



**REPORT TO THE NATIONAL COMPETITION COUNCIL**  
**IMPLEMENTATION OF NATIONAL COMPETITION POLICY AND**  
**RELATED REFORMS**  
**IN**  
**SOUTH AUSTRALIA**  
**MARCH 2004**

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## ABBREVIATIONS

ACCC	Australian Competition and Consumer Commission
ANZMEC	Australia and New Zealand Mines and Energy Council
ARMCANZ	Agriculture & Resource Management Council of Australia and New Zealand
CCA	Conduct Code Agreement
CoAG	Council of Australian Governments
CPA	Competition Principles Agreement
ESCOSA	Essential Services Commission of South Australia
GBE	Government Business Enterprise
GBE Act	Government Business Enterprises (Competition) Act 1996
GRIG	Gas Reform Implementation Group
LGA	Local Government Association
NCC	National Competition Council
NCP	National Competition Policy
NEM	National Electricity Market
NRTC	National Road Transport Commission
OLG	Office of Local Government
SAIPAR	South Australian Independent Pricing and Access Regulator
TPA	Trade Practices Act 1974

## 1. INTRODUCTION

This report summarises progress during calendar year 2003 by the South Australian Government in implementing the obligations contained in the three Intergovernmental Agreements (National Competition Policy Agreements) endorsed by the Council of Australian Governments (CoAG) on 11 April 1995:

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

The report fulfils the formal requirements of the Competition Principles Agreement (CPA) to publish an annual report concerning implementation of competitive neutrality requirements (CPA, Clause 3.(10)) and legislation review requirements (CPA, Clause 5.(10)). Other aspects of competition policy are also covered.

It can be read in conjunction with the South Australian Government's previous annual reports to the National Competition Council (NCC) covering calendar years 1996, 1997, 1998, 1999, 2000, 2001 and 2002. Also relevant are the NCC's first, second and third tranche assessment reports, supplementary reports on those assessments, and the assessment reports for 2003.

This report is structured under the broad headings of Conduct Code Agreement, Competition Principles Agreement, and Related Reforms. A small bibliography provides details of relevant publications.

The report has been prepared by the Department of the Premier and Cabinet, in consultation with other agencies of the South Australian Government, including particularly the Departments of Treasury and Finance; Justice; Primary Industries and Resources; Water, Land and Biodiversity Conservation; and Transport and Urban Planning.

Inquiries about the report may be directed to the NCP Implementation Unit, Cabinet Office, Department of the Premier & Cabinet, telephone (08) 8226 1931.

## 2. CONDUCT CODE AGREEMENT

The Conduct Code Agreement (CCA) obliges the South Australian Government to enact Application of Laws legislation to apply the Competition Code, without modification, in South Australia. The Competition Code (effectively the restrictive business practice provisions of Part IV of the *Trade Practices Act, 1974 (C/wth)*) is applied to all persons in South Australia, including the Crown in so far as it “carries on a business”.

Clause 2.(1) of the CCA requires that written notice of all exemptions made by State law, in reliance on section 51.(1) of the *Trade Practices Act*, will be given to the Australian Competition and Consumer Commission (ACCC) within 30 days of enactment. Clause 2.(3) requires written notice to be given to the ACCC by 20 July 1998 of section 51.(1) exemptions in existence at the commencement of the CCA and which will continue to have effect after 20 July 1998.

The *Competition Policy Reform (South Australia) Act, 1996 (SA)* and the *Competition Policy Reform (South Australia) Savings and Transitional Regulations, 1996 (SA)* came into force on 21 July 1996, and have continued in operation since that date, altered only to deal with cross vesting issues and the introduction of the New Tax System Price Exploitation Code. This legislation satisfies the obligations contained in clause 5 of the CCA. It applies the Competition Code to all persons coming within South Australia’s jurisdictional reach, including those unincorporated persons, not engaged in interstate or foreign trade or commerce, to whom Part IV of the *Trade Practices Act* does not apply for constitutional reasons.

### 2.1 Section 51(1) Exemptions

The *Chicken Meat Industry Act 2003* was enacted on 16 July 2003, and assented to by the Governor in August 2003 (although only the transitional and related provisions are presently in operation). It contains a comprehensive *Trade Practices Act* exemption for the negotiating, making, and giving effect to, agreements between each processor and its usual contracted growers for the agisting of chickens. The ACCC was notified of the exemption on 12 August 2003, within the 30 day requirement stated in clause 2(1) of the Conduct Code Agreement.

No legislated exemptions have been revoked by legislative amendments or repeals in the same period.

An independent review into the single-desk export aspects of the *Barley Marketing Act, 1993* was conducted in 2003. Section 33A of that Act contains a *Trade Practices Act* exemption for certain operations carried out by ABB Grain Export Ltd pursuant to the single-desk arrangements. The Government is considering the report and if it accepts any recommendations for change to the single-desk arrangements, the nature and extent of that exemption may need amendment.

### 2.2 Compliance

South Australian Government businesses are familiar with the compliance obligations imposed upon them as a result of the application of the *Trade Practices Act* to Crown statutory corporations, and the Competition Code to unincorporated Crown businesses.

However, the main difficulty has always been, and remains, the lack of delineation between a Crown business (in the full commercial, profit-seeking sense) and that large number of governmental activities where there is a fee or charge (or “co-payment” or “contribution”) or some element of cost-recovery, but no intention to seek a profit, and where the activity is seen more as a governmental activity than a business. In those situations, the activity may use “business” terminology, and will of course seek to operate efficiently, but its prime motivation is not commercial.

The Crown Solicitor’s Office maintains a Competition Unit that assists agencies with Trade Practices compliance and risk management. The Competition Unit maintains contact with the ACCC, both Canberra and Adelaide Regional Office, on issues that concern both the Government and the ACCC, including substantive trade practices matters and matters of mutual policy interest. The Competition Unit receives a steady volume of enquiries from a range of departments and statutory authorities, seeking both general assessments of their activities in terms of compliance with the *Trade Practices Act*, and advice on particular competition questions.

The Attorney-General for the State of South Australia (with the NSW and WA Attorney’s-General) successfully sought leave to intervene in the High Court in the Power and Water Authority case (9<sup>th</sup> and 10<sup>th</sup> of March 2004), and has obtained leave to intervene in the Baxter Healthcare Pty Ltd case in the Federal Court, on matters involving, *inter alia*, the application of section 2B of the Trade Practices Act and derivative Crown Immunity. No decisions have been handed down as at the date of this Report.

### 3. COMPETITION PRINCIPLES AGREEMENT

The Competition Principles Agreement puts in place policy elements additional to those contained in the Conduct Code which are considered essential for a comprehensive National Competition Policy. These additional policy elements are:

- independent oversight of prices charged by monopoly Government businesses;
- competitive neutrality, to ensure significant Government businesses do not enjoy any net competitive advantage simply as a result of public sector ownership;
- structural reform of public monopolies prior to privatisation or introducing competition to the market supplied by the monopoly;
- review of legislation which restricts competition;
- third party access to services provided by means of significant infrastructure facilities;
- application of these principles to Local Government.

#### 3.1 PRICES OVERSIGHT

The Essential Services Commission of South Australia (ESCOSA) was established by the *Essential Services Commission Act 2002*, taking over the regulatory responsibilities of the South Australian Independent Industry Regulator. Among other functions, ESCOSA regulates prices and performs licensing and other functions under relevant industry regulation Acts. In particular, section 25 gives the power to “make determinations regulating prices, conditions relating to prices and price-fixing factors for goods and services in a regulated industry.”

The ESCOSA has regulatory independence and is not subject to the direction or control of the Minister with respect to its regulatory functions.

A "regulated industry" is defined as “a specified industry, or specified activities, consisting of, involved in or related to the provision of essential services, declared by another Act to constitute a regulated industry for the purposes of this Act”. A "relevant industry regulation Act" means “another Act by which a regulated industry is declared for the purposes of this Act, and includes regulations under that other Act”.

##### 3.1.1 Port Facilities

Under Part 2 of the *Maritime Services (Access) Act 2000*, ESCOSA also has a role in price regulation for certain essential maritime services provided by the private port operator. The legislation provides for the Minister for Government Enterprises to issue a First Pricing Determination (FPD) to apply for three years from Sale (ie to 1 November 2004). The FPD essentially maintains prices at pre-sale levels for that period. In 2003, ESCOSA reviewed the impact of the FPD and recommended that the FPD be allowed to lapse and that ESCOSA institute prices monitoring in its place. Hence, ESCOSA will be responsible for price regulation from 1 November 2004.

Under Part 3 of the *Maritime Services (Access) Act 2000*, ESCOSA administers the Ports Access Regime, which provides a framework for negotiation and arbitration of prices for access to certain regulated maritime services associated with South Australia's prescribed ports. In December 2003 ESCOSA commenced a review of the Ports Access Regime, which is scheduled for completion in April 2004.

### **3.1.2 Rail Facilities**

Pricing oversight for the Tarcoola-Darwin Railway is addressed under **3.5 THIRD PARTY ACCESS**.

### **3.1.3 Electricity and Gas**

The *Electricity Act 1996* was amended in 1999 to declare the electricity supply industry as a regulated industry.

Given the anticipated convergence in gas and electricity markets in the event of gas FRC, one of the key principles underlying the Government's policy and legislation is consistency of gas and electricity industry regulation. In line with that principle, the following codes issued by ESCOSA, and covering both gas and electricity, took effect on 8 March 2004:

- Energy Retail Code;
- Energy Marketing Code; and
- Energy Customer Transfer and Consent Code.

As a result of such an approach, regulatory compliance costs should be reduced.

On 1 July 2003, ESCOSA gained powers under the *Gas Act 1997* to make a price determination for a gas entity operating a distribution system. Under Envestra's current Access Arrangement, ESCOSA will be required to make annual adjustments to Envestra's reference tariffs. These changes in tariffs will be effective from 1 July each year.

The Minister for Energy currently has a transitional role in fixing maximum prices for the sale and supply of gas to small customers (i.e. those with an annual consumption of less than 10 Tj).

From the commencement of gas FRC, for a certain transition period, the incumbent retailer, at the request of a small customer, must supply and sell gas to the customer at the entity's standing contract price and subject to the standing contract terms and conditions. The standing contract price is subject to a price justification process. Once section 33(1)(a) of the Gas Act is proclaimed, and Schedule 2 expires, ESCOSA would have the power to make a price determination.

Electricity pricing is discussed further in section **4.3 ELECTRICITY**.

## 3.2 COMPETITIVE NEUTRALITY

This section provides the Government's annual report for the 12 months to December 2003 on the implementation of the competitive neutrality policy and principles, as required by Clause 3(10) of the CPA.

### 3.2.1 Competitive Neutrality Policy and Principles

South Australia's approach to competitive neutrality is expressed in the *Government Business Enterprises (Competition) Act 1996* (GBE Act) and the supporting *Competitive Neutrality Policy Statement* (most recently revised in July 2002)<sup>1</sup>. The basic competitive neutrality principles of tax equivalent payments, debt guarantee fees and private sector equivalent regulation can be achieved through corporatisation, commercialisation or cost-reflective pricing. The mechanism chosen to achieve competitive neutrality depends on the extent to which potential benefits outweigh the costs.

The Appendices to the *Competitive Neutrality Policy Statement*, which were updated in May 2003<sup>2</sup>, list those businesses subject to Competitive Neutrality and note that identifying and listing specific businesses is not intended to exclude other business activities being identified as significant and added to the list as required. Regular assessments are carried out by government agencies. Removal of a business from the list would not preclude a complaint being made against the business.

The implementation of CN principles has been completed for identified significant business activities (SBAs) within Government. The focus is now on monitoring ongoing compliance by way of a formal annual review process requiring responsible Ministers to confirm that Government businesses continue to operate in accordance with CN principles.

Government businesses in South Australia are generally structured either as statutory authorities or as administrative units of government departments. Corporations Law companies are seldom used as it creates difficulties in establishing appropriate accountability arrangements.

### 3.2.2 Community Service Obligations (CSOs)

The South Australian Government's CSO policy is set out in its December 1996 *Community Service Obligations Policy Framework*<sup>3</sup>. CSO policy is also reflected in the July 2002 *Competitive Neutrality Policy Statement*, the March 1998 *Guide to Implementation of Competitive Neutrality Policy*<sup>4</sup> and the *Public Corporations Act, 1993*.

Currently, CSO payments are only made to two agencies, SA Water Corporation and South Australian Forestry Corporation. These arrangements have not changed since the previous report. A review of the CSO policy and procedural arrangements is presently underway to simplify and improve the efficiency of current arrangements.

<sup>1</sup> <http://www.premcab.sa.gov.au/pdf/competition/CNPolicyJuly2002.pdf>

<sup>2</sup> [http://www.premcab.sa.gov.au/pdf/competition/sig\\_business\\_activities.pdf](http://www.premcab.sa.gov.au/pdf/competition/sig_business_activities.pdf)

<sup>3</sup> <http://www.premcab.sa.gov.au/pdf/competition/commServ96.pdf>

<sup>4</sup> <http://www.premcab.sa.gov.au/pdf/competition/CompNeutpol.pdf>

### 3.2.3 Implementation Progress

Competitive neutrality principles have been progressively applied to the Government's SBAs since South Australia became a co-signatory to the *Inter-Governmental Agreements on Competition Policy* in 1995.

The May 2003 update of the Appendices to the *Competitive Neutrality Policy Statement* identifies 20 Category 1 and 15 Category 2 significant business activities. As a result of the regular review of agency business activities and compliance with competitive neutrality principles, further changes may be made and, subject to Cabinet approval, the Appendices updated accordingly.

*A Guide to the Implementation of Competitive Neutrality* (March 1998) and *A Guide to the Implementation of Cost Reflective Pricing* (October 2001) were prepared to assist agencies responsible for implementing the principles of competitive neutrality and, in particular, cost reflective pricing.

*The Public Corporations Act 1993* is the preferred mechanism for implementing corporatisation reforms in South Australia. The Public Corporations Act is flexible in its application in that it can be used either partially or in its entirety to reflect differing operational requirements. The Act can be applied to an entity's existing legislation but can also be used to establish separate legal status.

The Public Corporations Act includes the following provisions that facilitate corporatisation reforms:

- establishment of a board
- formal requirement for a Charter dealing with the nature and scope of commercial operations
- formal requirement to develop performance measures (agreed to by the Treasurer)
- imposition of tax equivalents
- dividend provisions
- annual and interim reporting obligations.

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

### 3.2.4 Compliance Monitoring- Identified Significant Business Activities (SBAs)

The Department of Treasury and Finance, which oversees the implementation of competitive neutrality requirements, seeks advice from all agencies annually to confirm on-going competitive neutrality compliance for each SBA and identification of any new SBAs. This regular review is consistent with the commitment in the *Competitive Neutrality Policy Statement* for regular assessment of government activities. The information provided in response to this request forms the basis of the following section, presented by portfolio. SBAs are either listed under their relevant agency or separately for the major government businesses where there is no association with a departmental agency.

## Major Government Businesses

As at 31 December 2003, the following three major government businesses, all of which are Category 1 SBAs, were not associated with departmental agencies. All three are corporatised entities and fully comply with competitive neutrality principles.

