rating proposals.

The Act, and associated regulations, require detailed disclosure notes associated with budget and annual financial reports to enable the community to more readily assess the financial position of local government. In a range of activities, the public will now have the opportunity to become involved in local government activities, including compulsory public question time at council and committee meetings; and improved objection and appeal rights against local government decisions.

In particular the Act gives local government the scope to undertake land development and trading undertakings as commercial activities. This will allow local government to become a competitor in certain commercial activities. The regulatory requirements will explicitly require that those commercial activities be budgeted and accounted for separately, which is an important step in ensuring transparency. This will allow the community to accurately judge the performance of local government in such undertakings.

(B) WAMA's Local Government Reference Group On Competition Policy

WAMA supports systemic and durable change in local government management and supports the separate identification of local government activities, including the profit and non-profit elements and monopoly characteristics within them. Implementation of the Local Government Statement will require local government to operate on the same basis as private providers, which will assist local government in adopting quality cost management practices.

A number of reform strategies are being pursued to support local government in understanding and implementing the changes that will occur as a result of the Package.

WAMA strongly supports the principles in the Local Government Statement and is keen to ensure that all spheres of government work together in a coordinated commitment to implementing the obligations. In doing so, WAMA will use the Integrated Local Area Planning (ILAP) principles of leadership and the introduction of notional competition policy to encourage local government to evaluate the benefits of corporatising their business units and making their activities competitive and transparent.

In January 1996 WAMA established the Local Government Reference Group on Competition Policy (Reference Group) to provide input into the implementation of competition policy in Western Australia.

The Reference Group comprises of 18 elected representatives and senior officers from a diverse range of local governments throughout the State. The principal objectives of the Reference Group are:

- to coordinate local government's commitment to implementation of the Clause 7 Statement;
- to educate and coordinate a consistent approach to compliance with Part IV of the Trade Practices Act;
- to assist in the management and promotion of systemic change resulting from the Package;
- to assist in the establishment of principles to determine the merits and means of separating competitive elements of local government operations;
- to assist local government in implementing "business principles" of performance measurement in service delivery as a precursor to benchmarking efficient operations,
- to establish principles to determine appropriate price and service regulations;
- to provide appropriate training and development of local government staff; and
- to coordinate implementation the of Package, generally.

In addition to the Reference Group, through funding provided under the auspices of the Federal Government *Local Government Development Program* (Development Program), WAMA is further supporting local government commitment to the Package. Through the Development Program, WAMA is pursuing a number of micro-economic reform aims and initiatives on behalf of local government, namely:

- assisting local government to maximise efficiency through competitive business structures and management techniques;
- assisting non-profit local government services to become more efficient and business-like;
- creating an information base for local government business activity likely to be affected by competition policy to provide advice on relevant issues; and
- fostering a business-like attitude of transparency and accountability for funding and the meeting of community needs throughout all activities of local government.

WAMA has identified a series of projected outcomes that will result from its commitments to the Reference Group and Development Program, including:

- developing an understanding of how and when local government will be affected by competition policy;

- developing a more informed understanding across all spheres of government regarding the costs and benefits of the implementation of specific reforms;
- developing a more informed understanding across local government of how to structure business units and account for community service obligations;
- identifying options for local government to achieve competition policy objectives which enhance competition and comply with the Trade Practices Act;
- facilitating the education and training of senior local government staff, not only to comply with the new regime, but more importantly to improve the delivery of goods and services, particularly in any monopoly or near monopoly area where commercial revenue is received;
- improving the performance of "non commercial" activities such as human service delivery and strategic planning;
- reducing the regulatory regime that customers of local government are confronted with; and
- generally supporting systemic change in local government activities and functions.

(C) Local Government Summary Statistics

For several years the Department of Local Government, in conjunction with WAMA and the IMM, has produced *Local Government Summary Statistics* covering population characteristics, revenue and expenditure data in respect of local government functions and other relevant economic performance indicators. The latest edition, in 1995, identified 175 statistics for each local government in Western Australia. These statistics are presented on both a regional average and State average basis to assist individual, regional and state wide comparison about performance to be made.

It is anticipated that in the 1996 edition, selective key performance indicators will be highlighted to enable comparisons between local governments on particular issues considered to be highly important from a benchmarking perspective. In terms of comparative financial performance, five key performance indicators have been identified by local government for inclusion in regulations associated with the Act.

Those five key indicators are:

- a current assets and liabilities ratio;
- a debt ratio;
- a debt service ratio;
- a rate coverage ratio to assess the degree of dependence upon revenue from rates; and
- an outstanding rates ratio.

These indicators will provide useful comparative data for assessing the financial performance of local government individually and collectively.

(D) Changes to the Financial Operating Systems

In 1990, the Australian Accounting Research Foundation released Exposure Draft 50 which dealt with financial reporting by local government. The Exposure Draft identified concerns about the adequacy and comparability of financial reports prepared by local governments in Australia.

Western Australia adopted the recommendations, and in 1994 local governments were required to adopt full accrual accounting under AAS27. The introduction of AAS27 has resulted in a more transparent and simplified reporting structure. The changes have required local government to include depreciation in their end of year accounts and to value infrastructure assets. This ensures that local government accounts for the full cost of their operations which enhances transparency and comparability with the private sector.

(E) Contemporary Issues in Local Government

In 1994, the Department of Local Government produced the Contemporary Issues in Local Government document, presenting the results of a survey which identified the extent to which modern management and organisation principles where being implemented by local government. The survey and subsequent report considered issues such as:

- competitive tendering;
- contracting out;
- approaches to asset management;
- the use of performance contracts and performance appraisal;
- the use of forward plans;
- the extent of resource sharing; and
- the prevalence of regional cooperation.

A follow up survey will be issued in the ensuing months with the assistance of the Australian Bureau of Statistics. Following the survey, a second *Contemporary Issues in Local Government* report will assess local government progress in adopting various modern management principles.

(F) Structural Reform Advisory Committee

The Structural Reform Advisory Committee (SRAC) was formed in late 1994 to consider the extent to which local governments are able to provide for a community of interest and deliver efficient and effective services to the community, with respect to the requirements and implications of the new Act.

SRAC recently reported to the Minister for Local Government, following broad analysis of the local government system in Western Australia. SRAC noted

that significant and positive management initiatives have been implemented by local government in recent years, but stressed the need for continued commitment to embrace further micro-economic reform. SRAC noted that a significant shift is required in the way that local government traditionally provides services. While the new Act will assist in this regard, SRAC noted that local government must embrace further structural reform and question the best way for it to organise its physical, financial and human resources to achieve a more competitive and productive organisation that meets the needs and desires of the community it serves. Implementation of the principles in this statement will further those objectives.

The SRAC recommendations address the management options and strategies available to local government, including:

- unification and boundary change;
- benchmarking and performance measurement;
- competition in service delivery;
- resource sharing;
- regional cooperation;
- customer service policies; and
- community participation mechanisms.

