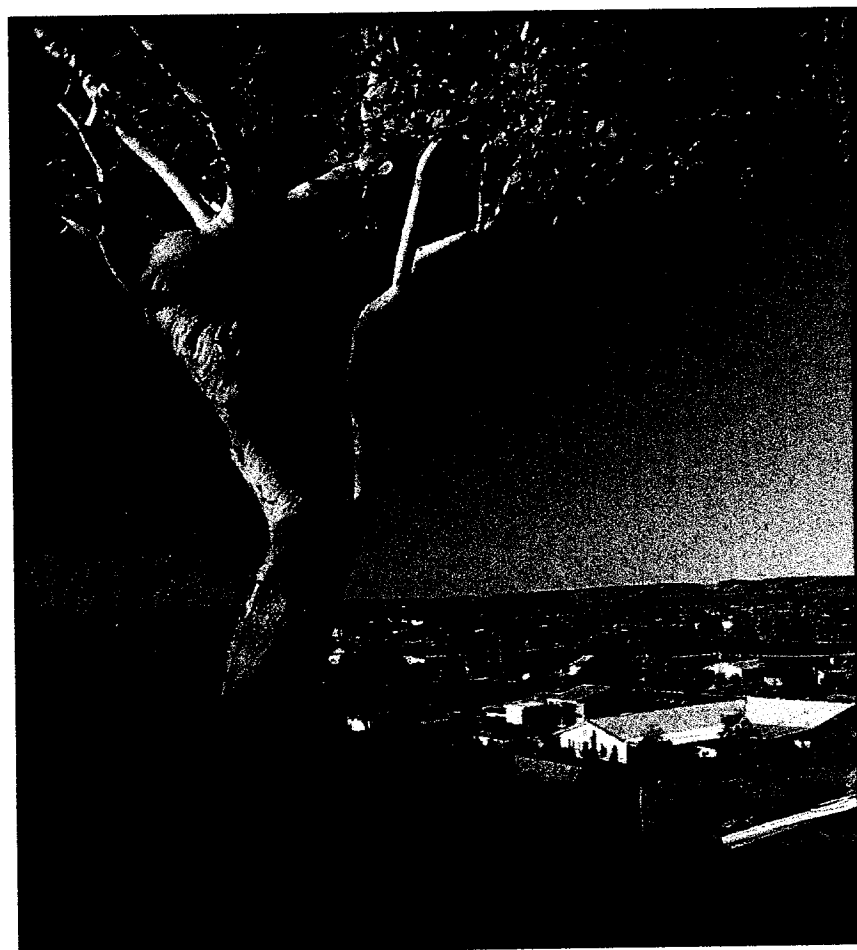


**NORTHERN TERRITORY GOVERNMENT
SUBMISSION TO THE
PRODUCTIVITY COMMISSION INQUIRY:**

**IMPACT OF COMPETITION POLICY
REFORMS ON RURAL AND REGIONAL
AUSTRALIA**



NOVEMBER 1998

INTRODUCTION

The Northern Territory has a relatively small, highly dispersed population. It is separated by vast distances from other Australian markets. These factors reduce the extent of competition in the local market. In turn, this reduces the benefits that the Territory can obtain from National Competition Policy reforms.

The Productivity Commission's inquiry focuses on rural and regional Australia. It is therefore relevant to the NT from two perspectives:

- a significant proportion of the Territory's population lives and works in remote areas. In many remote areas, competition in the delivery of services such as electricity and water is unlikely to be economically viable even in the long term; and
- Darwin itself is an isolated area.

The Northern Territory Government is pleased to note that the Productivity Commission intends to take account of the particular circumstances of Darwin as a smaller and more remote capital city. The Territory's small internal market means there are fewer opportunities to benefit from economies of scale. In addition, long distances from the rest of Australia reduce the Territory's ability to benefit from some competition reforms. These include national electricity market reforms and, to a large extent, those gas reforms that apply to areas where there are multiple suppliers and multiple pipelines (such as in south east Australia).

Thus, while the inquiry is very relevant to the Territory, many of the questions raised in the issues paper have only limited application to the Territory due to the factors highlighted above. The following sections respond to those questions of most relevance to the Territory.

The impact of National Competition Policy on rural industries

In broad terms, the Commission is seeking information on the application of the Trade Practices Act and the legislation review program to country Australia.

How does the exposure, or potential exposure, of rural industries to the full range of competitive conduct rules affect:

- *consumers, producers and industries in country and metropolitan Australia?*
- *prices of inputs used by country producers and product prices for country and metropolitan consumers?*
- *incomes of country producers and consumers?*
- *the structure and competitiveness of industries and markets important to country Australia?*

What are, or will be, the social impacts of the legislation review program and Trade Practices Act reforms on rural industries? For instance, are they having a positive or negative effect on business costs, investment and employment?

