

# NORTHERN TERRITORY OF AUSTRALIA

# **Annual Report**

on the

Implementation of National Competition Policy

2005



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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:

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

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

### **Northern Territory Annual Report 2005**

This Annual Report provides information relevant to each of the areas identified in the National Competition Council's *Assessment of governments' progress in implementing the National Competition Policy and Related Reforms* October 2004 and the 2005 National Competition Policy assessment framework for the Northern Territory.

The Report provides the National Competition Council, and any other interested party, with an understanding of the Northern Territory's overall progress on its legislative reform program as at 31 March 2005. It also provides general information as to other competition related matters, including the Northern Territory's gatekeeping process for primary and subordinate legislation, and changes to competitive neutrality policies and complaints procedures.

Review and reform information for various pieces of legislation has also been provided directly to the Council throughout the year upon request.

## PARTA ENERGY

# A1 Electricity

#### Power and Water Corporation Act

The last outstanding review matter for electricity relates to the repeal of section 19 of the *Power and Water Corporation Act*, which exempts the Power and Water Corporation from paying local government rates.

Although this section has not yet been repealed, the Power and Water Corporation has been paying local government rate equivalents as an interim measure pending the resolution of certain local government funding issues. This measure has been in place since 1 July 2001.

Options for more permanent arrangements are currently being developed and will be submitted to Government for consideration.

#### A2 Gas

#### Petroleum Act

As outlined in the Northern Territory's 2004 Annual Report on the implementation of National Competition Policy, the Petroleum Amendment Act 2003 implemented eight of the fourteen recommendations from the National Competition Policy review of the Petroleum Act.

The remaining six recommendations have now been implemented through the commencement of the *Petroleum Amendment Act 2004* on 13 September 2004.

The Northern Territory considers this review to be complete and its obligations met.

#### Petroleum (Submerged Lands) Act

The States and the Northern Territory mirror the Commonwealth's *Petroleum* (Submerged Lands) Act in local legislation under the terms of an inter-governmental agreement.

A national review was conducted several years ago with the Commonwealth as the lead jurisdiction. The Commonwealth implemented the review recommendations and it was intended that all the other jurisdictions would amend their respective Acts to mirror the changes. However, in the intervening period the Commonwealth committed itself to a major redrafting of the legislation, the final draft of which is currently in circulation to all jurisdictions for comment.

The Commonwealth has indicated that it intends introducing the new legislation during the autumn 2005 sittings of Federal Parliament. It is anticipated that all the other jurisdictions will move to implement and mirror the new legislation over the following 12 months. This should result in the new legislation commencing in all jurisdictions by early 2007.

It is intended that all competition review recommendations will be incorporated in the re-written legislation. It is appropriate for the Northern Territory to delay legislative action until the final composition of the corresponding Commonwealth Act is known and has been passed by the Federal Parliament. This will ensure that all States and the Northern Territory maintain the commitment to uniformity.

Some changes have been implemented to the Northern Territory Act since 2002. The most significant amendment being those associated with the creation of the new National Offshore Petroleum Safety Authority (NOPSA) that combines all safety authorities into one unit. These changes were implemented in the Territory upon the commencement of the *Petroleum (Submerged Lands) Amendment Act 2004* on 1 January 2005.

# PART B OTHER COMMITTMENTS

# **B1** Competitive Neutrality

### 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 the 12 months from 1 April 2004 until 31 March 2005.

#### Coverage and processes

There have been no developments in the coverage of the application of competitive neutrality principles in the Territory.

## **B2** Priority legislation review and reform

## **Liquor Licensing**

#### Liquor Act

The National Competition Policy review of the *Liquor Act*, finalised in 2003, recommended that the existing restriction on Sunday takeaway trade be abolished or amended so that it does not discriminate between types of liquor outlets. The recommendation is the only one of the review's twenty nine recommendations yet to be implemented.

Currently licensed supermarkets and stores in the Northern Territory are prohibited from selling take away liquor on Sundays while hotels, taverns and clubs are permitted to trade from 10am to 10pm.

