

New South Wales Government

**NSW Government Policy Statement on the
Application of National Competition Policy
to Local Government**

June 1996

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1 Introduction

- 1.1** In April 1995, the Council of Australian Governments (COAG) ratified the National Competition Policy. The Policy is aimed at increasing consumer and business choice, reducing production and transportation costs in an effort to lower prices for goods and services, and creating an overall business environment in which to improve Australia's international competitiveness.
- 1.2** The Industry Commission has estimated that the application of the Policy will boost Australia's Gross Domestic Product by about \$23 billion over the long term, and create opportunities for increased wealth and employment for all Australians. COAG has agreed that if these benefits are to be realised all levels of government need to be subject to the principles of competition.
- 1.3** Competition policy is of course only one part of the NSW Government's policy aims and its application is intended to sit alongside the Government's other economic, social and environment policy objectives. When applied, competition policy should be able to promote these other policy aims by creating a policy environment in which the costs and benefits of government regulation and service provision are subject to transparent assessment. Exposing public policy to this kind of transparency is essential for the efficient and effective allocation of resources for the benefit of the communities that State and local governments serve.
- 1.4** One of the major components of the National Competition Policy are the principles contained in the *Competition Principles Agreement*. They are aimed at encouraging efficient public sector service provision by exposing public business functions to competition, where appropriate. This is to be achieved by restructuring State and local government enterprises, and applying the *Trade Practices Act (Cth) 1974* to regulate State and local government business activities. The Policy provides an opportunity for both State and local government to work together to ensure that the principles of competition:
- Π are not implemented as an end in themselves;
 - Π promote increased consumer choice;
 - Π promote increased business choice and innovation;
 - Π facilitate the efficient allocation of resources in the economy; and
 - Π increase the opportunities for Australian business to effectively compete for international market share.
- 1.5** The NSW Government is committed to achieving these goals whilst ensuring that:
- Π all customers continue to have access to goods and services;

- II goods and services are equitably distributed; and
- II consumers are protected in the choices they make.

1.6 The National Competition Policy does not expressly or impliedly promote the benefits of private ownership over those of public ownership. The NSW Government does not believe that privatisation is a necessary step in the implementation of the competition principles.

2 The Competition Principles Agreement

2.1 The *Competition Principles Agreement* (the Agreement) (attached as Appendix 1) agreed to by the Commonwealth, States and Territories at the April 1995 COAG meeting, is the key policy component of the National Competition Policy Package. Essentially, it recognises that applying the *Trade Practices Act (Cth) 1974 (TPA)* to regulate State and local government activities for the purposes of promoting competition needs to be accompanied by a policy framework that facilitates the creation of competitive markets for public sector goods and services, where appropriate.

2.2 To guide governments in the creation of these markets, the Agreement specifies a range of principles primarily aimed at achieving clear delineation between the regulatory and commercial activities of State agencies and local councils and exposing their commercial activities to competition. These principles are the:

- (a) provision of independent pricing oversight of Government Business Enterprises (GBEs) (cl.2);
- (b) application of competitive neutrality to the significant business activities of government (cl.3);
- (c) structural reform of public monopolies (cl.4);
- (d) review of legislation with a view to removing anti-competitive provisions where the costs outweigh the benefits (cl.5); and
- (e) provision of third party access to essential infrastructure owned by the public and private sectors (cl.6).

2.3 Clause 7(1) of the Agreement specifies that *“the principles set out in [the] Agreement will apply to local government, even though local governments are not Parties to [the] Agreement, [and that] each State and Territory Party is responsible for applying those principles to local government.”*

Clause 7(2) of the Agreement specifies that, *“...where clauses [3], [4] and [5] permit each Party to determine its own agenda for the implementation of the principles set out in those clauses, each State and Territory Party will publish a statement by June 1996:*

- (a) *which is prepared in consultation with local government; and*
- (b) *which specifies the application of the principles to particular local government activities and functions.”*