Increasing Competition

The Territory has freed up markets such as regional air services and has outsourced the provision of road construction and maintenance activities. Implementation of these polices began before the NCP was introduced but they do demonstrate the results of deregulation.

Experience from deregulating regional air services is that these services have continued to be provided (and in fact services to some communities may have improved) despite concerns prior to deregulation that services would end.

The move to outsourcing road construction and maintenance services was accompanied by concern that local employment would be adversely affected. While the day labour positions have gone, experience has shown that local companies have been established and have been successful in winning contracts for road work, thus maintaining a local employment base.

Building repairs and maintenance have also been outsourced resulting in a healthier and more competitive building trades industry. This has made available in the broader community skills which may not have been previously available (for example, outsourcing of air conditioning repairs has meant previous in-house Government expertise is transferred to the private sector and then becomes available to the wider community).

In the case of open tendering the NT Government has found that the packaging of tenders is critical. If small jobs that could be handled by locals are included in tenders that they have no chance of winning (such as where major equipment or expertise is

required), then that work is lost to the locals. However, if the small jobs are bid separately (or combined into packages that are "winnable" by locals), then the local firms can bid and stand a chance to win the work. Such an approach can be cost-effective in the longer term. The maintenance of local skills and expertise is essential for rural and remote communities in the Northern Territory. This is not only for economic reasons but often, more importantly in remote areas, for social reasons.

Reform of Government Businesses

Reform of government businesses in the Territory has been accelerated by the introduction of NCP. Since 1995, the Territory Government has been implementing a set of policies designed to improve the efficiency of operation and management of government businesses generally.

The central objectives of the process have been to encourage an increased commercial focus for business-like activities and to provide appropriate structures and incentives to pursue efficiency and cost effectiveness in service delivery. Additionally, the identification of all costs involved in the provision of services allows users and producers to recognise the full costs of delivering services. This promotes efficient resource allocation.

Within this framework, the provision of explicit Community Service Obligations (CSOs) provides the opportunity for the Territory Government to ensure that certain non-commercial activities are carried out and to address regional concerns in a way that is consistent with NCP. For example, in the case of the Power and Water Authority, the Government provides CSOs for Aboriginal Essential Services. These involve the delivery of electricity, water and sewerage services to remote communities.

The National Competition Policy- related infrastructure reforms

A. Electricity

To what extent are the changes affecting:

- *the price of electricity in country and metropolitan Australia?*
- *the quality of electricity supply and associated services (e.g. connection)?*
- *business and employment opportunities in country Australia?*

Is competition policy reform bringing about a realignment of prices between different classes of customers? Who are the major beneficiaries and losers and how are they being affected?

In July 1998, the Territory reduced the cross subsidy in electricity prices from the commercial/industrial sector to the residential sector. The effects on regional and remote areas were mitigated by retention of Territory-wide uniform tariffs, partly funded by Community Service Obligations.

In its 1998-99 Budget, the Government announced a comprehensive review of all aspects of the Power and Water Authority (PAWA). This includes PAWA's future direction, ownership, the separation of regulatory and commercial functions, establishment of access arrangements and other relevant issues.

The review is yet to be finalised. It is therefore too early to draw conclusions about the benefits and costs of reform for rural and regional areas.

One issue that has arisen in the electricity market, due to the Territory's small population base, is the conflict between realising economies of scale and introducing competition. For example, it is generally accepted that plant level economies of scale in electricity generation exist up to at least 600 to 800 MW capacity. But, even in the Territory's largest system, the Darwin-Katherine grid, peak loads are less than 200 MW.

In addition, in smaller systems such as the Territory's, reliability of supply and the volatility of load necessitate a combination of smaller plants to guarantee service levels. Other evidence suggests that the efficient scale for electricity distribution systems occurs at around 1.5 to 2 million customers. PAWA has around 66 000 electricity customers spread over a number of individual distribution systems. The largest such system operated by PAWA (the Darwin-Katherine system) has 46 000 customers.

The vast distances between the Territory's regional centres and other Australian markets means it is uneconomical for the Territory to connect to the national electricity grid. This deprives the Territory of the opportunity to benefit from reforms in the national electricity market. The Industry Commission estimated that electricity reforms would account for around one quarter of the total benefits of NCP.

B. Gas

How are moves toward an integrated and more competitive gas industry affecting:

- *the price and quality of the supply of gas in country and metropolitan Australia?*
- *suppliers of alternative energies?*
- *the location decisions of major energy users?*
- *the costs of businesses in country Australia?*

Who are the major beneficiaries and losers and how are they being affected?

Natural gas in the Northern Territory

The current sources of natural gas in the Northern Territory are the Mereenie Oil and Gas field and the Palm Valley Gas field, both located south-west of Alice Springs.