In considering the finding of the NCP review of the *Liquor Act*, Government rejected the recommendation on the basis that a major review of alcohol related issues, known as the Alcohol Framework project, was not finalised and hence abolition of the restriction at that time was seen as premature.

On finalisation of the Alcohol Framework report in August 2004, Government reaffirmed its decision to retain the Sunday trading restriction.

In the lead up to the 2004 assessment, the Territory provided a public benefit case supporting the restriction on packaged liquor sales. Subsequently, the National Competition Council found that the Territory's public benefit case did not provide a credible justification for restricting packaged liquor sales in a manner which discriminates between types of liquor outlets. The Council recommended alternative approaches, including:

- banning all packaged liquor sales on Sundays regardless of outlet type;
- instituting bans on particular beverages considered to cause harm;
- instituting a roster system that retains the current number of sellers on Sundays but allows all incumbents the opportunity to trade; and
- allowing all liquor outlets to trade on Sundays but for a more restricted period than the current 12 hours.

Alternatively, the Council urged the Territory Government to develop additional policy options that promote harm minimisation objectives in a non-discriminatory manner or to provide an analysis demonstrating why the suggested options are inconsistent with public benefit objectives.

In response, the Territory advised that alternative approaches to the control of take away liquor sales would be given further consideration as part of the implementation of the Alcohol Framework related reforms during 2005. This work, which includes a complete overhaul of the *Liquor Act*, is currently underway and is not expected to be finalised for 12 months. As such, the restriction on Sunday takeaway sales remains in place at this time.

## **Agricultural and Veterinary Chemicals**

## Agricultural and Veterinary Chemicals (Northern Territory) Act

Nationally developed model legislation has now been passed in the Northern Territory and should commence in late May 2005. This legislation, the *Agricultural* and *Veterinary Chemicals* (*Control of Use*) *Act* 2004, satisfies competition obligations and it is the Territory's view that this matter is complete.

#### **Fisheries**

#### Fisheries Act 1996

All legislative changes recommended in the National Competition Policy review of the *Fisheries Act* have been implemented and have commenced. Action is continuing in order to meet the additional National Competition Policy obligations, including reviews of the Fishery Management plans.

It is the Territory's stance that the additional issues, raised by the National Competition Council in their 2004 Assessment of governments' progress in implementing the National Competition Policy and related reforms, are actually matters outside the scope of the legislative review and subsequent recommendations. These issues are, however, currently being investigated in terms of their possible application.

Although the Northern Territory Government's position was to maintain the pearl hatchery quota, despite recommendations to remove it by the National Competition Council, NT Fisheries have advised that Government may reconsider their stance on this matter. Industry representatives have also shown an interest in revisiting the issue of pearl hatchery quotas. Negotiations on this issue are at an early stage.

#### Taxis and Hire Cars

#### Commercial Passenger (Road) Transport Act (taxis)

The Northern Territory continues to cap taxi licenses issued in Darwin and Alice Springs at the 1 in 900 population ratio. Other population centres where there are commercial passenger vehicles (Nhulunbuy, Katherine and Tennant Creek) have no cap on taxi licenses. As indicated in previous updates, this ratio is Government policy and is not set down in the governing legislation for commercial passenger vehicles (*Commercial Passenger (Road) Transport Act*).

The Government monitors the taxi licences on issue in Darwin and Alice Springs and maintains a regular release of new licences to maintain the ratio. The method of release is by ballot with a random draw of ballot applicants. Applicants must be able to demonstrate their financial capability to supply and set up a vehicle as a taxi and supply both insolvency and criminal history checks. If there are insufficient

applicants, the remaining licences available are carried forward to the next ballot date.

There is also provision for licences that become available between ballot periods to be offered to previously unsuccessful balloters from the last drawn ballot listing.

There is also some degree of flexibility in the Northern Territory Government's approach to the ratio. Recent calls for more licences to be made available in Alice Springs were met with a release which dropped the ratio below the 1 in 900.

