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### **The National Competition Council**

The National Competition Council was established on 6 November 1995 by the *Competition Policy Reform Act 1995* following agreement by the Commonwealth, State and Territory governments.

It is a federal statutory authority which functions as an independent advisory body for all governments on the implementation of the National Competition Policy reforms. The Council's aim is to 'help raise the living standards of the Australian community by ensuring that conditions for competition prevail throughout the economy which promote growth, innovation and productivity'.

Information on the National Competition Council, its publications and its current work program can be found on the internet at [www.ncc.gov.au](http://www.ncc.gov.au) or by contacting NCC Communications on (03) 9285 7474.

# Table of contents

<b>Abbreviations</b>	<b>v</b>
<b>Findings and recommendations</b>	<b>ix</b>
<b>1 The National Competition Policy and related reforms</b>	<b>1.1</b>
Obligations under the National Competition Policy agreements	1.1
Fully participating jurisdictions	1.3
Governments' NCP annual reports	1.3
NCP payments to the States and Territories	1.4
<b>2 The Competition Principles Agreement reforms</b>	<b>2.1</b>
Achieving effective legislation	2.1
Structural reform of public monopolies	2.13
Competitive neutrality	2.14
<b>3 The related reforms</b>	<b>3.1</b>
Electricity	3.1
Gas	3.20
Water	3.45
Road transport	3.103
<b>4 Primary industries</b>	<b>4.1</b>
Agricultural product marketing	4.1
Agriculture-related products and services	4.45
Mining	4.88
Fisheries	4.100
Forestry	4.122
<b>5 Transport</b>	<b>5.1</b>

---

<b>Taxi services</b>	<b>5.1</b>
<b>Road transport related legislation</b>	<b>5.44</b>
<b>Rail</b>	<b>5.58</b>
<b>Ports and sea freight</b>	<b>5.67</b>
<b>Air transport</b>	<b>5.90</b>
<b>6 Health and pharmaceutical services</b>	<b>6.1</b>
Regulating the health professions	6.1
Drugs, poisons and controlled substances	6.69
Pharmacy	6.74
Other health legislation	6.86
<b>7 Legal services</b>	<b>7.1</b>
Legislative restrictions on competition	7.1
Harmonising legislation regulating the legal profession	7.4
Review and reform activity	7.5
<b>8 Other professions and occupations</b>	<b>8.1</b>
Legislative restrictions on competition	8.1
Regulating in the public interest	8.2
Review and reform activity	8.2
<b>9 Finance, insurance and superannuation services</b>	<b>9.1</b>
The financial sector	9.1
Insurance services	9.3
Public sector superannuation	9.29
<b>10 Retail trading arrangements</b>	<b>10.1</b>
Shop trading hours	10.1
Liquor licensing	10.16
Petrol retailing	10.33
<b>11 Fair trading legislation and consumer protection legislation</b>	<b>11.1</b>

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Legislative restrictions on competition	11.1
Regulating in the public interest	11.2
Review and reform activity	11.3
<b>12 Social regulation: education, child care and gambling</b>	<b>12.1</b>
Education	12.1
Child care	12.21
Gambling	12.30
<b>13 Planning, construction and development services</b>	<b>13.1</b>
Planning and approvals	13.1
Building regulations and approval	13.13
Service providers	13.22
<b>14 Communications</b>	<b>14.1</b>
Legislation restricting competition	14.2
Competitive neutrality matters	14.9
NCP obligations relating to Telstra	14.10
<b>15 National legislation review and reform matters</b>	<b>15.1</b>
National reviews	15.1
National standards setting obligations	15.11
<b>16 The Conduct Code Agreement obligations</b>	<b>16.1</b>
<b>Appendix A National Competition Policy contacts</b>	<b>A.1</b>
<b>Appendix B Commonwealth Office of Regulation Review:     report on compliance with national standard setting</b>	<b>B.1</b>
<b>References</b>	<b>R.1</b>

# Abbreviations

<b>ACCC</b>	<b>Australian Competition and Consumer Commission</b>
<b>ACT</b>	<b>Australian Capital Territory</b>
<b>ACTEW</b>	<b>ACTEW Corporation</b>
<b>agvet</b>	<b>Agricultural and veterinary</b>
<b>AHMAC</b>	<b>Australian Health Ministers Advisory Council</b>
<b>AMA</b>	<b>Australian Medical Association</b>
<b>ANZECC</b>	<b>Australian and New Zealand Environment and Conservation Council</b>
<b>ANZFA</b>	<b>Australia New Zealand Food Authority</b>
<b>ANZFSC</b>	<b>Australia New Zealand Food Standards Council</b>
<b>ANZMEC</b>	<b>Australian and New Zealand Minerals and Energy Council</b>
<b>APRA</b>	<b>Australian Prudential Regulation Authority</b>
<b>ARMCANZ</b>	<b>Agriculture and Resource Management Council of Australia and New Zealand</b>
<b>AWBI</b>	<b>AWB International</b>
<b>CCNCO</b>	<b>Commonwealth Competitive Neutrality Complaints Office</b>
<b>CIE</b>	<b>Centre for International Economics</b>
<b>CMS</b>	<b>Centralised monitoring system</b>
<b>CoAG</b>	<b>Council of Australian Governments</b>
<b>CPA</b>	<b>Competition Principles Agreement</b>
<b>CRR</b>	<b>Committee on Regulatory Reform (CoAG)</b>
<b>CSIRO</b>	<b>Commonwealth Scientific and Industrial Research Organisation</b>
<b>CSO</b>	<b>Community service obligation</b>
<b>CTP</b>	<b>Compulsory Third Party</b>

<b>EWP</b>	<b>Environmental water provision</b>
<b>EWR</b>	<b>Environmental water requirements</b>
<b>FRC</b>	<b>Full retail contestability</b>
<b>FSANZ</b>	<b>Food Standards Australia New Zealand</b>
<b>GBE</b>	<b>Government business enterprises</b>
<b>GPAL</b>	<b>Gas Pipelines Access Law</b>
<b>GPOC</b>	<b>Government Prices Oversight Commission (Tasmania)</b>
<b>HAL</b>	<b>Horticulture Australia Limited</b>
<b>HEC</b>	<b>Hydro Electric Corporation (Tasmania)</b>
<b>IPART</b>	<b>Independent Pricing and Regulatory Tribunal</b>
<b>ICRC</b>	<b>Independent Pricing and Regulatory Commission (ACT)</b>
<b>MDBC</b>	<b>Murray–Darling Basin Commission</b>
<b>NCC</b>	<b>National Competition Council</b>
<b>NCP</b>	<b>National Competition Policy</b>
<b>NEM</b>	<b>National electricity market</b>
<b>NEVDIS</b>	<b>National Exchange of Vehicle and Driver Information System</b>
<b>NT</b>	<b>Northern Territory</b>
<b>OECD</b>	<b>Organisation for Economic Co-operation and Development</b>
<b>ORR</b>	<b>Office of Regulation Review</b>
<b>PAWA</b>	<b>Power and Water Authority</b>
<b>PBS</b>	<b>Pharmaceutical Benefits Scheme</b>
<b>PC</b>	<b>Productivity Commission</b>
<b>RIS</b>	<b>Regulatory/regulation impact statement</b>
<b>ROP</b>	<b>Resource Operations Plan</b>
<b>SCARM</b>	<b>Standing Committee on Agriculture and Resource Management</b>
<b>SEVS</b>	<b>Specialist and Enthusiast Vehicle Scheme</b>

<b>SMA</b>	<b>Statutory marketing authority</b>
<b>TAC</b>	<b>Total allowable catch</b>
<b>TPA</b>	<i>Trade Practices Act 1974</i>
<b>VEETAC</b>	<b>Vocational Education, Employment and Training Committee</b>
<b>WEA</b>	<b>Wheat Export Authority</b>
<b>WRP</b>	<b>Water Resource Plan</b>
<b>WSAA</b>	<b>Water Services Association of Australia</b>

# Findings and recommendations

## Overview of progress

Australia is now in its seventh year of the National Competition Policy (NCP), the most ambitious and comprehensive program of economic reform in the country's history. Agreed to by all Australian governments in response to the Review of National Competition Policy (the Hilmer review), the program is a balanced mix of economic policy and measures to assure the social needs of all Australians, including the protection of the environment. NCP reform objectives and assessment benchmarks and policies are coordinated nationally under the aegis of the Council of Australian Governments (CoAG).

The NCP consists of intergovernmental agreements between the Commonwealth, State and Territory governments. Local governments, while not parties to the NCP agreements (the States and the Northern Territory accepted reform obligations on behalf of local governments within their jurisdiction) are also implementing the NCP.

The NCP agreements oblige governments to introduce specific policy measures in the areas of electricity, gas, water and road transport. Governments have met or significantly progressed obligations in each of these areas. The agreements also contain policy development principles and processes, covering primarily the review and reform of legislation that restricts competition, and government business enterprise reform. In these two areas, governments have discretion in developing policy, establishing reform priorities and determining the pace and timing of reform implementation.

For the legislation review and reform program, the date set by CoAG for completion was 30 June 2002, making legislation review and reform a significant focus of this assessment. Although no government had completed its program at 30 June 2002, progress is substantial. Many laws regulating significant areas of economic activity have been reviewed, and restrictions found not to provide a community benefit have been removed or transitional reform paths have been set in place. Much of the activity still underway at 30 June 2002 is likely to be completed by the next NCP progress assessment in June 2003. That said, at 30 June 2002, several jurisdictions had legislative restrictions in place which, on the evidence available, are not in the public interest.



## Electricity

The development of a competitive and efficient electricity industry is one of the key objectives of the NCP. New South Wales, Victoria, Queensland, South Australia and the ACT are now part of a national electricity market featuring an interconnected electricity grid. Tasmania expects to join in 2004, on completion of the Basslink interconnect with Victoria. Significant features of the national market are customer choice of supplier (generator, retailer and trader), capacity for new generation and retail supply companies to enter the national market, and the removal of barriers to interstate and intrastate trade in electricity. Western Australia, while not part of the national market, is proposing to restructure its government-owned monopoly electricity company, Western Power, to increase competition in its electricity industry.

One of CoAG's main objectives for the fully competitive national market in electricity is the ability for customers to choose which supplier (including generators, retailers and traders) they will trade with. This enables consumers to choose the cheapest electricity supplier and/or to base their choice on other factors, such as quality of service or environmental factors (given that the popularity of 'green' electricity is growing rapidly).

Since 2000, all retail customers within the national market consuming more than 200 megawatt hours per year have been contestable: that is, they are able to choose their retailer. Full retail contestability was extended to all New South Wales and Victorian consumers in January 2002, with South Australia and the ACT expected to introduce contestability for all customers in 2003. Queensland decided against full retail contestability but will review its decision in 2004. In the meantime, Queensland will consider making customers in the 100–200 megawatt hour consumption range contestable.

The National Competition Council is concerned with ensuring that all participants in the national electricity market meet their obligations on contestability in a timely manner. The Council expects that relevant governments will reconsider the electricity reform agreements in response to the Energy Markets Review before the 2003 NCP assessment. This will provide the opportunity for governments to revisit obligations for the introduction of contestability. The Council will make its final assessment of the introduction of contestability in 2003.

There have been significant improvements in the performance of the electricity industry in the jurisdictions participating in the national market. The Australian Bureau of Agricultural and Resource Economics (ABARE) estimated that by 2000 (three years after commencement of the national market), the benefits from electricity reform were equivalent to a real increase in Australia's gross domestic product of \$1.5 billion (in 2001 prices). ABARE forecast that Australia's gross domestic product will be 0.26 per cent higher by 2010 (\$2.4 billion in 2001 prices) than it would have been without reform, estimating the net present value of benefits between 1995 and 2010 at \$15.8 billion (in 2001 prices) (Short et al 2001, p.84).

The interconnection of jurisdictions' electricity grids to facilitate wholesale trading in electricity has led to increased cross-border trading. Trading allows jurisdictions to manage peaks in demand by drawing electricity from interstate generators when demand rises beyond the supply capacity of their own generators.

Competition reform is also reducing electricity prices. The Productivity Commission's report on trends in Australian infrastructure prices found that household electricity prices in Brisbane, Melbourne and Sydney fell by 1–7 per cent in real terms between 1990-91 and 2000-01 (PC 2002d). It estimated that this represented total real savings to households in 2000-01 of some \$70 million. Finally, competition is resulting in other benefits, including high supply reliability and system security, deeper liquidity of the contracts market, and increased investment and planned investment in generation and network interconnection (NECA 2002).

## Gas

CoAG established a program of gas reform comprising three key elements:

- the structural separation of the transmission, distribution, production and retail sectors of the gas industry;
- the introduction by all governments of third party access regulation for natural gas pipelines: the National Third Party Access Code for Natural Gas Pipelines (the National Gas Access Code); and
- the provision for all gas consumers to choose their supplier — that is, full retail contestability.

All governments have met their obligations for the first two elements of reform. Regarding the third element, New South Wales, Western Australia, South Australia and the ACT have removed regulatory barriers to full retail contestability, with New South Wales and the ACT introducing systems to support customer choice. Western Australia is scheduled to introduce systems to support customer choice by July 2003. South Australia is still to introduce such systems. Tasmania's full retail contestability timetable will be governed by the franchising arrangements currently being developed.

Victoria and Queensland have amended their timetables for introducing full retail contestability to October 2002 and January 2003 respectively. Victoria stated that it had amended its timetable in consultation with all jurisdictions but without the formal approval of all Ministers (which is required by the 1997 gas agreement). Queensland did not receive approval from all Ministers before amending its timetable. This means that both Victoria and Queensland have not fully met their national gas reform obligations. The Council will make its final assessment of full retail contestability in 2003.

The reform program has transformed Australia's gas industry. Regulated third party access (particularly in relation to distribution pipelines) and increasing competition in gas exploration have stimulated gas production and pipeline development proposals and activities. Since 1995 more than \$1 billion has been invested annually in upstream, transmission and distribution assets. The Australian Pipeline Industry Association (2001) estimates that transmission pipeline infrastructure almost doubled between 1989 and 2001, growing from 9000 kilometres to over 17 000 kilometres. This network expansion includes new pipelines linking processing facilities at Longford in Victoria and consumers in Sydney, Canberra and elsewhere in New South Wales and Victoria. Further network expansion is underway between Tasmania and Victoria, as well as between Victoria and South Australia; while pipelines linking the Northern Territory and/or Papua New Guinea are planned. The Australian Gas Association (1999) expects the proportion of Australia's energy supplied by gas to grow from the current level of 17.7 per cent to 22 per cent by 2005 and to 28 per cent by 2014-15. The electricity generation sector is expected to increase its demand for gas.

## Water reform

Water reform is the most complex and challenging of the NCP commitments, but offers the prospect of the most rewards. The water industry makes a significant contribution to the Australian economy: in value added terms, it is more than one quarter the size of the manufacturing and the agricultural sectors, almost half the size of the electricity industry and three times the size of the gas industry. The potential economic gains from improvements in its performance are considerable. Australia's excessive and inappropriate use of water over many years has created severe environmental problems, of which the adverse economic and social impacts are mounting. The CoAG water reforms, which are scheduled to be substantially completed by 2005, aim to achieve an economically viable and ecologically sustainable water industry by changing the way in which Australia manages its urban and rural water systems. Full and timely implementation of the reform framework will bring significant economic and environmental benefits.