3 Application of the Competition Principles Agreement and Trade Practices Act to Local Government

- 3.1** As required by s.7(1) and (2) of the Agreement the NSW Government is responsible for applying all the principles at paragraph 2.2 to local government in NSW and preparing a policy statement on how it is applying the principles of competitive neutrality, structural reform and legislation review to specific local government functions.
- 3.2** This part of the policy statement discusses how the NSW Government is working with local government to apply the principles of the Agreement and the *TPA* to local councils' business activities as well as the associated initiatives being employed by councils to improve service provision. The application of the principles of competitive neutrality, structural reform and legislation review to specific local government business functions is discussed in greater detail in parts 4, 5, and 6 respectively of this policy statement. Associated initiatives are detailed in part 7 of this policy statement.
- 3.3** In pursuing the application of the Agreement, the Government does not believe that a prescriptive approach will achieve reform with the spirit of co-operation necessary to benefit both consumers and business. Further, the Government supports the objects of the *Local Government (NSW) Act 1993*, which devolves to local councils significant responsibility for the conduct of their own affairs. The Government is confident that NSW councils are fully able to appreciate the significant efficiency gains and reduction in service costs that can flow from the adoption of competition reforms, and will be able to responsibly apply the Agreement for the benefit of their constituents and clients.
- 3.4** This policy statement has been prepared following consultation between The Cabinet Office, Department of Local Government, NSW Treasury, Premier's Department, and the NSW Local Government and Shires Associations. The submissions of those individual NSW councils that responded to the Government's request for comments on the draft Policy Statement have also been considered in the preparation of this Statement.

Independent Pricing Oversight

- 3.5** In relation to the application of the principles in the Agreement concerning independent pricing oversight of local government monopoly businesses, the Government believes that existing arrangements are adequate. Following a reference from the State Government, the Independent Pricing and Regulatory Tribunal (IPART) in NSW has the power to review the pricing practices of local government business activities that can be declared as monopolies under the IPART legislation, such as water supply authorities constituted

under the *Water Supply Authorities Act 1987* or county councils established for the supply of water. IPART is currently reviewing local government and rural water supply services. Alternatively, IPART can inquire into industry pricing that may involve local government business activities. IPART has conducted an inquiry into the pricing policies of the Waste Recycling and Processing Service, which included aspects of local government waste management services.

Competitive Neutrality

- 3.6** The application of competitive neutrality is discussed in detail in part 4 of this policy statement. The Government will work with local government to apply the principles of competitive neutrality to local government businesses, where appropriate, to ensure that local councils' service functions operate under similar competitive pressures to those experienced by the private sector. The application of competitive neutrality continues to be considered by the NSW Government's Working Group on the Application of Competitive Neutrality to Local Government Businesses and Working Group on State/Local Government Business Reciprocal Charges. The NSW Local Government and Shires Associations are represented on both groups.

Structural Reform

- 3.7** The application of the principles of structural reform are discussed in detail in part 5 of this policy statement. Structural reform is required to be applied to public monopolies and involves the separation of the non-contestable regulatory or other functions of a monopoly from those commercial activities which can be subject to competition. Certain local government activities, such as water supply, sewerage and waste management services may constitute monopolies in relevant markets.
- 3.8** However, having regard to the commercial objectives of these local government monopoly services and the merits of strictly separating the potentially competitive elements and non-contestable functions of local government monopolies, the Government has no plans with respect to this category of reform beyond what is described elsewhere in the policy statement. Indeed, the Government considers that competitive environments for local government services can be stimulated by applying the principles of competitive neutrality to the commercial activities of local government, where appropriate. These principles are discussed in part 4 of this policy statement.

Legislation Review

- 3.9** The application of the principles of legislation review are discussed in detail in part 6 of this policy statement. With respect to the review of legislation, the Government is undertaking:
- a review of regulatory instruments and the administration of approvals processes in local government decision making affecting development and other land use applications; and
 - a review of other legislation which may be anti-competitive.

Third Party Access to Essential Infrastructure

- 3.10** Under Part IIIA of the *TPA*, third parties can seek access to a service provided by means of a facility by requesting the National Competition Council (NCC) to recommend to the designated Minister (the responsible Minister in the State or Territory) to 'declare' the service. Declaration is possible only where the facility is of national significance and would be uneconomical to duplicate; and where access to the service would promote competition in other markets and can be provided safely.
- 3.11** Declaration under Part IIIA is also precluded where an effective State based access regime exists. In general, State based access regimes need to meet all the same tests as those for declaration under Part IIIA of the *TPA* (except for national significance) and comply with the principles set out in Clause 6(4) of the Agreement.
- 3.12** In August 1995, the Government sought advice from the NSW Local Government and Shires Associations on whether local government owned or operated services that may be subject to Part IIIA of the *TPA* or met the requirements for a State based access regime. To date no local councils appear to own or operate services that require the establishment of State based access regimes. The applicability of Part IIIA is of course dependent on applications by third parties.

