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ISBN 0-9750631-7-0

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Inquiries or comments on this report should be directed to:

Media and Communications Manager
National Competition Council
Level 9/128 Exhibition Street
MELBOURNE VIC 3000

Ph: (03) 9285 7474
Fax: (03) 9285 7477
Email: info@ncc.gov.au

An appropriate citation for this paper is:

National Competition Council 2003, *Assessment of governments' progress in implementing the National Competition Policy and related reforms: Volume one – Overview of the National Competition Policy and related reforms*, AusInfo, Canberra.

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 'improve the well being of all Australians through growth, innovation and rising productivity, and by promoting competition that is in the public interest'.

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

Table of contents

Abbreviations	v
Overview of progress and recommendations	ix
1 The National Competition Policy and related reforms	1.1
Obligations under the National Competition Policy agreements	1.1
Fully participating jurisdictions	1.2
Governments' NCP annual reports	1.3
NCP payments	1.4
2 Competitive neutrality	2.1
Benefits of competitive neutrality	2.2
Governments' progress in implementing their obligations	2.2
Financial performance of government trading enterprises	2.13
3 Structural reform of public monopolies	3.1
4 Legislation review	4.1
The CPA clause 5 obligations	4.2
Legislation and the public interest	4.3
The Council's approach to assessing compliance	4.5
Compliance with the review and reform of the stock of legislation	4.10
Governments' overall compliance	4.13
New legislation that restricts competition	4.21
5 The Conduct Code Agreement obligations	5.1
Legislation notified to the ACCC	5.2

6	National standard setting obligations	6.1
	The Commonwealth Office of Regulation Review	6.3
	Governments' compliance with CoAG requirements	6.5
	Assessment	6.8
7	Electricity	7.1
	Background	7.1
	Assessment issues	7.6
8	Gas	8.1
	National Competition Policy commitments	8.1
	Progress in meeting NCP commitments	8.2
	Assessment issues	8.4
9	Water	9.1
	The CoAG strategic reform framework for water	9.2
	Reform progress	9.22
	New South Wales	9.22
	Victoria	9.27
	Queensland	9.34
	Western Australia	9.40
	South Australia	9.45
	Tasmania	9.51
	Australian Capital Territory	9.59
	Northern Territory	9.63
	Murray–Darling Basin Commission	9.68
10	National road transport reform	10.1
	Implementation of reforms outstanding at 30 June 2002	10.3
	Assessment	10.5
	References	R.1

Boxes

2.1	Complaints mechanisms	2.9
4.1	Examples of how costs arise from restrictive legislation	4.4
4.2	Priority legislation areas	4.6
9.1	ARMCANZ/ANZECC National Principles for the Provision of Water for Ecosystems	9.13

Tables

1.1	Governments' provision of 2003 NCP annual reports	1.3
1.2	Estimated maximum NCP payments for 2003-04	1.5
4.1	Overall outcomes with the review and reform of legislation	4.14

Noncompliance with legislation review and reform:

4.2	Commonwealth Government	4.23
4.3	New South Wales	4.26
4.4	Victoria	4.29
4.5	Queensland	4.30
4.6	Western Australia	4.33
4.7	South Australia	4.38
4.8	Tasmania	4.41
4.9	ACT	4.43
4.10	Northern Territory	4.45

6.1	Regulatory matters where RIS requirements were met, 1 April 2002 to 31 March 2003	6.5
6.2	Regulatory matters for which RIS requirements were not met, 1 April 2002 to 31 March 2003	6.7
7.1	Review and reform of electricity related legislation	7.20
8.1	Summary of jurisdictions' obligations	8.1
8.2	Enactment and certification of access regimes	8.5
8.3	Contestability timetables for the national gas access regime	8.8
8.4	Implementation of AS 4564/AG 864	8.17
8.5	Review and reform of legislation relevant to natural gas	8.18
10.1	Incomplete or delayed 1999 NCP reforms, 30 June 2002	10.3
10.2	Incomplete or delayed 2001 NCP reforms, at 30 June 2002	10.2
10.3	Reform implementation, 30 June 2003	10.4

Volume 2 Legislation review and reform

Volume 3 Water reform

Abbreviations

ACCC	Australian Competition and Consumer Commission
ACT	Australian Capital Territory
ACTEW	ACTEW Corporation
Agvet	Agricultural and veterinary
AHMAC	Australian Health Ministers Advisory Council
AMA	Australian Medical Association
ANZECC	Australian and New Zealand Environment and Conservation Council
ANZFA	Australia New Zealand Food Authority
ANZFSC	Australia New Zealand Food Standards Council
ANZMEC	Australian and New Zealand Minerals and Energy Council
APRA	Australian Prudential Regulation Authority
ARMCANZ	Agriculture and Resource Management Council of Australia and New Zealand
AWBI	AWB International Limited
CASA	Civil Aviation Safety Authority
CBH	Cooperative Bulk Handling Limited
CCNCO	Commonwealth Competitive Neutrality Complaints Office
CIA	Competition Impact Analysis
CIE	Centre for International Economics
CMS	Centralised monitoring system
CoAG	Council of Australian Governments
CPA	Competition Principles Agreement
CRR	Committee on Regulatory Reform (CoAG)

CSIRO	Commonwealth Scientific and Industrial Research Organisation
CSO	Community service obligation
CTP	Compulsory Third Party
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i> (NSW)
ETEF	Electricity Tariff Equalisation Fund
EWP	Environmental water provision
EWR	Environmental water requirements
FRC	Full retail contestability
FSANZ	Food Standards Australia New Zealand
GBE	Government business enterprises
GPAL	Gas Pipelines Access Law
GPOC	Government Prices Oversight Commission (Tasmania)
HAL	Horticulture Australia Limited
HEC	Hydro Electric Corporation (Tasmania)
ICRC	Independent Pricing and Regulatory Commission (ACT)
IPART	Independent Pricing and Regulatory Tribunal
MDBC	Murray–Darling Basin Commission
NCC	National Competition Council
NCP	National Competition Policy
NECA	National Electricity Code Administrator
NEM	National electricity market
NEMMCO	National Electricity Market Management Company
NEVDIS	National Exchange of Vehicle and Driver Information System
NSWRMB	New South Wales Rice Marketing Board
NT	Northern Territory

OECD	Organisation for Economic Co-operation and Development
ORR	Office of Regulation Review (Commonwealth)
PAWA	Power and Water Authority
PBS	Pharmaceutical Benefits Scheme
PBT	Public benefit test
PC	Productivity Commission
RFA	Regional Forest Agreements
RIS	Regulatory/regulation impact statement
ROP	Resource Operations Plan
SCARM	Standing Committee on Agriculture and Resource Management
SEVS	Specialist and Enthusiast Vehicle Scheme
SMA	Statutory marketing authority
TAB	Totalisator agency board
TAC	Total allowable catch
TAFE	Technical and Further Education
TPA	<i>Trade Practices Act 1974</i>
VEETAC	Vocational Education, Employment and Training Committee
VORR	Office of Regulation Reform (Victoria)
WEA	Wheat Export Authority
WRP	Water Resource Plan
WSAA	Water Services Association of Australia

Overview of progress and recommendations

The National Competition Policy (NCP) is a product of all Australian governments. Adopted unanimously in 1995, it is the most extensive economic reform program in Australia's history. The NCP builds on the recognition that competitive forces drive economic growth that, in turn, promotes better living standards. Indeed, all governments had introduced some pro-competitive reforms prior to 1995, albeit that implementation was often piecemeal within and across the States and Territories. In adopting the NCP, governments embarked on a nationally coordinated program of reforms, under the auspices of the Council of Australian Governments (CoAG).

The NCP is founded on agreements between the Commonwealth, State and Territory governments. (Local governments, while not direct parties to the agreements, are also implementing the NCP.) The agreements specify principles and processes aimed primarily at improving the quality of regulation and the performance of government businesses. The agreements are augmented by further sector-specific intergovernmental agreements on electricity, gas, water resource policy and road transport.

While the aim of the NCP is to promote competition to encourage businesses to use resources more effectively, reduce prices and respond better to consumer needs, it is not about competition for its own sake. Rather, the NCP aims to promote outcomes that enhance the welfare of Australians. The suite of NCP programs, thus, comprises a balanced mix of policy initiatives and measures to advance social and environmental needs. Now in its eighth year, the NCP continues to deliver tangible benefits for consumers, households, businesses and the environment (box 1).

The NCP entails staged reforms assessed against agreed implementation timeframes. CoAG's direction that the review and reform of existing legislation containing restrictions on competition be completed by 30 June 2002 is a key milestone. As the National Competition Council could not assess all such activity for the 2002 NCP assessment, this 2003 NCP assessment — which considers activity to 30 June 2003 — has afforded governments an additional 12 months beyond the CoAG target. In relation to this, the Council advised all governments that the 2002 NCP assessment was the last for which it would accept assurances on legislation review and reform action. It further advised that review and/or reform activity that was incomplete or not consistent with NCP principles at 30 June 2003 would not comply with NCP obligations and that the Council was likely to make adverse recommendations on competition payments.

Box 1: A snapshot of benefits flowing from the NCP

- A national electricity market, currently operating in southern and eastern Australia, gives large consumers (including some households) choice of electricity supplier. The net present value of these reform benefits over 1995–2010 is estimated at A\$15.8 billion in 2001 prices (Short et al 2001). In national market jurisdictions, labour and capital productivity have improved significantly and household electricity prices in Brisbane, Melbourne and Sydney fell in real terms by 1 to 7 per cent between 1990-91 and 2000-01 — a saving to households in 2000-01 of around A\$70 million (PC 2002g).
- Free and fair trade in gas has been instituted nationally and most jurisdictions, with others to follow, offer customers a choice of gas supplier. The reforms have stimulated gas production and pipeline developments. Since 1995 over A\$1 billion has been invested each year in upstream, transmission and distribution assets, and transmission pipeline infrastructure grew from 9000 to 17 000 kilometres from 1989 to 2001.
- Governments have removed legislative restrictions found not to provide a net community benefit. For example, NCP reviews have shown that restricting retail trading hours is not in the public interest and consumers have embraced the resulting introduction of more liberal arrangements. In Sydney and Melbourne around 35 per cent of consumers buy groceries on Sunday where supermarkets are permitted to open. In Perth and Adelaide, where only small food stores can trade on Sundays, the comparative figure is 7–8 per cent (Jebb Holland Dimasi 2000).
- The performance of government businesses has improved substantially through structural reforms and the application of principles to ensure that such enterprises face normal commercial disciplines. Competitive neutrality has promoted a more dynamic culture within government businesses arising from increased transparency and accountability and this contributes to greater efficiency, better services and cost-reflective prices for goods and services.
- Progress towards an economically viable and ecologically sustainable water industry is occurring. Consumption-based pricing is encouraging efficient water use, and lower water bills for customers. Full cost recovery pricing means water businesses are better placed to maintain and replace infrastructure, ensuring more reliable and better quality service. Increased water trading means water is being used where it is most valued. Trade out of Victoria's Sunraysia region into South Australia increased to over 4000 megalitres in 2000-01, with water leaving lower-value horticulture, cropping and grazing. The increase in irrigation return in Victoria alone in 2000-01 was estimated at A\$12 million, but would be higher nationally given the water was used for higher-value activities across the border (DNRE 2001). All jurisdictions are developing water management plans that recognise the environment as a legitimate user of water.

Electricity

A competitive and efficient electricity industry is a key objective of the NCP. New South Wales, Victoria, Queensland, South Australia and the ACT are part of an interconnected national electricity market (NEM). Tasmania expects to join in 2005 on completion of a link to the mainland. Significant benefits of the NEM include providing for customers to choose suppliers (generator, retailer and trader), the ability of generation and retail suppliers to enter the market, and the capacity for interstate and intrastate trade in electricity. Although outside the NEM, Western Australia intends to restructure its electricity monopoly (Western Power) to provide for greater competition and the Northern Territory has introduced an access regime for transmission and distribution, and a licensing scheme to enable competition in generation and retail.

Although significant progress has been made, CoAG's objective of a fully competitive national market is yet to be realised. Both the CoAG Energy Market Review (2002) — the Parer Review — and CoAG itself have identified deficiencies in the operation of the NEM. Aspects targeted for further reform relate to governance arrangements and the regionalisation of the NEM arising from poor incentives for transmission investment, a lack of locational pricing structures and an absence of cost-reflective network pricing. Further concerns revolve around a lack of sufficient competition in generation, limited demand-side participation and the state of financial contracts markets.

Governments are considering ways to develop appropriate reforms to achieve a fully competitive NEM. The Ministerial Council on Energy will report to CoAG on necessary reforms to:

- strengthen the quality, timeliness and national character of governance of energy markets to improve the climate for investment;
- streamline and improve the quality of economic regulation across energy markets to lower its cost and complexity for investors, enhance certainty and lower barriers to competition;
- improve planning and development of electricity transmission networks to create a stable framework for efficient investment in new (including distributed) generation and transmission capacity; and
- enhance the participation of energy users including through demand management and the further introduction of retail competition to increase the value of energy services to households and business. (Ministerial Council on Energy 2003a).

The Council will consider in the 2004 NCP assessment jurisdictions' responses to addressing the deficiencies identified by the Parer Review and any reform initiatives coordinated through CoAG, the Ministerial Council and the NEM Ministers' Forum.

Some of the deficiencies in the electricity market relate to existing reform commitments. In its 2002 NCP assessment the Council identified full retail contestability as a significant outstanding issue for some NEM participants. Queensland is now the only jurisdiction that has not met its commitment to introduce full retail contestability. Queensland has undertaken to immediately consider introducing contestability for customers using between 100 and 200 megawatt hours per year (tranche 4A) and to bring forward a review of the costs and benefits of full retail contestability. Queensland has agreed to consult with the Council on the terms of reference for the cost-benefit review. The Council regards this undertaking as progress towards acceptable compliance and on that basis has decided that specific suspensions of competition payments pending finalisation of these matters are appropriate. Had such progress not occurred the Council would have recommended significant permanent deductions.

The Council has concerns about the potential for regulated retail tariffs and the level and delivery method of community service obligations to create barriers to further retail competition. Regulatory oversight of retail electricity tariffs should be transitional and cease when retail markets develop sufficiently. Programs for phasing out such arrangements, including price caps, will be of particular significance in future NCP assessments, including specific state-based arrangements such as the electricity tariff equalisation fund (New South Wales) and the benchmark pricing agreement (Queensland).

The Council will examine these issues and the progress made by all NEM jurisdictions in its 2004 NCP assessment. The Council will also monitor jurisdictions' derogations from the National Electricity Code and seek explanations for any ongoing derogations and a timetable for their expiration.

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; and
- the provision for all gas consumers to choose their supplier — that is, full retail contestability.

CoAG's objectives for national free and fair trade in gas are now largely in place and the benefits of reform are being realised. The Parer review found that the Australian gas market is increasingly competitive, dynamic and efficient. It further noted that 'removal of restrictions on interstate trade in gas and provision of access to pipelines (transmission and distribution) and to customers (removal of exclusive franchises) has encouraged new pipelines to be built. Similarly, exploration for and development of new gas reserves has been encouraged' (CoAG Energy Market Review 2002).

All governments have met their commitments in relation to structural reform and franchising and licensing principles. And, although the review and reform of legislation is incomplete in several areas, jurisdictions are generally committed to finalising their obligations in this area.

New South Wales, Victoria, Western Australia, South Australia and the ACT have removed regulatory barriers to full retail contestability. Western Australia and South Australia expect that impediments to the practical attainment of full retail contestability will be removed in 2004. Queensland deferred implementing full retail contestability without the agreement of all jurisdictions, and subsequently announced that it did not intend to implement it at all. Queensland therefore has not complied with its gas

reform obligations. The Council will assess Queensland's actions in the 2004 NCP assessment, after Queensland completes its consultation process, and makes a final decision on implementation. The Council will also consider jurisdictions' progress in implementing the national gas quality standard and Tasmania's progress in seeking certification of its gas access regime.

Water

Water is a significant Australian industry — in value added terms, water and wastewater is almost one quarter the size of agriculture and almost three times the size of the gas industry. While water use by agricultural industries accounts for about 70 per cent of all water used, urban and industrial consumption is significant. Many Australian river systems are stressed, with resulting loss of productive land, poor water quality and reduced biodiversity — for example, one third of assessed river reaches have impaired aquatic biota, over 85 per cent have significantly modified environmental features and over half have modified habitat (NLWRA 2001).

Recognising these and other problems, CoAG agreed in 1994 to a water resource policy and a strategic framework for water reform. This framework, which was subsequently incorporated into the NCP, encompasses: reforms based on consumption-based pricing and full cost recovery; the elimination of inefficient cross-subsidies and the transparency of remaining cross-subsidies; requirements for new rural water infrastructure to be economically viable and ecologically sustainable; the clarification of water entitlements and their separation from land title; the allocation of water to the environment; the facilitation of water trading to allow water to be used where it is most valued; various institutional reforms to improve efficiency; and measures to enhance public consultation in the reform program.

Reflecting the scope of the reform task, elements of the program are scheduled for consideration in each NCP assessment. The 2003 NCP assessment considered governments' progress with urban water and wastewater pricing reforms, intrastate water trading arrangements, the various institutional reform matters, and the implementation of the National Water Quality Management Strategy. The 2003 assessment also considered some matters that the Council had found in previous assessments not to be sufficiently advanced. The 2004 NCP water assessment will consider rural water pricing and cost recovery, water trading arrangements and the implementation of water entitlements systems, including allocations to the environment. The 2005 NCP assessment will consider governments' implementation of the entire program. Given the importance of an efficient and ecologically sustainable water industry, the scope of the reforms, the complexity of the task confronting governments and the longevity of the program, water reform warrants its own separate findings and recommendations — this is provided in volume 3 of this assessment.

All governments are making progress towards implementing the water resource policy, although in different ways. The variances reflect the diversity of the administrative and legislative environments across jurisdictions, differences in the health of river systems and differences in the interests of the relevant stakeholder groups.

- The urban pricing performs are substantially complete, although some water businesses are yet to achieve full cost recovery and apply consumption-based pricing. Two governments are close to introducing institutional arrangements that will provide for the independent economic regulation of the water industry, while a third is considering providing greater transparency by reporting annually on water and wastewater pricing. All other governments provide independent regulation or scrutiny of their water businesses.
- The development of water rights separate from land title, with ownership, volume, reliability and tradeability well specified is largely complete. The legislative base for water rights is now settled in all jurisdictions. CoAG is considering a new intergovernmental agreement that may cover water rights arrangements.
- The development of water management arrangements — which allocate water among extractive uses and to the environment — is proceeding in all jurisdictions, with priority given to stressed and overallocated systems. This complex task requires judgments about environmental allocations based on the available science and accounting for the interests of water users. Where systems are stressed or overallocated, governments are reducing the water available for extraction, or instigating arrangements that allow the possibility of future reductions if environmental monitoring indicates this is warranted.
- Water trading is in its infancy but is expanding. The Murray–Darling Basin Commission has work under way on interstate water trading, including the development of: exchange rates to allow trading between regions and between different water entitlements in different States; environmental controls for trading; administrative arrangements for processing and approving trades; and a system to provide access to State-based registry systems. The commission is also examining alternatives to the restrictions on water trading in place in some jurisdictions.
- All States and Territories are developing integrated catchment management frameworks, including in the context of bilateral agreements with the Commonwealth on the National Action Plan for Salinity and Water Quality and the Natural Heritage Trust extension. All governments are continuing to implement the National Water Quality Management Strategy, although there is variation in the scope and speed of reform.
- All States and Territories have robust arrangements for examining proposals for new rural water infrastructure against CoAG's twin tests of economic viability and ecological sustainability. This 2003 NCP assessment considered new infrastructure projects in three jurisdictions.

- All States and Territories reviewed their water industry legislation in line with their NCP obligations.
- All States and Territories recognise the importance of improving community understanding of water reform. Governments are introducing elements of the reforms, via public processes that include stakeholders.

For the purposes of reporting governments' compliance with their NCP obligations, this overview and recommendations provides only a brief treatment of developments in each State and Territory. It draws essentially only on matters that directly bear on the Council's recommendations with respect to 2003-04 NCP competition payments.

Road transport

The NCP road transport reforms arose from concerns about inconsistent and anomalous rules that governed road transport across the States and Territories. Lack of a consistent approach to road transport regulation increases compliance costs for interstate operators, potentially compromises road safety and creates incentives for users to take advantage of systemic and communications inconsistencies. Nationally consistent regulation with minimal impediments to interstate operations further enhances Australia's road transport industry — already efficient by world standards.

The NCP road transport reform program comprises 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. For the 1999 NCP assessment, CoAG endorsed a framework covering 19 of the initiatives and assessment criteria and target dates for their implementation. CoAG endorsed a further framework of six reforms for the 2001 NCP assessment.

The comprehensive road transport reform commitments are almost complete. Western Australia has two reforms outstanding and the Commonwealth and the ACT have one each. These initiatives are expected to be implemented during 2003-04. That said, because it is the Ministerial Council for Road Transport that specifies which reforms are subject to the Council's assessment, some of the reform modules have not been assessed.

Legislation review and reform

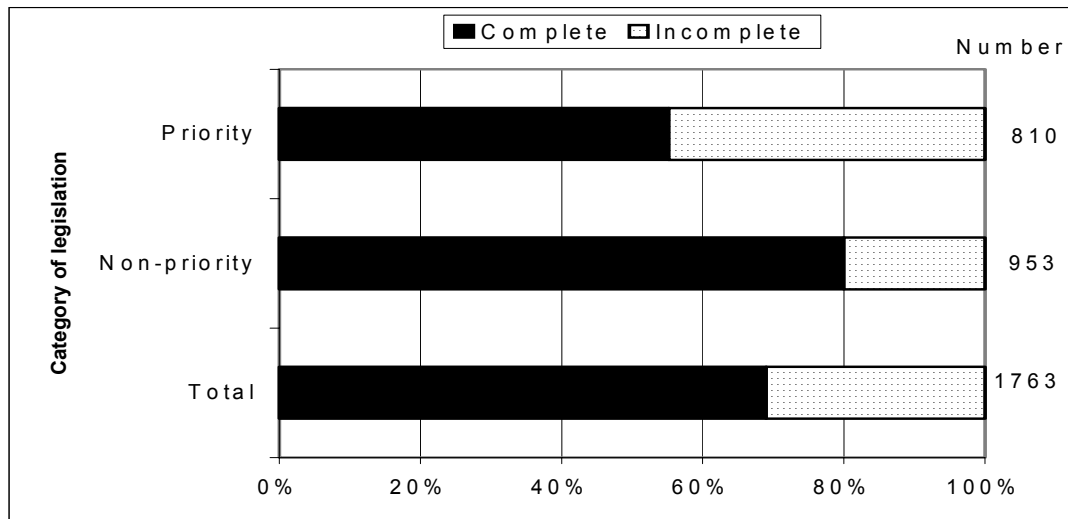
The legislation review and reform program is a vital element of the NCP. Each government developed an extensive legislation review agenda in June 1996, nominating, in total, around 1800 pieces of legislation for review. If a restriction on competition cannot be shown to provide a net community

benefit and to be necessary to achieve the objectives of the legislation, the government is obliged to remove the restriction.

Regulation that promotes the interests of the community provides the foundation for an internationally competitive economy. In contrast, laws designed to favour particular groups can result in beneficiaries commanding more resources than otherwise, and users and consumers paying more for the goods and services given regulatory protection. Consumers, in turn, have less to spend elsewhere, which means that providers of other goods and services produce less, use less capital and employ fewer people. Protecting incumbents erects a barrier not only to new entrants, but also to new ideas and innovative practices. A further loss to the community is the diversion of entrepreneurial effort away from undertaking core business activities to preserving (or seeking) a privileged position through legislative restrictions on competition.

Given that restrictions on competition are usually couched in terms of the interests of the community, the NCP requires that such claims are subject to robust and transparent scrutiny. Recognising the resource intensity of conducting legislation reviews, in 2001 the Council identified reform areas that it considered governments should address as priorities. These areas, many of which have been characterised by endemic restriction, include primary industries, retailing, the occupations, transport, finance, social regulation and construction and development activity.

Figure 1: Overall compliance with the review and reform of the stock of legislation (excluding water and energy legislation): all governments



While no jurisdiction managed to complete its review and reform activity at 30 June 2003, substantial progress has been achieved (figure 1). Many laws regulating significant areas of economic activity have been reviewed, and restrictions found not to provide a community benefit removed. Australia-wide, around 70 per cent of governments' nominated legislation has been reviewed and, where appropriate, reformed. For priority legislation, the rate

of compliance is substantially lower, at around 56 per cent overall. However, much of the priority legislation activity still under way at 30 June 2003 is likely to be completed in the near future.

As in earlier NCP assessments, the Council identified instances of review and reform activity that are inconsistent with NCP principles. In previous years, the Council typically discussed an appropriate way forward with relevant governments. This constructive engagement increased the opportunity for reforms in the public interest. As the Council's primary objective is to assist governments to achieve reform outcomes that are consistent with the interests of the community, it recommended the suspension or reduction of NCP payments only as a last resort. For the 2003 assessment, however, the Council had to make a final assessment on whether governments had met fully their agreed obligations against a firm implementation deadline.

Key areas where reforms are incomplete

Despite solid progress, addressing restrictive legislation remains contentious as evidenced by the lower success rate in the more difficult priority legislation review areas. Processes that subject restrictions on competition to public interest testing invariably generate opposition from incumbent beneficiaries. This opposition creates a political environment that is not always conducive to reform. Some areas where reform has been problematic are noted below.

Primary industries

At the commencement of the NCP, there were numerous statutory marketing arrangements for agricultural products. While review and reform outcomes have been mixed, there have been some notable successes. For instance, all governments repealed price and supply controls on drinking milk; Queensland ended its export marketing monopoly for wheat and barley; Victoria deregulated its barley marketing arrangements and a recent NCP review of similar arrangements in South Australia recommended deregulation; Western Australia is progressing reforms to liberalise its grain marketing; Queensland and Tasmania removed supply and marketing restrictions on eggs; Western Australia and South Australia have removed entry and pricing restrictions in bulk handling; Queensland expedited reform of the sugar industry; and centralised price fixing for poultry growing services has been replaced in several jurisdictions. In contrast, the Commonwealth Government's decision to not remove its wheat marketing restrictions, as recommended by its NCP review, has discouraged some State reforms in the public interest from proceeding.

Despite the pro-competitive outcomes in many areas of agricultural marketing, several often arcane arrangements remain reflecting that reform in this area continues to be difficult for governments that face resistance from well-mobilised and vocal beneficiaries of long-standing arrangements. This is

despite the inability of many relevant producer groups to unite to retain restrictions on competition because typically the most efficient and/or innovative producers are penalised by the 'averaging' practices of statutory marketing arrangements. For example, productivity losses can arise through pooling arrangements that can reduce rewards for quality and innovation, foster inefficient logistical arrangements and stymie the development of risk-spreading opportunities for producers and competing domestic marketers.

The retention of marketing boards for some commodities has contributed to lobbying from other commodity producers for similar market interventions. Unchecked, such an environment can be self-perpetuating as interest groups perceive the benefits of eschewing competitive processes in favour of lobbying for regulatory constraints on competition. In particular, governments face lobbying pressure from chicken meat growers and, at least in one State, dairy farmers, for re-regulation. The differential treatment of similar commodities across jurisdictions has the potential to direct mobile investment into areas with favourable regulatory environments (jurisdiction shopping) rather than for sound commercial reasons. For these reasons the Council regards agricultural marketing as a high priority area. It will scrutinise closely all new legislation in this area to highlight any threats to the gains that the community has won from reforms to date.

Governments are also using the NCP to consider how best to improve the efficiency of activities such fishing and forestry and to achieve the sustainable development of these resources.

Retailing

Prescribed shop trading hours discriminate among sellers on the basis of location, size or product and prevent them from trading, and consumers from shopping, at the times they consider appropriate. Such regulations are out of step with the social and demographic characteristics of modern economies where many people reside in two income households and desire flexibility in when and where they make their purchases of goods and services.

With the exception of Western Australia, all governments have substantially deregulated trading hours. The liberalisation of trading hours across Australia reflects that no properly constituted NCP review has determined that the restrictions provide a net community benefit. On the contrary, evidence from reviews and from the experience of deregulated jurisdictions negate the arguments put by proponents of such restrictions. For example, small retail business employment in Victoria has grown since it removed restrictions in 1996 whereas it has fallen by almost 10 per cent over the period in Western Australia.

Liquor licensing laws that focus on the public interest via nondiscriminatory provisions aimed at harm minimisation are consistent with NCP principles. More often than not, however, liquor licensing laws preclude entry by responsible sellers and favour some sellers at the expense of others.

Legislation governing the sale of liquor involves three broad categories of competition restrictions.

- Barriers to entry: Legislation in several jurisdictions contain tests that require licence applicants to demonstrate a need for an additional outlet.
- Discrimination between sellers: In Queensland, only holders of a general (hotel) licence can sell packaged liquor. In Western Australia, hotels can sell packaged liquor on Sundays while liquor stores are prohibited from opening. And, until recently, nonhotel retailers of packaged liquor in Tasmania could not sell less than nine litres of liquor in one any sale, whereas hotel bottle shops could sell any quantity.
- Market conduct: In Queensland, hotels are limited to three bottle shops, which must be detached from the hotel. Each bottle shop must be no larger than 150 square metres and drive-in facilities are prohibited.

These arbitrary restrictions have adverse implications for potential new businesses, for consumer convenience and community amenity more generally. As in previous assessments, the Council regards retail-related restrictions to be high priority matters. For the 2003 assessment, it looked for an appropriate balance between social goals and regulation that did not involve explicit references to competitive effects on incumbents.

Professions and occupations

The review and reform of laws regulating professions and occupations is a significant element of the NCP legislation review and reform program. Review and reform activity by individual governments in many of these areas is complete and complies with NCP principles. However, reform outcomes are still to be implemented in some important areas, including health practitioners — in particular, pharmacists — building related trades (including architects) and legal practitioners.

The Council identified compliance failures following some governments' reform activity, including ownership restrictions for dental and optometry practices and the registration of occupational therapists and speech pathologists. Ownership restrictions, in particular, which place occupational standing above business acumen, impede market entry for innovative service providers.

Pharmacy legislation

CoAG commissioned a national review of governments' pharmacy legislation in 1999 — the Wilkinson review. Among other matters, the review recommended: continuing to restrict the practice of pharmacy to pharmacists; retaining ownership restrictions; lifting restrictions on the number of pharmacies that a pharmacist can own; and continuing to permit friendly

societies to own pharmacies, but prohibiting their entry to jurisdictions where they do not operate currently.

CoAG referred the Wilkinson review to a working group which, although questioning the view that restricting pharmacy ownership is in the public interest, considered that deregulating ownership could be disruptive in the short term. The working group proposed that CoAG reject the recommendation to prevent friendly societies operating pharmacies in jurisdictions where they are not already present. It endorsed the recommendation to remove restrictions on the number of pharmacies that a pharmacist may own and recommended that reservation of pharmacy practice be retained only as an interim measure. The working group's findings reinforce the Council's reservations about the veracity of the initial review.

Although the working group reported in August 2002, no government completed the review and reform of its pharmacy legislation, although several indicated that amending legislation will be introduced later in 2003. The Council will look for governments to expedite progress in this important area and will scrutinise reforms to ensure that they do not discriminate against friendly societies operating in jurisdictions where they are located currently or in jurisdictions where they do not have a presence.

Taxis

Throughout Australia taxi and hire cars operate under anticompetitive regulations. State and Territory legislation generally provides for taxi licences to be issued infrequently on a discretionary basis. This has led to a decline in taxis per head of population. One indication of the regulation-induced scarcity of taxis is the artificially high values attached to taxi licences — often in the range of A\$200 000 to A\$300 000. Ultimately, this cost is borne by taxi users. The adverse efficiency impacts and the transfers from taxi users to licence holders from regulation are significant. The Victorian NCP review, for instance, estimated that the annual cost to the community of taxi supply restrictions was A\$72 million, comprising transfers from passengers to plate owners of A\$66 million and deadweight losses of A\$6 million.

All jurisdictions have completed NCP reviews of their taxi and hire car legislation. The Victorian, Western Australian, ACT and Northern Territory reviews recommended removing restrictions on taxi licence numbers and compensating incumbents through licence buybacks. The New South Wales and Tasmanian reviews recommended transitional approaches involving annual increases in licence numbers. Despite the evidence from NCP reviews that taxi supply restrictions are not in the public interest, governments have found it difficult to make major progress in this area.

Apart from a reform program in Victoria involving a twelve year program of staged releases of taxi licences, progress has been disappointing. The difficulties faced by governments is exemplified by the experience of the Northern Territory which in the late 1990s bought back all taxi licences in

tandem with opening the market to new participants. Notwithstanding that taxi users continue to pay for this licence buyback, the government subsequently reintroduced entry restrictions, thereby creating the conditions for a future adjustment problem. From the community's perspective, it is not clear what benefit was gained from funding the compensation package.

To help break the impasse in this field of regulation, the Council wrote to all jurisdictions in 2002 to advise that it accepted that a more gradual transition to open competition could be consistent with the NCP. It provided guidelines on acceptable reform programs extending beyond 2003. Some governments have started to consider reform initiatives, whereas others have found the task too daunting.

National reviews

Where a review raises issues with a national dimension, the NCP provides that it can be undertaken on a national basis. There have been 12 such reviews to date. In many cases, governments have not yet implemented the recommended reforms because of delays arising from protracted intergovernmental consultation. Areas where governments' review and reform of legislation is incomplete because of a need to resolve interjurisdictional processes include: agricultural and veterinary chemicals; drugs, poisons and controlled substances; trade measurement and travel agents.

In addition, the Council did not finalise the assessment of governments' obligations with respect to the review and reform of statutory monopoly provision of insurance. This reflects the commencement of a Productivity Commission inquiry into Australia's workers compensation schemes. Given the commonality of issues with monopoly provision of compulsory third party, and legal professional indemnity, insurance, the Council also did not complete its assessment in these areas.

There are demonstrable benefits from thorough interjurisdictional consultation on issues with a national dimension. Nevertheless, while a national focus can improve regulatory consistency across jurisdictions, the Council is concerned that in some cases the processes are not progressing within a reasonable period.

New legislation that restricts competition

As well as the obligation to review the stock of existing legislation, governments have continuing obligations to scrutinise all proposals for new legislation. This provides the community with some assurance that unwarranted anticompetitive restrictions on competition are not removed from existing legislation only to resurface in new legislation.

Where new legislation restricts competition, governments must establish that the restriction provides a net benefit to the community as a whole and is necessary to achieve the objective of the legislation. Accordingly, each government has established procedures for scrutinising new regulations — known as ‘gatekeeping’ processes. The Commonwealth Government’s gatekeeping procedures represent best practice as they require impact assessment for all regulatory proposals and are underpinned by detailed guidelines on the conduct of impact analysis. An independent Office of Regulation Review is empowered to examine agencies’ impact assessments and to advise Cabinet on their adequacy. The office also monitors and reports annually on compliance with the regulation impact analysis guidelines.

Other jurisdictions generally subject all primary and subordinate legislation to their gatekeeping requirements. New South Wales, however, does not subject direct amendments to legislation to its gatekeeping requirements. The Council considers this a material omission. In other respects there are divergences between the models adopted by each jurisdiction. For example many jurisdictions use Cabinet processes to implement gatekeeping mechanisms for primary legislation and therefore may not require the final impact assessment to be made available publicly. Others lack the rigorous monitoring and reporting systems of the Commonwealth, or their systems have not been in place long enough to be properly assessed.

Despite the efficacy of the gatekeeping system, governments have implemented some legislation that restricts competition in the absence of evidence of a net community benefit. For example, the Council is concerned about the introduction in some states of restrictions, based on tenuous public interest arguments, on advertising by lawyers for personal injury services.

An effective gatekeeping process is a necessary condition for guarding against the introduction of legislation that is not in the public interest, but does not obviate the need for the Council to scrutinise governments’ new legislation to ensure that it accords with their obligations under the NCP.

Reform of government businesses

Governments continue to reform their business activities in accordance with the NCP through the structural reform, and prices oversight, of public monopolies. Significant publicly owned businesses in all jurisdictions apply competitive neutrality principles and each government has a mechanism for investigating complaints that their businesses are not doing so appropriately.

The coverage of governments’ competitive neutrality policies is generally satisfactory and most governments continue to address business structure issues. For the 2003 assessment, the Council focussed on governments’ forestry businesses. It assessed all jurisdictions, apart from Victoria, as being well advanced in meeting their NCP obligations. However, the Council could not assess that governments’ forestry businesses comply with NCP because they are yet to establish track records of earning adequate profits.

Commonwealth, State and Territory complaints mechanisms are operating satisfactorily but could be improved in two areas. First, some jurisdictions provide for Ministers to decide whether an independent body should hear complaints and this can bring into question the independence of the complaints process. Second, complaints processes have been inordinately slow in some cases. While these concerns do not indicate widespread systemic failures, the Council encourages governments to consider options for accelerating investigation processes and any subsequent actions.

Competition payments: the Council's approach

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 2003-04 are approximately \$A765 million and are allocated to the States and Territories on a per capita basis. The Commonwealth Treasurer decides on the actual payments after considering the Council's advice on jurisdictions' progress in meeting their NCP obligations. 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 and is therefore not subject to reductions or suspensions.

In terms of the CoAG target for the completion of the legislation review program, for the 2003 NCP assessment the Council regarded a government as failing to meet its obligations where (a) the review and reform of legislation was not completed or (b) completed reviews and/or reforms did not satisfy NCP principles. Where review and reform activity was incomplete owing to a need to resolve outstanding national reviews or other interjurisdictional processes, the Council considered that there should not be adverse payment implications.

The significance of an individual compliance failure can reflect an array of considerations, including:

- *The extent of anticompetitive restrictions remaining.* Significance may vary across jurisdictions for the same area of regulation, depending on the extent of the restriction. Two jurisdictions might have identical barriers to entry to an industry, but one jurisdiction might allow greater entry to providers of a closely substitutable service, thereby mitigating the impact of the primary restriction (such as for taxis and hire cars).

- *The relative importance of a compliance breach in terms of its impacts on the community and economy.* Single desk arrangements for an agricultural commodity, for example, are more significant than, say, reservation of title for speech therapists.
- *How the effects of anticompetitive impacts are manifested.* Some restrictions on competition:
 - result in financial transfers to incumbent beneficiaries at the expense of potential competitors and users and final consumers;
 - have significant, albeit less tangible, effects on consumer convenience (such as the restrictions on shop trading hours); and
 - have pronounced impacts on the allocation of resource use in other jurisdictions or the economy generally, such as differential restrictions across jurisdictions that raise business costs and distort location decisions.

In addition to accounting for the significance of any particular compliance breach, CoAG has directed the Council, when assessing the nature and quantum 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; and
- the effect of one State or Territory's reform efforts on other jurisdictions.

The Council interprets this guidance to mean that individual minor breaches of reform obligations should not necessarily have adverse payments implications where a 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 a government's overall performance in reform implementation, the impact of the breach of reform obligations and whether there are adverse impacts on other jurisdictions.

In taking account of the significance of an individual compliance failure and CoAG's direction that a jurisdiction's overall performance in meeting the suite of NCP obligations should also condition payments recommendations, the Council determined that, for each State and Territory:

- significant individual compliance breaches should attract penalties (suspensions or deductions) in their own right; and
- other compliance breaches should be agglomerated and a general 'pool suspension' applied.

For the purposes of the 2003 NCP assessment, the categories of penalties are elaborated on below.

- **Permanent deductions** are irrevocable reductions in governments' 2003-04 competition payments for specific compliance failures. The Council may recommend that the permanent deduction not be imposed for competition payments in subsequent years where governments introduce appropriate reform. In the absence of complying action the Council is likely to recommend in future assessments that the 2003-04 deductions be ongoing.
- **Specific suspensions** apply until pre-determined conditions are met, at which time the suspension is lifted and suspended 2003-04 competition payments released to the relevant jurisdiction. Suspensions of this type recognise that governments are taking action to comply but have not as yet completed that action. The Council will address these matters as and when significant commitments are made, or reforms implemented. Where commitments are not made or met, or reform action not implemented by the 2004 NCP assessment, the Council is likely to recommend that the suspended 2003-04 competition payments be withheld permanently (that is, converted to a permanent deduction). In subsequent years the Council will consider whether further suspensions or permanent deductions should apply.
- **Pool suspensions** apply to a pool of outstanding legislation review and reform compliance failures and relate to payments for 2003-04. The Council will reassess progress with the pool of compliance failures in the 2004 NCP assessment. If satisfactory progress is made, the Council may recommend that the suspension be lifted or reduced and the funds released to the relevant jurisdiction. If satisfactory progress is not made, the Council is likely to recommend that all or part of the suspension be converted to a permanent deduction for the 2003-04 NCP competition payment and that the deduction be ongoing.

New South Wales

Energy

New South Wales is a leading state in energy markets reform and with one exception has met all obligations relating to electricity and gas reform for this 2003 NCP assessment.

- New South Wales implemented the reforms to establish the NEM and has met its commitment to full retail contestability. The Council:
 - is concerned about the potential for barriers to further retail competition in the electricity market created by the level and delivery

method of the community service obligations provided to franchised customers; and

- will further examine the electricity tariff equalisation fund in the context of the wider issues raised by regulated retail tariffs in its 2004 NCP 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 the National Gas Access Code, removed barriers to free and fair trade in gas, removed restrictions on gas use, adopted national pipeline construction standards, and introduced contestability to the household level.

New South Wales has extended a derogation from the National Gas Access Code relating to the treatment of some transmission pipelines as distribution pipelines. It did not, however, secure Commonwealth agreement to continue the derogation — the Commonwealth supported a three year extension rather than the five years proposed by New South Wales. Consequently, New South Wales is in breach of the intergovernmental agreement on gas.

Water

New South Wales substantially implemented the water pricing obligations for its urban sector. The Independent Pricing and Regulatory Tribunal regulates the four large urban metropolitan businesses, which set prices on a consumption basis to achieve full cost recovery. Many nonmetropolitan urban service providers also impose consumption-based prices for water services and achieve full cost recovery. The Government released guidelines to facilitate best practice pricing in February 2003, and annually benchmarks the performance of its nonmetropolitan urban water and wastewater providers.

New South Wales gazetted the State Water Management Outcomes Plan in 2002 and subsequently gazetted 35 water sharing plans covering 80 per cent of the State's water, including most stressed and overallocated systems. The Government deferred commencement of the water sharing plans until January 2004, after CoAG announced that it would consider a new intergovernmental water agreement. The State's new licensing and approvals system and its water rights registry will also commence on 1 January 2004.

As well as the new licensing system and registry, the trading rules in the water sharing plans are important to the development of water trading. While the trading rules significantly improve the State's arrangements, the rules in some plans appear to restrict trading beyond the need to protect the environment or to manage trading systems. There are also prohibitions on net trade of water out of some irrigation districts.

New South Wales completed the review and reform of its stock of water industry legislation, repealing a range of water industry legislation. The Council defers the 2003 assessment of New South Wales' actions to provide water for the environment and establish its licensing and registry system to February 2004.

Legislation review

New South Wales had 216 pieces of existing legislation (excluding electricity, gas and water) for review comprised of 118 priority and 98 nonpriority pieces of legislation. It completed the review and reform of over 70 per cent of its stock of legislation. New South Wales reviewed, and where appropriate, reformed nearly 70 per cent of its priority legislation and nearly 80 per cent of its nonpriority legislation. Compared to other jurisdictions, its performance was above average.

New South Wales had eight areas in which review and reform outcomes did not meet NCP obligations:

- vesting arrangements for grains (*Grain Marketing Act 1991*);
- centralised bargaining arrangements (*Poultry Meat Industry Act 1986*);
- restrictions on taxis and hire cars (*Passenger Transport Act 1990*);
- compulsory mediation for acquisition of farm debt (*Farm Debt Mediation Act 1994*);
- ownership restrictions for dentists (*Dentists Act 1989*) and optometrists (*Optical Dispensers Act 1963* and *Optometrists Act 1930*);
- exclusive gaming machine investment licences (*Gaming Machines Act 2001*); and
- requirements for minimum bets and advertising restrictions (*Racing Administration Act 1998*).

New South Wales had a further 20 areas where review and reform was incomplete, including 9 instances where a commitment to finalising activity for this NCP assessment was not evident. (It had six incomplete reform areas pending final resolution of interjurisdictional processes.)

Other NCP obligations

New South Wales:

- subjects all proposals for new legislation, apart from direct amendments, to testing for compliance with competition principles — the exclusion of

direct amendments from scrutiny means that its gatekeeping process may not provide sufficient analysis of new legislative proposals;

- continues to meet its obligations in relation to the structural reform of public monopolies and prices oversight of its monopoly businesses;
- meets its competitive neutrality obligations through appropriate coverage of government businesses and by virtue of a suitable competitive neutrality complaints mechanism;
- continues to meet its obligations under the Conduct Code; and
- has completed its road transport reform obligations.

Assessment

For the purposes of the 2003 NCP assessment, New South Wales had significant compliance breaches in the following areas.

- *Vesting for grains*: Monopoly arrangements for certain grains under the *Grain Marketing Act 1991* are inconsistent with the interests of the community and of producers. The Government reported that it could not expedite the expiry of the restrictions because of binding agreements with Grainco, the holder of the monopoly right. It presented no further evidence that its original decision to retain the restrictions was in the public interest. The Council notes, however, that the Government has legislated to remove the restrictions in September 2005.
- *Monopoly on domestic rice sales*: The NCP review of the statutory rice marketing monopoly, under the *Marketing of Primary Products Act 1983*, recommended removing the domestic monopoly while retaining the export monopoly. The Government failed to implement the recommendations. To progress matters, in 1999 a model for a Commonwealth rice export authority, which would enable liberalisation of domestic rice marketing arrangements, was developed by a working group. The New South Wales Premier agreed in principle to the model. The Commonwealth subsequently consulted other States and Territories but is yet to advise the outcome of these consultations. The Council understands that New South Wales will undertake a new review of the rice vesting arrangements. The Council expects the Government to undertake an independent review and, if it recommends reform, to implement such reform without delay unless there is a clear public interest in a reform transition against a firm timetable.
- *Chicken meat industry negotiations*: The *Poultry Meat Industry Act 1986* restricts competition between processors and growers by setting base rates for growing fees and prohibiting agreements not approved by an industry committee. The Government failed to show that these restrictions were in the public interest and, moreover, failed to conduct an open NCP review

process. The Council recommends a permanent deduction of 5 per cent of competition payments for 2003–04 for noncompliance in this area.

- *Regulation of liquor sales:* The *Registered Clubs Act 1976* and the *Liquor Act 1982* underpin an anticompetitive needs test that benefits incumbent sellers of liquor. Despite having commenced a review of its liquor licensing legislation in 1998, the Government has not yet finalised its review and reform activity. The Council recommends a permanent deduction of 5 per cent of competition payments for 2003–04 for noncompliance in this area.
- *Other compliance failures:* The Council recommends a suspension of 10 per cent of competition payments for 2003-04 for the remaining legislation review compliance failures, until reforms have progressed (see below). In particular, the Council will look for progress on domestic rice marketing (whether or not a Commonwealth rice export authority proceeds), grain marketing, the health professions (especially pharmacies), fisheries, and taxis and hire cars.

New South Wales: 'suspension pool'

Professions and occupations: Veterinarians; dentists*; nurses; podiatrists; optometrists*; pharmacists; architects; hairdressers; commercial and private inquiry agents; wool, skin and hide dealers

Primary industries: Fisheries management; food legislation; farm debt mediation*; rice marketing; grain marketing

Transport: Taxis and hire cars*; tow trucks; marine safety

Other: Funeral funds regulation; child care; gambling (lotteries, casinos, gaming machines*, minor gambling, racing*)

Activity delayed by ongoing national processes: Agricultural and veterinary chemicals; stock medicines; legal practice; travel agents; statutory monopoly workers compensation insurance; trade measurement

Notes: A * denotes that outcomes are not consistent with NCP obligations. Underline denotes that the relevant legislation is before Parliament.

In making its recommendations on competition payments, the Council has taken account of New South Wales considerable reform progress and successes as a reflection of its general commitment to NCP reform, and the likely impact of its reform failures. Balanced against these considerations, the Council considers that, in relation to New South Wales 2003-04 NCP competition payments, the matters identified in this assessment warrant:

- ***a permanent deduction of 5 per cent for noncompliance in respect of chicken meat industry legislation (estimated at A\$12.86 million);***
- ***a permanent deduction of 5 per cent for noncompliance in respect of the regulation of liquor sales (estimated at A\$12.86 million); and***
- ***a pool suspension of 10 per cent for outstanding legislation review items (estimated at A\$25.72 million).***

Victoria

Energy

Victoria is a leading state in NCP energy markets reform and has met all obligations under the electricity and gas reform agreements for the purposes of this 2003 NCP assessment.

- Victoria implemented the reforms to establish the NEM and met its commitment to full retail contestability. Its approach to meeting community service obligation objectives, by providing rebates for regional customers faced with higher distribution charges, minimises adverse impacts on competition. This provides a lead to other governments in implementing policies to achieve social objectives that are compatible with NEM objectives.
- Victoria has undertaken major 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 the National Gas Access Code, removed barriers to free and fair trade in gas, adopted national pipeline construction standards and introduced contestability to the household level. It is continuing with review and reform of gas-related legislation and the implementation of the national gas quality standard.

Water

Victoria's four urban metropolitan providers of water and wastewater services set prices to achieve full cost recovery. Several regional urban water and wastewater businesses are still to reach commercial viability. Volumetric pricing is widespread, so water users face an incentive to use water efficiently.

The Government introduced a Bill to establish the Essential Services Commission, with jurisdiction for the water industry from 1 January 2004. The commission's first price determination for the water industry will apply from 1 July 2005. In addition, the Government is canvassing water industry issues in a green paper review of the State's water industry.

Victoria completed flow rehabilitation plans for two of five priority stressed rivers. It anticipates that flow rehabilitation plans for two other rivers will be completed shortly. The Government referred one river plan to the relevant catchment management authority.

Victoria established a technical audit panel to consider whether the information and methods used to develop environmental flows are the best available at the time, and to decide whether the assessment of risks is properly done. The Government will make the panel's reviews and a range of other information publicly available.

Water rights are well defined, with Victoria well advanced in converting the existing rights of water authorities to clearly-defined bulk entitlements. Victoria has a well-established trading market for high security water, and trading plays an important role in the State's agricultural production.

Victoria will review two of the remaining constraints on water trading — the requirement for water entitlements to attach to land and the differential returns on bulk water supply. A further constraint in some irrigation districts is the provision that a trade may be refused if it would result in more than 2 per cent (net) of the total water entitlement being transferred out of the district in a given year.

Victoria reviewed its water industry legislation in 2001. The Government endorsed many of the recommendations of this review and is well advanced with implementing these. Victoria is considering other recommendations in its green paper review of the water industry.

The Council defers the 2003 assessment of Victoria's actions to provide water for the environment and establish its licensing and registry system to February 2004.

Legislation review

Victoria had 210 pieces of existing legislation (excluding electricity, gas and water) for review comprised of 91 priority and 119 nonpriority pieces of legislation. It completed the review and reform of over 80 per cent of its stock of legislation. Victoria reviewed, and where appropriate, reformed 78 per cent of its priority legislation and over 80 per cent of its nonpriority legislation. Compared to other jurisdictions, Victoria's performance was well above average.

Victoria had two areas in which review and reform outcomes were assessed as not meeting NCP obligations:

- barriers to entry to the provision of accident towing services (*Transport (Tow truck) Act 1983* and *Transport (Tow truck) Regulations*); and
- exclusive lottery licence arrangements (*Tattersall Consultation Act 1958* and *Public Lotteries Act 2000*).

Victoria had a further eight areas where review and reform was incomplete, including six instances where a commitment to finalising activity for this NCP assessment was not evident. (It had seven incomplete reform areas pending final resolution of interjurisdictional processes.)

Other NCP obligations

Victoria:

- subjects all proposals for new legislation to testing for compliance with competition principles via an NCP impact assessment;
- continues to meet its obligations in relation to the structural reform of public monopolies and prices oversight of its monopoly businesses;
- has promoted competitive neutrality reform of its government businesses and has a robust competitive neutrality complaints mechanism;
- continues to meet its obligations under the Conduct Code; and
- has met all of its road transport reform obligations.

Assessment

For the purposes of the 2003 NCP assessment, the Council recommends a suspension of 5 per cent of Victoria's competition payments for 2003-04 for legislation review compliance failures, until reforms have progressed (see below). In particular, progress will be required in the professions (especially pharmacies) and tow trucks.

Victoria: 'suspension pool'

Professions and occupations: Pharmacists; private agents; architects; surveyors

Primary industries: Fisheries management; and mining legislation

Transport: Tow trucks*; port services

Other: Gambling (lotteries*); building approvals

Activity delayed by ongoing national processes: Agricultural and veterinary chemicals; drugs, poisons and controlled substances; legal practice; travel agents; statutory monopoly provision of workers compensation and third party vehicle insurance; trade measurement

Note: A * denotes that outcomes are not consistent with NCP obligations.

Victoria has substantially completed the total NCP reform agenda and its overall progress has been impressive. 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. Balanced against these considerations, the Council considers that, in relation to Victoria's 2003-04 NCP competition payments, the matters identified in this assessment warrant a pool suspension of 5 per cent for outstanding legislation review items (estimated at A\$9.48 million).

Queensland

Energy

Queensland made substantial progress with energy reform. With two exceptions it met its obligations under the electricity and gas reform agreements for the purposes of this 2003 NCP assessment.

- Queensland implemented the reforms to establish the NEM. In October 2001, it announced that it would not implement full retail contestability, but would:
 - review the decision in 2004 once the impact of the introduction of full retail contestability in other jurisdictions was known; and
 - consider extending contestability to small business customers consuming less than 200 megawatt hours of electricity per year.

This decision followed a cost–benefit analysis that Queensland argued demonstrated that the costs of implementing full retail contestability outweigh the benefits. The Council considered this analysis in its 2002 NCP assessment and concluded that Queensland had not demonstrated that the costs of implementing full retail contestability outweigh the benefits because it had failed to make provision for dynamic benefits.

Queensland has now undertaken to immediately consider introducing contestability for customers using between 100 and 200 megawatt hours per year (tranche 4A) and commencing the planned 2004 review of the costs and benefits of full retail contestability. Queensland has agreed to consult with the Council on the terms of reference for the cost–benefit review. The Council regards these undertakings as the minimum acceptable level of progress towards compliance and on that basis has decided that specific suspensions of competition payments pending finalisation of these matters are appropriate. Had such progress not occurred the Council would have recommended significant permanent deductions and if the actions undertaken were not to occur it is highly likely that the Council will recommend the suspensions recommended as part of this assessment be converted into permanent deductions.

- In terms of its NCP obligations with respect to gas, Queensland has implemented the National Gas Access Code, removed barriers to free and fair trade in gas, removed regulatory restrictions on gas use, and adopted uniform national pipeline construction standards. Queensland has not, however, met fully its national gas reform obligations. It deferred the introduction of full gas retail contestability from 1 September 2001 to 1 January 2003 without the required consent of all governments. Queensland released for public consultation a cost–benefit analysis that found that the introduction of full retail contestability would impose significant net costs. It informed the Council that it intends, subject to

issues raised in public consultation, not to introduce retail contestability for gas users consuming less than 100 terajoules per year.

The Council considers that Queensland has not complied with the processes required under its national gas reform obligations. The Council will assess Queensland's actions against its commitment to introduce full retail contestability in its 2004 NCP assessment, after Queensland completes its consultation process, and makes a final decision on implementation.

Water

Queensland substantially implemented its urban water pricing obligations. Most businesses with over 1000 connections are achieving full cost recovery and implementing consumption-based pricing.

Water allocations are separate from land title, and their ownership, volume and location are clearly specified. Water resource plans specify the rules for the allocation of water, water security objectives and environmental flow provisions. The plans, which have effect for 10 years, are implemented through resource operations plans detailing day-to-day operational rules. Queensland has completed water resource plans for six river systems (with a further three expected soon) and a resource operations plan for the Burnett Basin.

Queensland's sole (potentially) overallocated river system is the Condamine–Balonne Basin. It is developing new water management arrangements for the basin, which it expects to finalise by mid-2004.

Queensland is in the early stages of permanent water trading. It commenced a trial of permanent trading in 1999 and has subsequently extended this. Queensland amended or repealed a range of water industry legislation via the *Water Act 2000*.

The Government announced its intention to proceed with the Burnett Water Infrastructure Project. The project comprises construction of the 300-gigalitre Burnett River Dam and construction or enhancement of associated weirs. With the exception of the raising of one weir, the project has passed through Queensland's environmental assessment processes and has been approved under the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999*. Studies commissioned by the Queensland Government show that the project will deliver significant net economic benefits and that regional water demand will be sufficient to take up the new entitlements from the Burnett project at appropriate prices.

Legislation review

Queensland had 178 pieces of existing legislation (excluding electricity, gas and water) for review comprised of 118 priority and 60 nonpriority pieces of legislation. It completed the review and reform of over 70 per cent of its legislation. Queensland reviewed, and where appropriate, reformed 61 per cent of its priority legislation and over 90 per cent of its nonpriority legislation. Compared to other jurisdictions, Queensland's performance was above average.

Queensland had six areas in which review and reform outcomes were assessed as not meeting NCP obligations:

- discriminatory restrictions on packaged liquor sales (*Liquor Act 1992*);
- restrictions on taxis and hire cars (*Transport Operations (Passenger Transport) Act 1994*);
- reservation of title for occupational therapists (*Occupational Therapists Act 1979*) and speech pathologists (*Speech Pathologists Act 1979*);
- restrictions on activities outside of ports (Transport Infrastructure (Ports) Regulation 1994 under the *Transport Infrastructure Act 1994*); and
- statutory monopoly provision of public sector superannuation (*Superannuation (Government and Other Employees) Act 1998*).

Queensland had a further 18 areas where review and reform is incomplete, including 11 instances where a commitment to finalising activity for this NCP assessment was not evident. (It had seven incomplete reform areas pending final resolution of interjurisdictional processes.)

Other NCP obligations

Queensland:

- ensures that all proposals for new legislation are tested for compliance with competition principles through a formal public benefit test before consideration by the Cabinet;
- continues to meet its obligations in relation to the structural reform of public monopolies and prices oversight of its monopoly businesses;
- has promoted competitive neutrality reform of its government businesses and was one of the first jurisdictions to establish a competitive neutrality complaints mechanism;
- continues to meet its obligations under the Conduct Code; and
- has met its road transport reform obligations.

Assessment

For this 2003 NCP assessment, Queensland did not meet its NCP obligations in the following areas.

- *Failure to progress electricity reform:* Full retail contestability has not been introduced as required under the NCP electricity reform agreements. Queensland has, however, agreed to immediately consider introducing contestability for tranche 4A customers and undertaking the further review of introducing full retail contestability immediately. The Council recommends a suspension of 10 per cent of competition payments for 2003–04 pending implementation of contestability for tranche 4A customers and a suspension of 15 percent of competition payments pending the outcome of the wider review of full retail contestability.
- *Regulation of liquor sales:* The *Liquor Act 1992* requires sellers of packaged liquor to hold a hotel licence and provide bar facilities. It also regulates the number of bottle shops per licence (limit of three) and their configuration. The restrictions apply statewide, notwithstanding an objective of protecting country hotels. The Council recommends a permanent deduction of 5 per cent of competition payments for 2003–04 for noncompliance in this area.
- *Other compliance failures:* The Council recommends a suspension of 10 per cent of competition payments for 2003-04 for the remaining legislation review compliance failures, until reforms have progressed (see below). In particular, progress will be required in the health professions (especially pharmacies), fisheries, and taxis and hire cars.

Queensland: 'suspension pool'

Aggregated health legislation: chiropractors and osteopaths; dentists; medical practitioners; optometrists and optical dispensers; physiotherapists; podiatrists

Separate health legislation: nurses; occupational therapists*; speech pathologists*; pharmacists

Other occupations: hairdressers; pawnbrokers and second-hand dealers; auctioneers and agents; surveyors

Primary industries: Fisheries management; food regulation; sawmilling

Transport: Taxis and hire cars*; rail; port activities*

Other: Superannuation*; funeral businesses; credit legislation; gambling (Keno, gaming, wagering); schools and child care

Activity delayed by ongoing national processes: Agricultural and veterinary chemicals; drugs, poisons and controlled substances; legal practice; travel agents; statutory monopoly workers compensation insurance; trade measurement; interactive gambling

Notes: A * denotes that outcomes are not consistent with NCP obligations. Underline denotes that the relevant legislation is before Parliament.

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. Balanced against this progress, the Council considers that, in relation to Queensland's 2003-04 NCP competition payments, the matters identified in this assessment warrant:

- *a permanent deduction of 5 per cent for noncompliance in the regulation of liquor sales (estimated at A\$7.31 million);*
- *a specific suspension of 10 per cent for noncompliance with respect to tranche 4A electricity reforms (estimated at A\$14.62 million);*
- *a specific suspension of 15 per cent for noncompliance with obligations in respect of full retail contestability for electricity consumers (estimated at \$A21.93 million); and*
- *a pool suspension of 10 per cent for outstanding legislation review items (estimated at A\$14.62 million).*

Western Australia

Energy

Western Australia does not have specific obligations under the NCP electricity reform agreements although some arise from the general NCP agreements. Western Australia is in the process of implementing significant electricity reform and has made good progress with gas reform.

- All jurisdictions, other than Western Australia, undertook structural reform of their electricity sectors. The Western Australian Government established an independent Electricity Reform Task Force in August 2001 to develop recommendations on the structural reform of the State's electricity sector and the incumbent service provider, Western Power Corporation. The task force issued its final report in October 2002 and the Government endorsed all recommendations and the indicative reform timetable. The key elements of the electricity reform program are:
 - the vertical disaggregation of Western Power into generation, networks (transmission and distribution) and retail entities, and the establishment of a fourth entity, the Regional Power Corporation, with responsibility for electricity supply in the north west interconnected system and Western Power's noninterconnected system;
 - the establishment of a bilateral contracts market with an associated residual trading market;
 - the mitigation of Western Power's generation market power through the auctioning of its capacity, a requirement that it participate in the

residual trading market and restrictions on its ability to invest in new or replacement fossil-fuelled generation plant;

- the retention of uniform tariffs and retail price caps;
- the implementation of retail contestability for all customers above 50 megawatt hours per year from 1 January 2005, then full implementation once the other reforms have been completed; and
- the development of an Electricity Access Code (to be administered by an independent regulator) by 1 January 2004 and the operation of the new access framework and licensing regime by 1 January 2005.

The Council recognises that this is a significant reform program and is satisfied with Western Australia's progress in meeting its obligations in relation to structural reform in the electricity sector. As part of the 2004 NCP assessment, the Council will consider the Government's review and enactment of necessary legislation and continued progress in implementing structural reform. Western Australia has some outstanding legislation review and reform commitments in the electricity area that will be considered as part of its broader structural reform program.

- Western Australia met all obligations under the national gas reform agreements for the purposes of this assessment. It has implemented the National Gas Access Code, removed barriers to free and fair trade in gas, removed restrictions on the use of gas, adopted uniform national pipeline construction standards and removed legislative barriers preventing contestability down to the household level. Western Australia is continuing with review and reform of gas-related legislation.

Water

Western Australia has a Bill before the Parliament to establish an independent economic regulatory authority with responsibility for several industries, including water. The Government is preparing a reference that will ask the authority to examine water and wastewater industry pricing.

Water rights are well specified in Western Australia. Licences are issued for between five and 10 years, but may be extended. There is also a presumption that licences are renewed if licence conditions are met. Water management plans, which continue indefinitely, make provision for environmental water. Most plans will be completed by 2005. The State has no stressed river systems, and relies primarily on groundwater.

Western Australia has a fully operational system for water trading, although trade is in its infancy and is concentrated in the South West Irrigation Scheme. There is legislative protection of environmental values and a capacity to refuse trades that would have an adverse environmental impact.

The Government undertook a substantial program of review of water industry legislation, but in many cases is still to implement recommended reforms.

Legislation review

Western Australia had 274 pieces of existing legislation (excluding electricity, gas and water) for review comprised of 117 priority and 157 nonpriority pieces of legislation. It completed the review and reform of 44 per cent of its stock of legislation. Western Australia reviewed, and where appropriate, reformed 31 per cent of its priority legislation and 54 per cent of its nonpriority legislation. Western Australia's performance was below that of all other jurisdictions.

Western Australia had seven areas in which review and reform outcomes were assessed as not meeting NCP obligations:

- discriminatory shop trading hours (*Retail Trading Hours Act 1987*);
- restrictions on packaged liquor sales (*Liquor Licensing Act 1988*);
- marketing of potatoes (*Marketing of Potatoes Act 1946*);
- fishery controls and licensing (*Fish Resources Management Act 1994*);
- price notification and fuel supply (*Petroleum Products Pricing Amendment Act 2000* and *Petroleum Legislation Amendment Bill 2001*);
- regulation conferring market power for the local fuel refinery (*Environmental Protection (Diesel and Petrol) Regulations 1999*); and
- exclusive licence and minimum bet levels (*Betting Control Act 1954*, *Totalisator Agency Board Betting Act 1960*, *Racing Restrictions Act 1917*).

Western Australia had a further 42 areas where review and reform is incomplete, including 31 instances where a commitment to finalising activity for this NCP assessment was not evident. (It had seven incomplete reform areas pending final resolution of interjurisdictional processes.)

Other NCP obligations

Western Australia:

- provides for all proposals for new legislation to be tested for compliance with competition principles by the Department of Treasury and Finance;
- legislation to establish an independent Economic Regulation Authority with jurisdiction over the electricity, gas, rail and water industries is before Parliament;

- has applied its competitive neutrality obligations to its significant businesses and has in place a competitive neutrality complaints mechanism — it does not, however, apply competitive neutrality principles to its health business activities;
- continues to meet its obligations under the Conduct Code; and
- has not yet met its NCP road transport reform obligations — it has two elements of the reform program to implement.

Assessment

For the purposes of the 2003 NCP assessment, Western Australia did not meet its NCP obligations in the following areas.

- *Regulation of retail trading hours:* Under the *Retail Trading Hours Act 1987*, Western Australia is the only jurisdiction to heavily restrict weekday trading hours and to prohibit large retailers from opening on Sundays (outside of tourist precincts). The Government announced that trading hours will not be extended before mid-2005. The Council does not consider that this decision to postpone reform accords with CoAG's direction for an appropriate transitional reform program to be underpinned by a robust public interest case. The Council recommends a permanent deduction of 10 per cent of competition payments for 2003–04 for noncompliance in this area.
- *Lack of transparency in water pricing:* The lack of transparency raises questions about whether water pricing principles have been met and will be in the future. The Council recommends a suspension of 10 per cent of competition payments for 2003–04 for noncompliance in this area. The suspension should be lifted and reimbursed when the Government establishes the Economic Regulation Authority and announces terms of reference for an investigation by the authority of water and wastewater pricing against the CoAG pricing principles.
- *Regulation of liquor sales:* The *Liquor Licensing Act 1988* contains a needs test, whereby a licence application can be rejected because there are liquor outlets in the area. The legislation further discriminates between hotels and liquor stores, with only hotels able to trade on Sundays. The Government announced that reforms will not take effect before mid-2005. The Council does not consider that this decision to postpone reform accords with CoAG's direction for an appropriate transitional reform program to be underpinned by a robust public interest case. The Council recommends a permanent deduction of 5 per cent of competition payments for 2003–04 for noncompliance in this area.
- *Potato marketing:* Western Australia is the only jurisdiction to regulate potato marketing. The *Marketing of Potatoes Act 1946* empowers the Potato Marketing Corporation to restrict the availability of land for

growing potatoes for fresh consumption and to fix the wholesale price of such potatoes. The Government announced that the restrictions will be retained in the public interest. The Council does not consider that the outcomes of the NCP review or the Government's stated arguments for retention of these arrangements are consistent with NCP obligations. The Council recommends a permanent deduction of 5 per cent of competition payments for 2003–04 for noncompliance in this area.

- *Egg marketing*: Western Australia is the only jurisdiction to retain egg marketing regulation. The *Marketing of Eggs Act 1945* restricts supply through licenses and production quotas and prohibits supply other than to the Egg Marketing Board. The Government announced that the restrictions will be removed not later than 2007. To expedite this process, the Council recommends a suspension of 5 per cent of competition payments for 2003–04. The suspension may be lifted on commencement of an appropriate reform implementation program.
- *Other compliance failures*: The Council recommends a suspension of 20 per cent of competition payments for 2003–04 for the remaining legislation review compliance failures, until reforms have progressed (see below). In particular, progress will be required in water legislation, the professions (especially pharmacies), fisheries, and taxis and hire cars.

Western Australia: 'suspension pool'

Aggregated health legislation: dentists; chiropractors; optometrists and optical dispensers; nurses; osteopaths; podiatrists; physiotherapists; psychologists; occupational therapists

Separate health legislation: medical practitioners; pharmacists; veterinarians

Building trades: architects; surveyors; land valuers; painters; gasfitters; electricians

Other occupations: auctioneers; settlement agents; pawnbrokers and second-hand dealers; debt collectors; employment agents; hairdressers; real estate and business agents; driving instructors

Primary industries: Grain marketing; chicken meat arrangements; veterinary preparations and feeds; food regulations; fisheries management*; pearling; and sandalwood

Water: Western Australia did not meet its obligations on water industry legislation (reform of eight Acts is before the Parliament and six other Acts are to be amended).

Transport: Taxis and hire cars; dangerous goods; jetties; navigation lights; marine and harbours; shipping and pilotage; airline routes

Fair trading legislation: Petroleum pricing*; diesel/petrol environmental regulations*; retirement villages; credit administration; hire purchase

Other: Superannuation; education service providers; universities; child care; gambling (lotteries, casinos and betting*, racing, and greyhound racing); planning and development

Activity delayed by ongoing national processes: Agricultural and veterinary chemicals; drugs, poisons and controlled substances; legal practice; travel agents; statutory monopoly workers compensation and third party vehicle insurance; trade measurement

Notes: A * denotes that outcomes are not consistent with NCP obligations. Underline denotes that the relevant legislation is before Parliament. The Council excluded consideration of progress with the aggregated health legislation, given an earlier agreement that reforms will be completed by July 2004.

In making its recommendations on competition payments, the Council has taken account of Western Australia's modest overall reform progress, and the likely impact of reform failures. Balanced against these considerations, the Council considers that, in relation to Western Australia's 2003-04 NCP competition payments, the matters identified in this assessment warrant:

- *a permanent deduction of 10 per cent for noncompliance in respect of retail trading hours legislation (estimated at A\$7.52 million);*
- *a permanent deduction of 5 per cent for noncompliance in respect of the regulation of liquor sales (estimated at A\$3.76 million);*
- *a permanent deduction of 5 per cent for noncompliance in respect of the marketing of potatoes (estimated at A\$3.76 million);*
- *a specific suspension of 10 per cent for lack of transparency in water pricing (estimated at A\$7.52 million);*
- *a specific suspension of 5 per cent for noncompliance in respect of egg marketing (estimated at A\$3.76 million); and*
- *a pool suspension of 20 per cent for outstanding legislation review items (estimated at A\$15.04 million).*

South Australia

Energy

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

- South Australia implemented the reforms to establish the NEM. It introduced full retail contestability in 2003, satisfying its electricity reform commitments. The Council is concerned, however, about the potential for overlap between NEM regulatory processes for new interconnection and South Australia's licensing regimes for new transmission companies. The Council will consider the issue further in its 2004 NCP assessment in the context of amended governance and regulatory arrangements in the NEM.
- 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 implemented the National Gas Access Code, removed barriers to free and fair trade in gas,

removed regulatory restrictions on gas use, adopted uniform pipeline construction standards and removed legislative barriers preventing contestability to the household level. South Australia is continuing with reform of gas-related legislation and the implementation of the national gas quality standard.

Water

South Australia committed to publishing annual transparency statements on water and wastewater prices, with the first statement covering pricing in 2004-05. The statements will establish the relationship of pricing by SA Water — the State's primary supplier of water and wastewater services — to the CoAG pricing principles. The statements will provide information on SA Water's financial performance in the context of pricing decisions and a range of pricing-related matters. The Essential Services Commission of South Australia (ESCOSA) is to review the processes for preparing the transparency statements and advise on the information supporting the pricing decisions. ESCOSA's report will form part of the transparency statements.

South Australia has completed water allocation plans for 17 water resources. It converted water allocations to volumetric licences in most areas of the State. The main area remaining is the South East Catchment, where revised water allocation plans and licence conversions will be completed in 2006.

South Australia's water rights are sufficiently specified to enable efficient water trading. Licences are issued in perpetuity and are separate from land title. Permanent and temporary water trading occurs through a variety of mechanisms, including private trades, brokers or water exchanges. Measures are in place to protect the water rights of users and the environment. The main remaining water trading issue is the limit on the volume of water that may be permanently transferred out of some irrigation districts.

South Australia has substantially completed its program of review and reform of water industry legislation. The Clare Valley Water Supply Scheme is a SA Water project involving the transfer of River Murray water to the Clare Valley. The scheme will provide reticulated water to townships and other areas, and to the Clare Valley for irrigation. South Australia approved the scheme in November 2002, subject to the establishment of an appropriate environmental monitoring program. The economic evaluation showed the scheme would deliver a net benefit, and additional unquantifiable benefits from wider availability of potable water.

Legislation review

South Australia had 171 pieces of existing legislation (excluding electricity, gas and water) for review comprised of 75 priority and 96 nonpriority pieces of legislation — a relatively modest task compared to other jurisdictions. It completed the review and reform of 63 per cent of its stock of legislation. It

reviewed, and where appropriate, reformed 37 per cent of its priority legislation and over 80 per cent of its nonpriority legislation. Compared to other jurisdictions, South Australia's performance was below average.

South Australia had six areas in which review and reform outcomes were assessed as not meeting NCP obligations:

- compulsory arbitration in relation to negotiations between chicken meat growers and processors (*Chicken Meat Industry Act 2003*);
- entry restrictions applying to taxis (*Passenger Transport Act 1994*);
- ownership restrictions relating to dental practices (*Dentists Act 1984*);
- monopoly provision of superannuation services (*Southern State Superannuation Act 1987*);
- exclusive licensing arrangements (*State Lotteries Act 1966*); and
- shop trading hours restrictions (*Shop Trading Hours Act 1977*).

South Australia had a further 28 areas where review and reform was incomplete, including 25 instances where a commitment to finalising activity for this NCP assessment was not evident. (It had nine incomplete reform areas pending final resolution of interjurisdictional processes.)

Other NCP obligations

South Australia:

- requires all agencies considering new legislation or amendments to existing legislation to consider restrictions on competition and address competition issues in the second reading speech of Bills to Parliament;
- continues to meet its obligations in relation to the structural reform of public monopolies and prices oversight of its monopoly businesses;
- applies competitive neutrality principles to significant government business activities and has established an appropriate complaints mechanism — although, in some instances, processes appear slow;
- continues to meet its obligations under the Conduct Code; and
- has met its road transport reform obligations.

Assessment

For the purposes of the 2003 NCP assessment, South Australia did not meet its NCP obligations in the following areas.

- *Barley marketing*: A second review of the *Barley Marketing Act 1993* has been completed. Currently, unlike Victoria, which deregulated domestic and export marketing, South Australia has a marketing monopoly. The second review did not produce credible public interest evidence to maintain the monopoly. The Council recommends a suspension of 5 per cent of competition payments 2003–04 until South Australia provides details of a complying reform implementation program.
- *Chicken meat industry negotiations*: The recently passed *Chicken Meat Industry Act 2003* provides for compulsory arbitration for negotiating disputes on terms and conditions and for non-renewal of contracts. The legislation has implications for other States and could affect the distribution of growing and processing activities. The Council recommends a permanent deduction of 5 per cent of competition payments for 2003–04 for noncompliance in this area. (The Council considers that noncompliance technically represents a breach of clause 5(1) of the CPA relating to the review and reform of the stock of legislation, or a prima facie breach of clause 5(5) relating to obligations with respect to new legislation.)
- *Regulation of liquor sales*: South Australia’s *Liquor Licensing Act 1997* contains a needs test, whereby the licensing authority can reject a licence application because there are already liquor outlets in the area. The Council recommends a permanent deduction of 5 per cent of competition payments for 2003–04 for noncompliance in liquor licensing.
- *Other compliance failures*: The Council recommends a suspension of 15 per cent of competition payments for 2003-04 for the remaining legislation review compliance failures, until reforms have progressed (see below). In particular, progress will be required in the health professions (especially pharmacies), fisheries, and taxis and hire cars. The Council will look for South Australia to further liberalise retail trading hours.

South Australia: ‘suspension pool’

Health professions: occupational therapists; chiropractors; medical practitioners; optometrists; physiotherapists; pharmacists; psychologists; chiropodists; veterinarians

Other occupations: architects; surveyors; land valuers; conveyancers; employment agents

Primary industries: Agricultural chemicals and stock foods; dairy; meat hygiene; mining legislation; fisheries management

Transport: Taxis and hire cars*, tow trucks, transport of dangerous substances;

Other: Shop trading hours restrictions*; superannuation*; petrol products regulation; children’s protection; gambling (lotteries*, gaming machines, racing and betting)

Activities subject to ongoing national processes: Agricultural and veterinary chemicals; drugs, poisons and controlled substances; legal practice; travel agents; statutory monopoly workers compensation and third party vehicle insurance; trade measurement; harbours and navigation; building contractors

Notes: A * denotes that outcomes are not consistent with NCP obligations. Underline denotes that the relevant legislation is before Parliament.

In making its recommendations on competition payments, the Council has taken account of South Australia's overall reform progress, and the likely impact of reform failures. Balanced against these considerations, the Council considers that, in relation to South Australia's 2003-04 NCP competition payments, the matters identified in this assessment warrant:

- *a permanent deduction of 5 per cent for noncompliance in respect of chicken meat industry legislation (estimated at A\$2.93 million);*
- *a permanent deduction of 5 per cent for noncompliance in respect of the regulation of liquor sales (estimated at A\$2.93 million);*
- *a specific suspension of 5 per cent for noncompliance in respect of barley marketing arrangements (estimated at A\$2.93 million); and*
- *a pool suspension of 15 per cent for outstanding legislation review items (estimated at A\$8.78 million).*

Tasmania

Energy

Tasmania met all obligations under the electricity and gas reform agreements for the purposes of this assessment.

- 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 interconnection with the mainland is established. In preparation for meeting the obligations that will arise, Tasmania has enacted the National Electricity Law and reviewed and reformed structural arrangements for electricity utilities. It 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 initially had limited NCP reform obligations in relation to gas, but its obligations under the national gas agreements have been triggered by the development of its gas industry, in particular the construction of a transmission pipeline from Victoria. Tasmania has implemented the National Gas Access Code, removed barriers to free and fair trade in gas, removed regulatory restrictions on gas use and adopted uniform national pipeline construction standards. Given that construction of the pipeline from Victoria is now completed, the Council expects Tasmania to apply for certification of its access regime in the near future. Tasmania is continuing with reform of gas-related legislation and is considering implementation of the national gas quality standard.

Water

Retail water and wastewater services are provided by Tasmania's local governments. Annual assessments by the Government Prices Oversight Commission show that most local governments achieve full cost pricing, and that consumption-based pricing (where cost-effective) is widespread.

Tasmania has established a system of transferable water rights that are separate from land title. The conversion of water rights under the previous system to licences and allocations under the new system is largely complete.

The Government is addressing its environmental obligations in two stages. It determines the environmental flow requirements that are needed to maintain a system at a low level of risk. For stressed (or more developed) water sources, the Government preserves an amount of water for the environment determined by agreement or negotiation with the community. Tasmania has established environmental water requirements for 14 water sources. It is close to completing its first water management plan.

Tasmania has made significant progress on water trading. In addition to establishing the new licences and allocations system, the Government removed two restrictions on water trading during 2002-03. Tasmania's arrangements adequately address risks to the environment posed by water trading. It essentially completed its water industry legislation review and reform obligations.

In 2001, the Government announced an intention to proceed with the Meander Dam, a 43-gigalitre project to increase the quantity and surety of irrigation water in the Launceston region. Economic evaluation of the project found that it will provide a net benefit. The project is a controlled action under the Commonwealth Environment Protection and Biodiversity Conservation Act, and is currently being assessed by the Commonwealth on environmental, social and economic grounds.

Legislation review

Tasmania had 238 pieces of existing legislation (excluding electricity, gas and water) for review comprised of 100 priority and 138 nonpriority pieces of legislation. It completed the review and reform of 84 per cent of its stock of legislation. It reviewed, and where appropriate, reformed 77 per cent of its priority legislation and 90 per cent of its nonpriority legislation. In this regard, compared to other jurisdictions, Tasmania's performance was well above average.

Tasmania had two areas in which review and reform outcomes were assessed as not meeting NCP obligations:

- Ministerial discretion over marine leases (*Marine Farming Planning Act 1995*); and

- the composition of the Veterinary Board of Tasmania (*Veterinary Surgeons Act 1987*).

Tasmania had a further 12 areas where review and reform was incomplete, including nine instances where a commitment to finalising activity for this NCP assessment was not evident. (It had five incomplete reform areas pending final resolution of interjurisdictional processes.)

Other NCP obligations

Tasmania:

- has a legislation gatekeeping process that assesses all new legislative proposals against competition principles;
- continues to meet its obligations in relation to the structural reform of public monopolies and prices oversight of its monopoly businesses;
- has made good progress with implementing competitive neutrality reforms and has an appropriate mechanism to handle complaints;
- continues to meet its obligations under the Conduct Code; and
- has met its road transport reform obligations.

Assessment

For the purposes of the 2003 NCP assessment, the Council recommends a suspension of 5 per cent of Tasmania's competition payments for 2003-04 for legislation review compliance failures, until reforms have progressed (see below). In particular, progress will be required in the health professions (especially pharmacies) and taxis and hire cars.

Tasmania: 'suspension pool'

Health professions: medical practitioners; optometrists; pharmacists; veterinarians*

Other occupations: auctioneers and real estate agents; architects; plumbers and gas-fitters

Primary industries: Agricultural and veterinary chemicals use; food regulation; marine farming*

Transport: Taxis and hire cars

Other: Vocational education and training; gambling (racing, and casinos and gaming machines*)

Activities subject to ongoing national processes: Agricultural and veterinary chemicals; drugs, poisons and controlled substances; legal practice; travel agents; statutory monopoly third party motor vehicle insurance

Notes: A * denotes that outcomes are not consistent with NCP obligations. Underline denotes that the relevant legislation is before Parliament.

In making its recommendations on competition payments, the Council has taken account of Tasmania's considerable overall reform progress, and the likely impact of reform failures. Balanced against these considerations, the Council considers that, in relation to Tasmania's 2003-04 NCP competition payments, the matters identified in this assessment warrant a pool suspension of 5 per cent for outstanding legislation review items (estimated at A\$0.91 million).

The ACT

Energy

The ACT met its obligations under the electricity and gas reform agreements for the purposes of this 2003 NCP assessment.

- The ACT implemented the necessary reforms to establish the NEM and introduced full retail contestability in 2003, satisfying its electricity reform commitments in this area.
- The ACT has implemented the National Gas Access Code, removed barriers to free and fair trade in gas, removed regulatory restrictions on gas use, adopted uniform pipeline construction standards and introduced contestability to the household level. The ACT is continuing with implementation of the national gas quality standard.

Water

The ACT addressed all urban water pricing obligations. Its Electricity and Water Corporation achieves full cost recovery and its water charges are use-based. The Government applies a water abstraction charge that covers the environmental costs of water use and the scarcity value of water. The Independent Competition and Regulatory Commission commenced an investigation into prices for water and wastewater services to allow for a price determination for water services from 1 July 2004.

Water rights in the ACT are separate from land title, are issued in perpetuity and provide the holder with a right to a share of the available resource. The ACT's Water Resources Management Plan, which commenced in 2000, estimates total water resources, environmental flow requirements and sets the water available for consumption to 2010. Under the ACT's environmental flow guidelines, flows are substantially protected. There are no stressed or overallocated systems within the ACT.

The ACT repealed all five water industry Acts that it identified for review.

Legislation review

The ACT had 256 pieces of existing legislation (excluding electricity, gas and water) for review comprised of 78 priority and 178 nonpriority pieces of legislation. It completed the review and reform of 85 per cent of its stock of legislation. The ACT reviewed, and where appropriate, reformed almost 60 per cent of its priority legislation and 97 per cent of its nonpriority legislation. Compared to other jurisdictions, the ACT's performance was about average.

The ACT had one area in which review and reform outcomes were assessed as not meeting NCP obligations in this NCP assessment — this related to licensing of agents under the *Agents Act 1968*.

The ACT had a further 10 areas where review and reform was incomplete, including eight instances where a commitment to finalising activity for this NCP assessment was not evident. (It had five areas where review and reform was incomplete pending final resolution of interjurisdictional processes.)

Other NCP obligations

The ACT:

- requires government agencies to prepare a regulation impact statement for proposals that restrict competition;
- continues to meet its obligations in relation to the structural reform of public monopolies and prices oversight of its monopoly businesses;
- has made good progress in competitive neutrality reform and has an appropriate competitive neutrality complaints mechanism;
- continues to meet its obligations under the Conduct Code; and
- has not yet met its NCP road transport reform obligations — it intends to implement the one remaining component soon.

Assessment

For the purposes of the 2003 NCP assessment, the Council recommends a suspension of 10 per cent of the ACT's competition payments for 2003-04 for legislation review compliance failures, until reforms have progressed (see below). In particular, progress will be required in the health professions (especially pharmacies), building trades and taxis and hire cars.

The ACT: 'suspension pool'

Aggregated health legislation: dentists; chiropractors and osteopaths; medical practitioners; nurses; optometrists; physiotherapists; psychologists; podiatrists.

Separate health legislation: pharmacists; veterinarians

Building and related trades: architects; builders; electricians; plumbers, drainers and gasfitters

Other occupations: employment agents*

Transport: Taxis and hire cars; transport of dangerous goods

Other: Superannuation; education and schools; gambling (betting and gaming machines)

Activities subject to ongoing national processes: Drugs, poisons and controlled substances; legal practice; travel agents; interactive gambling; public sector superannuation

Note: A * denotes that outcomes are not consistent with NCP obligations.

In making its recommendations on competition payments, the Council has taken account of the ACT's overall reform progress, and the likely impact of reform failures. Balanced against these considerations, the Council considers that, in relation to the ACT's 2003-04 NCP competition payments, the matters identified in this assessment warrant a pool suspension of 10 per cent for the outstanding legislation review items (estimated at A\$1.25 million).

The Northern Territory

Energy

The Northern Territory does not have obligations under the NCP electricity reform agreements. However, it has shown a commitment to electricity industry reform through the application of general NCP principles. The Territory has made good progress with gas reform, implementing relevant gas reform legislation without any transitional arrangements or derogations. It has implemented the National Gas Access Code, removed significant barriers to free and fair trade in gas, removed regulatory restrictions on gas use and adopted uniform national pipeline construction standards.

Water

The Territory's Power and Water Corporation complies with urban water and wastewater pricing obligations. The corporation operates, as much as possible, on a similar basis to a private sector corporation. The Territory has a comprehensive system of water entitlements. Water property rights are separate from land title, and ownership, reliability, volume, transferability and, if appropriate, quality are clearly specified. Because water supplies are plentiful relative to demand, there is little, if any, demand for water trading.

The Territory finalised the water allocation plan for the Ti–Tree Water Control District in August 2002. It expects to finalise three other plans in 2003-04. The Government completed five research projects on environmental flows in the Daly and Douglas rivers. This work is being used to guide the drafting of the water allocation plan for the Daly River region and in regional consultation on the plan.

Legislation review

The Northern Territory had 97 pieces of existing legislation (excluding electricity, gas and water) for review comprised of 57 priority and 40 nonpriority pieces of legislation. It completed the review and reform of over 60 per cent of its stock of legislation. It reviewed, and where appropriate, reformed 47 per cent of its priority legislation and 83 per cent of its nonpriority legislation. Compared to other jurisdictions, the Northern Territory's performance was below average.

The Territory had one area in which review and reform outcomes were assessed as not meeting NCP obligations. This related to the re-imposition of entry restrictions to the taxi industry (*Commercial Passenger (Road) Transport Act*) — notwithstanding that it had already compensated all former taxi licence owners when it previously liberalised entry restrictions.

The Northern Territory had a further 15 areas where review and reform is incomplete, including 14 instances where a commitment to finalising activity for this NCP assessment was not evident. (It had five incomplete reform areas pending final resolution of interjurisdictional processes.)

Other NCP obligations

The Northern Territory:

- has an approach to gatekeeping processes for new legislation that approaches best practice — requiring all Cabinet submissions on new legislative proposals to comment on whether the proposed legislation includes restrictions on competition and, if so, an analysis of the restriction's community benefits and costs and whether the restriction is the only way to achieve the objective of the legislation;
- continues to meet its obligations in relation to the structural reform of public monopolies and prices oversight of its monopoly businesses;
- has made significant progress with implementing competitive neutrality reforms and has a competitive neutrality complaints mechanism in place;
- continues to meet its obligations under the Conduct Code; and
- has met its road transport reform obligations.

Assessment

For the purposes of the 2003 NCP assessment, the Northern Territory has not met its NCP obligations in the following areas.

- *Regulation of liquor sales:* The *Liquor Act* contains a needs test whereby a licence application can be rejected if it is determined that existing sellers can meet consumer needs. The legislation further discriminates between hotels and liquor stores, with only hotels able to trade on Sundays. The Council recommends a permanent deduction of 5 per cent of competition payments for 2003–04 for noncompliance in this area.
- *Other compliance failures:* The Council recommends a suspension of 15 per cent of competition payments for 2003-04 for the remaining legislation review compliance failures, until reforms have progressed (see below). In particular, progress will be required in the health professions (especially pharmacies) and taxis and hire cars.

The Northern Territory: 'suspension pool'

Aggregated health legislation: dentists; health practitioners and allied professionals; medical practitioners; nurses; optometrists

Separate health legislation: radiographers; pharmacists; veterinarians

Building and related trades: architects;

Primary industries: Poisons and dangerous chemicals; food regulation; fisheries; mining

Transport: Taxis and hire cars*

Other: Liquor trading; higher education; community welfare; gambling (gaming, gaming machines, betting and racing)

Activities subject to ongoing national processes: Agricultural and veterinary chemicals; drugs, poisons and controlled substances; legal practice; travel agents; statutory monopoly third party motor vehicle insurance

Notes: A * denotes that outcomes are not consistent with NCP obligations. Underline denotes that the relevant legislation is before Parliament.

In making its recommendations on competition payments, the Council has taken account of the Northern Territory's overall reform progress, and the likely impact of reform failures. Balanced against these considerations, the Council considers that, in relation to the Northern Territory's 2003-04 NCP competition payments, the matters identified in this assessment warrant:

- ***a permanent deduction of 5 per cent for noncompliance in respect of the regulation of liquor sales (estimated at A\$0.38 million); and***
- ***a pool suspension of 15 per cent for outstanding legislation review items (estimated at A\$1.14 million).***

The Commonwealth

The Commonwealth has a mostly coordinating role in the related reform areas. To facilitate appropriate NCP reforms the Commonwealth established the Australian Competition and Consumer Commission and the National Competition Council. The Commonwealth:

- has implemented the National Gas Access Code and associated legislation and is rewriting the *Petroleum (Submerged Lands) Act 1967* consistent with the recommendations of the national review — amending legislation is to be introduced to Parliament in late 2003. It is participating with other relevant governments in the design of further reforms to meet the identified deficiencies in the NEM.
- has best practice arrangements to vet new legislation restricting competition. Regulation impact statements must be prepared for all proposed new and amending regulation (including quasi-regulation and treaties) with the potential to restrict competition. The Office of Regulation Review advises on whether the requirements have been met, and reports annually on the Commonwealth's overall performance;
- has undertaken structural reforms in relation to its government businesses and met its obligations in relation to the prices oversight of its monopoly businesses. However, the Council assessed in 2002 that the Commonwealth had not met its structural reform obligations arising from the Wheat Marketing Act. The Commonwealth has not addressed the 2000 review committee's recommendations to amend the Act to ensure the independence of the Wheat Export Authority, particularly its role in controlling exports;
- has implemented a best practice competitive neutrality regime with an independent competitive neutrality complaints mechanism; and
- is still to implement one remaining component of its national road transport reform agenda.

Legislation review

The Council assessed the Commonwealth's performance against 125 pieces of existing legislation (excluding electricity, gas and water) comprising 57 priority and 68 nonpriority pieces of legislation. It completed the review and reform of around half of this stock of legislation. It reviewed, and where appropriate, reformed around one third of its priority legislation and nearly 70 per cent of its nonpriority legislation. Compared to other jurisdictions, its performance was below average — second only to Western Australia.

The Commonwealth had five areas in which review and reform outcomes were assessed as not meeting NCP obligations:

- single desk export marketing for wheat (*Wheat Marketing Act 1989*);

- a myriad of restrictions on competition in broadcasting (*Broadcasting Services Act 1992* and related legislation);
- reservation of the standard letter service (*Australian Postal Corporation Act 1989*);
- statutory monopoly provision of superannuation (*Parliamentary Contributory Superannuation Scheme 1948*); and
- restrictive standards for second-hand vehicle imports (*Motor Vehicle Standards Act 1989*).

The Commonwealth had a further 17 areas where review and reform was incomplete, including 11 instances where a commitment to finalising activity for this NCP assessment was not evident. (It had three incomplete reform areas pending final resolution of interjurisdictional processes.)

Assessment

For the purposes of the 2003 NCP assessment the Commonwealth has not met NCP obligations in the following areas.

- *Export marketing for wheat*: The review of the *Wheat Marketing Act 1989* recommended reducing restrictions on wheat exports, while retaining the Australian Wheat Board's operations. The Commonwealth did not accept the recommendations designed to reduce restrictions on exports. The review did not show that retaining the wheat export single desk is in the public interest; rather, it found that allowing competition is more likely to be of net benefit to the community. The wheat export single desk will be subject to review in 2004 — nevertheless, as repeatedly stated by the Minister for Agriculture, this will not be an NCP review and will not consider the continuation of the single desk.
- *Broadcasting legislation*: The Commonwealth has not addressed the benefits and costs to the community from the significant restrictions in broadcasting or whether the objectives could be achieved without these restrictions.
- *Competition in postal services*: The Government will have satisfied its NCP obligations in relation to the review of the *Australian Postal Corporation Act 1989* if it establishes an access regime. The Government introduced a Bill to establish such a regime in 2000, but withdrew this in 2001 after failing to get approval in the Senate.
- *Industry assistance*: A review of assistance arrangements for the automotive industry has been completed and complying amending legislation introduced. A review into textile, clothing and footwear arrangements has been completed.

- *Other legislation review compliance failures*
 - Export controls for dairy produce, food and wood; food regulation; imported food control; plant and animal quarantine; and mining.
 - Shipping registration; navigation; and motor vehicle standards.
 - Superannuation; restrictions on services covered by private health insurance; pathology collection centre licensing; interactive gambling; radiocommunications; antidumping legislation.

The Commonwealth Government is not subject to NCP competition payments. In relation to its facilitation role and the demonstration effects of its best practice models for scrutiny of new legislation and the application of competitive neutrality, the Commonwealth has performed well. In contrast, its progress in the review and reform of legislation has set a poor example for the States and Territories.