



NORTHERN TERRITORY OF AUSTRALIA

Annual Report
on the
Implementation of
National Competition Policy
2003

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Introduction

In April 1995 all State and Territory Governments, with the Commonwealth, signed three intergovernmental agreements which together form National Competition Policy (NCP):

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

Under Clause 3 (10) and 5 (10) of the Competition Principles Agreement (CPA) all parties to the agreement are required to report annually on progress towards fulfilling the competitive neutrality and legislative review requirements of the Agreement.

Northern Territory Annual Report 2003

This Annual Report provides information relevant to each area identified in the National Competition Council's *Assessment of governments' progress in Implementing the National Competition Policy and Related Reforms* August 2002 and the 2003 assessment framework.

Review and reform information for various pieces of legislation has been provided directly to the Council throughout the year. Where possible, specific reform information is provided in this report in the form of amending legislation, included in the appendices.

Chapter 1 – Electricity and Gas

Oil Refinery Agreement Ratification Act

Act repealed, effective 8 November 2002.

Petroleum Act

Review and reform information previously submitted to the Council.

NCP review finalised. The Government has endorsed the NCP review and approved implementation of the review recommendations. Some recommendations have been included in the Petroleum Act Amendment Act 2003 while others will be actioned in time to meet the 30 June 2003 deadline.

The Amendment Act can be found at:

http://notes.nt.gov.au/dcm/legislat/Acts.nsf/84c76a0f7bf3fb726925649e001c03bb/c3a79d8801a96cac69256c8300796796?OpenDocument#_Section4

Power and Water Authority Act

The *Power and Water Authority Act* was replaced by the *Power and Water Corporation Act* (PAWC Act) from 1 July 2002. Section 19 of the PAWC Act provides an exemption from paying local government rates. This section has not yet been repealed as the Corporation will need to continue to pay local government rate equivalents through the Territory's Tax Equivalent Regime until complexities regarding the existing local government funding arrangements are resolved. However, the PowerWater Corporation satisfies competitive neutrality requirements as it has been paying local government rate equivalents since 1 July 2001.

Full Retail Contestability

The Territory has deferred the public benefits review of full retail contestability and the introduction of contestability for the two remaining tranches of electricity customers for five years. The deferral reflects the current lack of competition in the Territory's generation and retail electricity markets and the unavailability of gas outside of existing contracts in the short to medium term. The Territory will review the contestability timetable annually and intends to maintain the current access regime. Retention of the access regime would provide scope for competition to re-emerge, should gas become available.

Implementation of the new AS 4564/AG864 quality standard for general purpose natural gas

It is understood that the new AS 4564/AG864 quality standard is a technical standard, to be applied by the gas industry itself on a national basis. As such, the Territory will consider the application of the standard as part of the national standard setting process.

Petroleum (Submerged Lands) Act

A national review. The Commonwealth as lead legislator has now made amendments to the Commonwealth legislation addressing recommendations made in the national review. It is proposed to mirror those changes in local legislation prior to 30 June 2003.

Chapter 2 – Road Transport (COAG reforms)

Combined Vehicle standards (uniform vehicle design and construction standards)

As noted in the 2002 Assessment, the Territory has completed (or has been exempted from) all of the agreed road transport reform to 30 June 2002, except for one outstanding issue regarding the implementation of combined vehicle standards.

The Territory is in the process of implementing Australian Vehicle Standard Rules. Final draft regulations have been prepared by the Department of Infrastructure, Planning and Environment and are undergoing further consultation with Northern Territory Police. The regulations are substantial and have taken some time to be drafted.

It is anticipated that the Vehicle Standards Regulations will be put in place by June 2003. The Council will be provided with a copy of the new regulations, once they have been finalised and approved by Government.

Chapter 3 – Primary Industries

Agricultural and Veterinary Chemicals (Northern Territory) Act

The Northern Territory has recently released for discussion a draft Bill for control of use of agricultural and veterinary chemicals, fertilisers and stock foods. The proposed changes will bring the legislation into line with other Australian jurisdictions and will ensure greater protection of the health and safety of Territorians, animals and our environment.

The draft Bill is still in draft stage, and relevant Primary Industry associations and effected business people have been invited to comment on these changes. Public submissions regarding the changes to this draft Bill will be accepted up until Monday 14 April. These submissions and feedback from public forums will be considered when finalising this legislation.

The draft Bill and discussion paper can be found at http://www.dbird.nt.gov.au/dbird/DBIRD_Interim/news/agri_vet_chemical_bill/agri_vet_chemicals_bill.htm

Food Act 1986

A national review. Model food legislation has been drafted inline with the inter-governmental agreement signed on 3 November 2000. A Bill has been drafted and it is expected that the legislation will be introduced in the Legislative Assembly June 2003 Sittings.