The urban water reforms are now almost complete. They include consumption-based pricing of urban water to discourage wasteful use, full cost recovery by water service providers to help ensure appropriate investment in infrastructure, and institutional changes to ensure providers are efficient and accountable for the quality and cost of water and sewerage services. The rural water reforms relate primarily to arrangements for using water for irrigated agriculture. Excessive allocations to irrigation have caused extensive damage to river systems and groundwater resources, and salinity is destroying large tracts of productive land. The water reforms are designed to address these problems by ensuring:

- adequate water is available for the environment;
- water infrastructure is efficiently developed and maintained;

- new dams are economically viable and ecologically sustainable; and
- there is a system of tradeable water rights to help ensure water is used where it is most valued.

The main reform challenge is dealing with the environmental impacts of water use while ensuring effective property rights in water. Tensions from the need to meet the competing demands of irrigators, urban users and stressed rivers must be addressed. Water trading arrangements, based on a system of property rights separate from land title, are not fully implemented. While property rights and trading arrangements are complex and present challenges in implementation, they are essential to achieving governments' water reform objectives.

Governments have accepted the importance of creating an effective system of water property rights. CoAG recently re-affirmed the importance of property rights in addressing salinity and water quality problems. There is growing recognition of the need for water users to have certainty of access and the need to consider the impact of changes on users, particularly farmers. Governments will report to CoAG by September 2002 on the opportunities for, and the impediments to, better defining and implementing water property rights regimes and water trading, including how they are dealing with uncertainties.

This 2002 NCP assessment recognises some of the practical difficulties in delivering effective property rights. It has relied on commitments from the New South Wales, Victorian and Queensland Governments that actions to implement appropriate allocations, in particular allocations to the environment, are imminent.

The Murray–Darling Basin Commission continues to implement water reform across the Murray–Darling Basin. The commission has endorsed the recommendations of an independent audit on means of addressing water pricing, full cost recovery and institutional reforms. The Council will reassess the implementation of the recommendations for institutional reform when considering the commission's institutional arrangements in the 2003 NCP assessment. The Murray–Darling Basin Commission also continues to progress interstate trading arrangements. Further, the commission's Ministerial Council has agreed to determine by October 2003 the appropriate quantity of water (350 gigalitres, 750 gigalitres or 1500 gigalitres) for release into the River Murray for environmental flow purposes. In conducting the 2002 NCP assessment, the Council found that South Australia, unlike other States, does not pass on the costs of the commission's bulk water provider, River Murray Water, to irrigators. While this issue is not one for the commission, the Council will consider it further in 2004 when assessing each State's approach to rural water pricing.

## Road transport

The NCP road transport reform program is a package of 31 initiatives covering six areas (registration charges for heavy vehicles, transport of dangerous goods, vehicle operations, heavy vehicle registration, driver licensing, and compliance and enforcement). CoAG endorsed a framework of 19 of the 31 reforms, criteria for assessing implementation and target dates for the 1999 NCP assessment, and another framework of six reforms for the 2001 NCP assessment.

Governments did not endorse any road transport reforms for assessment in 2002. They also have not listed for NCP assessment some of the reforms from the original road transport package (notably, the speeding heavy vehicle policy and the higher mass limits), although some governments have implemented these either in whole or in part. The Council used the 2002 NCP assessment, however, to check progress with the reforms that were not implemented and operational at the time of the 2001 NCP assessment. It found the 1999 and 2001 programs to now be substantially complete. New South Wales, Victoria, Queensland, South Australia and Tasmania have implemented all obligations. Western Australia, the ACT, the Northern Territory and the Commonwealth are continuing to implement their remaining reform obligations. Most outstanding reforms are expected to be in place by the end of 2002. Western Australia and the Commonwealth are expected to have nationally consistent heavy vehicle registration processes and requirements operational by 2003.

## Legislation review and reform

The legislation review and reform program is an important element of the NCP, particularly for this 2002 NCP assessment. CoAG set a requirement that governments complete all reviews and implement appropriate reforms by 30 June 2002 (the reporting date for this assessment). Each government developed its review program in June 1996, setting an extensive review and reform task. Governments' programs nominated some 1800 pieces of legislation for review over seven years.

While review and reform activity was not complete in any jurisdiction at 30 June 2002, substantial progress has been achieved and much of the activity still underway is likely to be completed by the 2003 NCP assessment. Governments are also more cognisant of the benefits of avoiding unjustified restrictions in new legislation, with each jurisdiction having a formal process for considering the efficacy of legislative proposals before they become law. In addition, the Commonwealth Office of Regulation Review's monitoring of governments' compliance with processes aimed at improving the quality of national standards shows that governments' adherence to good regulatory processes is better than in the past.

Governments have now reviewed and improved their regulation of many significant activities, of which several have been characterised by endemic restriction. These activities include: the professions and occupations; primary industry matters including agricultural marketing, fishing and forestry; retailing matters such as trading hours and liquor licensing; transport matters, including taxi licensing; compulsory insurance matters, including workers compensation and third party motor vehicle insurance; and planning, construction and development activity. All governments have work remaining in one or more of these areas, which the Council will assess in 2003.

Despite recent progress and greater community awareness of the link between micro-economic reform, economic growth and community wellbeing, the reform of restrictive legislation is often contentious. By subjecting all restrictions on competition to public interest tests, the NCP generates opposition from the groups that benefit from protections. This issue-specific opposition, sometimes combined with broader concerns about the pace of economic and social change, creates a political environment that is not always conducive to economic reform. Governments' leadership in explaining their support for change and in removing those restrictions shown not to be in the public interest is critical to achieving outcomes that benefit the community overall.

Governments are also assisting reform by helping the community to adjust to the new environment. This has sometimes meant financial adjustment assistance, as was the case for the dairy industry. More commonly, it has meant the provision of additional time for implementation of reform objectives and change programs. CoAG recognised this approach explicitly, noting that satisfactory reform implementation, other than completion by 30 June 2002, may include (where justified by a public interest assessment) having in place a transitional arrangement that extends beyond this date. This NCP assessment notes several reform implementation strategies extending beyond 30 June 2002.

The co-occurrence of the deadline for review and reform completion and the 2002 NCP assessment posed some difficulties for the Council. It was not practical for the Council to report on all activity to 30 June 2002. Further, given the significant resource demand that the review and reform program places on governments, the Council accepted that there is a case for governments prioritising their review and reform activity to reduce delays in considering legislation that contains more significant competition restrictions. The Council believes it appropriate, therefore, to consider some review and reform activity in the 2003 NCP assessment. For the 2002 assessment, the Council regarded a government as failing to meet obligations under clause 5 of the Competition Principles Agreement (CPA) where:

- completed reviews and/or reforms did not satisfy NCP principles; and/or
- inadequate progress was made against significant legislation review and reform matters (in other words, where review and reform progress on significant issues was demonstrably inconsistent with the CoAG deadline).

The Council has found several discrete areas of review and reform activity that are inconsistent with NCP principles. In each of these cases, the Council has engaged the relevant governments in discussions to agree on an appropriate means of dealing with the problem area. All governments have participated in these discussions in a constructive and cooperative manner. Consequently, most of the problem areas have been the subject of an agreement or a shared understanding on remedial action, or at least a shared understanding on an approach to remedial action. In addition, each government has accepted that its entire review and reform program must be completed over the next twelve months. Completing the program (including implementing all appropriate reforms) by the 2003 assessment poses challenges for governments, especially those governments currently less advanced in their programs.

The Council considers that its approach of constructive engagement with governments has resulted in a high level of goodwill between the Council and governments regarding the assessment process and substantial commitment by each government to completing the review and reform program. The Council considers that this maximises the opportunity for pro-competitive legislative reform in the public interest. The Council wants to build on the goodwill and commitment demonstrated by governments during this assessment by accepting governments' assurances on future progress. Consequently, in relation to legislation review and reform matters, the Council has made no adverse recommendations on NCP payments at this time.

The Council does not consider that discussions with the Western Australian and South Australian Governments on remedial legislation review and reform action are sufficiently advanced to complete its recommendations on NCP payments to those States in this assessment. It is optimistic, however, that further discussions with the Western Australian and South Australian Governments will be productive so it has deferred recommendations on NCP payments for 2002-03 for both States until the conclusion of those discussions.

The Council stresses that this is the last NCP assessment for which it will accept assurances on future legislation review and reform action. It does not anticipate addressing review and reform activity in NCP assessments after 2003. The 2003 assessment will consider only completed review and reform activity. Review and/or reform activity that is incomplete or not consistent with NCP principles at June 2003 will be considered to not comply with NCP obligations. Where noncompliance is significant, because it involves an important area of regulation or several areas of regulation, the Council is likely to make adverse recommendations on payments. Governments should ensure they provide adequate reporting in time for the 2003 assessment, to show they have met review and reform obligations.

## Professions and occupations

Governments have reviewed the regulation of some 50 professions and occupations including health professionals and para-professionals, legal practitioners, pharmacists, engineers, surveyors, architects, building and planning certifiers, building and related tradespersons, various agents and dealers and teachers. The review and reform of laws regulating professions and occupations is perhaps the most significant element of the NCP legislation review and reform program. When governments signed the CPA, they envisaged that national reviews would be conducted for legislation with national dimensions. National reviews would promote national consistency and more integrated national markets. While regulation of the professions could be considered a prime candidate for national review, few pieces of legislation have been reviewed on a national basis. Even where there has been a national process, nationally uniform implementation of reforms has been slow and problematic. Consequently, reform of regulation of the professions has generally been implemented on a State-by-State basis, which has tended to reduce national consistency in regulation. Mutual recognition legislation (which has also been reviewed under NCP) ameliorates problems in inconsistent regulation of the professions, and individual jurisdiction's reviews have sometimes considered arrangements in other jurisdictions. The Council does not regard this outcome as desirable, however, and has sought to compare States in the assessment process to ensure that the implementation of reform is as consistent as possible.

Review and reform activity by individual governments in many of these areas is now complete and complies with NCP principles. Reviews have been completed but reform outcomes are still to be implemented for some important areas, including pharmacy, architects and legal practitioners. The Council identified potential compliance questions following some governments' reform activity, including ownership restrictions for dental and optometry practices, the registration of occupational therapists and speech pathologists, and restrictions on advertising by lawyers in relation to personal injury services. The Council will monitor these issues over the period to the 2003 NCP assessment.

## Primary industry matters

Legislation regulating primary industry activity forms a significant part of governments' legislation review and reform obligations. Governments have had a long history of involvement in the marketing of agricultural products, particularly via Commonwealth Government underwriting of export receipts and domestic price setting. Some arrangements were phased out in the 1970s and 1980s following evidence that they contribute to production inefficiencies and impose significant costs on taxpayers and domestic consumers.

When governments began to review their legislation under the NCP program, there were statutory marketing authorities (or 'single desks') for many



agricultural products, including wheat, coarse grains and oilseeds, dairy, horticulture, rice, potatoes, eggs, poultry meat and sugar. All governments repealed arrangements controlling the pricing and supply of drinking milk from 30 June 2000, following the national agreement on dairy industry deregulation supported by a financial adjustment assistance package. Queensland removed supply and marketing restrictions for eggs in 1998. It also ended its export marketing monopoly for wheat and barley on 30 June 2002. Victoria deregulated its barley marketing arrangements from July 2001. Industry-wide poultry meat pricing and supply arrangements have been replaced in several jurisdictions by arrangements providing for growers to negotiate collectively with individual processors under either authorisation by the Australian Competition and Consumer Commission (ACCC) or specific regulation.

The relevant NCP feature of most single desks is the monopoly (a domestic sales monopoly, an export sales monopoly) they hold on selling an agricultural product grown within their jurisdiction. A single desk with a domestic sales monopoly usually has rights to acquire produce from farmers to prevent them selling their produce interstate. It generally pays farmers the average price it receives less its marketing and transport costs. It also usually determines such matters as crop varieties planted and quality grades. Single desks thus require individual farmers to give up a considerable degree of choice in how they operate their business, what they produce and how they market their production.

A prominent issue in reviews of State agricultural marketing arrangements is the review of the Commonwealth wheat marketing arrangements and the Commonwealth Government's response to that review. The Commonwealth did not implement recommended reforms to partly liberalise restrictions on exports. Further, the Commonwealth has said that a further review in 2004 will not apply NCP principles. Some State reviews and some government responses have drawn a link between the reform of State marketing arrangements and the reform of wheat marketing arrangements. Consequently, inadequate application of NCP obligations by the Commonwealth to wheat marketing arrangements has not merely meant a lack of reform in the public interest for these arrangements; it has also meant that some State reforms in the public interest also have not proceeded. Despite the apparent Commonwealth reluctance to apply NCP principles to wheat marketing arrangements, the Council does not consider that inappropriate retention of these restrictive arrangements is a reason to delay reform in relation to State marketing arrangements.

Governments are also using the NCP program to evaluate the merits of legislative restrictions on agriculture-related matters, including agricultural and veterinary chemicals, bulk handling and storage, food standards, quarantine arrangements and veterinary services. They are also using the NCP program to consider how best to improve the efficiency of activities such as mining, fishing and forestry, and in the case of forestry and fishing, how best to achieve the sustainable development of the resource.

While the review and reform of legislation that restricts competition is the major NCP obligation relevant to primary industries, governments also face other obligations for some primary industries. Governments' operation of forestry businesses means that the application of competitive neutrality principles is important in that sector. The structural reform obligation is relevant where governments privatise former publicly owned bodies. Queensland, for example, has met its structural reform obligations in relation to the privatisation of the Queensland Sugar Corporation, particularly by devolving the corporation's former regulatory functions to local cane production boards and the Sugar Industry Commissioner.

## Retail and related matters

Governments have considered under the NCP a number of restrictive regulations relating to business conduct (including restrictions on the ability of businesses to enter new markets).

- Prescribed shop trading hours prevent sellers from trading at the times they consider appropriate. Trading hours arrangements also discriminate among sellers on the basis of location, size or product sold. Most governments have now deregulated trading hours arrangements, either by removing restrictions from relevant legislation or by providing broad exemptions from existing legislative restrictions. Significant restrictions now remain only in Western Australia and South Australia.
- Liquor licensing laws frequently preclude entry by responsible sellers and favour some sellers at the expense of others. In some jurisdictions, new entry is frustrated because incumbents are able to claim that they already provide an adequate service to the local area. Licensing tests that focus on the public interest via nondiscriminatory provisions aimed at harm minimisation and community amenity, without references to outlet density or competitive effects on incumbents, are unlikely to contravene NCP principles and should provide considerable freedom to address social concerns. Liquor licensing legislation was still under review in several jurisdictions at the time of this 2002 assessment.
- Legislation governing petrol retailing restricts entry and reduces the ability of sellers to raise and lower prices.
- Fair trading and consumer protection legislation regulates aspects of business conduct, including advertising, dealings with customers and information provision. Fair trading restrictions are in the public interest where they reflect provisions of the *Trade Practices Act 1974*.

