AUSTRALIAN CAPITAL TERRITORY

3RD TRANCHE PROGRESS REPORT
TO
THE NATIONAL COMPETITION COUNCIL

ON
IMPLEMENTING NATIONAL COMPETITION POLICY AND RELATED REFORMS

MARCH 2002

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1. Introduction

The Competition Principles Agreement signed by the Commonwealth, States and Territories in April 1995 obliges the parties to report annually on the implementation of clauses 3 and 5 of the Agreement, addressing competitive neutrality and legislation review. In addition, there is an annual reporting requirement with respect to implementation of the related reforms in electricity, gas, water and road transport, according to the COAG reform framework or its agreed modifications.

This is the ACT's sixth annual report to the National Competition Council (NCC). The initial report in 1997 referred to the period ending 31 December 1996 and was the basis for the assessment of the first tranche of competition payments that commenced in July 1997. In 1999, the annual report covering the period 1 January 1998 to 31 December 1998 formed the basis of the assessment of the second tranche of competition payments, which commenced on 1 July 1999. Last year's report covered the period 1 January 2000 to 31 December 2001 and was the basis for the third tranche of assessment, which commenced on 1 July 2001. The program will continue for another four years, conditional on the ACT continuing to implement reforms and maintaining reforms already implemented.

This report covers the reforms implemented in the period 1 January 2001 to 31 March 2002 and is the second report of the third tranche assessment.

2. Summary of third tranche NCP reform obligations

The third tranche reform program is established by the three April 1995 NCP Agreements, generally termed the Competition Policy Agreements. These are:

- the *Competition Principles Agreement;*
- the *Conduct of Code Agreement*; and
- the *Agreement on Related Reforms*.

Payment under the third tranche commenced in 2001-02 and will be made each year thereafter on the basis of progress on the implementation of the following reforms:

- the extent to which each State and Territory has actually complied with the competition policy principles in the Competition Principles Agreement, including the progress made in reviewing, and where appropriate, reforming legislation that restricts competition;
- whether the State or Territory has remained a fully participating jurisdiction as defined in the Competition Policy Reform Bill;
- the setting of national standards in accordance with the Principles and Guidelines for National Standard Setting and Regulatory Action and advice from the Office of Regulation Review on compliance with these principles and guidelines; and
- continued effective observance of reforms in electricity, gas, water and road transport.

To meet agreed third tranche obligations, Governments will need:

- to be a participating jurisdiction, that is, to have implemented the competition code, a modified version of Part IV of the TPA, including;
  - to have notified to the Australian Competition and Consumer Commission (ACCC) all legislation or provisions in legislation enacted or made in reliance upon section 51 of the TPA, within 30 days of the legislation being enacted or made (relevant legislation for the third tranche is legislation made since that notified for the second tranche assessment)
- to be a party to the CPA and to have implemented the major elements of the CPA program including;
  - application of competitive neutrality principles to all significant government-owned businesses, including local government businesses, where appropriate (clause 3)
  - structural reform of public monopolies where competition is to be introduced or before a monopoly is privatised (clause 4)
  - completion of the program of review of all legislation that restricts competition (including Acts, enactments, Ordinances or regulations) and

removal of restrictions, where appropriate (clause 5)

- gatekeeper regulatory impact analysis, including systematic and transparent assessment of alternatives to regulation, where new or amended legislation that restricts competition is proposed (clause 5)

- to achieve effective participation in the fully competitive national electricity market (NEM) including completion of all transitional arrangements;
- to fully implement free and fair trading in gas between and within jurisdictions;
- to achieve satisfactory progress towards implementation of the 1994 CoAG Strategic Framework for the reform of the water industry consistent with timeframes established through inter-governmental agreement;
- to fully implement reforms to road transport developed by the Australian Transport Council and endorsed by CoAG; and
- to ensure that national standards are set in accordance with principles and guidelines for good regulatory practice endorsed by CoAG.

Extension of Legislation Review Schedule

The ACT notes that CoAG, at its meeting on 3 November 2000, agreed to extend the deadline for completing all legislative reviews and implementing appropriate reforms from 31 December 2000 until 30 June 2002.

The ACT also notes that CoAG has agreed that satisfactory implementation of reforms may include, where justified by a public interest assessment, having in place a firm transitional arrangement that may extend beyond the revised deadline.

Details of review and reform activity which have not been completed at the time of this report, for example the current review of the public benefits of implementing full retail contestability for electricity, will be provided to the NCC on an ad hoc basis up to 30 June 2002.

ACT Compliance with Requirements

The ACT considers that it has fully complied with its obligations in relation to the completed matters that are discussed in detail in this report.

3. Competitive neutrality

Competitive neutrality obligations under NCP

Clause 3 of the Competition Principles Agreement obliges the Commonwealth, State and Territory Governments to introduce competitive neutrality, where it is in the public interest, for significant government business activities.

Under the Intergovernmental Agreement on the Reform of Financial Relations, Heads of Government agreed to introduce a National Tax Equivalent Regime (NTER) commencing 1 July 2001, to largely replace the Tax Equivalent Regimes (TER) operated by each State/Territory for their Government Business Enterprises.

The NCC has previously approved the ACT's framework as complying with the competitive neutrality obligations of the Competition Principles Agreement. Further to this the ACT:

- introduced the National Tax Equivalent Regime for a number of ACT Government business entities (listed below);
- is continuing transparency in funding of Community Service Obligations; and
- as previously advised, transferred competitive neutrality complaints from the Department of Treasury's Competitive Neutrality Complaints Unit to an independent body, the Independent Competition and Regulatory Commission (ICRC).

The application of CN principles with respect to local government business activities (clause 7) is not applicable to the ACT.

ACT Government business entities subject to the NTER are as follows:

- ACTEW Corporation Limited
- ACT Forests
- ACTTAB Limited
- ACTION Authority
- Australian International Hotel School
- Canberra Cultural Facilities Corporation
- Canberra Tourism and Events Corporation
- CIT Solutions Corporation
- Exhibition Park in Canberra

- Gungahlin Development Authority
- INTACT
- Totalcare Industries Limited

ACT Government business entities subject to the ACT's Tax Equivalent Regime are as follows:

- Kingston Foreshore Development Authority,
- Stadium Authority and;
- ACT Insurance Authority.

NTER Assessment

The ACT Treasury is undertaking a review of its current listing of entities in the NTER and the Territory's TER prior to the full commencement of NTER and the phasing out of TER on 30 June 2002

The assessment will seek to ensure:

- that ACT business entities are complying with the NTER arrangements under the Intergovernmental Agreement on the Reform of Financial Relations and related MOU;
- a finalisation of the NTER listing before the Territory's TER expires on 30 June 2002 and that those entities within it transfer to the Commonwealth's NTER;
- whether some entities have been inappropriately listed; and,
- whether any quasi-commercial operations in ACT Government departments should also be placed in the NTER.

The assessment is expected to be completed by April 2002.

Investigating allegations of non-compliance

While the Competition Principles Agreement addresses significant business activities, the ACT adopted a policy in 1996 of applying the principles of competitive neutrality wherever it is considered to be in the public interest. This will encourage improved efficiency and allocation of resources on a broader scale.

During 2000 the responsibility for investigating new complaints under the competitive neutrality requirements passed to the Independent Competition and Regulatory Commission (ICRC). The Microeconomic Reform Section of the Department of Treasury completed complaints that were on hand prior to the establishment of the ICRC.

During 2001, no competitive neutrality complaints were received by the ICRC.

Competitive Neutrality Guidelines

The ACT Treasury is currently reviewing the Competitive Neutrality Guidelines which have not been updated since 1996 with the aim of ensuring best practices in the implementation of competitive neutrality principles.

Depending upon ACT Government endorsement, a new Guide will be developed and is expected to be issued later in 2002.

Clearly Defined and Costed Community Service Obligations (CSOs)

ACT Government policy since 1997-98 is that all CSOs are identified and budget funded.

Table 3.1 provides a detailed listing of the Community Service obligations provided by ACT Government Business Enterprises (GBE).

Table 3.1 - CSO Payments in the ACT

Business Unit	Value $'000	Description
Exhibition Park in Canberra (EPIC)	292	Compensation for charging below market rates, as a result of Ministerial direction, or in agreements entered into by the ACT government prior to EPIC's establishment.
Yarralumla Nursery	150	Free Plant Issue scheme
ACT Forests	1,290	Provision and upkeep of public use areas within ACT forests.
ACTION	45,358	Fare subsidies for users from lower socio-economic groups, school bus services and off-peak services on the general route.
ACTEW	859	Half cost of water use for schools & churches
ACTEW	1,335	Half cost of sewerage services to churches & hospitals
ACTEW	30	Compensation for water & sewerage rates for leases granted under the (repealed) *Church Land Act 1924*
ACTEW	3,145	Rebates on electricity bills to pensioners
ACTEW	2,654	Rebates on water & sewerage charges to pensioners
ACTEW	115	Administration costs for rebates
Office of Public Trustee	576	Financial management under Guardianship Management and Property Tribunal's determinations and under power of attorney, welfare funerals.

4. Structural reform of public monopolies

ACTION Public Bus Services

A review of public bus services was carried out in 1997 and purchaser/provider arrangements were fully implemented during 1998. Responsibility for service specification and purchasing, major infrastructure assets and regulation rests with the Department of Urban Services' Road Transport section.

Implementation of full-cost attribution for ACTION operations was completed during 1999-2000 with the final devolution of funding for the remaining corporate functions carried out within the Department of Urban Services.

Funding for CSOs has been recognised in the Budget and has been paid to ACTION since 1988/89. These CSOs include payment for providing off-peak services as required by the Government, schools services, and pricing of concessional fares (that are substantially means-tested for low-income earners) at levels specified by the Government rather than the market rate.

ACTION also receives CSO funding through the Department of Education and Community Services for concessional (pensioners, unemployed) travel. The provision of Special Needs transport services was put out to tender in early 2000 with ACTION being awarded the contract for a three-year period.