Extension of the Trade Practices Act to Local Government

- 3.13** The NSW Government introduced the *Competition Policy Reform Act* in June 1995 and as a result, the Competition Code (in the form of a schedule to the *TPA*) will apply to the activities of individuals, unincorporated associations and statutory corporations in NSW from 20 July 1996. Accordingly, from that date, local council business activities will be subject to the prohibitions on anti-competitive behaviour prescribed in Part IV of the *TPA*.

Associated Reforms

- 3.14** In addition to compliance with the specific requirements of the Agreement, the NSW Government and NSW Local Government and Shires Associations are working together to encourage councils to embrace the philosophy of competition in relation to their practices and policies, to the extent that it will produce an improvement in services to local communities. A strategy is to be developed which will bring about a more customer oriented approach and cost effective provision of services by individual councils and Local Government generally. These initiatives are discussed in greater detail in part 7 of this policy statement.

4 Application of Competitive Neutrality to Local Government Business Activities

- 4.1** The principle of competitive neutrality requires that government businesses, whether Commonwealth, State or local, operate without net competitive advantages over other businesses as a result of their public ownership.
- 4.2** Previously, government businesses often received competitive advantages, such as immunity from various taxes and charges and regulatory requirements, concessional interest rates on loans and cheaper borrowing rates because of government guarantees. Simultaneously, public ownership could create competitive disadvantages, such as costly public service industrial conditions, higher superannuation costs, community service obligations and less managerial autonomy.
- 4.3** However, competition policy does not require that all firms or businesses compete on an equal footing. It is recognised that competing businesses may differ in size, assets, skills, experience and culture, characteristics which define each competitor's unique competitive advantages and disadvantages.
- 4.4** The benefits of adopting a competitive neutrality regime reside in the development of fairer and more cost reflective pricing policies and production in line with market requirements. These in turn should provide a basis for better resource allocation decisions throughout the economy and higher GDP growth than would otherwise occur.

The Competition Principles Agreement

- 4.5** The Agreement (cl.3(2)) makes it clear that the State Government is free to set its own agenda regarding the pace of implementing competitive neutrality principles.
- 4.6** The Agreement (cl.3(6)) specifies that the competitive neutrality principles need not be applied where the benefits of implementation are outweighed by the costs.
- 4.7** The Agreement (cl.3(1)) indicates that competitive neutrality is only to apply to a local council's business activities, and not to its non-business and non-profit activities.
- 4.8** The Agreement (cl.3(4)) requires a local council's significant business activities to be subject to the same corporatisation principles as those applied to significant State Government business activities. These are:

- Π adopt a corporatisation model for the business activities;
- Π include debt guarantee fees, where the business benefits from the council's borrowing position by comparison with commercial rates;
- Π factor into prices an appropriate return on capital invested;
- Π make any subsidies provided to customers, and the funding of those subsidies, explicit;
- Π operate within the same regulatory framework as other businesses; and
- Π include in their costs the same Federal, State and local government taxes and charges as do private businesses.

What is a Business Activity?

- 4.9** Generally, a business activity will involve the supply of goods and services for a fee or charge. However, not all activities involving the supply of goods and services would necessarily be classified as business activities.
- 4.10** Certain council activities are classified by the Government Statistician as trading enterprises and are therefore regarded as business activities. These are activities in relation to the provision and operation of water supply, sewerage, gas production and reticulation and abattoirs. In many of these circumstances councils may set prices or charge fees and may be seen as either directly or indirectly competing with private sector businesses.
- 4.11** Other businesses will be determined by each particular circumstance. For example, on one hand local councils' road building activities may not be judged to be a business activity, even if such activities generate revenue. However, if a council were to tender for road construction work from other councils or clients, or compete with the private sector in this area, council's activities are likely to be defined in business terms.
- 4.12** A guide to determining whether an activity is a 'business' is whether or not that activity is or is likely to be subject to competition by other providers, and the extent of that competition. Equally, councils need to consider the nature, importance to customers, and economic impact of the activity in question. If an activity is subject to competition, is significant to the people who are supplied by it and has an impact on the local, regional or broader economy, then there is a likelihood that it is a business activity.

