1. INTRODUCTION

At its April 1995 meeting, the Council of Australian Governments (COAG) signed a number of Agreements designed to boost the competitiveness and growth prospects of the national economy into the future. The Agreements give effect to a package of micro-economic reform measures that represent the National Competition Policy (NCP).

Under the Competition Principles Agreement (CPA), the Tasmanian Government is required to publish an annual report on its progress in implementing the competitive neutrality and legislation review principles. The NCP Progress Reports will outline progress with the remaining NCP reform principles and NCP sector specific reforms relating to electricity, water, gas and transport.

The Tasmanian Government's first public Progress Report was released in August 1997, along with the handing down of the 1997-98 State Budget. That report covered the period from 11 April 1995 to 31 July 1997. This Report outlines the Tasmanian Government's progress in the implementation of NCP and related reforms in Tasmania from 1 August 1997 to 31 August 1998.

Specifically, this Report:

- details Tasmania's commitments in implementing agreed NCP and related reforms, particularly in relation to the second tranche NCP payments due in 1999-2000;
- provides an outline of Tasmania's progress in implementing the reforms to date; and
- outlines the progress towards the full implementation of the reforms that have been, or are being, made to qualify for the second tranche NCP payments.

2. THE NATIONAL COMPETITION COUNCIL'S ASSESSMENT OF TASMANIA'S IMPLEMENTATION OF NCP AND RELATED REFORMS

In March 1997, the Tasmanian Government submitted to the National Competition Council (NCC) a report on its progress in implementing its first tranche NCP obligations. This report formed the basis upon which the NCC assessed Tasmania's progress in implementing NCP and related reforms for the purpose of recommending to the Commonwealth Treasurer whether the conditions for the first tranche of NCP payments were met.

In June 1997, the NCC gave Tasmania a positive assessment in its recommendations to the Commonwealth Treasurer on whether the State has successfully qualified for the first tranche of NCP payments, which were payable

in 1997-98. The Commonwealth Treasurer confirmed in early July 1997 that Tasmania would receive first tranche payments, totalling $13.1 million in 1997-98 (which have subsequently been re-valued at $12.0 million (in 1998-99 dollars) due to updated CPI and population estimates). These payments were received on a quarterly basis commencing in July 1997.

The Council did express some concern with the State's progress in relation to the application of NCP to local government. Specifically, the NCC recommended that Tasmania should receive its first tranche NCP payments for 1997-98, but that the 1998-99 component of the first tranche payments be conditional on the NCC carrying out an "interim assessment" of the State's progress with the application of NCP to local government.

It should be noted that the NCC expressed similar concerns about local government and a number of other reform areas in its assessment of the implementation of NCP by other States and Territories, which also resulted in interim assessments for all parties during 1998-99. In this regard, it was considered that the NCC had fewer concerns with the implementation of NCP in Tasmania relative to all other States.

In June 1998, the NCC provided the Commonwealth Treasurer with its interim assessment report on State and Territory performance against NCP and related reform commitments for the second year of the first tranche (1998-99).

The majority of jurisdictions, including Tasmania, have been assessed by the Council as having met their first tranche commitments in respect of issues outstanding from the first tranche obligations. The only exception is NSW, where the NCC has assessed that NSW did not meet its first tranche commitments with respect to domestic rice marketing and has recommended to the Commonwealth Treasurer that $10 million be deducted from NSW's first tranche NCP payments (should they fail to change their approach in this regard prior to early 1999).

In relation to Tasmania's outstanding first tranche issues, the Council has accepted that council amalgamations are likely to lead to a wider and more timely application of the competitive neutrality principles. Following commitments given by Tasmania to seek the agreement of the new councils to apply full cost pricing and the anticipated earlier completion of the corporatisation program, the Council reported that it was satisfied with Tasmania's progress against its first tranche commitments. The Council also indicated, however, that the timetable Tasmania has set itself for applying competitive neutrality principles to local government business activities would be important for the second tranche assessment.

2.1 *SECOND TRANCHE OBLIGATIONS*

In order to qualify for receipt of its share of the second tranche of payments in 1999-2000, Tasmania must:

- take steps, where relevant, to complete the transition to a fully competitive National Electricity Market by 1 July 1999;
  - At this stage, Tasmania is not a "relevant jurisdiction" for the purposes of these reforms to the electricity supply industry, due to the absence of any physical interconnection with the national electricity grid.
- continue with the effective implementation of all COAG agreements on the national framework for free and fair trade in gas;
  - As with the electricity reforms, Tasmania is currently exempt from having to comply with COAG gas industry reforms due to the absence of an established natural gas industry and therefore no gas infrastructure to which third party access can be provided.
- implement the strategic framework for the efficient and sustainable reform of the Australian water industry, as endorsed at the February 1994 COAG meeting;
- continue to be a fully participating jurisdiction under the Commonwealth's *Competition Policy Reform Act 1995* and the CPA;
- continue to effectively observe the agreed road transport reforms; and
- meet all its obligations under the CPA and the Conduct Code Agreement (CCA).

3 *REFORMS UNDER THE CONDUCT CODE AGREEMENT*

3.1 *EXTENSION OF PART IV OF THE TRADE PRACTICES ACT 1974*

The CCA sets out the agreed basis for extending the coverage of Part IV of the Commonwealth's *Trade Practices Act 1974* (TPA) to all businesses, regardless of their form of ownership.