SRAC noted the substantial opportunity to obtain better value for money for constituents through a consistent commitment to competition and an increased adoption of contracting out and competitive tendering, in areas where it is feasible to do so.

(G) Costing of Local Government Functions

In 1995 SRAC commissioned consultants to examine the means by which local government attributes costs to its activities. The consultant's project considered the current situation with regards to the treatment of costs, and the practicality of allocating administration and other costs to the activities of local government. The consultant will now develop methods and guidelines to assist local government to fully cost its activities. The project is expected to be completed by the end of June 1996.

Phase 1 of the project revealed a diversity of current practices allocating costs, amongst a general recognition by local government that it is necessary to improve cost allocation methods in order to facilitate comparability of financial information between local governments and establish the true costs of providing services.

The review highlighted the importance of allocating direct costs wherever possible and the need to allocate indirect costs on an accurate basis. The consultants have recommended that:

- allocation of direct costs should continue, with improvements to procedures to maximise accurate allocation;

- allocation of indirect costs to other functions as far as possible, through activity based costing and other methods;
- expenses incurred in raising general purpose income (such as rates and charges) should be shown separately and charged against those revenues;
- governance costs should be shown separately;
- administration costs, other than expenses charged against income and governance, should be allocated to other functions; and
- prescription of the allocation of administration costs in the Accounting Directions, with more detailed guidance on allocation methods in guidance manuals.

The study, once completed, will lead to greater consistency in cost allocation and will assist the reform initiatives contained in the new Local Government Act by facilitating the compilation of more consistent data for performance comparison and the development of benchmarking standards.

PART C

LOCAL GOVERNMENT CLAUSE 7 COMPETITION POLICY STATEMENT

Application of Competitive Neutrality, Structural Reform and Legislation Review principles to local government activities and functions in Western Australia

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The following text is the Local Government Statement. It is separated into 4 sections:

- General.
- Competitive Neutrality.
- Structural Reform of Public Monopolies.
- Legislation Review.

Each section commences with the Principle as set out in the Competition Principles Agreement. This section appears in bold and in a box. This is followed by a section entitled Application which is text elaborating on the principle and explaining its meaning and relevance to local government. Local government must comply with each Principle.

The Principles are numbered consecutively in accordance with the Competition Principles (as set out in the Competition Principles Agreement) to which they relate (eg Competitive Neutrality Principle number 1 is numbered CN.1 etc). The same numbering is used for the Application section.

The Principles reproduce the relevant text of the Competition Principles Agreement, in an adapted form, to be applicable to the functions and activities of local government. After each Principle, the relevant text of the Competition Principles Agreement is cited.

A copy of the Competition Principles Agreement is set out at Attachment 1.

PRINCIPLE G.1

Without limiting the matters that may be taken into account, where this statement calls:

(a) for the benefits of a particular policy or course of action to be balanced against the costs of the policy or the course of action; or

(b) for the merits or appropriateness of a particular policy or course of action to be determined; or

(c) for an assessment of the most effective means of achieving a policy objective;

the following matters shall, where relevant, be taken into account:

(d) government legislation and policies relating to ecologically sustainable development;

(e) social welfare and equity considerations, including community service obligations;

(f) government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;

(g) economic and regional development, including employment and investment growth;

(h) the interests of consumers generally or a class of consumers;

(i) the competitiveness of Australian businesses; and

(j) the efficient allocation of resources.

[Adapted from CPA Clause 1(3)]

Where the Local Government Statement requires local government to implement one or any of the Competition Principles such as competitive neutrality, legislation review and structural reform of public monopolies, local government will ensure that the factors in G.1 are taken into account through an open and rigorous analysis.

COMPETITIVE NEUTRALITY

The principle of competitive neutrality is an integral component of the Competition Principles Agreement.

The objective of competitive neutrality involves the introduction of measures effectively to remove any **net** competitive advantages arising simply as a result of local government ownership of business entity.

What is net competitive advantage?

Local government businesses face a range of potential advantages and disadvantages when judged against the private sector. However, not all competitive advantages or disadvantages should be removed. They should be balanced against one another. For example, if a local government business is more efficient than its private sector competitor, then it should not be prevented from exploiting that advantage. Only advantages and disadvantages which arise from government measures which discriminate between local government and private businesses, should be neutralised.

The objective of competitive neutrality has its roots in the Hilmer report which recommended that a mechanism to deal with competitive neutrality between government businesses and other businesses form part of a national competition policy for the following reasons:

1. concerns that it is not fair that government businesses should enjoy artificially induced competitive advantages when competing with private firms; and
2. it may be a misallocation of funds to subsidise by artificially conferring a net competitive advantage for provision of government services by the public sector, if to do so limits or prevents the opportunities for more efficient provision of those services by the private sector.

Local government functions and activities have the potential to individually and collectively impact on the Australian economy at all levels - local, state and national.

In assessing net competitive advantage local government must determine not only what its core services are, but examine all activities to determine whether their service delivery costs are transparent to the wider community.

The wider community is then in a position to determine whether the function and/or activities should be subsidised if, for example, it is a monopoly business, or, where there is competition in the market place, whether the service provided by local government is competitively neutral in its scope and operation. Within this context, true costs need to be shown to indicate that the principle of competitive neutrality has been applied and to demonstrate that any monopoly business is within the wide community interest.

The Department of Local Government is keen to ensure that all functions are adequately assessed and that any business monopolies are justified by transparent accountable decisions of local government. Other means such as

the comparison of appropriate benchmarks can be developed to enable local government to test its annual performance.

Local government can provide a range of business activities. In recognition of the capacity of markets to change rapidly, local government, as part of its annual budgeting and reporting process must review its functions to ascertain if the "market" is best served by those local government activities. The reporting requirements set out in this statement support that process.

PRINCIPLE CN.1

The objective of competitive neutrality is the elimination of resource allocation distortions arising out of local government ownership of significant business activities

[Adapted from CPA Clause 3(1)]

Application CN.1

The need for implementation of competitive neutrality arises from inefficiencies which are created when the market is distorted by regulatory and operating procedures which apply to some businesses but not to others who are competing in the same market. The Hilmer report noted that this disparity is most apparent between the public and private sector.

Competitive neutrality principles only apply to the business activities of local government entities, and not to the non-business activities of those entities. This principle is expanded in the following pages.

In implementing the competitive neutrality principles in this statement, local government will adhere to the objective in Principle CN.1

PRINCIPLE CN.2

Local government business enterprises should not enjoy any net competitive advantage arising simply as a result of their public ownership.

[Adapted from CPA Clause 3(1)]

Application CN.2

Traditionally, local government business enterprises have enjoyed advantages which potentially make it easier for businesses to operate and be successful. By the same token they have also had imposed on them obligations which the private sector does not have, therefore potentially making it more difficult for businesses to operate and be successful.