What is a Significant Business Activity?

- 4.13** To assist in determining when council's business activities are significant enough to be subject to the competitive neutrality principles, the Government proposes two categories of business activities. The requirements for each represent a minimum position and do not restrict councils in setting higher standards of separation and reporting.

- 4.14** Following consultation with the NSW Local Government and Shires Associations, the Government has chosen the \$2M threshold for corporatisation discussed below on the basis that it is likely to embrace most local government businesses that have a significant economic impact. The threshold also provides a guide for local government in identifying which of their businesses may be suitable for corporatisation so that they can avoid the impracticality and costs associated with applying a benefit-cost analysis to all their businesses.
- 4.15** Categorisation of local government business activities will be reviewed by the State government over time in consultation with local government.
- (a) Category 1 Businesses (\$2M and above)**
- 4.16** Businesses in this category are expected to have annual sales turnovers (annual gross operating income) of \$2M and above.
- 4.17** As a general rule all the competitive neutrality principles referred to in paragraph 4.8 should be fully applied. The onus is on councils to conduct an independent benefit-cost analysis to substantiate a view that the public interest will not be served by applying competitive neutrality. The benefit-cost analysis should be made public and council's decision not to apply the principles will be subject to external review in the event of a complaint.
- 4.18** Corporatisation does not necessarily mean that the business activity must be formally or legally incorporated as a separate organisation. However, the business must be capable of being separately identified within the operations of council and have its accounting and other operations structured in such a way as to provide a distinct reporting framework for its operations to council.
- 4.19** These businesses will be required to function under the same regulatory restrictions and requirements as any private sector business operating in the same field.
- 4.20** In setting prices, councils will have to take account of a range of factors and any policies established by bodies such as the Independent Pricing and Regulatory Tribunal in NSW.
- 4.21** The business would be expected to generate a return on capital employed that is comparable to rates of return for private sector businesses operating in a similar field. Any dividend would be retained by the council as the owner of the business.
- 4.22** Costs would need to include Commonwealth, State and local taxation equivalents, and debt guarantee fees where the business has the advantage of

a lower borrowing rate than it might otherwise face, because of council's overall borrowing position. Taxation equivalents would be paid to the council as the owner of the business.

- 4.23** The payment of subsidies to the business from general council funds is not prevented where councils determine to do so for whatever purpose. However, such subsidies must be an explicit transaction, in line with requirements for State government businesses.

(b) Category 2 Businesses (less than \$2M)

- 4.24** Businesses in this category are expected to have annual sales turnovers (annual gross operating income) of less than \$2M.
- 4.25** Businesses in this category are anticipated to have an insignificant distortionary impact on competition at either the State or national levels. They could involve council trade in goods and services within a localised area, or a region, in competition with the private sector. They may be considered quite significant business enterprises at the local level.
- 4.26** The scope and nature of these businesses can, however, vary widely. At the smallest scale, the business might be a minor adjunct to a mainstream, non-business council function. The photocopying sales at the administrative headquarters or sale of compost bins are some examples of very small-scale commercial activities. At the larger scale, the business activity might involve land subdivision and development, operation of significant entertainment and recreation centres, hire of major items of plant and machinery and the like.
- 4.27** Councils should apply full cost attribution to as many Category 2 activities as is practicable. In many circumstances, such as small rural water and sewerage schemes, full cost attribution is already occurring.
- 4.28** Additionally, any subsidy provided by the council is to be made explicit as part of the calculation of costs.
- 4.29** Councils can determine the extent to which business activities in this category are to be separated from its associated mainstream activities.
- 4.30** Where Councils compete in the market place they should do so on a basis that does not utilise their public position to gain an unfair advantage over a private sector competitor.
- 4.31** Accountability to the public is a pivotal consideration given that councils' policies and practices will be subject to increased levels of scrutiny.

Further Consideration of the Application of Competitive Neutrality to Local Government

4.32 As noted in paragraph 3.6 in this Statement, the application of competitive neutrality to local government will receive ongoing consideration by the NSW Government's Working Group on the Application of Competitive Neutrality to Local Government Businesses and Working Group on State/Local Government Business Reciprocal Charges. Both Groups include representatives from The Cabinet Office, NSW Treasury, Department of Local Government, and NSW Local Government and Shires Associations.