This extended coverage arises by virtue of the Commonwealth's *Competition Policy Reform Act 1995* and Tasmania's *Competition Policy Reform (Tasmania) Act 1996*. This latter Act, which was enacted in July 1996, extends the coverage of Part IV of the TPA to all business activities in Tasmania, whether they are incorporated or unincorporated, or publicly or privately owned.

The collective purpose of this Commonwealth and State legislation is to extend the coverage of the TPA to all businesses both in the private and public sectors. The amendments make the competitive conduct rules of the TPA applicable from 21 July 1996 to business activities which were previously immune.

3.1.1 Identification of Section 51 Exemptions

The CCA requires that, by 20 July 1998 (which is three years after the *Competition Policy Reform Act 1995* received Royal Assent), the Tasmanian Government must send written notice to the Australian Competition and Consumer Commission (ACCC) detailing all State legislation that:

- existed at 11 April 1995 and was enacted or made with reliance upon section 51 of the TPA (as it existed prior to amendment by the Competition Policy Reform Act); and
- will continue to operate to exempt certain anti-competitive conduct beyond 20 July 1998.

In March 1998, all Agencies and Government Business Enterprises (GBEs) were requested to undertake a preliminary analysis of the legislation for which they are responsible and identify any legislative exemptions ("section 51 exemptions") from the restrictive trade practices provisions contained in Part IV of the TPA which were in existence in Tasmanian legislation prior to 11 April 1995 and which remained in force.

A summary table of the results of the preliminary analysis of the legislation administered by the relevant Agencies and GBEs was developed based on the individual Agency and GBE responses. This information was subsequently provided to the Office of the Solicitor-General for analysis and advice as to whether the nominated Acts and their relevant provisions contained any exemptions which were in operation prior to 11 April 1995 and which fell within the terms of s.51(1)(b) of the TPA as that provision stood prior to amendment by the *Competition Policy Reform Act 1995*.

Advice received from the Solicitor-General's Office confirmed that no s.51(1)(b) exemptions were contained in Tasmanian legislation prior to 11 April 1995. The resulting analysis and advice from the Solicitor-General's Office subsequently formed the basis of the Tasmanian Government's submission to the ACCC.

4. REFORMS UNDER THE COMPETITION PRINCIPLES AGREEMENT (CPA)

4.1 COMPETITIVE NEUTRALITY

The primary objective of the competitive neutrality principles is to promote the efficient use of resources in public sector business activities. In particular, the competitive neutrality principles aim to eliminate resource allocation distortions arising out of the public ownership of entities engaged in significant business activities. That is, Government businesses should not enjoy any net competitive

advantage simply as a result of their public sector ownership and should compete on fair and equal terms with private sector businesses.

In applying the competitive neutrality principles, the CPA places Government businesses in two categories:

- significant GBEs, which are classified as Public Trading Enterprises (PTEs) and Public Financial Enterprises (PFEs) under the Australian Bureau of Statistics (ABS) Government Financial Statistics Classification; and

- significant business activities undertaken by a Government Agency as part of a broader range of functions.

In supporting Government Agencies and local government in the implementation of the competitive neutrality reforms, a number of guidelines have been published. In June 1997, following an extensive consultation process, the document *Full Cost Attribution Principles for Local Government* was finalised and subsequently released. In September 1997, the document entitled *Guidelines for Implementing Full Cost Attribution Principles in Government Agencies* was also completed and released to Agencies.

In addition to these guidelines, a seminar was conducted by the Department of Treasury and Finance in December 1997 for State Government Agencies to further facilitate a better understanding of the concepts of competitive neutrality and full cost attribution.

Since the seminar, individual meetings between Agencies and Treasury officers have provided an additional forum for the clarification of the competitive neutrality principles when necessary, to ensure that the implementation of reforms are progressed on a timely basis and are consistent with the NCP requirements.

Agencies are continuing to report to Treasury in relation to their significant business activities and advising implementation timetables for reforms. A table of the significant business activities of Government Agencies is detailed on the following page.

During 1997, the Department of Treasury and Finance conducted a series of workshops on a related Government reform initiative of competitive tendering and contracting (CTC). These workshops supplemented an earlier seminar on the policy framework for CTC and concentrated on the practical aspects of CTC implementation. The matters addressed in these workshops included:

- business case development;
- human resource management and industrial relations;
- costing of in-house bids and financial evaluation;
- tender and evaluation process; and
- contract design and specification, service level agreements, contract negotiations and managing contractual relationships.