The Palm Valley producers supply natural gas to the Power and Water Authority in Alice Springs, the majority of which is used for electricity generation in Alice Springs and Yulara. The remainder is on-sold by PAWA to Boral Energy Ltd for reticulation to

approximately 600 domestic, commercial and industrial customers in Alice Springs via the Envestra Ltd owned distribution system.

Natural gas from the Palm Valley gas field and the Mereenie oil and gas field is transported north to Darwin via a 1512 km high pressure transmission pipeline operated by NT Gas Pty Ltd. The majority of the gas produced is purchased by PAWA for generation of electricity in Tennant Creek, Katherine, Pine Creek and Darwin. A gas spurline from Daly Waters to McArthur River supplies fuel for a power station supplying electricity to the McArthur River Mine.

Gas Reform in the Northern Territory

The *Gas Pipeline Access (Northern Territory) Act* commenced in 1998 and represents a key component in the reform of the gas sector.

Commencement of this legislation is in accordance with the Northern Territory's obligations under the Natural Gas Pipelines Access Agreement, signed by the Commonwealth, State and Territory Heads of Government in November 1997.

The legislation provides for a legally enforceable right for third parties, such as suppliers, retailers and users, to negotiate access to pipelines for haulage services on terms and conditions which are fair and reasonable to both access seekers and pipeline owners.

In accordance with the provisions of the legislation, service providers (owners/operators of natural gas transmission and distribution pipelines) are to lodge with the relevant regulator (the Australian Competition and Consumer Commission) their proposed Access Arrangements by December 1998.

Effects of Gas Reform

The development of an integrated national gas market and an interconnected pipeline grid across various jurisdictions may result in lower energy costs for Northern Territory consumers in both the domestic and commercial markets in the longer term. The lower costs are expected to accrue from both the direct competition to existing producers and retailers of natural gas from interstate producers and retailers, and from the possible introduction to the market of natural gas from new producers in the Timor Sea.

At present, it remains uneconomic for the Territory to connect to the national gas market. As with electricity, the Territory has therefore been unable to gain the benefits of NCP in relation to gas.

In the longer term, reduced costs for natural gas may have a downward effect on electricity prices in the main centres in the Northern Territory, which rely on natural gas for electricity generation. These reduced costs will not translate to savings outside the main centres where electricity is produced via diesel generators.

C. Water

*How is ongoing water reform affecting consumers and industries in country Australia?
Are there likely to be adjustment costs?*

What are the environmental impacts in country Australia of the reforms?

*How is the removal of cross-subsidies in water charges affecting water rates in
country towns and in metropolitan areas?*

Which activities are likely to contract or expand as a result of the reforms?

*Has the capacity to trade water entitlements helped to ease the financial problems of
farmers/graziers?*

In July 1998, the Territory introduced a two-part tariff structure to charge for water. The effects on regional and remote areas were mitigated by retention of Territory-wide uniform tariffs, partly funded by explicit CSOs.

As noted above in the comments under "Electricity", in its 1998-99 Budget, the Government announced a comprehensive review of all aspects of PAWA.

As the review is yet to be finalised, it is too early to draw conclusions about the benefits and costs of water reform for rural and regional areas.

D. Road Transport

*How is road transport reform affecting businesses and consumers in country Australia
and the Australian community as a whole?*

Have there been changes in the cost and service quality of road transport?

*Have the regulation arrangements become more efficient? Is there evidence of
improved road safety in country Australia?*

The Territory continues to be involved in the National Road Transport Reform process. In part, the reforms involve improving the consistency of road regulations between the States and Territories. To the extent that this reduces the cost of road transport (for example, by reducing transport operator compliance costs), the Territory as a whole, and in particular rural and remote areas within the Territory, stand to benefit. This is particularly the case given the Territory's dispersed population and distance to other markets.

However, other elements of the reforms may have added to the cost of road transport. For example, the introduction of uniform heavy vehicle charges, while justified to ensure an appropriate degree of cost recovery for roads, is likely to have added to overall road transport costs. The impact of these changes is likely to have been greatest in rural and regional areas. While in some regions the effects would be

mitigated by the availability of alternative transport modes, as yet there is no competition from rail transport within the Territory.

E. Access

Access Regimes (for instance under Part IIIA of the *Trade Practices Act*) introduced under NCP may impact negatively on infrastructure opportunities in remote and regional Australia. Experience in the Territory with the Adelaide to Darwin rail project highlights this concern.

The Northern Territory and South Australian Governments are in the process of selecting a preferred consortia to build, own and operate the Tarcoola to Darwin railway line for a period of around 50 years, with the transfer of the line back to Governments at the end of the concession period. The bid process is being managed through the AustralAsia Railway Corporation, a statutory body owned by both Governments.

As part of the request for submissions process, the bidding consortia have had to consider alternative access arrangements that might apply to the line. For the private sector to commit to the project, a measure of certainty is required in terms of the use of the facility in order to protect the investment. If this certainty is not available, the likelihood of a successful outcome decreases. Should the result be that the railway not proceed, arrangements designed to increase competition (with road and sea transport to northern Australia) would in fact have the opposite effect.