Veterinarians Act 1994

Action has commenced to delete the current advertising restrictions from the Act and Regulations. This will be completed prior 30 June 2003.

A report will be provided prior 31 May 2003 regarding the remaining issues identified in the 2002 Assessment. Those issues are:

- composition of the registration board; and
- general reservations of practice.

Fisheries Act 1996

NCP review finalised. The review is awaiting consideration by the Government.

Mining Act 1980

NCP review finalised. The review is awaiting consideration by the Government.

Chapter 4 - Transport

Dangerous Goods Act and Regulations

Review and reform information previously submitted to the Council.

Two Bills in regard to Dangerous Goods were tabled in the Legislative Assembly February 2003 Sittings. It is anticipated that the Bills will be passed at the next Sittings of the Legislative Assembly commencing on 29 April 2003. One Bill is a new Dangerous Goods (Road and Rail Transport) Bill and the other is an amendment Bill to the yet uncommenced *Dangerous Goods Act 1998*.

The bills have been introduced to ensure national consistency in the management of road and rail transport of dangerous goods, the Northern Territory (NT) adopted substantially the Commonwealth Act and Regulations relating to the transport of dangerous goods 'by reference' to the Commonwealth legislation.

This means that the Commonwealth legislation, and the further regulations called up in that Act, will be the basis of Territory legislation in relation to the regulation of dangerous goods transported by road and rail. Minor amendments to the *Dangerous Goods Act 1998* to exclude Road and Rail Transport from that Act have been made.

Commercial Passenger (Road) Transport Act (taxis)

In November 2001, the Government imposed a six month cap on the number of taxi, minibus and private hire car licenses (excluding wheel chair accessible taxis). In the meantime, a review of the regulatory framework for these sectors was undertaken. Wheel chair accessible taxis were included in the cap from May 2002. The moratorium was extended to 1 March 2003 to cover the duration of the review and implementation of first stage of recommendations. The review was finalised and the Government decided against the permanent reintroduction of controls on licence numbers, but endorsed a number of recommendations.

The cap on license numbers was lifted on 1 March 2003. The first stage of reform to implement recommendations from the latest review was introduced in March 2003. The legislative amendments provide for:

- the establishment of a Commercial Passenger Vehicles Board to provide advice to the Minister on all policy and regulatory matters pertaining to the taxi, minibus and limousine industries. The Board is comprised of industry and consumer representatives and an independent chair. In addition to its advisory role, the Board has specific powers in relation to driver standards and training and ensuring drivers meet 'fit and proper' requirements for accreditation;
- the creation of a new executive taxi category. These vehicles will operate similarly to standard taxis however, the vehicle standard will be of a higher quality, similar to the existing private hire car standard;

- the requirement for new drivers undergo 78 hours of training (previously 24 hours) in order for an identity card to be issued. The training requirements align with nationally agreed competencies;
- the requirement for new drivers to have 5 years prior driving experience;
- a requirement for the vehicle to be registered in the name of the licensee for any new commercial passenger vehicle licence. This will ensure that the responsibility for the vehicle and its condition, together with the operation of the vehicle, remains with the operator. Existing operators have until 1 January 2004 to comply with this requirement; and
- a requirement for operators to pay the full year license fee in advance for any additional commercial passenger vehicles.

The next stage of legislative reform was tabled for first reading in Parliament in February 2003. However, community feedback has seen this process put on hold pending further deliberations. Rather than pre-empt the outcomes of these deliberations, they will be provided as an addendum to this report when known.

Chapter 5 – Health and pharmaceutical services

Health practitioner legislation: Dental, Health Practitioners and Allied Professionals Registration, Medical, Nursing, Optometrists Acts and Pharmacy Act

NCP reviews finalised. Review and reform information previously submitted to the Council.

The NCP reviews concluded that there was a strong net community benefit in continuing to register the health professionals registered under the current legislation, but recommended amendment to, or removal of, a number of anti-competitive features of the various Acts (including the removal of blanket practice restrictions).

In relation to the Pharmacy Act, in 1997 the Commonwealth, States and Territories agreed to meet their individual NCP obligations consistently through a single national review of pharmacy legislation to commence in 1999. On completion of the review, COAG referred the review to a Senior Officials Working Group for development of a nationally consistent response to the review's recommendations. The Prime Minister has since sought the agreement of the other Heads of Government to the public release of the Senior Officials Working Group's response, prior to it being considered by COAG.

In August 1998, the Professional Boards Review, which was an independent review of the Professional Boards and the current Acts regulating health practitioners, was undertaken. The major recommendation is that the six Acts which currently regulate health professionals in the Territory be incorporated into a single piece of legislation (omnibus).

