16 Hutt St Adelaide South Australia 5000 GPO Box 2693 Adelaide SA 5001 Ph (08)82242000 Fax (08)82326336

SUBMISSION TO. THE

PRODUCTIVITY COMMISSION ENQUIRY

INTO THE

IMPACT OF COMPETITION POLICY REFORMS ON RURAL AND REGIONAL AUSTRALIA

JUNE 1999

LOCAL GOVERNMENT ASSOCIATION OF SOUTH AUSTRALIA

INDEX

INTRODUCTION

This submission has been prepared by the Local Government Association of South Australia (LGA) and focuses on the impact of the National Competition Policy Reforms on Local Government in South Australia. It attempts to draw distinctions, where possible, to the perceived impacts of the NCP on rural Councils as against metropolitan Councils.

The primary responsibilities for Local Government are described in the Clause 7 Statement signed by the President of the LGA and the Premier in 1996 and is the key reference point for the LGA in responding to this Enquiry. A copy of the Statement is included as Appendix 1.

The Commission's draft report highlights a range of examples of interpretation by Councils in other States of the impact of the NCP reforms on their Councils. The LGA agrees with the Commission that misinterpretation has occurred on several occasions. Further, the LGA would assert that Councils in this State would demonstrate a greater understanding of the requirements under the NCP and the Clause 7 Statement applying to South Australia than those highlighted in the draft report. We believe this may be because of the extent to which the LGA in co-operation with the State Government has embarked on a support program for Councils regarding applying NCP to their significant business activities.

It is noted that some of the recommendations in the draft report suggest further guidance and support in interpreting and applying the NCP. To assist the Commission's further consideration of this issue we highlight the support program South Australia put in place initially and continues to provide to Councils.

Having made the above statements we still believe that further interpretation and guidance is required in some areas e.g. determining significance of a business activity, clarifying and quantifying community service obligations, public interest tests and assessing market impacts on Local Government businesses. Comment is made on these matters in this submission.

As with the other States we believe it is still too early to assess the impact of the NCP on Councils and their communities. However, we have included some anecdotal comment that would provide some assessment of the impacts.

Rural and Regional areas of this State, as has been highlighted in the draft report, would also consider that the application of the NCP by State Government in particular has contributed to decline in some country centres albeit that the NCP has not been the only force for change. The LGA submission makes comments regarding this matter.

Relevant to impacts of the NCP in rural and regional areas is the establishment of the "South Australian Regional Development Task Force" in August 1998 by the Premier of South Australia. The Task Force was to examine and report to the State Government on strategies to strengthen regional development in South Australia. It's final report is now available (April 1999). The Task Force conducted 16 public hearings, heard submissions from 147 people and organisations, received 120 written submission and amassed in excess of 2500 pages of transcript.

The Task Force recognises the enquiry of the Productivity Commission into the impact of the NCP on rural and regional Australia in their report. It suggested that the final report of the Commission could be a useful tool in assessing the impacts of the NCP on regional communities. The LGA believes that the Commission's report is an extremely useful tool in this regard as it compliments, expands upon and at times reinforces issues raised by the Task Force.

Where relevant, the LGA submission makes reference to matters raised by the Task Force although it is emphasised that the Task Force did not concentrate on the NCP specifically.

The LGA submission also makes comment on the:

- Strengths and opportunities for a collaborative approach to addressing the NCP, through the Clause 7 Statement, by State and Local Governments
- Timetable for the legislative review program

As noted in the draft report South Australian Councils have identified 6 Category 1 business activities and 49 smaller Category 2 business activities. The Clause 7 Statement for South Australia recognises the thresholds for category 1 and 2 business activities.

Finally it should be noted that Local Government in South Australia does not receive a share of competition policy payments and has been raising this matter with the State Government for some time now.

Overview of Support Activities for Councils regarding Application of the NCP and Clause 7 Statement

During 1995 to 1998 Councils in South Australia were subject to wide spread amalgamations and boundary changes driven by amendments to the Local Government Act. The legislation sought the reduction in the number of Councils in the State and improved service provision and efficiencies. The State Government sought a reduction of at least one-half of the number of Councils at the commencement of this restructuring period. In 1995 there were 119 Councils, today there are 68.

In some ways the impacts of these changes supported the principles of the NCP and provided another context within the broader reform program being undertaken by Councils. The newly amalgamated Councils were charged with the necessity to:

- Restructure elected arrangements
- Review organisational structures
- Merge services provided by more than one Council in the past
- Reassess employment needs e.g. number, type, job requirements etc
- Explore measures to improve service provision

The amalgamations resulted in larger geographic areas, greater budgets and higher populations. Councils also had a greater or broader mixture of demographic profiles and environmental and economic issues from those experienced by the individual Councils.

Councils were keen to demonstrate a "business as usual" approach in their interactions with the new communities. They therefore implemented new organisational responses to the deployment of staff, plant and machinery and reshaped service provision approaches to meet the needs of their new communities.

The LGA promoted the **NCP** and Clause 7 Statement issues as part of the overall reform program that was being undertaken by amalgamated Councils. Whilst some Councils did not have their boundaries adjusted they were embarking on reform programs relevant to service provision generally and the structure and approach to their business activities. For these Councils the NCIP and Clause 7 Statement were promoted as part of their ongoing reform programs.

Specific support measures were put in place to assist Councils, namely:

- Conduct of information and training sessions regarding the NCP and the Clause 7 Statement
- Development and distribution of comprehensive guidelines for the review of Council bylaws
- Development and distribution of comprehensive guidelines for the identification of significant business activities within the definition of the Clause 7 Statement. The guidelines included strategies for examining each significant business activity to determine whether competitive neutrality principles ought to apply and the impact of doing so and approaches to plan for the application of the principles to business activities
- Information regarding complaints management supported by selected consultants to be utilised for independent review of complaints
- Model grievance procedure and complaints management tools, modelled on the approach used by the Competition Complaints Commissioner for review and investigation
- Development of user-friendly and instructional reporting formats on activities undertaken and proposed for by-laws and significant business activities
- Appointment of a consultant to a215ist Councils on a regional or individual basis on a free basis for general enquiries and user pays for specific work
- Support of a legal nature regarding review of by-laws

Surveys were conducted after the first year of operation of the NCP and Clause 7 Statement. Anecdotal evidence would suggest that in the early stages Councils in South Australia had difficulty with the following:

Identifying which of their business activities were significant Applying the "community service obligations" test

Grasping that the NCP did not promote or require competitive tendering but that if this was a service provision tool adopted and "in house" teams were competing for a tender at the same time as potential external providers, the application of competitive neutrality principles ought to be considered

Assessing which competitive neutrality principles, if any, ought to apply to their business activities

In response to the above the guidelines for the application of the competitive neutrality principles have been simplified. Our Clause 7 Statement is now under review and the approach agreed between State and Local Governments is to simplify the Statement and make if more "user friendly".

Effects of the NCIP and Clause 7 Statement on South Australian Councils

The draft report appears to, suggest that most States and Councils believe it is too early to assess the impacts of the NCP. We believe this to be the case in terms of its impact on Councils in South Australia.

Having said this it is appropriate to convey that the impacts to date would appear to be:

-
-
-
-

Competitive Tendering

As NCP requires the application of competitive neutrality principles to activities subject to a competitive tendering process when an "in house" bid exists the following issues have emerged: -

- **Full costing of services has been the starting point for Councils when adopting competitive tendering**
- **The benefits and constraints of the competitive tendering approach to service provision continues to be assessed in the context of applying the purchaser/provider split.**
- **The desire and necessity for transparency is acknowledged in the offer and awarding components of the bidding process. However, the perceived requirement, necessity or desirability for the continuation of the purchaser/provider split beyond the seeking and awarding of a tender arrangement, particularly where in house bids are successful, is being considered by some Councils. The costs of implementing and administering two organisational structures is the key issue under consideration.**
- **The long-term impact of applying a competitive tendering approach is also being examined by many Councils. The impacts of this approach when employees are not successful in a bidding process can be great e.g, retraining, reskilling, redundancy, quality and availability of services particularly in emergencies, risk management, potential increase in future costs etc are all matters under consideration.**

Whilst the LGA accepts that the NCP does not require competitive tendering as such but requires the application of competitive neutrality principles the general thrust of the NCP is creating or promoting a "business" culture albeit with community obligation tests.

Insufficient flexibility exists in the NCP framework to enable Councils to determine whether the act of competitive tendering a service ought to attract the application of the competitive neutrality principles. The reality is that Councils are "not for profit" organisations i.e. whatever gains are made in one service area are offset in another. The private sector of course is profit driven and the price determined for a service by individual businesses is driven by their organisational costs, their desired level of profit and market prices.