Significant Business Activities of Government Agencies as at 31 August 1998

AGENCY	SIGNIFICANT BUSINESS ACTIVITY
Department of Transport	***Land Transport Safety*** Road Safety - conducting safety audits Vehicle Standards and Compliance - light vehicle inspections Motor Registry Policy - drivers licences and registration Motor Registry Services - sale of customised number plates ***Roads and Public Transport*** Delivery of Roads Program Collection of Asset Information for Roads Collection of Asset Information for Traffic and Bridges Bruny Island Ferry Service
Department of Primary Industry and Fisheries	Research Stations Laboratory Facilities
Department of Education, Training, Community and Cultural Development	Hire of School Facilities School Child Care Services Teachers' Residences
Tasmanian Audit Office	Financial Audits
Workplace Standards Authority	Inspection of Hazardous Plant in Workplaces
Department of Premier and Cabinet	Telecommunications Management Division and Computing Services
Tourism Tasmania	Wholesaling and Retailing of Travel
Tasmania Development and Resources	No Significant Business Activities
Department of Police and Public Safety	No Significant Business Activities
Department of Justice	Correctional Enterprises Legal Services
Department of Environment and Land Management	Environmental Laboratory Valuation Services
Department of Community and Health Services	***Public Housing*** ***Hospital Services - Non Clinical*** Building Services Laundry Cleaning ***Hospital Services - Clinical*** Pharmacy Radiology Pathology Private Sector Co-location PsychoGeriatric Nursing ***GP Services*** ***Private Patients in Public Hospitals*** ***Allied Health*** Dental Services Home and Community Care Ambulances ***Corporate Support*** Human Resource Operations Financial Operations
Department of Treasury and Finance	Property Services Unit

4.1.1 Government Business Enterprises

The CPA competitive neutrality principles are entirely consistent with the reform directions which were already in place in Tasmania in relation to Government Business Enterprises (GBEs). These directions are embodied in the *Government Business Enterprises Act 1995* (GBE Act). This Act places GBEs on a more competitive footing through the processes of both commercialisation and corporatisation. The Act fulfils Tasmania's competitive neutrality commitments in relation to significant GBEs by subjecting them to:

- tax equivalent regimes, directed at offsetting any tax advantages Government businesses may otherwise receive;
- debt guarantee fees, directed at offsetting the advantage of Government guarantees on borrowings;
- dividend requirements; and
- all regulations normally applying to the private sector.

As of 1 July 1997, the remaining Tasmanian GBEs (through the *Government Business Enterprises (Amendment of Act's Schedules) Order 1997*) became subject to the full tax equivalent regime, dividend regime and guarantee fees. The full tax equivalent regime comprises an income tax equivalent, a wholesale sales tax equivalent and a capital gains tax equivalent. The only exception to this arrangement is the Port Arthur Historic Site Management Authority (PAHSMA).

PAHSMA was omitted from the application of the Tax Equivalence Regime (TER) in view of the circumstances the organisation faced as a consequence of the Port Arthur tragedy in April 1996. The organisation has, as a result of the tragedy, faced significant human resource issues, including the departure of some senior and operational staff, whilst other staff have required considerable counselling to assist in dealing with the tragedy.

Since April 1996, the PAHSMA has had to rely on considerable financial support from the Consolidated Fund to enable it to continue to provide tourism and conservation services at the site. The Government has also been reviewing the structure of the PAHSMA. Recommendations in relation to the future structure and funding of the Authority's operations will be considered by the Government during its 1998-99 Budget deliberations. A decision regarding the application of the TER to PAHSMA will be made once a decision on the future structure and funding of the Authority has been established.

4.1.1.1 Community Service Obligations

The implementation of the Government's Community Service Obligation (CSO) Policy is integral to the enhanced performance and accountability of GBEs under the GBE Act. GBEs are expected to improve performance by focusing on commercial goals. Non-commercial activities may be recognised by Government

as CSOs. CSOs are purchased by the Government from the GBE so that the provision of CSOs by the GBE will no longer compromise the achievement of the commercial objectives of the GBE. Accordingly, non-commercial activities and functions, not all of which may qualify as CSOs, are clearly identified, justified and separately accounted for.

The CSO policy ensures that the Government's social and other objectives are achieved without impacting on the commercial performance of a GBE. It also improves the transparency, equity and efficiency of the delivery of non-commercial activities.

Since July 1997, Community Service Obligation contracts detailing funding for the provision of non-commercial activities to an agreed level have been signed with the Hydro Electric Corporation, Metro Tasmania Pty Ltd and the Public Trustee.

4.1.2 Recent Reforms to Government Business Enterprises

The Tasmanian Government has reviewed and reformed a number of government businesses since the signing of the CPA. These reforms are detailed below.

4.1.2.1 Bulk water suppliers

Since the last NCP Progress Report, the *North West Water Amendment Act 1998* has been passed by Parliament. This Act enables the transfer of the North West Regional Water Authority (NWRWA) to a local government joint authority. However, the legislation effecting the transfer has not yet been proclaimed. Consequently the transfer has not yet taken place. The transfer was postponed pending the outcome of the August 1998 State election and resolution of the local government council boundaries/amalgamation issues. It is expected that the NWRWA will be transferred to local government during 1998-99.

4.1.2.2 Port Reform

In July 1997, the Tasmanian Parliament enacted a package of port reform legislation comprising the *Marine and Safety Authority Act 1997*, the *Port Companies Act 1997* and the *Marine (Consequential Amendments) Act 1997*. The legislative package provides for:

- the separation of the regulatory and commercial functions of the ports;
- the establishment of Marine and Safety Tasmania (MAST) to assume the regulatory functions previously vested with port authorities;
- the full implementation of competitive neutrality principles; and
- the removal of barriers to entry for the private ownership and operation of ports.

Specifically, the package:

- establishes port companies to operate and manage the State's port facilities; and
- establishes MAST to oversee the administration and regulation of navigational and vessel safety. MAST is also responsible for managing the State's non-port marine facilities and functions.

Consistent with the intention of the NCP competitive neutrality principles, the Tasmanian ports have, since the commencement of the *Port Companies Act 1997* on 30 July 1997, become subject to Corporations Law obligations, the full tax equivalent regime, the dividend regime and guarantee fees.