The *ACTION Authority Act 2001* commenced on 1 January 2002. The Act allows for ACTION to operate as a Statutory Authority with a Board of Management. The Board commenced operation on 1 January 2002.

Public passenger bus services are regulated under the *Road Transport (Public Passenger Services) Act 2001*. This legislation places all the regulation of public bus transport into one piece of legislation and establishes an accreditation regime for operators of public passenger bus services. The introduction of the new legislation saw the repeal of the *Motor Omnibus Services Act 1955*.

ACT Forests

ACT Forests operates as a separate government business enterprise within the Department of Urban Services. It has a commercial charter relating to the management of 16,000 ha of pine plantations in the ACT.

A review of ACT Forests was undertaken in 1999-2000 with a view to obtaining advice on the most appropriate governance arrangements and financial structure to manage the commercial operations. A new organisation structure was implemented in July 2001, together with improvements to its commercial focus and the full funding of CSOs relating to the recreational and community use of the forests. A commercial board of advisers is in the process of being established.

In terms of competitive neutrality, since 1997-98 there has been budget funding of

CSOs. ACT Forests has full cost attribution and is subject to the National Tax Equivalent Regime.

ACT Forests' plantations are valued using the Australian Accounting Standard (AAS 35) Self Generating and Regenerating Assets.

In view of the small size of its operations, the separation of the purchaser and provider functions has been addressed internally within ACT Forests. This involves:

- strategic policy and Ministerial support services undertaken at the senior levels in ACT Forests in conjunction with Department of Urban Services executives;
- operational policy undertaken by senior and middle level officers within ACT Forests;
- financial management undertaken within ACT Forests;
- operations work largely undertaken by contracted labour and service providers; and
- community service obligations paid via the Department of Urban Services.

ACT Forests has no regulatory responsibilities, apart from those associated with land management. Its primary regulator is Environment ACT in the Department of Urban Services.

Waste Collection and Recycling Services

The kerbside collection of household waste and recyclables and the operation of waste disposal and recycling services at landfills are purchased by ACT NoWaste within the Department of Urban Services.

The kerbside collection of household waste and recyclables are services provided by private contractors under contract to the ACT Government. These contracts were awarded after a competitive tendering process.

The recycling services for organic waste, motor oils, metal and salvaged materials at the two ACT landfill sites are also provided by private contractors following a competitive tendering process.

At the end of 2000, landfill disposal operations were contracted out following a competitive tender process. This included the development and operation of a waste transfer facility.

Horticultural Maintenance and Cleaning Services

Canberra Urban Parks and Places in the City Management Group of the Department of Urban Services is the purchaser of horticultural maintenance and cleaning services. Some services are provided by private contractors and others by

CityScape Services, the in-house provider, which formerly had a monopoly in the provision of ACT Government horticultural, landscape development and community/open area cleaning services. In preparation for market testing, the service to be provided was specified in detail and a comprehensive service level agreement to form the basis of a contract was signed between the purchaser and provider.

The Department has now market-tested horticultural maintenance and cleaning services for the six regions across the ACT.

The first contract was awarded to Excell Corporation, a private sector company, in March 1999. The in-house provider, CityScape Services, tendered on a competitively neutral basis, with the financial assessment of the tenders including the attribution of the Department's potential redundancy costs. The tender for the second region, Inner South, was awarded to CityScape Services. The third region, Inner North, was awarded to Canberra Horticulture P/L, a local private sector company. The fourth, fifth and sixth regions of Belconnen/Gungahlin, Tuggeranong and City were awarded to CityScape Services.

Tenders are also currently being assessed for tree maintenance services on the same basis as the horticultural services. CityScape Services submitted a tender under the competitive neutrality guidelines.

Tender conditions require compliance with competitive neutrality principles. In-house bids must include costs and taxes, or equivalents that would be incurred by a private sector competitor. Consideration is also given to costs incurred by an in-house provider that would not be borne by competitors. A probity auditor is engaged to ensure that tender assessment is undertaken on a competitively neutral basis.

Other government agencies with responsibility for open space maintenance in the ACT have also completed, or are undergoing, market testing processes. These include the Department of Education and Community Services for suburban recreation, school and sporting grounds, Environment ACT for Murrumbidgee River corridor parks and camping grounds and ACT Housing for housing complex communal areas and landscaping.

Infrastructure Services

Purchaser and provider functions for roads and stormwater maintenance and asset creation services were first separated in 1991. The purchaser role was allocated to the City Management Group. The major provider functions relating to roads, stormwater, and streetlights were allocated to Territory-owned businesses, Totalcare Industries Ltd, ACTEW Corporation Ltd, Ecowise Environmental Pty Ltd and the privately (employee) owned Ecowise Services Australia.

A review of the purchaser, Roads ACT, commenced in February 1999 and further refined the structure and operation of the purchaser function. This new structure was implemented in July 2001.

In recognition of the need to maximise the return to the community on maintenance expenditure, Roads ACT implemented a broad market testing strategy. The Stormwater maintenance contract was awarded to ActewAGL for three years, based on competitive tendering, and the streetlight contract was also awarded to ActewAGL for three years, based on a single select tender and cost benchmarking of the tender rates. Traffic signal maintenance and roads maintenance contracts will be awarded by July 2002.

A strategic study on asset management commenced in August 2000 and was completed in March 2001. This study examined the current target service standards and verified those against standards used in other national jurisdictions. Where necessary and appropriate, these standards have been updated to new performance-based standards reflecting current national practice in asset maintenance. An asset condition audit of a sample of each asset type provided updated information on conditions across all asset types.

Another study was commenced in September 2000 to develop performance-based asset specifications for maintenance activities. Roads ACT will utilise the results of this study to form the basis of new specifications to be implemented in maintenance contracts.

In 1999-2000, Roads ACT undertook a comparative cost analysis to ascertain whether the government was paying a 'fair' price for purchasing Roads and Stormwater maintenance services. An extensive analysis involving over 50 cost indicators was carried out as part of the analysis between three State and three Local Government partners. The study concluded the ACT Government was in fact paying a 'fair price' to purchase its outcomes in the roads, traffic, bridges, paths and streetlight asset management services.

Roads ACT refined the above process and undertook another benchmarking study in 2000-2001. Specific indicators were drafted for Comparative Cost Analysis in 'Asset Maintenance' and 'Asset Creation' activities. Roads ACT was benchmarked with partners from Transport SA, Brisbane, Wollongong and Newcastle City Councils. A 'process benchmarking' study was also carried out where detailed activity analyses were undertaken to identify 'better' practices and assist in Roads ACT's process of continuous improvement. Again, the outcomes from this benchmarking further proved that Roads ACT performed well amongst their benchmarking partners.

The Heavy Vehicle Movements regulation function is performed by the in-house provider City Operations. The Service Level Agreement for heavy vehicle movement activity was reviewed resulting in an increase in the scope of services to be provided under the existing level of financial commitments. The reporting and follow-up actions of vehicles not complying with rules and restrictions are given high priority.

5. Activities of the Independent Competition and Regulatory Commission

Background

The Independent Pricing and Regulatory Commission (IPARC) was the ACT's independent regulator of prices for industries with insufficient competition and also regulated third party access to infrastructure arrangements. In February 2000 the *Independent Pricing and Regulatory Commission Act 1997* was amended to broaden its general regulatory powers while retaining the powers of the *IPARC Act*. The amending legislation, the *Independent Competition and Regulatory Commission Amendment Act 2000* changed the name of the regulator[1] and expanded its powers from primarily price regulation to a general competition policy and regulatory oversight role. The changes took effect from the date of the Act's gazettal on 23 March 2000.

ICRC Referral: ACTION Bus Services

In December 1998, the Minister for Urban Services referred the matter of appropriate pricing and price methodology for the regulated bus services provided by ACTION to the Independent Pricing and Regulatory Commission (IPARC). This first price direction was released on 30 April 1999 and the second direction for 2000-01 was released in May 2000.

Under new terms of reference, the ICRC conducted an investigation into the Price Direction of ACTION fares for a period of three years (2001-2004). The draft Direction was released for public examination and consultation on 19 February 2001.

The Commission released its final report on ACTION pricing on 18 May 2001. The determination process included consultation on a draft report released in February 2001 and submissions received at a public hearing on 2 April 2001. The Commission determined that:

- the price path should be for two years rather than three;
- the average increase in fare prices for 2001-2002 should not exceed CPI plus 2%;
- the average increase in fare price for 2002-2003 should not exceed CPI;
- the allowable increase in fares should be from reduced discounts rather than increased standard fares, with discounts on periodic tickets not exceeding 15% of the cash fare; and

[1] The text in this report refers to the IPARC where the regulator acted under the *IPARC Act 1997* and refers to the ICRC where the regulator is acting following the introduction of the *ICRC Amendment Act 2000*.

- concessions should be set at 50% of the standard fare and student concessions at 35% consistent with the Government's policy.

The effect of the determination was to cap fare increases in 2001-2002 to 5.94%. Also, the Commission drew attention to some potential benefits of a government decision to create ACTION as a statutory authority, which would provide an incentive for greater commercial discipline for ACTION and would encourage greater transparency in the transactions between ACTION and the Department of Urban Services.

ICRC Referral: Taxis (1)

The Commission issued its final report on taxi prices for the period commencing 1 July 2001 on 30 May 2001. The Commission introduced a new pricing methodology, abandoning the previous taxi prices index. It was considered that the index contributed to continuously inflating final consumption prices and made no provision for introducing operating efficiencies that might reduce the cost of the service to operators and consumers. Having considered the detailed data provided in submissions from both the taxi operator and the Department of Urban Services, the Commission amended its draft determination to provide for an average fare increase of 5.5% from 1 July 2001. The Commission also agreed that the existing fare structure be maintained.

In making its determination the Commission noted a number of issues including:

- service quality indicators in the Memorandum of Understanding (MOU) needed to be reviewed, with particular regard being paid to tightening of peak waiting times standards;

- improvements were needed in the monitoring of WAT service standards, with the application of appropriate sanctions where there were performance failures; and

- the undertakings in the MOU were to be enforced.