Examples of potential competitive advantages that may be enjoyed by local government business enterprises include:

- exemptions and concessions from taxes and charges;

- access to concessional interest rates on government procured borrowings;
- effective immunity from bankruptcy;
- exemptions from Corporations Law reporting requirements;
- explicit or implicit government guarantees on debts;
- access to central purchasing schemes; and
- benefits gained through dual regulator-provider responsibilities.

Examples of potential competitive disadvantages that may be faced by local government business enterprises include:

- compliance with varying levels of Ministerial discretion;
- compliance with employment terms and conditions greater than those applying to the private sector;
- compliance with restrictions on the class of consumers with which they may deal;
- expectations from local businesses for preferred supplier status,
- increased reporting, accountability and transparency requirements above those applied to the private sector;
- social equity considerations; and
- local government reporting requirements.

Net competitive advantage is assessed by balancing the advantages against the disadvantages. Competitive neutrality should be implemented to the extent that the benefits to be realised from implementation outweigh the costs. It is expected that competitive neutrality will apply as a matter of course where a local government business faces actual or potential competition with the private sector.

Net competitive advantage can be removed through:

- commercialisation or corporatisation of the agency;
- reform of specific advantages and/or disadvantages affecting the agency; or
- requiring the agency to adopt commercial principles in the pricing of its goods or services.

The approach will depend on the nature of the agency.

In implementing competitive neutrality principles set out in this statement, local government must adhere to the objectives in Principle CN.2.

PRINCIPLE CN.3

Local Government should determine its own priorities and policies for the implementation of the competitive neutrality principles subject to principles.

[Adapted from CPA Clause 3(2)]

Application CN.3

Subject to the requirements imposed by the Competition Principles Agreement and reproduced in this statement, such as cost-benefit assessments and annual reporting, local government should determine how to best implement the competitive neutrality obligations.

PRINCIPLE CN.4

For significant local government business enterprises which are classified as "Public Financial Enterprises" and "Public Trading Enterprises" under the Government Financial Statistics Classification local government will, where appropriate,:

(a) adopt a corporatisation model for those local government business enterprises; and

(b) will impose on significant business enterprises:

(i) full Commonwealth, State and Territory taxes or tax equivalent systems;

(ii) debt guarantee fees directed towards offsetting the competitive advantages provided by government guarantees; and

(iii) those regulations to which private sector businesses are normally subject, such as those relating to the protection of the environment and planning and approval processes, on an equivalent basis to private sector competitors.

[Adapted from CPA Clause 3(4)]

Application CN.4

Local government must apply Principle CN.4 to any local government business enterprise classified as a Public Trading Enterprises (PTEs) or Public Financial Enterprises (PFEs) under the Government Financial Statistics Classifications. At present, the Australian Bureau of Statistics indicates that no local government business entity in Western Australia is categorised as either a PTE or a PFE.

If at a later stage, a local government business enterprise falls within the definition of a PTE or PFE local government must then apply principle CN4 to that business enterprises. At that stage if local government determines that a corporatised model for such business enterprise is appropriate, it should consider the corporatisation model developed by the Intergovernmental Committee Responsible for Government Trading Enterprise National Performance Monitoring.

Tax Equivalent Payments

Where pursuant to this statement, a local government implements a tax equivalent system, payment made to that local government will be retained

by that entity, however it must not be used to support the business activity which gave rise to it.

The body administering the tax equivalent payment will disclose the treatment of its payments in its annual financial report.

PRINCIPLE CN.5

Local government agrees that entities which are not PTEs or PFEs (as defined in CN.4 above) but which undertake significant business activities as part of a broader range of functions will, in respect of those business activities:

(a) implement principle CN.4 (above); or

(b) ensure that the prices charged for goods and services will take account, where appropriate, of the items listed in principle CN.4 (b) and reflect full cost attribution for those activities.

[Adapted from CPA Clause 3(5)]

Application CN.5

Local government must implement Principle CN.5 for entities which undertake "significant business" activities as part of a broader range of functions regardless of the fact that they are not PTEs or PFEs. This means that local government must impose the same tax equivalent regimes, State taxes, debt guarantee fees and regulatory arrangements as apply to commercialised GTEs.

Joint Conduct of Business Activities

The competitive neutrality principles apply to the significant business activities conducted by (or under the control of) one or more local governments whether they are operating jointly or solely.

What are "Significant" Activities?

It is the responsibility of local government to determine whether it is engaged in "significant business activities" within the context of its operations, and therefore, whether it is required to apply the competitive neutrality principles.

Local government is only required to implement the above principles to the extent that the benefits to be realised from implementation outweigh the costs in respect of individual business activities exceeding $200,000 annual income.

For the purpose of determining a time period within which to apply the competitive neutrality principles, local government is divided into two categories:

- **Category One:** local governments with an annual turnover of $2 million or more; and
- **Category Two:** local governments with an annual turnover of less than $2 million.

Category One

Category one local governments must have determined whether to implement the competitive neutrality principles in this statement by 1 June 1997. They will have until 1 July 1998 to fully implement the competitive neutrality principles to those activities with an annual income of over $200,000 (see CN.6).

A copy of the implementation agenda must be included in the 1996-1997 annual report, along with progress reports on implementation for the 1997-1998 reporting period.

Where a decision is made not to implement the competitive neutrality principles to those activities, the local government will implement Principle CN5(b).

Category Two

Category two local governments must have determined whether to implement the competitive neutrality principles in this statement by 1 June 1998. They will have until 1 July 1999 to fully implement the competitive neutrality principles to those activities with an annual income of over $200,000.

It is anticipated that Category Two local governments will have fewer "significant" business activities that require the full introduction of the competitive neutrality principles. The onus, however, is on local government to ensure that a rigorous and open cost benefit analysis supports that conclusion.

Where there is an implementation agenda this must be included in the 1997-1998 annual report, along with progress reports on implementation for the 1998-1999 reporting period.

Implementation

All local governments engaging in either Category One or Category Two business activities must have fully implemented the competitive neutrality principles, where appropriate, by 1 July 1998 and 1 July 1999 respectively.

Consistent with Principle CN.3, CN.5 and CN.6 it is the responsibility of local government to determine what activities justify implementation of the principles

While it is appreciated that local government is in a significant state of change at present, implementation of the competitive neutrality principles will require detailed analysis of the market within which both Category One and

Category Two activities are undertaken. It is imperative that all local governments take steps before their respective deadlines to implement the competitive neutrality principles where appropriate. To assist in this process, the Department of Local Government and the Committee will maintain an oversight and monitoring role.

Full Cost Attribution

Where a decision is made not to introduce the principles in CN.4(a), local government will consider applying the State's Costing of Government Activities model, which are currently being adapted for local government, as a basis for ensuring that prices charged for goods and services take into account full cost attribution for those activities.

PRINCIPLE CN.6

Local government is not required to implement the competitive neutrality principles unless the benefits to be realised from implementation outweigh the costs.