4.1.2.3 Metro Tasmania

Metro Tasmania provides public urban road transport services in the metropolitan areas of Hobart, Launceston and Burnie. On 14 January 1998, the *Metro Tasmania Act 1997* and *Metro Tasmania (Transitional and Consequential Provisions) Act 1997* received Royal Assent, thereby effecting the transition of the former Government Business Enterprise, the Metropolitan Transport Trust, to a State-owned company. As a result, Metro Tasmania Pty Ltd (Metro Tasmania), as it is now called, is subject to Corporations Law obligations as well as the full tax equivalent regime, the dividend regime and guarantee fees obligations.

4.1.3 Competitive Neutrality Complaints Mechanism

Clause 3(8) of the CPA requires the State Government to implement a complaints mechanism in relation to competitive neutrality matters.

In its policy statement on competitive neutrality, the Government indicated that it will be utilising the Government Prices Oversight Commission (GPOC) as the focal point for receiving and dealing with complaints against State and local government business activities in relation to the application of the competitive neutrality principles.

The *Government Prices Oversight Amendment Act 1997* was enacted in September 1997. This Act extends, *inter alia*, the role of GPOC to include the investigation of complaints against the failure of a Government body to comply with the competitive neutrality principles and associated implementation guidelines. Complaints may be lodged against a Government body when an individual believes that the Government body has contravened any of the principles and is adversely affected by such a contravention. The individual must have first attempted to resolve the matter with the Government body informally, prior to lodging a formal complaint. The scope of the complaints mechanism therefore includes Government Agencies, local government businesses, GBEs, State-owned companies and statutory authorities. As at 31 August 1998, GPOC had received no formal complaints in relation to the application of the competitive neutrality principles.

4.2 *MONOPOLY PRICES OVERSIGHT*

The CPA requires that the State consider establishing an independent source of prices oversight advice in relation to monopoly, or near monopoly, suppliers of goods and services. Such a mechanism is necessary to ensure that monopoly providers charge prices that are "fair and reasonable" and which do not result in the exercise of monopoly market power to the detriment of consumers and businesses.

To meet this requirement, the Tasmanian Government introduced the *Government Prices Oversight Act 1995,* which came into effect on 1 January 1996. This Act established the GPOC as an independent body charged with the responsibility of conducting investigations into, and reporting on, the pricing policies of both GBEs and Government Agencies that are monopoly, or near monopoly, suppliers of goods and services in Tasmania. The *Government Prices Oversight Amendment Act 1997* further extended the coverage of the Government Prices Oversight Act to enable GPOC to conduct investigations into local government monopoly services.

The Government Prices Oversight Act provides for the prices and pricing policies of the most significant public sector monopolies in Tasmania to be automatically investigated at least once in every three years. Five GBEs were originally scheduled in the Act in this regard (the HEC, MTT, MAIB, HRWA and NWRWA). In addition, the Act provides a mechanism under which other monopoly services can be declared and therefore subject to a GPOC inquiry.

GPOC has completed investigations into the pricing policies of the Hydro-Electric Corporation (HEC) and the Metropolitan Transport Trust (MTT). Since the previous Progress Report one GPOC investigation has been completed and another two have commenced. These investigations are outlined below.

4.2.1 *MAIB Investigation*

GPOC investigated the pricing policies of the Motor Accidents Insurance Board (MAIB) in accordance with Terms of Reference issued to the Commission in May 1997. GPOC's Final Report on the MAIB investigation was released in August 1997. The report contained the Commission's final recommendations in relation to the maximum prices to be charged by the MAIB for the three years to the end of 2000.

The major recommendations of the Commission in the Final Report were that:

- under the existing arrangements (weightings) for different types of vehicles, trucks, buses and motorcycles were not paying their share of MAIB premiums. GPOC recommended that motorists' premiums reflect the insurance risk attached to particular classes of vehicles.

  GPOC recommended small increases (less than 5 per cent) in MAIB premiums for the majority of motor vehicles (eg. cars) but recommended substantial

increases (ranging between 55 and 158 per cent) for motorcycles, trucks and medium buses.

- certain changes be made to the benefits available under the scheme. The principal changes are that:
  - eligibility for MAIB insurance be restricted to claims arising from the driving of a motor vehicle, rather than its use;
  - MAIB cover only be available for off-road or recreational class vehicles when a premium has been paid and is current for that vehicle;
  - MAIB be allowed to recover costs from uninsured vehicle owners, reject claims for persons injured while driving their own uninsured vehicle and that MAIB be allowed the right to seek indemnity from negligent third parties; and
  - all accidents be reported to the police before the MAIB accepts a claim, but that the MAIB have the discretion to waive this requirement.

The Tasmanian Government accepted the recommendations of the Final Report in relation to changes to existing policy (without significant amendment), but rejected the recommendations relating to the quantum of future premiums. With regard to premium changes, the Government opted for a transition strategy which involves the creation of four classes of vehicles, with different arrangements for premium increases for each of the four classes.

Under the amended premium structure, the maximum premium increases in the first year will not exceed 15 per cent of the former premium level for any vehicle class. Maximum premiums in the second and third years are calculated using a component based on the percentage increase in average weekly earnings in Tasmania (AWE), plus a percentage increase in premium levels not exceeding 12.5 per cent for any vehicle class.