The Territory Government is committed to reform of the anti-competitive features of the above named six Acts governing health professionals in the Northern Territory. To this end, the Government has directed that the Acts be replaced by a single Health Practitioners Act, to be consistent with the recommendations of the relevant NCP reviews.

Development of the omnibus legislation has commenced. The legislation is to be ready for introduction in the Legislative Assembly August 2003 Sittings.

The NCP reviews of the above named Acts concluded that continued registration of currently registered professional groups is in the public interest.

The public interest would not be served by repealing these Acts prior to replacement legislation being enacted, for two main reasons. The first is that the practice of currently registered professions involves the performance of procedures that carry a high risk of significant harm if performed by inadequately trained persons. Repeal of the current legislation would allow un-trained persons to carry out those procedures. The second is that the information asymmetry market failure which the legislation remedies (through professional title protection) would re-occur. That is, consumers would not be able to distinguish competent "practitioners" from the incompetent.

Radiographers Act

NCP review finalised. Review and reform information previously submitted to the Council.

The NCP review concluded that the overall benefits of regulating radiography procedures are assessed to exceed the overall costs, but that this benefit is not large. The NCP review recommended that:

- the Act be repealed;
- radiographers no longer be a registered profession in the Territory;
- the current licensing powers of the Radiographers Board be transferred to the licensing powers of the Chief Health Officer under the *Radiation (Safety Control) Act*;
- any specific criteria that are deemed to be necessary for the licensing of operators of ionising radiographic equipment be incorporated into subordinate legislation under the *Radiation (Safety Control) Act*; and
- the need for regulation of non-ionising categories of irradiation in health care be considered in the context of the forthcoming national review of radiation safety control protection.

On 17 December 2002, the Government approved, in principle, the repeal of the *Radiographers Act* and the transfer of power and functions of the Radiographers Board, necessary for the continued regulation of radiographic procedures, to the Chief Health Officer under the proposed Radiation Protection Bill.

The Territory Government is committed to reform of the anti-competitive features of the *Radiographers Act*, as identified in the NCP review. However, as the Government has approved the drafting of legislation to replace the *Radiation (Safety Control) Act*, immediate reform of the *Radiographers Act* would result in allocation of scarce resources to reform an Act that would shortly become redundant (double-handling of reform). It would also delay the more pressing reform of the former Act and would impose unnecessary transition costs on business. Accordingly, the Territory will progress reform of both acts in a single process.

Development of new radiation protection legislation has commenced to replace the *Radiographers Act* and the *Radiation (Safety Control) Act*. The legislation is to be ready for introduction in the Legislative Assembly November 2003 Sittings.

The public interest justification for temporary retention of the anti-competition elements of the *Radiographers Act* beyond June 2003, is detailed in the NCP review. The review concluded that:

“The overall benefits of regulating radiography procedures are assessed to exceed the overall costs. However, it is concluded that there is an alternative means of achieving the same result as the current registration system, though in a wider and more consistent framework for the regulation of all irradiating technology. This is not a non-legislative approach but rather a different legislative approach through the Radiation (Safety Control) Act” (refer Executive Summary p vii).

Poisons and Dangerous Drugs Act

A national review. The Galbally review has been conducted and a national working group has been established to prepare a response to the review. The response is to be submitted to COAG in November 2003.

Therapeutic Goods and Cosmetics Act

The Commonwealth's *Therapeutic Goods Act* commenced in 1991. Some States have amended their legislation to adopt by reference the Commonwealth Act. The Territory proposes to repeal the *Therapeutic Goods and Cosmetics Act* and amend the *Poisons and Dangerous Drugs Act* to adopt the Commonwealth *Therapeutic Goods Act* by reference. The legislative changes will occur in tandem with changes to the *Poisons and Dangerous Drugs Act* resulting from the Galbally review, following COAG consideration.

Chapter 6 – Legal and other professions and occupations

Agents Licensing Act (real estate agents and conveyancers)

Review and reform information previously submitted to the Council.

Auctioneers Act

The *Auctioneers Act Repeal Act 2002* was assented to on 13 September 2002.

Consumer Affairs and Fair Trading Act (travel agent provisions)

A national review. The national review has been conducted. Other jurisdictions have rejected the major recommendation. However, the Territory is likely to support the major recommendation. The matter is awaiting consideration by the Government.

Hotel Keepers Act

Review and reform information previously submitted to the Council.

Legal Practitioners (Incorporation) Act

Review and reform information previously submitted to the Council.

It is expected that legislation will be introduced in the Legislative Assembly April 2003 Sittings.

Legal Practitioners Act

NCP review finalised. The report can be found at <http://www.nt.gov.au/justice/graphpages/lawmake/reports.shtml>
The review is awaiting consideration by the Government.