The ICRC has also been asked by the Government to inquire into the future direction of the ACT Taxi and Hire car industry. The detailed terms of reference are outlined on page 27.

ICRC Referral: Taxis (2)

The Commission undertook an investigation and provision of advice on the competition policy implications of allocating all WAT Licences to Yellow Cabs to facilitate a second taxi network in the ACT. The Commission considered that the restriction on competition involved in allocating WAT licences to a second network provider did not change the existing degree of competition in the market and provided the preconditions for the development of greater competition with the establishment of a sustainable second network. The Commission recommended that the allocation should only remain in place for a limited time to allow the second

network to establish itself and then WAT operators should be provided choice of booking network. The ACT Government rejected the Commission's findings in relation to the forced transfer of all WAT licences to the proposed second network operator.

ICRC Referral: Natural Gas

The Commission issued a final approval for the gas access arrangements proposed by ActewAGL, the local gas network service provider, in February 2001. The Commission received a reference for the determination of gas retail prices, issuing a final determination on 31 May 2001. The price path extended over three years from 1 July 2001 to 30 June 2004. The price path provided most consumers with real price reductions in the order of 3% to 5%. In most cases prices in the following two years would reduce by CPI less 1%. The Commission noted that the retail market for gas in the ACT was to become contestable from 1 July 2001. Contestability formally commenced on 1 January 2002. However, pipeline metering and system delays have precluded the market becoming actually contestable. The provision of metering at the interconnector is due by March 2002 in which case the market will be effectively fully open to competition. There are currently two licensed retailers in the ACT.

ICRC Referral Inquiry into Motor Vehicle Fuel Prices

The ACT Government issued a reference to the ICRC on 14 April 2001 to investigate motor vehicle fuel industry prices. The reference arose following community concern about record high prices for fuel peaking at over $1 per litre during this period. The Commission recommended against any new fuel pricing regulation. It recommended that the ACT Government implement a public information strategy to inform the public about the discounting cycles of fuel retailers and that the Government work with other jurisdictions to improve the transparency of wholesale pricing of fuel. The Commission made a number of other recommendations including that the Territory make representations to the Commonwealth Fuel Sales Grant Scheme to ensure all service stations in the ACT region are treated equitably in their ability to access the Fuel Sales Grant Scheme.

The ACT Government has not yet responded to the Commission's report.

Miscellaneous activities

More recently, the Commission:

- has received a reference for determination of taxi prices for the period from 1 July 2002 for a period of two years. The final determination is due by 30 May 2002.

- has received a reference for an investigation into and advice on whether there would be net benefits associated with full retail contestability in electricity in the ACT. The Commission will report by the end of March 2002.

- has received an application to approve the passing through of full retail contestability costs for gas in the ACT. The decision on the pass through is expected in March 2002.

- has received a reference for an investigation and advice on reforms in the taxi and hire car industries in the ACT. The Commission will report as soon as possible after 30 May 2002.

- in May, expects to reset regulated prices for the electricity, gas, water and sewerage utilities, both distribution and retail, and prices for ACTION services for the period 1 July 2002 to 30 June 2003. The Commission also anticipates references for determination of network charges for those services in the second half of 2003, applying to the period from 1 July 2004.

6. Achieving Effective Regulation

Compliance with the CPA legislation review commitments

The NCC in its Assessment Framework has prioritised legislative reviews that potentially have significant restrictions on competition. The Framework specifies detailed reporting requirements for significant reviews. These reporting requirements are satisfied in the following chapters, which detail progress in accordance with the Competition Principles Agreements.

Updating of the legislative review compendium database will be undertaken during March 2002 following receipt from the NCC.

The amended database will be returned to the NCC for assessment purposes by 30 April 2002.

Compliance with the conduct code obligations

No Section 51 exceptions under the *Trade Practices Act 1974* were sought during 2001.

7. Water

The ACT notes that the NCC's 2001 assessment recognised that the Territory has made good progress with the COAG water reforms and, overall, has more than complied with the requirements.

Pricing and Cost Recovery

Full Cost Recovery – Urban

The Independent Competition and Regulatory Commission (ICRC) has responsibility for the pricing of water. Under the ActewAGL partnership arrangements, ACTEW has contracted responsibility for the water and sewerage operations to the partnership. ACTEW Corporation has implemented two part tariff regimes; the usage charge is based on marginal costs. This was reported to NCC in the 2001 NCP report. The prices determined by the ICRC are based on achieving full cost recovery. In addition, the ACT Government recovers non-utility related costs through a Water Abstraction Charge which, inter alia, includes a component related to recovering the costs of catchment management and the environmental costs of water abstraction.

ACTEW's 100% Dividend Policy

ACTEW Corporation Ltd's (ACTEW) depreciation (a non-cash expense) allows them to retain sufficient cash to maintain their existing asset base.

ACTEW have not paid any income tax equivalents in cash since they were incorporated because of the accelerated depreciation allowed under tax law i.e. its assessable income for tax purposes has been a loss. Income tax expenses have been deducted from operating profits, hence the dividend. This also provides ACTEW with a source of cash for further capital investment, if they wish to do so.

The ICRC takes into consideration ACTEW's capex needs when setting prices for regulated services, including network charges and related prices for non-contestable customers (presently small volume electricity customers and all water/wastewater customers).

Dividend policy should be driven by ensuring that a Government Business Enterprise has a competitive capital structure. The Industry Average 2001-02 Debt Ratio for utilities in the water/electricity industry is 40%. ACTEW's planned debt ratio for the end of 2001-02 is 38% and has been much less than this in past periods. The 100% dividend policy has assisted in getting ACTEW's capital structure closer to an efficient level based on industry practice.

Trade Waste Charges.

The ACT Government and ACTEW have progressed reform of a water charging

system since the early 1990's. The current water pricing policy reflects sound economic management of a natural resource. Price structures and price levels ensure that appropriate pricing signals are relayed to consumers.

ACTEW has not yet introduced a systematic trade waste charge tied to quantity and quality of waste. This is entirely consistent with the COAG pricing framework. A decision to implement a systematic trade waste charge needs to be supported (amongst other things) by verifiable evidence that such a pricing approach will yield an improvement in economic efficiency via better resource allocation.

Earlier reviews by ACTEW of the need for such a charge have found that most waste in the ACT is of a domestic nature. This reflects the largely domestic and light commercial base of consumers and the absence of a significant industrial base. As a result, no serious cost impact was found to be incurred with the small level of actual trade waste discharges. Furthermore, it was thought these discharges could be more effectively and economically managed via a sewer acceptance charge where these users contribute to the cost of discharge monitoring and any extra treatment costs arising from trade discharge to sewers. ACTEW's Trade Waste Approvals system is now operational as an asset protection mechanism and this approach was noted by the NCC in the 2001 discussion paper. More recently, in a few instances ACTEW has applied a specific charge as a transitional initiative, tied to the volume and strength of the discharge.

Nevertheless, a systematic trade waste charge for managing trade discharge to the sewer warrants careful assessment and review. However, this is a complex and costly task as it requires a proper economic analysis of the costs of carriage and treatment of trade wastes and an awareness of alternative disposal and treatment options. It is currently proposed that any new systematic charging arrangement for trade waste be analysed and developed by ACTEW over the next 18 months. For any specified monopoly components, the new charging arrangement would need to be agreed with the ICRC.

Therefore, before introducing a systematic trade waste charge in the ACT, there is a need to properly evaluate the merits of such a charge. This cannot in any way be construed as undermining the principle of consumption based pricing espoused in the COAG pricing framework.

Community Service Obligations

See Table 3.1 - CSO Payments in the ACT under Chapter 3. Competitive Neutrality.

New Rural Schemes

The ACT is not planning any new publicly funded rural water supply infrastructure.

Institutional Reform

Institutional role separation

By 30 June 2001, the ICRC had approved Codes and standard customer contracts and issued 19 utility licences for electricity, gas, water and sewerage distributors and retailers enabling the *Utilities Act 2000* to become fully effective. The regime established under the *Utilities Act 2000* represents a further enhancement of reforms in this area with clearly defined responsibilities in Industry and Technical Codes that will be binding on all utilities, including water utilities.

Allocation and Trading

Water Allocation

The ACT continues to comply with requirements.

Water Trading

While the *Water Resources Act 1998* provides the legislative framework for trading to occur, there is no demand for intra-territory trade in the medium term.

The ACT is pursuing interstate trading rules within the Murray-Darling Basin Commission (MDBC) context. It is a participating member in the MDBC Water Market Reform Working Group, which is the primary group within the MDB initiative dealing with trading issues. Progress in the formulation of these rules is dependent on agreement between jurisdictions and the ACT has no capacity to force the pace. However, the ACT would not agree to trading rules which disadvantage the ACT or which will lead to increased environmental degradation. The ACT is the industry sponsor of a PhD scholarship into possible conditions for water trading by the ACT.

In regard to the MDBC water diversion cap, the ACT has not yet agreed to a final cap as the rules for water trading are still to be finalised. When these rules are finalised, the ACT will be in a position to determine a cap that is reasonable for the ACT. However, in meeting its COAG water reform obligations, the ACT has adopted a relatively conservative cap on water use based on the ACT *Environmental Flow Guidelines*.

Environment and Water Quality

Integrated Resource Management

There are no developments to report here.

Integrated Catchment Management

In March 2000 the ACT released its Integrated Catchment Management Framework. The Framework acknowledges the developments in legislation and

policies in natural resource management at the national level and takes into account the regional and local contexts in which it will operate. An Implementation Plan was released in late 2001. The Framework and Implementation Plan support the development of sub-catchment management plans by community groups working with government. In addition to the Sullivan's Creek Catchment Group and the Ginninderra Catchment Group sub-catchment management plans that were released during 2000, several others are in preparation.

The ACT has also contributed to the Murrumbidgee Catchment Blueprint required by the National Action Plan on Salinity and Water Quality.

8. Transport

Road Transport

The ACT has achieved all reportable measures, except for one supplementary report item for which an extension of time has been granted under the supplementary assessment approach.