4.2.2 Bulk Water Investigation

In January 1998 GPOC was requested to undertake an investigation into the pricing policies associated with the provision of bulk water by the Hobart Regional Water Authority (HRWA), the North West Regional Water Authority (NWRWA) and the Esk Water Authority (EWA).

Both the HRWA and the EWA have recently been transferred to local government and re-established under the *Local Government Act 1993* as joint local government authorities. Both these authorities are subject to full tax equivalent, dividend and guarantee fee regimes. The NWRWA has been subject to full tax equivalent, dividend and guarantee fee regimes since 1 July 1997.

The deadline for the completion of this investigation has been set at 30 November 1998 in view of the current review of Tasmanian water legislation that is underway. The latter review is being undertaken in light of the COAG

Agreement on the Efficient and Sustainable Reform of the Australian Water Industry.

As part of this investigation, the Commission was requested to prepare a paper by 31 August 1998 on the general water pricing principles that should apply in Tasmania. This timeframe will enable the general water pricing principles to be used by the three water authorities as the basis for their respective water pricing regimes and for these regimes to be subsequently reflected in the 1999-2000 budgets of participating councils, which will be formulated early in 1999. These actions will, in turn, assist the Tasmanian Government in meeting its obligations under the COAG agreement on water reform, which requires that a range of water reforms be introduced by 1998, including:

- the structural separation of the roles of water resource management;
- standard setting and regulatory enforcement and service provision;
- adoption of two-part tariffs for urban water, where cost-effective; and
- the introduction of arrangements for trading in water allocations or entitlements.

GPOC released the report on general water pricing principles to key stakeholders on 31 August 1998, with submissions on the proposed principles due by 21 September 1998. The report proposes a two-part tariff structure comprising a volumetric component which reflects long-run marginal costs with any revenue shortfall being recovered in the fixed component. Regional water pricing is to apply where justified and seasonal water pricing has been recommended. GPOC has also developed principles in relation to revenue adequacy of the bulk water authorities.

4.2.3 Electricity Prices Investigation

GPOC conducted its initial investigation into the pricing policies of the HEC in 1996. Following the completion of this investigation and, in accordance with the *Government Prices Oversight Act 1995*, the Government set maximum price paths for retail tariffs in the *Government Prices Oversight (Electricity Prices) Order 1996* for the period January 1997 to December 1999.

The electricity reform program in Tasmania has seen the HEC structurally separated and the regulatory framework for the electricity supply industry enhanced. Further details on electricity industry reforms are contained in section 6.1 of this Report.

Under the new regulatory arrangements contained in the amended *Electricity Supply Industry Act 1995* (ESI Act), the Electricity Regulator has the power to make determinations with regard to the maximum prices that can be charged for 'declared' services provided by electricity entities (whereas under the GPOC framework, the Government determines maximum prices, following recommendations by GPOC). Services may be declared by the Electricity Regulator if the Regulator is satisfied that an electricity entity has substantial

market power in respect of the service and that the promotion of competition, efficiency or the public interest requires the making of the declaration.

The new price control framework is contained in the *Electricity Supply Industry (Price Control) Regulations 1998* ("Price Control Regulations") and is largely based on the provisions of the Government Prices Oversight Act. These arrangements came into effect on 1 July 1998, coinciding with the appointment of the Government Prices Oversight Commissioner as the Electricity Regulator. In light of these arrangements, the Government Prices Oversight Act was amended to remove all references to electricity from its scope.

In April 1998, the Government initiated a second GPOC investigation into the pricing policies of the HEC, with the investigation transferring to the Electricity Regulator under the Price Control Regulations from 1 July 1998. Reflecting the new structural arrangements in the State's electricity supply industry, the investigation is to determine appropriate maximum price controls for electricity generation, transmission, distribution and retailing as well as maximum charges for system control functions for the period 2000 to around 2003.

In April 1998, GPOC released an Issues Paper highlighting the key matters that need to be resolved in determining these maximum charges and an initial set of submissions have been received. The Regulator is required to complete the investigation and publish a final report by 29 January 1999. Under the ESI Act, the Regulator must then, by order, make a determination specifying the price control mechanisms applying to the aforementioned services. The Price Control Regulations provide for a reopening of the determination in a limited set of circumstances.

4.3 *STRUCTURAL REFORM OF PUBLIC MONOPOLIES*

The CPA structural reform principles require that an independent review be conducted before either privatising, or introducing competition to, a public owned monopoly.

Since the signing of the CPA, the Tasmanian Government has undertaken a structural review in relation to the Government's intention, at that time, to withdraw equity from the Hydro-Electric Corporation's distribution and retailing businesses. The matter is covered in more detail in section 6.1.3 of this Report.

4.4 *LEGISLATION REVIEW*

In June 1996, the Tasmanian Government published, in accordance with the CPA requirements, a policy statement entitled *Legislation Review Program: 1996-2000 – Tasmanian Timetable for the Review of Legislation that Restricts Competition,* which established the Legislation Review Program (LRP). The LRP provides impetus to the Government's regulatory reform agenda and demonstrates its commitment to reducing the regulatory burden which, in many cases, needlessly restricts the operation of the Tasmanian economy.

Specifically, the LRP will see the review, by the year 2000, of all State legislation that restricts competition to ensure that the Government only retains those restrictions that are fully justified in the public benefit. Many existing legislative restrictions on competition impose substantial costs on consumers and society, through either cross subsidies, barriers to market entry by new businesses, unnecessary business costs or reduced incentives for firms to innovate and improve their efficiency.