As well as taxis, the Darwin and Alice Springs markets are also served by mini buses and private hire vehicles. These provide various degrees of competition to taxis in terms of service and pricing.

Mini buses operate in the same way as taxis, i.e. they can rank and respond to hails, accept bookings and carry data dispatch units, pay the same licence fee and are not regulated in terms of numbers or fares.

Private hire vehicles have less of a market access factor with no general street ranking or responding to hails being allowed, however, they can rank at a range of special functions and events. Mobile phones are allowed for bookings. Private hire vehicles are not regulated in terms of numbers or fares.

Within the taxi sector, price competition is also allowed. The Government sets the maximum fare that can be charged but operators can price below this if they so wish.

#### **Health Professions**

#### Health Practitioners and Allied Professionals Registration Act

In the Northern Territory's 2004 Annual Report on the implementation of National Competition Policy, it was noted that the ability of health professional boards to introduce new anticompetitive requirements through industry codes was circumscribed under the Health Practitioners Act 2004. It was also noted that the Health Professions Licensing Authority will conduct annual reviews of industry codes as a form of regulatory gatekeeping.

The Boards are currently in the process of conducting an annual review of their Codes under recommendations from the Health Professions Licensing Authority.

#### Pharmacy Act

Schedule 8 of the *Health Practitioners Act* commenced operation on 23 February 2005. Schedule 8 introduces restrictions with respect to pharmacy ownership. The Northern Territory Government, based on a written guarantee by the Prime Minister in August 2004, maintains its decision to introduce such restrictions was based on the understanding that the Federal Government would not withhold national competition policy payments.

A review was undertaken by Walter Turnbull in July 2004 in respect of the effects of schedule 8, however, the Territory Government has decided not to release the review report as a public document.

## **Drugs, Poisons and Controlled Substances**

# Poisons and Dangerous Drugs Act; Therapeutic Goods and Cosmetics Act (drugs and poisons); Pharmacy Act

The Northern Territory medicines and poisons legislation (the *Poisons and Dangerous Drugs Act*) is currently being reviewed by the Department of Health and Community Services to allow it to be improved to accommodate the recommendations of the National Competition Policy Review of Drugs, Poisons and Controlled Substances Legislation, which was conducted for COAG by Rhonda Galbally.

The NT review has commenced and will include consideration of the adoption of the Commonwealth's *Therapeutic Goods Act 1989* and the repeal of the NT *Therapeutic Goods and Cosmetics Act.* In addition, outstanding issues from the former *Pharmacy Act*, not included in Schedule 8 of the *Health Practitioners Act*, will also be addressed through this process.

A discussion paper is due for release in late April 2005. It is expected that an upgraded Act and Regulations will be in place toward the end of 2006.

#### **Legal Services**

#### Legal Practitioners Act

A national model Bill was released for public comment in 2004. Northern Territory legislation incorporating the provisions from the model Bill and the National Competition Policy review recommendations is currently being drafted and is expected to be introduced in late 2005 or early 2006.

#### Other Professions

#### Consumer Affairs and Fair Trading Act (travel agents)

The outstanding national issue arising from the National Competition Policy review is that of compulsory membership of the Travel Compensation Fund (TCF). Every jurisdiction other than the Northern Territory has rejected this aspect of the review.

The Territory is the only jurisdiction which has never required travel agents to maintain membership of TCF – in fact, a formal exemption from this requirement has been in place for many years. As it is clear that other jurisdictions will not remove

compulsory TCF membership, the Territory is considering the options put forward by an Advisory Committee for a Territory specific alternative to TCF.

#### **Trade Measurement Legislation**

#### Trade Measurement Act

Nationally, implementation of the recommendations from the National Competition Policy review of trade measurement legislation is all but completed. The only exception being the review of the definition of "meat"; which was the major anticompetitive issue identified in the NCP process. This review is currently being undertaken by a Victorian consultant.

An options paper has been prepared by Queensland, as lead agency and a Commonwealth Government Regulation Impact Statement is due to be prepared and released for public comment. Queensland will draft the necessary amendments to the legislation, which will subsequently be passed by all jurisdictions.