### *South Australian Water Corporation (SA Water)*

SA Water is established under the *South Australian Water Corporation Act, 1994*, with its primary role to provide water and wastewater services across the State. SA Water operates under the *Public Corporations Act, 1993*. The Corporation provides some services to the community on behalf of the Government at a lower than commercial rate of return, which are funded through CSOs. The main CSOs are for the pricing of country water and wastewater services, the administration of the pensioner concession scheme and the provision of water and wastewater concessions to exempt properties, which include charities, churches and public schools. SA Water is subject to tax equivalent payments and debt guarantee fees.

### *South Australian Forestry Corporation (ForestrySA)*

ForestrySA is established under the *South Australian Forestry Corporation Act, 2000*. It is subject to the provisions of the *Public Corporations Act, 1993*. ForestrySA's main function is to manage plantation forests for commercial production. Other non-commercial activities are transparently funded by CSO payments.

### *South Australian Lotteries Commission (SA Lotteries)*

SA Lotteries is established by the *State Lotteries Act, 1966*. The State Lotteries Act prescribes the distributions to be paid. The distributions, inclusive of State Gambling Tax and income tax equivalents, are directed to the Hospitals Fund and the Recreation and Sport Fund. Although not operating under the Public Corporations Act, SA Lotteries' current organisational structure and governance arrangements are consistent with the corporatisation requirement for competitive neutrality.

## Department of Human Services (DHS)

As at 31 December 2003, DHS had four Category 1 and five Category 2 SBAs. These are as follows:

- HomeStart Finance (Category 1)
- Institute of Medical and Veterinary Services (IMVS) – Research and Diagnostic Pathology Services (Category 1)
- Medvet Science Pty Ltd (Category 1)
- Metropolitan Domiciliary Care: Equipment Hire (Category 1)
- Modbury Hospital: Rental Accommodation (Category 2)
- Royal Adelaide Hospital: Rental Accommodation (Category 2)
- Flinders Medical Centre: Rental of Flats (Category 2)
- Flinders Medical Centre: Southpath pathology services (Category 2)
- Metropolitan Domiciliary Care: Therapy Solutions (Category 2)

All of these government businesses have adopted cost reflective pricing as the competitive neutrality measure with the exception of Medvet Science Pty Ltd and Homestart Finance, which are corporatised entities.

HomeStart Finance is established by the *Housing and Urban Development (Administrative Arrangements) Act, 1995*. The key functions and activities of HomeStart Finance are to develop, market and manage home finance initiatives, and to increase home ownership opportunities for South Australians.

DHS has confirmed that all SBAs comply with the relevant competitive neutrality principles.

### **Department of Education and Children's Services (DECS)**

As at 31 December 2003, DECS had four Category 2 SBAs:

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

DECS has advised that all of these SBAs comply with competitive neutrality principles through the implementation of cost reflective pricing.

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

As at 31 December 2003, DFEEST had one Category 1 SBA, namely, "Fee for service activities not required by Government in vocational education and training", which operates within TAFE Institutes.

DFEEST has advised that ongoing compliance with cost reflective pricing as the adopted competitive neutrality measure is occurring.

In addition, DFEEST has advised that business rules within TAFE Institutes are constantly under review to ensure its Category 1 SBA activity operates in accordance with the principles of cost reflective pricing and complies with competitive neutrality principles.

### **Department of the Premier and Cabinet (DPC)**

As at 31 December 2003, DPC had two Category 1 SBAs and one Category 2 SBA. These are as follows:

- Adelaide Festival Centre Trust (AFCT)
  - BASS ticketing service (Category 1)
  - Theatre set-building workshops (Category 1)
  - Theatre hire services (Category 1)

- Artlab (Category 2)

#### *Adelaide Festival Centre Trust (AFCT)*

The AFCT is established by the *Adelaide Festival Centre Trust Act, 1971*. AFCT's key functions and activities are managing and operating the Centre, facilitating artistic, cultural and performing arts activities throughout the State and providing ticketing systems and related services. The Trust also provides advisory, consultative, managerial and support services, within areas of the Trust's expertise, to persons associated with the conduct of artistic, cultural or performing arts activities. Although the Centre receives a subsidy for operational expenses, most of its revenue is derived from commercial activities.

For the identified SBAs in particular, DPC has advised that BASS Ticketing Service and Theatre Workshops, both Category 1 SBAs, have implemented cost reflective pricing. Theatre hire is also currently listed as a Category 1 SBA. However, the AFCT is obliged, under the terms of the Adelaide Festival Centre Trust Act, to encourage and facilitate artistic, cultural and performing arts activities throughout South Australia. The AFCT's annual performance agreement with Arts SA also requires it to deliver free and low cost activities to the community to develop audiences and encourage community participation. The AFCT has expressed concern that cost reflective pricing for theatre hire would be prohibitive for community groups, and the AFCT would be unable to achieve its community outcomes. During 2004 it is therefore proposed to review the net public benefit of the community use of AFCT facilities based on current costing and pricing arrangements to ensure ongoing compliance with CN principles.

#### *Artlab*

Artlab, a Category 2 SBA, has implemented cost reflective pricing principles as its competitive neutrality measure. In April 2003, the entity undertook a competitive neutrality review with respect to cost reflective pricing implementation, which concluded that Artlab continues to meet competitive neutrality requirements.

### **Department of Primary Industries and Resources (PIRSA)**

At 31 December 2003, PIRSA Rural Solutions was a Category 1 SBA, and Seed Certification and Testing was a Category 2 SBA. PIRSA has confirmed that for 2003, these two SBAs comply with competitive neutrality principles through the implementation of cost reflective pricing.

### **Department of the Environment and Heritage (DEH)**

At 31 December 2003, Cleland Wildlife Park and the Discover Penguins Program were both Category 2 SBAs.

#### *Cleland Wildlife Park (CWP)*

CWP has adopted cost reflective pricing as the competitive neutrality measure and has developed a comprehensive 5 year business plan to drive the implementation process. DEH, as part of a regular monitoring mechanism, is currently undertaking a review of the implementation of competitive neutrality measures.

### *Discover Penguins Program*

The Competition Commissioner determined in his report *Competitive Neutrality Complaint regarding penguin tour activities at Kingscote, Kangaroo Island by National Parks and Wildlife SA*, dated 19 December 2002, that the Discover Penguins Program constitutes a significant business activity (Category 2) for competitive neutrality purposes. DEH has since completed an independent audit and calculation of the costs attributable to the Discover Penguins Program activities, with the subsequent implementation of cost reflective pricing.

### **Department of Administrative and Information Services (DAIS)**

At 31 December 2003, Supply SA (Distribution Services), which is a business unit of DAIS, is classified as a Category 1 SBA, and undertakes the buying and selling of stationery and miscellaneous goods for government. DAIS has advised that this SBA continues to comply with cost reflective pricing principles.

### **Department of Transport and Urban Planning (DTUP)**

At 31 December 2003, DTUP had three Category 1 SBAs being TransAdelaide, West Beach Trust, and the Adelaide Cemeteries Authority. All three are corporatised entities and comply with competitive neutrality principles.

#### *TransAdelaide*

TransAdelaide is established by the *TransAdelaide (Corporate Structure) Act, 1998* and is subject to the provisions of the *Public Corporations Act, 1993*. As the sole government-owned commercial public passenger transport services operator, TransAdelaide has two significant business operations comprising the provision of tram and train services, and the management of the tram and train infrastructure in the metropolitan area. TransAdelaide receives most of its revenue under a transparent subsidy payment from the Government.

#### *West Beach Trust (WBT)*

The WBT is established by the *West Beach Recreation Reserve Act, 1987*. The WBT manages and develops the West Beach Recreation Reserve lands and environment that is now marketed as Adelaide Shores. It manages the West Beach Recreation Reserve as a sporting, cultural and recreational complex and is responsible for the control and management of the sand dune and foreshore subject to the *Coast Protection Act, 1972*. The WBT does not presently pay a dividend but this position will be reviewed in 2004.

#### *Adelaide Cemeteries Authority (ACA)*

The ACA is established by the *Adelaide Cemeteries Authority Act, 2001* and is subject to the *Public Corporations Act, 1993*. The ACA has an exemption from the Treasurer under Section 29 of the Public Corporations Act, and is not required to pay tax liabilities.

## Justice Department

As at 31 December 2003, the Justice Portfolio had three listed Category 1 SBAs - Contestable Legal Services (part of the Crown Solicitor's Office), Police Security Services Division and the Public Trustee, and one Category 2 SBA - Interpreting and Translating Centre.

The Department has confirmed compliance with the adopted competitive neutrality measures for each of these SBAs.

### *Police Security Services Division (PSSD)*

PSSB is a business unit within the SA Police. It is currently listed as a Category 1 SBA. The Department has advised that PSSB is currently compliant with the requirements of commercialisation with the exception of establishing its dividend policy, which is yet to be formalised.

### *Public Trustee (Personal Trusteeship Services)*

The Public Trustee is established by the *Public Trustee Act, 1995*. The former Government introduced legislation to corporatise the Public Trustee but it lapsed in late 2001. For some time before that however, the Public Trustee had been commercialised and it currently meets the requirements of commercialisation that are contained in the State Government's *Competitive Neutrality Policy Statement*. The commercial obligations of the Public Trustee include a tax equivalency regime and payment of dividends.

### *Interpreting and Translating Centre (Multicultural SA)*

Multicultural SA has advised that its Interpreting and Translating Centre has implemented and complies with cost reflective pricing principles.

## Tourism Department

As at 31 December 2003, the Adelaide Convention Centre and Adelaide Entertainment Centre were both Category 1 SBAs in the Tourism Portfolio.

### *Adelaide Convention Centre (ACC)*

The ACC is established as a subsidiary to the Minister for Tourism by regulation under the *Public Corporations Act, 1993*. The ACC, a Category 1 SBA, has implemented cost reflective pricing. ACC has advised that it annually reviews all of its services to ensure ongoing compliance with competitive neutrality principles.

### *Adelaide Entertainment Centre (AEC)*

The Adelaide Entertainment Corporation, trading as the Adelaide Entertainment Centre, is established as a subsidiary to the Minister for Tourism by regulations issued under the *Public Corporations Act, 1993*. Most of the AEC's revenue is derived from commercial activities but it also receives a subsidy for operational expenses. No subsidy was paid during 2003. The AEC has implemented cost reflective pricing principles.

### **Department of Business, Manufacturing and Trade (DBMT)**

DBMT has advised that as at 31 December 2003 it had no SBAs. The Manufacturing Engineering Projects Group (Graduate Development Program), within the SA Centre for Innovation, Business and Manufacturing, which was a Category 2 SBA in 2002 has left the Department and re-established as a private consulting business.

### **Department of Water, Land and Biodiversity Conservation (DWLBC)**

At 31 December 2003, DWLBC had one Category 2 SBA, namely, State Flora, which has implemented cost reflective pricing. The Department has advised that it is undertaking a review of State Flora's pricing methodology to ensure it is compliant with competitive neutrality principles.

### **3.2.5 Competitive Neutrality Complaints**

The Government Business Enterprises (Competition) Act came into operation in August 1996. The Act provides for the appointment of Competition Commissioners who can be assigned to investigate complaints of infringement of competitive neutrality principles. In August 1997, a Commissioner was appointed by the Governor to investigate complaints referred to him by the Premier. The Commissioner was re-appointed for a further two year term in December 2001 and again in December 2003.

The Department of the Premier and Cabinet provides a secretariat for the complaints mechanism, which responds to enquiries from the public and manages the complaints process. A package of information relevant to competitive neutrality complaints is available to persons seeking further information or wishing to make a complaint.

Upon receipt of a written complaint against a State or local government business activity, and subject to it being within the scope of the GBE Act, the complaint is referred to the State agency or local government concerned for investigation, response and possible resolution. Where the complaint cannot be satisfactorily resolved, consideration is given to its assignment to the Competition Commissioner.

The complaint against Supply SA was referred to the Competition Commissioner in August 2002 and was finalised in June 2003. A summary of the Commissioner's report will be made available at [www.premcab.sa.gov.au](http://www.premcab.sa.gov.au).

The complaint against Mt Barker District Council was incomplete at the end of 2003 as a result of a number of new issues needing further investigation.

One written complaint was received during 2003. The complaint, which is against the Adelaide Festival Centre Trust, has been referred to the Department of Premier and Cabinet for investigation.

A summary of the complaint finalised in 2003 appears in Tables 1 below.

**TABLE 1: FORMAL COMPLAINTS FINALISED IN 2003**

<i>Date of receipt of complaint</i>	<i>Target of complaint</i>	<i>Nature of complaint <sup>(1)</sup></i>	<i>Findings of investigation and recommendation</i>	<i>Date of formal advice to complainant</i>	<i>Date of formal advice to target of complaint</i>	<i>Action taken or proposed following recommendation <sup>(2)</sup></i>	<i>Other relevant information <sup>(3)</sup></i>
13/05/2002	Department of Administrative & Information Services	Activities of Supply SA in relation to sales of school stationary.	The Competition Commissioner concluded that Supply SA did not infringe the competitive neutrality principles. He found that Supply SA's actions as a short-term response to competitive pressures within a market in which it has been established for some time, were not in conflict with its obligation to set cost reflective pricing.	Competition Commissioner advised complainant on 18/06/2003	Competition Commissioner advised DAIS on 18/06/2003		

### **3.3 STRUCTURAL REFORM**

#### **3.3.1 Gas and Electricity**

Developments in the gas and electricity sectors during 2003 are reported in section 4.

#### **3.3.2 Ports**

On 16 October 2001 the Government announced the divestment of Ports Corp to the Flinders Port consortium. Settlement was completed on 2 November 2001. The consortium has commenced a 99 year lease of Ports Corp land and has purchased wharves, buildings, plant and equipment and the ongoing business. On 5 September 2002, the South Australian Ports Corporation was dissolved and the *South Australian Ports Corporation Act 1994* repealed.

Third party access in relation to port facilities is addressed under **3.1 PRICES OVERSIGHT**.

## 3.4 LEGISLATION REVIEW

This section provides the Government's annual report for the 12 months to December 2003 on the review of legislation that restricts competition, as required by clause 5.(10) of the CPA.

### 3.4.1 Reviews completed by December 2003

There are 178 Acts scheduled for review. Schedule 1 summarises the status of the legislation reviews considered in this part.

A list of review reports provided to the NCC is contained in Schedule 1. It does not include those reviews which were listed as completed in the 1998 Annual Report.

### 3.4.2 Legislation subject to permanent reduction of competition payments

#### *Chicken Meat Industry Act 2003*

The legislation was passed in Parliament with unanimous support in July 2003 and assented to by the Governor in August, 2003. However, its implementation has been deferred in consequence of the Federal Treasurer accepting the NCC recommendation of a permanent financial penalty of \$2.93 million per annum.

The Minister for Agriculture, Food and Fisheries has met with the President of the NCC, Dr Wendy Craik, to discuss its view of the legislation. The NCC has agreed to provide the South Australia Minister with a further view on both the South Australian and Western Australian approaches. If the Minister is successful in changing the view of the NCC then the Act would immediately become competition compliant.