4.4.1 Progress with the LRP Timetable

Since the development of the LRP timetable in 1996, a significant number of reviews have commenced in line with the review timetable.

The initial timetable, however, has been regularly updated to reflect changes in the legislation review priorities or legislative programs of Agencies as well as the rescheduling of a large number of reviews due to the failure of other jurisdictions to support national reviews of legislation. In particular, the rescheduling of legislation originally nominated for national review has resulted in a large number of reviews being scheduled in 1998 and 1999. It is considered, however, that a significant number of these reviews will be of a minor nature or will be repealed or replaced with new legislation, which will obviate the need for a LRP review. A revised timetable, complete with the status of any reviews which have been undertaken, is outlined in Appendix A.

Progress with the LRP Review Timetable as at 31 August 1998

Status of Reviews	1996	1997	1998
Acts repealed or expected to be repealed	19	24	23
Acts removed from the LRP timetable	1	0	2
Reviews deferred	4	25	2
Reviews in progress	15	11	24
Reviews not yet commenced	* 1	0	33
Reviews completed	0	0	7
Total Number	**40**	**60**	**91**

* Review now to be undertaken nationally.

The majority of reviews commenced in 1996 and 1997 are nearing completion and are either in the process of being implemented, considered by the Government or involve legislative changes which are pending. Treasury's Regulation Review Unit is continuing to work with relevant Agencies to ensure that the remaining 1998 reviews are undertaken in accordance with the timeframes established by those Agencies.

A major review of the following Acts (and their associated subordinate legislation) has commenced, or is scheduled to commence in 1998:

- *Plumbers and Gasfitters Act 1951*

- *Hospitals Act 1918;*
- *Inland Fisheries Act 1995;*
- *Land Surveyors Act 1909;*
- *Local Government Act 1993;*
- *Taxi Industry Act 1995;*
- *Dairy Industry Act 1994;*
- *Mineral Resources Development Act 1995*;
- *Water Act 1957* and associated primary legislation; and
- *Environmental Management and Pollution Control Act 1994.*

4.4.2 Major Reviews Conducted

A number of 'major reviews' have been conducted to date. A review of existing legislation is considered to be major where it has economy-wide implications, or where it significantly affects a sector of the economy (including consumers). Details regarding a number of these major reviews are listed below.

4.4.2.1 Traffic Act 1925

The *Traffic Act 1925* contains two major components. Part III of the Traffic Act regulates vehicles used to carry goods or passengers for reward through the public vehicle licensing system. The balance of the Act provides for the registration of vehicles, the regulation of drivers, vehicle standards and the operation of vehicles.

In October 1995, the Tasmanian Government established an independent committee of review into Tasmania's public vehicle licensing. The Committee, chaired by Mr David Burton, undertook a comprehensive investigation (the "Burton Review") into the need for transport reform, which included widespread consultation, before handing its report to the Minister for Transport in October 1996.

This investigation incorporated a substantial review of the restrictive provisions of Part III of the *Traffic Act 1925*. The review found that there was a need to overhaul the archaic controls imposed on the transport industry by Part III of the Traffic Act, which are the most onerous in Australia. The restrictive, anti-competitive and protectionist nature of these controls was found to stifle innovation and increase costs to consumers.

Following the Burton Review, the Tasmanian Government introduced major reforms to the public vehicle licensing system through a suite of new transport legislation. This legislation was passed by both Houses of Parliament in late 1997 and was expected to be proclaimed in August 1998 following finalisation of supporting regulations and consequential amendments to the *Taxi Industry Act 1995*. The proclamation date has since been deferred as a consequence of the August 1998 State election.

Following the release of the Burton Committee report, the Government established a series of consultative committees with industry to develop detailed legislative proposals for reform of the public vehicle licensing system.

In July 1997, the Passenger Transport Reform Group and the Road Freight Industry Reform Group submitted detailed reports to the Minister for Transport. These reports outlined proposals for the reform of the public vehicle licensing system in line with the recommendations of the Burton Review.

Legislative changes were developed based on these reports and submitted to Parliament in October 1997. They were passed by Parliament with only minor amendment in November 1997. During the debate on the *Passenger Transport Act 1997* however, a commitment was made to transfer the regulation of luxury hire cars from the *Passenger Transport Act 1997* to the *Taxi Industry Act 1995*. However, legislation to transfer the regulation of luxury hire cars to the Taxi Industry Act was prepared and submitted to Parliament, but had not been finalised at the time the State election was called. It is expected that this legislation will be resubmitted to the incoming Government who will then determine if the *Taxi and Luxury Hire Car Industries Reform Bill 1998* will be amended or re-submitted to Parliament in its existing form.

In October 1997 the Government signed a Memorandum of Agreement with the transport industry associations which committed the parties to work cooperatively to develop the detailed regulations, administrative systems and transitional arrangements to give effect to the new legislation. A joint industry-government group has been formed to oversee the implementation of this Agreement. The group is close to completing its work, with a suite of regulations having been prepared that will give effect to the new system of public vehicle regulation.