The outstanding item, one part of the national registration package, relates to backdating motor vehicle registration renewals to the date of expiry, if the request to renew is within 3 months of the expiry. The ACT was unable to implement this reform at the same time as the other registration reforms, due to computer system limitations.

Amendments to ACT regulations and business systems were subsequently made to commence this reform, however, prior to the 2001 ACT election, the ACT Legislative Assembly voted in March 2001 to disallow implementation of this initiative. However, the new ACT Government, elected in October 2001, will shortly re-consider this matter.

Details of the second tranche measures and implementation status are set out in the following Table 7.1 – ACT Road Transport Reform Status at 31 December 2001.

Table 7.1 - ACT Road Transport Reform Status at 31 December 2001

NATIONAL REFORM PROJECT	REQUIREMENT FOR SECOND TRANCHE	ACT STATUS	REQUIRED END DATE
1. National Heavy Vehicle Registration Scheme.	Jurisdictions to have in place and be applying legislation consistent with the national model. The aim is to ensure uniform national procedures.	**Implemented (see text)**	March 2000
2. National Driver Licensing Scheme	Jurisdictions to have in place and be applying legislation consistent with the national principles. The scheme will establish uniform requirements for key driver licensing transactions (issue / renewal / suspension / cancellation).	**Implemented**	March 2000
3. Vehicle Operations	Jurisdictions to have in place and be applying legislation consistent with the national model for : • Mass and Loading Regulations; • Oversize / Overmass; • Restricted Access Vehicles (RAV) Regulations.	**Implemented**	March 2000

NATIONAL REFORM PROJECT	REQUIREMENT FOR SECOND TRANCHE	ACT STATUS	REQUIRED END DATE
4. Heavy Vehicle Standards	Jurisdictions to have in place and be applying legislation consistent with national model. The aim is to provide uniform in-service design and standards for heavy vehicles and trailers.	**Implemented**	Superseded by Combined Vehicles Reforms
5/6. Truck and Bus Driving Hours	Jurisdictions to have in place and be applying legislation consistent with the national model. The aim is to provide a legal and administrative framework for managing truck and bus driver fatigue.	**Not applicable in the ACT, as agreed by ATC.**	N/A
7. Common Mass and Loading Rules	Jurisdictions to have in place and be applying legislation consistent with the national model. The national standards will improve productivity for heavy vehicles while protecting roads and bridges.	**Implemented**	Not specified
8. One Driver/One Licence	Jurisdictions to have in place and be applying legislation consistent with the national model. The aim is to have common and simplified licence categories, and to eliminate multiple licences.	**Implemented**	March 2000
9. Improved Network Access	The aim is to expand "as of right" access through routes for B-Doubles and other approved large vehicles.	**Implemented**	March 1999

NATIONAL REFORM PROJECT	REQUIREMENT FOR SECOND TRANCHE	ACT STATUS	REQUIRED END DATE
10/11. Common Pre-registration Standards for Heavy Vehicles and Common Roadworthiness Standards	Jurisdictions to have in place and be applying legislation consistent with the national model.	**Implemented**	Not specified
12. Enhanced Safe carriage and Restraint of Loads	The aim is to improve safety through standardised regulations and a practical guide for securing loads.	**Implemented**	July 1999
13. Adoption of National Bus Driving Hours	Adoption of new regulations for buses including two-up driving hours.	**Not applicable in the ACT, as agreed by ATC.**	N/A
14. Interstate Conversion of Driver Licenses	Jurisdictions to have in place and be applying legislation consistent with national principles to afford simplified, no cost interstate conversions of driver licenses.	**Implemented**	July 1999
15. Alternative Compliance	Agreement to support development of alternative compliance regimes.	**Implemented – to be developed as required**	Not specified
16. Short-term Registration	To enable options for 3 and 6 month registration for heavy vehicles.	**Implemented**	Not specified
17. Driver Offences/Licence Status.	Jurisdictions to have in place and be applying legislation consistent with national model. The aim is to allow employers to obtain limited information about employees' licence status.	**Implemented**	With licensing module

Taxis

The new Minister for Urban Services announced in February 2002, that the Independent Competition and Regulatory Commission would conduct an investigation in the taxi and hire car industries. The investigation has commenced and is expected to report as soon as possible after 30 May 2002.

The Terms of Reference for the investigation are as follows:

1. Provide an assessment of the level of service currently provided by the ACT Taxi and Hire car industries (including the extent of any change in service levels over recent years), the state of competition within the industries and their costs relative to other comparable jurisdictions.

2. Provide advice on the need for any further changes within the industries taking into account the NCP Review of Taxi and Hire car legislation, the recently commenced *Road Transport (Public Passenger Services) Act 2001*, competition within each respective industry, service levels and community expectations.

3. Advise on the likely implications for the ACT Taxi and Hire car industries of changes recently introduced or proposed by the NSW Government.

4. Where further changes for the ACT are recommended, provide advice on the expected community benefits for each recommended change.

5. Provide advice on what measures may be required to facilitate the establishment of a second taxi network in the ACT and the costs and benefits of introducing such measures.

6. Provide advice on the measures that may be necessary to ensure that people with a disability receive equivalent access to taxi services to that enjoyed by the general community.

Dangerous goods legislation

Review of the *Dangerous Goods Act 1984* is part of an overall review of the ACT's Occupational Health & Safety (OH&S) legislation.

The review examined the development of an integrated performance-based regulatory regime for workplace safety and dangerous goods in line with agreements reached in 1991 by Premiers and Chief Ministers that jurisdictions would pursue the development of nationally uniform, flexible and performance-based regulations under parent occupational health and safety legislation.

While a Regulatory Impact Statement (RIS) was prepared and public comments sought, the October 2001 ACT election and subsequent change of government did not allow for the drafting of amending legislation.

The National Occupational Health & Safety Commission have released a new

national standard on dangerous goods that can be applied in jurisdictions. The ACT is considering how this can be incorporated into a new legislative framework, taking into account previous findings derived from the RIS and public comments process.

9. Primary industries

Veterinary surgeons

Similar to the practice in all other States and Territories, the ACT regulates to effect control over the fitness and standard of practice of veterinary surgeons.

This includes assessments of the potential for harm to animals and the community where a veterinary surgeons fails to meet expected levels of qualification and fitness, or does not maintain safe standards of practice. The regulatory model of legislation is based on the provisions relating to the regulation of health professionals

The ACT completed a review of the *Veterinary Surgeons Registration Act 1965* in March 2001. The review identified restrictive provisions in relation to registration/entry requirements, title restrictions, scope of practice restrictions and conduct requirements.

The review found a net public benefit in maintaining a system of registration of veterinary surgeons based on their satisfactory achievement against specified statutory entry standards. The review further found a net benefit to the public by restricting use of the title, 'Veterinary Surgeon', to those persons who have been accepted as meeting statutory entry requirements. The review did not establish an overwhelming benefit in maintaining scope of practice restrictions.

In relation to conduct requirements, the review found a net benefit in maintaining standards of conduct in legislation. The review recommended however that the current generalised standards be recast as specific, unambiguous conduct requirements that have an identifiable and direct public benefit/public protection role. (Note: It was not necessary to address advertising restrictions within the review as the Veterinary Surgeons Act 1965 does not limit advertising by registered veterinary surgeons.)

The review also made recommendations in relation to the review of board decisions, and the involvement of independent bodies in conducting disciplinary investigations and hearings.

In March 2001, the ACT Government considered the review report and agreed to the drafting of legislation that incorporated the review's recommendations. The Government also agreed to a range of additional reform proposals in relation to the operation and structure of the legislation. The revised *Veterinary Surgeons Act 2002* is being finalised and it is expected to be introduced into the ACT Legislative Assembly by mid 2002.

Forestry

See Chapter 4. Structural Reform of Public Monopolies.

Fisheries

A business impact statement was prepared as part of the development of the *Fisheries Act 2000*. The statement and findings are as follows:

BUSINESS IMPACT STATEMENT - FISHERIES ACT 2000

The *Fisheries Act 2000* (the Act) is intended to ensure that:

1. Native fish habitats are conserved;
2. Fisheries are managed sustainably;
3. There is viable and high quality recreational fishing; and
4. There is co-operation with other Australian jurisdictions in sustaining fisheries and protecting native fish species.

Implementation of the Act impacts on business in the ACT as follows:

Fish wholesalers and commercial fishers:

Registration

People who receive more than the prescribed amount of fish in a prescribed period from commercial fishers will be required to be registered as a "fish dealer" unless the fish is received for retail or non-commercial purposes.

Licensing

People who take more than the prescribed amount of fish in a prescribed period for commercial purposes must be licensed as a "commercial fisher".

Records management

All licensed and registered "commercial fishers" and "fish dealers" will be required to keep records relating to all fish that has been taken, sold, received or processed. These records are required to be kept for a minimum of five years.

These restrictions mirror those in place in NSW. Currently, there are no commercial fishers in the ACT; hence, there is no impact on existing businesses. There are four ACT fish wholesalers listed in the Yellow Pages, but NSW Fisheries advise that because these businesses are not registered as fish dealers in NSW they must be acquiring their fish from NSW wholesalers. In these circumstances these businesses do not need to register as fish receivers in the ACT and there is no impact on existing businesses.

Fish importers and exporters

Pet shops and individuals who trade interstate in live fish are required to be licensed. This provision is carried over from the *Nature Conservation Act 1980* and therefore continues current practice. However, live fish for human consumption are excluded from this provision, as fish wholesalers require registration/licensing under another provision of the Act.

Should any businesses establish in the ACT as seafood merchants buying directly from commercial fishers, the inclusion of provisions within the Act mirroring those applying in NSW allows for appropriate cross-border auditing of the fish for sale industry.

In the event that any businesses commence trading in this area, registration as either a fish dealer or a commercial fisher will require a person to keep records in accordance with the provisions of the Act relating to the quantity of fish taken, received, processed or sold. These records may be required to be produced to a conservation officer. Records must be kept for at least five years. The fee to be paid for registration is the same as in NSW and contributes to the cost of industry oversight.