The possibilities for catering for access for the railway project are as follows:

1. Do nothing

Under Part IIIA of the *Trade Practice Act*, the risk of doing nothing is that the infrastructure may be 'declared' on the recommendation of the NCC to the Federal Treasurer, potentially opening up the project to use by third parties on terms unacceptable to the owner-operator. Financiers may have a relatively high risk perception of such an outcome, and would factor this into their threshold requirements for the project, lifting the required return on equity estimations to potentially unobtainable levels for this project.

2. Change *Trade Practices Act*

This approach would require special consideration for the project under the *Trade Practices Act*, probably requiring a change in that Act which may be difficult to achieve.

3. ACCC

A number of discussions have occurred with the ACCC since 1997, with a view to putting in place the principles of an 'access undertaking' which would preclude the project from being 'declared'. More recently the ACCC has made it clear that the Commission can only deal with the preferred consortium in putting in place an access undertaking for the project. This precludes the 3 short-listed consortia from individually seeking an access undertaking from the ACCC during the

detailed submission phase, in order to give financial institutions the certainty they require in regard to access as part of committing to fully underwritten bids.

4. NCC

The only remaining avenue is to pursue a Territory/South Australian legislative regime, and to seek NCC certification that the regime is 'effective'. Like the ACCC 'access undertaking' process, this would preclude third parties seeking 'declaration' of the infrastructure.

In these circumstances it is proposed to establish complementary access regimes in the Territory and South Australia through legislation, and to seek certification from the NCC that the regime is effective. It is essential that the process be successfully negotiated by February 1999, the date when detailed submissions from consortia are due.

In summary, the existing arrangements for access are motivated around existing infrastructure and take no account of the pioneering nature and special risks associated with new infrastructure. This is likely to have an adverse effect on development in regional Australia.

Reform of government monopolies

Telstra

In July 1997 the Federal Government introduced the *Telecommunications Act*. The intention of the Act was to ensure that there would be no regulatory barriers to new suppliers entering the market. The industry would be self-regulating, with heavy fines imposed on carriers that engaged in anti-competitive conduct.

There are 25 licensed carriers in Australia. While many of the 25 resell long distance services in the NT, only one provides local call services. Competition is marginally stronger in the Internet Service Provider area with a number of local and interstate companies providing competitive services. However, the majority of these rent their services from a single carrier, Telstra.

What has been the impact in country and metropolitan Australia of the introduction of competition in telecommunications services in terms of costs and service standards?

It has been the experience of the Northern Territory Government that changes to cost and service provision have been demand driven rather than supply led. For example, Cutler and Company produced a report that estimated Territory businesses pay up to a 30 per cent premium for telecommunications services over that paid by south east Australian businesses. This was based on the existing price structure and the frequency of calls made outside the immediate location of the business.

For example, a business located in south east Australia may make 80 per cent of its calls within a 50 kilometre radius, while a Katherine business may make only 40 per cent of its calls within the same radius. If the majority of the remaining calls are made on an STD basis, then clearly the Katherine business incurs proportionately more calls at STD rates. This results in a significant percentage of daily telecommunication transactions incurring long distance charges, which are calculated on a timed call basis.

Since these findings, Telstra has dropped its charges, by redefining the STD zones, to those in line with the Eastern States.

The provision of domestic and business access to high bandwidth services, such as Integrated Services Digital Network (ISDN), is currently not based on an equitable cost structure. The rent on ISDN lines is three times that of a normal Public Switched Telephone Network (PSTN) line, yet the cost of provision is similar. The cost structure needs to be based on local call access, rather than on STD rates.

Moreover, price structures are "historical", being based on Telstra's legacy analog network, and do not reflect "cost structure" under today's primarily digital networks. Hence it is often more economic for the customer to build infrastructure rather than use Telstra. For example, it is cheaper for the Territory Government to build its own microwave links than to hire data capacity from Telstra.

Improvements in the service to customers in the telecommunications sector are of particular importance to consumers that reside in rural and remote Australia. It has been the experience of the NT Government that technical advice, product information and pricing information on new products are slow or inadequate. For example, a Government agency had been forced to wait for six months for information on the Telstra ATM product.

Many billing mistakes have been detected. Telstra recently refunded \$250 000 for billing errors on one product alone to a Government agency. The complexities of Telstra's product make it nearly impossible to detect charging errors.

Calls to the Cyclone Warning and Information emergency number should remain free to the consumer in the same way as calls to 000 are. With Australian Communications Authority's changes to the numbering scheme, many free Dial-it services were abandoned and calls to the new 1900 cyclone warning number are now at premium rates to Territory consumers.

Has a more competitive communications sector helped some businesses to remain, or locate, in country communities?