An immediate repeal of the legislation would achieve competition compliancy but leave the industry with a standard ACCC authorisation to collectively negotiate. As no negotiation has occurred under ACCC authorisations from 1997 to the present in South Australia (or any other State), this strategy would be satisfactory only to processors. The Government may need to consider the alternative option of amending the Act to replicate the Committee structure of the WA Chicken Meat Industry Council as a substitute for arbitration.

Options are under consideration to aid resolution of the present policy predicament. They may take considerable time to achieve an outcome satisfactory to both the State and Federal Governments.

#### *Liquor Licensing 1997*

Following the 1997 review of the Liquor Licensing Act, a further review of the two remaining restrictions, the "proof of need" test which constrains the number of outlets and the requirement that liquor can only be sold from stores devoted entirely to liquor sales has been completed. The NCC has indicated that the requirement for sales from premises devoted entirely to liquor sales is a trivial restriction and no reform is required. The "proof of needs" test enables competitors to object to the issue of licences on the ground that there is no demonstrated need and permits objections by others if there is likely to be a significant social impact. The Government is considering the report's recommendations in relation to the "proof of need" test.

### **3.4.3 Legislation subject to individual suspensions of competition payments**

#### ***Barley Marketing Act 1993***

The 2003 Round Committee's NCP review of the export barley marketing arrangements recommended examination of a licensing model similar to that adopted by Western Australia.

A comprehensive appeal was lodged in September 2003 with the Federal Treasurer against the NCC's recommendation of an annual suspension of competition payments of \$2.93 million. The NCC Secretariat has since advised that it has no objection to SA's request for an extension of time in order to allow the completion of a number of legislation reforms, including barley.

A PIRSA Task Force is examining ways of reviewing current accountability and transparency issues for ABB Grain Ltd and examining the feasibility of a licensing model. Some legislative amendments are expected to be introduced in the 2004 spring session of Parliament to clarify long standing issues.

### **3.4.4 Legislation included in the pool of suspended competition payments**

#### ***Agricultural And Veterinary Chemicals Legislation.***

#### ***Agricultural and Veterinary Chemicals (SA) Act 1994***

The Commonwealth is the lead legislator for the National Registration Scheme for Agricultural and Veterinary Chemicals and until its legislation is passed, the States and Territories are unable to put their legislation into effect to deal with licensing of agricultural chemical manufacturers and regulation of low risk chemicals.

Changes in the Commonwealth's *Agricultural and Veterinary Chemicals Code Act 1994* will require consequential changes in the *Agricultural and Veterinary Chemicals (South Australia) Act 1994*. Since changes in definitions are involved, changes will also have to be made to the South Australian *Agricultural and Veterinary Products (Control of Use) Act 2002*, which references some of the affected definitions in the federal Act via the South Australian mirror legislation.

Chemical assessment services are technically already contestable, though the National Registration Authority (NRA) has not chosen to utilise other possible providers, largely due to the difficulties in verifying the capabilities of non-governmental alternative providers. The SCARM working group report was endorsed by the Ministerial Council in late 2002 and a regulatory impact statement released for public comment in December 2003.

Compensation for third party access to chemical assessment data is currently being assessed by the NRA in conjunction with jurisdictions and the chemical manufacturing industries. This has been a difficult process to negotiate with major manufacturers, many of whom are based overseas. Initial drafting instructions are being prepared by the Commonwealth.

#### ***Agricultural Chemicals Act 1955***

This Act will be repealed when Agricultural and Veterinary Products (Control of Use) Act 2002 is proclaimed. Proclamation of the Agricultural and Veterinary Products (Control of Use) Act 2002 is intended with the first set of regulations that are now at settling stage and

this is expected prior to 30 June 2004. If it is not completed, the Act is automatically enacted with effect from 29 August 2004, 2 years after Parliament enacted the legislation.

### ***Stock Foods Act 1941, Stock Medicine Act 1939***

Implementation of reforms to 'control of use' legislation is provided for in the *Agricultural and Veterinary Products (Control of Use) Act 2002* which was passed by Parliament in August 2002.

Both Acts will be repealed with effect from 29 August 2004 when the Agricultural and Veterinary Products (Control of Use) Act 2002 is proclaimed. Some existing components of the Stock Foods Act, which were assessed as being NCP compliant will be transferred to the Livestock Act 1997.

### ***Architects Act 1939***

A review of the Act was completed in August 1999 but was deferred pending completion of a review by the Productivity Commission of state legislation initiated in November 1999 by the Commonwealth Treasurer. The Productivity Commission report was issued on 16 November 2000 and recommended repeal of legislation and its replacement with self regulation mechanisms similar to those used by the unregulated accountancy and engineering professions. A State Officials Working Group (SOWG) with representatives from each State and Territory was set up to develop a national response to the review.

The SOWG recommended retention of registration provisions without restrictions on the practice of architecture and building design, industry and consumer representation on registration boards, accessible and transparent consumer complaints procedures and scope for contestability of certification within the Board system.

Cabinet approval to amend the Act to remove the major anti-competitive elements and to update the Act generally will be sought during April 2004. This will include removal of provisions restricting ownership of companies and limitations on advertising. It is expected that a Bill to implement these amendments will be introduced into Parliament during October 2004.

### ***Building Work Contractors Act 1995***

The Review of the South Australian legislation was completed in 2001. It recommended retention of the licensing and registration provisions and reduction of the financial resources and mandatory building indemnity insurance requirements.

The proposal to reduce financial resources and insurance requirements was referred back to the Review Panel for reconsideration in light of the collapse of HIH, one of only two providers of building indemnity insurance in SA. A Supplementary Issues Paper, dealing with financial and insurance requirements, was released for public and industry comment.

However, the Ministerial Council for Consumer Affairs (MCCA) commissioned a national review of the same issues by Professor Percy Allan. Work is now progressing on implementing these recommendations with a package of nationally consistent reforms to building legislation aimed at reducing building disputes and indemnity insurance claims. This is likely to increase the financial requirements for licensees and these will be assessed under the "gatekeeper" requirements which apply to new legislative proposals.

The NCP review of the SA legislation has been completed and it should not have been included in the 2003 assessment suspension pool.

### ***Children's Protection Act 1993***

The review report recommended that restrictions in section 6(1) were unjustified and may limit the Court's ability to appoint an officer best suited to needs of the child.

This section states:

#### *Interpretation*

6. (1) *In this Act, unless the contrary intention appears:*

*"Care and Protection Co-ordinator" means a member of the staff of the State Courts Administration Council assigned to the position of Care and Protection Co-ordinator.*

The Review report concluded that:

*The current restriction is unjustified, and may in fact limit the Court's options unnecessarily. Alteration to Section 6 (1) of the Act should ensure there is no prohibition on other persons being appointed to fulfil the role, thereby allowing the appointing officer to best address the needs of the child.*

It appears the Review concluded that under the Act only a Court appointed person (the Care and Protection Coordinator) can represent the interests of the child. This restriction, it argues, prevents other persons who may be better suited from representing the child in a "Family Care Meeting" convened by the Minister.

The argument in the Review report is concerned with the potential for disadvantage to the child if their cultural and linguistic needs are not properly met during a family care meeting. However this argument is not well supported by the Act.

*Section 30(1)(e) provides that the coordinator can invite to the meeting any other adult person (not being a legal practitioner) who the child or the child's guardians wish to support them at the meeting and who, in the opinion of the Co-ordinator, would be of assistance in that role.*

*Section 31(1) provides that the meeting is constituted such that (g) any other person nominated by the Co-ordinator for the purpose of providing expert advice or information on matters relevant to the meeting; and*

*(h)(i) if the child is an Aboriginal child, a person nominated by a recognised Aboriginal organisation; or*

*(ii) if the child is a Torres Strait Islander child, a person nominated by a recognised Torres Strait Islander organisation.*

The Act itself therefore provides sufficient protection and support for the child which it is the coordinator's role to ensure is provided. The coordinators do not necessarily have to fulfil this role, only to ensure that is done.

Part 5 of the Act, provides that the Care and Protection Co-ordinator has a crucial role in the coordination, management, review and facilitation of "Family care meetings" as required under the Act. It is entirely appropriate that this person be familiar with operation of the Act and the Court to fulfil this role properly.

The person authorised under section 7 has an obligation to ensure that as far as practical, coordinators represent a balance of appropriate cultural diversity.

There was no argument or evidence provided by the Review about this section restricting competition although the Review suggested there was a potential for such a restriction which may not be in the best interests of the child. However, as described above, this view is based on an inadequate interpretation of the Act.

The NCC 2003 assessment stated that restrictions in the Act are unjustified and may limit the ability to appoint an officer best suited to needs of the child. This assessment may have relied solely upon the Review report.

This assessment by the NCC should be revised given the lack of any evidence in the Review Report and/or argument supporting the claim that section 6(1) "Care and Protection Co-ordinator" is anti-competitive. There is sufficient support given to the needs of the child under that Act and the conclusion that the Court's options are unnecessarily restricted by the section in meeting the needs of the child is not correct.

Any amendments to the Children's Protection Act resulting from the Child Protection Review in 2002-03 will be consistent with the NCP principles and will be assessed under the "gatekeeper" provisions of the Competition Principles Agreement. The 2002-03 Child Protection Review recommended further amendments to the Act and legislation amendments are expected as a result. .

The NCP review of this Act has been completed and there are no reforms to be implemented. The inclusion of this Act in the 2003 assessment suspension pool is incorrect and should be revised.

### ***Chiropodists Act 1950***

The 1999 NCP review recommended removal of ownership and advertising restrictions and limiting practice reservations. Cabinet has approved the drafting of a Podiatrists Bill to implement these recommendations and after consultation with stakeholders, approval will be sought to introduce the Bill consistent with other health practitioner legislation in removing ownership restrictions to Parliament later in 2004.

### ***Chiropractors Act 1991***

The 1999 NCP review recommended removal of ownership restrictions and the amendment of practice reservations and the advertising code. Cabinet has approved the drafting of a Bill to implement these recommendations and after consultation with stakeholders, approval will be sought to introduce the Bill consistent with other health practitioner legislation in removing ownership restrictions to Parliament later in 2004.

### ***Controlled Substances Act 1984***

This Act which was the subject of a national review lead by the Commonwealth and final outcomes were not available at the time of the last national review. Recommendations regarding the restriction of S2 and S3 drugs to pharmacists are now being considered as part of this and other jurisdictions' reviews. A meeting of the National Coordinating Committee on Therapeutic Goods is set for the 9th March 2004 to further discuss the recommendations of the Galbally Review.

Since AHMAC is still considering the Galbally Review it would be premature for South Australia to make a decision until AHMAC arrives at its position. It is expected that final outcomes will be known in the latter half of 2004.

### ***Conveyancers Act 1994***

The non-controversial recommendations of the NCP review have been implemented. The recommendations relating to reform of the ownership restrictions remain outstanding after amendments contained in a Bill introduced by the former Government were opposed by the ALP, then in Opposition and now in Government.

A compromise proposal for reforms to the ownership provisions has been developed and the NCC has advised that implementation of these compromise reforms would be accepted as satisfactory compliance with CPA requirements. The compromise proposal is scheduled for consideration by Cabinet on 1 March 2004. If Cabinet approves the proposal it is anticipated that a Bill will be drafted for introduction as soon as possible thereafter, with the aim of having it passed and in operation before 30 June 2004.

### ***Dairy Industry Act 1992***

The *Dairy Industry Act 1992* establishes the South Australian Dairy Authority. It licenses dairy farmers, processors and vendors and since industry deregulation its key function in practice is to impose a Code of Practice primarily for food safety purposes as a condition of licence. The food safety system administered by the South Australian Dairy Authority has strong stakeholder support as it is recognised by its peers as the most cost effective system in Australia.

A government working group and an industry steering committee were established in 2000 to consider the future food safety requirements for all primary industry sectors in South Australia following the acceptance by CoAG of the inter-governmental food regulation agreement, the development of a South Australian Food Act and development of national primary production and processing standards by FSANZ. A discussion paper was released in October 2002 titled "*Legislation for implementation of Food Safety Systems in the Primary Industry Sector*".

A Primary Produce (Food Safety Schemes) Bill was released for public consultation in November 2003. It provides for development of food safety schemes (regulations) with regulatory intervention in proportion to identified risks. The Bill creates a framework for cost effective implementation of risk-based food safety systems and is similar to the framework in the Victorian *Dairy Act 2000*. The mechanisms will include: accreditation/licensing of businesses; imposing food safety schemes/standards/codes; collection of fees from industry for those costs attributable to industry; approval of auditors.

The *Dairy Industry Act 1992* will be repealed when a Dairy Scheme is approved under the Primary Produce (Food Safety Schemes) Bill. It is planned to introduce the Bill into Parliament in late March 2004 and the Dairy Scheme is expected to be implemented in August 2004.

### ***Dangerous Substances Act 1979***

The NCP review of this Act found a net public benefit justification for the restrictions on competition contained in the Act. Therefore, no changes to the Act were recommended. The review report was provided to the NCC in 2001.

This Act should not have been included in the 2003 assessment suspension pool.

Cabinet approved the drafting of a *Major Hazard Facilities and Dangerous Goods Bill* on 27 January 2004. These are new provisions assessed under to “Gatekeeper” obligation. It is anticipated that the new legislation will come into effect early in 2005. This legislation will prohibit the importation, handling, storage and sale of white phosphorous matches.

#### ***Dentists Act 1984***

The review recommended the removal of limits on ownership and the *Dental Practice Act, 2000* maintains these restrictions although providing the Minister with discretion to exempt suitable applicants. All applications for exemption received have been granted or are in the process of being considered, with the initial approvals being published in the *SA Government Gazette* on 19 June 2003. Cabinet approval to remove this remaining restriction on ownership of dental practices will be sought and amendments will be introduced into Parliament shortly.

#### ***Employment Agents Registration Act 1993***

A review of the Act was completed in 2003. It raised several issues relating to competition policy, however, the majority were assessed as being low impact. In consultation with the industry, discussions are continuing in order to identify the optimal method of addressing these concerns. This may include a code of practice and a reduced level of legislation. Every effort is being made to achieve an approach that is consistent with other jurisdictions. It is anticipated that this will be resolved by mid 2004.

#### ***Fisheries Act 1982***

The NCP review of the Act was completed in 2002. The review found that:

- without some form of control, the market demand for fish will lead to unsustainable harvesting of those fish.
- The *Fisheries Act 1982* provides a legal framework for protecting the living resources of the waters to which it applies. Primarily this translates to sustainable exploitation of the State’s wild fish resources. As such the Act is restrictive in nature.
- The mechanisms by which effective management of a wild fishery can be achieved vary in their impact on competition from minor to significant. The aim is to utilise those mechanisms that have the minimum impact.
- The management arrangements that the Act provides for allow limits on the extraction arrangements from a fishery, allocation of fish resources across competing uses, and the widest possible range of choices about how to catch fish. Each fishery is managed according to its particular circumstances, with a mix of access, output and input controls, as appropriate. This ensures the taking of no more, and usually less, than the maximum biological yield at the lowest cost.

It was the view of the Review Panel that the restrictions that were examined during the NCP review are justified on the basis that the benefits to the community outweigh the costs to the community. Furthermore, legislation that limits effort and catch for fisheries in this State is widely supported by the community, including commercial and recreational fishers.

Several provisions in the Act and its Regulations considered to have anti-competitive elements were further considered in a general review of the Act during 2003. A discussion paper was issued in February 2003 and further consultations undertaken during May 2003.