[Adapted from CPA Clause 3(6)]

Application CN.6

Local government will undertake an open and transparent cost-benefit analysis to determine whether it is appropriate to apply the competitive neutrality principles to their business activities. The cost-benefit analysis must:

- identify all the quantitative and qualitative costs and benefits (including economic, social, environmental etc); and
- evaluate whether the identified benefits outweigh the costs.

Copies of the cost-benefit analysis carried out under Principle CN.6 may be requested by the State from time to time.

PRINCIPLE CN.7

Principle CN.4(b) (iii) shall not be interpreted to require the removal of regulations which apply to a local government business enterprise (but which do not apply to the private sector) where local government considers the regulation to be appropriate.

[Adapted from CPA Clause 3(7)]

Application CN.7

Local government is only required to apply the same regulations to its business activities as those which apply to the private sector.

PRINCIPLE CN.8

To ensure the efficient operation of this Statement local government will furnish any reasonable information that may be requested by the State to enable the State to publish its annual report on the application of the competitive neutrality principles in Western Australia.

[Adapted from CPA Clause 3(10)]

Application CN.8

Under Clause 3(10) of the CPA, the State is obliged to publish an annual report on the implementation of the competitive neutrality principles. The annual report must include a statement on all allegations of non compliance with the principles. Although local government is not a party to the Agreement, the State's obligations extend to ensuring that the principles are applied to local government activities and functions. This will require access to some information to allow local government achievements in the application of competitive neutrality to be accurately reflected annually.

PRINCIPLE CN.9

Where a private business that is in competition (or potential competition) with a local government entity to which the competitive neutrality principles apply, believes that the entity is not complying with this statement, it may make a written submission to the Department of Local Government setting out the allegations of non-compliance with the principles.

[Adapted from CPA Clause 3(8)]

Application CN.9

Only a private business entity that is in competition, or potential competition, with a local government entity to which the competitive neutrality principles apply, may raise allegations of non compliance with the competitive neutrality principles in this statement. The Department of Local Government, or other authorised body, on receipt of a complaint, will review the matter in consultation with the parties and report to the Minister on the appropriate course of action, if any, to be taken.

PRINCIPLE CN.10

Local government will include in its annual report details of the application and implementation of the competitive neutrality principles to its activities and functions pursuant to this statement.

[Adapted from CPA Clause 3(10)]

Application CN.10

The annual report must include:

- notification that a local government business enterprise has been classified by the Australian Bureau of Statistics as either a PTE or PFE;
- a statement of the activities to which competitive neutrality has been applied in the reporting period;
- a statement of the activities to which the application of competitive neutrality was considered but not applied in the reporting period;
- an implementation timetable complying with CN.5 for activities to which the competitive neutrality principles will be applied in the next reporting period;
- confirmation that a cost benefit analysis was undertaken as required under CN.6;
- details of any allegations of non compliance with the competitive neutrality principles made by a private entity and the action, if any, that was taken to resolve the complaint; and
- any other information considered relevant with regard to the implementation of the competitive neutrality principles.

STRUCTURAL REFORM OF PUBLIC MONOPOLIES

The Hilmer Inquiry recognised that the introduction of competition into markets that have traditionally been supplied by public monopoly or near monopolies, requires more than the removal of regulations that restrict the introduction of competition into those markets. Structural reform of that monopoly or near monopoly is often required in conjunction with regulatory reform to achieve the benefits of increased competition.

A decision to introduce competition into a monopoly market will require consideration of structural separation issues in three main areas:

- the separation of regulatory and commercial functions;
- the separation of natural monopoly and potentially competitive activities; and
- the separation of potentially competitive activities.

The Package does not intend to encourage privatisation of government monopolies. However, it does encourage the introduction of competition into traditional monopoly sectors once a careful review into the appropriate market structure has been undertaken.

PRINCIPLE SR.1

Local government is free to determine its own priorities and policies for the reform of public monopolies with respect to the structural reform principles in this statement.

[Adapted from CPA Clause 4(1)]

Application SR.1

Subject to any national or state process with respect to the reform of public monopolies, and subject to the obligations in this statement, local government is free to determine its priorities and develop its policies with respect to the structural reform of local government public monopolies.

PRINCIPLE SR.2

Before a local government introduces competition into a sector traditionally supplied by a public monopoly, it will separate from the public monopoly any responsibility for industry regulation. The local government will separate industry regulation functions so as to prevent the former monopolist from enjoying a regulatory advantage over its (existing and potential) rivals.

[Adapted from CPA Clause 4(2)]

Application SR.2

Regulatory and commercial activities must be separated before introducing competition into a sector which is a monopoly or near monopoly.

While local government in Western Australia traditionally does not provide extensive goods or services in monopoly or near monopoly markets, to the extent that such markets do exist, local government must adhere to the structural reform principles set out in this statement.

For example sectors to which the structural reform principles may apply include:

- waste management;
- construction and maintenance activities;
- recreation activities;
- public property developments;
- aerodromes; and
- parking.

PRINCIPLE SR.3

Once a local government makes a decision to introduce competition into a sector traditionally supplied by a public monopoly, and before that sector is corporatised or competition is introduced, local government will undertake a review into

- *the appropriate commercial objectives for the public monopoly;*
- *the merits of separating any natural monopoly elements from potentially competitive elements of the public monopoly;*
- *the merits of separating potentially competitive elements of the public monopoly;*
- *the most effective means of separating regulatory functions from commercial functions of the public monopoly;*
- *the most effective means of implementing the competitive neutrality principles set out in this statement;*
- *the merits of any community service obligations undertaken by the public monopoly and the best means of funding and delivering any mandated community service obligations;*
- *the price and service regulations to be applied in the industry; and*
- *the appropriate financial relationship between the owner of the public monopoly and itself, including the rate of return, dividends and capital structure.*

[Adapted from CPA Clause 4(3)]

Application SR.3

Local government will ensure that before competition is introduced into such a sector a review complying with SR.3 is undertaken. Local governments requiring assistance with determining the methodology for such a review should initially contact the Department of Local Government.

PRINCIPLE SR.4

Local government will include in its annual report a statement on the application and implementation of the structural reform principles to its activities and functions.

[Adapted from CPA Clause 4]

Application SR.4

The annual report must include:

- a statement of the activities to which the structural reform principles have been applied in the reporting period;
- a statement of the activities to which the application of the structural reform principles was considered but not applied;
- a statement confirming that the principles in relation to structural reform have been complied with; and
- any other information considered relevant with regard to the implementation of the structural reform principles.

The Hilmer Report noted that:

> *"the greatest impediment to enhanced competition in many key sectors of the economy are the restrictions imposed through government regulation- whether in the form of statutes or subordinate legislation - or government ownership... Compliance with Government regulation is not prohibited by the Trade Practices Act, no matter how anti-competitive the consequences."*

All parties to the National Competition Policy package agreed that legislation (including Acts, Enactments, Ordinances or Regulations) should not restrict competition unless:

a) the benefits of the restriction to the community as a whole outweigh the costs; and

b) the objectives of the legislation can only be achieved by restricting competition.