Reciprocal Charging

4.33 In general, it is agreed that local government business activities should be the subject of State taxes and charges and that State Government businesses should likewise be subject to local Government taxes and charges. Currently this situation does not apply formally, although it is practised in certain areas. It is intended that a common application be introduced over time as the relevant State tax legislation is amended.

4.34 However, before reciprocal charging can be introduced, there are a number of anomalies that need to be identified, assessed and ultimately addressed. The NSW Government's Working Group on Reciprocal Charging is currently reviewing arrangements with a view to:

- II identifying the quantum and direction of the net financial impact if the anomalies were removed; and
- II identifying the impact on individual State and local government businesses with a view to assessing the need for any phasing of removal.

4.35 The work of the Group is not expected to be finalised until towards the end of 1996.

Complaints Mechanism

4.36 The Agreement requires the creation of an effective regime to deal with competitive neutrality related complaints directed against local government businesses. This regime is not intended to replace any existing remedies or consumer rights arrangements.

4.37 The Government believes that councils should be made the first point of contact regarding complaints. This will ensure that councils have the

opportunity to obtain feedback on the appropriateness of their policies and performance, and to remedy any problems that might arise. Each council will be responsible for establishing and resourcing its own internal complaints handling process. The information contained in the August 1994 Practice Note issued by the Department of Local Government titled “Complaints Management in Councils” may be of assistance to councils in this context.

- 4.38** Complaints received by State agencies concerning conduct by councils will be referred to councils for comment in the first instance, and will be handled within the existing legislative provisions. The Department of Local Government will handle only those complaints which councils are unable or have failed to resolve or where, after consideration by the council, the complainant requests a review by the Department and in the circumstances the request is reasonable.
- 4.39** The complaints mechanism will be reviewed annually for two years to determine whether it is adequate or another mechanism is warranted.

Guidelines for Councils in Implementing Competitive Neutrality

- 4.40** As indicated at paragraph 4.17 the onus is on councils to conduct an independent benefit-cost analysis to substantiate a view that the public interest is not served by applying competitive neutrality. Clause 1(3) of the Agreement provides a range of equity, social welfare, consumer, environmental and industrial matters that can be used in this benefit-cost analysis. The Government in consultation with local government will develop guidelines to assist councils in applying these and other matters to determine whether it is appropriate not to apply competitive neutrality principles in any particular circumstance.
- 4.41** Pricing guidelines will be developed jointly by the Government and the NSW Local Government and Shires Associations to assist councils with the implementation of competitive neutrality requirements. The guidelines will cover situations where there may be a need for flexibility in pricing to maintain competitive neutrality with private sector businesses.
- 4.42** The Government and local government will further collaborate to develop guidelines for councils with respect to the application of tax equivalents and dividend payments and the financial accounting and treatment of explicit subsidies for council business activities.
- 4.43** The Government will also be seeking to ensure the consistency of individual councils’ Complaints Management Systems through the release of a Local Government practice note. The note will aim to provide guidance to councils

on the operation and procedures of an appropriate complaints mechanism, including time limits for considering complaints.

- 4.44** In addition, the Government will also prepare a practice note on the relationship between the application of competitive neutrality and accounting methods used by councils. The note will aim to provide guidance to councils on accounting for competitive neutrality.

Timetable for Implementation

- 4.45** The Government intends to prepare all reports, guidelines and procedures proposed in this Statement by December 1996. Councils will be required to comply with the application of competitive neutrality consistent with this Statement from 1 July 1997.

Annual Reporting Requirements

- 4.46** Councils will be required to provide a summary of their progress in implementing the competitive neutrality principles in their annual reports. The Department of Local Government will incorporate in its annual report a summary of the overall progress being made by local governments in New South Wales. The summary will also make reference to complaints that have been received and the associated implementation issues.