The general review of the Fisheries Act has been completed and public consultation on direction of new legislation has occurred. The Government’s responses to the recommendations in the NCP review dealing with restrictions on competition were -

- The Owner/Operator restrictions in the marine scalefish fishery will be maintained at this stage while a further restructure of the industry is being implemented.
- The one-person/one-license restrictions have been removed.
- Management restrictions in the schemes of management have been removed excepting those that are required for sustainability outcomes and others where the industry will not agree to their removal. The Government will not remove these latter without industry agreement (e.g. rock lobster pot restrictions on licenses).
- Corporate ownership has been allowed.
- Other issues include stronger property rights, licence tenure, foreign ownership of commercial fishing licences, permanent transfer of quota and the provision of industry services are subject to policy and drafting instructions for a new Fisheries Bill.

A Cabinet submission is scheduled for March 2004 to seek Cabinet approval for the development of a Consultation Draft Bill for further public release. This Draft Bill is expected to be released in June 2004 for a period of 60 to 90 days. A new Act could be tabled in Parliament before 31 December 2004 for assent on 1 July 2005.

#### ***Fisheries (Gulf St Vincent Prawn Rationalisation) Act 1987***

The Act can be rescinded as the last licence holder has settled their buyback debt with the Crown. A Cabinet submission will go forward in March 2004 seeking approval to rescind the Act.

#### **Gambling legislation**

##### ***Authorised Betting Operations Act 2000***

A Bill to amend the Act to allow the provision of fixed odds betting for the TAB, allowing bookmakers to be a body corporate and clarifying criteria for issuing permits to bookmakers has been introduced into Parliament and were passed on 5 May 2004. This completes the review and reform process in relation to this Act.

A phase out period for the removal of minimum telephone bets for bookmakers is already contained in the bookmakers' rules and will be complete by 1 July 2004.

This Act was not scheduled for review and is subject to the "gatekeeper" obligations in the CPA. Therefore, it should not have been included in the 2003 assessment suspension pool.

##### ***Gaming Machines Act 1992***

The NCC noted that the Government has not yet amended the Act to remove the State Supply Board's exclusive Gaming Machine Service Licence. That amendment has been approved by Cabinet and is contained in technical amendments that are currently being finalised. It is expected that this Bill will be considered by Parliament when it resumes in May 2004.

The NCC also noted that the Government has not yet responded to the issue of transferability of gaming machines within the existing cap arrangements. The recently released Independent Gambling Authority report of its *Inquiry into the Management of Gaming Machine Numbers* recommends a number of measures including the introduction of a transfer system for gaming machine entitlements. Legislation has been drafted and will need to be considered by Parliament prior to the expiration of the current freeze on gaming machine numbers on 31 May 2004.

### ***Lottery and Gaming Act 1936***

The outstanding issues relate to the recommendation to restrict participation in bingo and instant lottery tickets to persons 18 years of age and over, and that the IGA should approve events subject to sweepstakes and Calcutta sweepstakes. The proposal with respect to age restriction should await the outcome of a decision on lifting the age for SA Lotteries products from 16 to 18 years.

The issue of sweepstakes and Calcutta sweepstakes is correctly identified as minor. It will be addressed at an appropriate opportunity. Since the competition restrictions have been assessed as trivial, this Act should not be included in any reduction of competition payments.

### ***State Lotteries Act 1966***

The NCC did not accept the Government's public benefit argument for retaining the South Australian Lotteries Commission as a statutory sole provider. The Government maintains the position that the current arrangements provide an adequate level of service and that the community obtains a net financial benefit from the current arrangements.

The new development since the last advice on this matter is that Victorian Government officials have written to States and Territories noting the various commitments to review the lotteries industry structure that has arisen from NCP requirements. In particular some States have commenced processes or are further considering issuing public lottery licences. That correspondence proposes the establishment of a national working group to exchange information and discuss issues around the commercial arrangements in this area including the implications for the existing cross border arrangements. South Australia has indicated that it will participate in those discussions.

The gambling NCP review also proposes that the age restriction for the purchase of Lotteries Commission products should be increased from 16 to 18 years. Firstly, it is noted that this is considered a social matter and not a matter for competition policy consideration. At the time of the response the Government noted that there was currently a Bill (Private Members) before Parliament on this issue. That Bill has subsequently lapsed, but the issue is again being raised for consideration.

### ***Harbors and Navigation Act 1993***

There has been an intergovernmental agreement to develop nationally consistent legislation. This agreement has been extended until 2005 at which time the national reform should be complete. Possible amendments to the SA legislation to adopt as completed nationally agreed standards will be progressively prepared as necessary.

However, the NCP review was completed in 1999 and no reforms were required. This Act should not have been included in the 2003 assessment suspension pool.

### ***Land Valuers Act 1994***

An NCP Review of this Act recommended that the Act and the requirement for land valuers to hold prescribed qualifications be retained. However, it was also recommended that consideration be given as to whether the completion of subjects other than the professional sequence should be removed from the training requirements in relation to all post-graduate courses and that, if the Advanced Diploma in Property (Valuation) is offered in South Australia, this course is considered for recognition as a prescribed qualification.

As the trend in this and other jurisdictions has been to move away from qualifications and to prescribe units of competency, review of the current qualification requirements for land valuers had been deferred until the national training package incorporating competencies for valuers has been developed and endorsed (scheduled to be in 2005). The Advanced Diploma in Property (Valuation) is not presently offered in South Australia.

The Competition Principle Agreement (CPA) obligations with respect to review and reform of this Act have been satisfied. Any consideration given to changes in the prescribed qualifications is being undertaken separately from the NCP review.

The Act should be removed from the 2003 suspension pool.

### ***Legal Practitioners Act 1981***

In October 2000 the Government adopted the review recommendations in full, including the recommendation to keep the issue of multi-disciplinary practices under review and that there is no change to the professional indemnity insurance provisions provided premiums remain competitive.

However, the issue of multi-disciplinary practices is on the Standing Committee of Attorney-General's agenda, and is being progressed as part of the project to devise national model laws for the legal profession. Other amendments have been incorporated into a draft Miscellaneous Amendment Bill which received Assent on 4 December 2003.

### ***Meat Hygiene Act 1994***

The review was completed in September 2000. Progress was delayed due to the development of the new South Australian Food Act 2001 which impacts on the recommendations of the review, and came into operation in December 2002. Cabinet approved the drafting of amendments to the Act in response to the recommendations of the review on 10 February 2003.

A Memorandum of Understanding between the Department of Human Services, the Local Government Association and the Department of Primary Industries and Resources, SA has been developed to define areas of responsibility for inspections.

The recommendations of the NCP Review of the Meat Hygiene Act which require legislative amendment are:-

- broadening the scope of the Act to include retail meat processing, and
- including 'rabbit' within the definition of 'meat'.

Amendments to the Meat Hygiene Regulations which address the inclusion of 'rabbit' within the definition of 'meat' have been approved by Cabinet sub-committee and have been published in the SA Government Gazette and will come into effect on 5 June 2004.

The Meat Hygiene Miscellaneous (Amendments) Bill 2004 has been introduced into Parliament and the key change will be the addition of retail butchers to the Act. The Bill is expected to be proclaimed with an operative date around 1 July 2004 thereby making the Act NCP compliant. Once it is compliant, the regulations will be transferred to a Scheme under the proposed Primary Produce (Food Safety Schemes) Act. (See Dairy Act above.) This will have no NCP implications.

### ***Medical Practitioners Act 1983***

The review recommended removing ownership restrictions, registering medical students, requiring declaration of commercial interests and requiring professional indemnity insurance.

The Medical Practice Bill 2001 was introduced into the SA Parliament in May 2001 but lapsed following the calling of the State election. A new Bill, the Medical Practice Bill 2004 was introduced into the House of Assembly on 23rd March 2004 by the Minister for Health. This Bill removes existing ownership restrictions and includes provisions which protect the public but do not restrict entry into the market.

### **Mining Acts**

The review of the Mining Act 1971, Opal Mining Act 1995 and Mines and Works Inspection Act 1920 and the respective Regulations was completed in December 2002.

#### ***Mining Act 1971***

The NCP review did not identify any restrictions on competition that should be reformed. For this reason, the Act should not have been included in the 2003 suspension pool.

#### ***Opal Mining Act 1995***

Section 13 of the Act denies corporations' entry to the Major Working Area at Coober Pedy for the purposes of exploration and mining and the NCP review report recommends its repeal. The proposal to repeal this section will be forwarded to Cabinet for approval in April 2004 and it is expected to be in effect by 1 December 2004.

#### ***Mines and Works Inspection Act 1920***

The NCP review did not identify any restrictions on competition that should be reformed and the Act should not have been included in the 2003 suspension pool.

The report recommends that although the health and safety provisions in the *Mines and Works Inspection Act* are not provisions that contain restrictions on competition, they should be repealed as the *Occupational Health, Safety and Welfare Act* now deals with all of the matters they cover. The report also recommends that the provisions be repealed when amendments arising from the current review of the *Mining Act* are made and that the remaining provisions of the *Mines and Works Inspection Act* be incorporated into other appropriate legislation (eg. the *Mining Act*) at the same time.

The Government is considering the removal of the occupational health and safety provisions from the *Mines and Works Inspection Act* and incorporating the remaining provisions in to the *Mining Act* for administrative purposes only. It is not an obligation arising from the NCP review of the legislation or one required by Clause 5 of the CPA.

#### ***Motor Vehicles Act 1959 – Tow Trucks***

The Accident Towing review was completed in 2000. The review was released in November 2003 for public consultation with industry and key stakeholders on the recommendations. It is available at [www.transport.sa.gov.au](http://www.transport.sa.gov.au).

### **Motor vehicle compulsory third party insurance**

#### ***Motor Accident Commission Act 1992***

#### ***Motor Vehicles Act 1959***

This review has been completed and amendments to the legislation passed in October 2002. The Government released an Indicative Response to the NCP review of Compulsory Third

Party bodily insurance arrangements for public comment in February 2001. The decision to retain the Motor Accident Commission as the sole provider of CTP insurance in South Australia was reaffirmed in September 2001. The Government considered that the review demonstrated that a sole provider scheme is cheaper for motorists than a multi-provider scheme and that the objectives of CTP legislation – universal coverage, fair claims settlement, (maximum) affordability of premiums, fairness and community acceptability as well as minimum financial risk to the Government – cannot be achieved except by restricting competition through compulsion, community rating and provision by a single statutory authority. Amendments giving effect to the Government's response came into operation on 3 October 2002.

#### ***Occupational Therapists Act 1974***

The NCC has been provided with a copy of the review, which contains the public interest arguments for retaining registration. Cabinet has approved the drafting of a Bill to implement these recommendations consistent with other health practitioner legislation and after consultation with stakeholders, approval will be sought to introduce the Bill to Parliament later in 2004.

#### ***Optometrists Act 1920***

The Review was completed in April 1999. The recommendations include extending coverage to include optical dispensers, removal of restriction on training providers and the introduction of a code of conduct. Consultation on a proposal to grant prescribing rights to optometrists concluded in March 2004. Recommendations to the Minister regarding provisions for prescribing rights and the ongoing registration of optical dispensers are currently in progress and Cabinet approval to draft a bill consistent with other health practitioner legislation in removing ownership restrictions and implementing these amendments will be sought shortly.

#### ***Passenger Transport Act 1994 – Taxis***

The 1999 review report by consultants Halliday-Burgan was released by the Minister for Transport and Urban Planning on 8 November 2000. The Government is committed to review the taxi industry by 2006.

#### ***Petroleum Products Regulation Act 1995***

The review of this Act found that the current licensing system, namely the requirement for approval for an authority to make prescribed retail sales, provided the main restriction on competition in the petroleum retailing industry, creating a barrier to entry and protecting existing industry participants (large and small) without providing a net public benefit. The review's main recommendation therefore related to the abolition of the Petroleum Products Retail Outlets (PPRO) Board.

It is expected that the *Statutes Amendment Petroleum Products Bill* will be tabled in the 2004 Spring session of Parliament.

The Bill will abolish the Petroleum Products Retail Outlets (PPRO) Board and make other consequential amendments. Although the original timeframe for the abolition of the PPRO Board was 30 June 2004, time delays in introducing the Bill will require the extension of the transitional arrangement, until 31 December 2004. This date will be enacted through Gazettal.

### ***Pharmacists Act 1991***

A national review of the Pharmacy Regulation was completed in February 2000 (the Wilkinson Review). The review recommended retaining registration, the protection of title, practice restrictions and disciplinary systems (although with minor changes to the registration systems recommended for individual jurisdictions). Further, the review recommended maintaining existing ownership restrictions, and removing business licensing restrictions. CoAG considered a report in response to the review prepared by a senior officials' working party (the Borthwick report) and agreed limits on FSMA pharmacies and advertising restrictions should be lifted. The Government is considering its response to these reports.

### ***Physiotherapists Act 1991***

The review was completed in February 1999. Consistent with other health practitioner legislation in removing ownership restrictions the Bill will include publication of a code of conduct without advertising restrictions, amended definitions of areas of practice protected, removal of the requirement to register business names, removal of ownership restrictions, prohibition of undue influence, demonstration of continuing competence and removal of advertising and unprofessional conduct provisions from code of ethics prior to adoption of a code of conduct.

Cabinet has approved the drafting of a Bill to implement these recommendations and after consultation with stakeholders, approval will be sought to introduce the Bill to Parliament later in 2004.

### ***Psychological Practices Act 1973***

The review completed in 1999. It recommended removing advertising and practice restrictions. Cabinet has approved the drafting of a Bill to implement these recommendations and after consultation with stakeholders, approval will be sought to introduce the Bill consistent with other health practitioner legislation to Parliament later in 2004.

### ***Shop Trading Hours Act 1977***

Significant amendments were made to the Act in June 2003 to extend weeknight trading to 9pm (from July 2003) and to allow Sunday trading from 11am to 5pm for stores in the metropolitan area from October 2003. Further amendments are not proposed, however, the Act will be reviewed after three years of operation.

### ***Southern State Superannuation (SSS) Act 1987***

A desktop review of the Act (undertaken by the Crown Solicitor's Office) recommended no reform. This was considered by the NCC not to have met CPA obligations.

In its 2003 assessment the NCC considered that SA "had not established that the benefits of the restriction on choice of superannuation fund for providers and members exceed the costs".

The restriction in relation to the State Government not providing 'scheme choice' to members of the Triple S Scheme is considered trivial to negligible because:

- In relation to administration fess, a recent report by '*SuperRatings*', an independent research company, states that based on a survey of all Australian superannuation schemes, the Triple S Scheme had the lowest administration expenses of any scheme in Australia. The Non Investment Related Management Expense Ratio of Triple S was 0.28% per annum compared to the industry average of 1.16%. The research also showed that the average administration cost per member of Triple S was \$30.69

(across the total membership). This compared against an industry low of \$26.60 and an average of \$199.53 per annum.

- Members of the scheme have the option to choose between several different investment strategies. The returns of the core investment strategy over the last 7 years have exceeded the median returns on funds in the Mercer Australian wide survey by 0.7% per annum (on a comparative tax basis).
- Insurance premiums in the self-funded arrangement are on a par with the most competitive of the big private sector industry funds.