Accordingly, the Package implements a system that:

- *requires the systematic review of all existing legislation to determine whether there are any direct or indirect effects on competition;*
- *reforms legislation identified as having an effect on competition, where the costs of the restriction outweigh the benefits to the community as a whole; and*
- *develops a regulatory impact assessment process that requires all new legislative proposals to meet the above criteria, with a further review every ten years.*

(NB A reference in this part to Local Laws shall be taken to include By-Laws)

PRINCIPLE LR.1

Legislation should not restrict competition unless it can be demonstrated that:

(a) the benefits of the restriction to the community as a whole outweigh the costs; and

(b) the objectives of the Local Laws can only be achieved by restricting competition.

[Adapted from CPA Clause 5(1)]

Application LR.1

Pursuant to the Competition Principles Agreement, the State has developed a review timetable of all legislation, including local government legislation, that has an effect on competition. State enabling legislation (establishing and governing the operation of local government) will be included in the review

timetable if it has an effect on competition as will other State legislation conferring powers on local government. Local Laws however will be subject to a separate review timetable prepared by the State and Local Governments.

A preliminary review has been undertaken of Local Laws to ascertain whether any of them may have an effect on competition.

Local Laws may restrict competition explicitly, by the wording of the enabling provisions, or implicitly through their operation or effect.

For example, Local Laws may directly or indirectly restrict competition by:

- regulating the entry and exit of participants in various markets;
- controlling pricing or production levels;
- regulating the price of goods or services used in various production processes;
- regulating the quality, amount or location of goods and service delivery;
- regulating advertising and promotional activities; or
- conferring benefits on particular classes of competitors.

Any Local Law that:

- allows only one entity to supply a good or service;
- requires producers of goods or service to sell to a single entity;
- limits the number of actual or potential producers of goods or services in a market;
- limits the output of an entity; or
- limits the number of persons that can be engaged in an occupation or activity;

should be presumed to have a direct or indirect effect on competition. The above restrictions may be imposed directly through a prohibition in the By-Law or Local Law or through licensing procedures that create barriers to market entry.

To ensure that local government reviews, and, where appropriate, reforms all Local Laws that restrict competition, any review carried out under this statement must be broad in scope and open to public scrutiny.

PRINCIPLE LR.2

Subject to the requirements in this statement, local government is free to determine its own priorities and policies for the reform of Local Laws that restricts competition.

[Adapted from CPA Clause 5(2)]

Application LR.2

Subject to the requirement to assess Local Laws, local government is free to determine its own priorities and develop policies for review and reform. It is expected however, that where local government determines that the benefits of a restriction on competition to the community as a whole outweigh the costs, that local government will be in a position to justify a decision not to reform those Local Laws. In doing so, local governments will need to ensure that the cost benefit analysis under Principles LR.1 and LR.4 is transparent, rigorous and open to scrutiny.

PRINCIPLE LR.3

Local government, in consultation with the State, has developed a table for the review of all existing Local Laws that restrict competition. Those Local Laws must be subject to further review and, where appropriate, reform by the year 2000.

[Adapted from CPA Clause 5[3]]

Application LR.3

The following Local Laws have been identified as having a potential direct or indirect effect on competition:

All Local Laws relating to:

- abatement of nuisances, admission charges, advertising;
- aerodromes, amplifiers, amusements, animals, awnings;
- balconies, basketball courts, bazaars, bee-keeping, bill posting;
- birds, bowling greens, bowsers-petrol, brickmaking, bridges;
- brothels, building, cabins-holiday, camps-holiday, caravans and camping;
- carnivals, chalets, charges for admission, clearing of vacant land;
- council works and undertakings, courts-sporting, dancing rooms;
- depasturing fees, discounts-rates and charges, diseased animals;
- drift-sand, employees duties, employment offices, examination of vehicles;
- excavating and quarrying, explosives, extractive industries, fairs, fees;
- foreshores, furnaces, grazing of stock, hand bills, hawkers, hoardings;
- jetties, junk yards, labour mart, land-declared too wet for buildings;
- licences, liquids-flammable, management of property, markets;
- meetings, motels, notices and plans, noise, nuisances, parking stations and facilities;
- piers, planning, plans, public stalls, quarrying;
- rates - payment of, registration - licenses, sales-public, sale yards,
- scales and weighing machines, showgrounds, street trading;

- swimming pools-public, timber yards, trading undertakings, undertakings and works;
- water-supplies, watercourses, zoning.

All the above Local Laws must be reviewed and, where appropriate reformed, by the year 2000. In carrying out that review local government will comply with Principle LR.4 (below) and associated obligations set out in this statement.

PRINCIPLE LR.4

A review of Local Laws should include, but is not limited to, terms of reference that:

- *clarify the objectives of the Legislation;*
- *identify the nature of the restriction on competition;*
- *analyse the likely effect of the restriction on competition and on the economy generally;*
- *assess and balance the costs and benefits of the restriction; and*
- *consider alternative means for achieving the same result including non-legislative approaches.*

[Adapted from CPA Clause 5(9)]

Application LR.4

A review of Local Laws is not limited to, but must incorporate the above principles. Where feasible, local government should consult with affected parties and allow those parties to comment on any proposed changes to those Local Laws.

PRINCIPLE LR.5

Local government will ensure that all new proposals for Local Laws that restrict competition are accompanied by evidence that they are consistent with the requirements in principle LR.1 namely that:

(a) the benefits of the restriction to the community as a whole outweigh the costs; and

(b) the objectives of the Local Laws can only be achieved by restricting competition.

[Adapted from CPA Clause 5(5)]

Application LR.5

Local government will ensure that, from 1 January 1997, all proposals for Legislation, (including local laws) that restrict competition are accompanied

by evidence that establishes principles LR.1 and LR.5 have been complied with.

In considering proposals for legislation, local government will consider guidelines for regulatory impact statements currently being developed by the State's Competition Policy Unit, which will be effective from 1 January 1997.

PRINCIPLE LR.6

Local government must develop a review and reform strategy that complies with the obligations under LR.3 and LR.4.

The review and reform strategy must be published in the annual report of each local government.

[Adapted from CPA Clause 5(6)]

Application LR.6

Due to the nature of Local Laws and the number of local governments with responsibility for them, it has not yet been possible for State and Local Government representatives to review extensively the operation of all legislation and determine a review and reform agenda. The list in LR.3 is the result of a preliminary analysis of legislation that may potentially have a direct or indirect effect on competition.

Consistent with LR.2 above local government will determine its own policies and priorities for the review, and where appropriate reform, of its By-Laws and Local Laws. In developing the review and reform strategy required under this statement, local government should first review and reform that legislation which has the greatest economic impact on competition.