It is expected that any legislative changes that come out of the review will be implemented as part of the legislation arising from the National Legal Profession project. It is anticipated that the National Legal Profession project will be finalised by August 2003.

Legal Practitioners Act (Professional Indemnity Insurance Regulations)

The NCP report on the provisions of the Act and the Regulations dealing with indemnity insurance has been delayed pending a re-assessment of what the insurance market is able to deliver. The NCP report is likely to be referred to Government in the next few months but legislative reform is not likely to occur until the National Legal Profession project bears some fruit.

Chapter 7 – Finance, insurance and superannuation services

Territory Insurance Office Act

As reported in the 2002 assessment, the review of the *Territory Insurance Office Act* was undertaken by Treasury and the TIO in 1999. Necessary amendments to remove two of the three potential restrictions identified in the Act were passed by the Legislative Assembly in November 2000. The remaining restriction relates to the issue of the government guarantee on TIO's deposits and contracts of insurance, which is currently being considered as part of a general review of the Territory's corporate governance and prudential supervision arrangements for TIO.

Motor Accidents (Compensation) Act

In November 2000, Taylor Fry Consulting Actuaries and Professor Stephen King completed the review of the operation of the Territory's motor accident third party compensation. The review encompassed the *Motor Accidents (Compensation) Act* and Part V and Section 137B of the *Motor Vehicles Act* and was conducted in accordance with standard terms of reference for National Competition Policy legislation reviews. The review was also conducted under oversight by a steering committee comprised of NT Treasury, the former Attorney-General's Department and the Department of Transport and Works. The review concluded that the legislation satisfied NCP requirements, but made two recommendations for the Government to consider. The recommendations are that:

1. the statement of objectives in the *Motor Accidents (Compensation) Act* be expanded to clearly state the objectives of the scheme; and
2. specific references to TIO as administrator of the scheme be replaced with a neutral term to allow for possible future franchising of the scheme, should Government consider this beneficial.

It was determined that these recommendations would be considered as part of the wider consideration of appropriate corporate governance and prudential supervision arrangements. To assist with the Council's 2002 assessment, a copy of the review (and Government's response to it) was sent to the Council on 18 June 2002.

A wider review to examine the options for the future ownership and management of the MACA scheme is currently being conducted by Treasury and TIO (with support from Trowbridge Consulting). Substantive recommendations are likely to be put to Government in mid-2003. Treasury will provide the Council with details of the outcome of the review once it is finalised.

Insurance arrangements: Compliance with National Competition Policy

The monopoly provision of compulsory third party insurance in the Territory was considered in the Taylor Fry review of MACA, which has been sent to the Council as noted above. The review considered that "it is unlikely that there would be any significant savings from having multiple underwriters with a 'no fault' scheme".

As identified in the review report, the objective of the Territory's 'no fault' CTP insurance scheme is to provide universal coverage of personal injuries and death from motor vehicle accidents in a timely and efficient manner, with minimal distress and cost to victims. The review recognised that, given the 'no fault' nature and relatively small scale of the Territory's scheme, it is more cost efficient to have a single operator (i.e. a single operator would be better placed to achieve administrative economies of scale). Multiple insurers would be likely to find it most efficient to share various resources, which the review states would "mute any competition that could exist between multiple insurers under a universal, no fault scheme".

However, the review recommends that the Territory Government consider amending the legislation to allow an insurer, other than the TIO, to operate or underwrite the scheme. As stated above, this will be considered as part of a wider review examining options for the future ownership and management of the MACA scheme, the findings of which will be provided to the Council, following Government endorsement.

Prudential supervision – following the establishment of the national prudential regulatory regime in 1998, the Commonwealth agreed with the Territory that TIO would remain outside the scope of the national framework, with Treasury assuming sole responsibility for the prudential supervision of TIO activities, including the motor vehicle accidents compensation scheme (under MACA). The wider review of TIO, which is currently being conducted, will examine the most appropriate prudential supervision arrangements for TIO (including MACA), including whether to subject TIO to supervision by APRA, or by Government applying APRA regulations. As noted above, details of the outcome of the review will be forwarded to the Council once they are finalised.

Work Health Act (workers compensation)

Review and reform information previously submitted to the Council.

The *Work Health Act* was enacted to promote occupational health and safety in the Territory to prevent workplace injuries and diseases, to promote the rehabilitation and maximum recovery from incapacity of injured workers and to provide financial compensation to workers incapacitated from workplace injuries or diseases and to the dependants of workers who die as the result of such injuries or diseases.

The Act provides for an earnings related, pension based incapacity benefit structure where a worker can receive benefits, if required, until 65 years of age. The Act also provides for the payment of a worker's reasonable medical, surgical and rehabilitation expenses as well as benefits for permanent impairment and death.