What has been the effect on employment opportunities?

At a general level, it appears that local business has been stimulated through the retailing of mobile phones and paging services. Conversely, as Telstra provided the majority of employment opportunities in the local telecommunications sector, the total number of jobs appears to have decreased due to Telstra downsizing.

Is there sufficient competition in the provision of telecommunications services in country Australia to achieve lower costs and good service?

This question is partially answered by the statements presented under the Cost and Service questions above. A more comprehensive answer needs to address the impact of several initiatives currently being undertaken by the Northern Territory Government. Dependant upon the outcome of these initiatives, competition through an open tender process for the provision of advanced communications services may result in lower costs and better services to the Government and Territorians.

The Northern Territory Government is currently in the process of seeking tender responses to two significant telecommunication services. The first is the Darwin Central Business District Fibre Optic Project. The second is the Advanced Communications Strategy.

The outcome of these tenders will reflect the level of competition between telecommunication carriers for business in the Northern Territory.

As reflected in these tenders, the Northern Territory Government is actively pursuing a policy of open competition with the aim of reducing costs and improving service. The Northern Territory Government is keen to ensure that Territorians have access to advanced telecommunications services on an equitable basis. In this sector, cost determines the level of service, not technical feasibility, and hence it is the primary concern of Government.

A number of future developments have been identified that will definitely impact on the level of competition currently experienced by the existing telecommunications carriers. The most significant will be the introduction of global satellite systems offering advanced voice and data services. Two currently licensed carriers with this potential are Iridium South Pacific and PanAmSat Asia Carrier Services.

Cable companies may offer another potential service. Windytide, through its ownership of Austar, currently provides cable television services to residents in Darwin. This service may be extended to other voice and data services.

Another significant initiative aimed at providing remote and rural Territorians with access to advanced telecommunication services is the Electronic Outback Project. Many communities in the Territory are currently using antiquated services. The Electronic Outback project will lay the groundwork for providers of services such as Internet and EFTPOS through fibre optic cabling and satellite facilities.

Beyond stimulating private sector demand and uptake of alternative technologies, the Northern Territory Government has identified the electronic delivery of Government services as a potential area of major benefit to rural and regional Territorians. In recognising the potential benefits of Electronic Service Delivery (ESD), the Government has called for 'Requests for Proposal for Electronic Service Delivery'. This is the first step in determining the requirements of providing ESD to all Territorians.

Commonwealth, State, Territory and Local Governments are all considering using ESD in the provision of information and services to the public. Organisations such as The Online Council, National Office of the Information Economy, and the Single Entry Task Force are all involved in moving government information and services online.

The extent to which telecommunication conditions change over the entire breadth of the Territory will be a clear indication of the impact of the Competition Policy Reforms on rural and regional Australia. The impact to date has been marginal. However there exists the potential for some significant change in the short to medium term.

Australia Post

The Northern Territory Government raised the following issues as part of its submission to the National Competition Council's (NCC) Review of the *Australian Postal Corporations Act*:

- a reduction in the level of reserved services provided by Australia Post will impact rural and remote Australians to a greater extent than people in metropolitan areas;
- the provision of a universal service order at a uniform rate allows rural and remotely located businesses to compete on a relatively equal footing in the Australian and global markets;
- maintenance of cross-subsidy funding policies assists Australia Post to provide equitable services throughout Australia;
- the definition of a letter should either be expanded to include all packages or the Community Service Obligation should be amended to include the delivery of all packages; and
- the Northern Territory Government does not support deregulation of the postal delivery market if, as indicated in the Options Paper, services would be reduced and costs increased to rural and remote Australians and their respective State and Territory Governments.

What has happened to postal services in country Australia? What are the expected benefits and costs of further reform to Australia Post for country Australia?

Since the NCC Review, Australia Post has actually increased the number of outlets in the Territory. Several Licensed Post Offices (LPOs) have been opened in rural and remote communities, the latest being in Yuendumu. Additionally, a number of existing outlets have been significantly upgraded. The Northern Territory as a whole is considered a growth market.

The expected benefits may come in the form of reduced costs to consumers through competition with private industry. However, country Australia is considered a low profit market with the existing price structure only maintained by the Community Service Obligation. As more than half of Australia Post's postal outlets are located in rural and remote communities, it is difficult to see how existing services can be maintained under a more open market environment.

Have alternative technologies (e.g. internet, EFTPOS) and/or the development of Australia Post counters in other businesses helped to offset closures of country post offices?

Online provision of government services (as highlighted in the previous section), once available to all Australians, would remove the need for Australia Post to provide many current services which are outside its CSO. Conversely, Australia Post currently offers services in the field of digital signatures and digital IDs. These services, coupled with other encryption-based technologies, will be of great benefit to rural and remote Australians in the near future. Australia Post is ideally positioned to provide these services.