## Transport (including taxis)

Review and reform of transport regulation forms a significant proportion of governments' legislation review and reform activity. The regulation of road

transport, rail (mainly rail safety), sea transport (and port regulation) and air transport and related services has been tackled under the NCP. Taxi and hire car licensing has been perhaps the most difficult transport regulation matter. The significant competition issue here is the restriction on supply imposed by the strict regulation of taxi and hire car licence numbers. In recent years, the release of new licences in all jurisdictions has been limited (even zero in some jurisdictions). Restricting the number of providers in a consumer service industry, which the licensing restrictions do, is an unusual legislative approach. The result in this case has been a long-term decline in the number of licences relative to population, a steady increase in the real value of taxi licences and, consequently, a rise in costs to passengers. Evidence from NCP reviews of taxi licensing confirms that supply restrictions are not in the public interest.

No government has made major progress in addressing this issue, although some have begun to tackle licensing restrictions. The Council will further consider governments' progress in this area in the 2003 NCP assessment. It will look for governments to address supply restrictions by the time of the 2003 assessment, such that the regulatory arrangements in place deliver the best outcome for the community.

## Compulsory insurance

Governments have considered under the NCP their approaches to regulating compulsory insurance activity, including arrangements for workers compensation, third party motor vehicle and professional indemnity insurance. The major NCP question is the means of provision of these types of insurance: either statutory monopoly underwriting by a government-owned body, or competitive provision via private underwriters. Insurance markets are experiencing considerable uncertainty and governments are introducing or considering introducing regulatory changes to reduce uncertainty and to slow the growth in premiums. In some cases, these changes are impinging on related activity such as personal injury services provided by the legal profession.

Changes in the insurance industry and its regulation are continuing in 2002-03. These changes will have ramifications for the entire insurance sector, including insurance provided by statutory monopoly (which is the Council's major interest). This environment of change is not conducive to finalising the NCP assessment of the arrangements for delivering workers compensation, third party motor vehicle and professional indemnity insurance at this time. The Council will therefore assess governments' compliance in these areas in 2003.

The Council believes that jurisdictions' consideration of the appropriate means of regulating insurance would be assisted if governments were to undertake a comprehensive national review of the economics of insurance markets and the regulation of the various insurance activities. The Council considers such a review would assist understanding of the links between

insurance markets and of the reasons for the recent premium increases, and would also help assessment of the effects of reforming tort law. Such an inquiry would further enable all jurisdictions to contribute to a better understanding of the merits of monopoly and private provision of workers compensation, third party motor vehicle and professional indemnity insurance.

## National reviews

Where a review raises issues with a national dimension or effect on competition (or both), the CPA provides that the government responsible for the review will consider whether the review should be undertaken on a national (interjurisdictional) basis. There are currently 12 national reviews, encompassing some significant areas of regulation. Nine reviews have been completed, with the remaining three in progress. In several cases, however, governments are still to complete the implementation of reforms recommended by the national reviews.

Delays in completing national review and reform activity often arise as a result of drawn-out interjurisdictional consultation. Further, sometimes State and Territory reform activity is delayed by having to wait for the conclusion of the national process. The Council accepts there is benefit in thorough investigation of relevant issues and adequate interjurisdictional consultation. Moreover, the national focus has improved the consistency of regulation among jurisdictions. The Council would be concerned, however, if the current processes were not concluded within a reasonable period to enable reform of State and Territory legislation to proceed.

The Council considers that reform activity in relation to five national reviews is substantially complete. First, the review of the Mutual Recognition Agreement found the scheme is working well. It made 30 recommendations, which jurisdictions substantially support. Second, the review of food regulation led to the development of model food legislation, which has now been adopted in most jurisdictions and will be introduced in the remaining jurisdictions in 2002. Lastly, governments have agreed to firm transitional arrangements for completing the reform of radiation protection legislation, architects regulation and petroleum (submerged lands) legislation. In each case, the transitional reform path extends beyond 30 June 2002. In the 2003 NCP assessment, the Council will consider governments' progress with implementing reform outcomes arising from the remaining national reviews. It will also monitor adherence to the transitional implementation arrangements in 2003.

## Reform of government businesses

Governments are continuing to reform their business activities under the NCP. This is occurring via the application of competitive neutrality

principles, the structural reform of public monopolies and monopoly prices oversight arrangements. Significant publicly owned businesses in all jurisdictions apply competitive neutrality principles. Each government also has a mechanism for investigating complaints that their businesses (and those of local governments within their jurisdiction) are not implementing appropriate competitive neutrality arrangements. These bodies receive few complaints about competitive neutrality implementation.

Most governments are continuing to address business structure issues. Victoria released a policy statement on forests in which it undertook to establish a new commercial entity (VicForests) applying competitive neutrality principles, including the identification and direct funding of community service obligations and market-based sawlog pricing and allocation. Western Australia is considering a consultant's review of competitive neutrality in native forest timber operations. Queensland is establishing a new statutory authority to undertake the regulatory functions currently administered by WorkCover Queensland, to enable WorkCover Queensland to more effectively apply competitive neutrality principles.

Some significant government business activities do not apply competitive neutrality principles, however. Some businesses (such as universities), while government owned, are not subject to direction by government; the NCP obligation in these cases is for governments provide a statement of competitive neutrality obligations to the business to encourage application of the principles. Additional measures that governments could take to enhance competitive neutrality implementation by universities include staff and information assistance. Western Australia does not require its health businesses to apply competitive neutrality principles, which is consistent with the NCP to the extent that the costs of implementation outweigh the benefits. The Productivity Commission's monitoring of the financial performance of a range of Commonwealth, State and Territory government trading enterprises revealed that some businesses are not earning commercial rates of return. This monitoring work also raised questions about the costing, funding and transparency of arrangements for delivering community service obligations and those for estimating debt guarantee fees. The Council will monitor governments' progress in these areas in future NCP assessments.

## The Council's approach to recommending competition payments

Under the Agreement to Implement the National Competition Policy and Related Reforms, the Commonwealth Government makes payments to the States and Territories as a financial incentive to implement the NCP and related reform program. The payments recognise that the States and Territories have responsibility for significant elements of the NCP, yet much

of the financial dividend from the economic growth arising from the NCP reforms accrues to the Commonwealth through the taxation system.

Competition payments in 2002-03 are approximately \$740 million, distributed to the States and Territories on a per capita basis. The Federal Treasurer decides on the level of payments to each State and Territory after considering advice from the Council on jurisdictions' progress in implementing the NCP and related reform program. The Council may recommend a reduction or suspension of payments where it assesses that governments have not implemented the agreed reform program. The Council also assesses the Commonwealth's progress, but the Commonwealth does not receive payments.

The Council is independent of governments, but works with them closely in interpreting reform obligations and assessing progress. The Council's focus is on encouraging implementation of beneficial change, rather than on recommending reductions in competition payments. Even if the evidence at the time of each NCP assessment shows that a reform is not fully implemented, the Council does not make adverse payments recommendations if the relevant government is moving towards implementation or has a viable and timely proposal for addressing the noncompliance. The Council will tighten this approach for the 2003 NCP assessment, however, reflecting the need to finalise legislation reviews and implement appropriate reforms by June 2003.

Following CoAG's review of the NCP in 2000, Heads of Governments provided guidance to the Council on how it should approach recommendations on competition payments for each State and Territory. They directed the Council, when assessing the nature and level of any financial penalty or suspension, to take into account:

- the extent of the relevant State or Territory's overall commitment to the implementation of the NCP;
- the effect of one State or Territory's reform efforts on other jurisdictions; and
- the impact of a State or Territory's failure to undertake a particular reform.

Where the Council recommends a penalty, it must publish its reasons in the assessment report.

The Council interprets this guidance as meaning that individual minor breaches of reform obligations should not necessarily have adverse payments implications where the responsible government has generally performed well against the total NCP reform program. Nevertheless, a single breach of obligations in a significant area of reform may be the subject of an adverse recommendation, especially where the breach has a large impact and/or an adverse impact on another jurisdiction. Further, the Council interprets the CoAG guidance as suggesting that the quantum of any payments recommendation should bear some relationship to the responsible

government's overall performance in reform implementation, the impact of the breach of reform obligations and whether there are adverse impacts on other jurisdictions.

## Progress by each jurisdiction

### New South Wales

- New South Wales has been a leading State in NCP energy markets reform and, with one exception, has met all obligations relating to national electricity and gas reform for this 2002 assessment.

In 1996, New South Wales provided stimulus to national gas reform by legislating consistently with the work undertaken by the Gas Reform Task Force on developing a gas access code. Subsequently, all governments agreed to adopt this code with some refinements. New South Wales has:

- implemented and applied the National Gas Access Code and associated legislation;
- removed significant barriers to national free and fair trade in gas;
- removed regulatory restrictions on the use of gas;
- adopted uniform national pipeline construction standards; and
- introduced contestability down to the household level, allowing customers to choose their gas supplier.

One outstanding issue is that New South Wales has extended a derogation from the National Gas Access Code relating to the treatment of some transmission pipelines as distribution pipelines for the purposes of the code. New South Wales did not secure Commonwealth agreement (as one party to the code) to continue the derogation. (The Commonwealth supported a three year extension rather than the five years proposed by New South Wales.) The Council understands that New South Wales and the Commonwealth are continuing to discuss this matter.

Regarding electricity reform, New South Wales has taken all actions necessary to introduce the national electricity market and has extended contestability down to the household level, allowing customers to choose their electricity supplier. New South Wales is participating with other relevant governments in a review of energy markets, to address outstanding issues identified by the Council in previous NCP assessments. These issues include developing a truly national grid, implementing full retail contestability and sunseting derogations to the National Electricity

Code. Other reform issues include streamlining national market institutional arrangements, improving the wholesale market pricing mechanism and introducing effective demand management mechanisms. The Council is concerned with ensuring New South Wales' Electricity Tariff Equalisation Fund is a transitional measure only and does not become a permanent feature of the national market. The Council will revisit all remaining issues in the 2003 NCP assessment in the light of the recommendations of, and governments' responses to, the Energy Markets Review.

- While progress by New South Wales on its water reform agenda is slower than expected, its efforts are generally satisfactory given the State's extensive consultation processes on environmental issues and its many stressed and overallocated river systems. A particular achievement is the move to independent price regulation for large parts of the urban and rural water industries. Urban two-part tariff reform for metropolitan service providers and most nonmetropolitan urban providers should be substantially complete by the time of the 2003 assessment. Water allocations (including for the environment) for most stressed and over-allocated systems will be in place in 10-year water sharing plans by December 2002. New South Wales will adopt a register of water allocations based on the land title register and run by Land and Property Information NSW.

The State's progress in adopting cost-reflective rural water pricing is satisfactory, although apparently slower than that of other jurisdictions because a date for achieving full cost recovery is not yet available. Nonetheless, New South Wales is adopting a transparent and independent process to ensure water prices reflect the costs of rural water supplies, including environmental costs. This approach to addressing environmental costs is more robust than in other jurisdictions. Assessment of progress is made complicated, however, because some costs of supplying water appear to be mixed with costs to the environment. The Council regards the separation of these costs (partly a matter of institutional reform) as a key next step in this area. The Council will assess progress in institutional reform in relation to the Department of Land and Water Conservation and State Water in 2003. The Council will reassess all aspects of cost-reflective rural water pricing in 2004.

- New South Wales has completed its national road transport reform agenda.
- New South Wales has a comprehensive legislation review program and has completed almost 80 per cent of its reviews of significant existing legislation. Reforms have been implemented for almost half of these priority reviews. All proposals for new legislation are tested for compliance with competition principles through a formal Cabinet Office process.
  - New South Wales has made good progress applying NCP reforms to the professions. New South Wales has completed review and reform activity in relation to the regulation of doctors, chiropractors,



osteopaths, physiotherapists, psychologists, security guards, motor vehicle dealers, property agents and hawkers. Reviews have been completed and reform activity appears to be on track in relation to the regulation of lawyers, nurses, commercial agents, conveyancers, employment agents, private inquiry agents, second-hand dealers, driving instructors and other occupations.

New South Wales has retained restrictions that mean only registered dentists can own dental practices and only registered optometrists can own optometry practices. The Council considers that these restrictions do not meet NCP obligations. It acknowledges that in both cases, however, there is a process for granting exemptions to these restrictions and that New South Wales has provided assurances that it will not use the requirement to obtain an exemption to protect incumbent business owners. The Council also has questions about restrictions imposed by New South Wales on advertising by lawyers in relation to personal injury services. The Council acknowledges this issue is related to ongoing work on insurance, and the Government's view that the restriction on legal advertising is necessary to ensure public liability insurance premiums are affordable. The Council will continue to monitor the impact of these restrictions and will consider them further in 2003.

- New South Wales has completed a review of its planning legislation and is progressing an extensive reform program. It has completed its review and reform of building legislation, while its review and reform activity relating to building trades and associated professional services (architects, surveyors and valuers) is near completion. The Council will finalise its assessment of the New South Wales Government's compliance with its NCP obligations in these areas in 2003.
- New South Wales has substantially reformed retail trading arrangements. Shop trading hours are effectively deregulated via a wide application of exemptions from the legislative restrictions. A review of a public needs test for new liquor outlets is underway, and assessment of review and reform progress in this area will be finalised in 2003. New South Wales has no other significant regulatory restrictions on retail trading.
- New South Wales did not include education legislation in its legislation review program. It has advised the Council, however, that its education legislation is subject to extensive alternative review processes that are either underway or have been recently completed.
- The Council questions the strength of the public interest case provided by New South Wales in support of racing industry legislation that requires bets with licensed bookmakers to be a minimum of \$200 and that also imposes restrictions on advertising by licensed bookmakers. The Council accepts, however, that the impact of the two restrictions is likely to be limited.

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- The Council has identified some problems with New South Wales' legislation review and reform performance in primary industries. The Council does not consider that review and reform activity relating to grain marketing arrangements meets NCP obligations. The Council notes that New South Wales has legislated the removal of restrictions on vesting powers in September 2005, but considers that the processes involved and the delays in achieving these reforms are not consistent with the interests of the community or producers. Similarly, the Council considers that the New South Wales response to the review of poultry meat marketing arrangements does not meet NCP obligations. Review and reform activity for the rice industry has been prolonged, although the Council accepts that, at the time of this assessment, the Commonwealth has responsibility for progressing reform in this area. On the other hand, reform of the dairy industry was a considerable achievement, review and reform activity for agriculture-related products appears to be progressing well, and review and reform of regulations governing veterinary surgeons also appears to be on track. The Council will finalise assessment of the application of NCP principles to the fishing and forestry sectors in 2003.
  - The review of taxi and hire car regulation in New South Wales made recommendations that favour a phased approach to reform, recognising the close relationship between taxi and hire car services. There is a question about whether these recommendations constitute sufficient reform in the community interest, because the recommendations, even if fully implemented, may do little more than address future demand for taxi services. In any case, New South Wales is yet to implement the recommendations fully. It has agreed to re-examine taxi and hire car regulation over 2002-03, and the Council will revisit this issue in the 2003 assessment.
  - New South Wales continues to meet its obligations under the Conduct Code Agreement.
  - New South Wales implements its prices oversight obligations through the Independent Pricing and Regulatory Tribunal (IPART) established in July 1996 as the successor to the New South Wales Government Pricing Tribunal. IPART is empowered to determine maximum prices and/or periodically review the pricing policies of declared government-owned monopoly services. IPART also regulates gas and electricity tariffs and third party access to networks in New South Wales, and advises the Government regarding complaints that significant government businesses are not applying competitive neutrality principles.