The Clause 7 Statement suggests that "cost reflective pricing" as a competitive neutrality principle could be applied to Council business activities. The concept of reflecting the general market price tends to reinforce that the business sector has it right when seeking a certain level of return on investment. Insufficient flexibility exists for Councils to assess what level of profit it desires given it will reinvest this profit.

Resourcing Impacts of NCP

Applying the NCP is resource intensive. It comprises the following steps:

- **determining a business activity exists**
- **assessing the activity under the NCP framework e.g. public interest and community service obligation considerations etc**
- **investigating and where appropriate applying competitive neutrality principles**
- **recording all steps along the way so as to be ready if a complaint arises**
- **establishing complaints mechanisms**
- **engaging independent auditors or complaints managers if desired**

all of the above tasks take time, consume resources and have costs associated to them.

Where a Council is in an area where markets are **not available for** its business activities it is questionable whether the resources required are warranted or justified in all circumstances.

If the desire for assessing business activities to improve service provision strategies or to consider other desirable mechanisms for the delivery of the service is the driver for change then the NCP becomes a less resource intensive issue.

There is a slight move amongst metropolitan. councils to critically assess whether they ought to be in various business or service activities and whether sufficient external providers exist now for them to move away from a direct service delivery role. In addition, some Councils are considering their role as a provider or facilitator of various services and in what service areas these roles are more appropriate.

Impact on Rural and Regional Areas of the State

Rural Councils are generally not as resourced as metropolitan Councils and find it more difficult to adequately respond to NCP matters within timeframes required.

They also have an ethos of providing as many opportunities as possible for contractors in their local areas to access Council work or retaining a certain level of employment as their contribution to the viability of the community. This decision can be an economic one for their area or necessary to ensure accessible services when required especially in an emergency. The NCP would require, if a complaint came forward, the Council to justify these matters.

There is a belief amongst country Australia that it suffers from State and Commonwealth Government policy which favours the large metropolitan base or is centrally driven. It is often designed as a "one case fits aV mentality. This belief is reflected in the draft report on various occasions and also in the South Australian Regional Development Task Force Report, April 1999.

Councils remain concerned regarding the impact of Government decisions that can result in withdrawal of services or an altered arrangement for service delivery of what were traditional State Government services. Examples exist of services being withdrawn in rural areas and the draft report demonstrates this and the impacts local communities perceive on employment, economic growth, business attraction and so on. It is recognised that whilst the introduction of the NCP has been a contributing factor, not necessarily the primary driving force for change.

The NCP has had a direct impact however on infrastructure and utilities such as water, gas and electricity. The policy decisions including NCP that underpin government decisions in this regard is discussed in the South Australian Regional Development Task Force Report. It suggests that a range of strategies ought to be put in place to ensure that Governments consult and gather data on a regional basis as to the impact of decisions that will result in withdrawal or changes to services provided or supported. The report suggests a more collaborative approach and devolution of decision making to regional levels and this is supported by the LGA along with the use of a community impact statement.

The proposed new Local Government Act for South Australian Councils (in Parliament at this stage) proposes provisions that would put the onus on Councils to work collaboratively with State and National Governments and regionally on policy and planning between all spheres of Government when decisions taken impact on service provision. The degree to which the State and Commonwealth Governments will assist Councils in this regard will become evident when the legislation is passed and Councils initiate programs of collaboration. It is clear, and this is supported by the Regional Development Task Force report, that functional reform agreements between State and Local Government will be necessary to ensure policy and service reviews are conducted in an organised fashion and respect the various objectives and policies of both spheres of Government. NCP issues ought to be part of these debates.

Any review of the NCP and redefining of Government Policy ought to take place in consultation with Local Government. Nationally this would occur through the Australian Local Government Association and locally in this State with the LGA. In undertaking such a review it will be necessary to specifically consider the impact of NCP on rural and regional Australia.

The NCP framework insufficiently guides decisions regarding public interest tests, community service obligations and the impact of competitive neutrality principles on issues such as environmental management, **economic** development,

job growth, business generation and the like. The Commission's recommendation to provide further guidance in this regard is supported.

The LGA would also assert that the private sector needs to be more fully educated on the application of the NCP framework by Governments. Perceptions of the "level playing field" created by the NCP in the eyes of business do not adequately recognise that the NCP continues to provide Government with its right in a policy context to determine what services it provides and what businesses it participates in.

Timetable for Legislative Review

The LGA notes the comments made by various States and in particular South Australia regarding the legislative review program component of the NCP reflected in our Clause 7 Statement.

South Australian Councils have an interest or at times a role in at least 68 pieces of State legislation.

The LGA would endorse that the timetable for review of legislation is resource intensive and the timelines are difficult to meet. The LGA has responded to numerous requests for responses to discussion papers developed by the State Government as part of its consultation on the review program. The ability for rural Councils to comment on the number of proposal put before us is time consuming and resource intensive for ourselves and rural Councils.

Arguably these difficulties could result in outcomes that have not been appropriately or adequately explored by all parties.

Local Government1State Government Approaches

The collaborative approach to determining the content of the Clause 7 Statement for South Australia and for supporting Councils in this State has been developing well over the past 18 months.

The Clause 7 Statement in South Australia places the onus on Councils to determine and apply the Statement to their Council's significant business activities. Reporting mechanisms are in place and this provides information for the State Government to assess. how Councils are applying the Statement.

The legislative framework (Government Business Enterprises (Competition) Act 1996) in South Australia to hear, investigate and make recommendations to Councils and State Government agencies on the application of competitive neutrality requires complainants to work through State Government agencies or Councils in the first instance. The objective of the legislation is to have agencies and Councils resolve complaints where possible at the local level. The complainant may raise a matter with the Commissioner if they feel their complaint has not been resolved or dealt with to their satisfaction.

It would appear from our reading of the draft report that some States may not have put in place this self management approach with appropriate safety nets.

The Local Government Act is currently under review and the NCP matters have been addressed as required in the Act.

Principles supporting NCP

Support is given to the following principles, many of which are imbedded in the draft report, for the application of the NCP.

There is an acceptance of the actions of Government to provide a mechanism (NCP) to encourage competition, pursue improved economic performance and the subsequent intent of enhanced incomes, employment and living standards

Given the magnitude of Australia and the vast variations in population densities there is a need for governments to have continual regard for the principles of access and equity balanced against other competing factors such as the cost of service and user pays. In support of which governments at all levels need t-o practice the principle of "community service obligations" when addressing policy shift and change management

Accountability and transparency must apply at all levels of government dealings. This philosophy is firmly entrenched within the policies, protocols and practices of the LGA of SA and its member Councils.

There are a number of influences impacting on rural and regional Australia - some are of benefit, others are of adverse influence. These have been occurring over a considerable period of time and each has contributed in part to the current status of rural and regional Australia.

- NCP, of itself, is not the major catalyst in the trauma experienced in many sectors of country Australia. Rather it is a combination of factors that have and are continuing to contribute over time.
- NCP should not be used as an excuse by governments to abrogate their responsibilities for the provision of adequate services to country communities.

SUMMARY

The **LGA** submission demonstrates support for a number of the recommendations of the Commission's report.

There are, however, a range of matters for which we are not in a position to comment and therefore this submission has primarily dealt with the perceived impacts of the application of the NCP framework to Council significant business activities.

Over time the impact of the NCP will require monitoring and the report of the Commission will be a useful document in this regard.

-
-
-

CLAUSE 7 STATEMENT ON THE APPLICATION OF COMPETITION PRINCIPLES TO LOCAL - GOVERNMENT UNDER THE COMPETITION PRINCIPLES INTERGOVERNMENTAL AGREEMEN7

This document contains a statement on the application of competition principles t particular Local Government activities and functions, as required under clause 7 the Competition Principles Agreement.

It has been produced by the Government of South Australia with the assistance of Joint State and Local Government Working Group.

CONTENTS

TABLE OF ABBREVIATIONS

ALGA	Australian Local Government Association
COAG	Council of Australian Governments
CPA	Competition Principles Agreement
GBE	Government Business Enterprise
NCC	National Competition Council
NCP	National Competition Policy
TPA	Trade Practices Act

INTRODUCTION

Local Government in South Australia

Local Government has seen many improvements in management, functions and structures over recent years. However, all spheres of Government are facing increasing financial and social pressures to make further improvements in public sector performance and accountability. National Competition Policy is one of these pressures.

Local Government in South Australia faces other changes at the moment, in the reform process under way and the review of the Local Government Act. All of these elements are separate, although inevitably they all have connections with each other as well.

This statement is concerned with the application of the principles of the Competition Principles Agreement to Local Government. It has been prepared with the intention of complementing the Local Government Reform Process now under way.