The 2003 NCC Assessment report states that “the main outcomes of the restricted choice of fund provider are that contributors cannot take advantage of higher returns that they believe other superannuation funds could provide and the market presence of alternative service providers is constrained”. Against the fact that the *SuperRatings* group has found Triple S to have the lowest administration fees in Australia and Triple S returns have been better than the median over the last 7 years, it is not valid for the NCC to conclude that contributors are in some way disadvantaged by the restriction on choice of fund provider. The economies of scale in Triple S, which bring these benefits to members, could be put under pressure if members had a choice of fund or scheme.

Super SA, the tied service provider to SA Government employees for their Guarantee Levy money, only provides superannuation scheme administration services. Super SA has approximately 6 FTEs dedicated to this task, thus representing an insignificant level of economic activity.

Funds SA, however, administers the investing of Super SA’s Guarantee Levy money. Funds SA is not an investor itself, but manages the outsourcing of the investments to a range of private sector investment managers. Funds SA regularly assesses its private sector investment managers on the basis of their recent performance. Thus, the actual investment of the funds has no anticompetitive impact in the equities or financial markets.

### ***Survey Act 1992***

The review recommended current restrictions on companies and partnerships be removed and new provisions be added to make it an offence for any person to exert undue influence over a licensed surveyor to provide a service in an inappropriate or unprofessional manner. The Bill containing these reforms was assented to on 11 December 2003 and will come into operation on 1 April 2004.

### ***Trade Measurement Act 1993***

The Trade Measurement Act was reviewed nationally with Queensland as lead agency. The review was completed in late 2003. The review, incorporating a Public Benefit Test of the requirement to unit price non pre-packed meat, concluded that all restrictions contained in the legislation are justified as delivering net public benefits. While the review recommends a further review to standardise and clarify the definition of meat for the purposes of a requirement to unit price all non pre-packaged meat, this would only increase the present net benefit. Therefore, once the Office of Regulatory Review and the NCC are provided with a copy of the final report, our CPA obligations should be met. The lead agency advised in November 2003 that it intended to advise the NCC and ORR of the completion of the review and reform project.

This Act should be removed from the 2003 assessment suspension pool.

### ***Travel Agents Act 1986***

A National review was conducted of this legislation with WA as lead agency. Significant delays were experienced with the conduct of this review, due mainly to concerns about an initial report prepared by external consultants. The Ministerial Council for Consumer Affairs endorsed the Review Recommendations. It resolved to defer implementation of a recommended review of the Travel Compensation Fund (TCF) pending completion of existing joint industry working group reviewing the TCF in light of the effects on the TCF of the Ansett collapse. The remaining recommendations were:

- To review the qualification requirements for travel agents and make these uniform throughout Australia;
- To increase the turnover threshold amount under which persons are exempt from the licensing requirement to \$50,000;
- To remove the exemption for Crown-owned businesses.

Implementation is being overseen by a national working party with WA as lead agency. The qualification requirements have been reviewed and work is progressing towards legislating to implement the new uniform requirements by 30 June 2004.

Cabinet has approved the increase in the exemption threshold amount and Regulations are currently being drafted with a view to having them gazetted and in operation prior to 30 June 2004.

After consultation with the Minister for Tourism regarding the recommendation to remove the Crown exemption, the Minister for Consumer Affairs has determined not to implement this recommendation. This is because the South Australian Tourism Commission does not engage in competitive commercial activity therefore does not attract competitive neutrality requirements. The conclusion that the Crown exemption need not be removed in South Australia was endorsed by the Director, NCP Implementation Unit, Department of Premier and Cabinet. It is also understood that other States are also deferring implementation of this recommendation, possibly on the same grounds. Other States have been revoking exemptions that apply to interstate Crown-owned businesses promoting tourism to those interstate destinations. There is no such legislative exemption in SA, although OCBA has received legal advice to the effect that the Queensland Tourism Commission, which carries on business in SA, does not require a licence in SA due to the operation of the common law.

### ***Veterinary Surgeons 1985***

The NCP review was completed in May 2000 and approved by Cabinet in September 2000. A Veterinary Practices Bill was passed in 2003. Consultation on new Regulations commenced with the issue of a discussion paper on 11 March 2004. It is expected that Regulations will be completed in time to enable proclamation of Act by 30 June, 2004.

### ***Occupational Health, Safety and Welfare Act 1986***

At the time of the last report a legislative review of the Act was being conducted and the NCP review of the Act could not be finalised until that was complete. The review of the Act (part of the review of occupational health and safety and workers' compensation and rehabilitation by Brian Stanley in 2002) has been followed by the *Occupational Health, Safety and Welfare (SafeWorkSA) Amendment Bill 2003*, presently before Parliament.

The major finding of the NCP review was that the benefits of the existing system outweigh the costs of the restriction on competition and therefore should be retained. The review did

raise some concerns in relation to market entry for health and safety representatives (because of accreditation processes) and in relation to public access to Australian Standards referred to in the *Occupational Health, Safety and Welfare Regulations, 1995*.

The proposed SafeWorkSA Authority will consider these issues. In the event the Authority is not established, the matters will be dealt with by the existing ministerial Occupational Health, Safety and Welfare Advisory Committee (OHSWAC).

It is anticipated that the relevant group will propose any changes in relation to these issues by June 2005.

### ***Workers Rehabilitation and Compensation Act 1986***

The NCP legislative review of the Act was completed in mid 2002 under the guidance of an inter-agency Steering Committee. Prior to the completion of the final report, an Issues Paper and a Draft Report were released for comment, with 12 and 13 submissions received respectively. Meetings were also held with some of the interested parties.

The review identified a number of restrictions to competition in the Act but only proposed minor legislative changes. The majority of the identified restrictions were considered appropriate as they are consistent with the Act's objectives and there are net public benefits from their retention. The two most significant restrictions identified by the review are compulsory coverage and sole scheme administrator (statutory monopoly provider). The review found both to be of a net public benefit and recommended their retention. The NCC has previously accepted the arguments for compulsory coverage.

In mid 2002, the South Australian Government announced two separate investigations of aspects of the workers rehabilitation and compensation arrangements in South Australia. These two investigations related to, firstly a report on the financial, risk management and governance arrangements of the WorkCover Corporation, and secondly, a review of the South Australian workers compensation and occupational health, safety and welfare systems. The Minister received reports on these two investigations for consideration in late 2002 and early 2003.

In early 2003, the Minister for Industrial Relations released the report on the 'Review of Workers Compensation and Occupational Health, Safety and Welfare' (the 'Stanley' review) for public consultation. As both of these reviews were to consider issues raised in the NCP legislative reviews, and there was a strong likelihood that legislative changes would be identified, further action on the NCP review recommendations was not progressed on the basis that the NCP review recommendations would be considered as part of the Government's broader review of the workers rehabilitation and compensation arrangements in South Australia.

### **3.4.4 Legislation not subject to reduction of competition payments**

#### ***Advances to Settlers Act 1930***

#### ***Loans for Fencing and Water Piping Act 1938***

#### ***Loans to Producers Act 1927***

These Acts were defunct and a review was not undertaken. The *Statutes Amendment and Repeal (National Competition Policy) Bill 2002* combined the repeal or minor amendment of

a number of Acts to give effect to the recommendations of NCP legislation reviews. The above three Acts were repealed as part of this process in 2002.

### ***Branding of Pigs Act 1964***

#### ***Brands Act 1933***

It is proposed to introduce Mandatory Registration Regulations under Section 17 of the Livestock Act requiring that persons must be registered if they keep livestock of a prescribed class. Such a requirement is already in place for persons keeping deer and bees and the proposal is to include persons who keep sheep, cattle, buffalo, goats and alpaca.

When the regulations are drafted, Parliamentary Counsel will be requested to draft a proclamation bringing parts 1 (b) & (c) of Schedule 2 of the Livestock Act into operation, resulting in the repeal of the Brands Act and the Branding of Pigs Act. The changes are expected to be proclaimed by 30 June 2004.

### ***Citrus Industry Act 1991***

The NCP review of the Act was completed in 2001. It recommended that an association representative of the citrus industry in South Australia be nominated under the *Primary Industry Funding Schemes Act, 1998* as the administrator of a fund established under that Act to undertake those functions performed by the Board which provide industry benefit. The Act would then be repealed.

The draft Citrus Industry (Competition Policy Reform) Amendment Bill 2004 to remove major anti competitive elements from the *Citrus Industry Act 1991* has been released for public comment following extensive consultation with the industry via the Citrus Industry Implementation Committee.

The amendments provide for:

- Setting a sunset date for the Act to expire (30th April 2005)
- Retention of registration of industry participants remains but tests for licensing are removed.
- Simplification of the “preparation and packing” requirements for fruit moving through the chain – tying these requirements to provisions of the proposed food safety laws in SA.
- Retention of maturity standards and other key food safety requirements in the conditions of fruit preparation and packing.
- Retention of powers to raise levies from all sectors.
- Retention of the powers to collect information and of inspection.
- Removal of powers and administrative functions which govern settlement of payments made by wholesalers to packers.
- Removal of powers to regulate the movement, handling and marketing of fruit.
- Removal of powers to make marketing orders.
- Board representation changed to represent all sectors, as requested by industry.

The Amending Bill provides a sunset date of 30th April 2005 for the Citrus Act, with affairs of the Citrus Board to be wound up by 31st July 2005. It is expected to have passed through parliamentary processes by July 2004.

### ***Crown Lands Act 1929***

The NCP review was completed in 1999 following public consultation. No NCP reforms were required and this review is now complete.

Following completion of the review, Cabinet approved the drafting of a rewrite of the Act to rationalise leasing and licensing arrangements. There are no outstanding NCP issues.

### ***Discharged Soldier Settlement Act 1934***

Repeal of the Act approved by Cabinet. Bill to repeal to be introduced into Parliament in September 2004.

### ***Dried Fruits Act 1993***

An Act to repeal the Dried Fruits Act was passed by Parliament in November 2003. This repealing legislation included provisions for transfer of remnant funds of the Dried Fruits Board to SA Dried Tree Fruit Growers Association. The agreement between the Minister and the SA Dried Tree Fruits Association for transfer and management of these funds is currently being finalised by Crown Solicitor's Office. Once transfer of funds occurs, approval will be sought from Cabinet for the Dried Fruits Repeal Act to be proclaimed.

Closing of Dried Fruits Board accounts and transfer of funds to the SA Dried Tree Fruits Association should be completed by 30th April 2004. Proclamation of the Dried Fruits Repeal Act should be completed by 31<sup>st</sup> May 2004.

### ***Fair Trading Act 1987***

In response to comments by the NCC in the Third Tranche Assessment, the relevant agency reviewed the Act to ensure that any provisions beyond those which duplicate parts of the Trade Practices Act were reviewed according to the clause 5(1) principles. The review report recommends the retention of all provisions, which are justified on the basis of a net public benefit, with further review during a forthcoming general review of Act of the following matters:

- increasing the door to door sales threshold from \$50 to \$100
- reviewing the need for retention of fair reporting provisions when sufficient time has elapsed, to ascertain adequacy of Commonwealth Privacy Act
- considering the repeal of the s.40 price ticket requirements which is a trivial restrictions on competition
- repealing or increasing the level of certainty in third party trading scheme provisions.

The NCP review of this Act has been completed.

### ***Family and Community Services Act 1972***

The 1999 NCP review report recommended removal of provisions preventing for-profit organisations entering into grant allowance agreements for the provision of long term care.

The Government considers the recommendation is not in the public interest and should be rejected for these reasons -

- The not-for-profit sector subsidises the cost of these services considerably and it is therefore very unlikely that for-profit agencies would enter this market.
- There are no reliable and consistent benchmark standards against which a for-profit agency could be held accountable.
- There is a considerable risk that a for-profit agency would need to cut services in order for it to be financially viable.
- Given that financial margins are slim:

- Any reserves accumulated by agencies from prudent management should be returned to clients; and
- In the provision of this service the needs of the client should always take precedence over profits. For-profit agencies, by their nature would not be able to meet this principle as effectively as not-for-profit agencies.
- The current provision does not preclude the for-profit sector, but provides that the Minister can always ensure the needs of the client are met before the needs of a commercial principle or enterprise.
- At the time of the proposed amendment, SACOSS, the Child and Family Welfare Association of SA the Association of Major Community Organisations (SA) all were opposed to it.

There is no strong case supporting the proposition that competitive interests are being unnecessarily restricted from entering this market and a strong community benefit argument exists for the maintenance of this provision. Essentially these arguments are that:

- There is no evidence that demonstrates the barrier to competition is significant.
- There is a considerable public benefit in terms of the assurances to the client and the care provider that their interests are the primary focus of the agency and the Government.
- The Act does not preclude the Minister from considering a for-profit agency if it is in the interests of the client group to do so.
- Given the vulnerability of these clients, it is in the public interest that the Minister be given the discretionary ability to have a preferred provider sector, which has as its primary focus the interests of the client and this focus is not put at risk with a need for financial gain.

The NCP review has been completed and the Government has concluded, for the reasons stated above, that no reform is necessary.

#### ***Food Act 2001***

The Act is based on the national model Bill and there are no additional provisions in the Act unique to South Australia. Implementation of food safety provisions in relation to primary produce is being applied under the *Dairy Industry Act 1992* which is also included in the suspension pool.

#### ***Fruit and Plant Protection Act 1992***

The NCP review was been completed in April 2003 and no reforms were recommended. No further action is required.

#### ***Impounding Act 1991***

The 2001 NCP review has been completed. The Act does not contain any restrictions on competition.

#### ***Irrigation (Land Tenure) Act 1930***

NCP review completed but no reforms recommended. The Act has been repealed.

#### ***Local Government Act 1934***

The provisions relating to cemeteries were repealed in 2002 and this completed the NCP obligation to review and reform the Act.

### ***Motor Vehicles Act 1959 – Driving Instructors***

The review of Motor Driving Instructors recommends minor amendments to the legislation to reflect the terminology used by the industry and these are not competition issues. The Government is considering the report.

### ***Pastoral Land Management and Conservation Act 1989***

NCP review completed in 1999 but no NCP reforms were required. Review has been completed.

Subsequent amendments implementing protocols enabling public access to pastoral leases by members of the public did not involve any competition issues.

### ***Petroleum (Submerged Lands) Act 1982***

An inter-governmental agreement of 16 October 1967 by Australian Governments requires that petroleum legislation in Australian waters be, as far as practicable, common.

South Australia has agreed to the Ministerial Council Minerals and Petroleum Resources (MCMPR) proposal to create a National Offshore Petroleum Safety Agency (NOPSA) for Minerals and Petroleum.

However, there are neither current licences nor current plans to promote petroleum acreage releases in SA's adjacent, offshore waters. For the sake of legislative efficiency and in the absence of any operational need to amend the Act at this time, South Australia intends to amend the legislation to achieve 'harmonisation' with the Commonwealth Act after the completion of major amendments now being developed nationally for the creation of the National Offshore Petroleum Safety Authority (NOPSA). The timing of amendments of the South Australian Act will follow the Commonwealth's timelines for incorporating the NOPSA into the Commonwealth legislation. This plan ensures for all practical purposes that South Australia's Act is on track to be amended before any licensed petroleum activities are undertaken.