The Act provides for a multiple insurer scheme where employers are required to insure their workers' compensation risks with insurance companies approved for that purpose. Premiums are not regulated but are subject to market forces. The approved insurers manage the workers compensation claims on behalf of their client employers.

The Workers Compensation provisions of the Act were the subject of review (Working Group) which commenced in September 1999. The review did not result in any changes to the unregulated nature of premiums which remain subject to market forces.

Amendments to the Act, emanating from the review were commenced on 1 November 2002 and provide:

- a stronger ability to deem injured workers to have an earning capacity, after 104 weeks of incapacity;
- an increase in work related death benefit;
- rationalisation of benefits payable to Junior workers;
- changes to the commutation provisions;
- improved rehabilitation and return to work procedures;
- better dispute resolution procedures;
- changes to compensation payable to claimants who are imprisoned to ensure that claimants who are imprisoned outside of the Northern Territory are not eligible to receive weekly compensation benefits (as is the case for those imprisoned in the Territory); and,
- changes to compensation payable to claimants who move overseas such that those claimants will not be eligible for weekly benefit payments unless the rehabilitation process is complete.

There has also been a review of the medical and associated intervention in the Northern Territory's workers' compensation scheme. In this regard a report was commissioned in June 2001 and provided in December of the same year. The report was released for stakeholder and public comment on 30 June 2002. The report together with comments and submissions received is awaiting consideration by the Government.

Three residual matters from the original review, commenced September 1999, are being progressed together with the medical review. These matters concern:

- workers being required to be pro-active in the return to work process;
- negotiated settlements; and
- a time limit for claimants to apply for mediation (in relation to disputed claims).

Chapter 8 – Retail trading arrangements

Liquor Act

The Racing, Gaming and Licensing Division of Treasury has completed a legislative review of the *Liquor Act*. The review report is in the process of being circulated for Northern Territory agency comments and is expected to be considered by Government by the end of April 2003.

It is anticipated that the Territory will progress towards implementing relevant reform flowing from review recommendations, following the Government's consideration of the review. Following the Territory Government's consideration of the review, a copy of the review report and overview of the Government's response will be provided to the Council prior to 30 June 2003.

Prices Regulation Act

Review and reform information previously submitted to the Council.

Trade Measurement Act

A national review. The national review has not been completed. No action will be taken until the review is complete. The inter-governmental agreement mandates that approach.

Chapter 9 – Social regulation: education, child care and gambling

Education Act:

Two remaining issues were identified in the 2002 Assessment: requirements for registration of non-government schools and the regulation of higher education.

Requirements for registration of non-government schools:

Originally consideration had been given to introducing Regulations to clarify the “prescribed requirements” for the registration of non-government schools. Following further discussion about the proposal, and in consultation with the non-government school sector, it was decided that the requirements would be clarified through administrative arrangements instead of Regulations. Administrative arrangements will be developed in consultation with the non-government school sector. The administrative arrangements will be flexible to respond to changing circumstances, and will deal with only core, basic requirements for registration that are in the public interest.

Regulation of higher education:

Section 73A of the *Education Act* has been reviewed to determine if any changes were required to reflect the protocols endorsed by the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA). The review has identified areas where amendments to the *Education Act* should be made. These have been discussed with relevant stakeholders. The matter is awaiting consideration by the Government.

Community Welfare Act

NCP review finalised. Review and reform information previously submitted to the Council.

The review concluded that there was a strong net community benefit in the retention of the potentially anti-competitive elements of the Act. However, the review made the following recommendations which “might lead to modifications of certain features of the Act” [and subordinate legislation]:

- either enforce or remove the licensing requirements for children’s homes;
- re-frame child care centre standards as outcomes, rather than prescribed standards;
- clarify the basis and status of standards for child care; and
- broaden the scope of child care activities that are brought within the licensing net to encompass all forms of purchasable child care services.

The Government is committed to reform of the anti-competitive features of the *Community Welfare Act*, as identified in the NCP review. However, the Government considers that the public interest would be best served not by attempting to institute such reforms in isolation and with limited public consultation, by June 2003, but by undertaking the reforms as part of a broad early childhood strategy to be determined in 2003 following extensive community consultation, with revised legislation to be implemented from July 2005.

Reform of voluntary child care services regulation is likely to have widespread community impact and is therefore a matter of significant interest in the community. The Government is therefore of the view that it is in the public's interest that reform of the Act should only occur following broad and informed community consultation. The Government does not believe that the June 2003 deadline for reform of anti-competitive legislation allows sufficient time for adequate and informed consultation.

Accordingly, the Government proposes introduction of legislation in the Legislative Assembly November 2003 Sittings, following an appropriate consultation period.