New South Wales is promoting competitive neutrality reform. It expects all government businesses that undertake significant business activities within the general Government sector to implement competitive neutrality principles. Individual government businesses seeking exemptions from implementing competitive neutrality requirements bear the onus of demonstrating that the costs would exceed the benefits.

New South Wales has corporatised many public trading enterprises and applied a comprehensive Commercial Policy Framework designed to mirror the disciplines faced by a private sector firm in a competitive market. The commercial activities of general Government sector agencies are required to adopt competitive neutrality pricing principles, unless a net community benefit for doing otherwise can be demonstrated.

For the purposes of the 2002 assessment, New South Wales has not met NCP obligations in relation to:

- an extension for five years of a derogation against the National Gas Access Code;
- ownership restrictions in dental and optometrist regulation;
- vesting arrangements for grains;
- arrangements regulating the poultry meat industry;
- provisions affecting activity by bookmakers; and
- taxi and hire car regulation.

Further, in the area of water reform, New South Wales is in the process of finalising 39 water sharing plans that will set water property right entitlements and environmental allocations for the next 10 years. The Council has obtained significant assurances from New South Wales regarding implementation of the water sharing plans and will conduct a NCP supplementary assessment before the end of 2002 to assess compliance of these plans with CoAG commitments. The supplementary assessment may have implications for NCP payments for New South Wales in 2002-03. In all other areas, completed reform activity has met NCP obligations and New South Wales has made substantial progress against the overall NCP reform agenda.

In making its recommendations on competition payments, the Council has taken account of the State's considerable reform progress and successes, as a reflection of a commitment to NCP reform, and the likely impact of reform failures. Balanced against this progress, and given the Government's assurances on the significant areas of noncompliance, the Council considers that the noncomplying matters identified in this assessment do not warrant an adverse recommendation on payments for 2002-03 (noting the supplementary water reform assessment above). The Council will consider these areas of NCP noncompliance again in 2003, along with any further reform failures and the State's overall progress with reform implementation. The Council notes that New South Wales faces a difficult challenge in completing reform implementation for its legislation review and reform program by 2003.

## Victoria

- **Victoria has been a leading state in NCP energy markets reform and, with one exception, has met all obligations under the national electricity and national gas reform agreements for the purposes of this assessment.**

Victoria has now almost completed reform of its gas industry. It divided the then state-owned gas transmission, distribution and retailing activities into separate corporations, and privatised the three stapled gas distribution/retail businesses. The former gas transmission corporation became Transmission Pipelines Australia (and was privatised in 1999) and the independent system operator VENCORP. Victoria has:

- implemented and applied the National Gas Access Code and associated legislation;
- removed significant barriers to national free and fair trade in gas; and
- adopted uniform national pipeline construction standards.

Victoria deferred full retail contestability from 1 September 2001 to 1 October 2002. According to the Government, the deferral is the result of delays in the development of systems and processes necessary to manage customer transfers and metering data. Victoria stated that it amended its timetable following consultation with all jurisdictions but without the formal approval of all Ministers as required by NCP gas reform agreements. The Council considers that Victoria has not fully met its national gas reform obligations.

Victoria has taken all actions necessary to introduce the national electricity market and has extended contestability down to the household level, allowing customers to choose their electricity supplier. Victoria is participating with other relevant governments in a review of energy markets, to address outstanding issues identified by the Council in previous assessments. These include the development of a truly national grid, the implementation of full retail contestability and the sunsetting of derogations to the National Electricity Code. Other reform issues include streamlining national market institutional arrangements, improving the wholesale market pricing mechanism and introducing effective demand management mechanisms. The Council will revisit all of these outstanding issues in the 2003 NCP assessment in the light of the recommendations of, and governments' responses to, the Energy Markets Review.

Victoria's approach to meeting community service obligation objectives by providing rebates for regional customers faced with higher distribution charges minimises adverse impacts on competition and provides a lead to other governments in implementing policies to achieve social objectives that are compatible with national electricity market objectives. Victoria's approach to the regulation of retail prices, which recognises the need to

provide 'headroom' in regulated prices to facilitate new entry, should promote competition over time.

- Victoria has a strong record in property rights and most pricing aspects of water reform. Key advances include the separation of bulk and retail water suppliers in Melbourne, and the replacement of water charges based on property valuations with two-part charges comprising a fixed fee per property and a water usage-based charge. Victoria's water reforms have delivered significant benefits, particularly to small businesses, with water bills decreasing by as much as two-thirds after pricing based on property value was replaced with consumption-based pricing. Victoria has effectively implemented cost-reflective pricing in rural water supplies, has had properly assigned property rights (separate from land title) in rural water in place for some time and is progressively removing impediments to trade in water rights. The Victorian Government has made progress in defining the involvement of the Essential Services Commission in water issues: key objectives include a financially viable water industry, and the consideration of environmental and social obligations.

The Council is concerned, about Victoria's approach to ensuring adequate allocations of water for the environment, especially for stressed and overallocated systems. Victoria has made progress on this issue for this 2002 assessment and is beginning to deliver significant outcomes for the environment. The 2002-03 State Budget provided \$10.6 million over three years for the Victorian River Health Strategy. Victoria provided \$15 million in a joint fund with South Australia to achieve an additional 30 gegalitres of environmental flow for the River Murray. It has budgeted \$77 million for the Wimmera-Mallee pipeline to deliver environmental flows for the Wimmera and Glenelg rivers, and \$12.8 million to address the health of the Gippsland Lakes. In addition, Victoria and the Council have agreed to a set of measures that will ensure a better approach to environmental allocations in the future.

- Victoria has completed its national road transport reform agenda.
- Victoria has a comprehensive legislation review program. It has completed all of its reviews of significant existing legislation, and implemented reforms for almost 60 per cent of these priority reviews. All proposals for new legislation are tested for compliance with competition principles via an NCP impact assessment. The Department of Treasury and Finance advises the Cabinet on NCP issues and assists Victorian Government agencies with NCP implementation.
  - Victoria has made excellent progress in applying NCP reforms to the professions, having made substantial progress early in the NCP program. Early reforms in the health sector included the removal of unnecessary restrictions on commercial operation (including restrictions on advertising and ownership of practices). Reforms were completed for chiropractors and osteopaths in 1996, optometrists and chiropodists in 1997, and physiotherapists in 1998. Legal professional regulation was the subject of new legislation that removed many

barriers to competition, including the distinction between solicitors and barristers, and the prohibition on non-lawyer conveyancers. Victoria has since completed satisfactory review and reform activity in relation to the regulation of dentists, doctors, nurses, psychologists, traditional Chinese medicine practitioners, driving instructors, motor vehicle dealers, second-hand dealers, employment agents and commercial agents. Reviews have been completed and reform activity appears to be on track in relation to the regulation of security guards, property agents and private inquiry agents.

- Victoria has satisfactorily completed review and reform of regulation of electricians and refrigeration mechanics. Review and reform of its planning and environmental legislation, building regulation, the regulation of associated professional services (architects and surveyors) and the regulation and other building trades appears to be progressing well and will be assessed again in 2003.
- One of Victoria's notable achievements is the removal in 1996 of restrictions on shop trading hours. This change has provided greater flexibility to businesses and choice to consumers. There has also been extensive change to liquor licensing regulations, with significant streamlining of on-premises licensing requirements and the phasing out of the limit on a single licence holder to a maximum of 8 per cent of the total number of licences.
- Victoria has also completed review and reform activity for education, vocational training and child care services.
- Victoria reviewed the *Club Keno Act 1993* in 1997 but has not yet announced its response. Victoria is to review its gambling legislation in 2003, which should provide an opportunity to address this matter. Victoria will need to finalise its approach to this legislation by the 2003 NCP assessment to comply with its NCP obligations.
- Victoria's barley industry review and associated reform placed it at the forefront of applying NCP principles to statutory marketing arrangements. Together with South Australia, it reviewed arrangements for barley marketing, finding no community benefit case to support the requirement that growers sell their produce through a statutory marketing authority. Following consultation with the industry, the review process culminated in deregulation of the domestic barley market in July 1999 and the export market in July 2001. Victoria also played a leading role in the national reform of the dairy industry. Review and reform activity for agriculture-related products appears to be progressing well, while review and reform of the regulation of veterinary surgeons also appears to be on track.
- Victoria has subjected its fisheries regulation to NCP review. This review made recommendations that are generally applicable to all Victorian fisheries as well as recommendations for specific fisheries.

The recommendations involve continuing work on fisheries matters, which the Council will monitor in the 2003 NCP assessment.

- Victoria’s forestry policy statement released in February 2002 signals the Government’s intention to separate forest policy, regulatory and commercial functions. The Government undertook to create VicForests as an independent commercial entity applying competitive neutrality principles, with sawlog prices set transparently using market processes. The Council will review Victoria’s progress in forestry in the 2003 NCP assessment.
- The review of taxi and hire car regulation in Victoria recommended deregulation facilitated by the buy-out of existing licences. Instead, Victoria is favouring a phased approach to reform, recognising the close relationship between taxi and hire car services and considering that a more gradual approach will help the taxi industry adjust to change. Measures include the introduction of new peak-period licences, progressive increases in the number of general licences and an independent review of hire car regulation. Apart from the Northern Territory, Victoria is the only jurisdiction which has as yet proposed a substantial reform package. The Council questions whether Victoria’s reforms are sufficient to address the community interest however, and will revisit this issue in the 2003 NCP assessment. Victoria also has restrictions on the licensing of tow truck operators, which it is considering via the NCP program.
- Victoria continues to meet its obligations under the Conduct Code Agreement.
- Victoria has actively promoted competitive neutrality reform for some time. It has corporatised or commercialised many of its government businesses and is ensuring the competitive neutrality elements are addressed in pricing and regulation. Victoria requires competitive neutrality principles to be applied to all government business activities where the benefits are expected to exceed the costs. The State has a good record in handling allegations that competitive neutrality principles are not being appropriately applied. Its complaints-handling body, the Competitive Neutrality Complaints Unit, has instituted processes to follow up complaints already upheld, to assist the implementation of remedies.

For the purposes of the 2002 assessment, Victoria has met all of its NCP obligations with two exceptions:

- the review and appropriate reform of taxi and hire car regulation (although Victoria has made a start with its 2002 reform package); and
- the deferral of retail contestability in gas without all other governments’ formal approval.

These issues aside, Victoria has substantially completed the total NCP reform agenda and its overall progress has been impressive.

Following some initial concerns about the area of water reform, the Council is now satisfied that the State's river health strategy provides the tools for Victoria to meet its water reform commitments in relation to environmental reforms for stressed rivers. The Council has obtained significant assurances from Victoria that key reforms will occur in this area by the time of the 2003 assessment. In 2003, the Council will assess Victoria's application of the river health strategy to a first round of five stressed river plans. To prepare for that assessment, the Council will work with Victoria to ensure these plans are developed in accordance with the proposed reform path.

The Council expects to be able to work with Victoria to resolve outstanding reform issues in taxi and hire car regulation, and anticipates that the Government will satisfactorily complete its remaining legislation review and reform obligations by the 2003 assessment. The Council also expects to be able to resolve the outstanding gas reform issue before the 2003 assessment.

In making its recommendations on competition payments, the Council has taken account of Victoria's considerable reform progress and successes as a reflection of a commitment to NCP reform, and the likely impact of reform failures. While the Victorian Government is still to fully address its NCP obligations relating to taxis and hire cars and to gas reform, the Council considers this does not warrant an adverse recommendation on payments for 2002-03.

## Queensland

- Queensland has made substantial progress with energy reform. With two exceptions, Queensland has met all obligations under the national electricity and national gas reform agreements for the purposes of this 2002 NCP assessment.

Queensland has:

- implemented and applied the National Gas Access Code and associated legislation;
- removed significant barriers to national free and fair trade in gas;
- removed regulatory restrictions on the use of gas; and
- adopted uniform national pipeline construction standards.

One outstanding issue is that Queensland deferred the introduction of full gas retail contestability from 1 September 2001 to 1 January 2003 without the consent of all governments, which is required by the NCP gas reform agreements. Queensland sought the consent of each government to this deferral and advised that all governments other than the Commonwealth have approved the amendments to its full retail contestability timetable.



The Council considers that Queensland has not fully met its national gas reform obligations.

Queensland joined the national electricity market by bringing forward the date for interconnection with New South Wales (via the Powerlink/Transgrid interconnector) to January 2001. Queensland has taken all other actions necessary to introduce the national market with one significant exception in relation to the implementation of full retail contestability. Queensland is participating with other relevant governments in a review of energy markets, designed to address outstanding issues identified by the Council in previous assessments. These include the development of a truly national grid, the implementation of full retail contestability and the sunseting of derogations to the National Electricity Code. Other reform issues include streamlining national market institutional arrangements, improving the wholesale market pricing mechanism and introducing effective demand management mechanisms. The Council will revisit all of these outstanding issues in the 2003 NCP assessment in the light of the recommendations of, and governments' responses to, the Energy Markets Review.

The electricity reform agreements include a firm commitment to allow all customers the choice of electricity supplier. Following analysis by PA Consulting and Queensland Treasury, Queensland has decided not to implement full retail contestability, at least for now. After revising its calculations following discussions with the Council, Queensland Treasury estimates that the costs of implementation (for the five-year period commencing 1 January 2003) will be \$141 million, with estimated benefits of \$52 million.

The Council considers, however, that the Queensland Treasury's estimate of the benefits of full retail contestability is grossly understated, principally because the final quantitative cost/benefit calculation does not account for the dynamic benefits of full retail contestability. While the Council accepts that it is difficult to estimate these benefits, it considers that the value of the dynamic benefits would be greater than \$89 million over five years (which is difference between costs and benefits according to the Treasury analysis). On this basis, the Council considers that the Queensland Government has not demonstrated that the costs of implementing full retail contestability outweigh the benefits. Accordingly, the Council considers that Queensland has failed to satisfy its NCP assessment obligation to implement full retail contestability. The Council considers this failure to be serious: full retail contestability is an important component NCP reform in the electricity sector. The Council notes that Queensland will consider over the next six months whether to extend contestability. The Council will address this issue for the final time in the 2003 NCP assessment, taking into account Queensland's and other governments' responses to the Energy Markets Review.

- Queensland's progress with water reform was slow early in the NCP program. The Government has made rapid progress more recently, however, and is on track with the CoAG timetable for reform. In some

areas, such as implementing full cost recovery among smaller local government water businesses, Queensland is ahead of other States. Queensland has adopted independent price regulation for parts of the urban water industries, although there are some gaps in coverage that need to be addressed. Queensland has made good progress in cost recovery in urban water and trade waste pricing. Urban two-part tariff reform is being applied progressively and is likely to take several years. The Townsville City Council, however, has not introduced two-part pricing. Queensland is making good progress in adopting cost-reflective rural water pricing.

Queensland has one stressed river system, the Condamine–Balonne Basin. Progress in addressing the basin's problems is extremely important and overdue. Queensland has commissioned a six-month independent review of the science of the Condamine–Balonne region, focusing on environmental allocations and salinity concerns, and has committed to implementing the review's recommendations. Queensland generally has a robust process for determining water allocations for its river systems. The Council will further assess Queensland's progress on this matter in a February 2003 NCP supplementary assessment. Queensland will adopt a register of water allocations based on the land title register, and run by the Land Titles Office.