The new system is based on:

- the abolition of public vehicle licences for all forms of transport;
- intrastate aircraft operations being governed only by Commonwealth legislation and appropriate State environmental or public health legislation (eg in relation to aerial spraying);
- road freight operations being subject only to quality regulation of vehicles;
- the introduction of voluntary operator accreditation schemes based largely on alternative compliance schemes designed to provide real incentives for quality operators;
- public passenger carrying vehicles to be subject only to quality controls, and to the screening of drivers as "fit and proper" persons; and
- regular passenger transport services to be registered with the Department of Transport, with core services (those considered essential by Government to meet the community's social mobility needs) that are not provided by the market being provided under contract to Government, with contracts to be competitively tendered.

One of the key issues in relation to the *Passenger Transport Act 1997* which remains to be resolved is the transitional arrangements for regular passenger transport services. To this end, specific proposals are being developed through the joint industry-government group identified above. Whilst it is anticipated that agreement on this issue will be reached shortly, its resolution is not considered crucial to the proclamation of the Passenger Transport Act as regular passenger transport services required by the Government may be provided on a continuing basis under contract.

At the recent State election, both major political parties indicated their intentions to continue with the current industry-government negotiations so as to bring the public vehicle licensing reform process to a satisfactory conclusion. The Tasmanian Transport Council, the peak transport industry organisation, has similarly committed itself to the continuation of this consultative process.

Priority attention is now being given to completing the review of the remainder of the Traffic Act as well as the *Motor Vehicles Taxation Act 1981*, the *Transport Act 1981* and their associated Regulations. To this end, new traffic and vehicle legislation will be developed during 1998 based on national road transport laws (other than dangerous goods) emanating from the National Road Transport Commission process.

4.4.2.2 Motor Accidents (Liabilities and Compensation) Act 1973

A review of the *Motor Accidents (Liabilities and Compensation) Act 1973* was undertaken during 1997. This review focussed on the impact that the monopoly role of the MAIB has upon the delivery of compulsory third party personal (CTP) insurance to Tasmanian motorists.

In conducting the review, the review body found that:

- the statutory monopoly for the provision of CTP insurance is justified in the public benefit and therefore should be maintained; and
- the power of the Board to enter into arrangements or agreements with other insurers is not justified and should be replaced with a provision which only provides the Board with a power to reinsure.

The recommendations of this review were accepted by the Government in early April 1998 and a minor legislative change will need to be made to put these recommendations into effect.

4.4.2.3 Apple and Pear Industry (Crop Insurance) Act 1982

The *Apple and Pear Industry (Crop Insurance) Act 1982* was scheduled for review as the Fruit Crop Insurance Scheme provided for under the legislation is compulsory. This has the effect of putting in place what is, in essence, a statutory monopoly. It also restricts the ability of Tasmanian apple and pear growers to manage their crop related business risks independently.

In undertaking a major review of this legislation, the review body determined that, while the scheme has some benefits, they do not outweigh the costs imposed by the scheme upon the apple and pear industry and the general community. Consequently, the Review Body recommended in its Regulatory Impact Statement (RIS) that the continuation of the Act and its compulsory powers cannot be justified in the public benefit. The recommendations of this review are being considered by the Government.

4.4.2.4 Forestry Act 1920

The *Forestry Act 1920* establishes Forestry Tasmania and provides for the management and protection of forests. The Act was scheduled for review on the basis that it contains restrictions on competition which include provision for the granting of forest permits, licences and the registration of sawmills and timber brands.

Following the engagement of a consultant to undertake a review of the Act, it has been recommended that a substantial amount of the Forestry Act be repealed, including the majority of Part IV, which provides for the granting of forest permits, licences and the registration of sawmills and timber brands. Provisions relating to timber classification officers were also recommended for repeal.

The remaining anti-competitive provision relates to the provision that Forestry Tasmania make available each year for the veneer and sawmilling industries, a minimum aggregate quantity of 300 000 cubic metres. However, this requirement has been extensively reviewed in the context of the Tasmanian Forest and Forest Industries Strategy (TFFIS) and the Regional Forest Agreement (RFA). Further, in a recent KPMG Report to Forestry Tasmania entitled, *National Competition Policy Issues*, Dr David Cousins commented that:

"the setting of a minimum volume requirement by itself is unlikely to reduce competition in the relevant markets. Indeed, if in fact the minimum serves as an effective constraint so that more is supplied than would otherwise be the case, it may increase competition, especially in downstream markets."

The review processes conducted under both the TFFIS and more recently the RFA demonstrated that the minimum supply requirement was justified in the public interest. It determined that benefits associated with ecologically sustainable development and economic and regional development, including employment and investment growth, outweigh any costs imposed on the community as a result of the minimum supply requirement.

It is expected that the Government will consider the recommendations of the review and introduce amendments to the Forestry Act accordingly.

4.4.3 Review Processes

In assessing a jurisdiction's performance for the second tranche of competition payments, the National Competition Council (NCC) has indicated that the council

will be looking closely "at the bona fides of reviews". A key part of this will include the actual conduct of the reviews.

The review processes for the LRP are outlined in detail in the document, *Legislation Review Program: 1996-2000 – Tasmanian Timetable for the Review of Legislation that Restricts Competition.* A key feature of these processes is the determination of whether an identified restriction is classified as a major or minor restriction on competition. The resulting review process is then tailored to the level of the restriction on competition. In the case of major restrictions on competition (those that have economy wide implications or significantly affect a sector of the economy), the need to have an independent, open, rigorous and transparent justification process is a paramount consideration when establishing the review.