5 Structural Reform of Local Government Business Activities

- 5.1** Local Councils are responsible for providing a range of services to their constituents such as water and sewerage services, waste management, road construction, abattoirs, street cleaning, parks maintenance and environmental management, swimming pools, childcare and vehicle maintenance. These services may be categorised as commercial or of a business nature in certain circumstances.
- 5.2** In determining whether council functions constitute a business activity, the size, nature, importance to customers and economic impact of council activities that are in competition with the private sector are useful indicators.
- 5.3** The Agreement (cl.4) sets out steps to structurally reform public monopolies. It makes clear that governments are free to set their own agendas in this regard.
- 5.4** The Agreement (cl.4(2)) indicates that before competition is introduced to a sector traditionally supplied by a public monopoly it is necessary to remove any responsibilities the public monopoly may have for industry regulation. Through this separation of commercial or operational and regulatory functions, any regulatory advantage the public monopoly may have enjoyed over existing and potential competitors is eliminated.
- 5.5** The Agreement (cl.4(3)) also specifies that when introducing competition to a market traditionally supplied by a public monopoly, and before the public monopoly is privatised, governments are required to undertake a review into the following matters:
- Π the appropriate commercial objectives for the public monopoly;
 - Π the merits of separating any natural monopoly elements from potentially competitive elements of the public monopoly;
 - Π the merits of separating potentially competitive elements of the public monopoly;
 - Π the most effective means of separating regulatory functions from commercial functions of the public monopoly;
 - Π the most effective means of implementing the competitive neutrality principles set out in the Agreement;
 - Π the merits of any community service obligations undertaken by the public monopoly and the best means of funding and delivering any mandated community service obligations;
 - Π the price and service obligations to be applied to the industry; and

II the appropriate financial relationships between the owner of the public monopoly and the public monopoly, including rate of return targets, dividends and capital structure.

5.6 Structural reform involves the separation of the non-contestable regulatory or other functions of a public monopoly from its potentially competitive commercial activities. Certain local government activities, such as water supply, sewerage and waste management services may constitute monopolies in relevant markets.

5.7 However, having regard to the commercial objectives of these local government monopoly services and the merits of strictly separating the potentially competitive elements and non-contestable functions of local government monopolies, the Government has no plans with respect to this category of reform beyond what is described elsewhere in the policy statement. Indeed, the Government considers that competitive environments for local government services can be effectively created by applying the principles of competitive neutrality to the commercial activities of local government, where appropriate. These principles are discussed in part 4 of this policy statement.

6 Legislation Review

- 6.1** Local Councils do not legislate in NSW and they do not have an obligation to review anti-competitive legislation in the same way that the NSW Government does in order to fulfil its obligations under the Agreement.
- 6.2** Nonetheless, there are a number of State laws which, while governing the way local councils perform their regulatory functions, impose restrictions on competition and add to the cost of or prevent market entry. The major Acts in this category are the *Local Government Act 1993* and the *Environmental Planning and Assessment Act 1979*.
- 6.3** The Government has commenced an extensive program of review which will address the economic costs arising from this legislation. The encouragement of better performance by local councils in the planning approvals systems is a high priority, so that delay, uncertainty and other transaction costs associated with new developments are reduced. To this end, the *Local Government Act* and regulations under it are proposed for review in 1997/98 and the Government has released a Green Paper on the proposed review of the planning, land use and natural resource approvals systems. At the end of the community consultation period in September 1996, the Government will be in a position to release the White Paper in this regard.
- 6.4** The guiding principles for reforms in the planning approvals area are proposed as follows.
- (a) State Government agencies regulating the environment, land use and natural resources should assess their regulatory regimes from the perspective of those who use them and design systems that are coherent, co-ordinated and consistent. The rules governing land use and resource use should be transparent and available to the public.

Agencies should co-ordinate their consideration and determination of land and natural resource usage. Where more than one agency is involved in the regulation of an area or resource, documentation of relevant rules should be available to local councils and to the public in one coherent and 'seamless' form.

In particular, planning instruments under the *Environmental Planning and Assessment Act* should provide a systematic and accessible guide to the lawful use of land and natural resources.

- (b) Government should regulate strategically through publicly accessible plans wherever possible, and only through the spot checking of Development Applications in unusual and high risk circumstances. Referrals and concurrences should be minimised and approved by the Director of Planning or

incorporated in planning instruments only where justified and only if accompanied by clear and publicly accessible assessment criteria. Regulation of land and natural resource usage should ideally occur by the setting of performance outcomes and/or environmental values. Only where risks are unacceptably great should plans positively prohibit specific usage or activities.

The objectives (or prohibitions) should be explained sufficiently so that local councils may determine development applications without reference to specialist State government agencies, unless exceptional circumstances require this.