#### **Child Care**

#### Community Welfare Act

The Care and Protection of Children and Young People Bill is being developed as a result of a full review of the Community Welfare Act. Among other things, the Bill addresses issues raised in the National Competition Policy review of the Community Welfare Act.

The proposed legislation is currently the subject of the Northern Territory's Competition Impact Analysis process, and it is anticipated that it will be introduced into the Legislative Assembly early in the second half of 2005

#### Gambling

#### Totalisator Licensing and Regulation Act; Sale of NT TAB Act

Under section 21 of the *Totalisator Licensing and Regulation Act* the Northern Territory Licensing Commission has the power to grant an exclusive licence for race totalisator wagering. In 2002, as part of the sale negotiations for the NT TAB, the Commission granted UNiTAB (then known as QTAB) a 15 year exclusive license to operate a totalisator wagering service in the Northern Territory.

The National Competition Council in its 2004 assessment rejected the Territory's public benefit justification for the exclusive license and judged the Northern Territory to have not met its Competition Principles Agreement obligations with respect to the *Totalisator Licensing and Regulation Act*.

At the time the purchaser of the NT TAB was chosen in 2000 and the 15 year exclusive racing totalisator licence was agreed to, the National Competition Policy review of the *Totalisator Licensing and Regulation Act* was still underway. The final report of the review submitted to the Government in March 2001 rejected some commonly raised justifications for exclusivity, including scale and free rider arguments. The review did however find that there was a case for exclusivity given the legitimate doubt as to whether more than one operator, with a Territory wide network of outlets, could survive in a totalisator wagering market the size of the Northern Territory's.

The Northern Territory has the smallest racing totalisator turnover of any jurisdiction in Australia, as demonstrated in Table 1.

**Table 1: Racing Totalisator Turnover by Jurisdiction 2002-03** 

Jurisdiction	Turnover (\$m)	Turnover (%)
New South Wales	4 642	40.9
Victoria	2 941	25.9
Queensland	1 687	14.8
South Australia	631	5.6
Western Australia	961	8.5
Tasmania	253	2.2
Australian Capital Territory	129	1.2
Northern Territory	86	0.8
Total	11 330	100.0

Source: Australian Gambling Statistics 2004 – Table 160

The final sale agreement for NT TAB included a commitment by UNiTAB to undertake additional expenditure in upgrading the technology in previously dilapidated retail facilities, with the installation of information display systems and electronic results services.

For the 2004 assessment, the Council noted "the one way in which to test whether the market can support a single seller would be to remove exclusivity" (2004 NCP assessment vol 1 p 18.20). In accordance with the review findings, it is the Territory's assertion that had this approach been adopted at the time that the decision was made to privatise the NT TAB, it would have reduced the Territory Government's ability to procure agreement terms for access to totalisator wagering services for Territory consumers, and improvements in service standards.

This claim is based on the relatively high average costs of operating a totalisator service in the Nothern Territory, due to the significant fixed costs associated with operating a network of physical outlets over a large geographical area, and the relatively small local wagering pool to draw on. From the Territory Government's perspective, a low risk approach to ensuring the ongoing provision of totalisator services in an efficient manner was to submit the exclusive right to supply the small and dispersed Territory racing totalisator market to a competitive bidding process.

Furthermore, UNiTAB's Northern Territory operations are subject to competition from interstate totalisators by way of phone and internet betting. Interstate operators can

advertise in racing publications available in the Territory. Also Sky Channel, which is broadcast in UNiTAB outlets in the Territory, displays the odds of all three major Australian totalisator pools. If the odds offered in UNiTAB were materially different than those offered by the other totalisator pools, it would be apparent and Territory punters could place bets in other jurisdictions by phone or internet.