The new Commonwealth Act will contain some changed terminology, thus required consequential amendments to other State legislation, including the Gas Pipelines Access (South Australia) Act 1997. PIRSA's Petroleum Group is working with Parliamentary Counsel to meet the timelines set by the Commonwealth Government for its amendments to offshore petroleum legislation. It is proposed to introduce the Bill in the September Parliamentary sittings. Amendments to the Act, at least in respect to NOPSA and common nomenclature in respect to the proposed Commonwealth "Offshore Petroleum Act" are required to come into operation on 1 Jan 2005 (date of commencement of NOPSA under Commonwealth Act).

These new legislative proposals are assessable under the "gatekeeping" provisions of the CPA.

### ***Plumbers, Gas Fitters and Electricians Act 1995***

The NCP review of this Act identified certain trivial restrictions on competition but these changes were assessed by the NCC as not being required for CPA clause 5 purposes and in its 2003 Assessment the NCC assessed SA has not having completed its CPA obligations with respect to this Act.

All of the recommendations of the review have now been implemented, apart from the recommendation that the business competency and financial resources requirements be reduced where a person proposes only to subcontract to other contractors. It was decided that these requirements were necessary to ensure that subcontractors are better able to protect themselves from exploitation by contractors and that consumers are protected from the potential for subcontractors in financial trouble to cut corners. Also, the proposal was thought to be inconsistent with measures designed to decrease insolvency rates of building contractors, because they would suffer the impact of subcontractor insolvencies. The remaining recommendations were implemented by Regulations that came into operation on 31 January 2004.

#### ***Public and Environmental Health Act 1987***

The 2000 NCP review of the Act concluded that the provisions relating to public health standards and communicable diseases and monitoring of these were justified by the public benefits derived by the community. No reforms are required and the NCP review obligation has been completed.

Following the completion of the NCP review, discussions occurred with educational bodies and professional organisations on alternative courses providing qualifications for authorised officers which might be approved.

#### ***Radiation Protection and Control Act 1982***

National review of legislation recommended several amendments relating to environmental protection, non-ionising radiation and certification of third party testing of x-ray machines. AHMAC has accepted the recommendations and the implementation plan. South Australia will implement the recommendations according to the agreed timetable which extends to June 2005.

#### ***Security and Investigation Agents Act 1995***

The NCP review of this Act was completed in May 2003. It made a number of recommendations for minor changes to the Act that have been assessed by the NCC as not being restrictions on competition for the purposes of clause 5 of the CPA. Consultation is occurring within Government regarding a number of the proposals prior to seeking Government approval to implement the review recommendations. In light of competing priorities it is unlikely that the recommendations will be implemented by 30 June 2004

#### ***South Australian Health Commission Act 1976***

The NCP review completed in 1999 reviewed the provisions restricting market conduct by private hospitals. Amendments to the Act for non-NCP and NCP issues are currently being considered as part of the health reform process arising from the Generational Health Review..

#### ***South Australian Motor Sport Act 1984 (formerly Australian Formula One Grand Prix Act)***

Until the end of 2002 this legislation was committed to the Premier. Reflecting the previous Ministerial arrangements the Department of the Premier and Cabinet (DPC) commenced the NCP review of the Act. Notwithstanding that the Act is now committed to the Deputy Premier, DPC offered to complete the review process, subject to the Deputy Premier's approval. Such approval was granted in early 2003.

The NCP Review of the Act has been completed. An assessment of the restrictions contained in the Act found that they range from trivial to intermediate in severity. The restrictions relate

primarily to the provisions that provide the SA Motor Sport Board with access to facilities or other powers that are either not available to its competitors or are only available at a higher cost. However, the Act does not prevent competitors from staging events and in the context of a national market for attracting and staging major motor sport events, the adverse effect of the restrictions on competition is considered to be relatively minor.

In assessing the costs and benefits associated with the restrictions on competition contained in the Act, the Review found that there are costs to the community including inconvenience to the public and some businesses as a result of the lack of public access to a small part of the Adelaide Parklands, noise and restrictions that occur due to road closures. However, this inconvenience is considered to be more than outweighed by the significant economic and tourism benefits generated by the staging of motor sport events. This finding is supported by independent economic studies. Therefore, on the basis that the restrictions on competition contained in the Act provide a net public benefit to the community as a whole, no changes to the legislation are recommended.

#### ***Starr-Bowkett Societies Act 1975***

Payments through these societies now completed. Last Starr Bowkett Society recently deregistered. The Act is to be repealed.

#### ***Water Legislation***

A report on the review of the *Waterworks Act 1932*, *Sewerage Act 1929* and the *South Australian Water Corporation Act 1994* was completed prior to the change in Government in February 2002. The report concluded that the primary restrictions to competition and constraints on market entry for alternative suppliers in areas already supplied by SA Water appear to arise from the inherent natural monopoly of the infrastructure rather than specific provisions of the legislation.

The majority of the identified restrictions to competition were considered appropriate in the context of the Acts' objectives and that there are net public benefits from their retention. Although the review report identified a number of trivial and intermediate restrictions in the Act and consequently recommended some minor amendments to the Acts, the existing arrangements are considered to adequately address the issues raised in the review report, and accordingly no legislative changes are proposed.

#### ***White Phosphorous Matches Act 1915***

This Act will be repealed after the introduction of the *Major Hazard Facilities and Dangerous Goods Bill* as described in 3.4.3 above.

#### ***Wine Grapes Industry Act 1991***

The Wine Grapes Industry Act has been the subject of a National Competition Policy review by KPMG Management Consulting (completed in 1999) and a legislative review by PIRSA (completed in 2001).

KPMG concluded that the indicative price arrangements that the Act provides for do not have the effect of fixing, controlling or maintaining prices, are unlikely to give rise to a breach of the Trade Practices Act and are not presently operating to restrict competition in the market for the supply of wine grapes. Nevertheless, KPMG recommended that the Act be repealed because it is not achieving its apparent objectives. However, such a recommendation was beyond the scope of the review.

Rather than implement the recommendation to repeal the Act in isolation, the Government's preferred path was to work with industry stakeholders, particularly wine grape producers and processors, to explore alternative mechanisms for achieving desired outcomes. Primary Industries and Resources SA (PIRSA) established a departmental Review Team to manage the process.

Section 9(1) of the Wine Grapes Industry Act 1991 states that a processor must not accept delivery of wine grapes grown in the production area for processing unless all amounts that have previously fallen due in a previous season have been paid in full, or the processor has been granted an exemption.

It is proposed to issue a statement along the lines that unless it can be demonstrated that a processor is insolvent and provided that interest on outstanding payments is paid, a processor will be granted an exemption under Section 9(3) allowing the processor to accept delivery of fruit without having paid all amounts that have fallen due in previous vintages. It is necessary to canvass the views of grape and wine industry stakeholders before the statement is released. Release of the statement will complete the changes necessary to make the Wine Grapes Industry Act NCP compliant.

#### **3.4.6 New legislation**

Clause 5(5) of the Competition Principles Agreement requires proposals for new legislation containing restrictions on competition to be accompanied by evidence that the legislation is consistent with the principles in clause 5(1).

The Department of the Premier and Cabinet has produced two documents, *Guidelines paper for agencies conducting a legislation review under the CoAG Competition Principles Agreement*, February 1998 and *Proposals for New Legislation - National Competition Policy Review Obligations*, November 2001 (endorsed by Senior Management Council in December 2001), reminding South Australian portfolio agencies of this obligation. The documents are published on the Department of the Premier and Cabinet internet site at [www.premcab.sa.gov.au](http://www.premcab.sa.gov.au).

The Department of the Premier and Cabinet's *Circular 19 - Preparing Cabinet Submissions* was approved by Cabinet in July 2003 and describes the processes and requirements involved in preparing Cabinet submissions. It requires the provision of information on community impacts, specifically family and society, small business, regional and regulatory (including NCP issues) impacts, in all Cabinet submissions. This process ensures that all of the "gate keeping" obligations contained in Clause 5 of the Competition Principles Agreement in relation to existing scheduled legislation reviews and for new legislation are met as Cabinet must approve all proposals for changes to legislation.

The circular encourages early consultation on proposals among those in the community who are likely to be affected and relevant Government agencies. A risk management assessment and an implementation strategy are required, where these are appropriate. The circular indicates the type of proposals where a regulation assessment is appropriate and provides a checklist of questions to focus upon relevant considerations.

The NCP Implementation Unit in the Department of the Premier and Cabinet provides advice to agencies on regulation impact statements and NCP requirements. It also advises Cabinet

Office on the adequacy of the regulation impact statements in Cabinet submissions. The NCP Implementation Unit provided comments on 297 regulatory impact statements in Cabinet submissions during 2003.

Cabinet Office is now assessing whether or not each Cabinet submission has considered the range of community impacts described above and if these are considered to be adequate. A summary of the results will be published annually.

### **3.4.7 Ten Year Review**

Following the completion of the scheduled legislation reviews, clause 5(6) requires the systematic review of legislation which restricts competition at least every ten years. The first review of a scheduled Act was completed in 1997.

It should be noted that in South Australia subordinate legislation lapses at the end of ten years, and must be remade. This will bring into play the processes for the review of new legislation described above.

## THIRD PARTY ACCESS

### 3.5.1 Port Facilities

Third party access in relation to port facilities is addressed under **3.1 PRICES OVERSIGHT**.

### 3.5.2 Rail Facilities

The South Australian Government, in conjunction with the Northern Territory and Commonwealth Governments, supported the AustralAsia Railway project. One of the fundamental features of that project was the rail access regime for the line from Tarcoola to Alice Springs, which now extends to Darwin, established by the complementary *Australasia Railway (Third Party Access)* legislation of South Australia and the Northern Territory.

This regime was certified by the Commonwealth Treasurer as effective under section 44N of the *Trade Practices Act 1974* on 23 March 2000. The certification is for a period ending on 31 December 2030.

ESCOSA has the role of regulating third party access to the Tarcoola to Darwin railway.

Central to the rail access regime is the *AustralAsia Railway (Third Party Access) Code* ["the Code"], which is a schedule to the *AustralAsia Railway (Third Party Access) Act 1999*.

The extension of the railway line to Darwin has been completed, with the service to Darwin commencing operations in January 2004. To coincide with the commencement of operations on the Tarcoola-Darwin railway, the Governments of South Australia and the Northern Territory declared the Code, by way of a joint ministerial notice. The Code took effect at 3pm Central Summer Time, on Thursday 15 January 2004.

In July 2003, ESCOSA made a Provisional Determination under the Code in relation to Regulated Rates of Return for the Tarcoola-Darwin railway. The Provisional Determination relates only to certain regulated rates of return to be applied by an arbitrator in the event of an access dispute.

ESCOSA issued the following two guidelines under the Code in February 2004, both of which took effect on Monday 16 February 2004 -

- *Rail Industry Guideline No. 1 (Final) Access Provider Reference Pricing and Service Policies*, which sets out the pricing and service policy obligations placed upon the access provider (Asia Pacific Transport Pty Ltd).
- *Rail Industry Guideline No. 2 (Final) Arbitrator Pricing Requirements*, which sets out certain pricing principles and methods that an arbitrator would need to apply were an access dispute to arise and reach arbitration.

The provisional determination and guidelines may be obtained from ESCOSA's website at: [www.escosa.sa.gov.au](http://www.escosa.sa.gov.au).

With regard to intrastate rail regulation, responsibility for access regulation will be transferred from Transport SA to ESCOSA in 2004. Technical and safety regulation will remain with Transport SA.

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

Intrastate railway operators are providing the regulator with six monthly reports of their costs associated with providing railway services in accordance with Part 7 of the Act. There have been no access disputes referred to the regulator under section 35 of the Act for reference to arbitration during the year 2003.

### ***Australasia Railway (third Party Access) Code:***

On 10 March 2003 the Australian Competition Tribunal overturned the decision by the Commonwealth Minister (Senator Ian Campbell) to declare the line between Tarcoola and Wirrida under section 44H of the *Trade Practices Act 1974 (Cth)*. As a result of this decision access to the line from Tarcoola to Wirrida reverted to being subject to the Code.

Construction of the new railway from Alice Springs to Darwin was completed on 14 January 2004. The Code was applied to the railway from Tarcoola to Darwin by joint Ministerial notice made under clauses 2 and 49 of the Code. This application of the Code to the railway took effect at 3 PM *Central Summer Time* on 15 January 2004. As a result of this notice the Code applies to the railway from the southern boundary of the land leased to Asia Pacific Transport Consortium Pty Limited to the point where the railway ends on the wharf at East Arm in Darwin. Associated sidings, crossing loops and the railway within any terminal, or any intermodal cargo handling or port facility between those two points are also subject to the Code.

### **3.5.3 Gas Issues**

#### ***National Gas Pipelines Advisory Committee***

The Seventh and Sixth Amending Agreements for the Gas Code came into operation on 17 April 2003 and 24 April 2003 respectively. Due to South Australia's role as the lead legislator for the Gas Access Regime, such agreements take effect in all Australian States and Territories upon publication in the South Australia Government Gazette.

The Seventh Amending Agreement included:

- Increasing the scope of a New Facility to include an asset providing services ancillary to haulage services, such as facilitating competition in retail markets.
- A revision to provide the Regulator with the means to change the capital base, if the forecast capital expenditure meets certain efficiency criteria. That change still permits the Regulator at the next regulatory review to decide if the actual expenditure meets these criteria, and to determine how much of this change will be brought into the capital base.

The Sixth Amending Agreement permitted greater flexibility in establishing the scope of access arrangements for gas pipeline services. Previously, if a pipeline service was provided by the same entity through more than one covered pipeline then each pipeline required a separate access arrangement. The Agreement changed the Code to permit such access arrangements to be rationalised to, for example, just one access arrangement, subject to the proviso that the regulator is the same. The change will permit a reduction in the cost of regulation, by lowering the administrative costs to both the regulator and service provider.

### ***Envestra Access Arrangement for the South Australian Gas Distribution System***

On 17 April 2003, the South Australian Independent Pricing and Access Regulator (SAIPAR) released its Final Approval with respect to Envestra Limited's Access Arrangement. The Access Arrangement sets out default terms and conditions on which access to Envestra's distribution system is provided to retailers.

The regulatory functions of SAIPAR were transferred to ESCOSA on 1 July 2003 (see section **4.2 GAS**). From that date, ESCOSA commenced its role as regulator of access to the distribution system in South Australia, which includes the Envestra Access Arrangement.

### ***Regulation of Natural Gas Transmission Network***

The report to the NCC for the calendar year 2002 mentioned that the Australian Competition and Consumer Commission (ACCC), the Relevant Regulator for the Moomba to Adelaide Pipeline (MAP), drafted and approved its own Access Arrangement for the MAP, after it did not approve the revised Access Arrangement submitted by Epic Energy. The report also noted that Epic Energy had appealed to the Australian Competition Tribunal (ACT) against the ACCC's decision.

The ACT issued its orders with regard to Epic Energy's appeal on 10 December 2003:

- Increasing the initial capital base; and
- Rescinding the inclusion of the expansion in pipeline capacity arising from the addition of Pelican Point Power Station as a customer, as the Tribunal did not believe that it provided Epic with the ability to exercise market power of a significant nature.