Competition Policy

In 1992 the Council of Australian Governments (COAG) - made up of the Commonwealth and each of the State and Territory Governments and the Australian Local Government Association - agreed to set up the independent Hilmer Committee of Inquiry into how to generate more competition within the Australian economy.

In February 1994 the recommendations of the Hilmer Report were accepted in principle by COAG. In April 1995, COAG endorsed a package of legislation and administrative arrangements which underpins the establishment of a Nation Competition Policy (NCP). This package incorporated almost all of the Hilmer recommendations.

The Competition Principles Agreement (CPA) is part of this package. Under clause 7 of the CPA, the principles of the national policy are to apply to Local Government. Each State is to develop a statement, in consultation with Local Government, which specifies the application of the principles to particular activities and functions of Local Government. The statement is to be published by June 1996.

Consultation

In the spirit of the Memorandum of Understanding, a Joint State and Local Government Working Group was convened in October 1995. The Working Group prepared consultation documents containing a draft clause 7 statement and discussion of the associated issues. The purpose of those documents was to help Local Government in South Australia to understand what the application of competition principles would mean to it. The documents were published on 1 December 1995 and the consultation period extended to 22 February 1996.

The Clause 7 Statement contained in this document has been prepared by the Government with the assistance of the Joint State and Local Government Working Group and after the consultation process referred to above.

CLAUSE 7 STATEMENT

APPLICATION OF COMPETITION PRINCIPLES TO LOCAL GOVERNMENT

COMPETITIVE NEUTRALITY

Business activities

1. Business activities of Local Government are defined as those activities where:
    - costs are met predominantly directly from the user, rather than from rates or other revenue sources; and
    - the Council is undertaking the activity with a view to earning a return rather than meeting a community need that would not otherwise be met.

2. Typically,. business activities will be structured so that they retain their own receipts and make a profit. They may fall within the following areas, although the list is not intended to be exclusive:

    water supply
    sewerage
    gas supply
    electricity
    waste dumps and incinerators
    bus services abattoirs
    quarries
    caravan parks
    aerodromes
    off-street car parks
    cemeteries
    any activity conducted for another Local Council or State agency for a fee

3. Local Government bodies will be accountable for the decisions they make in identifying their business activities through their annual reports and the scrutiny of the complaints mechanism to be established by the State Government. It is the current intention of the Government that this mechanism will be provided through the Competition Commissioner, an office to be established under legislation.

Conduct of business activities

4. A business activity may be conducted by or under the effective control of a single Local Government authority, jointly or under the effective control of more than one authority, or by or under the effective control of a body constituted under section 200 of the Local Government Act.

Categories

5. For the purpose of determining the priority order in which Local Councils should consider the appropriateness of applying the various principles of competitive neutrality to their businesses, Local Government businesses are divided into two categories:

   Category One: Business activities with an annual revenue in excess of $2 million, or employing assets with a value in excess of $20 million;

   Category Two: All other business activities which generate income or consume resources and which are significant to the Local Council concerned.

6. It is up to the Local Council concerned to decide when a particular business activity is significant, taking into account all relevant factors, including the objectives of National Competition Policy, as outlined in this Statement and the Appendices, and the size of any impact on the Council's finances and on the economy.

Category One business activities

7. A Local Council or bodies undertaking Category *One* business activities must consider by July 1997 whether it is appropriate to apply the following policies, and, if so, whether the community benefits would outweigh the costs of implementing them:

   a corporatisation model; full tax or a tax equivalent system; andlor debt guarantee fees directed towards offsetting any competitive advantage.

8. If it decides not to impose these requirements, it should ensure that prices charged for goods or services take account of full cost attribution for these activities, unless that will make it impossible for the Local Council to achieve its objectives in conducting the business activity.

9. Local Government bodies will be accountable for the decisions they make on the policies to be applied to Category One business activities through their annual reports and the scrutiny of the complaints mechanism provided through the Competition Commissioner.

Category Two business activities

10. A Local Council or Councils conducting a Category Two business activity will consider by July 1998:

    whether it is appropriate to, and whether the community benefits would outweigh the costs, if the same requirements as for Category One were imposed on the business activity; and

if not, whether it is appropriate that prices should be fully cost-reflective, or whether the costs of doing so would outweigh the benefits, for example because there is some specified social or community objective which can only be met through the price subsidy.

11. Local Government bodies will be accountable for the decisions they make on the identification of Category Two business activities and the policies to be applied to them through their annual reports and the Competition Commissioner's scrutiny of the Local Council's own complaints mechanism.

in-house bids in competitive tendering situations

12. Councils are encouraged to make use of competitive tendering as a tool for comparing the efficiency of their internal operations with alternative service providers, and making use of more efficient alternatives where these *E* available. However, the application of competitive neutrality policy and principles needs to be considered carefully in these cases. '

13.When a Local Government body calls for competitive tenders for a particular activity it has previously provided through its own resources, and allows an in-house unit to make a bid for the tender, that in-house unit is conducting a business activity. If that business activity is significant, the Council should consider whether to apply principles of competitive neutrality to the in-house bid.

14.As an alternative, Local Councils should consider informing all potential private bidders of the in-house bid, and of the fact that the in-house bid enjoys a net competitive advantage because competitive neutrality policies do not apply to -ft.

Private sector equivalent regulation

15.State and Local Government regulation of all Local Government business activities will be equivalent to that applying to competing private sector businesses, unless there are countervailing community benefits that require otherwise.

16.Where any differences in regulation may result from State legislation or Local Government by-laws, this policy will be progressively implemented during the review and reform of legislation which restricts competition, to be completed by the year 2000.

Corporatisation model

17.Corporatisation does not necessarily mean incorporation as a legal entity, although this may be part of it. It is a concept which encompasses a range of organisational and management issues. More detail on the meaning of a corporatisation is provided in the explanatory notes in Appendix One.

18. Local Government bodies considering whether to adopt a corporatisation model for their business activities may make use of material published on the concept by the State or Commonwealth Governments and the experience many Local Government bodies have already acquired by setting up business units.

Tax equivalent systems

19. Tax equivalent systems, where introduced, should cover all applicable Commonwealth, State and Local taxes which are not in practice paid to the relevant sphere of Government. The tax equivalent payment will be retained by the relevant Local Council, but should not be used to support the business activity which gave rise to ft.

20. The Local Council administering the tax equivalent payment will disclose the treatment of its payment in its annual financial report.

21. In the case of significant business activities conducted by Local Government bodies which are created under a State statute and operate on behalf of more than one Local Government authority, appropriate arrangements for supervising the administration of these payments will be agreed between the Local Government Association and the Minister for Local Government Relations.

Debt guarantee fees

22. Where a Local Council decides to apply a debt guarantee fee to a significant business activity, it should administer that fee in the same way as a tax equivalent payment. The fee should not be used to support the business activity concerned, and ft should be shown in the annual report.

Cost-benefit assessment

23. A Local Council is only required to adopt a practice or principle in this statement to the extent that the benefits to be realised from implementation outweigh the costs. In making this judgment, Councils will, where relevant, take into account:

any material policy considerations, including:

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

the competitiveness of Australian businesses; and
the efficient allocation of resources

- the impact on actual and potential competitors of the relevant Local Council business activity;
- the impact on the local community
- the impact on the State and national economies.

Guidelines

24. The Local Government Association, in consultation with relevant State Government agencies, will develop guidelines to assist Local Councils in applying these policies.

Competitive neutrality complaints

25. Local Government authorities are encouraged to establish their own systems for handling complaints about competitive neutrality.

26. The State Government competitive neutrality complaints mechanism, when established, will receive complaints about Local Government bodies on the same basis as complaints about State Government agencies. Any complaints will initially be referred to the Local Council concerned for investigation. Only if the complainant is still not satisfied will the complaints mechanism proceed to investigate the matter.

27. For Category One business activities, it will investigate and report on:
    - whether the Local Council complied with its obligation to consider by the required date a competitive neutrality policy for the business activity concerned;
    - whether that consideration was properly conducted; and
    - whether the policy subsequently adopted was followed in the case of the complainant.

28. For Category Two business activities, it will report on the adequacy of the competitive neutrality complaints handling processes established by the Local Council concerned.

Timetable

29. By 30 June 1997. Local Government bodies to:
    - have identified all significant business activities they conduct; and
    - have finished considering which principles of competitive neutrality will be applied to those business activities which have revenue in excess of $2 million per annum, or employ assets in excess of $20 million.

Data to go into a consolidated annual report to be published by the State Government, covering the period from publication of this statement until 30 June 1997 will be required within two months-of 30 June 1997.

