

## 2 Summary of NCP reform obligations for the 2001 assessment

The three NCP agreements of April 1995 establish the NCP reform program. To meet agreed obligations for the 2001 assessment, governments must:

- be a fully participating jurisdiction — that is, have implemented the Competition Code (a modified version of part IV of the *Trade Practices Act 1974* (TPA)), including:
  - notifying the Australian Competition and Consumer Commission (ACCC) of all legislation or provisions in legislation enacted or made in reliance on s51 of the TPA, within 30 days of the legislation being enacted or made (legislation made since that notified for the second tranche assessment);
- be a party to the Competition Principles Agreement (CPA) and have implemented the major elements of the CPA program, including:
  - applying competitive neutrality principles to all significant government-owned businesses, including local government businesses, where appropriate (clause 3);
  - undertaking structural reform of public monopolies where competition is to be introduced or before a monopoly is privatised (clause 4);
  - reviewing legislation that restricts competition (including Acts, enactments, ordinances or regulations) and removing restrictions, where appropriate (clause 5); and
  - undertaking gatekeeper regulatory impact analysis (including systematic and transparent assessment of alternatives to regulation) of proposed new or amended legislation that restricts competition (clause 5);
- achieve effective participation in the fully competitive national electricity market (NEM), if a relevant jurisdiction, including completing all transitional arrangements;
- implement fully, if a relevant jurisdiction, free and fair trading in gas between and within jurisdictions;
- achieve satisfactory progress in implementing the 1994 Council of Australian Governments (CoAG) Strategic Framework for the reform of

the water industry, consistent with timeframes established through intergovernmental agreement;

- implement fully the road transport reforms developed by the Australian Transport Council and endorsed by CoAG; and
- ensure national standards are set in accordance with the principles and guidelines for good regulatory practice endorsed by CoAG.

The CPA also commits governments to consider establishing independent prices oversight arrangements for government business enterprises. Such businesses often have the potential to engage in monopolistic pricing behaviour, either because they are legislated or natural monopolies or because they operate in markets where competition is weak. Prices oversight arrangements now exist in all States and Territories except Western Australia. In the previous NCP assessments, the Council found that all States and Territories had satisfied this obligation.

## Fully participating jurisdictions

The *Competition Policy Reform Act 1995* defines 'fully participating jurisdictions' as those States and Territories that are parties to the Conduct Code Agreement and that apply the Competition Code as law, either with or without modifications. All States and Territories signed the Conduct Code Agreement to extend the operation of part IV of the TPA to all business activities within their jurisdiction. Constitutional limitations had previously prevented application of part IV, which prohibits a range of anticompetitive trade practices, to unincorporated businesses operating in only one State. In addition, many State and Territory government businesses had Shield of the Crown immunity from the TPA. Each State and Territory has enacted a modified version of part IV of the TPA (the Competition Code). Other than Western Australia, all jurisdictions enacted the legislation by the agreed date of 20 July 1996. Western Australia enacted its legislation in September 1996, but made it retrospective to the earlier date, so meeting its obligation to apply the code.