It is difficult to catch a person in the act of dealing in illegally caught fish and the records management regime proposed has proven the most effective means of conserving fisheries in other states. It is not in the interest of long-term sustainability of fisheries for the ACT to remain a gap in the audit trail for commercial fish dealing.

The requirement to register as a fish dealer is quite separate from regulations relating to food, including the provisions of the *Food Act 2001*. There is no duplication, as the food regulations are required as a community health safety measure, while the proposed fisheries regulations put in place an audit trail to conserve fisheries.

The alternative to regulating fish wholesalers in the ACT is to continue to rely on the application of interstate legislation. This would require interstate, particularly NSW, authorities to intercept any illegally caught fish before they crossed the ACT border. This is seen to be difficult and high-cost exercise and rule out this form of regulation.

Notwithstanding the absence of commercial fishing in the ACT at present, inquiries are made from time to time. The provision for licensing commercial fisheries in the ACT is needed because in the absence of provision for commercial fishing licences, the rules on bag limits for recreational fishing would apply.

The impact of the Act on importers and exporters of live fish (fish for human consumption are exempt from this provision) is the same as that currently applying under the *Nature Conservation Act 1975*. Businesses (mostly pet shops) are required to obtain a licence and keep records of cross-border trade in live fish. A nationally developed list of fish species exempt from import/export regulation is used to ensure that only fish species which pose a genuine threat of transferring disease or causing environmental harm are subject to restriction through licence conditions. Administrative appeal rights are available.

10. Health and pharmaceutical services

Health professions

ACT Health Professional Review and Reform Activity

Similar to the practice in all other States and Territories, the ACT regulates to effect control over the fitness and standard of practice of many of its health professional groupings. There are currently 14 health professional groups covered by 11 separate health professional Acts. The professions are: Chiropractors, dentists, dental technicians and dental prosthetists, medical practitioners, nurses, optometrists, osteopaths, physiotherapists, podiatrists, psychologists and pharmacists. (Dental therapists and dental hygienists are regulated but not registered by the *Dentists Act 1931*)

The ACT regulates health professionals based on a judgement of the potential for harm that may arise where a health professional fails to meet expected levels of qualification and fitness, or does not maintain safe standards of practice. Although the ACT regulates health professionals through the operation of 11 separate profession specific Acts, the legislation shares a common framework and largely replicate common regulatory provisions.

The ACT completed a consolidated review of its 11 health professional Acts in March 2001. The review identified restrictive provisions in relation to registration/entry requirements, title restrictions, scope of practice restrictions, and conduct requirements including advertising prohibitions.

The review found a net public benefit in maintaining a system of registration of health professionals based on their satisfactory achievement against specified statutory entry standards. The review further found a net benefit to the public by restricting use of the relevant title to those persons who have been accepted as meeting statutory entry requirements. The review did not establish an overwhelming benefit in maintaining scope of practice restrictions.

In relation to conduct requirements the review found a net benefit in maintaining standards of conduct in legislation. The review recommended, however, that the current generalised standards be recast as specific, unambiguous conduct requirements that have an identifiable and direct public benefit/public protection role. The review supported that existing restrictions on advertising be repealed and replaced by a prohibition on misleading advertising.

The review also made regulatory reform recommendations in relation to the continuation of health boards, the review of board decisions, and the involvement of independent bodies in conducting disciplinary investigations and hearings.

In March 2001, the ACT Government considered the review report and agreed to the drafting of legislation that incorporated the review recommendations. The Government also agreed to a range of additional reform proposals in relation to the

operation and structure of the legislation. The revised H*ealth Profession Bill 2002* is being finalised and is to be introduced into the ACT Legislative Assembly by mid 2002. The legislative proposal is for the existing health professional Acts to be repealed and replaced by a consolidated Act.

Pharmacy

The ACT has been a participating jurisdiction in the National Review of Pharmacy and is awaiting final COAG consideration of the recommendations of the National Review.

The National Review's findings are however not dissimilar to those arrived at through the ACT health professional review process. Accordingly most of the findings of the national review are likely to be addressed by the proposed ACT reforms.

CoAG has yet to finalise its response to the review, however, the draft notes acceptance of the recommendation on ownership noting that,

> 'the impact of removing the ownership restrictions could be too disruptive for the industry in the short term … this does not imply an obligation on the Australian Capital Territory or the Northern Territory to amend their legislation, as the territories' legislation falls within the boundary of acceptable regulation as set out in Recommendation 1.'

However, the report was also somewhat ambiguous in relation to ACT Pharmacy legislation. It concluded,

> 'On balance, the Review believes that the provisions in the Act cannot be held to rule out the ownership of pharmacies by persons other than pharmacists. If that is so, the current provisions are not wholly consistent with the Review's recommendation but, because they fall *within* and not *outside* the scope of the Review's conclusion on the boundaries of justifiable regulation of who owns pharmacies, any adjustments to current statutory requirements are a matter for the Territory.'

In August 2001 the ACT Legislative Assembly supported amendments to the ACT's *Pharmacy Act 1931*. These amendments permit persons already entitled to carry on the business of a pharmacy to utilise a company structure in doing so. Hence, the extent of the prohibition provided by the *Pharmacy Act 1931* will remain unchanged after the commencement of the amending Act. The amendments extend the opportunity to carry on business as a pharmacist and to provide a pharmacy service for fee or reward to companies. The amending legislation does not impose any additional obligations with respect to the ownership of pharmacy property.

In March 2002, the Legislative Assembly passed an amending Bill, the *Pharmacy Amendment Bill 2001*, that delayed the introduction of the *Pharmacy Act 2001* from 24 March 2002 to 1 June 2002.

The *Pharmacy Act 2001* requires that companies that wish to be registered as

pharmacists in the ACT comply with certain conditions. The Act prescribes certain matters in relation to the internal management of a company. However, the ACT is awaiting clarification as to the validity of the legislation from the Commonwealth as it appears that the *ACT (Self Government) Act 1988* may not give the Legislative Assembly the power to legislate for the internal management of a company.

Delay in the commencement of the legislation will allow the issue to be resolved so that pharmacists do not rely on the legislation and develop corporate structures and business arrangements that may later prove to be invalid or unlawful.

Population health and public safety

Cemeteries

While the NCC has not raised any significant concerns with respect to population health legislation to date, the following information is provided in relation to cemeteries.

Public cemeteries in the ACT are managed by the Canberra Public Cemeteries Trust. The Trustees report directly to the Minister, but are provided with administrative resources by the Department of Urban Services through the City Operations Branch. The cemeteries operate in competition with other burial facilities in the region and with a local crematorium, which have attracted an increasing market share in recent years.

The Centre for International Economics (CIE) report, NCP Review of ACT Cemeteries and Crematoria, generally supported maintaining the existing arrangements. The consultants identified three major areas to be addressed under the Government's commitment to National Competition Principles. They were:

- The provision of ACT cemeteries should not be restricted by legislation to a single operator;

- Restrictions on tenure after burial should be clarified so that cemetery operators have the scope to fully recover the costs of ongoing cemetery operations by introducing various limited tenure gravesite options, reflecting maintenance costs; and

- Outdated parts of the legislation and regulations should be removed to increase flexibility for operators to respond to market needs.

The Cemeteries and Crematoria Bill 2001 was introduced into the Legislative Assembly on 26 February 2001 and debate on the Bill commenced on 28 August 2001. Debate was adjourned and the issue was not finalise at the time of the 2001 ACT election.

The new Government supports the major recommendations of the review, with the exception of the recommendation to allow for varying tenure of graves. It is now proposed that a revised Bill will be introduced into the Assembly in May 2002.

11. Professions and occupations not covered elsewhere

Legal services

Review of the *Legal Practitioners Act 1970* has ceased. Further review and reform activity will occur at a national level to ensure a uniform and nationally consistent framework for the industry. Jurisdictions' Attorneys-General are overseeing the establishment of the review panel with the expectation that model legislation can be developed before the end of 2002.

Professional indemnity insurance

The ACT has released an issues paper and, as an interim measure pending the full NCP review, the ACT Government amended the *Legal Practitioners Act 1970* to introduce a second approved insurance provider.

Other professional and occupational licensing

Pawnbrokers and second-hand dealers

A review by the Department of Justice and Community Safety in September 2001 concluded that the Act should be retained, with a number of amendments incorporated. Reducing the risk of the market being used by criminals to pass on stolen goods is the essential public interest rationale to retaining record keeping requirements and police powers of inspection.

Specific requirements ensure that regular traders in second hand goods maintain and provide records of transactions to the police, that goods may be held by notice where police believe it to necessary to check whether the goods have been stolen before being on-sold and the vesting of power in the court to prohibit further participation in the industry where appropriate. The review also found that the requirements should be altered to take into account new technology and the archaic business rules in the legislation should largely be repealed. The Government is considering the review findings.

Auctioneers

A review of the *Auctioneers Act 1959* by the Department of Justice and Community Safety was completed in April 2001. The review found that while the regulatory costs imposed on auctioneers are minor, the benefits appear insufficient to justify the licensing requirements in the Act. It recommended that the Act should be repealed and the Government is considering the review findings.

Hawkers

In early 2000, the Department of Urban Services engaged the Allen Consulting Group (Allen) to undertake a review of the *Hawkers Act 1936* and *Collections* Act *1959.* The Allen Report made 28 recommendations for legislative reform relating to the operation of the Hawkers and Collections Acts.

The then Government accepted all of the review recommendations, except the recommendation regarding removal of the 180-metre exclusion zone preventing hawkers from operating near shops. Instead, it decided to maintain the existing restriction, unless the hawker obtained written approval from the Minister or an authorised officer. This approach maintained the existing regulatory regime in this regard and the status quo in the ACT retail sector. On balance, the restriction provides for alternative retail trade and innovation while maintaining the viability of fixed retail outlets that are disadvantaged by higher up-front and ongoing costs (shop fitout, rent and rates) and problems associated with trading at a fixed location.

The current Government supports the major recommendations of the review. It is proposed that amending legislation will be reintroduced into the Legislative Assembly in May 2002.