Decisions to reduce Australia Post services based on ESD need to ensure that rural and remote Australians have access to ESD. For example, under the Universal Service Obligation (USO), Telstra is committed to servicing 97% of Australians with a phone service by the year 2000. It is the remaining 3% who are outside of the USO who will be the same people to be affected by the withdrawal of Australia Post services. These same people will not have the option of electronic bill paying or telephone banking services. Given the high proportion of Territorians living in remote areas, it is reasonable to expect that NT residents will be over represented in the 3% of Australians outside the USO.

Competitive neutrality and local government

As required, the Northern Territory has developed and published a policy statement on the application of the Competition Principles Agreement to local government. However, there continue to be no local government business activities in the Northern Territory.

On 21 August 1997 the NCC President wrote to the Chief Minister of the Northern Territory regarding the exception of the NT by the NCC from further examination of progress with reform implementation at local government level.

Due to the small size of the populations served by local governments, councils or associations, in many instances there is no alternative local supplier with which the council could compete. Further, the size of many of the communities is not sufficient to support a private business conducting council activities. That is, individual functions may not be economically viable and require the support of council.

Where a local supplier exists, or the market is of sufficient size, councils have generally taken the opportunity to sub-contract services. For example, garbage collection has been successfully subcontracted in many municipal councils. However, despite increased contracting out, there is still little competitive tendering occurring due to limited numbers of suppliers.

What are the major costs and benefits associated with the application of competitive neutrality at the local government level in terms of the quality and cost of services?

To date, there is little quantitative evidence regarding the cost impact of contracting out of services. However, councils generally feel that the use of contractors has resulted in cost savings for the councils.

What have been the social impacts? Have there been employment repercussions?

In remote communities, the council is not just the major employer, it is often the only employer. The only alternative supplier would be from the closest major centre, with a corresponding impact on local employment and training opportunities. Moreover, there would be flow of cash and subsequent purchasing capacity out of the community.

Further, the nature of council operations in remote communities is such that the council carries very high community service obligations which are neither properly costed nor funded. Consequently, remote councils rarely generate normal rates of return. If councils were required to generate normal rates of return, many of the agency functions, such as banking, post office, health centres, which invariably operate at a loss, would be targeted, with consequent social impacts.

The average income in remote communities in the Territory is less than \$11 000 (ABS 1996 Census), so the capacity to absorb increased costs of council services which might result from full attribution of costs in pricing regimes is extremely limited.

Has the application of competitive neutrality provided opportunities for new operators to provide services to councils?

There has been no evidence that the introduction of competitive neutrality has provided opportunities for new operators to provide services to councils. Given the size of the markets in many councils, it is felt unlikely that new operators would find it cost-effective to establish in the smaller centres.

Distributional issues

What evidence is there of different economic and social effects of NCP reforms in country and metropolitan areas of Australia?

If there are differences, what measures may be taken to facilitate the flow of benefits to country Australia?

The Agreement to Implement the National Competition Policy and Related Reforms states that "local government will benefit from the link between the State and Local Government FAGs [Financial Assistance Grants] pool". The Northern Territory notes

that in 1997/98 the Commonwealth Treasurer determined not to index local government funding in line with increases in FAGs for population growth. Whilst the Treasurer's 1998/99 determination includes an adjustment for population growth, the base funding for local government has been reduced because of the 1997/98 decision.

Other issues

Implementation Costs

The Territory is continuing to review restrictions on competition in its legislation. However, as with administration of other NCP issues, such as competitive neutrality, diseconomies of scale are an issue in this process.

The cost and time taken to complete the tasks in most cases are not affected by the size of the population, but by other factors, such as the number of government businesses or the amount of legislation to be reviewed. For example, in per capita terms the Territory has more legislation to review than any other jurisdiction (Table 1).

Table 1: LEGISLATION TABLED FOR REVIEW BY JURISDICTION

Jurisdiction	Approx. Volume of Legislation to be Reviewed	Legislation per 100 000 head of population
NSW	200	3.3
Vic	400	8.8
QLD	125	3.8
WA	290	16.7
SA	180	12.2
Tas	141	29.8
NT	81	47.0

Source: National Competition Council, Legislation Review Compendium, April 1997

As requested by the Commission, a copy of the *Guidelines for Legislation Review*, issued by the Department of the Chief Minister in 1996, are at Attachment A.

Is there a lack of competition in some areas of the distribution of food and petroleum products that could be addressed through NCP?

There is no doubt that the high food and petrol prices in remote communities are to a large extent due to a lack of competition in those markets. However, again given the size of the markets, it is difficult to see how NCP could contribute to reducing these costs.

Does NCP lessen or worsen regional concerns about other aspects of the microeconomic reform agenda - for example, deregulation of banking and petrol prices?