- (c) Planning, land use and natural resource management procedures and processes should be streamlined; regulatory design of these systems should be efficient and routinely assessed for cost-effectiveness.
- (d) Building regulations should also be streamlined, economically efficient and cost-effective; in particular, performance-based standards should be adopted for building and siting approvals; water and sewerage approvals should be integrated with building (and planning) approvals.
- (e) Local council performance in the processing of building and development applications should be open to scrutiny and improved through systematic application of incentives (such as public comparison of performance).
- (f) Dispute resolution should be affordable, fair and accessible.

6.5 The reforms which the Government will pursue to implement these principles will be reported in the context of the Government's separate Legislation Review policy statement required under the Agreement.

7 Associated Reforms

7.1 In addition to compliance with the Agreement, the NSW Government is working with the NSW Local Government and Shires Associations (the Associations) to promote a range of initiatives associated with the application of competition policy to local government services. The aim of these initiatives is to provide better services to local communities. Many councils are already in the process of adopting these initiatives which include performance measurement and benchmarking; workplace reform and enterprise bargaining; reviews of regulatory processes, contracting out; establishment of business units; and the general review of service provision.

Benchmarking

7.2 One method of identifying the current level of performance and where areas and processes could be improved is through benchmarking. Benchmarking is the process whereby an organisation compares its own products, services and practices against those of other organisations recognised as being the best at a particular function. It is not simply an exercise in measurement, but a learning process that allows the organisation to improve its performance to meet and exceed the standards of the best.¹

7.3 Of course organisations are seldom directly comparable and allowances have to be made for differences in resources, scale and operating environments. This is especially the case in the local government context where council services are often affected by a wide range of economic and social issues. However, once differences are taken into account, it is often possible to make a judgement on the relative performance of a particular organisation, and more importantly, to assess where improvements might be made.

7.4 The Government and the Associations have been jointly working to promote appropriate performance measurement and benchmarking in local councils. As part of this process, the NSW Department of Local Government has undertaken a review of its comparative statistics publication, which it uses as a guide to the performance of councils.

7.5 The Department's publication is now based on 24 key performance indicators which were identified through a joint study by the Department, Associations and Institute of Municipal Management. It is intended that the number of indicators be expanded to 26 later this year. The Associations have used the same data to produce computer software (MagIC) which facilitates inter-

¹ A Model for Best Practice in Client Service in the Public Sector, Canberra Bulletin of Public Administration, No.72, April 1993; p.69

council comparisons, produces graphic presentations of these comparisons and promotes the use of comparative data by councils.

- 7.6** As part of the national Local Government and Efficiency Program agreed to by Commonwealth, State and Territory Ministers for Local Government, the NSW Government and Associations have been involved in the development of a guide to benchmarking in Local Government that has been published and distributed to all councils. This publication forms the basis for a series of seminars being run by the Associations to promote benchmarking in Local Government.
- 7.7** In addition to these seminars, there are a number of other benchmarking initiatives currently underway in NSW. Two regional organisations of councils are undertaking major benchmarking projects on regulatory processes. There are also projects looking at libraries (North Sydney), children's services (Parramatta), engineering services (Wyong), water and Sewerage (Dept of Land and Water Conservation).

Workplace Reform

- 7.8** Award restructuring has had a major impact on Local Government. A new Local Government Award was ratified by the Industrial Relations Commission in 1995 which replaced existing Awards. The Award is facilitative rather than prescriptive thus encouraging a workplace focus. All parties to the award believe a more effective climate for enterprise bargaining will exist following the implementation of the award. The path has been cleared for councils to bargain on truly structural issues such as job redesign, training plans, salary systems, hours of work, performance management systems, and benchmarking which will realise real productivity and efficiency improvements.
- 7.9** The Associations are providing on-site consultancy assistance to councils in developing their workplaces. The aims of the project are to:
- II increase the pace of workplace reform across the Local Government industry in NSW;
 - II ensure quantifiable productivity gains measured by decreased service costs and through substantial improvements in service delivery;
 - II ensure the process of workplace reforms is on-going and self-sustaining; and
 - II provide more satisfying and rewarding employment opportunities for employees in the Local Government industry by developing salary systems with progression based on skills acquired and used, by removing discrimination in the workplace, by increased competency based training to enhance transferable skills and career opportunities and through participative work redesign.