### ***Productivity Commission Review of the Gas Access Regime***

The Commonwealth Government referred a review of the Gas Access Regime to the Productivity Commission in June 2003. The Productivity Commission invited initial submissions to the Review and released an Issues Paper to assist individuals and organisations with preparing submissions. The South Australian Government forwarded a submission in response to the Issues Paper to the Productivity Commission in September 2003.

The Productivity Commission released a Draft Report on the Review in December 2003, inviting written responses on the report. The South Australian Government has responded to the Draft Report, with its response being available on the Productivity Commission's website.

## **3.6 LOCAL GOVERNMENT**

The application of competition principles to the Local Government sector in South Australia is continuing, consistent with the Statement on the Application of Competition Principles to Local Government (the so-called Clause 7 Statement).

### ***Reporting Period***

Information from Councils 2002/2003 annual reports has been used as the basis for the following report. As a consequence, the reporting period for Local Government in this report is for the 2002/2003 financial year. This is consistent with reporting in previous years.

### ***Significant Business Activities***

It has been previously reported that councils have identified all significant business activities and determined which competitive neutrality principles are to apply to them. Councils continue to review these arrangements and, as a consequence, there has been a slight change in the reporting of significant business activities from the last report.

The pattern established since the commencement of NCP implementation and reporting in South Australian Local Government continued during the reporting period. Generally speaking, councils are only involved in small-scale business activities and cost reflective pricing is the most common principle being applied to achieve competitive neutrality.

There are seven councils conducting Category 1 business activities:

- The Adelaide City Council;
- The City of Burnside;
- The City of Mitcham;
- The District Council of Mount Barker;
- The City of Norwood Payneham & St Peters;
- The City of Unley; and
- The Corporation of the Town of Walkerville.

The Adelaide City Council has five Category 1 business activities:

- Adelaide Aquatic Centre;
- Central Market Authority;
- North Adelaide Golf Links;
- Off Street Parking (U-Park); and
- Wingfield Waste Management Centre.

An organisational structure has been implemented in the Adelaide City Council that separates its business activities from its other activities, and commercialisation principles are being applied.

The District Council of Mount Barker conducts the Monarto Quarries, which was classified as a category 1 business in the second year of its operation. Commercialisation is the competitive neutrality principle being applied.

The City of Mitcham and the City of Unley jointly run a fully commercial cemetery operation as a Category 1 business via a separately incorporated subsidiary.

The City of Burnside, the City of Norwood Payneham & St Peters and the Corporation of the Town of Walkerville have established 'Eastern Waste Management', a joint subsidiary for waste collection. The 2003 report is the first time that this joint subsidiary has been included as a significant business activity.

Councils reported on a total of 36 Category 2 business activities. These are almost exclusively small scale, with caravan parks occurring most frequently. Table X summarises the Category 2 activities and the principles being applied to them – cost reflective pricing (CRP), commercialisation (COM) or corporatisation (COR).

In the majority of cases, cost reflective pricing is the principle being employed to achieve competitive neutrality.

**TABLE – Category 2 significant business activities**

<b>Nature of Activity</b>	<b>Number</b>	<b>CRP</b>	<b>COM</b>	<b>COR</b>
Caravan Parks	20	17	2	1
Works/Development	5	5		
Recreation centres	3	3		
Waste management	1	1		
Function centres/Cafes	2		1	1
Saleyards	1	1		
Small tourist facility	2	2		
Rural Transaction Centre	1	1		
Multipurpose recreational, sport and tourism facility management	1			1
<b>Total</b>	<b>36</b>	<b>30</b>	<b>3</b>	<b>3</b>

### ***By-laws***

As previously reported, each council has identified by-laws that may restrict competition and, where appropriate, initiated reform of the by-laws.

All by-laws in South Australia are subject to a sunset clause - after seven years of operation they lapse. Under the terms of the new *Local Government Act 1999*, any new by-laws made must not restrict competition to any significant degree unless there is evidence that the benefits of the restriction outweigh the costs and that the objectives of the by-law can only be reasonably achieved by the restriction.

All council by-laws, when made, are also examined by the Legislative Review Committee of Parliament, which must ensure that they are in accordance with the general objects and intent of the legislation under which they are made. The Committee may move for the disallowance of a by-law.

### ***Competitive Neutrality Complaints***

The State Government competitive neutrality complaints mechanism in the Department of Premier and Cabinet was established to receive and consider competitive neutrality complaints against both State and Local Government business activities.

Before a complaint is assigned to an independent Competition Commissioner for investigation, the matter must have been referred to the Local Government agency for investigation and report, but not have been resolved by agreement between the parties during that process. The Clause 7 Statement advises councils to establish their own formal mechanism to handle complaints, and a draft model was prepared to provide guidance.

No new competitive neutrality complaints were lodged against Local Government businesses in 2003. However, there is an ongoing complaint against the District Council of Mount Barker.

## 4. RELATED REFORMS

The Agreement to Implement National Competition Policy and Related Reforms makes provision of specified financial assistance by the Commonwealth conditional on the States making satisfactory progress with the implementation of the requirements of the Conduct Code Agreement and Competition Principles Agreement and also with implementation of related reforms which have been the subject of separate CoAG agreements. These related reforms include:

- establishment of a competitive national electricity market;
- national framework for free and fair trade in gas;
- strategic framework for the efficient and sustainable reform of the Australian water industry;
- road transport reforms.

### 4.1 ELECTRICITY

Under the *Agreement to Implement the National Competition Policy and Related Reforms*, the third tranche obligations for the relevant jurisdictions (New South Wales, Victoria, South Australia and the ACT) are to:

- have given full effect to, and continue to observe fully, the Competition Policy Inter-governmental Agreements;
- have fully implemented, and continue to observe fully, all COAG agreements with regard to electricity, gas, water and road transport.

With respect to electricity, this refers to aspects such as:

- the ability for customers to choose which supplier, including generators, retailers and traders, they will trade with;
- non-discriminatory access to the interconnected transmission and distribution network;
- no discriminatory legislative or regulatory barriers to entry for new participants in generation or retail supply; and
- no discriminatory legislative or regulatory barriers to interstate and/or intrastate trade.

With the introduction of electricity Full Retail Contestability (FRC) on 1 January 2003, South Australia has fully met its NCP obligations in relation to electricity.

The electricity market in South Australia has undergone significant structural reforms, with a disaggregated structure put in place, oversighted by a strong independent regulatory framework. This reform was introduced consistent with the South Australian Government's Clause 4 (of the Competition Principles Agreement) review of the South Australian electricity supply industry which made recommendations as to how best to introduce competition into the electricity industry. The resulting report was assessed by the NCC as being "rigorous and independent" (Second Tranche Assessment, page 187).

### ***South Australian Derogations***

South Australia notes the NCC's continued concerns regarding jurisdictions seeking any further derogations to the National Electricity Code, notwithstanding the extensive 'public benefit' test applied by the ACCC.

At this stage, South Australia has no intention to seek further derogations, however, we reserve the right to seek further derogations, or extensions to current derogations, if it is considered to be in the public interest to do so.

### ***Regulation***

As was noted last year, consistent with the South Australian Government's commitment to introduce a strong consumer protection framework, ESCOSA was established in late 2002.

The ACCC, in accordance with its responsibilities under the National Electricity Code (Code), commenced regulation of the transmission network in South Australia, operated by ElectraNet SA, from 1 January 2003.

The South Australian Government has maintained the Office of the Technical Regulator under the *Electricity Act 1996* and the *Gas Act 1997* to monitor and regulate safety and technical standards in the energy supply industry.

The former Electricity Industry Ombudsman Scheme has been expanded to encompass gas entities. The newly formed Energy Industry Ombudsman is responsible for a free dispute resolution process between the electricity and gas entities and customers. Mr. Nick Hakof, originally appointed in January 2000 as Electricity Industry Ombudsman, is continuing as Energy Industry Ombudsman.

The ombudsman is independent, and has a broad discretion to deal with complaints. The ombudsman has a jurisdictional limit of \$20,000 but this can be increased to a maximum of \$50,000 with the consent of the parties to the dispute.

### ***Full Retail Contestability***

The South Australian Government has made a range of legislative changes to ensure that there are adequate consumer protection measures in place to support electricity FRC.

Through the *Electricity (Miscellaneous) Amendment Act 2002*, which amended the *Electricity Act 1996*, ESCOSA was given the power to require that retailers justify any price increases and has reserve powers to cap retail prices if ESCOSA finds that electricity tariffs are excessive and unjustifiable.

ESCOSA undertook a second price justification review for AGL SA's prices from 1 January 2004. ESCOSA concluded that a small reduction in the allowance for wholesale energy costs was appropriate. However, this reduction was offset by increases in ETSA Utilities' costs.

The commencement of FRC necessitated the integration of a number of complex computer systems required for processing customer transfers, for meter reading and for dispatching information to NEMMCO and other retailers. The necessary system upgrades to allow customers to transfer between retailers have now been completed by ETSA Utilities.

The Government is encouraged by recent reports from ESCOSA indicating that an increasing number of consumers are transferring to market contracts. The Government is further encouraged by the recent retail licence applications by Aurora Energy and International Power. If approved, Aurora Energy and International Power will join AGL SA, Origin Energy, TXU, PowerDirect, EnergyAustralia, ActewAGL, Country Energy, Energex, NRG, Tarong Energy and AusPower as licensed retailers. The Government notes that currently AGL SA, Origin, TXU, EnergyAustralia and PowerDirect are offering market contracts to small customers.

In terms of regulation of distribution and transmission pricing, it should be noted that the Electricity Pricing Order (EPO), issued on 11 October 1999, will continue to regulate the prices charged by the distribution business until 2005 and provide guidance for future regulatory periods. However, as of 1 January 2003, the EPO no longer regulated retail or transmission prices.

### ***Ministerial Council on Energy***

The Government has continued to work closely with other NEM jurisdictions in pursuing energy reforms through the Ministerial Council on Energy.

The Government has committed to continuing to address issues arising from the CoAG Energy Market Review such as the role and form of electricity transmission and market governance arrangements. See under **4.3 FURTHER ENERGY MARKET REFORMS**.

## **4.2 GAS**

In July 1997, the *Gas Act 1997* came into effect, establishing a new regulatory regime for the gas industry. The Act provides for separate licences to operate pipelines and to undertake gas retailing, thereby ensuring effective separation of these activities. In July 1997, the pipeline networks previously owned by Boral in South Australia (e.g. Adelaide, Mt Gambier, and Berri) were sold to Envestra Limited, an energy infrastructure company. This sale meant that the former pipeline and retail parts of Boral within South Australia had been legally separated. Neither Epic Energy nor Envestra have been issued with a licence to enable them to retail or sell natural gas. Origin Energy (formerly Boral), the main natural gas retailer in South Australia, along with other entities, including Terra Gas Trader, have been issued with licences to retail natural gas, but not for the operation of gas pipelines.

It is the South Australian government's view that such structural separation, along with the provisions of the South Australian Gas Access Regime, ensures the continued separation of the natural monopoly element of the gas industry, namely the pipelines from the retailing element.

The structural separation of the competitive retailing aspect of the gas industry from the natural monopoly pipeline element is seen as consistent with National Competition Policy. The 1997 CoAG Natural Gas Pipelines Access Agreement states that the access regime applies to both transmission and distribution pipelines, rather than just transmission pipelines as noted in the February 1994 CoAG communiqué. It would appear inconsistent with the seamless approach to pipeline access, that ownership of transmission pipelines should preclude ownership of distribution pipelines. From this it is concluded that clause 10 of the

February 1994 communiqué is satisfied as long as the above structural separation is maintained.

The *Gas Pipelines Access (South Australia) Act 1997* originally established the South Australian Independent Access and Pricing Regulator (SAIPAR) for gas distribution pipelines in South Australia. The Government established ESCOSA in September 2002. In accordance with the *Statutes Amendment (Gas and Electricity) Act 2003*, the regulatory functions of SAIPAR were transferred to ESCOSA on 1 July 2003. The Act amended both the *Gas Act 1997* and the *Gas Pipelines Access (South Australia) Act 1997*. SAIPAR has been dissolved and ESCOSA is currently the economic and commercial regulator for the gas industry, as well as the Local Regulator for access issues on the distribution system.

Pursuant to the national access regime, the ACCC is the national regulator for transmission pipelines. The ACCC established the Moomba to Adelaide pipeline access arrangement on 15 August 2002. Epic Energy appealed this decision to Australian Competition Tribunal, and the Australian Competition Tribunal handed down a decision on the Epic Energy Access Arrangement appeal on 10 December 2003 (see section 3.5.3 above).

### ***Retail Contestability***

Pursuant to the 1997 CoAG Natural Gas Pipelines Access Agreement, the legal barriers to contestability of gas retailers have been removed according to the following timetable.

Date	April 1998	1/7/1999	1/7/2000	1/7/2001
Annual TJ	>100	10-100	< 10 (non domestic)	All customers

All natural gas consumers have been legally contestable since 1 July 2001. It is the South Australian Government's view that removing legal impediments to retail competition in gas is sufficient to satisfy the 1997 inter-governmental agreement.

*However, the South Australian Government is continuing to work to overcome the impediments to gas Full Retail Contestability (FRC), as domestic households and small businesses using less than 10 terajoules gas per annum have been unable to switch gas retailers due to a number of technical and administrative reasons.*

During 2003, the South Australian Government amended the *Gas Act 1997* to address the establishment of a Retail Market Administrator, facilitate FRC systems and establish consumer protection arrangements suitable for a multiple retailer environment.

An update on the impediments to full retail competition, as highlighted in the previous 2002 report to the NCC, is as follows:

- **Access to infrastructure.** As mentioned under section 3.5.3 above, SAIPAR approved the Envestra Access Arrangement on 17 April 2003 further resolving potential access impediments to gas FRC.
- **Gas supply.** This is no longer an issue as the SEA Gas pipeline has been built and commissioning commenced on 1 January 2004. The presence of the second pipeline will provide additional gas into the State.

- **Retail Market Administration.** South Australian gas industry participants have established with Western Australian gas industry participants the Retail Energy Market Company (REMCo). REMCo has been given a licence by ESCOSA to operate as a gas retail market administrator in South Australia. REMCo is currently establishing the required IT systems and retail market rules, which are anticipated to be operational in mid 2004.

These measures will assist competition between gas and electricity retailers to be on a more equal footing and dual fuel marketing strategies, offering both gas and electricity, are expected.

### **4.3 FURTHER ENERGY MARKET REFORMS**

In June 2001, the Council of Australian Governments (CoAG) recognised that effective operation of an open and competitive national energy market will contribute to improved economic and environmental performance and deliver benefits to households, small business and industry, including in regional areas, and established the Ministerial Council on Energy (MCE) to provide oversight and coordination of energy policy development.

As a substantial response to the COAG Energy Market Review and other matters, the MCE provided a detailed report to CoAG on *Reform of Energy Markets* on 11 December 2003. The proposed reforms are not part of the requirements of the Conduct Code Agreement, Competition Principles Agreement and related reforms, which have been the subject of separate CoAG agreements. This information is provided to indicate the current state of progress with these further reforms, rather than as evidence for compliance with National Competition Policy and related reforms. These reforms provided for a new governance framework, which includes the establishment of two new energy institutions:

- the Australian Energy Market Commission - the body with primary responsibility for market development and rule-making in respect of the National Electricity Code and the National Gas Access Code; and
- the Australian Energy Regulator - the body with primary responsibility for regulation of the electricity and natural gas industries and compliance with the Codes.