As noted in the National Competition Policy review report, the sale of the NT TAB involved an upfront payment of \$8 million and, when combined with tax payments, the total purchase price was estimated at approximately \$60 million over 15 years (in net present value terms). Whilst maintaining the assertion that the Territory market is sufficiently served by a single operator, if the Territory Government were now to buy back the exclusive license, it would be liable to UNiTAB for compensation, the cost of which is likely to exceed any public benefit from removing exclusivity.

The NCP review of the Totalisator Licensing and Regulation Act found that: "Should the NT Government seek to revoke that exclusivity, it is reasonable to expect that the purchaser would seek redress. In addressing the issue of exclusivity of gambling licences more generally, Quiggen (1999) in a submission to the Productivity Commission has argued that in many cases governments in selling monopoly business have put themselves in a position where the cost of breach of contract would exceed the value realised in the sale (Submission 149, p. 6)" (p23).

It is important to note that, to date, no jurisdiction in Australia has abolished exclusive totalisator licences. The 2004 assessment of the Northern Territory's review and reform progress appears to be inconsistent with that afforded to some other jurisdictions. Victoria, Queensland, New South Wales and South Australia are in a similar position to the Territory in that they have provided exclusive licences to their privatised totalisator operators. Each of these jurisdictions has been assessed as being in compliance with their Competition Principles Agreement obligations, because the cost of removing exclusivity is judged to be greater than any public benefit accruing from it.

In summation the Territory contends that the decision to provide an exclusive licence to the successful bidder for the NT TAB:

- was not in breach of any findings of an NCP review at the time;
- was necessary to ensure that a network of physical outlets across the Territory was upgraded and maintained and that the Territory market was adequately serviced given its relatively small size;
- is justified on the basis that the costs of reciprocating the exclusive licence would more than likely outweigh any associated public benefit; and
- is consistent with the reform of totalisator regulations in other jurisdictions.

## **B3** Non-priority legislation review and reform

#### Companies (Trustees and Personal Representatives) Act

The Commonwealth has recently stated that it will not take over prudential regulation of Trustee Companies. It is now likely that the matter will be put back on the Standing Committee of Attorneys-General agenda so as to develop a national solution.

The Northern Territory has completed a National Competition Policy review but this has not yet been referred to the Government because of the outstanding issues at a national level.

#### Consumer Credit (Northern Territory) Act

The remaining amendments to the Consumer Credit Code arising from the National Competition Policy review are being drafted by Queensland.

Advice received by the Territory Government is that the amendments will be introduced and passed by Queensland in 2005. Once passed, they will automatically apply in the Northern Territory.

# Public Health (Shops, Eating Houses, Boarding Houses, Hotels and Hostels) Regulations

The *Food Act 2004*, which commenced on 1 July 2004, repealed Part III of these Regulations. The remainder of the Regulations were left to be reviewed in conjunction with the finalisation of the Public and Environmental Health Bill.

The Department of Health and Community Services is currently reviewing the various Public Health regulations to support the Public and Environmental Health Bill. Guidelines are being prepared for Accommodation, Infection Control and Swimming Pools. A lead time has yet to be determined in relation to these matters.

#### Public Health Act

The *Public Health Act* is to be repealed upon commencement of the Public and Environmental Health Bill, which is still the subject of consideration by the Minister.

## **B4** New legislation and gatekeeping

The Competition Principles Agreement 5(5) obliges governments to ensure proposals for new legislation that have the potential to restrict 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. This obligation has been ongoing since the signing of the National Competition Policy Agreements in 1995.

The Northern Territory's gatekeeping arrangements, the Competition Impact Analysis (CIA) process, were explained in detail in the Northern Territory's 2004 *Annual Report on implementation of National Competition Policy.* After 18 months of operation, a number of areas have been identified in which improvements could be made and a review is currently underway to enhance the process and possibly broaden the scope of the CIA.

Listed below are the details of all new and amending legislation considered by the Competition Impact Analysis Committee in the 12 month period from 1 April 2004 until 31 March 2005.

It should be noted that legislation that is developed in order to implement previously approved National Competition Policy review recommendations is generally exempted from the CIA process, provided no additional restrictions are included in the legislation.