- Queensland has completed its national road transport reform agenda.
- Queensland has a comprehensive legislation review program. It has so far completed over 70 per cent of its reviews of significant existing legislation, implemented reforms for almost 40 per cent of these priority reviews. Before consideration by the Cabinet, all proposals for new (including amending) legislation are tested for compliance with competition principles through a formal public benefit test.
  - Queensland has made good progress applying NCP reforms to the professions. Following a general review of its health and medical practitioner legislation, Queensland significantly reduced advertising restrictions and removed many other restrictions on the conduct of businesses supplying health professional services. Queensland's second-stage health practitioner reviews examined, among other things, ownership controls on optometrists, certain restrictions on dentists and core practice restrictions across professions.

Queensland is reviewing its legal practice regulations, including the requirements for admission to the legal profession, required qualifications for practice, ownership restrictions, the reservation of practice (including conveyancing) and professional indemnity insurance, and expects to have a Bill before the Parliament in 2002.

Queensland has completed satisfactory review and reform activity in relation to the regulation of osteopaths, psychologists, commercial agents, driving instructors, motor vehicle dealers, employment agents, hairdressers and hawkers. It has completed reviews and implemented

partial reforms in relation to the regulation of medical practitioners, chiropractors, dentists, nurses, optometrists, podiatrists, physiotherapists, lawyers, security guards, private inquiry agents, second-hand dealers, property agents and auctioneers. It appears to be on track with the implementation of outstanding reforms.

Queensland has retained, however, restrictions on the use of the titles 'occupational therapist' and 'speech pathologist'. The Council considers these title restrictions do not meet NCP obligations. Title restrictions are unlikely to provide significant consumer protection benefits in these two areas because most patients are referred via another health professional or use the services of therapists employed in health facilities such as hospitals, nursing homes, community health centres and rehabilitation services. Several other jurisdictions do not require occupational therapists to be registered and only Queensland requires speech therapists to be registered. The Council accepts, however, that the impact on competition of this restriction is likely to be insignificant.

- Queensland has satisfactorily completed the review and reform of its planning and building legislation. Review and reform activity for building and construction regulation, the regulation of associated professional services (architects, surveyors and valuers) and the regulation of associated building trades appears to be progressing well and will be assessed again in 2003.
- Queensland has made significant progress on retail trading matters. Restrictions on shop trading hours have been significantly relaxed in the populous south-east Queensland region and other major metropolitan regions. Remaining restrictions are subject to applications (for further deregulation) to an independent assessment process that takes into account NCP principles. In relation to liquor licensing arrangements, Queensland's specialist provider model requires a seller of take-away liquor to hold a general (hotel) licence, which means that operators of off-hotel outlets must conduct a primary hotel business. Queensland is the only jurisdiction to impose this type of restriction on operators of take-away liquor outlets. The Council considers that these restrictions in their current form do not meet NCP obligations; in particular, it is not clear that the restrictions are necessary to meet the Government's objective of minimising harmful consumption of alcohol. Queensland has no other significant regulatory restrictions on retail trading.
- Queensland has satisfactorily completed NCP reforms in relation to education and vocational training, and is making good progress in the review and reform of the regulation of child care services.
- Queensland's NCP reform of its dairy and grains regulation is a considerable achievement. Queensland met its dairy industry obligations after repealing its vesting, price-setting and quota provisions following the national agreement in 2000 to deregulate the

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industry. Queensland's export monopoly on barley and wheat expired on 30 June 2002.

- Queensland retained the single desk arrangements governing the marketing of sugar, while removing some restrictions on cane supply and milling. (The Commonwealth removed the tariff on imported raw sugar in 1997). Developments internationally are likely to bring pressures for further change in sugar industry arrangements.
- Queensland has completed a review of its fisheries regulation. This provided a framework for subsequent reviews of individual fisheries. The Council will review Queensland's progress in this area in 2003. Also in 2003, the Council will further consider Queensland's progress in applying NCP principles to forestry in 2003.
- Queensland's review of taxi and hire car regulation largely endorsed existing arrangements, contrary to the conclusions of all other NCP reviews. The Council does not accept that Queensland's review made a robust case for the retention of these arrangements, and regards the State as not having met its NCP obligations in this area. Queensland has agreed to re-examine taxi and hire car regulation over the current 2002-03 in the light of experience elsewhere in Australia, and the Council will revisit this issue in the 2003 NCP assessment.
- Queensland continues to meet its obligations under the Conduct Code Agreement.
- Queensland was one of the first jurisdictions to establish a competitive neutrality complaints mechanism. The Queensland Competition Authority, a body independent of the government, administers the mechanism, which became operational in 1997. The authority receives and investigates complaints from competitors of publicly owned businesses that are gazetted as significant business activities, where those complaints relate to a government businesses' payments of taxes or application of tax equivalent systems, debt guarantee fees and regulatory neutrality issues. The Premier and Treasurer, in consultation with the portfolio Minister, deal with complaints about other matters and may ask the authority to investigate these complaints. The authority also provides prices oversight of Queensland Government monopoly businesses and is the State regulator for third party access arrangements.

Queensland has achieved good progress in working with local governments to develop and apply appropriate NCP reforms. Local governments have a more extensive business role in Queensland than in other jurisdictions. Queensland has recognised this by setting aside a proportion of its competition payments for local governments that successfully implement NCP obligations, including competitive neutrality.

Queensland has reviewed the *Local Government Act 1993*, the *City of Brisbane Act 1924*, and all local government laws. Competitive neutrality reforms are also being implemented by local governments, with the initial

focus on the large businesses operated by the 18 largest local governments. Competitive neutrality reforms are now almost completed for these businesses, and the focus of Queensland's competitive neutrality reforms at the local government level has moved to smaller businesses. The overall current status of local governments' competitive neutrality implementation is that:

- eight of the large 'type 1' businesses run by local governments have been commercialised and have implemented full cost pricing;
- 13 of the 21 medium-size 'type 2' businesses have implemented all of the elements of full cost pricing; and
- 50 of the 149 small 'type 3' businesses have applied all elements of full cost pricing.

For this 2002 NCP assessment, Queensland has yet to satisfy the Council that it has met NCP obligations in relation to:

- the application of two-part tariffs for urban water supplies in Townsville;
- the requirement to address the stressed condition of the Condamine–Balonne river system;
- the deferral of retail contestability in gas without all other governments' formal approval;
- full retail contestability in electricity;
- registration requirements for occupational therapists and speech therapists;
- liquor licensing arrangements that require the operator of a take-away outlet to hold a hotel licence and operate a hotel; and
- taxi and hire car regulation.

In all other areas, completed reform activity has met NCP obligations and Queensland has made significant progress against the total NCP reform agenda.

In making its recommendations on competition payments, the Council has taken account of Queensland's considerable reform progress and successes as a reflection of its commitment to NCP reform, and the likely impact of reform failures. The Council recommends retaining the ongoing payment reduction of \$270 000 imposed in the 2001 NCP assessment (for Townsville City Council's failure to satisfy the NCP requirements in respect of two-part water pricing reform). Queensland has referred a second cost-effectiveness study commissioned by Townsville City Council to the Queensland Competition Authority. This study suggests that there is no net benefit from introducing two-part pricing in Townsville. If the authority finds that this second review is robust, then the Council will recommend that the payment reduction be

immediately lifted. If the authority finds that the review is not robust, then the payment reduction should continue.

In relation to the outstanding requirement to address the stressed condition of the Condamine–Balonne river system, the Council will further examine Queensland's progress (including the conduct of the Cullen review and implementation of recommendations) in a February 2003 supplementary NCP assessment. This supplementary assessment may have implications for 2002-03 NCP payments.

The Council considered Queensland's position on retail contestability in electricity and the implications for payments recommendations at some length. The Council regards Queensland's position as, first, inconsistent with reform obligations and the approach adopted by other national market participant governments and, second, as a serious reform failure with significant adverse implications for all participant governments. The Council considers that this reform failure warrants a substantial reduction in competition payments, to apply until Queensland introduces full contestability. The Council notes, however, Queensland's continuing work to assess the implications of further reductions to the threshold for contestability. The Council also notes that there is an opportunity for all governments to amend the electricity reform agreements before the 2003 NCP assessment. Governments may choose to do this to relieve Queensland of obligations under the electricity agreements, having regard to Queensland's view that a net benefit has not been established for the introduction of full retail contestability. Accordingly, the Council makes no recommendation on payments on this issue in this assessment. In the absence of any agreement by governments relieving Queensland of its contestability obligations, the Council will assess Queensland (along with other relevant governments) on this issue for a final time in 2003 and will recommend on payments at that time, as appropriate.

Given the Queensland Government's assurances on the other significant areas of noncompliance, the Council does not consider that a further adverse recommendation on payments for 2002-03 is warranted. The Council will reassess Queensland's remaining areas of noncompliance again in 2003, along with any further reform failures and the State's overall progress with reform implementation. The Council notes that Queensland faces a substantial task in completing appropriate reform implementation for its legislation review and reform program by 2003.

## Western Australia

- Western Australia has made good progress with gas reform, but has achieved little in electricity reform. The State has met all obligations under the national gas reform agreements for the purposes of this assessment. It has:

- implemented and applied the National Gas Access Code and associated legislation;
- removed significant barriers to national free and fair trade in gas;
- removed regulatory restrictions on the use of gas;
- adopted uniform national pipeline construction standards; and
- removed legislative barriers preventing contestability down to the household level, establishing a framework to allow customers to choose their gas supplier.

Western Australia is not a participant in the national electricity market and does not have specific obligations under the NCP electricity reform agreements. Nonetheless, some reform obligations in electricity arise from the general NCP agreements. The current Western Australian Government is committed to addressing longstanding reform issues in the electricity industry and implementing a reform program through the application of general NCP principles.

While Western Australia has implemented a third party access regime for the transmission and distribution network of its electricity corporation, Western Power, the Council recently considered this regime and concluded that it was not effective against the principles of clause 6 of the CPA. The regime has had little pro-competitive impact. Western Australia is conducting a comprehensive review of the structure of Western Power, consistent with the CPA clause 4 framework. Appropriate reform in response to this review will constitute one of Western Australia's most important NCP reforms. The Council will assess Western Australia's progress in electricity reform again in 2003.

- Western Australia is making good progress with its water reform obligations and has demonstrated a strong commitment to the reform process. Institutional reform has been progressed, with the adoption of independent price regulation for large parts of the urban and rural water industries. Western Australia has made good progress in cost recovery in urban and rural water pricing. It has no stressed river systems and continues to make good progress against the 2005 deadline for appropriately assigning water allocations (including environmental allocations). The State has been deficient, however, in failing to implement the intergovernmental National Water Quality Management Strategy. The Council has agreed on a remedial program with Western Australia, which will formally report to the Council on progress at the end of December 2002 and March 2003. The Council will closely monitor implementation of the program and reassess progress in the 2003 NCP assessment.
- Western Australia still has seven elements of the 1999 and 2001 NCP road transport reforms programs to fully implement. It expects to implement most of these by October 2002, although processes to enable nationally

consistent heavy vehicle registration are not expected to be in place until mid-2003. Legislation providing for this registration process was before the Parliament when the Parliament was prorogued for the 2001 State election, so it must be reintroduced.

- Western Australia has a comprehensive legislation review program. It has so far completed almost 80 per cent of its reviews of significant existing legislation, but implemented reforms for less than 20 per cent of these priority reviews. All proposals for new legislation are tested for compliance with competition principles through a process managed by the Department of Treasury and Finance. The department liaises with agencies developing new legislation with the potential to restrict competition, to ensure the legislation is reviewed. Further, the department can present its advice directly to the Cabinet if it considers competition issues are not appropriately addressed.
- Western Australia is continuing to progress NCP reforms to the regulation of the health professions. Following the State's health practitioner legislation review, the Government released a policy framework for its new health practitioner legislation. When implemented, this framework will remove significant restrictions on advertising, business structure and business ownership. The Government has approved the drafting of template legislation.

Western Australia is retaining existing practice protections for health professions for three years from June 2001, while it conducts a review to identify core practices that warrant restriction. The Council accepts that the core practices model is a significant reform, requiring extensive consultation, and that potential public safety risks justify retaining the current provisions for the three-year period nominated by Western Australia. The Government is also retaining restrictions on the use of the 'occupational therapist' title. The Council considers that this restriction does not meet NCP obligations. Western Australia has undertaken to consider its approach to regulating occupational therapists via the core practice review process. In 2003, the Council will consider Western Australia's progress with its core practices review to ensure it remains on track for completion by June 2004.

Western Australia has made good progress applying NCP reforms to other professions and occupations. It is drafting legislation to remove restrictions on legal practice business structures and will consider other reforms when its review of legal practice (currently close to completion) is finished. Reviews have been completed and reform activity appears to be on track in relation to the regulation of inquiry and security agents, motor vehicle dealers, pawnbrokers and second-hand dealers, auctioneers, settlement agents and participants in the boxing industry. Reviews are close to completion for employment agents, hairdressers and real estate agents. Western Australia is still to review the regulation of driving instructors. In 2003, the Council will



finalise the assessment of compliance in those areas where review and reform activity is not complete.

- Western Australia has consolidated and reviewed its town planning legislation. Review and reform activity for the regulation of associated professional services (architects, surveyors and valuers) appears to be progressing well. Similarly, reviews of legislation regulating the building and related trades are either complete or close to completion. Western Australia has also made progress in reviewing and reforming education and vocational training legislation. The Council will finalise its assessment of Western Australia's compliance with its NCP obligations in these areas in 2003.
- Western Australia has significant remaining restrictions on competition in relation to retail trading hours and liquor licensing. Trading hours are restricted on week days, and Sunday trading by large retailers is prohibited outside tourist precincts. Western Australia's review process, which commenced in 1999, has been drawn out and the Government is still to consider the review report. The Western Australian Government has acknowledged that there is some support in the community for removing trading hours restrictions and a case for reform. It has undertaken to implement reforms during 2002-03. No details of these reforms are yet available; the Government is to examine these via a Ministerial task force. Western Australia's liquor licensing legislation contains a needs test, whereby the licensing authority can reject a licence application because there are already sufficient existing liquor outlets in the affected area. The legislation also distinguishes between hotels and liquor stores, with only hotels able to trade on Sundays. Western Australia's review of liquor licensing legislation is complete and its recommendations appear to address NCP concerns. The Government has not yet announced its response to the review recommendations, but has recognised the need for reform and will review liquor licensing arrangements during 2002-03.
- Western Australia's petroleum pricing legislation requires that retail petrol prices be fixed for at least 24 hours, and that a minimum wholesale price be set for motor fuels. These restrictions are intended to encourage stability and transparency in pricing. Monitoring of petrol prices by the ACCC suggests, however, that the Act has no consistent effect on prices and that prices may even be higher in Perth than in some other capitals. The Council will reassess Western Australia's compliance with NCP principles in each of these areas in 2003.
- Western Australia still has some way to go to meet legislation review and reform obligations in most areas of primary industry. The *Grain Marketing Act 1975* provides an export monopoly in the marketing of coarse grain. The Government, while committing to deregulation of the monopoly, will do so only when the Commonwealth removes the Australian Wheat Board monopoly. Western Australia has agreed to establish arrangements such that, until deregulation, the monopoly

(held by the Grain Pool of Western Australia) will operate only in export markets where there is genuine market power attributable to the single desk.