Agents/Real estate agents

A review of the *Agents Act 1968* by the Department of Justice and Community Safety was completed in April 2001. The review concluded that there are no competition policy issues requiring legislative reform within the real estate, stock and station and business agents' markets, but questions the imposition of a licensing regime on the employment agents' market. Travel agents were not subjected to a competition policy review, as they are already the subject of an NCP review by the Ministerial Council on Consumer Affairs. The Government is considering the review findings.

12. Retail trading arrangements

Fair trading legislation

A review of the *Fair Trading Act 1992* by the Department of Justice & Community Safety concluded in September 2001 that the Act is pro-competition. Minor amendments were made to fair trading in the *Fair Trading (Amendment) Act 2001*.

Consumer credit legislation

A review of the *Consumer Credit (Administration) Act 1996* by the Department of Justice & Community Safety concluded in September 2001 that the market suffers from well documented market failures that expose consumers to high levels of financial risk and an inability to discriminate objectively between the providers of services in terms of quality and cost of service.

Given the need for government intervention to protect the public interest against potential market failures, the report made a number of recommendations about the way in which these issues might be addressed. The ACT is considering an appropriately costed licensing framework necessary to promote the delivery of more efficient and competitively priced services.

Trade measurement legislation

An initial assessment of the *Trade Measurement (Administration) Act 1991* determined that the Act did not restrict competition and so a more detailed review was not required.

13. Insurance and superannuation services

Workers compensation insurance

Workers compensation insurance is mandatory in the ACT. Insurers approved under the Act offer insurance to employers and set premiums based on industry-based coding.

Prior to the ACT 2001 election, the then Government considered two reports on the ACT workers' compensation scheme; a Legislative Assembly Select Committee report and the Workers Compensation Monitoring Committee report. The reports' recommendations formed the basis of proposals to reform the existing legislation. On 7 December 2000, the Government tabled for consultation an exposure Draft of a Bill and Regulation to amend the ACT *Workers' Compensation Act 1951*. A period of public consultation was completed in time for draft legislation to be introduced into the Legislative Assembly and the *Workers Compensation (Amendment) Act 2001* was passed prior to the election in October 2001. The new legislation comes into effect on 1 July 2002.

Consultation with relevant stakeholders (unions, employer groups, medical, rehabilitation provider and legal representatives) is currently ongoing with respect to the regulations that will come into force after 1 July 2002.

The amending legislation and associated regulations provide that more flexible arrangements be permitted between employers and insurers and promote the development of insurance products matched to individual company needs. Further, they provide that the Minister may enact regulations to govern aspects of insurers' conduct if necessary.

The focus of the new scheme is the rehabilitation and return to work of injured employees. The injury management focus is supported by:

- benefits that encourage an early and safe return to work;
- requirements that insurers and employers are geared for injury management;
- flexibility for injured workers to engage with second employers;
- obligations on all parties to participate in injury management and return to work; and
- certainty and consistency in relation to medical payments, medical assessments, and second opinions.

The amended legislation does not change the potential for choice of provider, nor does it regulate premiums.

Compulsory Third-Party Insurance

The *Motor Traffic Act 1936* regulates a number of areas concerned with road transport and traffic. Part V of the Act (and associated subordinate legislation) provides the regulatory framework for the operation of a compulsory third-party insurance (CTPI) scheme in the Territory. Like New South Wales and Queensland, CTPI is provided by authorised private insurance companies rather than government in the ACT.

The ACT scheme permits multiple insurers. However, in recent years, the NRMA has operated as the sole provider of CTPI. This 'monopoly' is not legislatively created and is subject to change should another provider seek authorisation. On this basis, the Department of Treasury has previously advised the National Competition Council that the ACT legislation does not restrict competition and is not being reviewed under the regulation review program.

Public sector superannuation

Prior to the 2001 ACT election, the Government had given a written undertaking to the unions in all enterprise bargaining agreements, of which the majority of the arrangements will not expire until September 2002, that it would not change the existing arrangements unless one month's notice was given to the Australian Industrial Relations Commission and unions.

Current government policy is that parties agree that the Public Sector Superannuation scheme will be maintained and remain open for new entrants.

14. Education services

School Legislation Review

The following legislation was reviewed:

- *Education Act 1937*
- *Free Education Act 1906 (NSW)*
- *Public Instruction Act 1880 (NSW)*
- *Schools Authority Act 1976*

A review of school education legislation was undertaken for the following reasons:

- Efficiency - existing legislation governing school education is spread over four Acts and it would be more efficient for community and government to operate under one piece of legislation.
- As existing legislation dates back to the 19th century, the review examined how the legislation should be updated to incorporate contemporary practice and policies, accommodate change in the delivery of school education and incorporate modern legislative drafting policies and practice.

Following the review, draft legislation was prepared or introduction to the ACT Legislative Assembly. A review of the application of Competition Policy to the proposed new school education legislation concluded that proposed legislation complies with national agreements on NCP.

In summary the specific issues identified related to regulation of non-government schools.

- As stated in the review the legislation has been drafted “on the basis that the non government schools may be subject to the *Trade Practices Act 1974*.
- However, regulation of non-government schools “is likely to be exempt from the provisions of the *Trade Practices Act 1974*, but consistent with the Competition Principles Agreement”.
- The application of the conclusions to the review will be comparable to the application of competitive principles in other States and Territories within Australia.

School Legislation Review Committee

A School Legislation Review Committee was established in September 1998 to review the *ACT Education Act 1937* and the *ACT Schools Authority Act 1976* and

advise the Minister for Education on:

- the relevance of the Acts' existing provisions;
- the key elements of legislation needed to underpin high quality schooling in the ACT; and,
- provide information and recommendations to assist Government in determining the form and content of replacement legislation.

Terms of reference

The Review Committee was required to perform (but not be limited by) the following tasks:

- development and dissemination of a discussion paper on the key issues to be considered in the review;
- invite submissions;
- consult on the key issues through a series of workshops;
- examine and report on existing state and territory legislation;
- take into account the objectives, maintenance of standards and management of school education in the ACT;
- look at closer relationships between the government and non-government systems;
- develop an options paper on the possible elements of new legislation, including objectives; and
- take into account the impact of other relevant ACT and Commonwealth legislation and agreements, including competition and regulatory review policies.

Consultation

The Committee was to take into account the ACT Government Consultation Protocols.

A Discussion Paper for the review of legislation was circulated widely, with over 5,000 copies distributed between July and November 1999. Its purpose was to focus public comment and debate on the key issues for schooling in the ACT.

The public consultation itself had three components:

- community information sessions which were open to the general public (ultimately involving about 200 participants);

- special interest workshops, by invitation, which involved about 100 participants (such as student representative bodies); and

- public submissions, of which 80 were received.

Review findings

A report was obtained for the Committee about the Territory's obligations pursuant to the Competition Principles Agreement. In reviewing the interaction of competition policy and education, the report concluded that:

- there is no reason in principle why schools should be excluded as a threshold issue from any application of competition policy;

- in applying competition law, the provision of education by a government school, as it is presently delivered, will be a non-business rather than business activity and, as such, will not be subject to competition law;

- the application of competition law to non-government schools is not so clearly decided and accordingly, while it is probable that a non-profit non-government school will also be characterised as a non-business activity, this cannot always be assumed. Legislation should, therefore, be prepared on the basis that non-government schools may be subject to the Trade Practices Act;

- certain activities of schools could be classified as a business and as such subject to the Trade Practices Act. These activities are not specified or prescribed in legislation and so are not relevant for present purposes;

- the establishment or closure of a government school is not a matter that is in the course of trade and is not, therefore, subject to the Trade Practices Act. Such activity could be brought within the course of trade by the conduct of the various decision makers who might be involved, but this will not be governed by the legislation and so is not relevant for present purposes; and

- the registration of schools is likely to be exempt from the provisions of the Trade Practices Act, but consistent with the Competition Principles Agreement it is recommended that any proposed legislation should ensure competitive neutrality in dealing with this aspect.

Recommendations

Recommendation 1

Establish a single Act for schooling in the ACT.

Recommendation 2

Include a Statement of Values and Principles as a preamble to legislation for schooling in the ACT.

Recommendation 3

Include additional statements of Values and Principles for the government and non-government sectors at the beginning of the relevant sections of the legislation.

Recommendation 4

Consider the introduction of Teacher Registration for professional enhancement of teachers in the ACT.

Recommendation 5

Include a statement about the government's commitment to the funding of ACT schooling in the general preamble to the legislation.

Recommendation 6

Maintain an obligation to provide comprehensive information about key inputs and outcomes in the ACT school system.

Recommendation 7

Maintain the current compulsory school age thresholds.

Recommendation 8

Include in the Values and Principles the goal that all students should complete the senior years of schooling with a broad general education, which covers both the academic and the vocational, and which prepares them for lifelong learning.

Recommendation 9

Incorporate into the legislation a definition of attendance that reflects the evolving nature of schooling.

Recommendation 10

Incorporate some basic principles about the management of student truancy, suspension and exclusion into the legislation.

Recommendation 11

Incorporate the principles behind existing arrangements for curriculum into legislation.

Recommendation 12

Allow formal ties between particular government and non-government schools to evolve.

Recommendation 13

Assess the likely impact of Internet-based learning technologies on existing legislative provisions for schooling in the ACT.

Recommendation 14

Strengthen community involvement in educational decision-making at the system level for government schools.

Recommendation 15

Amend existing legislative provisions for government school boards to make explicit the role of the principal and the curricular responsibilities of these boards.

Recommendation 16

Make provision in the legislation for a general statement of, and policy in support of, parent participation in government schools.

Recommendation 17

Maintain the provisions of the *NSW Free Education Act 1906* in legislation for ACT schooling, and make explicit the provision for fee-paying international students in government schools.

Recommendation 18

Make a statement in the legislation supporting needs-based funding components for government schools.

Recommendation 19

Include in legislation the conditions under which schools may request voluntary financial contributions.

Recommendation 20

Retain current legislative provisions relating to the establishment and re-registration of non-government schools.