30. By 30 June 1998:

Local Government bodies to have finished considering which principles of competitive neutrality will be applied to all significant business activities they conduct. Data to go into a consolidated annual report to be published by the State Government, covering the period from 1 July 1997 until 30 June 1998, will be required within two months of 30 June 1998.

3 1. By 30 June 1999:

State Government, in consultation with Local Government, to have reviewed the effectiveness of this policy statement and published a new policy statement. Data to go into a consolidated annual report to be published by the State Government, covering the period from 1 July 1998 until 30 June 1999, will be required within two months of 30 June 1999.

32. By 30 June 2000

Local Government bodies will have ensured that all Local Government business activities are subject to the same local government regulations as those applying to the private sector, unless the community benefit requires otherwise. Data for a consolidated annual report, to be published by the State Government, covering the period from publication of the new statement until 30 June 2000, will be required within two months of 30 June 2000.

Annual report

33.The annual report on competitive neutrality published by the State Government will include summary information on the implementation of this statement in the Local Government sphere.

34. Local Government authorities will include in their annual reports information on:

- their progress in meeting their obligations under this statement
- allegations of non-compliance with the policy received by the Local Council and the outcome of the investigation into that complaint.

35. This information will be provided to the State Government within two months of the close of each financial year.

STRUCTURAL REFORM OF PUBLIC MONOPOLIES

Local Government public monopolies

36. This policy only applies to public monopolies conducted by Local Councils. In South Australia this applies only to a very small number of Councils providing services in the areas of water, sewerage, gas reticulation and electricity distribution.

Industry Regulation

37. No monopoly business operated by a Local Council is to retain any responsibilities for industry regulation if it becomes subject to competition.

Review of structure

38. Before ' a Local Council sells a monopoly business K will conduct a review into the matters required under clause 4(3) jointly with the State Government.

39. A similar review will be conducted if competition is to be introduced to a monopoly business as a result of Council regulatory action. If a change in State regulation is to result in the introduction of competition for a Local Government monopoly business, the State Government will consult relevant Local Councils in the course of conducting the required review.

REVIEW AND REFORM OF LAWS RESTRICTING COMPETITION

Review of the Local **Government Act**

40. The review of the Local Government Act will take into account the State Government's obligations under the Competition Principles Agreement to ensure that laws do not restrict competition except where this is necessary for the benefit of the whole community.

Existing by-laws

41. In view of the current process of structural reform of Local Government under way in South Australia, and the likely establishment of many new Local Councils after elections in. May 1997, it is not reasonable to expect existing Councils to begin immediately the process of identifying existing by-laws which restrict competition, reviewing them and reforming them as appropriate.

42. Local Government authorities will identify existing by-laws which restrict competition by 1 June 1997. At that time Local Government authorities will also

advise the State Government of the timetable according to which they will review and, where appropriate, reform all the by-laws identified.

43. The reviews must incorporate the following terms of reference:
- 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.

44. A restriction on competition involves any regulation which places barriers on market entry or conduct. Examples are limitations on outdoor advertising or street trading. Clearly, many such restrictions are required in the public interest, and the result of the review will be to demonstrate the extent of the need for them. The review should examine whether the community benefits of each restriction on competition outweigh the cost, and, if so, whether restricting competition is the only means-of achieving the objectives of the legislation.

45. More detail on obligations in relation to legislation review is in the explanatory notes in Appendix One.

New legislative proposals

46. After 1 July 1996, Local Government authorities should not forward to State Parliament for review any new by-law restricting competition unless it is accompanied by a report containing evidence that:
- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

Annual reports

47. Local Government authorities will report annually on their progress in reviewing and reforming by-laws, according to the timetable and the guidelines.

48. An overview of their progress will be included in the annual report to be published by the State Government. For this purpose, Local Councils will be asked to provide data on their review of by-laws within two months of the close of the financial year, beginning after the 1997-98 year.

REVIEW OF THIS POLICY STATEMENT

Review by 2001

49. This policy statement will be reviewed by State and Local Government by December 1998 and again by December 2000.

Matters to be taken into account

50. Those reviews will consider
    - any changes to the Competition Principles Agreement since this statement was published;
    - the effectiveness of this statement in achieving the objectives of the Competition Principles Agreement in the Local Government sphere;
    - evidence of the costs and benefits of-implementing this scheme
    - whether any further action is warranted to achieve the objectives of the Competition Principles Agreement or improve their implementation.

APPENDICES

Appendices

Appendix One: Explanatory Notes
- Competitive Neutrality Policy and Principles
- Structural Reform of Public Monopolies
- Review and Reform of Legislation Restricting Competition
- Review of this Policy Statement
- Monitoring implementation of the Clause 7 Statement

Appendix Two: **National Competition Policy**

Appendix Three: Competition Principles Agreement

APPENDIX ONE

EXPLANATORY NOTES

These notes are provided to assist. Local Councils to understand the competition principles and begin to apply them to their business activities. Within the next twelve months, guidelines offering further assistance with these issues will be prepared by the Local Government Association, in consultation with relevant State Government agencies.

COMPETITIVE NEUTRALITY POLICY AND PRINCIPLES

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 as a result of their public sector ownership.

The policies to achieve competitive neutrality will only apply to:
• publicly owned business entities; or
• significant business activities undertaken as part of a broader range of functions. They will not apply to non-business, non-profit activities.

The requirement to implement competitive neutrality policies also depends upon an assessment of what is appropriate and whether the benefits to be realised from implementation will outweigh the costs.

The benefits of applying competitive neutrality to government businesses might include:

- increased market contestability, enabling competing firms to operate in the market. This in turn may produce incentives for lowering costs and achieving greater choice for consumers;
- the comparative performance of the government business can be better judged. This improves the incentives for the business to operate efficiently, encouraging better use of the community's scarce resources;
- better ability of owner governments to clarify non-commercial objectives and thereby determine whether the business is effectively meeting these objectives.

However, there may be significant costs in implementing competitive neutrality policies including high administrative costs. In some cases it may be inappropriate to apply them, for example because of difficulty in defining non-commercial and commercial objectives for a business or the predominance of non-commercial objectives.

The following have been identified as the major areas where government businesses may enjoy a competitive advantage:

- a structure which does not clearly separate commercial and non-commercial objectives;
- exemption from rates and taxes;
- debt guarantees;
- the business not being subject to regulation on the same basis as private businesses;

There may also be other factors or areas where government businesses have a competitive disadvantage, for example where the owner Government restricts the business from competing in certain markets. It is up to the owner Government whether it retains such restrictions. In applying the principles *of* competitive neutrality, Local Government bodies may wish to consider whether such restrictions continue to be appropriate.

For each business activity, it is necessary to determine whether such advantages or disadvantages exist and the appropriateness and costs and benefits of applying competitive neutrality policies designed to eliminate these.

The policy elements designed to eliminate these distortions are described below.

Corporatisation

Corporatisation does not necessarily involve formal or legal incorporation but represents a range of reforms directed at full commercialisation and market reorganisation.

The features of a fully corporatised business are as follows:

- clear and non-conflicting objectives - with commercial objectives to be given a key role; trade-offs for other objectives (eg social or regulatory objectives) should be made clear;
- an appropriate degree of management responsibility, authority and autonomy;
- effective performance monitoring by the owner government;
- effective rewards and sanctions related to performance;
- attaining competitive neutrality in input and output markets.

The application of these principles will depend upon a number of factors, including the extent to which the owner government is prepared to delegate responsibility for managing the business. It is possible to apply some of these features and not others, dependent upon an assessment *of* what is appropriate for a particular business, and the costs and benefits of implementing each aspect of corporatisation.

Taxes or tax equivalent systems

Some Local Government businesses may enjoy a competitive advantage because they are not subject to taxation (including Council rates). This would enable them to charge lower prices and thereby prevent or inhibit competition in the industries in which they operate.

The application of the tax or a tax equivalent creates a cost impost so as to neutralise the competitive advantage that would otherwise be enjoyed and ensures cost reflective pricing.

Actual payment of the tax can result in a net transfer of revenue between spheres of government. Provided that the business is recognising taxation as a cost, then transfers between governments are not necessary to achieve competitive neutrality. In practice, it may be appropriate for the local government body concerned to levy the tax on its business as a tax equivalent payment.

State and Local Government will consider the direct application of rates and taxes only on the basis that there are no net transfers between spheres of government.

Tax equivalent systems should cover all Commonwealth and State taxes for which the business would be liable if it were not a Local Government instrumentality. These include:

- Commonwealth: income tax, wholesale sales tax;
- State: payroll tax, stamp duties, financial institutions duty, land tax

In addition, Local Government businesses should be subject to Local Government rates on the same basis as private businesses.