Western Australia's 1996 review of the *Chicken Meat Industry Act 1977* recommended that growers be able to opt out of industry-wide negotiations on supply fees and that controls on entry to the processing and growing sectors be removed. The Government expects to introduce legislation to implement the recommendations of its review later in 2002. Review and reform activity in relation to potato supply and marketing is similarly drawn out, with Western Australia recently recommencing its consideration of this issue.

The State is the only jurisdiction to retain egg marketing regulation, but is considering options for removing this regulation. Western Australia also recently restarted a review of bulk handling arrangements, focusing on the anticompetitive effects of restrictions on how Cooperative Bulk Handling Limited prices its services. The State's review and reform of the regulation of veterinary surgeons appears to be on track, and Western Australia reformed its dairy regulation following the national decision to deregulate the industry.

- Western Australia has completed reviews of the two major Acts regulating its fisheries and has released its review reports. The more significant questions arising from these reviews relate to the western rock lobster and pearl fisheries. The Government expects to have implemented pro-competitive reforms in the rock lobster fishery by the start of the 2003 season. The review of this fishery also signalled potential benefits from introducing an output-based management regime. In relation to the pearl fishery, the Government accepted most of the recommendations of its NCP review, but not proposals to remove limits on hatchery quotas and to auction wildstock quotas. The Government indicated that it would revisit these matters in 2005 when the current hatchery policy expires. The Council will consider these issues in the 2003 NCP assessment. The Council will also consider Western Australia's progress on forestry at this time, noting that the Government is currently considering a consultant's review of the application of competitive neutrality principles to native forest timber operations.
- Western Australia has completed a review of its *Taxi Act 1994*, and subsequently has implemented limited reform. It allows (virtually) free entry to the hire car industry, although it imposes several other regulatory restrictions that constrain the ability of hire cars to compete with taxis. The Government released 60 new taxi licences in 2000, but appears to have made no further attempt to release licences. It is now proposing an industry forum to evaluate the community benefit from further relaxation of supply restrictions. The Council considers that this process may lead the interests of the industry to subsume the overall community interest. Given the reform outcomes to date, the

Council does not consider that Western Australia has complied with its NCP obligations relating to the taxi and hire car industry. Western Australia provided some assurances during the 2002 NCP assessment that it wants to progress reform, including improving driver remuneration and career opportunities. The Council will reassess Western Australia's progress in the 2003 NCP assessment.

- Western Australia continues to meet its obligations under the Conduct Code Agreement.
- The Government has committed to the establishment of an independent economic regulator with jurisdiction over the electricity, gas, rail and water industries. The proposed Economic Regulation Authority is expected to be operational by 1 January 2003. It will be responsible for access regulation and have independent advisory functions in relation to any retail pricing and inquiry functions determined by the Government. The authority will also be responsible for issuing and enforcing industry licences.
- Western Australia is applying its competitive neutrality obligations by corporatising or commercialising its significant businesses, which includes a requirement to apply competitive neutrality principles. Western Power and the Water Corporation are corporatised. Other large businesses are commercialised or proposed for commercialisation. Port authorities, for example, were commercialised under the *Port Authorities Act 1999*. Western Australia's competitive neutrality complaints mechanism received no substantive complaints during 2001. Western Australia does not, however, apply competitive neutrality principles to its health business activities. The Council has raised this with the State's competitive neutrality complaints secretariat and will consider the coverage of competitive neutrality application in the State in the 2003 NCP assessment.

Western Australia's local governments have conducted an extensive program of business reviews to assess whether the introduction of competitive neutrality principles is warranted. Competitive neutrality principles have been introduced in many businesses as a result. Western Australia recently focused on extending competitive neutrality to smaller government agencies, conducting 23 competitive neutrality reviews of significant business activities.

For the purposes of the 2002 assessment, Western Australia has not met NCP obligations in relation to:

- water quality issues and the adoption of the intergovernmental National Water Quality Management Strategy;
- the regulation of retail trading hours;
- liquor licensing arrangements;

- arrangements relating to egg marketing;
- supply management and marketing arrangements relating to potatoes;
- registration requirements for occupational therapists; and
- taxi and hire car regulation.

In all other areas, completed reform activity has met NCP obligations, although barely so in relation to overall progress on the legislation review and reform program.

The Council has had constructive discussions with the Western Australian Government and has been able to resolve an appropriate process for addressing the national water quality reform obligations. Western Australia will report to the Council on progress at the end of December 2002 and March 2003. This matter may have implications for Western Australia's NCP payments for 2002-03.

Discussions between the Council and the Western Australian Government on the other outstanding issues are continuing. Consequently, the Council has been unable to finalise its 2002 NCP assessment and make recommendations on NCP payments to Western Australia for 2002-03. The Council will finalise its assessment and make payments recommendations when discussions on outstanding issues are concluded. The Council will recommend that NCP payments be paid in full for the 2002-03 financial year if these outstanding issues are resolved (noting the water quality matter above).

In 2003, the Council will again assess Western Australia's remaining areas of noncompliance with NCP principles, along with any further reform failures and the State's overall progress with reform implementation. The Council notes that Western Australia faces a severe challenge in completing reform implementation for its legislation review and reform program by 2003, and will need to devote more resources to this effort over the next 12 months.

## South Australia

- South Australia has met all obligations under the national electricity and gas reform agreements for the purposes of this assessment.

South Australia was lead legislator for the national gas code legislation, setting up derogations and transitional arrangements consistent with the gas agreements. It has completed its structural reform commitments and reviewed legislation that restricts intra-field competition in the Cooper Basin, in accordance with the gas agreements and the CPA, and implemented appropriate reforms. South Australia has:

- implemented and applied the National Gas Access Code and associated legislation;

- removed significant barriers to national free and fair trade in gas;
- removed regulatory restrictions on the use of gas;
- adopted uniform national pipeline construction standards; and
- removed legislative barriers preventing contestability down to the household level, establishing a framework to allow customers to choose their gas supplier.

South Australia has introduced significant reform to its electricity industry. Structural arrangements have been comprehensively reviewed. South Australia has established an independent regulator responsible for pricing, licensing and network access. It has taken all actions necessary to introduce the national electricity market and will extend contestability down to the household level in early 2003, allowing customers to choose their electricity supplier. South Australia is participating with other relevant governments in a review of energy markets, to address outstanding issues identified by the Council in previous assessments. These include the development of a truly national grid, the implementation of full retail contestability and the sunseting of derogations to the National Electricity Code. Other reform issues include streamlining national market institutional arrangements, improving the wholesale market pricing mechanism and introducing effective demand management mechanisms.

The Council notes that all necessary South Australian regulatory approvals for the South Australia New South Wales Interconnect (SNI) have been granted, but remains concerned about the apparent overlap between the national electricity market and South Australia's regulatory processes for new interconnects. The Council will revisit these outstanding issues in 2003, in the light of the recommendations of, and governments' responses to, the Energy Markets Review.

- South Australia has achieved significant progress with implementing water reform. It has developed a comprehensive allocation system that provides for environmental needs (including those of the River Murray) and involves significant community involvement. South Australia continues to progress implementation of consumption-based pricing reforms for the commercial sector and trade waste charging reforms. The Council has identified two issues of concern in this assessment, however. First, South Australia's dividend policy may not be consistent with CoAG commitments because dividend distributions from SA Water to the Government exceed total after-tax profits. The Council will reassess this issue in 2003 after a broad review of the dividend policies of all jurisdictions has taken place. Second, South Australia has not implemented the intergovernmental National Water Quality Management Strategy. The Council has agreed with South Australia on a final timetable to implement the national strategy. The Council will reassess this issue in 2003.

- South Australia has completed its national road transport reform agenda.
- South Australia has a comprehensive legislation review program. It has so far completed almost 80 per cent of its reviews of significant existing legislation, and implemented reforms for almost 40 per cent of these priority reviews. All agencies considering new legislation or amendments to existing legislation must consider restrictions on competition, demonstrate in Cabinet submissions seeking approval to draft legislation that competition issues have been considered, and address competition issues in the second reading speech of Bills to Parliament.
  - South Australia has made good progress with reviewing laws regulating the professions and occupations. Reviews are complete in most cases, although in some cases reform implementation was not concluded because legislation lapsed with the calling of the 2002 State election.

South Australia has completed reviews of a range of health practitioner legislation, including legislation regulating chiropractors and osteopaths, medical practitioners, nurses, physiotherapists, dentists, optometrists and opticians, chiropodists, psychologists and occupational therapists. It has implemented satisfactory reforms to legislation regulating nurses. Replacement medical practitioner legislation lapsed with the calling of the 2002 State election. In other cases, the Government is drafting legislation, or still considering its response to review recommendations.

South Australia has retained ownership and related restrictions for dentists contrary to the recommendation of its review. The Council considers that these restrictions do not meet NCP principles. It acknowledges, however, that the legislation contains mechanisms for granting exemptions to the ownership restrictions, which may reduce their adverse impacts. The Council will monitor the exemptions process and finalise its assessment in 2003. South Australia has also indicated that it will retain registration requirements for occupational therapists, but has not provided a convincing public interest rationale for registration. The Council considers that South Australia's action in this area does not meet NCP principles, but accepts that the cost of this restriction on competition is not likely to be significant.

South Australia's review of legal practitioner regulation recommended opening further areas of legal work to competition. The work in this area lapsed with the calling of the State election; nevertheless, the national model laws process provides a means of addressing several of the recommendations of South Australia's review. A Bill to remove ownership restrictions on conveyancers also lapsed with the calling of the election. South Australia has completed or significantly progressed reviews of the regulation of security and investigation agents, tow truck operators, driving instructors, second-hand motor vehicle dealers, second-hand dealers and pawn brokers, auctioneers and employment

agents. Reform of the regulation of land agents and hairdressers has been implemented.

- South Australia has reviewed its land use and development regulation, and the regulation of related occupations. It has also completed a review of its building regulation, and has completed (or is close to completing) reviews of the regulation of related trades, including building contractors, plumbers and gas fitters, and electricians.
- South Australia has not met its legislation review and reform obligations in relation to the regulation of barley marketing. South Australia and Victoria jointly reviewed barley marketing arrangements in 1997. Both governments accepted the review recommendations to remove restrictions on domestic marketing and to retain the export monopoly for the shortest possible time. Unlike Victoria, which has now deregulated both domestic and export marketing, South Australia legislated to extend the marketing monopoly indefinitely, with a further review of the export monopoly to be conducted by November 2002. South Australian growers therefore have fewer options for the sale of their crop, and alternative export marketers are unable to offer their services to the State's growers. Further, evidence suggests that prices achieved by growers in Victoria, where marketing is deregulated, may be higher than those received by South Australian growers, perhaps reflecting the greater freedom of Victorian growers to respond to market demands. South Australia has not produced credible public interest evidence to support its decision to extend the monopoly. The Government has, however, undertaken that the review due by November 2002 will be open, independent and robust, with terms of reference that reflect competition principles. The Council regards this issue as a significant competition question and will reassess South Australia's progress in meeting its NCP obligations in the 2003 NCP assessment.

South Australia is making progress on its NCP obligations in several other areas of primary industry, however. Its reform of its dairy industry, following the national decision to deregulate the industry, was a considerable achievement. The State's review of the regulation of veterinary surgeons is complete, although no decision on the review recommendations has been announced. South Australia repealed its regulation of bulk grain handling (which imposed a sole right to receive and deliver grain, and an obligation to charge uniform prices) in 1998. The State's poultry meat regulation, while not yet repealed in accordance with the recommendation of the review of the legislation, does not shelter collective bargaining action from challenge under the Trade Practices Act and therefore is not operational. South Australia recently released for consultation draft replacement legislation, which will need to be assessed under the State's gatekeeping process. South Australia is also reviewing its principal fisheries legislation. The Council will look for South Australia to have completed review and

reform activity in these areas consistent with NCP principles by the time of the 2003 NCP assessment.

- South Australia has considerable restrictions on retail activity, including trading hours, liquor licensing and the licensing of petrol retail outlets. Trading hours regulation imposes significant restrictions on opening times for shops outside the central business and the Glenelg Tourism Precinct. It exempts certain types and sizes of shop from the restrictions, leading traders to devote considerable effort to finding ways in which to circumvent the restrictions on trading times. There are differences in the times that different types of shops selling similar products are able to open. Consumers are prevented from shopping at times that are convenient to them. At the time of printing of this report, the South Australian Government released a media statement outlining limited changes to its trading hours regime. The Government's proposal appears to recognise the need to address the current complex system of exemptions, but the Council has as yet no detail of what South Australia is proposing in this area. The Council is looking for South Australia to further develop its proposals for reforming trading hours arrangements to address its NCP obligations in this area.
- The State's liquor licensing arrangements contain a needs test, whereby the licensing authority can reject a licence application because there are already sufficient existing liquor outlets in the affected area. South Australia undertook in the 1999 NCP assessment to reconsider this provision during 2000-01. While this review had not been conducted by June 2002, the Government has advised the Council that it aims to complete the review and reform of licensing legislation by June 2003.
- South Australia's petrol retail licensing arrangements allow the Government to withhold new licences if the new licence holder would provide unfair and unreasonable competition to sellers in the area surrounding the new outlet. A review of this legislation has been completed but is yet to be considered by the Government. The Council will consider South Australia's compliance with NCP principles in each of these areas in 2003.
- Although South Australia's taxi licensing legislation contains a discretion enabling the Minister to release new licences, there has been no release of new licences since 1 January 1999. The Council considers that the mere existence of the legislative discretion is insufficient for compliance with CPA clause 5 obligations. In discussions with the Council, the South Australian Government has undertaken to examine possible mechanisms for addressing restrictions on the availability of taxis. Until the 2003 NCP assessment, the Council will pursue discussions with South Australia on arrangements for improving the supply of taxis.



- South Australia continues to meet its obligations under the Conduct Code Agreement.
- South Australia applies competitive neutrality principles to all significant Government business activities, identifying significant businesses on the basis of their size and influence in the relative market(s). Businesses are categorised to facilitate the application of competitive neutrality principles. Even businesses that are not categorised are still subject to investigation if there is a complaint that they are not appropriately applying competitive neutrality principles. South Australia recently completed an interdepartmental review of its competitive neutrality policy. In July 2002, the Government approved a revised policy statement. South Australia refers competitive neutrality complaints to its Competition Commissioner for investigation. Five written complaints about State Government business activities were received in 2001, although only one was assessed as a competitive neutrality issue. There were no complaints about local government business activities.

For the purposes of the 2002 NCP assessment, South Australia has not met NCP obligations in relation to:

- the regulation of retail trading hours;
- liquor licensing arrangements;
- barley marketing arrangements;
- ownership restrictions for dental practices;
- registration requirements for occupational therapists;
- water quality and implementation of the National Water Quality Management Strategy; and
- taxi and hire car regulation.

In all other areas, completed reform activity has met NCP obligations, and South Australia has made significant progress against its total NCP reform agenda.

The Council has had constructive discussions with the South Australian Government and has been able to resolve appropriate processes for addressing the outstanding water reform, liquor licensing and barley marketing issues. The Council will monitor the impact of restrictions on dental practices and occupational therapists. It also anticipates further reform activity in relation to taxi and hire car regulation over the next 12 months.