Recommendation 21

Remove mention of compulsory fees for government preschools from existing legislation.

Recommendation 22

Review licensing arrangements for independent preschools attached to registered non-government schools.

Recommendation 23

Retain current legislative provisions relating to home schooling.

Education Bill 2000

The *Education Bill* 2000 did not come before the Legislative Assembly for the second reading prior to the ACT election in October 2001. The Bill is being updated to incorporate the new Government's views. It is to be issued as an exposure draft in June 2002 and completion of the new legislation is not likely until the end of 2002.

Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994

The *Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994* (ACT ESOS Act 1994) was repealed by the Statute Law Amendment Bill 2001 on 15 June 2001.

This legislation was reviewed when the Commonwealth changed its own Act governing providers of education services for overseas students. Conscious of the Commonwealth's purpose to tighten up provisions to protect the interest of overseas students, the ACT proposed the relevant changes necessary for ACT legislation. On advice from Parliamentary Counsel, given the Commonwealth legislation, it was decided to repeal the ACT's own legislation.

In summary, the A*CT ESOS Act 1994* was repealed in recognition of:

- the fact that the *Commonwealth ESOS Act 2000* contains the same provisions as the *ACT ESOS Act 1994* in respect of assurance of student fees;
- the *Commonwealth ESOS Act 2000* provides similar and higher levels of protection for the ACT international student industry than the *ACT ESOS Act 1994*.

Vocational Education and Training Act 1995

The *Vocational Education and Training Act 1995* is scheduled for amendment in the Spring Session 2002 of the ACT Legislative Assembly, following the expected adoption of "model clauses" by the Australian National Training Authority Ministerial Council (ANTA MINCO) in May 2002. The ACT legislation will incorporate these "model clauses" to ensure national consistency in the application of the nationally agreed Standards for VET Providers.

Since March 2000, work has progressed on reviewing model clauses in this legislation to establish and introduce new standards that ensure that providers of vocational education and training meet qualifications established through legislation. These standards are seen to be in the public interest to protect both providers and consumers of vocational education and to bring relevant state practices into line with nationally consistent standards.

Board of Senior Secondary Studies Act 1997

The *Board of Senior Secondary Studies (BSSS*) *Act 1997* provides for accreditation of courses, assessment, moderation and certification of student attainment and the registration of schools as Recognised Training Organisations in the ACT for both ACT government and non-government schools.

In this way it provides regulation for both the government and non-government school sectors.

The Act was amended in 1998 to broaden the scope of recognised educational institutions that could offer the Year 12 Certificate.

When the schools' education legislation was reviewed, consideration was given to the applicability of the *BSSS Act.* The assessment determined that the legislation maintained uniform standards for senior secondary courses and certification and has

been retained.

The *BSSS* legislation complies with national competition policy even though, based on the Competition Policy Review of ACT schools legislation, it is believed that regulation of non-government schools is likely to be exempt from the provisions of the *Trade Practices Act.*

15. Gambling: Racing and Betting

The review of bookmaking legislation (*Bookmakers Act 1985*) resulted in the ACT enacting a new statute (*Race and Sports Bookmaking Act 2001*), enabling the implementation of a range of reforms. Race bookmakers' licences are now granted by the ACT Gambling and Racing Commission and no longer require the approval of the racing clubs. Minimum limits on telephone bets have been removed. Similarly, the requirement for sports bookmakers (and sports bookmakers' agents) to first hold a race bookmaker's licence has been removed from the legislative framework. Flexible arrangements with respect to the locations where sports bookmaking offices can operate, however, are not yet fully implemented. Arrangements relating to the size of the betting security guarantee are, similarly, not yet finalised. The cap on the number of sports bookmaking licences issued has been lifted.

The *Racecourses Act 1935*, which contained a number of significant restrictions in relation to racing activities, was repealed with the commencement of the *Racing Act 1999* in July 2001. In addition to re-establishing the regulation of the existing racing clubs on a new statutory footing, the Racing Act also provides for other racing organisations to conduct races for the purpose of betting. In addition, establishment of the independent ACT Gambling and Racing Commission (the "Commission") has removed the potential for direct Ministerial control of the industry.

A public interest examination of the draft legislation was undertaken by the Allen Consulting Group in September 1998. As a result of the review, the revised framework focussed on who can conduct racing and where they can race, while restrictions on when racing could be conducted were removed. The report justified the continued regulation of gambling to:

- maintain public confidence in the ACT racing industry by ensuring product quality, consumer protection and minimisation of the potential for criminal activity; and,

- minimise the potential for problem gambling and associated social costs.

Accordingly, licensing controls that relate to who can be an Approved Racing Organisation (ARO) were retained. Prior to the Commission approving an ARO application, it must be satisfied that the applicant:

- has a demonstrated capacity to conduct and control races and race meetings;

- can demonstrate that races and race meetings to be conducted by the applicant shall be conducted honestly, with integrity and free from criminal influence; and

- has established a comprehensive set of rules to cover the control and conduct of races and race meetings.

An applicant can apply to the Minister for a review of the decision of the Commission, if the Commission declines the application.

To satisfy probity concerns, an Approved Racing Organisation is required to provide to the Commission a copy of each report, in respect to racing activity, that is provided to owners, members and shareholders of the ARO.

Similarly, relating to locational controls, previous requirements for the licensing of racecourses, particularly in regard to the setting of a time limit on the duration of a racecourse licence, have been removed. The new legislation provides that an ARO is required to inform the Commission of the location of the racecourse where it proposes to conduct its race meetings and the Commission shall approve this specified location as a licensed racecourse. The rationale behind this restriction is that through the licensing of racecourses, the Commission retains the link to the control of betting.

The approval of the licensed racecourse may only be revoked by the Commission following an inquiry or upon the request of the controlling body.

Summary

Bookmaker's Act 1985 – repealed by *Race and Sports Bookmaking Act 2001*(commenced September 2001) – reform activity largely implemented.

Racecourses Act 1935 – repealed by *Racing Act 1999* (commenced July 2001) – reform activity implemented.

Gaming Machines

The Gaming Machine Act 1987 is currently being reviewed by the ACT Gambling and Racing Commission. This comprehensive review, which is yet to be completed, will consider national competition policy matters such as the type of gaming machines, if any, to be permitted in hotels. The review will also consider harm minimisation matters, including the prevalence of gaming machines in the community, as part of the wider public benefit issues.

The review is expected to be completed around mid-2002 with new or amended legislation being considered by Government and the ACT Legislative Assembly.

Public Benefit Argument for the Interactive Gambling Act 1998

A 1999 Productivity Commission Inquiry Report into Australia's Gambling Industries determined the competitive benefits of interactive gaming. These included the increase of accessibility to casino games, a greater choice of gambling servers and providers, and the lowering of associated costs (Policy for New Technologies, 1999: 18.14). The report also outlined the many social costs of interactive gaming, such as the dangers of unsupervised gambling and the accessibility of minors. With these factors in mind in 1998, the ACT implemented its legislation to allow for the competitiveness of providers operating from within the Territory whilst allowing for measures that prescribe social responsibility.

Whilst there are certain sections of the Act that limit the freedoms of potential gaming

providers, the overall effect of the Act is to strike a balance that allows for responsible competition in a manner that is beneficial to the public.

In 2001, the Federal Government introduced its *Interactive Gambling Act 2001*, which further curtailed the operations of all providers within Australia. Interactive gaming providers are no longer able to provide gambling services, or advertise those services, to persons located within Australia. The choice for Australian citizens who wish to participate in interactive gambling is therefore limited to foreign, often unregulated, operators.

The ACT's *Interactive Gaming Act 1998* implements measures to ensure the good standing of operators and their business, ensuring their reputation as good international citizens whilst giving them a fair competitive edge in the industry.The following restrictions have been adopted in the Territory to fulfil this intention.

Licensing

In April 1998, the Allen Consulting Group was commissioned by the ACT to review gambling legislation in relation to National Competition Policy. The findings in Chapter 5 of their Final Report determined a socially responsible approach to the regulation of service providers and associated important persons in the industry, whilst adhering to National Competition Policy requirements. The review did not include the *Interactive Gambling Act 1998* within its findings, however the findings relating to related forms of gambling are applicable.

The ACT legislation on interactive gambling provides criteria for licensing. These are designed to determine quality controls that ensure, as much as practicable and reasonable, the good character of the applicant and his or her capacity to operate an interactive gambling site in accordance with regulations.

The licensing process is designed to exclude those with designs that would bring interactive gaming into disrepute by means of unlawful operations, such as fraudulent schemes, scams, or the misleading or deceptive conduct of interactive games. This process is further enhanced by allowing the Minister discretionary powers in the granting of the license. Whilst this may raise questions of due process, its primary purpose is to give a further assurance that the provider of the license will be of good character and possess the capacity to run a gambling operation in accordance with regulations.

Moreover, similar licensing restrictions apply to those intent upon holding a "key person" position within an interactive gaming business, as well as those who undertake to act as agent on behalf of the licensed provider. Once again, the purpose is to ensure the lawful conduct and management of interactive gaming by determining the good character and operational capacity of such persons. The Minister maintains a discretionary power in granting such licenses, providing a further responsible restriction for upholding the integrity of the industry.

Should a licence holder of any description under the *Interactive Gambling Act 1998* subsequently arouse suspicion as to the unlawfulness or poor conducting of an

interactive gaming business, the Minister maintains the discretionary power to review, cancel or suspend a license, and issue enforceable directions or change a condition of the licence. This extends the socially and financially responsible purpose of the initial licensing process to an ongoing monitoring of the integrity of the licence holders so that the purpose of the legislation is maintained.

Thus, the limitations that the licensing process imposes upon the interactive gaming industry, individual businesses, and the public at large - by restricting the competitive playing field to operators of good professional standing and integrity - cannot be said to restrict competition merely by the fact that they limit it to those intent upon providing lawful operations. However, if it is construed to be restrictive, such a restrictive imposition upon the licensing process is in the interest of interactive players and the public at large, by providing a taxable service under legislation that promotes social responsibility.