Similar policies are being implemented for State Government businesses.

Debt guarantee fees

A government guarantee is an undertaking by the government to cover the liability of an entity in the event that it is unable to meet its debt servicing obligations. Private companies are assessed by financial institutions for the level of risk and interest rates or other factors are adjusted accordingly. Public institutions sometimes stand behind a veil of government and avoid such market assessment, with governments in fact bearing such risk. As a result, the government agency receives cheaper finance, giving it a competitive advantage over a private sector firm.

Where Local Government businesses receive cheaper finance because of a guarantee, then a guarantee fee should apply to the face value of debt outstanding. It may vary according to risk.

The levying of a guarantee fee is not only aimed at introducing competitive neutrality, but also encourages better debt management practices and recovers the cost incurred for financial risk.

However, many Local Government businesses may not be formally allocated a level of debt, let alone be assessed for risk. The application of debt guarantee fees may therefore depend upon the commercial relationship between the business and its owner government.

Private sector equivalent regulation

Regulation applying to Local Government businesses should be equivalent to that applying to competing private sector businesses.

The CPA refers, by way of example, to regulations such as those relating to the protection of the environment, and planning and approval processes.

Any State regulation or Local by-law which exempts a Local Government business activity from a particular requirement imposed on private sector competitors would be a restriction on competition.

Inquiries by the Joint State and Local Government Working Group suggest that Local Government businesses are covered by nearly all the requirements of State laws regulating business activities. This requirement is therefore unlikely to have a significant effect. Where government businesses are subject to other regulations or restrictions which do not apply to private sector competitors, these should be reviewed to consider whether they are in the public interest.

As part of the CPA, State and Local legislation which restricts competition will be reviewed, with the intent of removal or amendment of competitive restrictions. This policy element of competitive neutrality will be addressed as part of that process.

Application to particular local government activities and functions

Relevant sections of clause 3 of the CPA, which deals with Competitive Neutrality Policy and Principles, are reproduced in italics below, with a comment on how each subclause will be applied to Local Government.

The State Government will be considering whether and how to apply these principles to each of its significant business activities. In applying the principles to Local Government, the State Government is leaving it to Local Councils to apply the principles to the significant business activities they each conduct. Local Councils will be accountable for these decisions through the publication of annual reports and the jurisdiction of a competitive neutrality complaints mechanism to be established by the State Government.

The State Government, in consultation with Local Government, will review progress under this statement after July 1998, and may revise the statement if it has not achieved its objectives.

Clause 3 and its Application to Local Government

*(1) The objective of competitive neutrality policy is the elimination of resource allocation distortions an*sing 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.*

Subclause (1) defines the scope and purpose of the policy. It is based on a belief that competition in business will produce economic efficiencies, and that it is therefore in the interests of the community as a whole, as well as individual competitors, that competition should be fair.

The policy acknowledges the importance of other policy considerations, as well as economic efficiency and competition. When the Competition Policy Reform Bill 1995 and the draft intergovernmental agreements which make up the national competition policy package were introduced into the Senate, the second reading speech included these comments:

> In sectors such as education, health, welfare, community services and labour market programs where the public sector has, and will continue to have, a dominant role, the relevance of competition policies will be limited to those circumstances where enterprises are engaged in business activity. In most cases where this is an issue at all, this is a small part of their overall role, or ancillary to the provision of core services.
>
> For instance, government schools are not normally engaged in business activity. While they may be seen as competing with private schools (for students) this is not competition to earn revenue and profits, and is therefore not a "business" activity to which the competitive neutrality principles apply. Similarly, these reforms will not be relevant to public hospitals treating public patients or providing in-house hospital services, but may be relevant where those hospitals are treating private patients or operating commercial cleaning services. In these areas a public hospital would be directly competing with private firms.

The application of competitive neutrality policy and principles should be considered in the light of these comments.

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

The State Government is a Party to the CPA. It is therefore free to determine how it will implement the principles for its own business activities and, in consultation with Local Government, to Local Government business activities.

(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:

(The only such Local Government bodies in South Australia are electricity undertakings operated by the Councils of Coober Pedy, Roxby Downs and Hawker. These policies should be applied to those business activities if they are significant.)

> *(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 the GTE National Performance Monitoring);*

Where the corporatisation model is adopted for these entities, the CPA assumes that it will be appropriate to apply tax equivalents, debt guarantee fees and private sector equivalent regulation. However, an assessment of costs and benefits should still be carried out before each of these principles is applied.

> *and (b) the Parties will impose on the Government business enterprise: (i) full Commonwealth, State and Territory taxes or tax equivalent systems;*

The policy should be applied to the three electricity undertakings described above if a corporatisation model is adopted for them, unless the costs of implementation outweigh the benefits. Note that Local Government rates should be treated like all other taxes.

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

The policy should be applied to the three electricity undertakings described above if a corporatisation model is adopted for them, unless the costs of implementation outweigh the benefits.

> *and (N) 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.*

The State Government is currently preparing an Electricity Act to regulate all electricity providers operating in the State, including the three electricity undertakings outlined above.

Any regulation which applies less stringently to a government business than to private sector competitors is a restriction on competition. Under clause 5 of the CPA, each Party is required to review and, where appropriate, reform all legislation which restricts competition by the year 2000. This aspect of the CPA and its application to Local Government are dealt with later in this statement.

(5) Subject to subclause (6), where an agency (other than an agency covered by subclause ffi) *undertakes significant business activities as part of a broader range of functions,*

For other significant business activities which are undertaken by a Local Council as part of a broader range of functions, the CPA requires that the same principles be implemented where appropriate and where the benefits of implementation outweigh the costs.

An alternative course in the case of these businesses is for the prices charged for goods and services to take account of tax equivalents, debt guarantee fees and any advantage obtained through being subject to regulation less onerous than that applying to private sector competitors. Once again, these item * s should only be factored into prices where it is appropriate to do so and where the benefits of doing so outweigh the costs.

The definition of "business activity' is not always easy. If issues arise about the application of the Competition Code in Part IV of the Trade Practices Act to Local Government activities, courts will determine whether the Local Council was engaged in trade or commerce at the time. Although there is likely to be overlap, this is not necessarily the same thing as a "business activity for the purpose of applying this policy.

As noted earlier, the existence of a profit motive and/or of private sector competition is part of the notion of a "business act"". Conducting a business activity involving trading in goods or services. It therefore involves a transaction between a Local Government body and some other person or organisation, in which money or other value is exchanged for goods or services.

Once a business activity has been identified, it is then necessary to decide whether it is "significant". The timetable proposed for implementation of this policy statement requires Local Councils to give highest priority to business activities which have an annual revenue in excess of $2 million or employ assets with a value in excess of $20 million. Businesses of this magnitude are almost certain to be significant on any definition, and so the application of the principles to these business activities should be considered first.

This does not mean that other business activities of a smaller scale are not significant. Significance may also be affected by factors such as the impact of the business activity on actual or potential competitors and the effect of the business activity on the local and wider economy and on the Council's own financial position.

Councils will be expected to assess the significance of the business activities they operate on a case-by-case basis, over the next two years.

the Parties will, in respect of the business activities:

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

This section requires that each significant business activity be examined to see whether it is appropriate to:
• adopt a corporatisation model, or any of the elements of corporatisation, for it
• apply full taxes or a tax equivalent system to it
• apply debt guarantee fees to it
• apply private sector equivalent regulation to it.

It is likely to be appropriate to apply at least the key elements of a corporatisation model to a business activity which is conducted for primarily commercial reasons. For example, a road-building activity which offers its services to other people or organisations, apart from the government which owns it, is probably doing so for primarily commercial reasons. This is in contrast with a rural cemetery or a library, which a Council may be providing as a community service to local people, rather than for a commercial return.

With some business activities it may not be appropriate to apply these some elements of competitive neutrality policy because they are not common in the particular market in which the business operates. For example, in the aged care field most operators are non-profit and therefore not subject to tax. In this environment there is little point in a Council which operates an aged care facility introducing a tax equivalent system.

Tax equivalent systems, debt guarantee fees and private sector equivalent regulation are most likely to be live issues when there is actual or potential profit-based competition for a Local Council's business activity. The potential for significant harm to competitors should be a key issue to take into account when considering what policies to apply to each business activity.

or (b) ensure that 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.

Tax equivalent systems and debt guarantee fees can involve heavy accounting costs and so are only likely to be appropriate for larger business activities. This subclause suggests an alternative course which may be simpler to apply and achieve a similar result.

In applying this policy governments should consider the prices they charge for goods and services and examine the reasons why they are lower than those which might otherwise prevail in the market. Lower prices may be a result of several factors:

- a decision to subsidise the price from general Council revenue, because of a view that those who need the good or service could not afford to pay the commercial price;
- unfair competition, as a result of the Council not having to meet all the overheads of its competitors, in a market where consumers could afford the real price; or
- a genuine competitive advantage enjoyed by the Council.