In discussions with the Council about the reform of retail trading hours restrictions, the South Australian Government undertook to revisit previous review evidence and to explore options for change. South Australia has

proposed some limited reforms but is still to explain in detail how it proposes to address anomalies in its trading hours arrangements. Consequently, the Council has been unable to finalise its 2002 NCP assessment and make recommendations on NCP payments for 2002-03. The Council will finalise its assessment and make payments recommendations for 2002-03 when South Australia provides more detail on its approach to retail trading hours reform. The Council will recommend that competition payments be paid in full for the 2002-03 financial year once it is satisfied that this issue is resolved consistent with NCP principles.

In 2003, the Council will reassess these areas of noncompliance, along with any further reform failures and South Australia's overall progress with reform implementation. The Council notes that South Australia faces a substantial challenge in completing reform implementation for its legislation review and reform program by 2003.

## Tasmania

- Tasmania initially had limited NCP reform obligations in relation to the energy markets. As a party to the national electricity market agreements, Tasmania has obligations in relation to connection to the national market, but these do not acquire full effect until physical interconnection with the mainland is established. Similarly, Tasmania's obligations under the national gas agreements have been triggered by the development of its gas industry. Tasmania has met all of its new obligations for this 2002 NCP assessment.

Tasmania has:

- implemented and applied the National Gas Access Code and associated legislation. (It has not yet sought certification of this legislation as required by the agreements, but this application is imminent);
- removed significant barriers to national free and fair trade in gas;
- removed regulatory restrictions on the use of gas; and
- adopted uniform national pipeline construction standards.

Tasmania has made a commitment to join the national electricity market through the construction of the Basslink interconnector. In preparation for meeting obligations that arise following interconnection, Tasmania has enacted the National Electricity Law and reviewed and reformed structural arrangements for electricity utilities. Tasmania has also enacted the Tasmanian Electricity Code for third party access to transmission and distribution services which is consistent with how the National Electricity Code provides for the access regime in the national electricity market.

- Tasmania experienced some delays in implementing its water reform obligations in the earlier years of the NCP program. It has since made some progress on implementing two-part tariffs, but the Council has several concerns about aspects of the State's approach in the area of urban full cost recovery. Tasmania has not provided sufficient information for the Council to make a full assessment of urban full cost recovery.

Tasmania has a legislated framework for water allocations and trading, and has achieved progress in implementing:

- effective water catchment management strategies; and
- bulk water pricing.

The Council has some concerns regarding the State's processes for determining environmental allocations and the inappropriate use of socio-economic studies to delay those allocations. These problems are evident in the draft Great Forester water management plan, which was the first plan developed in Tasmania. Given the precedent value of this plan and the Council's concerns with the current draft, the Council will reassess all final plans in 2003.

- Tasmania has completed its national road transport reform agenda.
- Tasmania has a comprehensive legislation review program. It has so far completed around 90 per cent of its reviews of significant existing legislation, and implemented reforms for almost half of these priority reviews. Tasmania's legislation gatekeeping process assesses all new legislative proposals, including against competition principles.
  - Tasmania has made good progress in reviewing and reforming laws governing professions and occupations. It has reviewed and reformed legislation governing several health professions, including chiropractors and osteopaths, dentists, nurses, physiotherapists, podiatrists, psychologists and radiographers. Tasmania's health practitioner legislation reforms have removed advertising restrictions, ownership restrictions and, in some cases, practice reservations. The Government has reviewed its *Medical Practitioners Registration Act 1996*, in which restrictions on ownership of practices are a key competition issue. The Government is yet to consider the review recommendations. Tasmania is finalising its review of optometry regulation, where again the key issues are restrictions on ownership and advertising.

Tasmania has completed satisfactory reviews and reforms of legislation governing commercial and inquiry agents, security providers, driving instructors, pawnbrokers and second-hand dealers, and hairdressers. The Government is proposing to replace legislation governing auctioneers and real estate agents later in 2002. Tasmania has also reviewed its legal practitioner legislation and the Government will soon consider a reform proposal in relation to conveyancing.

- Although Tasmania’s taxi and hire car legislation allows the Transport Commission to issue additional taxi licences, there has been no issue of new licences in urban areas since 1995. Unlimited numbers of hire car licences are available at a fee of \$5000 although hire cars are restricted to pre-booked work. The Government is still to respond to the recommendation of the State’s taxi review group to eliminate the Transport Commission’s discretion over the issue of new licences, replacing it with a provision requiring the annual auction of new licences. In addition, the Council is not convinced that the formula governing the release of taxi licences will reduce the existing scarcity of licences. Given these circumstances, Tasmania cannot be considered to have met NCP obligations relating to taxis and hire cars. Tasmania has undertaken, however, to progress taxi licensing reform during 2002-03, and the Council will consider this matter again in 2003.
- Following two NCP reviews of retail trading hours arrangements, both of which found that restricting trading hours is not in the public interest, the Tasmanian Government legislated to allow unrestricted trading except on Easter Friday, Christmas Day and the morning of Anzac Day. As Victoria did when introducing its trading hours changes, Tasmania is allowing local governments to conduct a vote on whether to retain restrictions within their area. The changes to Tasmania’s trading hours will operate from 1 December 2002.

Tasmania’s review of liquor licensing had not reported by June 2002. The review is considering the two major restrictions: the requirement that nonhotel outlets sell liquor in quantities of at least nine litres and the prohibition on the sale of liquor by supermarkets. Tasmania has therefore not complied with NCP principles in relation to liquor licensing. The Tasmanian Government assured the Council during this 2002 assessment that it is committed to examining liquor licensing issues consistent with the public interest as soon as possible. The Council will consider this matter further in 2003.

- Tasmania has also reviewed its education legislation. It has implemented all review outcomes except those concerning the regulation of vocational education and training. A minor review of arrangements for the registration of universities has been completed. Tasmania has also updated legislation that governs the licensing of child care providers and establishes standards of care.
- Tasmania has completed a review of its land use and planning legislation. It has also satisfactorily completed the review and reform of its building legislation and the regulation of associated building trades. Review and reform activity for the regulation of associated professional services (architects, surveyors and valuers) appears to be progressing well. The Council will finalise its assessment of Tasmania’s compliance with its NCP obligations in these areas in 2003.
- Tasmania continues to meet its obligations under the Conduct Code Agreement.

- Tasmania has made good progress with implementing competitive neutrality reforms. Tasmania's significant State Government businesses are subject to tax equivalent regimes, debt guarantee fees, dividend requirements and regulatory equivalence with the private sector. Competitive neutrality principles also apply to significant business activities at local government level. The Government Prices Oversight Commission, an independent commission, handles competitive neutrality complaints. The mechanism allows for complaints to be brought against any public business activity at either the State or local government level. Tasmania is reviewing its policy to better identify significant local government businesses to which competitive neutrality should apply.

For the purposes of the 2002 assessment, Tasmania has not met NCP obligations in relation to:

- full cost recovery in urban water supplies;
- allocation of water for the environment in water management plans;
- liquor licensing regulation; and
- taxi and hire car regulation.

In all other areas, completed reform activity meets NCP obligations, and Tasmania has made significant progress against the total NCP reform agenda. The Council will reassess Tasmania's progress with full cost recovery in urban water pricing in an October 2002 supplementary assessment. This matter may have implications for Tasmania's 2002-03 NCP payments.

In making recommendations on competition payments, the Council has taken account of Tasmania's considerable reform progress and successes as a reflection of a commitment to NCP reform, and the likely impact of reform failures. Balanced against this progress, and given the assurances provided by the Government on the significant areas of noncompliance, the Council considers that the noncomplying matters identified in this assessment do not warrant an adverse recommendation on payments for 2002-03 (noting the urban water pricing matter above). In 2003, the Council will reassess Tasmania's progress in the other areas of noncompliance, along with any further reform failures and the State's overall progress with reform implementation. The Council notes that Tasmania faces a difficult challenge in implementing all reforms flowing from its legislation review and reform program by 2003.

## The ACT

- The ACT has met all obligations under the national electricity and national gas reform agreements for the purposes of this 2002 NCP assessment.

The ACT has:

- implemented and applied the National Gas Access Code and associated legislation;
- removed significant barriers to national free and fair trade in gas;
- removed regulatory restrictions on the use of gas;
- adopted uniform national pipeline construction standards; and
- introduced contestability down to the household level, allowing customers to choose their gas supplier.

The ACT has taken all actions necessary to introduce the national electricity market with one exception: it is yet to extend contestability down to the household level, allowing customers to choose their electricity supplier. A recent review by the Independent Competition and Regulatory Commission recommended in favour of extending contestability to households, but the Government is yet to respond. The ACT is participating with other relevant governments in a review of energy markets, designed to address outstanding issues identified by the Council in previous assessments. These include the development of a truly national grid, the implementation of full retail contestability and the sunseting of derogations to the National Electricity Code. Other reform issues include streamlining national market institutional arrangements, improving the wholesale market pricing mechanism and introducing effective demand management mechanisms. The Council will revisit all of these outstanding issues in the 2003 assessment in the light of the recommendations of, and governments' responses to, the Energy Markets Review.

- The ACT has established a strong record on water reform, being the only jurisdiction in the 1999 NCP assessment to have fully met its obligations under the water reform agreements. (That assessment was the first occasion on which water reform commitments were assessed). The ACT does not have any rural water or nonmetropolitan urban water suppliers, so its reform program in water is nearly complete. A particular achievement is the move to independent price regulation for water services. The Council considers that the ACT's dividend policy may not be consistent with CoAG commitments because dividend distributions from ACTEW to Government almost equal after-tax profits. Further, the ACT needs to consider the merits of systematic pricing arrangements for trade waste by the 2003 NCP assessment. The ACT is yet to establish a cap on water entitlements with the Murray–Darling Basin Commission.
- The ACT will implement the one remaining component of its national road transport reform agenda by December 2002. This component is a minor matter relating to the continuous registration of motor vehicles.

- The ACT has a comprehensive legislation review program. It has effectively completed its reviews of significant existing legislation, and implemented reforms for over 30 per cent of these priority reviews. The ACT tests all proposed legislation for compliance with competition principles. It requires regulatory impact statements to be prepared on all proposed new or amended legislation or subordinate legislation as part of the policy development process. Cabinet submissions must indicate whether policy recommendations have any competition implications. The Department of Treasury advises departments in the preparation of the regulatory impact statements
  - The ACT has few areas of regulatory restriction on competition in retail trading. It removed shop trading hours restrictions in 1997, and has reviewed liquor licensing arrangements. The few restrictions in the area of liquor licensing were found to be in the public interest. The ACT has reviewed its fuel pricing legislation consistent with its NCP obligations.
  - The ACT has made good progress in applying NCP reforms to the regulation of professions and occupations. It completed a consolidated review of its 11 health profession Acts in March 2001. The reforms recommended by the review appear consistent with CPA principles. The Government has approved the drafting of legislation to implement the recommendations, and expects to have a Bill before the Legislative Assembly in late 2002. The ACT Parliament amended the *Pharmacy Act 1931* in August 2001, with the intention of ensuring only registered pharmacists or companies controlled by registered pharmacists can own and operate pharmacies. The ACT considers this amendment does not introduce any new restrictions on pharmacy ownership. It is preparing advice for the Council on the effect of the amendment. The Council will finalise its assessment of the ACT's NCP compliance in relation to the health and pharmacy professions in 2003.

The ACT ceased its review of its legal practitioner regulation, given the work underway on uniform national laws for the legal profession. It has reviewed (or considered via a regulatory impact process) laws regulating security guards and patrol services, driving instructors, motor vehicle dealers, pawnbrokers and second-hand dealers, real estate and other business agents, auctioneers, hawkers and providers of child care services.

- The ACT has reviewed its education sector legislation consistent with NCP principles. Reviews of legislation governing planning, land and development approvals, and related occupations (such as surveyors), have been completed. The ACT has also completed a review of its legislating regulating building and building related trades, and of the certification process for building approvals.
- There are remaining restrictions on taxi and hire car services. The ACT's review of this regulation recommended that taxi licensing restrictions be removed and that the Government buy back existing

licences at market value. It also recommended the removal of all restrictions on hire car licence numbers. A second review (by the Independent Competition and Regulatory Commission) was completed in June 2002. It also recommended that supply restrictions on taxi and hire car licences be removed. The ACT Government is considering the commission's recommendations and has undertaken to respond on the issue of reform of the industry as soon as possible. The Council will look for a substantive Government response to the review recommendations by the 2003 NCP assessment.

- The ACT continues to meet its obligations under the Conduct Code Agreement.
- The ACT has made good progress in competitive neutrality reform. Appropriate taxation, debt guarantee and regulatory neutrality arrangements are being applied to the Government's full range of business activities. The Independent Competition and Regulatory Commission considers complaints that ACT Government business activities are not appropriately applying competitive neutrality policy. No complaints were lodged in the ACT in 2001.

The ACT's completed reform activity has met NCP obligations and the ACT has made substantial progress against the total NCP reform agenda. For the purposes of the 2002 NCP assessment, the only matters that the ACT is still to address are:

- the regulation of the taxi and hire car industry;
- effective trade waste pricing;
- whether the dividend payout ratio for ACTEW is consistent with NCP obligations; and
- a Murray–Darling Basin Commission cap on entitlements for the ACT.

The Council will reassess these issues in the 2003 NCP assessment. In relation to trade waste charges, the Council will look for systematic charging arrangements in 2003.

In making its recommendations on competition payments, the Council has taken account of the ACT's considerable reform progress and successes, as a reflection of a commitment to NCP reform, and the likely impact of reform failures. Balanced against this progress, and given the assurances provided by the Government on the significant areas of noncompliance, the Council considers that the noncomplying matters identified in this assessment do not warrant an adverse recommendation on payments for 2002-03. The Council will reassess the ACT's progress with the remaining areas of noncompliance again in 2003, along with any further reform failures and the Territory's overall progress with reform implementation. The Council notes that the ACT has relatively few significant remaining legislation review issues but still has some way to go to complete reform implementation by 2003.



## The Northern Territory

- The Northern Territory has made good progress with gas and electricity reform.

The Territory has met all obligations under the national gas reform agreements and general NCP principles for the purposes of this assessment. It has implemented relevant national gas reform legislation without any transitional arrangements or derogations. It has:

- implemented and applied the National Gas Access Code and associated legislation;
- removed significant barriers to national free and fair trade in gas;
- removed regulatory restrictions on the use of gas; and
- adopted uniform national pipeline construction standards.

The Territory is not a participant in the national electricity market and does not have any obligations under the NCP electricity reform agreements. Through the application of general NCP principles, however, the Northern Territory has shown that it is committed to the reform of the electricity industry.

The Territory undertook a major review of the structure of its Power and Water Authority in late 1998. In response to the review, the Government developed arrangements to permit competition in the Territory's electricity market, apply economic regulation to the electricity industry and transfer regulatory and policy functions from the Power and Water Authority. The Government has sought to promote greater competition within its electricity sector by providing for third party access to the transmission and distribution network of its electricity corporation. The Council has assessed this regime against NCP principles and has certified it as being effective.

- The Territory is making sound progress with its water reform obligations and has demonstrated a commitment to the reform process. Reforms have been implemented to achieve cost recovery and rates of return on urban services, consumption-based pricing, the removal of cross-subsidies, institutional separation and bulk water pricing. The Territory has no stressed river systems. It continues to make progress against the 2005 deadline to appropriately assign water allocations (including environmental allocations), and in developing public education programs to support the water reform process.
- The Territory's one outstanding component of the national road transport reform agenda is expected to be addressed in 2003.
- The Territory has a comprehensive legislation review program. It has so far completed around 90 per cent of its reviews of significant existing

legislation, and implemented reforms for over 40 per cent of these priority reviews. All Cabinet submissions on new legislative 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 consider whether the restriction is the only way in which to achieve the objective of the legislation.