The public interest justification for temporary retention of the anti-competitive elements of the Act beyond June 2003, is detailed in the NCP review. The review concluded that:

"...in general the public benefits of all three sets of arrangements (operational objectives) of the Act exceed their public costs by a large margin, and that they therefore should be retained." (refer Executive Summary pg vi).

Gaming Control Act, Gaming Machine Act and respective Regulations

A single legislative review report has been finalised, covering the regulation of gaming operations, captured in the *Gaming Control Act* and Regulations and the *Gaming Machine Act* and Regulations. The review, which included public consultation, was conducted by an independent consultant and was overseen by a steering committee of Northern Territory Government representatives. The report is in the process of consideration by Territory agencies and it is anticipated that the review report will be considered by Government in May 2003.

Following the Territory Government's consideration of the review, a copy of the review report and overview of the Government's response will be provided to the Council prior to 30 June 2003.

Totalisator Licensing and Regulation Act and Sales of NT TAB Act

A review of the Territory's wagering regulation was finalised by the Centre for International Economics in February 2001. The review captured the *Totalisator Licensing and Regulation Act* and the *Sale of the NT TAB Act*. Government approved the review and consequent recommendations in February 2002.

No legislative changes are necessary, but subsequent negotiations are in progress regarding the Sale of the NT TAB Agreement to facilitate the implementation of the review findings. It is anticipated that negotiations will be finalised by the end of April 2003. A copy of the review report and a detailed overview of the Territory Government's response will be provided to the Council, following the completion of these negotiations.

Racing and Betting Act, Unlawful Betting Act and respective Regulations

A single legislative review report has been finalised, encompassing the *Racing and Betting Act*, *Racing and Betting Amendment Act*, Racing and Betting Regulations and the *Unlawful*

Betting Act. The review, which included public consultation, was conducted by an independent consultant and was overseen by a steering committee of Northern Territory Government representatives.

The review report is in the process of consideration by Territory Government agencies for comment and it is anticipated that Cabinet will consider the report by the end of April 2003. Following the Territory Government's consideration of the review, a copy of the review report and overview of the Government's response will be provided to the Council.

Chapter 10 – Planning, construction and development services

Building Act

NCP review finalised. Review and reform information previously submitted to the Council.

In July 2002 the Government:

- endorsed the recommendations of the review that sections 21, 41 and 46 of the Act be repealed, as they are considered redundant or anti-competitive in nature;
- endorsed the outcome of the review that, apart from the above provisions, anti-competitive provisions of the Act can be justified under clause 5(1) of the CPA
- directed that 'Other Issues' raised in the review be considered during the general review of the Act.

An amendment bill has been prepared to repeal sections 21, 41 and 46 of the Act. It is intended that the bill will be introduced in the Legislative Assembly April 2003 Sittings. The amendments are scheduled to be in place before 30 June 2003.

A general review of the *Building Act* has commenced and the Territory's 'gatekeeping' process for new legislation will ensure that any resulting amendments will meet the CPA tests. The issues titled 'Other Issues' referred to in the review will be addressed as part of this general review. It should be noted that the 'Other Issues' have been deemed not to impact directly on the Territory's competition policy obligations.

A copy of the draft Building Amendment Bill 2002 is at Appendix 1.

Architects Act

A national review. The Government endorsed implementation of the agreed policy principles within the context of the Inter Government Working Group response to the Productivity Commission *Review of Legislation Regulating the Architectural Profession* (Report No. 13, released on 16th November 2000).

Drafting of a Bill to amend the Act is currently in progress. It is expected that legislation will be introduced in the Legislative Assembly June 2003 Sittings.

Electrical Workers and Contractors Act

NCP review finalised. Review information previously submitted to the Council.

The Government, in January 2003, endorsed the findings of the NCP review. Drafting of a Bill to amend the Act is currently in progress. It is expected that legislation will be introduced in the Legislative Assembly June 2003 Sittings.

Plumbers and Drainers Licensing Act

NCP review finalised. Review information previously submitted to the Council.

The Government, in January 2003, endorsed the findings of the NCP review. Drafting of a Bill to amend the Act is currently in progress. It is expected that legislation will be introduced in the Legislative Assembly June 2003 Sittings.

Chapter 11 – Competitive neutrality

Competitive neutrality implementation

Competitive Neutrality in the Territory has largely been implemented through the commercialisation of significant Government Business Divisions (GBDs). The Darwin Port Corporation and NT Treasury Corporation are corporatised GBDs and the Territory Insurance Office has been established as a separate legal entity and operates on a fully corporatised basis.