The first case is an example of a non-business, non-profit activity under subclause (1) and as outlined in the second reading speech. In cases of this type it is unlikely to be appropriate to apply this subclause.

The second case **describes situations in which both the** competitors and the community are harmed by the inappropriate pricing; competitors because they lose business unfairly and the community because general revenue is being used to subsidise a good or service for which consumers could afford the real competitive price.

In the third case, the Council is entitled to the benefits of its greater efficiency. It would normally be appropriate to ensure that prices charged do reflect these overheads, so that competitors and the community can see that R is the efficiency which is producing the lower prices, not some unfair advantage.

In considering the issue of what reforms are appropriate for each significant business activity, decision-makers should bear in mind the objective of competitive neutrality policy. The elimination of resource allocation distortions implies that people may make different decisions about the way they use resources after reforms are implemented. It will be most appropriate to apply these principles where it is likely to have an impact on the choices people make, for example on how much electricity to consume, or on whether to contract out ~a service or provide it through in-house resources.

The greater the likelihood of competition in the field, the more chance there is th people will have real choices to make, which will be influenced by the application of these policies.

(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.

This is an over-riding provision which makes it clear that none of the policies should be applied where the net effect would be harmful. The CPA in clause 1(3) gives further guidance on the nature of this test:

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

(a) for the benefits of a particular policy or course of action to be balanced against the cost 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 heafth and safely, 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.

Consider as an example a Council which runs a meals-on-wheels activity. It could be said that this is in competition with a home-delivered fast food operation, and that it should be subject to tax equivalent systems to make this competition fairer. Perhaps in that case the provision of meals to the home-bound might be cheaper, and on straight economic grounds the policy would appear desirable. However, a cost-benefit analysis might take into account many non-economic factors relevant to the decision, such as the food preferences and nutritional needs of the consumers and the social benefit to both consumers and the volunteer meals-on-wheels providers of the regular contact they enjoy. This clause allows these matters to be taken into account in the final decision.

If a competitor makes a complaint to the *Competition Commissioner about a government's failure to apply one or more of these policies, the cost - benefit assessment may be important in persuading the Commissioner that the government's behaviour was appropriate in all the circumstances. The cost-benefit assessment of applying these principles to each significant business activity should be recorded and retained for this purpose.

(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.

This subclause concerns the application of private sector equivalent regulation to government businesses. Sometimes governments apply restrictions to their businesses which are not applied to private sector competitors. These may be community service obligations, or they may be designed to restrict the fields in which the business competes, perhaps to minimise risk.

Where these regulations or restrictions are imposed through Local Government regulation, the responsible Council may retain them if satisfied that they are appropriate. Where the regulation on a Local Government business activity is imposed by the State, the State Government will consider whether it is still appropriate, in consultation with Local Government.

(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.

The State Government will be publishing a policy statement on competitive neutrality similar to this one, outlining. how it Will apply these policies to its significant business activities, with a timetable.

For Local Government, the timetable will be:

By 30 June 1997:
Local Government bodies to:
- have identified all significant business activities they conduct; and
- have finished considering which principles of competitive neutrality will be applied to those business activities which have revenue in excess of $2 million per annum, or employ assets with a value in excess of $20 million;

By 30 June 1998:
Local Government bodies to have finished considering which principles of competitive neutrality will be applied to all significant business activities they conduct

By 30 June 1999:
State Government, in consultation with Local Government, to have reviewed the effectiveness of this policy statement and published a new policy statement.

By 30 June 2000
Local Government bodies to have ensured that all Local Government business activities are subject to the same local government regulations as those applying to the private sector, unless the community benefit requires otherwise.

The complaints mechanism will be provided through the Competition Commissioner, which will be established through legislation before the end of 1996. Persons who believe that they have suffered as a result of a failure by a State or Local Government business activity to comply with its policy obligations, as set out in these policy statements, will be able to have their complaints investigated.

Councils are also encouraged to establish their own mechanisms to investigate complaints about competitive neutrality. Where such mechanisms are established, any complaints to the Competition Commissioner about the behaviour of a Local Council will initially be referred to that Council for investigation. Only if the complainant is still not satisfied will the Competition Commissioner proceed to investigate the matter.

For business activities which have revenue in excess of $2 million per annum, or employ assets in excess of $20 million, the Competition Commissioner will investigate and report on:

- whether the Local Council complied with its obligation to consider by 30 June 1997 a competitive neutrality policy for the business activity concerned;
- whether that consideration was properly conducted; and
* whether the policy subsequently adopted was followed in the case of the complainant.

For all other significant business activities, the Competition Commissioner will investigate and report on the adequacy of the competitive neutrality complaints mechanism established by the Local Government body concerned.

(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.

Within two months of the close of each financial year, Local Government bodies will be required to provide the State Government data on actions taken to implement the then current policy statement and any allegations of non-compliance received by the Local Government body. These reports will be amalgamated and included in the State Government annual report on implementation of competitive neutrality.

STRUCTURAL REFORM OF PUBLIC MONOPOLIES

This section of the CPA applies to the introduction of competition to a sector traditionally supplied by a public monopoly and the privatisation of public monopolies. Its objectives are:

- to separate responsibilities for industry regulation and participation in that industry, in order to promote fair competition; and
- to encourage Governments selling or introducing competition to traditional monopoly businesses to consider ways of enhancing competition in the relevant market.

Since Local Councils in South Australia operate very few public monopolies, the clause will have limited application to them.

The CPA requires a Commonwealth, State or Territory Government considering privatisation or the introduction of competition to a traditional monopoly to conduct a review into specified matters. The purpose of this review is to ensure that the relevant issues which may lead to enhanced and fairer competition are considered.

Relevant parts of clause 4 of the CPA, which deals with Structural Reform of Public Monopolies, are reproduced in italics below, with a comment on how each subclause will be applied to Local Government.

The State Government, in consultation with Local Government, will review progress under this statement after July 1998, and may revise the statement if it has not achieved its objectives.

Clause 4 and its Application to Local Government

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

This subclause emphasises the right **of the State to determine** its agenda forreforming public monopolies, consistent with these principles.

(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.

An example of relocation of industry regulation is in the electricity industry in South .Australia. In the past ETSA enjoyed a monopoly as an electricity provider in much of the State and it was also responsible for issues such as the technical and safety standards of operating electricity. Now ETSA Corporation has been established as a corporation with a focus on the electricity business, and a new Electricity Act is being prepared, under which the Department of Mines and Energy will be responsible for regulation.

As noted above, very few Local Councils in South Australia operate monopoly businesses. The exceptions are mainly electricity, water and sewerage undertakings in remote and rural areas. Councils may exercise regulatory powers over these monopolies which could affect competition, perhaps through planning and development controls over the installation of infrastructure and facilities or the management of environmental impacts.

Corporatisation of the monopoly undertakings is one response to this problem. Separating the business into a stand-alone activity will ensure that it has no industry regulation responsibilities. However, some monopoly undertakings in remote areas may be so small that the costs of corporatisation outweigh the benefits.

An alternative course for Local Councils operating these monopolies may be to develop procedures for ensuring fair treatment for any potential competitor who comes under Council's regulatory jurisdiction. Appointment of an independent adviser or probity auditor in such cases would help. This would ensure that any decisions affecting the competitor were made on proper grounds, and not in order to protect the Council's existing monopoly from competition.

Decisions made on improper grounds may in any case be open to legal challenge or investigation by the Ombudsman.

(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.*

A monopoly situation may exist as a result of a law or because it is a natural monopoly.

A monopoly business which is the result of the operation of a law will be examined as part of the process of review and reform of legislation which restricts competition.

Natural monopolies occur when a business activity relies on infrastructure or facilities which can not be economically duplicated. An example is the provision of electricity, where a potential competitor is unlikely to be willing to invest in building a second transmission and distribution system. Structural reform can be used to separate the natural monopoly (the transmission system) from other parts of the business (selling or generating electricity). This is called vertical separation. Horizontal separation occurs when a monopoly business splits into two or more parts which compete with each other.

Certain Local Government business activities may be natural monopolies in the circumstances of the particular market in which they operate. For example, a waste disposal facility may be the only such facility within a reasonable distance in a more sparsely populated area, where the costs of establishing a second such facility would not be economically justified. Issues concerned with the privatisation of a monopoly may arise if a Local Government body decides to sell such a business.

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

The Local Government Act was under review before the adoption of NCP. That review will now take into account the State Government's obligations under the Competition Principles Agreement to ensure that laws do not restrict competition except where this is necessary for the benefit of the whole community.