- The Territory has made good progress in applying NCP reforms to the professions. It has reviewed legislation regulating chiropractors, dentists, medical practitioners, nurses, Aboriginal health workers, occupational therapists, optometrists, osteopaths, physiotherapists, psychologists and radiographers. The previous Government approved the preparing of an omnibus Health Practitioners Bill (to replace six existing Acts). The Council doubts the strength of the public interest rationale for the continued registration of occupational therapists. The Territory is one of only four jurisdictions to require registration.

The Northern Territory has also reviewed the regulation of legal practitioners, commercial agents, process servers, inquiry agents, bailiffs, driving instructors, motor vehicle dealers, pawnbrokers and second-hand dealers, real estate agents and their representatives, conveyancing agents, auctioneers, and hawkers. Legislation has been amended in several cases, and amendments to other legislation are being prepared. The Territory has completed a review of its *Building Act* (which regulates building practitioners) and is progressing reviews of legislation regulating associated trades. The Council will review progress in these areas in 2003.

- The Northern Territory repealed its *Grain Marketing Act* in 1997, thus meeting NCP obligations. It replaced various mining legislation with the *Mining Management Act 2001*, but has yet to respond to the NCP review of its *Mining Act*. The Territory has completed a review of its fisheries regulation and the Government is expected to consider its response to this review by October 2002. The Council will finalise its assessment of NCP compliance for the Territory's remaining primary industry matters in 2003.
- The most significant transport NCP issue for the Territory is the review and appropriate reform of the regulation of taxi and hire car licensing. The Council found in the 2001 NCP assessment that the Northern Territory had met its obligations in these areas, reflecting the Territory's decision in January 1999 to remove all licensing restrictions. In November 2001, the Northern Territory Government imposed a temporary (six-month) cap on the number of minibus, private hire car and taxi licences (with the exception of wheelchair accessible taxis), which it later extended to December 2002. The Government also announced a review of the regulatory framework, releasing a discussion paper for this review in May 2002. Given the cap on licences, and noting that the discussion paper canvasses measures

that may restrict competition, the Council will reassess the Territory's NCP compliance in relation to taxis and hire cars in 2003.

- There is no legislation regulating retail trading hours in the Northern Territory. Liquor licensing arrangements include a needs test that can exclude applicants for new licences on the basis of their potential competitive threat to incumbents. The Territory's legislation also discriminates between hotels and liquor stores, in that liquor stores are prohibited from opening on Sundays whereas hotels may trade between 10 a.m. and 10 p.m. The NCP review of these restrictions is underway. The Council will reassess the Territory's progress in relation to liquor licensing in 2003.
- The Territory continues to meet its obligations under the Conduct Code Agreement.
- The Territory has made significant progress with implementing competitive neutrality reforms. This effort has involved applying tax and debt equivalents to Government business divisions, ensuring the business divisions pay for all inputs used in providing services and ensuring prices charged fully reflect costs. The Territory has also reviewed the capital structure and dividend policies of Government business divisions against private sector benchmarks, and established performance monitoring arrangements through a range of financial and nonfinancial indicators. The recently enacted *Government Owned Corporations Act 2001* is allowing a 'shareholder' model of corporate governance to be applied to large government businesses that operate in competition with the private sector.

For the purposes of the 2002 NCP assessment, the Northern Territory has not met NCP obligations in relation to:

- the licensing of liquor outlets; and
- registration requirements for occupational therapists.

In addition, the Council notes the developments in the Northern Territory in relation to taxi and hire car regulation. The Council is concerned that these may signal the inappropriate re-introduction of restrictions on the supply of taxis and hire cars. In all other areas, completed reform activity has met NCP obligations and the Northern Territory has made substantial progress against the total NCP reform agenda.

In making recommendations on competition payments, the Council has taken account of the Territory's considerable reform progress and successes as a reflection of a commitment to NCP reform, and the likely impact of reform failures. Balanced against this progress, and given the assurances provided by the Government on the significant areas of noncompliance, the Council considers that the noncomplying matters identified in this assessment do not warrant an adverse recommendation on payments for 2002-03. The Council will reassess the Northern Territory's progress with these areas of

noncompliance, along with any further reform failures and the Territory's overall progress with reform implementation, in 2003. The Council notes that the Territory faces a large task in completing reform implementation for its regulation review and reform program by 2003.

## The Commonwealth

The Commonwealth has played mostly a coordinating and facilitating role in the related reforms areas (electricity, gas, road transport and water), because few of these activities fall within its jurisdiction. It has also undertaken specific reforms in relation to its Government businesses and anticompetitive legislation. In addition, the Commonwealth has initiated NCP and complementary reforms in communications and transport services, including reforms in telecommunications, airports and rail. The Commonwealth established the ACCC and the Council to help progress reform, providing significant new funding for the ACCC's expanded regulatory roles.

- The Commonwealth has implemented the National Gas Access Code and associated legislation. It is participating with other relevant governments in a review of energy markets, to address outstanding issues identified by the Council in previous NCP assessments. These include the development of a truly national grid, the implementation of full retail contestability and the sunseting of derogations to the National Electricity Code. Other reform issues include streamlining national market institutional arrangements, improving the wholesale market pricing mechanism and introducing effective demand management mechanisms. The Council will revisit these issues in the 2003 NCP assessment in the light of the recommendations of, and governments' responses to, the Energy Markets Review.
- The Commonwealth does not have any specific water supply responsibilities, so does not have distinct obligations under the water reform agreements.
- The Commonwealth will implement the one remaining component of its national road transport reform agenda in 2003.
- The Commonwealth has a comprehensive legislation review program, and has so far completed over 80 per cent of its reviews of significant existing legislation. Reforms have been implemented for almost 30 per cent of these priority reviews. The Commonwealth has robust arrangements to vet new legislation restricting competition. Regulation impact statements must be prepared for all proposed new and amending regulation (primary legislation, subordinate legislation, quasi-regulation and treaties) with the potential to restrict competition. The Office of Regulation Review (ORR) advises on whether the requirements of this process have been met, and reports annually on the Commonwealth's overall performance in this area.

- The Commonwealth conducted the Wallis review of the regulatory framework of Australia's financial system. In response to the recommendations of this review, the Commonwealth introduced far-reaching changes to Australia's financial regulatory structure, which came into effect in 1998.
- The Commonwealth commissioned the Productivity Commission to conduct reviews of the *Customs Tariff Act 1995 — Automotive Industry Arrangements* and the *Customs Tariff Act 1995 — Textiles Clothing and Footwear Arrangements*. In both cases, the Commonwealth decided to freeze the tariff reduction program over the period 2000–05 in the face of review findings that there would be an overall net benefit from faster and deeper tariff reductions.

In relation to automotive tariffs, the Commonwealth argued that its response achieved two important objectives. These were the continuation of the process of tariff reform and progress towards the APEC 2010 goal of trade liberalisation, and the management of the transition to lower tariffs to best position Australia to attract investment in the car industry. Automotive tariffs are again under review by the Productivity Commission. The Commonwealth indicated that its 1997 textiles, clothing and footwear package was designed to assist in securing jobs by encouraging additional investment and promoting an internationally competitive textiles, clothing and footwear industry in Australia.

- With agreement from the States and Territories, and prompted by the Council's NCP consideration of gambling regulation, the Commonwealth commissioned the Productivity Commission to examine a wide range of social and economic issues related to gambling regulation. The review has informed policy considerations on gambling services by all Australian governments.
- Following a review, the Commonwealth introduced less prescriptive product labelling regulations and adopted mandatory labelling standards that are consistent with accepted international nomenclature, to lower costs and reduce barriers to trade.
- The Commonwealth has reviewed some aspects of the *Quarantine Act 1908* and implemented appropriate reforms. It will review remaining aspects that restrict competition and have not yet been subject to NCP principles. A review of the *Export Control Act 1982* made recommendations to reduce compliance costs and restrictions on exports, which the Commonwealth has accepted. The Commonwealth also integrated and streamlined a range of export concession arrangements into a single scheme (TRADEX) reducing the costs of doing business.
- The Commonwealth has reviewed legislation that restricts competition in port, marine and shipping services, including a Productivity Commission review of part X of the Trade Practices Act. The

Commonwealth has implemented most of the recommendations of these reviews and is considering implementing the remainder.

- The Commonwealth played a leading role in the review and reform of dairy marketing arrangements, coordinating the national adjustment assistance package to facilitate reform measures. The Commonwealth conducted an independent review of wheat marketing arrangements. The review did not consider that a net community benefit from the arrangements had been established and made recommendations to reduce restrictions on wheat exports while retaining the Australian Wheat Board operations intact. The Commonwealth accepted most of the review recommendations, except those designed to reduce restrictions on exports. The Council considers that this response by the Commonwealth does not meet NCP obligations.
- The Commonwealth has reviewed several areas of health regulation and implemented some of the recommendations of these reviews. The Council considers, however, that there is scope to apply NCP principles further to impediments to competition in the health insurance industry.
- The Commonwealth has commissioned major reviews of regulation of telecommunications, broadcasting services and radiocommunications.

Among the most important concerns identified by the Productivity Commission's inquiry into broadcasting regulation (which reported in April 2000) is that scarce spectrum should be allocated to its most highly valued uses. Existing arrangements that do not require incumbent television networks to bid for spectrum cannot guarantee this outcome. Similarly, mandating the 'simulcasting' of high definition television may not be consistent with consumer preferences. The Commission also recommended that:

- datacasting services be defined as digital broadcasting services;
- multichannelling be permitted; and
- commercial and national broadcasters be permitted to provide interactive services.

The Commonwealth is yet to respond fully to the Productivity Commission recommendations. In early August 2002, it announced a review of the roles of the Australian Broadcasting Authority and the Australian Communications Authority, which will focus on arrangements for managing broadcasting and telecommunications spectrum.

The Department of Communications, Information Technology and the Arts is conducting a separate review of datacasting, canvassing in its issues paper:

- **some liberalisation of the genre rules;**
- **case-by-case decisions by the Australian Broadcasting Authority on whether a datacast would fall within the definition of a commercial television broadcast;**
- **provision for datacasters to offer interactive services only; and**
- **provision for datacasters to offer narrowcasting services (services to specific groups).**

The department is expected to finalise the datacasting report in 2002 and the Government is required to release the report within 15 sitting days of receiving it.

The Productivity Commission's review of the *Radiocommunications Act 1992* has made several draft recommendations to improve competitive arrangements for spectrum allocation. The Commission forwarded the final report to the Government on 1 July 2002.

The Productivity Commission review of telecommunications (parts XIB and XIC of the Trade Practices Act) argued that regulation is required because carriers need access to Telstra's local loop (a natural monopoly) to offer call origination and termination services to their customers. Further, Telstra's prior status as the monopoly provider means that it dominates subscriber numbers and the access network. The Productivity Commission recommended that the ACCC continue to oversee telecommunications competition and that access arrangements apply to only core telecommunications services. On 24 April 2002, the Minister for Communications, Information Technology and the Arts announced the Government's initial response to the report, including that the Government will:

- **retain the telecommunications-specific regulatory regime;**
  - **require the ACCC to publish benchmark terms, conditions and prices, of access to core telecommunications services;**
  - **remove 'merits review' rights so Telstra cannot appeal to the Australian Competition Tribunal on the ACCC's access arbitrations; and**
  - **implement an accounting separation of Telstra's wholesale and retail operations.**
- In response to the recommendations of a National Competition Council review of the *Australian Postal Corporation Act 1989*, the Government decided to:
- **reduce protection of Australia Post's domestic mail service;**
  - **introduce an access regime;**

- 
- open incoming international mail to competition; and
  - introduce a service charter, as approved by the Government.

There is a difference between the Commonwealth's reforms and the Council's recommendations in respect of one major issue: rather than a comprehensive access regime, the Council proposed open competition in business letter services and all international mail services. The success of the Government's approach will depend heavily on the effectiveness of the access regime. The Government introduced a Bill in 2000, providing for the establishment of an access regime and some other changes, but withdrew this in 2001. Once the access regime is in place, the Commonwealth will have satisfied its NCP obligations in relation to postal services.

- The Commonwealth operates a number of business enterprises (established under enabling legislation or the Corporations Law), share-limited companies and business units (set up as separate commercial activities within agencies). All are required to operate on a competitively neutral basis to avoid unfairly disadvantaging actual or potential competitors. Australia Post, for example, is a Government business enterprise established under its own Act of Parliament, and it is required to pay all Commonwealth and State taxes and charges.

The Commonwealth has an autonomous competitive neutrality complaints mechanism — the Commonwealth Competitive Neutrality Complaints Office — located within the Productivity Commission. The office advises the Treasurer on the application of competitive neutrality to government activities. Notably, it is able to recommend that competitive neutrality arrangements be applied to businesses below the Commonwealth's threshold for significance.

- The Commonwealth also has a responsibility under the competition agreements (CPA clause 4) to examine industry regulation and matters relating to the structure of its public monopolies where it is introducing competition or proposing privatisation.
  - The Council has previously concluded that the framework for the regulation of the telecommunications sector was consistent with competition principles, but that the Commonwealth had not met its obligation to examine the treatment of the remaining monopoly element of Telstra's business, the local fixed network.
  - The Commonwealth was also obliged to conduct a CPA clause 4 review to determine the appropriate structure for the Sydney Basin airports (including the proposed second airport) before privatisation. The Commonwealth has conducted this review and has met NCP obligations in this area.
  - The Commonwealth has instituted reform measures in rail services. The above-rail (train operations) and below-rail (track) businesses of



Australian National were restructured and sold over the period 1993–2002. In November 1997, the Commonwealth sold the Tasmanian rail services, including track and above-rail facilities. The Commonwealth did not conduct a formal CPA clause 4 review before either privatisation process, but the reforms appear to have been largely consistent with NCP principles.

For the purposes of the 2002 NCP assessment, the Commonwealth has not met NCP obligations in relation to:

- export marketing arrangements for wheat;
- restrictions on competition in health insurance arrangements;
- the structural reform of Telstra;
- providing for greater competition in postal services;
- broadcasting and radiocommunications legislation; and
- automotive and textile/clothing/footwear tariff arrangements.

There are further reviews under way or proposed in some of these areas. The Commonwealth has announced a review of the roles of the Australian Broadcasting Authority and the Australian Communications Authority, which will focus on arrangements for managing broadcasting and telecommunications spectrum, and the Department of Communications, Information Technology and the Arts is conducting a separate review of datacasting. Automotive tariff arrangements are currently under review by the Productivity Commission. There is to be a further review of wheat marketing arrangements in 2004 but the Commonwealth has not agreed to conduct this as an NCP review.

Apart from the above matters, the Commonwealth's completed reform activity meets NCP obligations. The Council does not make recommendations in relation to the Commonwealth's noncompliance with NCP obligations, because the Commonwealth does not receive NCP payments. The Council will consider the Commonwealth's progress with the areas of noncompliance again in 2003, along with any further reform failures and the Commonwealth's overall progress with reform implementation. The Council notes that the Commonwealth faces a difficult challenge in completing reform implementation for its regulation review and reform program by 2003.