The Local Government Competition Policy Committee will maintain an oversight role to ensure that local government is effectively meeting the implementation requirements under the legislation review obligations and provide input and assistance where required. Local government must develop a review and reform strategy for the By-Laws and Local Laws listed at LR.3 and publish that strategy in its next annual report.

PRINCIPLE LR.7

Local government must review all Local Laws every 8 years in accordance with the principles for legislation review in this statement.

[Adapted from CPA Clause 5(6)]

Application LR.7

The Local Government Act 1995 requires that Local Laws be reviewed every 8 years. When local government is conducting such reviews it will ensure that Principles LR.1 and LR.4 are complied with for all Local Laws that have a potential direct or indirect effect on competition.

PRINCIPLE LR.8

Local government will include in its annual report a statement on the application and implementation of the legislation review principles to its activities and functions.

[Adapted from CPA Clause 5(10)]

Application LR.8

The annual report must include:

- a statement of the local laws which have been reviewed and reformed as a result of the legislation review principles;
- a statement of the activities to which the application of the legislation review principles were considered but not applied;
- a statement indicating that all the legislation review principles in this statement have been complied with;
- a copy of the review and reform strategy developed under principles LR.6;and
- any other information considered relevant with regard to the implementation of the legislation review principles.

ATTACHMENT 1

THE COMPETITION PRINCIPLES AGREEMENT

ATTACHMENT 1
COMPETITION PRINCIPLES AGREEMENT

BETWEEN

THE COMMONWEALTH OF AUSTRALIA

THE STATE OF NEW SOUTH WALES

THE STATE OF VICTORIA

THE STATE OF VICTORIA

THE STATE OF WESTERN AUSTRALIA

THE STATE OF SOUTH AUSTRALIA

THE STATE OF TASMANIA

THE AUSTRALIAN CAPITAL TERRITORY, AND

THE NORTHERN TERRITORY OF AUSTRALIA

WHEREAS the Council of Australian Governments at its meeting in Hobart on 25 February 1994 agreed to the principles of competition policy articulated in the report of the National Competition Policy Review:

AND WHEREAS the Parties intend to achieve and maintain consistent and complementary competition laws and policies which will apply to all businesses in Australia regardless of ownership:

THE COMMONWEALTH OF AUSTRALIA

THE STATE OF NEW SOUTH WALES

THE STATE OF VICTORIA

THE STATE OF QUEENSLAND

THE STATE OF WESTERN AUSTRALIA

THE STATE OF SOUTH AUSTRALIA

THE STATE OF TASMANIA

THE AUSTRALIAN CAPITAL TERRITORY, AND

THE NORTHERN TERRITORY OF AUSTRALIA agree as follows:

Interpretation

1. (1) In this Agreement, unless the context indicates otherwise:

"Commission" means the Australian Competition and Consumer Commission established by the Trade Practices Act;

"Commonwealth Minister" means the Commonwealth Minister responsible for competition policy;

"constitutional trade or commerce" means:

(a) trade or commerce among the States;

(b) trade or commerce between a State and a Territory or between two Territories; or

(c) trade or commerce between Australia and a place outside Australia;

"Council" means the National Competition Council established by the Trade Practices Act;

"jurisdiction" means the Commonwealth, a State, the Australian Capital Territory or the Northern Territory of Australia;

"Party" means a jurisdiction that has executed, and has not withdrawn from, this Agreement;

"Trade Practices Act" means the Trade Practices Act 1974.

(2) Where this Agreement refers to a provision in legislation which has not been enacted at the date of commencement of this Agreement, or to an entity which has not been established at the date of commencement of this Agreement, this Agreement will apply in respect of the provision or entity from the date when the provision or entity commences operation.

(3) Without limiting the matters that may be taking into account, where this Agreement calls:

(a) for the benefits of a particular policy or course of action to be balanced against the costs of the policy or course of action; or

(b) for the merits or appropriateness of a particular policy or course of action to be determined; or

(c) for an assessment of the most effective means of achieving a policy objective;

the following matters shall, where relevant, be taken into account:

(d) government legislation and policies relating to ecologically sustainable development;

(e) social welfare and equity considerations, including community service obligations;

(f) government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;

(g) economic and regional development, including employment and investment growth,

(h) the interests of consumers generally or of a class of consumers;

(i) the competitiveness of Australian businesses; and

(j) the efficient allocation of resources.

(4) It is not intended that the matters set out in subclause (3) should affect the interpretation of "public benefit" for purposes of authorisations or notifications under the Trade Practices Act.

(5) This Agreement is neutral with respect to the nature and form of ownership of business enterprises. It is not intended to promote public or private ownership.

Prices Oversight of Government Business Enterprises

2. (1) Prices oversight of State and Territory Government business enterprises is primarily the responsibility of the State or Territory that owns the enterprise.

(2) The Parties will work cooperatively to examine issues associated with prices oversight of Government business enterprises and may seek assistance in this regard from the Council. The council may provide such assistance in accordance with the Council's work program.

(3) In accordance with these principles, State and Territory Parties will consider establishing independent sources of price oversight advice where these do not exist.

(4) An independent source of price oversight advice should have the following characteristics:

(a) it should be independent from the Government business enterprise whose prices are being assessed;

(b) its prime objective should be one of efficient resource allocation but with regard to any explicitly identified and defined community service obligations imposed on a business enterprise by the Government or legislature of the jurisdiction that owns the enterprise;

(c) it should apply to all significant Government business enterprises that are monopoly, or near monopoly, suppliers of goods or services (or both);

(d) it should permit submissions by interested persons; and

(e) its pricing recommendations, and the reasons for them, should be published.

(5) A Party may generally or on a case-by-case basis:

(a) with the agreement of the Commonwealth, subject its Government business enterprises to a prices oversight mechanism administered by the Commission; or

(b) with the agreement of another jurisdiction, subject its Government business enterprises to the pricing oversight process of that jurisdiction.

(6) In the absence of the consent of the party that owns the enterprise, a State or Territory Government business enterprise will only be subject to a prices oversight mechanism administered by the Commission if:

(a) the enterprise is not already subject to a source of price oversight advice which is independent in terms of the principles set out in subclause (4);

(b) a jurisdiction which considers that it is adversely affected by the lack of price oversight (an "affected jurisdiction") has consulted the Party that owns the enterprise, and the matter is not resolved to the satisfaction of the affected jurisdiction;

(c) the affected jurisdiction has then brought the matter to the attention of the Council and the Council has decided:

(i) that the condition in paragraph (a) exists; and

(ii) that the pricing of the enterprise has a significant direct or indirect impact on the constitutional trade or commerce;

(d) the Council has recommended that the Commonwealth Minister declare the enterprise for price surveillance by the Commission; and

(e) the Commonwealth Minister has consulted the Party that owns the enterprise.

Competitive Neutrality Policy and Principles

3. (1) The objective of competitive neutrality policy is the elimination of resource allocation distortions arising out of the public ownership of entities engaged in significant business activities: Government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership. These principles only apply to the business activities of publicly owned entities, not to the non-business, non-profit activities of these entities.