As reported by the Australian Institute of Petroleum on 15 October 1998, for September 1998, Alice Springs had the highest average cost per litre of unleaded petrol of the 100 country towns surveyed. Freight costs and the lack of an independent refinery in the NT were given as the reasons for the price disparities.

Whilst the price per litre of petrol in Darwin was relatively high for September (75 cents per litre compared with Brisbane, the cheapest in the survey, at 58 cents), some reduction is expected in subsequent months as a result of the recent opening of Woolworth's Petrol Plus.

CONCLUSION

This submission has endeavored to draw to the Productivity Commission's attention the unique nature of the Northern Territory. Not only is its capital city, Darwin, remote from other major cities, but many Territorians live in extremely remote locations where the benefits of National Competition Policy have little or no opportunity to penetrate.

An over rigid application of NCP would not necessarily be in the best interests of developing a productive and efficient rural and regional Australia. As outlined in this submission, some communities may not have sufficient businesses in a particular sector to enable competitive tendering. Administrative costs are incurred if community management has to identify potential external suppliers just to satisfy NCP processes.

Of particular concern are the difficulties being encountered by the Adelaide to Darwin rail project in establishing a conforming access regime. For the private sector to commit to this huge project, a measure of certainty is required in terms of the use of the facility in order to protect the investment. If this certainty cannot be delivered the project may not go ahead. This could not be seen as a beneficial outcome for rural and regional Australia.



NORTHERN TERRITORY OF AUSTRALIA
DEPARTMENT OF THE CHIEF MINISTER

**1996 - 2000
National Competition Policy**

**Guidelines for
Legislation Review**

Prepared by Policy & Coordination Unit

1. BACKGROUND

At the Council of Australian Governments (COAG) meeting of 11 April 1995, Heads of Governments agreed to a National Competition Policy. Three agreements were signed:

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

The Competition Principles Agreement (CPA) includes undertakings to:-

- (I) publish a timetable by mid 1996 listing all legislative measures that restrict competition and specifying when that legislation is to be reviewed over the period up to the year 2000;
- (II) subject all proposals for new legislation that restricts competition to a public benefit test;
- (III) where legislation that restricts competition is retained after the initial review, to subject that legislation to a further review at least once every 10 years, and
- (IV) report annually to the National Competition Council (NCC) on progress in implementing the review timetable.

The Commonwealth and States/Territories have agreed that all reviews should be completed, and implementation of the appropriate reform programs be commenced (or, at the very least, be endorsed by the relevant Government) by 31 December 2000.

2. LEGISLATIVE REVIEW PROGRAM

In accordance with the CPA, the Northern Territory Government has developed a program of review of all NT Legislation in which anti competitive provisions have been identified. The Legislation Review Program was published in June 1996 and has been forwarded to all effected agencies for implementation of the review process in accordance with the agreed timetable.

Legislation included in the Program may restrict competition in any of the following ways:

- **Restricts Market Entry**

In addition to the normal commercial barriers to market entry that might exist (such as the purchase of suitable plant and equipment), there may also be legislative barriers. These can include:

- total prohibition in regard to a particular business activity;
- a statutory monopoly concerning a business activity that operates either Territory wide or in a particular locality;
- licensing or registration requirements for persons or bodies wishing to engage in a particular business activity, which operate on the basis of restricting the number of market participants or limiting participation to those persons or bodies that meet defined standards, hold certain qualifications or are members of particular occupation or professional organisations;
- the allocation of quantitative entitlements, quotas or franchises among participants in particular business activities; or
- the allocation of licenses or other authorities that allow the holder access to natural resources (including water, minerals, forests and fisheries) or which create rights, or permit specified activities, denied to non-holders (for example, licenses to dispose of waste material in a particular manner).

- **Restricts Competitive Conduct**

Legislation can restrict competitive conduct by firms in the market by restricting ordinarily acceptable forms of competitive behaviour. Such restrictions can include matters such as:

- price controls in relation to goods or services;
- hours of operation;
- size of premises;
- the provision of specified facilities or the use of specific equipment;
- the geographical area of operation;
- permissible advertising;
- business ownership, or
- the type of good or service that can be offered for sale.

- **Restricts Product or Service Innovation**

Legislation can restrict competition by regulating the quality or standard of a product or service, thereby reducing the scope for innovation. Such restrictions can include the requirement for prescribed quality or technical standards to be observed in the production or packaging of a good or the delivery of a service, other than those requirements that apply generally in relation to public or workplace health and safety.

- **Restricts the Entry of Goods and Services**

Legislation can restrict the entry of goods and services from interstate or overseas, giving a competitive advantage to local producers. In most cases such restrictions relate to quarantine matters, are scientifically based and are designed to stop the spread of animal or plant pests or diseases. However, in some cases the restrictions have no scientific basis and serve to protect existing businesses from interstate and overseas competition.