The high volume of exemptions granted can be attributed to the large number of Bills and Regulations that are machinery or procedural in nature.

#### Competition Impact Analysis adequately completed for the following:

- Agricultural and Veterinary Chemicals (Control of Use) Regulations
- Amendments to the Housing Assistance Schemes Regulations
- Building Amendment Bill (No 1) 2004
- Building Amendment Bill (No 2) 2004
- Fire and Emergency Amendment Bill 2004
- Fire and Emergency Amendment Regulations 2005
- Gene Technology (Northern Territory) Bill
- Long Service Leave and Benefits (Construction Workers) Bill 2004
- Planning Amendment Bill 2004
- Professional Standards Bill 2004
- Tanami Agreement Ratification Bill 2004
- Weapons Control Amendment Bill 2005

Total: 12

#### **Exemptions from the CIA process issued to the following:**

- Agents Licensing Regulations
- Amendments of Fisheries Regulations (exemption granted August 2004)
- Amendments of Fisheries Regulations (exemption granted October 2004)
- · Amendments to the Barramundi Fishery Management Plan
- Associations (Model Constitution) Regulations
- Australian Crime Commission (Northern Territory) Bill; Australian Crime Commission (Consequential Amendment) Bill 2004
- Australian Crime Commission (Northern Territory) Regulations
- Business Tenancies (Fair Dealings) Regulations
- Child Protection (Offender Reporting and Registration) Regulations
- Child Protection (Offenders Registration) Bill 2004
- Classification of Publications, Films and Computer Games Amendment Bill 2005
- Criminal Code (Money Laundering) Amendment Bill 2004
- Criminal Code Amendment (Child Abuse Material) Bill 2004
- Criminal Code Amendment Bill (No 2) 2004
- Dangerous Goods Regulations
- Darwin Port Corporation Amendment Bill 2004 (exemption granted May 2004)
- Darwin Port Corporation Amendment Bill 2004 (exemption granted September 2004)
- Desert Knowledge Australia Regulations
- Electrical Workers and Contractors Regulations
- Evidence Reform (Children and Sexual Offences) Bill 2004
- Food (Administration) Regulations
- Housing Amendment Bill 2004
- Jabiru Town Development (Accounting) Regulations
- Justice Portfolio (Miscellaneous Amendments) Bill 2005
- Lake Bennett (Land Title) Bill 2004
- Legal Practitioners Amendment Bill 2004
- Legislative Assembly (Powers and Privileges) Regulations
- Local Government (Administration) Regulations
- Marine Amendment Bill 2004
- Misuse of Drugs Amendment Regulations 2004
- Motor Vehicles (Fees and Charges) Amendment (Heavy Vehicles) Regulations 2005
- Ombudsman Bill; Ombudsman (Consequential Amendments) Bill 2004
- Parks and Reserves (Framework for the Future) Regulations
- Pay-Roll Tax Regulations
- Petroleum (Submerged Lands)(Application of Commonwealth Laws) Regulations
- Petroleum (Submerged Lands) Amendment Bill 2004
- Place Names Amendment Bill 2004
- Planning Amendment Regulations
- Poisons and Dangerous Drugs Amendment Bill 2004
- Poisons and Dangerous Drugs Regulations
- Police Administration Amendment (Powers and Liability) Bill 2004
- Police Administration Amendment Bill 2004
- Private Security Regulations

- Proportionate Liability Bill 2004
- Public Health (Shops, Eating Houses, Boarding Houses, Hostels and Hotels)
   Regulations (Part III)
- Residential Tenancies Amendment Bill 2004
- Sentencing Amendment (Aboriginal Customary Law) Bill 2004
- Standard Time Bill 2005
- Taxation (Administration) Amendment (Objections and Appeals) Bill
- Taxation (Administration) Regulations
- Territory Insurance Office Amendment Bill 2005
- Traffic Regulations
- Uncollected Goods Regulations
- Volatile Substance Abuse Prevention Bill; Misuse of Drugs Amendment Bill 2004
- Work Health Amendment Bill 2004

Total: 56