(2) Each Party is free to determine its own agenda for the implementation of competitive neutrality principles.

(3) A Party may seek assistance with the implementation of competitive neutrality principles form the Council. The Council may provide such assistance in accordance with the Council's work program.

(4) Subject to subclause (6), for significant Government business enterprises which are classified as "Public Trading Enterprises" and "Public Financial Enterprises" under the Government Financial Statistics Classification:

(a) the Parties will, where appropriate, adopt a corporatisation model for these Government business enterprises (noting that a possible approach to corporatisation is the model developed by the inter-governmental committee responsible for GTE National Performance Monitoring); and

(b) the Parties will impose on the Government business enterprise:

(i) full Commonwealth, State and Territory taxes or tax equivalent systems;

(ii) debt guarantee fees directed towards offsetting the competitive advantages provided by government guarantees; and

(iii) those regulations to which private sector businesses are normally subject, such as those relating to the protection of the environment, and planning and approval processes, on an equivalent basis to private sector competitors.

(5) Subject to subclause (6), where an agency (other than an agency covered by subclause (4)) undertakes significant business activities as part of a broader range of functions, the Parties will, in respect of the business activities:

(a) where appropriate, implement the principles outlined in subclause (4); or

(b) ensure that the prices charged for goods and services will take account, where appropriate, of the items listed in paragraph 4(b), and reflect full cost attribution for these activities.

(6) Subclauses (4) and (5) only require the Parties to implement the principles specified in those subclauses to the extent that the benefits to be realised from implementation outweigh the costs.

(7) Subparagraph (4)(b)(iii) shall not be interpreted to require the removal of regulation which applies to a Government business enterprise or agency (but which does not apply to the private sector) where the Party responsible for the regulation considers the regulation to be appropriate.

(8) Each Party will publish a policy statement on competitive neutrality by June 1996. The policy statement will include an implementation timetable and a complaints mechanism.

(9) Where a State or Territory becomes a Party at a date later than December 1995, that Party, will publish its policy statement within six months of becoming a Party.

(10) Each Party will publish an annual report on the implementation of the principles set out in subclauses (1), (4) and (5), including allegations of non-compliance.

Structural Reform of Public Monopolies

4. (1) Each Party is free to determine its own agenda for the reform of public monopolies.

(2) Before a Party introduces competition to a sector traditionally supplied by a public monopoly, it will remove from the public monopoly any responsibilities for industry regulation. The Party will re-locate industry regulation functions so as to prevent the former monopolist enjoying a regulatory advantage over its (existing and potential) rivals.

(3) Before a Party introduces competition to a market traditionally supplied by a public monopoly, and before a Party privatises a public monopoly, it will undertake a review into:

(a) the appropriate commercial objectives for the public monopoly;

(b) the merits of separating any natural monopoly elements from potentially competitive elements of the public monopoly;

(c) the merits of separating potentially competitive elements of the public monopoly;

(d) the most effective means of separating regulatory functions from commercial functions of the public monopoly;

(e) the most effective means of implementing the competitive neutrality principles set out in this Agreement;

(f) the merits of any community service obligations undertaken by the public monopoly and the best means of funding and delivering any mandated community service obligations;

(g) the price and service regulations to be applied to the industry; and

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

(4) A Party may seek assistance with such a review from the Council. The Council may provide such assistance in accordance with the Council's work program.

Legislation Review

5. (1) The guiding principle is that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:

(a) the benefits of the restriction to the community as a whole outweigh the costs; and

(b) the objectives of the legislation can only be achieved by restricting competition.

(2) Subject to subclause (3), each Party is free to determine its own agenda for the reform of legislation that restricts competition.

(3) Subject to subclause (4) each Party will develop a timetable by June 1996 for the review, and where appropriate, reform of all existing legislation that restricts competition by the year 2000.

(4) Where a State or Territory becomes a Party at a date later than December 1995, that Party will develop its timetable within six months of becoming a Party.

(5) Each Party will require proposals for new legislation that restricts competition to be accompanied by evidence that the legislation is consistent with the principle set out in subclause (1).

(6) Once a Party has reviewed legislation that restricts competition under the principles set out in subclauses (3) and (5), the Party will systematically review the legislation at least once every ten years.

(7) Where a review issue has a national dimension or effect on competition (or both), the Party responsible for the review will consider whether the review should be a national review. If the Party determines a national review is appropriate, before determining the terms of reference for, and the appropriate body to conduct the national review, it will consult Parties that may have an interest in those matters.

(8) Where a Party determines a review should be a national review, the Party may request the Council to undertake the review. The Council may undertake the review in accordance with the Council's work program.

(9) Without limiting the terms of reference of a review, a review should:

(a) clarify the objectives of the legislation;

(b) identify the nature of the restriction on competition;

(c) analyse the likely effect of the restriction on competition and on the economy generally;

(d) assess and balance the costs and benefits of the restriction; and

(e) consider alternative means for achieving the same result including non-legislative approaches.

(10) Each Party will publish an annual report on its progress towards achieving the objectives set out in subclause (3). The Council will publish an annual report consolidating the reports of each Party.

Access to Services Provided by Means of Significant Infrastructure Facilities

6. (1) Subject to subclause (2), the Commonwealth will put forward legislation to establish a regime for third party access to services provided by means of significant infrastructure facilities where:

(a) it would not be economically feasible to duplicate the facility;

(b) access to the service is necessary in order to permit effective competition to a downstream or upstream market;

(c) the facility is of national significance having regard to the size of the facility, its importance to constitutional trade or commerce or its importance to the national economy; and

(d) the safe use of the facility by the person seeking access can be ensured at an economically feasible cost and, if there is a safety requirement, appropriate regulatory arrangements exist.

(2) The regime to be established by Commonwealth legislation is not intended to cover a service provided by means of a facility where the State or Territory Party in whose jurisdiction the facility is situated has in place an access regime which covers the facility and conforms to the principles set out in this clause unless:

(a) the Council determines that the regime is ineffective having regard to the influence of the facility beyond the jurisdictional boundary of the State or Territory; or

(b) substantial difficulties arise from the facility being situated in more than one jurisdiction.

(3) For a State or Territory access regime to conform to the principles set out in this clause, it should:

(a) apply to services provided by means of significant infrastructure facilities where:

(i) it would not be economically feasible to duplicate the facility;

(ii) access to the service is necessary in order to permit effective competition in a downstream or upstream market; and

(iii) the safe use of the facility by the person seeking access can be ensured at an economically feasible cost and, if there is a safety requirement, appropriate regulatory arrangements exist; and

(b) incorporate the principles referred to in subclause (4).

(4) A State or Territory access regime should incorporate the following principles:

(a) Wherever possible third party access to a service provided by means of a facility should be on the basis of terms and conditions agreed between the owner of the facility and the person seeking access.