Competitive Tendering

- 7.10** Councils are already extensively involved in using contractors to provide some of their services and facilities, as in some circumstances contractors may be the most cost effective method of service provision. However, considerations other than price may be relevant in determining methods of service provision. Accordingly, the Government considers that a decision to competitively tender services can most appropriately be made by an individual council taking into account all its relevant circumstances.
- 7.11** In consultation with local government, the Government intends to develop competitive tendering guidelines to assist councils in their decisions to use competitive tendering, including when, where and how tendering can be applied.

Review of Service Provision Options

- 7.12** It is important that all councils are aware of the full cost of their operations and how this compares with other service providers, being either other councils or private sector providers.
- 7.13** This may be achieved through benchmarking or it may be achieved through the establishment of business units and full competitive tendering. The Government considers that the most appropriate approach will be best determined by local circumstances. What is essential is that councils undertake a periodic review of their services to make sure that they are suited to customer requirements and provided in a cost effective manner.
- 7.14** Councils should make provision for these processes in their management plans and report the outcomes in their annual reports.
- 7.15** In order to facilitate a co-ordinated approach to these initiatives the Government and Associations intend to work with local councils to develop and provide councils with a range of information on reforms and examples of best practice as well as guidelines on costing, administration of approvals and other areas of activity.

8 Public Interest and Consumer Protection Principles

Public Interest Considerations

- 8.1** The equitable distribution of goods and services amongst all customers is integral to the implementation of competition policy in NSW. The NSW Government is aware of the need to consider equity, environment, industrial relations and other issues in accordance with clause 1(3) of the Agreement, when applying competition policy. Clause 1(3) of the Agreement requires governments to take account of the following issues, where relevant, when applying the principles of competition to State and local government business activities:
- Π government legislation and policies relating to ecologically sustainable development;
 - Π social welfare and equity considerations, including community service obligations (CSOs);
 - Π government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
 - Π economic and regional development, including employment and investment growth;
 - Π the interests of consumers generally or of a class of consumers;
 - Π the competitiveness of Australian businesses; and
 - Π the efficient allocation of resources.
- 8.2** As a result, the maintenance of CSOs or social programs by local governments remain an important part of the implementation of competition policy and reform generally. As discussed at paragraph 4.20, any CSO funding from a council to a business unit should be transparent. The Government will continue to work with local government to ensure that social programs meet the needs of the community.
- 8.3** The Government is committed to consulting closely with a wide range of consumer, environmental and other groups in the implementation of competition policy as it affects local government, to ensure that the promotion of competition continues to be in the interests of consumers.

Consumer Protection Principles

- 8.4** The introduction of competition to markets currently dominated by public monopolies provides consumers with the scope for increased choice and lower prices for public sector goods and services. In addition to the effects of facilitating the operation of competitive markets, consumer protection

provisions in the *TPA* relating to unconscionable conduct now work hand in hand with existing consumer protection legislation to safeguard the interests of all consumers in Australia.

- 8.5** Under s.12 of the *Local Government (NSW) Act 1993*, consumers can gain access to a range of a council's financial and management reports and other information relevant to the public interest. Public access to such information attaches a significant degree of public accountability to the decisions and operation of local councils. The Government expects that provisions in the *Local Government Act* enabling public access to such information will continue to fully operate in relation to a council's decision to adopt reforms proposed in the policy statement as well as the conduct of those reforms.
- 8.6** The NSW Government is committed to ensuring that the rights and needs of consumers are protected and not disadvantaged by reforms to the provision of public sector goods and services. Accordingly, the Government has released a Green Paper on Consumer Protection and Competition Policy, proposing a set of draft Consumer Protection Principles which may be applied to State Government utilities and businesses. The draft Principles may also have application to local government. The draft Principles have been designed to primarily ensure that consumers have:
- II access to information that affects their ability to make choices about services;
 - II recourse to complaints and dispute resolution mechanisms both within and external to a utility; and
 - II the opportunity to be consulted about proposed changes and the impacts of reform.
- 8.7** Comments on the Green Paper have been sought by September 16 1996 and the Government will be undertaking a public consultation process on the proposals in the Green Paper. Local government will have the opportunity to participate in public meetings for the Green Paper in Sydney, Newcastle, Wollongong, Dubbo and Lismore. Details of the meetings can be obtained from the NSW Department of Fair Trading. Feedback from consultations will be considered and included in the application of competition policy to State and local government utilities and businesses.

Appendix 1: The Competition Principles Agreement