Local Council by-laws will be reviewed by the relevant Council in each case.

Relevant parts of clause 5 of the CPA,* which deals with Review and Reform of Laws Restricting Competition, are reproduced in italics below, with a comment on how each subclause will be applied to Local Government.

The State Government, in consultation with Local Government, will review progress under this statement after July 1998, and may revise the statement if it has not achieved its objectives.

(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.*

The guiding principle requires that Governments consider the effect of the law on the whole community for which they are responsible. The benefits to particular sections of the community (eg local industry) or its quality of life (eg reduction in air pollution) must be analysed and evaluated against the costs which fall on other sectors (eg higher prices for consumers). It will not always be possible to put a dollar figure on the costs and benefits, but at least the effects of the law can be identified and the balance between them analysed.

As with evaluating the costs and benefits of imposing competitive neutrality policies, all relevant policy considerations should be taken into account in conducting a cost-benefit analysis, including those listed in subclause 1(3), which are: *government legislation and policies relating to ecologically sustainable development; social welfare and equity considerations, including community service obligations, government legislation and policies relating to matters such as occupational health and safety, industrial relations, access and equity, economic and regional development, including employment and investment growth; the interests of consumers generally or of a class of consumers, the competitiveness of Australian businesses, and the efficient allocation of resources.*

In addition to producing benefits to the whole community which outweigh the costs, a law which restricts competition must be the only way of achieving the relevant objectives. For example, the objective may be protecting consumers who need health services from harm caused by incompetent practitioners. To achieve that objective it may be necessary to ensure that persons delivering health care have been externally certified as having the requisite knowledge and skills. Preventing non-certified practitioners from providing health services must be the only way to ensure that health services are of a sufficient standard, in addition to the benefits in higher quality health care outweighing the costs in higher prices, if the legislation is to be justified under the guiding principle.

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

'The State is free to determine in what order it will review legislation and how it will zonduct the reviews.

The same freedom is extended to Local Government in reviewing Council by-laws during the life of this policy statement.

(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.

The State Government recognises that Local Government is currently undergoing a structural reform process, and it would be unreasonable to expect Local Councils, many of which may be differently constituted after the May 1997 elections, to begin the review of existing by-laws before that process is complete. Local Government authorities should advise State Government of existing by-laws which restrict competition by June 1997, with the timetable according to which they will review and, where appropriate, reform all the by-laws identified.

The Deregulation Office in the Department of Premier and Cabinet has developed guidelines to assist agencies to identify legislation which restricts competition. These guidelines identify two main ways in which legislation may affect competition:

- by restricting entry to a market; and/or
- by restricting competitive conduct within that market

The ways in which legislation may restrict competition include:

- creating a monopoly;
- restricting entry by limiting the number of producers or the amount of product;
- occupational or business licensing or registration systems;
- restricting entry based on product standard or quality;
- restricting entry for goods or services from interstate or overseas or another region, or giving preference to local producers
- restricting competitive conduct within a market such as price, hours of operation, advertising or the use of particular techniques or equipment;

allowing an administrative discretion which is traditionally used to limit competition, perhaps by treating some providers differently.

It is recognised that many good and necessary laws restrict competition. There are many cases where such a restriction is essential, in order to achieve a significant community benefit. However, the policy requires that all laws restricting competition should be identified, so that those community benefits and the necessity of the restriction can then be reviewed.

The reviews of by-laws will be conducted by relevant Local Government authorities, as part of their existing program of by-law review. These reviews must be consistent with the guiding principle and incorporate the specified terms of reference.

The Deregulation Office in the Department of Premier and Cabinet will be able to provide advice to Local Councils on methods of conducting reviews, if required.

(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).

This subclause imposes obligations on law-makers considering new legislative proposals. They must ensure that all proposed by-laws which restrict competition are accompanied by evidence that they comply with the guiding principle.

Local Government by-laws are laid before Parliament and may be disallowed by the Parliament on the recommendation of the Legislative Review Committee. In order to assist the Committee to consider proposed by-laws in the light of the State's obligations under the CPA, from 1 July 1996 Local Councils should provide the Committee with the required evidence of compliance with the guiding principle when putting forward new by-laws which restrict competition. These by-laws should be accompanied by a report containing evidence that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting. competition.

A complementary approach would be to amend the Local Government Act to specify how Local Government bodies should abide by these principles when exercising their delegated law-making powers. This issue will be considered in the review of the Local Government Act.

(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.

When a decision is made that legislation restricting competition complies with the guiding principle and should be retained, the date of the next review some time in the

next ten years should be determined. A consolidated timetable of legislation to be reviewed again in this way will be developed during 2000.

(7) Mere 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.

It is unlikely that any Council by-laws will have a national effect. However, particular by-laws may affect other Councils, in which case Councils may care to consider joint reviews.

(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 nonlegislative approaches.

This is an important subclause which sets out the issues each review must cover. These terms of reference should be included in the terms of reference for each review of legislation restricting competition, and each of them should be addressed in the written report of that review.

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

The Department of Premier and Cabinet will produce an annual report on the State's progress in reviewing and reforming legislation which restricts competition. An overview of progress in the Local Government sphere will be included in that annual report. The annual reports of individual Local Councils should also contain an account of the legislation reformed as a result of reviewing the costs and benefits of restrictions on competition.

REVIEW OF THIS POLICY STATEMENT

Any policy statement can become out of date as a result of changing circumstances, including changed policy objectives. It can also be improved as a result of experience. For this reason it is desirable that policies should be regularly reviewed.

This policy statement will be reviewed by State and Local Government by December 1998 and again by December 2000.

Review of the policy statement after about two years of operation will allow for finetuning and an assessment of whether it is achieving its objectives. As the CPA itself is to be reviewed after five years of operation, it would be appropriate to review the policy statement again after that time.

Nature of the review

Those reviews will consider:

- any changes to the CPA since this statement was published;
- the effectiveness of this statement in achieving the objectives of the CPA in the Local Government sphere;
- evidence of the costs and benefits of implementing this statement; and
- whether any further action is warranted to achieve the objectives of the CPA or improve their implementation-

The matters specified for the review are intended to be broad. They allow for a review of the implementation of whatever Intergovernmental Agreement may apply at that time, the adoption of additional or modified objectives by State and Local Government and consideration of the costs and benefits of action to date.

MONITORING IMPLEMENTATION OF THE CLAUSE 7 STATEMENT

In order to meet its obligations under clause 7, the State Government will need to monitor implementation of the statement and satisfy itself that satisfactory progress is being made in the application of the principles to Local Government. This information will also be useful to Local Government authorities, which will be able to benchmark themselves against their peers.

Mechanisms

The mechanisms for monitoring implementation of the clause 7 statement are:

Competitive Neutrality

- Local Government bodies will include in their annual reports information on:
  - application of competitive neutrality principles;
  - tax equivalent systems administered by the Local Government body; and
  - complaints received, with the outcome of the investigation into that complaint.

- The annual reports of the State competitive neutrality complaints mechanism will include data on complaints against Local Government bodies.

Structural Refonn of Public Monopolies

- Local Councils will advise the State Government when privatisation or the introduction of competition is contemplated for a monopoly, with a view to agreeing on an appropriate review process.

Legislation Review

- Local Councils will advise State Government by June 1997 of by-laws which restrict competition and the times at which they will be reviewed, for inclusion in the timetable to be developed by the State Government

- From 1 July 1996, Local Government authorities will include in their annual reports a progress report on the review and reform of by-laws which restrict competition.

APPENDIX TWO

NATIONAL COMPETITION POLICY - GENERAL INFORMATION

Why do we need a National Competition Policy?

All governments across Australia, be they Local, State, Territory or Commonwealth, are faced with the same problem - how to encourage the better use of resources to help achieve a higher standard of living for their constituents.

Lack of competition in key markets within the economy has been identified as a major impediment in this process of achieving more for less. Without competition, industries have less encouragement to operate at their optimum level, and may waste resources.

Through technological and other advances, Australia is now virtually a single national market, as opposed to a set of individual State/Territory or regional markets. As a result, we need a system of -regulating and encouraging competition which applies equally to all Australian businesses.

The State Government's vision for the economy emphasises increasing South Australian industries' focus on export markets. Greater competition within Australia is one means of reducing overheads and increasing efficiency which will support that drive.

The National Competition Policy is designed to increase competition for the benefit of the community as a whole. It is based on a belief that competition is generally desirable, but acknowledges the need for exceptions where it can be demonstrated on a case-by-case basis that it will not deliver socially beneficial outcomes.