4.4.4 National Reviews

Clause 5 of the CPA specifies that where legislation has a national dimension or effect on competition (or both), consideration may be given to conducting a national review. If a national review is determined to be appropriate, the Tasmanian Government is required to consult with other jurisdictions that have an interest in the matter before determining terms of reference or appropriate review bodies.

As noted in the previous Progress Report, Tasmania initially scheduled a large number of Acts for national or joint jurisdictional review. This legislation generally fell within the following three areas:

- uniform, complementary, application, template or mirror legislation (including national codes and standards);
- State legislation where reforms have "spillover" effects to other jurisdictions; and
- legislation where a joint or national approach to the review would be beneficial to all relevant jurisdictions.

However, a number of other jurisdictions did not support national or joint jurisdictional reviews for a large number of these Acts.

Accordingly, the majority of the Acts originally scheduled for national review have now been listed for State-based review. This has resulted in the number of Acts listed for review in 1998 and 1999 being considerably greater than originally proposed.

Notwithstanding this, national reviews are currently being progressed, or are scheduled, in the following areas:

- Agricultural, veterinary and industrial chemicals;
- Food standards;

- Legal profession;
- Pharmacy;
- Drugs, poisons and controlled substances;
- Travel agents;
- Building Code of Australia;
- Air navigation;
- Financial legislation (companies, securities, futures and consumer credit); and
- Trustee companies.

The potential for additional reviews is also increasing as other jurisdictions now begin to realise the benefits of taking a national approach to a number of reviews.

4.4.5 LRP Gatekeeper Arrangements

Over 250 legislative proposals have been assessed under the "gatekeeper" provisions of the LRP since its inception in June 1996. It has been pleasing to note that several new Acts introduced have resulted in significant reform in areas which have previously been highly regulated.

The most prominent area where this has occurred has been in relation to the regulation of health professions. A major legislative reform program has been undertaken by the Department of Community and Health Services (DCHS) which has resulted in the Government reforming legislation governing the practice of optometrists, medical practitioners, nurses, chiropractors, osteopaths, physiotherapists, pharmacists, psychologists and dental prosthetists. This program has removed the large majority of restrictions on the competitive conduct associated with these occupations. Examples of reforms already approved include the deregulation of optical dispensing, the substantial removal of advertising controls for some occupations and reduced regulatory controls on dental prosthetists, chiropractors, osteopaths and psychologists.

DCHS also developed new legislation to replace the *Public Health Act 1962*, which represented an outdated approach to public health. The *Public Health Act 1998* and the *Food Act 1998*, which represent modern public health practice, were prepared to replace this outdated legislation. The new Public Health Act takes a risk-based approach to public health matters, focussing on autonomy and self-regulation, as well as a more preventative approach to public health. A comprehensive RIS was prepared justifiying the restrictions contained in this legislation and significant public consultation was undertaken.

The gatekeeper provisions of the LRP are an effective mechanism to ensure that proposed primary legislation does not unduly restrict competition or have a significant negative impact on business. This was demonstrated by the assessment of the *Residential Tenancy Bill 1997* under the LRP gatekeeper arrangements. Originally, the Bill proposed the establishment of a centralised

security deposit arrangement to be managed by a Residential Tenancy Authority. The proposal was seen to be unnecessarily restrictive and that the objectives of the legislation could be achieved in a much simpler manner.

By applying the guiding principle for proposed legislation, it was demonstrated that the requirement for a monopoly statutory authority for the collection of security deposits was not in the public benefit. As a result, the establishment of the monopoly authority was replaced with a set of legislative provisions that simply prescribed the requirements regarding the payment of security deposits and the rights and responsibilities of landlords and tenants in this regard. The resultant legislation achieved the objectives of the original proposal with a minimum of regulation.

Another area of significant reform has been in the development of fisheries management plans for the major fisheries in the State, including the rock lobster, abalone and scalefish fisheries. These plans, which are issued under the *Living Marine Resources Management Act 1995*, were the culmination of a number of years of discussion and negotiation between the Government and the industry. The plans outline arrangements to ensure that the fisheries are managed in a sustainable manner and the industry is viable in the long term. They include, in line with NCP legislation review requirements, a detailed justification of the costs and benefits of the proposals and have enabled the Tasmanian community to provide informed comment on the proposed management arrangements for the relevant fisheries.

4.5 *THIRD PARTY ACCESS*

As outlined in the previous NCP Progress Report, the Commonwealth's *Competition Policy Reform Act 1995* amended the TPA to provide for a regime for third party access, under certain conditions, to services provided by means of significant infrastructure facilities. However, this access regime does not apply to a service provided by a facility where the State or Territory in whose jurisdiction the service is situated has established an "effective" access regime which covers that facility.

At this stage there are no State-based legislative access regimes in place in Tasmania, as there has been insufficient infrastructure in the State of the required nature to justify the introduction of such a regime. Consequently, Tasmania relies on the provisions of the Commonwealth's access regime under Part IIIA of the TPA.

In relation to the electricity supply industry, as a central element of the reform process, the Government introduced the *Tasmanian Electricity Code* (TEC), which provides for, *inter alia*, third party access to the Tasmanian transmission and distribution network (see 6.1.2) in a similar way in which the National Electricity Code provides the access regime in the NEM. It is intended that Tasmania's network business will shortly provide an access undertaking to the ACCC for acceptance under Part IIIA of the TPA.