The Shareholder Model of Corporate Governance is the basis for Government Owned Corporations (GOC) reform. On 1 July 2002, the *Government Owned Corporations Act* was introduced which provides for the establishment and operation of government businesses as GOCs. The former Power and Water Authority became the Territory's first GOC under the Act and is now referred to as the Power and Water Corporation (PowerWater). PowerWater operates five separate business lines of commercial activity and functions outside the scope of the Territory Budget and public account.

PowerWater are currently the only GBD to which the GOC framework is applied. The Government is in the process of considering applying the GOC framework to the Darwin Port Corporation and may consider the possibility of applying it to other significant GBDs on a case-by-case basis in the future.

The Productivity Commission's report on *Financial Performance of Government Trading Enterprises 1996-97 to 2000-01* uses the average rate of return on 10 year Commonwealth Government bonds of 5.8% as a performance benchmark for the Government Trading Enterprises included in the report. The Darwin Port Corporation (DPC) is the only Territory GBD included in the report. DPC reported a return on assets of -3.8 per cent, primarily due to the downwards revaluation of non-current assets. The revaluations were undertaken to ensure that the value of non-current assets reflect the 'fair value'.

Competitive neutrality complaints

The Northern Territory Treasury currently handles all complaints regarding breaches of competitive neutrality principles. Treasury received no formal competitive neutrality complaints and there were no outstanding complaints to be resolved in calendar year 2002 (or to March 2003).

Chapter 12 – Gatekeeping mechanism

The Competition Principles Agreement 5(5) obliges governments to ensure proposals for new legislation that restricts competition are accompanied by evidence to show that the legislation provides a net benefit to the community and that the restriction is necessary to achieve the objectives of the legislation. The obligation regarding new legislation has been an ongoing obligation for governments since the signing of the NCP agreements in 1995.

In response, the Northern Territory established arrangements for ‘gatekeeper’ scrutiny of the competition impacts of new and amended legislation by means of the Cabinet process. All Cabinet Submissions on legislation proposals must comment on whether the proposed legislation includes new restrictions on competition. If so, the proposing agency must analyse the community benefits and costs of the restriction and whether the restriction is the only way to achieve the objective of the legislation.

Further, new legislation proposals considered complex, or which would have a large impact, are added to the Northern Territory’s Legislation Review Program and a comprehensive review is undertaken.

Examples of new legislation that has been added to the Northern Territory’s Legislation Review Program include:

- Animal Welfare Act 1999
- Darwin Port Authority Amendment Act 1998
- Fisheries Amendment Act 1997
- Kava Management Act 1998
- Meat Industries Amendment Act 2002
- Mental Health and Related Services Act 1998
- Merlin Project Agreement Ratification Act 1998
- Northern Territory Rail Safety Act 1998
- Nursing Act 1999
- Planning Act 1999
- Racing and Betting Amendment Acts - 1998, 1999 and 2000
- Residential Tenancies Act 1999
- Totalisator Licensing and Regulation Act 2000

The Government is currently considering a proposal for a new ‘gatekeeper’ process in the Northern Territory. The new process, to be known as Competition Impact Analysis, is primarily based on the *Regulation Impact Statement* process administered by the Commonwealth’s Office of Regulation Review.

A report will be provided prior 31 May 2003 regarding the new ‘gatekeeper’ process.

Chapter 13 – Non-priority legislation

Companies (Trustees and Personal Representatives) Act

NCP review finalised. The matter will not be referred to the Government until the outcomes of the national review are completed. The national review cannot be completed until the Commonwealth Government provides advice concerning potential roles for its regulatory agencies (ASIC and APRA).

Kava Management Act

Government endorsed the review report and approved the public release of the review report, which is available on the Racing, Gaming and Licensing section of Treasury's website at <http://www.nt.gov.au/ntt/licensing/kava/kava.htm>. The *Kava Management Amendment Bill 2003* was introduced on 25 February 2003 in order to implement the recommendations of the review of the *Kava Management Act*. The Bill is expected to be passed at the next sittings of the Legislative Assembly in April/May.

A copy of the Bill is at Appendix 2.

Merlin Project Agreement Ratification Act

Review and reform information previously submitted to the Council.

NCP review finalised. The Government endorsed the NCP review, however, in early 2003 the operators of the Merlin Mine publicly announced the closure of the mine. Mining has now ceased but some processing of stock will continue for another 12 months. It is intended to repeal the Act within 12 months.

Motor Vehicle Dealers Regulations (CAFTA)

The *Consumer Affairs and Fair Trading Amendment Act 2002* commenced operation on 1 December 2002. Consequential amendments to the Regulations are in the course of development.

Places for Public Entertainment

A Bill to amend the Act was introduced in the Legislative Assembly February 2003 Sittings.

A copy of the Bill is at Appendix 3.