- **Restricts Competition Through Administrative Discretion**

Legislation can also restrict competition by providing for administrative discretion that has traditionally been exercised to inhibit competition. This discretion can include:

- the favouring of incumbent suppliers;
- preferential purchasing arrangements;
- making financial assistance (such as direct grants or subsidies or the waiver of various State or Local government taxes or charges) available if a business is carried on in a certain location;
- treating public and private sector providers differently; or
- setting technical specifications that are only available from a single supplier.

Other forms of restriction can include "Taxation" Acts which although concerned with raising taxation revenue, can restrict competition, and "Agreement" or "Ratification" Acts which generally favour certain companies over others by allowing them to undertake specific activities, or exempting them from certain requirements.

3. THE REVIEW PROCESS AND PRINCIPLES

Clause 5 of the CPA sets out the overarching principle to be followed in the reform of legislation.

This is that legislation (both primary and subordinate) 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 (the benefits test); and
- (b) the objectives of the legislation can only be achieved by restricting competition.

The CPA requires this principle to be applied to **both existing anti-competitive legislation and new legislative proposals** that will impose a restriction on competition. Further, this principle clearly puts the onus of proof on those supporting a restriction on competition to demonstrate that the restriction is unavoidable and is to the benefit of the public.

The CPA specifies five criteria which, without limiting the terms of reference, should be addressed when reviewing existing legislation, or assessing new legislation, that restricts competition. These criteria require:

- the objectives of the legislation to be clarified;
- the nature of the restriction on competition to be identified;
- the likely effect of the restriction on competition and on the economy generally to be analysed;

- the costs and benefits of the restriction to be assessed and balanced; and
- alternative means for achieving the same result, including non-legislative approaches, to be considered.

The CPA also lists a number of other broad policy considerations that governments should take into account when determining whether legislative restrictions on competition are warranted. These considerations include, but are not limited to:

- 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 a class of consumers;
- the competitiveness of Australian business; and
- the efficient allocation of resources.

There is no one formula for the conduct of reviews. Each review will depend upon the significance of the matters being reviewed. This includes the extent to which public consultation will be required and whether the matters under consideration lend themselves to particular approaches (for example, economic modelling).

Much of the Territory program concerns occupational licensing and in these cases consultation with the particular interest groups would be prudent. This could be achieved by the placement of public advertisements in the local press (or nationally where appropriate) which:

- point out that the Government is required to undertake reviews;
- indicate that a particular review has been scheduled, and its timing;
- give a background to what is being undertaken (for example, removal of competition impediments which cannot be justified); and
- invites submissions from interested parties (this might including reference to specific identified restrictions and solicitation of views as to whether they should be retained, removed or amended, etc).

4. FINAL REVIEW REPORT FOR CABINET

For every review of existing legislation, a final review report will need to be prepared for consideration by Cabinet.

The purpose of the final report is to ensure that Cabinet is presented with sufficient information to enable a decision to be made on whether:

- the specific legislative restriction(s) on competition in question; and
- the broader impact of the legislation on business.

is warranted in the public benefit. Once Cabinet has considered the report, it will decide what action must be taken, if any.

A typical report would cover the following:

Introduction

- NCP Agreement, timing in the program, etc.
- How the review was conducted, consultation, etc. carried out in developing the report.

Body of the Report

- Broad account of the industry (sector) covered by the legislation (for example, the taxi industry) including size, impact, value to the economy, etc., (for example, with taxis, number of plates, value of plates, passengers carried, relevance to the tourist industry, numbers employed, etc.).
- Objectives of the legislation (what does it seek to control, why and how?)
- Detail of arguments for and against regulation (or aspects of the regulation) and an assessment of the validity of the arguments. The bottom line is "public interest" (however defined). Economic benefits need to be balanced against such things as environmental requirements, occupational health and safety issues, resource protection, employment impacts, social welfare and equity considerations, regional development objectives, the potential for market failure, investments impacts, national or international agreements, etc.).
- Each restricting element will need to be assessed and a view reached on whether that provision should be retained, modified or removed. If controls are to be continued, an analysis of other ways (if any) of achieving the same objectives (for example, negative licensing, "self-management" by industry, etc.) will be required.

Findings and Recommendations

The report should contain:

- clear recommendations on the possible actions that can be taken (i.e. retaining, amending or repealing the specific legislative restriction(s) in question);
- clear recommendations on any possible actions that can be taken in relation to the broader impact of the legislation on business, and
- an outline of any transitional arrangements that may be required.

5. NATIONAL REPORTING

As outlined above, jurisdictions are required to report annually to the National Competition Council on progress in implementing the review timetable. In the Northern Territory, the Department of the Chief Minister is responsible for preparation and coordination of the annual report.

A Legislation Review data base is currently being prepared utilising lotus notes which agencies will be required to update regularly in regard to legislation review progress. The data base will provide the basis for annual reports to the National Competition Council. Detailed instructions regarding access to and use of the data base will be provided as soon as it becomes operational.