

1 The National Competition Policy and related reforms

Obligations under the National Competition Policy agreements

The three National Competition Policy (NCP) agreements of April 1995 establish the program of NCP and related reforms. The NCP agreements are augmented by sector-specific intergovernmental agreements on the four related areas of reforms: electricity, gas, water resource policy and road transport (NCC 1998). To meet obligations for the 2002 NCP assessment, governments must:

- be a party to the Conduct Code Agreement and have implemented the Competition Code (a modified version of part IV of the *Trade Practices Act 1974* [the TPA]), including notifying the Australian Competition and Consumer Commission (ACCC) of all legislation or provisions in legislation that rely on s. 51 of the TPA, within 30 days of the legislation being enacted or made;
- be a party to the Competition Principles Agreement (CPA) and have implemented the major elements of the CPA program, including;
 - applying competitive neutrality principles to all significant government-owned businesses (including local government businesses) where appropriate (CPA clause 3);
 - undertaking structural reform of public monopolies where competition is to be introduced or before a monopoly is privatised (CPA clause 4);
 - reviewing existing (at 1996) legislation that restricts competition (including Acts, enactments, ordinances and regulations) and removing restrictions, where appropriate (CPA clause 5);¹ and
 - undertaking gatekeeper regulatory impact analysis (including systematic and transparent assessment of alternatives to regulation) of

¹ The CPA originally set a deadline of 2000 for governments to complete legislation reviews and appropriate reforms. In November 2000, the Council of Australian Governments extended the deadline to 30 June 2002.

proposed new or amended legislation that restricts competition (CPA clause 5);

- have achieved effective participation in the fully competitive national electricity market (NEM), if a relevant jurisdiction, including completing all transitional arrangements;
- have fully implemented (if relevant) free and fair trading in gas between and within jurisdictions;
- have achieved satisfactory progress in implementing the 1994 Council of Australian Governments (CoAG) strategic framework for the reform of the water industry, consistent with timeframes established through intergovernmental agreement;
- have fully implemented the road transport reforms developed by the Australian Transport Council and endorsed by CoAG; and
- ensure national standards are set in accordance with the principles and guidelines for good regulatory practice endorsed by CoAG in 1997.

The CPA also commits governments to consider establishing independent prices oversight arrangements for government business enterprises. Such businesses often have the potential to engage in monopolistic pricing behaviour, either because they are legislated or natural monopolies or because they operate in markets where competition is weak. Prices oversight arrangements now exist in all States and Territories except Western Australia. In Western Australia, Ministers, sector-specific regulators and public sector officials perform economic regulatory functions. The State Government has committed to establishing an independent multi-industry economic regulator — the Economic Regulation Authority — which will perform a range of functions, including making recommendations to the Government on tariffs and charges for government monopoly services.

Agreements reached by Heads of Government following CoAG's review of the NCP and the role of the National Competition Council in 2000 also provide direction on the implementation of the NCP. Heads of Government affirmed the importance of the NCP in sustaining the competitiveness and flexibility of the Australian economy and contributing to higher standards of living. They agreed to several measures to clarify and finetune implementation, with the objectives of establishing a practical framework for the ongoing effective implementation of the NCP and addressing community concerns about NCP implementation.

The guidance on reform implementation provided by CoAG relates mainly to the legislation review and reform and competitive neutrality obligations. It includes: extending the deadline for completing the legislation review and reform program from 2000 to 30 June 2002; requesting that governments document the public interest reasons supporting their reform decisions and make this reasoning publicly available; requesting that governments consider the likely impacts of reform measures on specific industry sectors and

communities, including likely adjustment costs; directing the Council to examine, in considering compliance with CPA clause 5, whether the conclusion reached by a legislation review is within a range of outcomes that could reasonably be reached on the information available to a properly constructed review process; and recognising that satisfactory reform implementation may include a firm transitional arrangement that may extend beyond 30 June 2002, where justified by a public interest assessment. CoAG's additional guidance on compliance with the CPA clause 3 competitive neutrality obligations involve governments adopting a 'best endeavours' approach where a government business is not subject to executive control by government, definition of the term 'full cost attribution', and processes relating to the provision of community service obligations (see chapter 2).

Fully participating jurisdictions

The *Competition Policy Reform Act 1995* defines 'fully participating jurisdictions' as those States and Territories that are parties to the Conduct Code Agreement and that apply the Competition Code as law, either with or without modifications. Each State and Territory signed the Conduct Code Agreement to extend the operation of part IV of the TPA to all business activities within their jurisdiction, and each has enacted a modified version of part IV (the Competition Code). Each State and Territory is a fully participating jurisdiction for the purpose of the 2002 NCP assessment.