These and the associated legislative reforms are being progressed by the MCE with a view to improving energy market governance and streamlining the energy code change processes to deliver long-term benefits to energy consumers.

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

### **4.4 WATER**

South Australia's report on implementation of CoAG water reforms in South Australia forms an attachment to this report.

### **4.5 ROAD TRANSPORT**

The set of national road transport reforms considered under National Competition Policy originate from the Heavy Vehicles Agreement 1991 and Light Vehicles Agreement 1992. The reform programs envisaged under these agreements were subsequently included in the

third of the three agreements underpinning NCP, the *Agreement to Implement the National Competition Policy and Related Reforms*.

The NCC reported in 2002 assessment of jurisdictions' progress in 2001, published in December 2002, that it was satisfied that, as at 30 June 2002, South Australia had completed all NCP road transport reform obligations.

## 5. BIBLIOGRAPHY

The following three Intergovernmental Agreements were endorsed by Heads of Government on 11 April 1995:

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

The following documents summarise the NCC's assessments for all jurisdictions:

- *Assessment of State and Territory Progress with Implementing National Competition Policy and Related Reforms - June 1997*
- *National Competition Policy and Related Reforms: Supplementary Assessment of First Tranche Progress - June 1998*
- *Second Tranche Assessment of Governments' Progress with Implementing National Competition Policy and Related Reforms - June 1999*
- *Supplementary Second Tranche Assessment Report - December 1999*
- *Assessment of Governments' Progress in Implementing National Competition Policy and Related Reforms, (Third Tranche Assessment), June 2001*
- *Assessment of Governments' Progress in Implementing National Competition Policy and Related Reforms - Water Reforms, June 2001*
- *Assessment of Governments' Progress in Implementing National Competition Policy and Related Reforms – Volume 1: Assessment, August 2002*
- *Assessment of Governments' Progress in Implementing National Competition Policy and Related Reforms – Volume 2: Water Reforms, August 2002*

Copies of these and other documents on aspects of NCP are available from the NCC in Melbourne, telephone (03) 9285 7474, and can be downloaded from the Council's website at: <http://www.ncc.gov.au>.

Relevant documents concerning NCP implementation in SA include:

- *Report to the National Competition Council - Implementation of National Competition Policy and Related Reforms in SA - March 1997*
- *Report to the National Competition Council - Implementation of National Competition Policy and Related Reforms in SA - April 1998*
- *Report to the National Competition Council - Implementation of National Competition Policy and Related Reforms in SA - March 1999*
- *Report to the National Competition Council - Implementation of National Competition Policy and Related Reforms in SA - March 2000*
- *Report to the National Competition Council - Implementation of National Competition Policy and Related Reforms in SA - March 2001*
- *Report to the National Competition Council - Implementation of National Competition Policy and Related Reforms in SA - March 2002*
- *Report to the National Competition Council - Implementation of National Competition Policy and Related Reforms in SA - March 2003*
- *Review of Legislation which Restricts Competition - timetable, June 1996 (updated May 1997, May 1998, December 1999, March 2001, March 2002)*

- *Guidelines Paper for Agencies conducting a Legislation Review under the CoAG Competition Principles Agreement* - February 1998
- *Proposals for New Legislation - National Competition Policy Review Obligations* - November 2001
- *Clause 7 Statement on the Application of Competition Principles to Local Government* – September 2002
- *Structure of Government Business Activities*, March 1995
- *Community Service Obligations - Policy Framework*, December 1996
- *Water and Sewerage Pricing for SA Water Corporation*, December 1996
- *Water and Sewerage Pricing for SA Water Corporation - Final Report of investigation under the Government Business Enterprises (Competition) Act 1996* - June 1997
- *Competitive Neutrality Policy Statement*, July 2002
- *A Guide to the Implementation of Competitive Neutrality Policy* - March 1998
- *A Guide to the Implementation of Cost Reflective Pricing – A part of Competitive Neutrality Policy*, October 2000

Copies of each of these publications are available from the NCP Implementation Unit, Cabinet Office, Department of the Premier and Cabinet, telephone (08) 8226 1931. Some can be downloaded from the Department's website at:

<http://www.premcab.sa.gov.au/publications/nationalcompetitionpolicy>

## **Schedule 1 – Summary of legislation in 3.4 Legislation Review**

Note – these appear in the same sequence in which they appear in the report.

### **Matters incorrectly penalised in 2003 suspension pool**

*Building Work Contractors Act 1995*  
*Children’s Protection Act 1993*  
*Dangerous Substances Act 1979*  
*Lottery and Gaming Act 1936*  
*Harbors and Navigation Act 1993*  
*Land Valuers Act 1994*  
*Mining Act 1971*  
*Mines and Works Inspection Act 1920*  
*Trade Measurement Act 1993*

### **Legislation reviews completed**

*Crown Lands Act 1929*  
*Survey Act 1992*  
*Veterinary Surgeons 1985*  
*Dried Fruits Act 1993*  
*Fair Trading Act 1987*  
*Family and Community Services Act 1972*  
*Food Act 2001*  
*Fruit and Plant Protection Act 1992*  
*Impounding Act 1991*  
*Pastoral Land Management and Conservation Act 1989*  
*Plumbers, Gas Fitters and Electricians Act 1995*  
*Public and Environmental Health Act 1987*  
*South Australian Motor Sport Act 1984 (formerly Australian Formula One Grand Prix Act)*  
*Waterworks Act 1932*  
*Sewerage Act 1929*  
*South Australian Water Corporation Act 1994*

### **Legislation repealed**

*Advances to Settlers Act 1930*  
*Loans for Fencing and Water Piping Act 1938*  
*Loans to Producers Act 1927*  
*Irrigation (Land Tenure) Act 1930*  
*Local Government Act 1934*

### **Legislation repealed with effect from August 2004**

*Agricultural Chemicals Act 1955*  
*Stock Foods Act 1941*  
*Stock Medicine Act 1939*

### **Uncompleted reviews lead by Commonwealth**

*Agricultural and Veterinary Chemicals (SA) Act 1994*  
*Controlled Substances Act 1984*  
*Petroleum (Submerged Lands) Act 1982*

### **Disputed assessments**

*State Lotteries Act 1966*

*Motor vehicle compulsory third party insurance (Motor Accident Commission Act 1992 & Motor Vehicles Act 1959)*

*Shop Trading Hours Act 1977*

*Southern State Superannuation (SSS) Act 1987*

### **Legislation reforms scheduled for completion by 31 December 2004**

*Architects Act 1939*

*Chiropodists Act 1950*

*Conveyancers Act 1994*

*Dairy Industry Act 1992*

*Dentists Act 1984*

*Employment Agents Registration Act 1993*

*Fisheries (Gulf St Vincent Prawn Rationalisation) Act 1987*

*Authorised Betting Operations Act 2000*

*Meat Hygiene Act 1994*

*Medical Practitioners Act 1983*

*Opal Mining Act 1995*

*Occupational Therapists Act 1974*

*Optometrists Act 1920*

*Petroleum Products Regulation Act 1995*

*Physiotherapists Act 1991*

*Psychological Practices Act 1973*

*Travel Agents Act 1986*

*Branding of Pigs Act 1964*

*Brands Act 1933*

*Discharged Soldier Settlement Act 1934*

*Security and Investigation Agents Act 1995*

*South Australian Health Commission Act 1976*

*Starr-Bowkett Societies Act 1975*

*White Phosphorous Matches Act 1915*

*Wine Grapes Industry Act 1991*

### **Legislation reforms scheduled for completion by 30 June 2005**

*Fisheries Act 1982*

*Occupational Health, Safety and Welfare Act 1986*

*Citrus Industry Act 1991*

*Radiation Protection and Control Act 1982*

### **Legislation reviews with no scheduled date of completion**

*Chicken Meat Industry Act 2003*

*Liquor Licensing 1997*

*Barley Marketing Act 1993*

*Gaming Machines Act 1992*

*Legal Practitioners Act 1981*

*Motor Vehicles Act 1959 – Tow Trucks*

*Passenger Transport Act 1994 – Taxis*

*Pharmacists Act 1991*

*Workers Rehabilitation and Compensation Act 1986*

*Motor Vehicles Act 1959 – Driving Instructors*

## Schedule 2 - LEGISLATION REVIEW REPORTS PROVIDED TO NCC

Legislation	Date provided (* denotes electronic version provided)
Agricultural and Veterinary Chemicals (South Australia) Act 1994	18 June 2001
Agricultural Chemicals Act 1955	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Agricultural Holdings 1891 (The)	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Authorised Betting Operations Act 2000	March 2003
Barley Marketing Act	3 July 2003
Building Work Contractors Act 1995	15 July 2002
Business Names Act 1996	18 June 2001
Casino Act 1997	March 2003
Children's Services Act 1985	24 August 2001
Chiropodists Act 1950*	18 June 2001
Chiropractors Act 1991*	18 June 2001
Citrus Industry Act 1991	3 October 2002
Coast Protection Act 1972	4 March 2002
Construction Industry Training Fund Act 1993	18 June 2001
Controlled Substances Act 1984	Not provided - publicly released national reviews (advice 18 June 2001)
Conveyancers Act 1994	18 June 2001
Cremation Act 1891	18 June 2001
Crown Lands Act 1929	4 March 2002
Dairy Industry Assistance (Special Provisions ) Act 1978	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Dangerous Substances Act 1979	18 June 2001
Dentists Act 1984*	18 June 2001
Development Act 1993	18 June 2001
Discharged Soldiers Settlement Act 1934	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Education Act 1972	24 August 2001
Electricity (General) Regulations 1997	25 September 2001 (by email)
Electricity (Miscellaneous) Amendment Act 1999	25 September 2001 (by email)
Electricity Act 1996	25 September 2001 (by email)
Electricity Corporations (Restructuring & Disposal) Act 1999	25 September 2001 (by email)
Electricity Corporations (Restructuring and	25 September 2001 (by email)

Disposal) Regulations 1999	
Electricity Corporations Act 1994	25 September 2001 (by email)
Electricity Corporations Regulations 1997	25 September 2001 (by email)
Emergency Powers Act 1941	26 November 2001
Enfield General Cemetery Act 1944	18 June 2001
Environment Protection Act 1993	4 March 2002
Explosives Act 1936	18 June 2001
Financial Institutions (Application of Laws) Act 1992	No review undertaken. Act has been repealed.
Firearms Act 1977	18 June 2001
Fisheries Act 1982	23 July 2003
Fisheries (Gulf St Vincent Prawn Fishery Rationalisation) Act 1987	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Fisheries (Southern Zone Rock Lobster Fishery Rationalisation) Act 1987	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Flinders University of South Australia Act	3 February 2002
Fruit and Plant Protection Act 1992	23 July 2003
Freedom of Information Act	24 August 2001
Fruit and Vegetables (Grading) Act 1934	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Garden Produce (Regulation of Delivery) Act 1967	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Groundwater (Border Agreement) Act 1985	24 August 2001
Hairdressers Act 1988	18 June 2001
Heritage Act 1993	4 March 2002
Highways Act 1926	18 June 2001
Independent Gambling Authority Act 1995	March 2003
Independent Industry Regulator Act 1999	25 September 2001 (by email)
Industries Development Act 1941	22 August 2002
Irrigation (Land Tenure) Act 1930	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Land Agents Act 1994 (and supplementary report)	24 August 2001
Land and Business (Sale and Conveyancing) Act 1994	18 June 2001
Land Valuers Act 1994	18 June 2001
Landlord and Tenant Act 1936	Not provided as restrictive sections have been repealed.
Legal Practitioners Act 1981	9 October 2001
Local Government Act 1934	24 August 2001
Lottery and Gaming Act 1936	March 2003
Margarine Act 1939	Not provided as repeal of the Act is recommended (advice 18 June 2001)

Marginal Dairy Farmers (Agreement) Act 1971	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Meat Hygiene Act 1994	18 June 2001
Medical Practitioners Act 1983*	18 June 2001
Motor Accident Commission (CTP)	25 September 2001
Motor Vehicles Act 1958	25 September 2001 (CTP)
Murray Darling Basin Act 1993	24 August 2001
National Electricity (South Australia) Act 1996	25 September 2001 (by email)
National Parks and Wildlife Act 1972	4 March 2002
Native Vegetation Act 1991	4 March 2002
Natural Gas Pipelines Access Act 1995	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Noxious Insects Act 1934	18 June 2001
Occupational Therapists Act 1974*	18 June 2001
Optometrists Act 1920*	18 June 2001
Passenger Transport Act	NCC obtained from website
Petroleum (Submerged Lands) Act 1982	Not provided - publicly released national reviews (advice 18 June 2001)
Petroleum Act 1940	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Petroleum Products (Regulation) Act 1995	March 2003
Pharmacists Act 1991	Not provided - publicly released national reviews (advice 18 June 2001)
Phylloxera and Grape Industry Act 1995	18 June 2001
Physiotherapists Act 1991*	18 June 2001
Poultry Meat Industry Act 1976	mid-December 2002
Prevention of Cruelty to Animals Act 1985	4 March 2002
Prices Act 1948	18 June 2001
Psychological Practices Act 1973*	18 June 2001
Public Trustee Act 1995	18 June 2001
Radiation Protection and Control Act 1982	Not provided - publicly released national reviews (advice 18 June 2001)
River Murray Waters Agreement Supplemental Agreement Act 1963	24 August 2001
Roxby Downs (Indenture Ratification) Act 1982	21 January 2002
Rural Industry Adjustment (Ratification of Agreement) Act 1990	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Rural Industry Adjustment and Development Act 1985	18 June 2001
Rural Industry Assistance Act 1985	Not provided as repeal of the Act is recommended (advice 18 June 2001)

Sandalwood Act 1930	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Second-hand Dealers and Pawnbrokers Act 1996	15 July 2002. Assessed as meeting CPA obligations by NCC June 2001.
Second Hand Vehicle Dealers Act 1995	24 August 2001
Seeds Act 1979	Not provided as repeal of the Act is recommended (advice 18 June 2001)
South Australian Film Corporation Act 1972	18 June 2001
South Australian Museum Act 1976	18 June 2001
Southern State Superannuation Act	Annual Report 1999
South Eastern Water Conservation and Drainage Act 1992	24 August 2001
State Lotteries Act 1966	March 2003
State Supply Act 1985	22 August 2002
Stock Foods Act 1941	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Stock Medicines Act 1939	Not provided as repeal of the Act is recommended (advice 18 June 2001)
Stony Point (Liquids Project) Ratification Act 1981	21 January 2002
Survey Act 1992	13 June 2002
Unauthorized Documents Act 1916	26 November 2001
University of Adelaide Act	3 February 2002
University of South Australia Act	3 February 2002
Vocational Education, Employment and Training Act 1994	18 June 2001
War Service Land Settlement Agreement Act 1945	Not provided as repeal of the Act is recommended (advice 18 June 2001)
White Phosphorus Matches Prohibition Act 1915	18 June 2001
Wilderness Protection Act 1992	4 March 2002
Wine Grapes Industry Act 1991	7 March 2002