Approved Control Systems

The Allen Report states that to maintain a competitive gambling industry, 'the first characteristic is the imposition of quality controls upon the prospective suppliers of the gaming facility' (Allen, 1998: 40).

Such a general statement has influenced several regulatory sections of the *Interactive Gambling Act 1998,* not the least of which is the requirement of the Commission to approve the licensed provider's control system for the conducting of the interactive gaming business. In the process of such approval, the Commission may look at such factors as:

- the conduct of interactive games;
- the general procedures for the conducting of interactive games;
- the procedures for the recording and paying of prizes;
- the procedures and standards for the maintenance, security, storage and transportation of equipment to be used;
- the procedures for using and maintaining security facilities; and
- the positions designated as key positions.

The implications of such controls upon the service provider's system serve many purposes. The approved control system ensures the integrity of the interactive gaming operation, such that it provides a fair and honest service for the players. This has the benefit of attracting more players to games that are operated under these requirements, as the player knows that he or she is playing in a game where the honesty and integrity of the game is prescribed and monitored. The 1999 Productivity Report into Australia's Gambling Industries highlighted the capacity for consumers to determine the integrity of providers in an unregulated marketplace ("Policy For New Technologies", 18.24: 1999). However, the existence of regulations

that serve to ensure provider integrity from the outset ensures the reputation of providers registered within the Territory and increases their goodwill.

Furthermore, an approved control system must have measures that reflect the intended social concern of the legislation, by ensuring the provider has in place such measures that allow for players to be excluded from playing or for them to have a betting limit in place. The control measures also include the registration of players so that their identity and domicile may be determined to ensure their legal capacity to play.

Thus, the approval of a control system ensures that the integrity of each interactive game and business provides a fair service to the customer. Such regulation, by exposing the hand of market forces, promotes competition by guiding the licensed provider through a set of rules that ensure fairness from the perspective of both players and industry competitors within the Territory.

License Fees and Tax

The initial costs pertaining to the gaining of an interactive gaming license are quite high, and limit the entering into that competitive field to those who have good financial resources or backing.

Application fees apply initially, followed by an annual license fee should the application be successful. Furthermore, the person intent upon gaining a licence bears the costs of investigations into the feasibility of the proposal to operate an interactive gaming business. These costs serve two purposes: first, they cover investigations that are for the public benefit, by determining the suitability of the applicant. Secondly, they provide a disincentive to frivolous applications and provide a deterrent for those who have not made their own preparations to determine their suitability and capacity to run an interactive gaming site.

Additionally, the Territory has designed a taxation formula that rewards good business practice. A competitive taxation regime is an important element in a successful business. An interactive gaming site, by its nature, should be a profitable exercise for the provider, as the odds are always within his or her favour. Market forces are determined by the demand of the product, but do not effect the percentage of returns. However, any such business that stays within the regulatory system of the Territory will ensure a good professional reputation amongst customers, in turn increasing demand.

In light of this, the Territory has implemented a system of taxation that rewards the higher earning Internet providers. The rationale behind this is that the regulations are conducive to a successful business. This social benefit of “survival of the honest” is furthered by the increase in revenue gains that such a successful business would bring. The legislation not only enhances the quality of competitiveness within the international community, but also ensures that the Territory is at the centre of such operations with the public being the main beneficiary.

Miscellaneous

There are further restrictions upon interactive gaming operators that, whilst not directly affecting their chances of competing within the marketplace, do impose restrictions that affect the day-to-day running of the operation. Such restrictions are found under the general heading of Compliance Requirements (Pt. 7 of the Act). These rules, addressing concerns of both The Allen Report and the Productivity Commission, are as follows:

- Prohibition of provider to act as a credit provider – this addresses the dangers that such conflicting interests provide, by combining inducements of gambling with facilitating credit.

- Limitation on amounts wagered – this is a further recognition of social responsibility, allowing players to be excluded from, or set limits on, their gaming activities. Whilst restricting the free trading of the provider, it is necessary that the community concerns of problem and addictive gambling be recognised and dealt with.

- Advertising – whilst the Territory does regulate the advertising of interactive gaming, these have largely been superseded by the Commonwealth Act which bans it except for a few exceptions (subject to Ministerial approval), such as charities and international sporting events.

- Ancillary agreements – the Commission may demand that the details of certain agreements be submitted to them for their approval. The Commission may also terminate ancillary agreements where it considers it necessary to do so. Once again, this division of the Act is to ensure the integrity of the operations of the interactive gaming business.

16. Planning, construction and development services

Review of Building Regulations

Review of the Building Act 1972

In January 1999, the ACT introduced private certification of building approvals and inspections. The portions of the *Building Act 1972* that deal with these matters were rewritten as part of the change and the process included the production of a Regulatory Impact Statement.

The provisions of the Act that deal with the control of legionella were repealed in July 2000. Substitute controls now appear in public health legislation.

The review of the licensing and insurance parts of the Act is discussed below under Regulation of Building and Related Trades - Builders/building practitioners.

Planning and Building Approvals

Review of the Land (Planning and Environment) Act 1991 – parts V and VI, grants of land and development approval processes

In February 2000, the ACT Minister for Urban Services released the ACT Government's response to the National Competition Policy review of parts V and VI of the *Land (Planning and Environment) Act 1991.*

The review tested a number of potentially anti-competitive aspects of the legislation, to determine whether retaining the restrictions provided a cost or benefit to the ACT community. These included aspects of the grant of lease process, the development approval process and compliance with lease covenants.

The Government agreed to the majority of the 15 recommendations, with two recommendations agreed in part and one not agreed. The Report recommended a number of measures to improve accountability and transparency in administering the leasehold system and addressed perceived anti-competitive elements for the direct granting of concessional leases.

The ACT Government agreed to the recommended reforms that focus on the transparency of dealings in land outside the normal auction process. These changes include:

- providing more detail to the ACT Legislative Assembly about the process to determine the sale price and concessions granted under a new lease;
- no longer allowing the application fee for a direct grant of land to be used as a

deposit towards payment for the land;

- providing a public document about the process used to assess direct grant applications;

- reviewing the fees charged for direct grants to reflect the costs and subsidies associated with the direct grant process; and

- reviewing disallowable instruments made under the Land Act to determine whether they are still required and are accord with NCP principles.

As a result, the Land Act Regulations were amended on 25 January 2001 to clarify which development activities on rural leases do, or do not, require approval. Other reforms are being handled by new administrative processes. Disallowable instruments for the direct granting of leases are currently being revised and a study of concessional leasing policies and practices will commence shortly.

Service providers

Architects Act

In November 2000, the Commonwealth released the Productivity Commission's National Competition Policy review of legislation regulating the architectural profession. The inquiry served as a national review of participating States and Territories' legislation, including the ACT *Architects Act 1959*.

In conducting the review, the Commission released an issues paper in November 1999 and a draft report in May 2000 before completing its final report in August 2000. It conducted hearings after the issue of each of the earlier documents and received a number of written comments.

The review considered the anti–competitive aspects of the occupational licensing system involved, particularly the restriction of the title "architect' to registered persons. The Commission's preferred option was to repeal Architects Acts and the statutory certification of architects. The Commission found these added very little to other measures for addressing concerns about the quality of the built environment and the various health and safety issues related to buildings. The Commission recommended a two-year transition period before repeal. It expected that this option would lead to current architects establishing a voluntary system of registration and marketing the advantages of their qualifications.

The Commission accepted that jurisdictions that registered all building practitioners could continue to register architects and other designers of buildings as part of this system. It listed a number of principles that should then be adopted in relation to architects.

All States and Territories have agreed to participate in the development of a national response to the review and a Working Group has been set up for this purpose. An interstate working group was formed to draft a joint response. No agreed position

was reached in time to permit implementation in the ACT in 2001. The Territory expects to legislate in 2002 for an outcome compatible with national competition principles.

Surveyors Act

Pursuant to the ACT's commitment under the Competition Principles Agreement to review all legislation that potentially restricted competition, a review of the *Surveyors Act 1967* was formally commenced in November 1998 by independent consultants, The Allen Consulting Group.

The report was widely circulated for comment in 1998 and a well attended public seminar held to discuss issues raised. Public and industry comments on the Allen Report together with feedback received at the seminar were critical to framing the Government's response.

Examination of proposed deposited plans and audits of surveys and the registration of surveyors will continue to ensure standards are maintained.

The *Surveyors Act 2001* was drawn up to implement the review and came into effect on 26 July 2001.

Regulation of Building and Related Trades

Builders/building practitioners

In October 2001, the ACT Government released its National Competition Policy review of potentially anti-competitive aspects of occupational licensing and requirements for compulsory insurance under the *Building Act 1972.*

The Allen Consulting Group undertook a targeted public review in combination with the review of the *Plumbers, Drainers and Gasfitters Board Act 1982,* which deals only with occupational licensing, and occupational licensing and requirements for compulsory insurance under the *Electricity Act 1971.*

The reviewer issued a Directions Paper in May 2000, held four public meetings and received written comments before they drew up their final report in August 2000. The review determined that market failures justified continued regulation in this form but that the system should be simplified as far as possible.

The Government accepted the majority of the twenty-two recommendations and began drafting legislation at the beginning of 2001. Due to the 2001 election, this legislation was not part of the truncated legislative session and was postponed until 2002.

Plumbers, drainers and gas fitters

The potentially anti-competitive aspects of occupational licensing under the *Plumbers, Drainers and Gasfitters Board Act 1982* were jointly reviewed with the

Building Act 1972 and the *Electricity Act 1971*. The process and outcome of the review is discussed above under builders /building practitioners. The simplifications recommended by the review included the establishment of a single piece of legislation that deals with all the relevant occupations.

Electricians

The potentially anti-competitive aspects of occupational licensing under the *Electricity Act 1971* were jointly reviewed with the *Building Act 1972* and the *Electricity Act 1971*. The process and outcome of the review is discussed above under builders/building practitioners. The simplifications recommended by the review included the establishment of a single piece of legislation that deals with all the relevant occupations and the abolition of insurance requirements for electrical contractors.