(b) Where such agreement connot be reoched, Governments should establish a right for persons to negotiate access to a service provided by means of a facility.

(c) Any right to negotiate access should provide for an enforcement process.

(d) Any fight to negotiate access should include a date after which the right would lapse unless reviewed and subsequently extended; however, existing contractual rights and obligations should not be automatically revoked.

(e) The owner of a facility that is used to provide a service should use all reasonable endeavours to accommodate the requirement of persons seeking access.

(f) Access to a service for persons seeking access need not be on exactly the same terms and conditions.

(g) Where the owner and a person seeking access connot agree on terms and conditions for access to the service, they should be required to appoint and fund an independent body to resolve the dispute, if they have not already done so.

(h) The decisions of the dispute resolution body should bind the parties; however, rights of appeal under existing legislative provisions should be preserved.

(i) In deciding on the terms and conditions for access, the dispute resolution body should take into account:

(i) the owner's legitimate business interests and investment in the facility;

(ii) the costs to the owner of providing access. including any costs of extending the facility but not costs associated with losses arsing from increased competition in upstream or downstream markets;

(iii) the economic value to the owner of ony additional investment that the person seeking access or the owner has ogreed to undertake;

(iv) the interests of all persons holding contracts for use of the facility;

(v) firm and binding contractual obligations of the owner or other persons (or both) already using the facility;

(vi) the operational and technical requirements necessary for the safe and reliable operation of the facility;

(vii) the economically efficient operation of the facility; and

(viii) the benefit to the public from having competitive markets.

(j) The owner may be required to extend, or to permit extension of, the facility that is used to provide a service if necessary but this would be subject to:

(i) such extension being technically and economically feasible and consistent with the safe and reliable operation of the facility;

(ii) the owner's legitimate business interests in the facility being protected;

and

(iii) the terms of access for the third party taking into account the costs borne by the parties for the extension and the economic benefits to the parties resulting from the extension.

(k) If there has been a material change in circumstances, the parties should be able to apply for a revocation or modification of the access arrangement which was made at the conclusion of the dispute resolution process.

(l) The dispute resolution body should only impede the existing right of a person to use a facility where the dispute resolution body has considered whether there is a case for compensation of that person and, if appropriate, determined such compensation.

(m) The owner or user of a service shall not engage in conduct for the purpose of hindering access to that service by another person.

(n) Separate accounting arrangements should be required for the elements of a business which are covered by the access regime.

(o) The dispute resolution body, or relevant authority where provided for under specific legislation should have access to financial statements and other accounting information pertaining to a service.

(p) Where more than one State or Territory access regime applies to a service, those regimes should be consistent and, by means of vested jurisdiction or other cooperative legislative scheme, provide for a single process for persons to seek access to the service, a single body to resolve disputes about any aspect of access and a single forum for enforcement of access arrangements.

Application of the Principles to Local Government

7 (1) The principles set out in this Agreement will apply to local government, even though local governments are not Parties to this Agreement. Each State and Territory Party is responsible for applying those principles to local government.

(2) Subject to subclause (3), where clauses 3, 4 and 5 permit each Party to determine its own agenda for the implementation of the principles set out in those clauses, each State and Territory Party will publish a statement by June 1996:

(a) which is prepared in consultation with local government; and

(b) which specifies the application of the principles to particular local government activities and functions.

(3) Where a State or Territory becomes a Party at a date later than December 1995, that Party will publish its statement within six months of becoming a Party.

Funding of the Council

8. The Commonwealth will be responsible for funding the Council.

Appointments to the Council

9. (1) When the Commonwealth proposes that a vacancy in the office of Council President or Councillor of the Council be filled, it will send written notice to the States and Territories that are Parties inviting suggestions as to suitable persons to fill the vacancy. The Commonwealth will allow those Parties a period of thirty five days from the date on which the notice was sent to make suggestions before sending a notice of the type referred to in subclause (2).

(2) The Commonwealth will send to the States and Territories that are Parties written notice of persons whom it desires to put forward to the Governor-General for appointment as Council President or Councillor of the Council.

(3) Within thirty five days from the date on which the Commonwealth sends a notice of the type referred to in subclause (2), the Party to whom the Commonwealth sends a notice will notify the Commonwealth Minister in writing as to whether the Party supports the proposed appointment. If the Party does not notify the Commonwealth Minister in writing within that period, the Party will be taken to support the proposed appointment.

(4) The Commonwealth will not put forward to the Governor-General a person for appointment as a Council President or Councillor of the Council unless a majority of the States and Territories that are Parties support, or pursuant to this clause are taken to support, the appointment.

Work Program of the Council, and Referral of Matters to the Council

10. (1) The work of the Council (other than work relating to a function under Part IIIA of the Trade Practices Act or under the Prices Surveillance Act 1983) will be the subject of a work program which is determined by the Parties.

(2) Each Party will refer proposals for the Council to undertake work (other than work relating to a function under Part IIIA of the Trade Practices Act or under the Prices Surveillance Act 1983) to the Parties for possible inclusion in the work program.

(3) A Party will not put forward legislation confirming additional functions on the Council unless the Parties have determined that the Council should undertake those functions as part of its work program.

(4) Questions as to whether a matter should be included in the work program will be determined by the agreement of a majority of the Parties. In the event that the Parties are evenly divided on a question of agreeing to the inclusion of a matter in the work program, the Commonwealth shall determine the outcome.

(5) The Commonwealth Minister will only refer matters to the Council pursuant to subsection 29B(1) of the Trade Practices Act in accordance with the work program.

(6) The work program of the Council shall be taken to include a request by the Commonwealth for the Council to examine and report on the matters specified in subclause 2(2) of the Conduct Code Agreement.

Review of the Council

11. The Parties will review the need for, and the operation of, the Council after it has been in existence for five years.

Consultation

12. Where this Agreement requires consultation between the Parties or some of them, the Party initiating the consultation will:

(a) send to the Parties that must be consulted a written notice setting out the matters on which consultation is to occur:

(b) allow those Parties a period of three months from the date on which the notice was sent to respond to the matters set out in the notice: and

(c) where requested by one or more of those Parties, convene a meeting between it and those Parties to discuss the matters set out in the notice and the responses, if any, of those Parties.

New Parties and Withdrawal of Parties

13. (1) A jurisdiction that is not a Party at the date this Agreement commences operation may become a Party by sending written notice to all the Parties.

(2) A Party may withdraw from this Agreement by sending written notice to all other Parties. The withdrawal will become effective six months after the notice was sent.

(3) If a Party withdraws from this Agreement this Agreement will continue in force, e with respect to the remaining Parties.

Sending of Notices

14. A notice is sent to a Party, by sending it to the Minister responsible for the competition legislation of that Party.

Review of this Agreement

15. Once this Agreement has operated for five years, the Parties will review its operation and terms.

Commencement, of this Agreement

16. This Agreement commences once the Commonwealth and at least three other jurisdictions have executed it.