Governments' NCP annual reports

The CPA obliges all governments to produce annual reports outlining their progress against their legislation review and competitive neutrality obligations. The aim of these reports is to provide full public reporting on these areas of NCP activity by governments.

As part of the 1997 NCP assessment, governments agreed that reporting on NCP activity more broadly would be beneficial, recognising that the reports provide significant input to the assessments and to community awareness of the NCP. Governments agreed to provide their annual reports by the end of March in each assessment year, detailing their NCP activity to at least the end of the previous year.

All governments provided annual reports in 2002, thus meeting reporting obligations under the CPA. Except for the Commonwealth, each government's report was publicly available at 30 June 2002. The Commonwealth provided a draft annual report that it will subsequently publish. At the request of the Council, all governments provided additional information augmenting and/or clarifying the material in their NCP reports for 2002. Table 1.1 sets out the dates on which governments made their reports available.

Table 1.1: Governments' provision of NCP annual reports

<i>Government</i>	<i>Date on which the Council received the 2002 annual report*</i>
Commonwealth	19 April 2002
New South Wales	11 April 2002
Victoria	3 April 2002
Queensland	3 April 2002
Western Australia	28 March 2002
South Australia	17 April 2002
Tasmania	30 April 2002
ACT	8 April 2002
Northern Territory	19 April 2002

* To assist the Council, some governments made their reports available initially in draft form, before the relevant government endorsed the draft for public release. The dates reported are the dates on which governments submitted their reports, whether draft or endorsed. All State and Territory reports are now endorsed and publicly available. The Commonwealth Government's report was in draft form at 30 June 2002.

NCP payments to the States and Territories

Under the Agreement to Implement the National Competition Policy and Related Reforms, the Commonwealth agreed to make NCP 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. The payments are a means, therefore, of distributing across the community the gains from economic growth that arise from investment in NCP reform.

The Council assesses governments' progress against the NCP obligations and makes recommendations to the Federal Treasurer on the distribution of NCP payments. The prerequisite for States and Territories receiving NCP payments is satisfactory progress against the NCP obligations; if governments do not implement the agreed reforms, then there are no reform dividends to share. The Council may recommend that the Federal Treasurer reduce or suspend the NCP payments otherwise available to a State and Territory where that State or Territory has not invested in the reform program in the public interest.

The Council may recommend a reduction or suspension because failure to implement the program as agreed can contribute to a decline in economic activity and, consequently, to a reduction in the overall financial dividend from reform. The Council's primary objective, however, is to assist

governments to achieve reform outcomes that are consistent with the interests of the community. Consequently, the Council recommends suspension or reduction of NCP payments only as a last resort — that is, only where a government does not propose a satisfactory path to dealing with identified breaches of reform obligations. CoAG has asked the Council, when assessing the nature and level of the reduction or suspension recommended for a particular State or Territory, to account for:

- the extent of the jurisdiction's overall commitment to the implementation of the NCP;
- the effect of one jurisdiction's reform efforts on other jurisdictions; and
- the impact of the jurisdiction's failure to undertake a particular reform (CoAG 2000).

The Council interprets CoAG's guidance on the nature and level of payments recommendations to mean 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 program. Nevertheless, a single breach of obligations in relation to an important area of reform may be the subject of an adverse recommendation, especially where the breach has a large impact and/or has an adverse impact on another jurisdiction. The Council also interprets CoAG's guidance as suggesting that the quantum of any payments recommendation should bear some relationship to the responsible government's overall performance on reform implementation, the impact of the breach of reform obligations and whether there are adverse impacts on other jurisdictions.

The Council's advice to the Federal Treasurer in this 2002 NCP assessment informs the Treasurer's decisions on the distribution of NCP payments in 2002-03.² Approximately \$740 million is available in 2002-03, on the basis that the States and Territories meet their reform obligations. This amount is distributed among the States and Territories on a per capita basis, as shown in table 1.2. The Council also assesses the Commonwealth's progress in implementing the NCP program, but the Commonwealth, although a party to the NCP agreements, does not receive NCP payments.

² In November 2000, Heads of Government reaffirmed their commitment to the NCP program and asked the Council to undertake annual assessments of governments' performance in meeting their NCP and related reform obligations following the assessment in 2001. Prior to 2002, the Council conducted assessments in 1997, 1999 and 2001.

Table 1.2: Estimated maximum NCP payments for 2002-03^a

<i>Jurisdiction</i>	<i>NCP payments in 2002-03 (\$m)</i>
New South Wales	248.6
Victoria	184.7
Queensland	139.6
Western Australia	73.0
South Australia	56.7
Tasmania	17.7
ACT	11.9
Northern Territory	7.5
Total	739.8

^a Estimates based on current inflation rate and population growth.

Source: Commonwealth of Australia 2002, Budget Paper No. 3 — Federal Financial Relations.