

16 The Conduct Code Agreement obligations

In addition to the legislation review and reform obligations in the Competition Principles Agreement (CPA), there are National Competition Policy (NCP) commitments that are designed to improve the effectiveness of regulation in the Conduct Code Agreement. Clause 2(1) of the Conduct Code Agreement requires the Commonwealth, State and Territory governments to send written notice to the Australian Competition and Consumer Commission (ACCC) of legislation or provisions in legislation that rely on s. 51(1) of the *Trade Practices Act 1974* (the TPA) within 30 days of the legislation being enacted or made.

Section 51(1) of the TPA provides that conduct that would be an offence under the Act's restrictive trade practices provisions may be permitted if specifically authorised under a Commonwealth, State or Territory Act. As such, legislation that is relevant to clause 2(1) of the Conduct Code Agreement is new legislation restricting competition, so it needs to satisfy the tests in clause 5 of the CPA.

Each of the National Competition Council's assessment reports lists the legislation relevant to clause 2(1) that governments enacted since the previous assessment along with the date of notification to the ACCC. Since 1 July 2001 (the period of the current NCP assessment), only the New South Wales government has enacted legislation relying on s. 51(1) of the TPA. The legislation notified by New South Wales is listed in the following section.¹

The Conduct Code Agreement also required (under clause 2[3]) governments to have notified the ACCC by 20 July 1998 of all continuing legislation reliant on s. 51(1) of the TPA.² All governments stated as part of the 1999 NCP assessment that they had notified the ACCC of all relevant legislation.

¹ For legislation passed between 11 April 1995 (earliest date stated in the agreement) and 30 June 1999 and notified by jurisdictions see NCC 1999b, pp. 172-7. For legislation passed between 1 July 1999 and 30 June 2001 notified by jurisdictions see NCC 2001, p. 26.2.

² For this list, see NCC 1999b, pp. 172-7.

Legislation notified to the ACCC under clause 2(1)

In accordance with clause 2(1) of the Conduct Code Agreement, New South Wales notified the ACCC of three pieces of legislation passed since 1 July 2001 that rely on s. 51(1) of the TPA:

- *Coal Industry Act 2001*, notified on 10 January 2002;
- *Industrial Relations Amendment (Public Vehicles and Carriers) Act 2001*, notified on 10 January 2002; and
- *Industrial Relations (Ethical Clothing Trades) Act 2001*, notified on 10 January 2002.

For each of these Acts, notification occurred within 30 days of the Act being passed.