Private Hospitals and Nursing Homes Act

Amending legislation to give effect to NCP review recommendation's has been introduced and passed in the Legislative Assembly. It is anticipated that the legislation will commence during the 2003/2004 financial year. This Act will then be referred to as the *Private Hospitals and Residential Aged Care Facilities Act*.

A copy of the Bill is at Appendix 4.

Private Security Act

Government endorsed the review report and approved the public release of the review report, which is available on the Racing, Gaming and Licensing section of Treasury's website at <http://www.nt.gov.au/ntt/licensing/security/security.htm>. The *Private Security Amendment Bill 2003* was introduced on 27 February 2003 in order to implement the recommendations of the review of the *Private Security Act*. The Bill is expected to be passed at the next sittings of the Legislative Assembly in April/May.

A copy of the Bill is at Appendix 5.

Procurement Act

The legislative review of the *Procurement Act* has been finalised. The review report has been circulated to Territory Government agencies for comment and it is anticipated that Government will consider the report in April 2003. Treasury will provide the Council with a copy of the review report (and any subsequent amendments or public interest case for any remaining restrictions) following Government consideration.

Public Health Act

The Government has approved development of new public health legislation. A Bill has been drafted and it is expected that the legislation will be introduced in the Legislative Assembly June 2003 Sittings.

Radiation (Safety Control) Act

A national review. Review and reform information previously submitted to the Council.

The national review was conducted by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) on behalf of all jurisdictions. The Australian Health Minister's Conference has endorsed all the recommendations of the ARPANSA review and the proposed implementation plan.

On 17 December 2002, the Government:

- approved drafting of a Radiation Protection Bill to replace the *Radiation (Safety Control) Act*;

- directed that the Radiation Protection Bill be consistent with the recommendations of the NCP Review of Radiation Protection Legislation conducted by the Australian Radiation Protection and Nuclear Safety Agency; and
- endorsed the implementation plan already endorsed by the Australian Health Ministers' Conference out-of-session, for meeting NCP commitments in respect of the *Radiation (Safety Control) Act*.

The legislation is to be ready for introduction in the Legislative Assembly November 2003 Sittings.

Trade Measurement (Administration) Act

The Council, in its 2002 Assessment, stated that the Act will be assessed in light of the implementation of outcomes arising from the national review of the *Trade Measurement Act*.

The national review of the *Trade Measurement Act* has not been completed.

Work Health Act (OH&S)

Review and reform information previously submitted to the Council.

The NCP review on Part IV of the *Work Health Act* was considered by the Government in February 2003. The Government agreed with the recommendations in the report, except for the recommendations to:

- eliminate Occupational Health and Safety Workplace Committees; and
- remove the current exemption of work carried out at mine sites from the OH&S provisions of the *Work Health Act*.

Eliminate the OH&S Workplace Committee

This recommendation was not adopted as the legislation already provides adequate flexibility to allow employers to avoid the requirement for a committee. For instance, there is no such requirement if there are fewer than 20 people employed, or if less than 50% of the workers want a committee. There is also a power for the Work Health Authority to provide exemptions where the objectives of a committee are achieved by other appropriate means.

Remove current exemption of work carried out at mine sites for the Act

This recommendation was not adopted as the mining industry operates on an entirely different set of workplace skills and competencies than those required for general industry and which covered under the *Work Health Act*. It is considered inappropriate for the *Work Health Act* to attempt coverage of an industry with its own particular and specialised needs which is already well serviced by its own OH&S legislative provisions. There are extensive OH&S provisions in the *Mining Management Act* covering work carried out on a mining site that justify the existing exemption.

It was decided that the remaining recommendations from the NCP review report would be incorporated in a much broader 'independent' review of the *Work Health Act (Part IV)* and the Work Health (Occupational Health and Safety) Regulations. (Terms of Reference attached). The findings of the review will be submitted to the Government mid 2003.

Chapter 14 – Trade Practices Act

Under the Conduct Code Agreement, the Commonwealth, States and Territories have an on-going obligation to report legislation reliant on section 51(1) of the Trade Practices Act to the ACCC. Clause 2(1) of the Conduct Code obliges Governments to send written notice to the ACCC of legislation that relies on section 51(1) when the legislation has been enacted or made.

The Consumer Affairs and Fair Trading (Tow Truck Operators Code of Practice) Regulations were made on 8 May 2002. They contain a section 51 clause. Notification was provided to ACCC.

Appendix 1

Draft Building Amendment Bill 2002

Appendix 2

Kava Management Amendment Bill 2003

Appendix 3

Places of Public Entertainment Amendment Bill 2003

Appendix 4

Private Hospitals and Nursing Homes Amendment Act 2002

Appendix 5

Private Security Amendment Bill 2003