Aims of National Competition Policy

The main aims of National Competition Policy are to:

- develop an open and integrated Australian market for goods and services by removing unnecessary barriers to trade and competition;
- ensure no buyer or seller in a market is able to engage in anti-competitive conduct against the public interest;
- as far as possible, apply the same rules of market conduct to all market participants regardless of the form of business ownership - that is, government business activities should not enjoy any net special advantages;
- ensure that regulation of business activities which restricts competition is subject to an assessment of the likely costs and benefits.

Benefits of a National Competition Policy

In a more competitive environment, businesses must provide a more attractive deal to their customers. For example, competition has been increased in domestic air travel and telecommunications. This has produced significant community benefits, including lower prices, a greater variety of products and better service.

The Industry Commission has estimated that, if fully implemented, National Competition Policy reforms will increase Australia's production efficiency by about $23 billion a year. This should result in lower costs, and more employment.

Key elements of National Competition Policy

To implement a National Competition Policy, a package of complementary laws and policy decisions was adopted by the Council of Australian Governments (COAG) at its 11 April 1995 meeting. COAG is made up of the Prime Minister, the Premiers and Chief Ministers and the President of the Australian Local Government Association.

The package contains new Commonwealth legislation amending the Trade Practices Act, proposed State legislation and three intergovernmental agreements. The package has seven policy elements, which are set out in Table 1. They can be summarised as:

- the extension to all business activities of the coverage of the Competition Code contained in the Trade Practices Act; and
- the reform of certain significant industries, currently largely operated by Governments, in order to introduce incentives similar to those which prevail in the private sector.

TABLE 1
National Competition Policy at a glance

Policy Element	Purpose	Example
Extension of coverage of Trade Practices Act	To limit anti-competitive conduct in business, no matter who is conducting the business concerned	The Competition Code (Part IV of the Trade Practices Act) will apply to all business activities, including those conducted by: • professions, eg lawyers • unincorporated small businesses • Local and State Governments
Third party Access to Infrastructure Facilities	To provide access, on fair conditions, to facilities essential for competition in a downstream or upstream market	Access for competing suppliers to facilities such as telecommunications cables, electricity transmission systems, railway tracks and gas pipelines.
Prices Oversight	To regulate the price of goods and services in a market where there is not enough competition.	Commonwealth Prices Surveillance Act as it applies to declared monopoly and near-monopoly businesses; Government Pricing Tribunal in NSW and Regulator-General in Victoria
Structural reform of public monopolies	To reform the structure of Government-owned Monopolies before Introducing competition or Privatising them	Removing industry regulatory functions from ETSA Corporation; Removing gas purchase powers and introducing access legislation to cover the gas pipeline formerly belonging to PASA, before it was sold.
Competitive neutrality policy and principles	To eliminate resource Allocation distortions arising out of public Ownership by ensuring they do not enjoy any net Competitive advantage	Introduction of tax equivalent payments for significant State Government businesses; Market pricing of Government goods and services for which a competitive market exists.
Legislation review	To review and, where Appropriate, reform all Legislation which restricts Competition	It will be appropriate to reform legislation which restricts competition (eg land use restrictions, occupational and business licensing) if the review shows that the benefits to the community as a whole do not outweigh the costs.
Reforms in electricity, gas, water and road transport	To implement COAG Agreements on enhancing free and fair trade in these Sectors	Introduction of a national market in electricity; Pricing reforms in water, Uniform national road charges

Misunderstandings about National Competition Policy

Many people in the community have certain ideas about what competition policy means. Not all of these are based on the package adopted by Heads of Government. That package contains many safeguards and opportunities for different policy objectives to be taken into account. This table outlines some of the common' misconceptions.

TABLE 2

Common misconceptions

Misconception	Comment
Competition at all costs	State Governments can exempt conduct from the Trade Practices Act Legislation restricting competition will be retained where justified by community benefit CPA provides for benefits of a course of action to be balanced against costs
NCP means privatisation	CPA states it is neutral on ownership of business enterprises and is not intended to promote either public or private ownership It does not require the State Government to excise any functions from the Local Government sector
Social and community goals will take second place to commercial and economic imperatives	CPA does not require that competition over-ride other public policy considerations Social welfare and equity considerations and community service obligations, among other things, are to be taken into account Local Government may still continue to subsidise particular business activities (however defined) from general revenue
NCP requires competitive tendering for government activities	Neither the legislation nor the Agreements contain any obligation to impose outsourcing requirements on Local Government or to introduce competitive tendering
Local Government has not been consulted about the policy or its impacts	The ALGA is a member of COAG. It endorsed the principles of the Hilmer Report, along with other Heads of Government at their February 1994 meeting, and participated in the drafting of the legislation and Agreements which make up the April 1995 package. In South Australia, Local Government has been extensively consulted about this statement, which has been prepared by a Joint State and Local Government Working Group, after all Local Councils had an opportunity to comment on a draft.

Implications for Local Government

Local Government will be affected by National Competition Policy through:

- the application of the Competition Code, or Part IV of the Trade Practice Act, when it is carrying on business, as that concept is defined by the courts; and
- the CPA, whose principles the State Government is obliged to apply to Local Government as appropriate and only where the costs of doing so are justified by the benefits.

Clause 7 of the CPA requires the State Government to publish a statement, prepared in consultation with Local Government, specifying the application of certain competition principles to particular Local Government activities and functions. These principles are:

- competitive neutrality policy and principles
- structural reform of public monopolies
- review and reform of legislation restricting competition.

Structural reform of public monopolies is of little significance for Local Government authorities in South Australia, -as they run very few monopoly businesses. The most significant areas for most Local Government bodies will be the application of competitive neutrality policy and principles and review and reform of laws, including by-laws, restricting competition.

The clause 7 statement contained in this document leaves most decisions on the implementation of the competitive neutrality policy and principles to individual Local Government bodies. Some guidance is provided on appropriate approaches. A priority order for considering the application of the principles is outlined, based on the size of the business activity concerned. The adoption of annual reports and a complaints mechanism covering competitive neutrality will ensure accountability.

The obligation to review and reform legislation which restricts competition will be built into existing programs for promulgating and reviewing Local Government by-laws. Relevant criteria may be incorporated into the Local Government Act, as a result of the current review of that Act.

For further information or advice and support in applying the clause 7 statement, please contact the:

Local Government Association
16 Hutt Street, Adelaide, SA 5000
Telephone 08 224 2000
Fax 082242099

To provide feedback or comment on the policy statement, for use in the review of the statement, please contact:

Executive Director, Local Government Reform GPO Box 667, Adelaide, SA 5001
Telephone 08 207 0640
Fax 082070685

APPENDIX THREE

COMPETITION PRINCIPLES AGREEMENT

COMPETITION PRINCIPLES

AGREEMENT

BETWEEN

THE COMMONWEALTH OF AUSTRALIA
TTIE STATE OF NEW SOUTH WALES
THE STATE OF VICTORIA
THE STATE OF QUEENSLAND
TIHE STATE OF WESTERN AUSTRALIA
’111E STATE OF SOUTH AUSTRALIA
’113E STATE OF TASMANIA
THE AUSTRALIAN CAPITAL TERRITORY, AND
THE NORTHERN TERRITORY OF AUSTRALIA

COMPETITION PRINCIPLES

AGREEMENT

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;

TBE 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 taken 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

G) 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 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 from 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 ReforTn 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 ob ectives for the public monopoly; j

(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 AM 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 objective 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 ~ 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 in 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) 'Me 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 sigfficant 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 cannot be reached, 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 right 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 requirements 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 cannot 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 ownes 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 arising from increased competition in upstream or downstream markets;
(iii) the economic value to the owner of any additional investment that the person seeking access or the owner has agreed 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;
(i) the owners 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.

(1) 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 of 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 lodal 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. (I)The work of the Council (other than work relating to a function under Part J11A of the Trade Practices Act or under the Prices Surveillance Act 1983) win 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 IELA 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 *conferring 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 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 " 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-

Signed for an on behalf of the Parties by:

The Honourable Paul John Keating,
Prime Minister of the Commonwealth of Australia,
on the 11th day of April 1995
in the presence of.

The Honourable Robert John Carr,
Premier of the State of New South Wales,
on the 11th day of April 1995
in the presence of.

The Honourable Jeffrey Gibb Kennett,
Premier of the State of Victoria,
on the 11th day of April 1995
in the presence of:

The Honourable Wayne Keith Goss,
Premier of the State of Queensland,
on the 11th day of April 1995
in the presence of:

The Honourable Richard Fairfax Court,
Premier of the State of Western Australia,
on the 11th day of April 1995
in the presence of:

The Honourable Dean Craig Brown
Premier of the State of South Australia,
on the 11th day of April 1995
in the presence of: