

# Overview and recommendations

This 2005 assessment of governments' progress implementing the National Competition Policy (NCP) and related reforms is the final assessment under the suite of the NCP reforms adopted by all Australian governments in 1995. Over the past decade, Australian governments have participated in the most extensive and successful economic reform program in the nation's history.

With the near conclusion of the NCP, the Australian Government requested the Productivity Commission, in April 2004, to inquire into the impacts of the NCP and report on future areas 'offering opportunities for significant gains to the Australian economy from removing impediments to efficiency and enhancing competition' (PC 2005a, pp. iv–v).

The Productivity Commission provided its final report in February 2005. It found that:

*National Competition Policy (NCP) has delivered substantial benefits to the Australian community which, overall, have greatly outweighed the costs. It has:*

- *contributed to the productivity surge that has underpinned 13 years of continuous economic growth, and associated strong growth in household incomes*
- *directly reduced the prices of goods and services such as electricity and milk*
- *stimulated business innovation, customer responsiveness and choice*
- *helped meet some environmental goals, including the more efficient use of water.*

*... Though Australia's economic performance has improved, there is both the scope and the need to do better. Population ageing and other challenges will constrain our capacity to improve living standards in the future. Further reform on a broad front is needed to secure a more productive and sustainable Australia. (PC 2005a, p. xii)*

The Council of Australian Governments (COAG) in June 2005 endorsed the need to maintain reform momentum and to lock in the substantial benefits achieved. It stated that:

*It is important not to be complacent about the continued performance of the Australian economy. Resting on the achievements of the last*

*decade will cost the Australian community opportunities for greater prosperity.*

*Australia's productivity performance is under threat, with further reform essential if the economic expansion of the last 14 years is to continue.*

*The Australian economy is operating in an intensely competitive international environment. As a small trading nation, Australia will drive its economic growth by minimising barriers to trade and maximising its business flexibility.*

*The case for continuing reforms on a collaborative basis is clear.*  
(COAG 2005, p. 5)

COAG agreed to review the NCP by the end of 2005, drawing from, but not being limited by, the Productivity Commission report. The outcome of the COAG process will be a new reform agenda and accompanying institutional arrangements, including whether independent assessment of governments' progress should continue.

This 2005 NCP assessment concludes recommendations on the financial incentive payments to the states and territories, contingent on them implementing agreed reforms. Maximum competition payments for 2005-06 are estimated at \$800 million, allocated to the states and territories on a per person basis. The Australian Government decides on the actual payments after considering the National Competition Council's advice on jurisdictions' progress in meeting their NCP commitments. State and territory governments are not compelled to implement the NCP reforms, but the Council may recommend a reduction or suspension of competition payments if it assesses that governments have not met their agreed commitments.

The 2003 NCP assessment was the first time the Council recommended substantial payment reductions for all state and territory governments, reflecting the commitment to have completed the legislation review and reform program—a significant element of the NCP package—by 30 June 2002. The Council also recommended payments reductions in the 2004 NCP assessment. The Australian Government accepted all recommendations arising from both assessments. The scope and magnitude of the reductions reflected that the NCP was drawing to a close so governments needed to meet all commitments, particularly given the billions of dollars in competition payments already dispensed.

# The National Competition Policy 1995–2005: a snapshot of outcomes

The NCP reforms are based on a pro-competitive presumption, but with competition as a means rather than an end in itself. Foremost, the NCP aims to promote the public interest. Its reform elements, therefore, are subject to safeguards to weigh the costs and benefits on a case basis. The NCP provides for consideration of efficiency, social, environmental, equity and regional objectives in the assessment of reform options.

The 1995 intergovernmental agreements for the NCP set out the following commitments.

## Competition Code

*Commitment:* Enact legislation to apply the Competition Code—which reflects the part IV anticompetitive conduct provisions of the *Trade Practices Act 1974*—to those unincorporated persons to whom part IV of the TPA does not apply for constitutional reasons.

*Outcome:* All state and territory governments have extended the Trade Practices Act prohibitions against anticompetitive behaviour. Accordingly, the Competition Code applies to all persons, including the Crown (in so far as it carries on a business), within a jurisdiction’s reach.

## Prices oversight

*Commitment:* Consider the merits of establishing independent sources of price oversight for government businesses enterprises.

*Outcome:* All Australian governments determined that independent prices oversight arrangements would be in the public interest. This function generally resides within regulatory authorities, but may also be undertaken by other institutions such as competitive neutrality units.

The key institutions are the Australian Competition and Consumer Commission (Australian Government), the Independent Pricing and Regulatory Tribunal (New South Wales), the Essential Services Commission (Victoria), the Queensland Competition Authority, the Economic Regulation Authority (Western Australia), the Essential Services Commission of South Australia, the Government Prices Oversight Commission (Tasmania), the Independent Competition and Regulatory Commission (ACT) and the Utilities Commission (Northern Territory).

## Competitive neutrality

*Commitment:* Ensure regulatory and commercial neutrality between government businesses and competing private businesses where the benefits exceed the costs (see chapter 2). (Competitive neutrality principles are consistent with government subsidies and community service obligations that meet their social goals—the only obligation is that these be transparent, rather than hidden behind opaque cross-subsidisation with attendant competition restrictions.)

*Outcome:* In all states and territories, major government business enterprises have been corporatised, other significant businesses have been exposed to competitive neutrality principles, and competitive neutrality complaints units have been established. Nevertheless, outcomes across Australia are mixed, and there is scope for improving the coverage of competitive neutrality principles and the operation of complaints mechanisms.

Performance monitoring of government trading enterprises (GTEs) reveals that many have a return on capital below the risk free government bond rate (PC 2005b). The Productivity Commission observed that:

*... without a commitment to better governance, the National Competition Policy reform objective of operating GTEs commercially will not be fully achieved' ... failure to meet this objective has potentially serious consequences, given that these GTEs have combined assets of more than \$174 billion and generate \$55 billion in revenue annually. (PC 2005c)*

Failure to achieve the risk free bond rate would, other things being equal, suggest that the community would be better served if governments simply invest the capital associated with their businesses rather than continue to manage them. Although simplistic, this indicates the need for GTEs to have clearly delineated commercial and non-commercial objectives and to ensure the latter are met efficiently. Further reform in this area is required.

## Structural reform of public monopolies

*Commitment:* Remove regulatory functions from government businesses and review the merits of separating any monopoly elements, before privatising a public monopoly or introducing competition (see chapter 3).

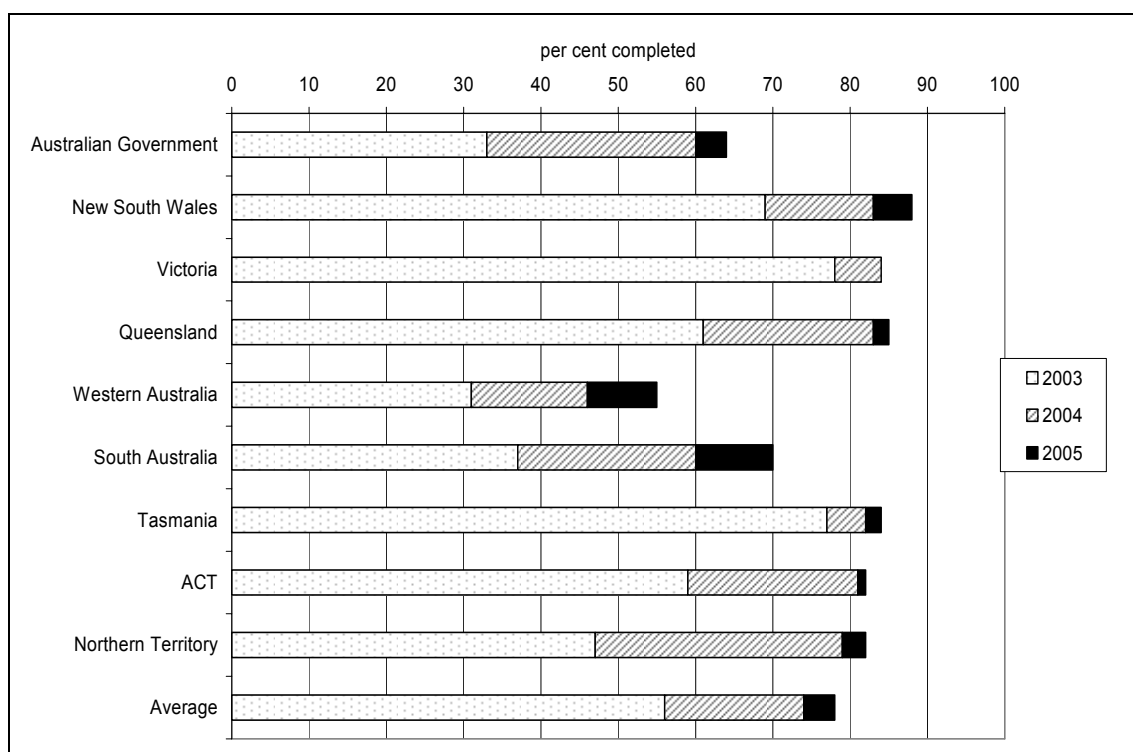
*Outcome:* Governments generally have met these commitments, in particular recognising the need to remove regulatory functions from government businesses that operate in markets with private sector competitors. One notable failure was the Australian Government's unwillingness to undertake a structural separation review before partly privatising Telstra. The government preferred to prohibit anticompetitive conduct and facilitate access to telecommunications services through special provisions in the Trade Practices Act.

## Legislation review (extant legislation)

*Commitment:* Review all legislation containing competition restrictions (as at 1996) to ensure that the restrictions are in the public interest and remove those restrictions that are not (see chapters 9–19).

*Outcome:* Each government identified laws regulating areas of economic activity. Most of these have been reviewed, and restrictions found not to provide a community benefit removed. In aggregate terms, around 85 per cent of governments' nominated legislation has been reviewed and, where appropriate, reformed. For priority legislation, the rate of compliance is around 78 per cent<sup>1</sup> (see figure 1).

**Figure 1:** Governments' progress with completing their priority legislation review and reform matters, 2003–05



The legislation review program required a substantial commitment by governments and has been pivotal in removing barriers to competition across activities as diverse as the professions and occupations through to transport and communications. Agricultural marketing is one area in which NCP reviews have led to substantial removal of unwarranted restrictions on

<sup>1</sup> Recognising the burden on governments from conducting reviews and implementing reforms, and that the greatest community benefit would arise from prioritising legislation with the greatest impact on competition, the Council nominated priority areas of regulation (NCC 2003a, ch. 4). It has scrutinised around 800 pieces of priority legislation and monitored outcomes in a further 1000 non-priority areas.

competition. Examples include all governments repealing price and supply controls on drinking milk; Queensland ending its export marketing monopoly for barley; Victoria deregulating its monopoly barley marketing arrangements (and NCP reviews recommending liberalisation of similar arrangements in South Australia); Western Australia liberalising grain marketing restrictions; Queensland, Western Australia and Tasmania removing supply and marketing restrictions on eggs; Western Australia and South Australia removing entry and pricing restrictions on bulk handling; and all jurisdictions removing centralised price fixing for poultry growing services.

The legislation review program has resulted in a material reduction in unwarranted competition restrictions. Governments have introduced major reforms in tandem with systematically transforming a multitude of smaller productivity-impeding regulations. While some competition restrictions may have appeared relatively isolated in their impact, in total they were a significant drag on the economy's growth potential.

The legislation review program is based on governments' initial screening of their legislation for competition restrictions, which has occasionally proved limiting. There are instances where legislation also appears to impinge on efficiency, or involves excessive 'red tape', without necessarily restricting competition. These instances are not addressed by governments' present NCP commitments.

Where a review raises issues with a national dimension, the NCP provides that it can be undertaken on a national basis. However, the conduct of national reviews has often been unsatisfactory. In several cases, governments have not implemented recommended reforms, owing to delays from protracted intergovernmental consultation: some national reviews have been underway for many years. The outcomes from national reviews appear to depend on two main considerations: (1) who conducts the national review and (2) the relative costs and benefits of national consistency versus policy competition.

Ideally, independent agencies should conduct national reviews, such as the Productivity Commission's national review of architects. Reviews that are not sufficiently independent may settle on 'consensus' or least common denominator reforms that all the parties can achieve leading to very little benefit in some jurisdictions. Apart from reduced duplication, the chief benefit of national reviews is the scope to engender regulatory consistency throughout Australia, thereby reducing compliance and transactions costs. On the other hand, the Council has observed innovative approaches to reform in one jurisdiction being adopted by others. Reform in one jurisdiction can thus provide a catalyst for other jurisdictions to act in areas that seemed (politically) intractable.

## Legislation review (new legislation)

*Commitment:* Ensure that all new legislation containing competition restrictions is in the public interest (see chapter 4).

**Box 1:** Elements of best practice gatekeeping**Institutional environment settings (COAG and individual governments)**

- A high level commitment by governments to the importance of good process to achieve high quality regulation
- Consideration given to assessing the quality of the stock of legislation, in addition to ensuring the flow of high quality new legislation
- (At least initial) external monitoring, comparison and assessment of the performance of gatekeeping systems as governments move to improve these arrangements
- Cross-jurisdictional information exchange through the Regulation Review Forum as a vehicle to continually promote best practice gatekeeping systems

**Whole-of-government process issues**

- Legislative underpinning for the application of regulatory impact assessments for primary, subordinate and quasi regulation
- Structured integration of regulation impact statement (RIS) processes into agencies' regulatory policy development roles
- Mandatory guidelines for the conduct of RISs, with appropriate cost-benefit assessment frameworks that focus on the quantification of costs and benefits for consumers, business, government and the community, and that appropriately explore alternatives to meet the stated objectives
- Greater awareness of the risks of using regulation to achieve off-budget solutions and/or to placate vested interests, rather than adopting a community-wide perspective

**The gatekeeper**

- Optimal model: an independent statutory gatekeeper established under a separate Act or through protocols to ensure independence
- Second best: an independent entity removed from a direct role in policy formulation, with an appropriate 'Chinese wall', adequate resources and a high level line of reporting
- Responsibility for 'fail safe' systems to ensure that all regulatory proposals are scrutinised to determine whether a RIS should be undertaken, and that RISs are conducted in a timely manner to avoid *ex post* justifications
- Capability to provide/withhold certificates of adequacy for RISs before consideration by Cabinet (or to not accept poor quality RISs)
- Training capabilities and high level imprimatur to work with agencies in developing RISs
- Public monitoring and exposure of agencies' compliance with RIS requirements and the quality of RISs prepared

**Transparency**

- Where appropriate, the conduct of RISs at the consultation stage and for the decision maker
- RISs made publicly available when legislation is introduced, including expurgated RISs where genuine confidentiality considerations arise
- A publicly accessible repository for RISs
- Incorporation of sunset clauses to facilitate *ex post* evaluation of the projected costs and benefits of the RIS

Source: chapter 4.

*Outcome:* The integrity of governments' regulation impact assessment processes is central to their capability to meet the commitments on new legislation. The process of ensuring governments develop effective and efficient regulation is referred to as 'gatekeeping'. All governments have gatekeeping mechanisms that could, in principle, operate to ensure compliance with their NCP commitments. The Council has strong reservations, however, about whether all gatekeeping processes are delivering appropriate outcomes in practice.

Effective gatekeeping is necessary to guard against the introduction of legislation that is not in the public interest. Australia is subject to a rapid regulatory accretion, and governments face a variety of pressures to enact new laws. Where new laws are in the public interest, community welfare is enhanced. But the costs as well as the anticipated benefits of regulation need to be assessed rationally. This is the role of gatekeeping systems, and while there have been improvements, most governments have systems that fall short of best practice and so may not ensure quality regulation in the future (see chapter 4). Box 1 summarises the Council's view of the necessary ingredients for effective gatekeeping arrangements.

## Third party access to essential infrastructure

*Commitment:* A national regime to facilitate third party access, on reasonable terms and conditions, to essential infrastructure services with natural monopoly characteristics.

*Outcome:* Part IIIA of Trade Practices Act has been established to provide three pathways for a party to seek access to an infrastructure service: via declaration; via an existing effective access regime; or by meeting terms and conditions set out in voluntary undertakings approved by the Australian Competition and Consumer Commission (ACCC).

Under part IIIA, the decision on whether a significant infrastructure facility is subject to regulation is generally separated from regulation of that facility. The Council thus advises on whether access to an infrastructure facility should be regulated by the ACCC or a similar state body, or not at all. The Council has assessed:

- 19 declaration applications covering a diverse range of activities including, payroll deductions services, gas distribution and electricity services, airport ramp and cargo services, rail services, transmission of sewage services, and water storage services
- 18 certification applications covering gas pipelines, shipping channels, rail track services, electricity distribution networks and port and maritime services
- two applications for coverage under the National Gas Code and 29 applications for revocation of coverage.



## Electricity

*Commitment:* Structural, governance, regulatory and pricing reforms to promote competition in electricity generation and retailing (see chapter 6).

*Outcome:* New South Wales, Victoria, Queensland, South Australia and the ACT are part of an interconnected national electricity market. Tasmania entered the national electricity market in 2005, and its link to the mainland is expected to be commissioned in 2006. The benefits of the national electricity market 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 national electricity market, Western Australia is restructuring 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.

Most governments have met their commitments under the electricity agreements, although some critical elements remain outstanding. While considerable progress has been made towards achieving the goal of a fully competitive national electricity market, the electricity market has significant deficiencies that the current reform program does not specifically address. These shortcomings were identified in 2003 during the Ministerial Council on Energy's deliberations on a future reform agenda for electricity, but there has been little further progress.

## Gas

*Commitment:* Remove legislative and regulatory barriers to the free trade of gas both within and across state and territory boundaries, and provide third party access to gas pipelines (see chapter 7).

*Outcome:* The objective of national free and fair trade in gas is now largely realised. The Australian gas market is increasingly competitive, dynamic and efficient. All governments have met their commitments in relation to structural reform and franchising and licensing principles. New South Wales, Victoria, Western Australia, South Australia and the ACT have removed regulatory barriers to full retail contestability. Queensland has deferred implementing full retail contestability for customers consuming less than 1 terajoule of gas per annum.

## Road transport

*Commitment:* Improve the efficiency of the road freight sector (see chapter 8).

*Outcome:* 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. COAG endorsed frameworks covering 25 of the initiatives for assessment under the NCP.

The (assessed) road transport reform commitments are almost complete—of 147 reform elements across all jurisdictions, 143 have been satisfactorily implemented. Western Australia has two reforms outstanding, and the Australian Government and the ACT have one each. These outstanding commitments relate to relatively minor areas of the reform agenda.

Not all road transport reform elements are subject to assessment under the NCP and there is significant scope for further productivity enhancing reforms in road, and a need for a more integrated agenda for road and rail.

## Water

*Commitment:* COAG agreed to a strategic water reform framework in 1994, which was incorporated into the 1995 NCP agreements. COAG's main objectives were to establish an efficient and sustainable water industry and to arrest widespread natural resource degradation, for which water use is partly responsible. The framework covers pricing, the appraisal of investment in rural water schemes, the specification of, and trading in, water entitlements, resource management (including recognising the environment as a user of water via formal allocations), institutional reform and improved public consultation. Past NCP assessments have considered governments' implementation of particular elements of the water reform framework, with the 2005 NCP assessment examining each government's implementation of the entire framework.

*Outcome:* The 2003 and 2004 NCP assessments revealed that all governments recognise the importance of effective and efficient water management. Each is making progress towards this objective although jurisdictions are at different stages of implementation. Notably, urban pricing is now achieving at least the lower bound of cost recovery and elements of the rural reform program are underway. Substantial work remains, however, particularly to implement compatible systems of water access entitlements and appropriate environmental allocations, and to establish effective water trading arrangements.

COAG agreed in 2003 to refresh the 1994 reform framework and provide a forward water reform program, reaching the Intergovernmental Agreement on a National Water Initiative in 2004.<sup>2</sup> In accord with this agreement, the

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<sup>2</sup> Western Australia and Tasmania did not sign the Intergovernmental Agreement on a National Water Initiative. Tasmania subsequently signed the agreement in June 2005.

National Water Commission is conducting the 2005 NCP assessment of jurisdictions' compliance with water commitments.

## **Much has been achieved, but more is needed**

Many reform objectives under the NCP have substantially been met. All governments have appropriate price oversight mechanisms in place and generally have removed regulatory functions from public monopolies operating in competitive markets. Further, governments have applied competitive neutrality principles to their large government businesses and have complaints mechanisms in place. These commitments continue to be relevant as long as governments own businesses. Similarly, commitments continue relating to third party access to the services provided by essential infrastructure facilities.

The commitments relating to the quality of new legislation (gatekeeping) remain fundamental to Australia's prosperity. Governments' gatekeeping mechanisms need to be improved substantially and subject to oversight to assist movement towards more effective arrangements capable of delivering regulation without unwarranted efficiency and compliance costs.

The timeframe set by COAG for the legislation review and reform agenda was not met. However, substantial elements of the program have been delivered, and the reform dividend to the nation is evident. One drawback not envisaged by the NCP's focus on removing unwarranted restrictions on competition is the extent of costs (efficiency, compliance and administration) sometimes imposed to support restrictions that are in the public interest. It is possible for example, for a non discriminatory measure to have an excessive compliance burden, yet meet the NCP obligations. Similarly, regulations that impede efficiency but which do not involve competition restrictions may not even have been reviewed under the NCP. In this context, enhanced gatekeeping arrangements could ensure an improved flow of regulation, but do little to improve excessive 'red tape' in the stock.

For the road transport reform agenda, the NCP obligations have substantially been met. However, further integrated and coordinated reform of land transport (and coastal shipping and ports) is needed. Energy reform has progressed reasonably well in relation to the specified NCP obligations. Nevertheless, COAG's objective of a fully competitive national electricity market has not yet been attained, and reviews have identified significant deficiencies (not addressed under the current NCP reform program).

The NCP incorporates general programs, sector-specific reforms and sound public policy principles and processes within an embracing reform platform. As the Organisation for Economic Cooperation and Development (OECD) observed recently, Australia has become a model for other OECD countries, in particular, because of:

*... the tenacity and thoroughness with which deep structural reforms were proposed, discussed, legislated, implemented and followed-up in virtually all markets, creating a deep-seated 'competition culture' (OECD 2005, p. 11)*

Reflecting the NCP's broad agenda and the commitment required by all governments, it is not surprising that outcomes across reform areas and between jurisdictions are mixed (see table 1). The key areas of unfinished business include: completing the legislation review program; improving the application of competitive neutrality principles; the Australian Government adhering better to structural reform principles; and all governments making a concerted effort to improve their regulation gatekeeping arrangements.

**Table 1:** Summary of outcomes, by jurisdiction

	<i>Energy reform</i>	<i>Road reform</i>	<i>Competitive neutrality</i>	<i>Structural reform</i>	<i>Legislation review</i>	<i>Gatekeeping (out of five)</i>
<i>Australian Government</i>	✓	x	✓	x	x	✓✓✓✓
<i>New South Wales</i>	✓	✓	✓	✓	✓	✓
<i>Victoria</i>	✓	✓	✓	✓	✓	✓✓✓
<i>Queensland</i>	✓	✓	✓	✓	✓	✓✓
<i>Western Australia</i>	✓	x	x	✓	x	✓
<i>South Australia</i>	✓	✓	✓	✓	x	✓✓
<i>Tasmania</i>	✓	✓	✓	✓	✓	✓✓
<i>ACT</i>	✓	x	✓	✓	✓	✓
<i>Northern Territory</i>	✓	✓	✓	✓	✓	✓✓

However, more is required than finalising an agenda conceived a decade ago. As productivity enhancing reforms have been implemented, new challenges (many not envisaged in 1995) have emerged. Some have likened the reform task to walking up a down escalator—in a globally competitive environment, reform inertia means declining living standards. The relevance of existing regulations needs to be re-assessed continually and what is considered best practice today may tomorrow be an impediment to the nation achieving its growth potential.

## Competition payment reductions

For the 2003 and 2004 NCP assessments, the Council assessed governments as not meeting their NCP obligations where they failed to undertake reform activity specified in intergovernmental agreements. For the legislation review and reform obligations, a compliance failure arose where:

- the review and reform of legislation was not completed, or
- completed reviews and/or reforms did not satisfy NCP principles.

Reflecting the significance of each compliance failure (and indications from governments as to their preparedness to address noncompliance), the Council recommended reductions to payments as either deductions or suspensions:

- *Permanent deductions* are irrevocable reductions in governments' competition payments. In 2004, the Council recommended permanent deductions for specific compliance failures. Where relevant governments have not improved compliance in these areas for this 2005 NCP assessment, the Council has recommended that the deductions continue.
- *Specific suspensions* are a temporary hold on competition payments until a government completes its compliance efforts in a particular area. In 2004, the Council recommended suspensions to apply until the relevant governments met pre-determined conditions, at which time the suspended 2004-05 competition payments would be released. Where commitments have not been made or met for this 2005 NCP assessment, or reform action has not been implemented, the Council has recommended that the suspended payments be deducted permanently.
- *Pool suspensions* apply to a pool of outstanding compliance failures. Where satisfactory progress has been made to improve compliance for this 2005 NCP assessment, the Council has recommended that the 2004 suspension be lifted or reduced, and that funds be released to the relevant jurisdiction. Where satisfactory progress has not been made, the Council has recommended that all or part of the suspension be converted to a permanent deduction.

In this 2005 NCP assessment the Council has therefore made two types of recommendations, relating to whether:

1. some or all of the suspended 2004-05 competition payments should be released to governments or deducted permanently
2. governments' 2005-06 competition payments should be reduced.

The three forms of reduction to competition payments were a feature of the 2003 and 2004 NCP assessments. However, the Australian Government has advised that the 2005-06 competition payments (arising from this 2005 NCP assessment) represent the last such payments. Consequently, it would not be

appropriate for the Council to recommend suspensions that would require a further review of progress for them to be lifted. The Council, therefore, has limited any payment reduction recommendations to permanent deductions.

In addition, the Council has not assessed progress with water reform, which is now a matter for the National Water Commission. The Australian Government is responsible for coordinating the assessment recommendations of the commission and the Council.

Recommendations to reduce competition payments are expressed as a percentage of a relevant jurisdiction's maximum notional payment for the year, rather than specific dollar amounts. Reductions have always been, and continue to be, denominated in five percentage point increments. This approach provides for equality of treatment across jurisdictions of different sizes, but involves broad judgments about the likely effects of particular noncompliances. The Council perceives little value in attempting to be overly precise by finetuning payment reductions below five percentage point increments.

Relevant to the Council's recommendations on suspended 2004-05 competition payments and the allocation of 2005-06 competition payments is each government's continuing progress in meeting its remaining priority legislation review and reform obligations. In assessing governments' progress, the Council has accepted that in certain areas:

- governments are not in a position to progress some areas of legislation review and reform because interjurisdictional processes (that is, national reviews) are yet to be concluded. These instances of incomplete activity do not bear adversely on payment recommendations.
- some compliance failures are unlikely to have a significant impact on competition—for example, some jurisdictions have retained the reservation of title for occupational therapists without demonstrating that this is in the public interest. However, reservation of title is a restriction with a relatively minor impact that does not preclude other health practitioners offering identical services under other titles (such as rehabilitation therapist).

Each government's 'pool' of noncompliant legislation reflects some compliance breaches where these mitigating circumstances are relevant.

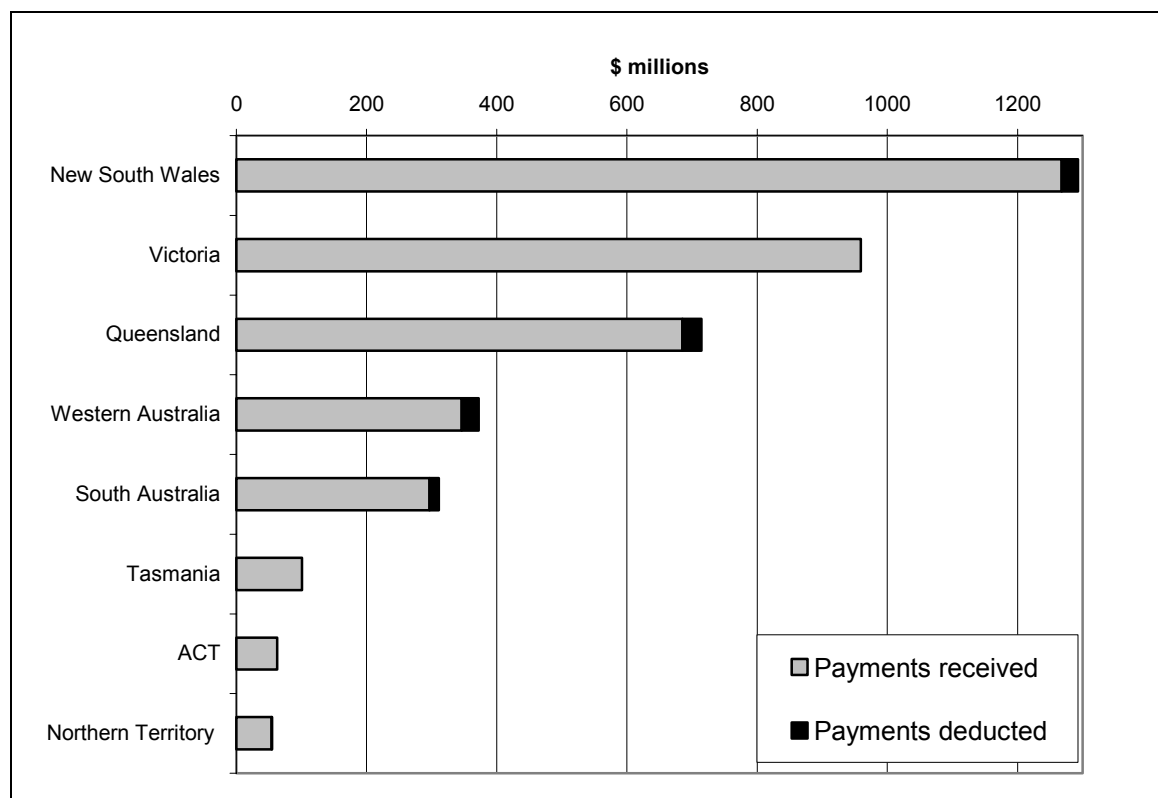
Competition payments commenced in 1997-98. On the Council's recommendation, the Australian Government applied one substantive payment reduction prior to the 2003 NCP assessment—\$270 000 for Queensland in relation to an urban water pricing matter.

Figure 2 shows that, despite the significant reductions (affecting New South Wales, Queensland, Western Australia, South Australia and the Northern Territory) applied after the 2003 and 2004 NCP assessments, around 98 per cent of \$3.9 billion of available competition payments was paid to governments from 1997-98 to 2003-04. Victoria, Tasmania and the ACT

received 100 per cent of their payments, whereas Western Australia received the lowest proportion at around 93 per cent.

The following sections present the Council’s recommendations for 2005-06, and the suspended 2004-05, competition payments. Table 2, at the end of this overview, provides a summary of recommendations.

**Figure 2:** Total competition payments received by jurisdiction, 1997-98 to 2003-04<sup>a</sup>



<sup>a</sup> Excludes additional competition payments of around \$1.5 billion available for 2004-05 and 2005-06 because this 2005 NCP assessment includes the Council’s recommendations in relation to suspended 2004-05 payments, and the allocation of 2005-06 payments.

## Recommendations

### New South Wales

<i>Prices oversight</i>	<i>Energy reform</i>	<i>Road reform</i>	<i>Competitive neutrality</i>	<i>Structural reform</i>	<i>Legislation review</i>	<i>Gatekeeping (out of five)</i>
✓	✓	✓	✓	✓	✓	✓

## Water

- *Appropriate environmental allocations.* Over several assessments, the Council sought evidence that New South Wales's environmental allocation arrangements are based on the best available science and that robust socioeconomic evidence supported departures from the science based levels. Arising from the 2004 NCP assessment, the Australian Government imposed a specific suspension of 10 per cent of 2004-05 competition payments for noncompliance, recoverable if New South Wales provided evidence that it establishes environmental allocations in accord with its COAG obligation. This matter is now subject to separate assessment by the National Water Commission.

## Legislation review

New South Wales has completed the review and, where appropriate, reform of 91 per cent of its stock of legislation, including 88 per cent of its priority legislation and 94 per cent of its non-priority legislation.

- *Chicken meat industry negotiations.* The Poultry Meat Industry Act restricted competition between processors and growers by setting base rates for growing fees and prohibiting agreements not approved by an industry committee. The Australian Government implemented the Council's recommendation of a specific suspension of 5 per cent of 2004-05 competition payments, recoverable on the completion of an appropriate review and, where necessary, implementation of NCP compliant reforms.

New South Wales conducted an NCP review of the Act, leading to the passage of the Poultry Meat Industry Amendment (Prevention of National Competition Policy Penalties) Bill through Parliament in June 2005. The amendments introduce reforms that meet the state's NCP obligations. The Council thus recommends the release to New South Wales of the 2004-05 competition payments suspended for noncompliance.

- *Monopoly on domestic rice sales.* The 1995 NCP review of the statutory rice marketing monopoly recommended removing the domestic monopoly while retaining the export monopoly. The New South Wales Government failed to implement the recommendations. To progress matters, in 1999 a working group developed a model for a rice export authority under Commonwealth jurisdiction, which would liberalise domestic rice marketing. At the time of the 2003 NCP assessment, the Australian Government was consulting with other states and territories on this matter. Consequently, the Council considered that there should be no adverse payments outcome because New South Wales was unable to expedite reform.

In November 2003, New South Wales extended the rice vesting arrangements until 2009 and reported that the consultations on the federal rice export authority had been abandoned. In March 2004, the



state Minister for Agriculture and Fisheries wrote to the Council to confirm that the government would undertake a new review of the rice marketing arrangements. The Australian Government imposed a specific suspension of 5 per cent of 2004-05 competition payments, recoverable on the completion of an appropriate review and, where necessary, timely implementation of NCP compliant reforms.

The 2005 NCP review (provided to the Council in June 2005) found that the export arrangements deliver a net public benefit, but that domestic regulation imposes a net cost. Without a national single export desk, however, it contended that the net benefit would be eroded if domestic trading in New South Wales grown rice was allowed (because it would not be possible to prevent exports of New South Wales-grown rice via other states). The review consequently recommended retention of the vesting arrangements, which the government accepted.

The review relied on data and analysis provided by the industry to establish the benefits of an export single desk, but it failed to present this evidence in any detail or demonstrate that it was tested appropriately. Moreover, the review stated an explicit preference for a deregulated domestic market with a single export desk, but contended that ‘there is arguably no feasible failsafe mechanism ... to protect these benefits other than through a national single desk, an approach previously ruled out’. This finding, which goes to the heart of the second leg of the CPA clause 5(1) test (that the objectives of the legislation cannot be achieved without restricting competition) was not evidenced by any exploration of alternatives. There is a range of relevant alternatives in Australia, from the domestic deregulation of barley in South Australia and Western Australia, Graincorp’s authorisation of canola and sorghum buyers in New South Wales, and the sugar vesting exemptions administered by the Sugar Industry Authority in Queensland. All of these arrangements provide for single export desks coincident with domestic deregulation.

It is useful to revisit the key recommendation of the 1995 NCP review of rice marketing that:

*... the New South Wales Government agree to provide a state based regime to secure single desk export selling for the New South Wales rice industry from 1 February 1999, whether by way of an attenuated vesting arrangement or otherwise, but which has minimal anticompetitive effects, in the event that the Commonwealth does not grant an export licence or equivalent. (NSW Government Review Group 1995, p. 46)*

To meet the COAG requirement for a properly constructed review process, it was incumbent on New South Wales to ensure the 2005 rice review assessed whether the state could liberalise domestic rice marketing by exempting rice sold domestically from vesting, on conditions that protect the board’s export monopoly. An option that should have been explored would be to restrict who may buy rice from growers to buyers authorised by a suitably reconstituted marketing board. Such authorisation could be conditional on these buyers accepting a contract that prohibits the export

of this rice unless it has been substantially transformed, and that prohibits the sale of this rice domestically unless under a contract that prohibits exporting by the next buyer, and so on—in a similar manner to the distribution and resale restrictions that are often imposed in other industry sectors. Normal commercial sanctions, such as contract termination and litigation, would be available to the board and, in turn, authorised buyers in the event of any breach of these conditions. The board's costs of administering and enforcing these arrangements could be recovered from authorised buyers.

On 14 October 2005, the Minister for Primary Industries informed the Council that the New South Wales Government intended to reform regulations governing the market for domestic trade in rice in New South Wales while retaining a single desk for export sales. The proposed measures seek to safeguard the export single desk through appropriate licensing arrangements. The main elements of the proposed scheme are:

- a single desk arrangement for rice exports from New South Wales will be retained
- an “authorised buyer” scheme will be introduced for domestic trade in rice
- the Rice Marketing Board will administer the scheme, subject to appeals to the New South Wales Administrative Decisions Tribunal
- the single desk will be protected through the sanction for any person or corporation found to have breached the conditions of their licence (that is, exported rice) through the loss of their authorised buyer permit for a stipulated period of time
- the arrangements will commence in 2006, after the current crop has been harvested.

In discussions with the Council, the minister undertook that the necessary legislation would be enacted by the New South Wales Parliament before 30 November 2005.

New South Wales will need to pass the proposed legislation by this date to comply with its NCP commitments. If it does not, the Council considers that New South Wales will have failed to meet its CPA commitments in relation to rice marketing and thereby failed to satisfy the conditions for release of the suspended 2004-05 NCP payments. The Council does not support any extension to the 30 November 2005 timeframe.

*Other noncompliant legislation review and reform matters.* The items remaining in the New South Wales pool do not warrant any reduction of 2005-06 competition payments.

**New South Wales pool**

*Primary industries:* veterinary surgeons

*Transport:* taxis

*Health:* pharmacy; dental technicians

*National reviews:* agricultural and veterinary chemicals (and stock medicines); legal practice; trade measurement

**Assessment**

*In relation to New South Wales 2004-05 competition payments, the Council recommends:*

- *releasing in full the payments suspended for noncompliance with obligations relating to poultry meat legislation*
- *a permanent deduction of the payments suspended for noncompliance with obligations relating to rice marketing legislation.*

*In relation to 2005-06 competition payments, the Council considers that the matters identified in this assessment warrant a permanent deduction of 5 per cent for noncompliance relating to the regulation of rice marketing.*

*If New South Wales enacts proposed reforms to legislation governing rice marketing by 30 November 2005, the Council recommends:*

- *releasing in full New South Wales 2004-05 competition payments suspended for noncompliance in rice marketing*
- *payment in full of New South Wales 2005-06 competition payments .*

**Victoria**

<i>Prices oversight</i>	<i>Energy reform</i>	<i>Road reform</i>	<i>Competitive neutrality</i>	<i>Structural reform</i>	<i>Legislation review</i>	<i>Gatekeeping (out of five)</i>
✓	✓	✓	✓	✓	✓	✓✓✓

Victoria has completed the review and, where appropriate, reform of 88 per cent of its stock of legislation, including 84 per cent of its priority legislation and 91 per cent of its non-priority legislation. The items remaining in Victoria’s pool do not warrant any reduction to 2005-06 competition payments.

**Victorian pool**

*Primary industries:* fisheries

*Health:* pharmacists

*Professions/occupations:* legal practice (conveyancing)

*Other:* lottery exclusive licences

*National reviews:* legal practice; agricultural and veterinary chemicals; drugs, poisons and controlled substances; trade measurement; travel agents

**Assessment**

***The Council recommends that Victoria receive its full allocation of 2005-06 competition payments.***

**Queensland**

<i>Prices oversight</i>	<i>Energy reform</i>	<i>Road reform</i>	<i>Competitive neutrality</i>	<i>Structural reform</i>	<i>Legislation review</i>	<i>Gatekeeping (out of five)</i>
✓	✓	✓	✓	✓	✓	✓✓

**Energy**

- *Failure to progress gas reform.* In the 2004 NCP assessment, the Council assessed that Queensland had not made progress towards extending contestability to commercial and industrial customers using 1–100 terajoules of gas a year, despite an independent study (commissioned by Queensland) finding that the benefits of extending contestability would outweigh the costs. The 1997 gas agreement recognised that the introduction of retail contestability posed transitional issues for all jurisdictions, and allowed for a phased process to be completed by 2001. Queensland did not meet this time frame and failed to gain the approval of all governments for an indefinite deferral. The Australian Government implemented a specific suspension of 5 per cent of 2004-05 competition payments pending Queensland's implementation of the findings of the cost-benefit study.

Queensland has passed a Regulation to extend retail gas contestability from 1 July 2005 to commercial and industrial reticulated gas customers using 1–100 terajoules a year. The practical extension of contestability, however, requires Queensland to finalise market operation and business rules. Queensland will give effect to the rules in a Regulation under the Gas Supply Act scheduled to commence on 1 November 2005. Apart from the finalisation of the rules, there are no remaining barriers to effective contestability to customers using 1–100 terajoules a year. This addresses Queensland's obligations in this area. Consistent with Queensland's undertakings on this matter, the Council would expect Queensland to review no later than 2007 its decision not to extend contestability to tranche 4 customers.

The Council recommends the release of the 2004-05 competition payments suspended for full retail contestability not being extended to gas customers in line with the findings of the state's cost-benefit study.

- *Failure to progress electricity reform.* In the 2003 NCP assessment, the Council found that Queensland had not introduced full retail contestability as required under the NCP electricity reform agreements. Queensland agreed to consider introducing contestability for customers consuming 100–200 megawatt hours a year (tranche 4A) and to further review the immediate introduction of full retail contestability. As recommended by the Council, the Australian Government imposed a suspension of 10 per cent of 2003-04 competition payments, pending implementation of contestability for tranche 4A customers, and a suspension of 15 per cent of competition payments, pending the outcome of the wider review of full retail contestability.

For the 2004 NCP assessment, Queensland met its obligation to introduce contestability for tranche 4A customers. It did not, however, further review the introduction of full retail contestability. Accordingly, the Australian Government:

- released the suspended 10 per cent of 2003-04 competition payments, in recognition that the state had implemented contestability for tranche 4A customers
- permanently deducted the 15 per cent of 2003-04 competition payments suspended pending the outcome of the wider review of full retail contestability
- suspended 15 per cent of 2004-05 competition payments, pending the completion of the review and implementation of its findings.

On 28 September 2005, the Queensland Premier announced that full retail contestability would be introduced for small businesses and households from 1 July 2007 (Beattie 2005). The Electricity Amendment Regulation (No.2) 2005 was passed on 6 October 2005 to give effect to the July 2007 starting date. Accordingly, the Council recommends releasing in full the 15 per cent of 2004-05 competition payments suspended pending the completion of the review and implementation of its findings.

## Legislation review

Queensland has completed the review and, where appropriate, reform of 87 per cent of its legislation, including 85 per cent of its priority legislation and 92 per cent of its non-priority legislation.

- *Regulation of liquor sales.* The Liquor Act 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 size. The

restrictions apply statewide, notwithstanding an objective of protecting country hotels. The Australian Government imposed a permanent deduction of 5 per cent of 2003-04 competition payments and 5 per cent of 2004-05 competition payments.

Given the continued lack of progress, the Council recommends a permanent deduction of 5 per cent of 2005-06 competition payments for continued noncompliance.

- *Other noncompliant legislation review and reform matters.* The items remaining in Queensland's pool do not warrant any reduction to 2005-06 competition payments.

#### **Queensland pool**

*Primary industries:* fisheries

*Transport:* taxis

*Health:* pharmacy; occupational therapists; speech pathologists

*Professions/occupations:* legal practitioners (conveyancing); auctioneers and agents

*National reviews:* drugs and poisons; legal practitioners; trade measurement; agricultural and veterinary chemicals

## **Assessment**

***In relation to Queensland's 2004-05 competition payments, the Council recommends:***

- ***releasing in full the payments suspended for noncompliance with gas reform obligations***
- ***releasing in full the payments suspended for noncompliance with obligations relating to full retail contestability for electricity consumers.***<sup>3</sup>

***In relation to 2005-06 competition payments, the Council considers that the matters identified in this assessment warrant a permanent deduction of 5 per cent for noncompliance relating to the regulation of liquor sales.***

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<sup>3</sup> In correspondence with the Council and with the Australian Government Treasurer, the Queensland Government has also sought to be paid competition payments initially suspended in 2002-03 and then deducted in 2003-04 for failure to implement full retail contestability. In the Council's view this payment was appropriately deducted and should not be refunded now.

## Western Australia

Prices oversight	Energy reform	Road reform	Competitive neutrality	Structural reform	Legislation review	Gatekeeping (out of five)
✓	✓	x	x	✓	x	✓

### Energy

- *Structural electricity reforms.* At the time of the 2004 NCP assessment, Western Australia had failed to implement an essential aspect of the reform package recommended by the Electricity Reform Task Force—namely, the structural separation of Western Power into generation, network and retail entities. The Australian Government implemented a suspension of 15 per cent of 2004-05 competition payments, pending the passage of legislation to disaggregate Western Power. (The Council observed that the suspension would have been significantly larger if not for the government’s strong performance in other aspects of electricity reform.)

On 22 September 2005, Western Australia passed the *Electricity Corporations Act 2005*, which provides for Western Power to be split into four independent functional entities by 31 March 2006.

The Council recommends the release to Western Australia of the 2004-05 competition payments suspended for noncompliance with structural electricity reforms.

### Legislation review

Western Australia has completed the review and, where appropriate, reform of 68 per cent of its stock of legislation, including 55 per cent of its priority legislation and 77 per cent of its non-priority legislation.

- *Regulation of retail trading hours.* Under the Retail Trading Hours Act, Western Australia is the only jurisdiction to heavily restrict week day trading hours and to prohibit large retailers (outside of tourist precincts) from opening on Sundays. The Australian Government imposed a permanent deduction of 10 per cent of the state’s 2003-04 competition payments and 10 per cent of 2004-05 competition payments.

In 2005, Western Australia conducted a referendum on extending trading hours—58 per cent of voters supported the ‘no’ case for extended weeknight trading and 61 per cent supported the ‘no’ case for Sunday trading. The government advised the Council that it would not address the restrictions on retail trade because the referendum had established the public interest for the restrictions. It contended that the Council, to conclude otherwise, would have to presume it knew more about the public interest than the public.

The NCP obliges governments to remove competition restrictions unless they can demonstrate that the restrictions benefit the community overall (being in the public interest) and are necessary to meet objectives. Moreover, COAG (2000) directed that the Council, when making recommendations on competition payments, should consider whether the conclusion reached is within a range of outcomes that could reasonably be reached based on the information available to a 'properly constituted review process'. Western Australia's independent review did not find there was a public interest in retail trading hours restrictions—a result mirrored by every NCP review of shop trading hours conducted across Australia.

The Council thus recommends a permanent deduction of 10 per cent of 2005-06 competition payments for continued noncompliance relating to retail trading hours legislation.

- *Regulation of liquor sales.* The Liquor Licensing Act contains a needs test, whereby a licence application can be rejected because the area has incumbent liquor outlets. The legislation further discriminates between hotels and liquor stores, with only hotels able to trade on Sundays. Following the 2003 NCP assessment, the Australian Government imposed a permanent deduction of 5 per cent of 2003-04 competition payments and 5 per cent of 2004-05 competition payments, for continued noncompliance.

The government recently released a second liquor review, which found that the restrictions on competition are unwarranted and should be reformed. The findings are consistent with the state's previous liquor review (and all other NCP reviews of liquor conducted across jurisdictions). The government's response has been to initiate community consultations on the review's findings.

There is little prospect of compliant reforms being introduced before the conclusion of this NCP assessment, so the Council recommends a permanent deduction of 5 per cent of the state's 2005-06 competition payments.

- *Potato marketing.* Western Australia is the only jurisdiction to regulate potato marketing. Legislation empowers a Potato Marketing Corporation to restrict the availability of land for growing potatoes for fresh consumption, and to fix the wholesale price of such potatoes. Following the 2003 NCP assessment, the Australian Government imposed a permanent deduction of 5 per cent of 2003-04 competition payments, based on the Council's assessment that neither the outcomes of the NCP review nor the government's arguments for retaining the arrangements were consistent with NCP obligations.

In the lead-up to the 2004 NCP assessment, the Western Australian Government announced that it would amend the Act to change the basis of supply restrictions from growing area to quantity, and to introduce incentives for growers to supply varieties preferred by consumers. When implemented, these changes are likely to reduce the costs of the marketing



arrangements. To meet its obligations, however, the government needed to have removed the supply and marketing controls. Consequently, the Australian Government imposed a permanent deduction of 5 per cent of 2004-05 competition payments.

There has been no further progress, so the Council recommends a permanent deduction of 5 per cent of 2005-06 competition payments, for continued noncompliance.

- *Suspension pool.* For the 2004 NCP assessment, the Council assessed that the Western Australian Government had made poor progress in addressing its outstanding legislation review and reform items. The Australian Government imposed a 15 per cent pool suspension of the state's 2004-05 competition payments (of which 5 percentage points attached to a failure to complete a raft of general health practitioner reforms).

#### **Western Australian pool**

*Primary industries:* fisheries; agricultural produce (chemical residues); aerial spraying controls; veterinary preparations; food regulation; veterinary surgeons; pearling

*Transport:* marine and harbours legislation

*Health:* pharmacy

*Health practitioner legislation:* dentists and dental prosthetists; chiropractors; optical dispensers and optometrists; nurses; osteopaths; physiotherapists; podiatrists; psychologists; occupational therapists; medical practitioners

*Professions/occupations:* auction sales; settlement agents; pawnbrokers and second-hand dealers; debt collectors; employment agents; hairdressers; real estate and business agents; architects

*Water legislation:* Western Australia is the only jurisdiction to have significant outstanding obligations on water industry legislation

*Other:* petroleum products pricing; retirement villages; credit legislation; town planning and development; building regulations; gaming exclusive licences; minor gambling; casinos and betting; totalisator exclusive licence

*National reviews:* travel agents; legal practitioners; agricultural and veterinary chemicals; drugs and poisons; trade measurement

For this 2005 NCP assessment, the government has, despite reminders over a number of assessments, made little progress in reforming its health practitioner legislation. Its progress in addressing commitments on other outstanding legislation has been slow. That said, there have been some advances. Most significantly, the Council accepts that the state's continuing reform of its grain marketing legislation meets its NCP obligation (see chapter 14). The operation of the Grains Licensing Authority has delivered demonstrable benefits to the Western Australian community, particularly grain growers. Moreover, it has provided a working model for reforming South Australia's barley marketing restrictions. Given the significance of the Western Australian grains sector, the Council considers that this important reform warrants a positive competition payment recommendation.

The Council recommends the permanent deduction of the 5 percentage points of 2004-05 competition payments suspended for failure to reform health practitioner legislation. Of the remaining 10 percentage points of suspended 2004-05 competition payments, the Council recommends that 5 percentage points be released to the state (primarily for its grain marketing reform) and 5 percentage points be deducted permanently.

In relation to 2005-06 competition payments, the Council recommends that 10 percentage points be deducted permanently for failure to address the remaining pool items.

## Assessment

*In relation to Western Australia's 2004-05 competition payments, the Council recommends:*

- *releasing in full the payments suspended for noncompliance with obligations relating to electricity structural separation*
- *releasing one third (5 percentage points) of 2004-05 competition payments suspended for outstanding legislation review items (pool) and permanently deducting the remainder (10 percentage points).*

*In relation to 2005-06 competition payments, the Council considers that the matters identified in this assessment warrant:*

- *a permanent deduction of 10 per cent for noncompliance relating to retail trading hours legislation*
- *a permanent deduction of 5 per cent for noncompliance relating to the regulation of liquor sales*
- *a permanent deduction of 5 per cent for noncompliance relating to the marketing of potatoes*
- *a permanent deduction of 10 per cent for outstanding legislation review items (pool).*

## South Australia

<i>Prices oversight</i>	<i>Energy reform</i>	<i>Road reform</i>	<i>Competitive neutrality</i>	<i>Structural reform</i>	<i>Legislation review</i>	<i>Gatekeeping (out of five)</i>
✓	✓	✓	✓	✓	x	✓✓

South Australia has completed the review and, where appropriate, reform of 83 per cent of its stock of legislation, including 69 per cent of its priority legislation and 94 per cent of its non-priority legislation.

- *Barley marketing.* Two reviews of the Barley Marketing Act failed to produce credible public interest evidence to support the monopoly marketing arrangement. Following the 2003 NCP assessment, the Australian Government imposed a suspension of 5 per cent of 2003-04 competition payments until South Australia provided details of a complying reform implementation program.

After the imposition of the suspended penalty, the South Australian Government made a concerted effort to introduce a reform package in the public interest. However, the legislation did not have sufficient support to pass through Parliament. Accordingly, the Australian Government permanently deducted the suspended competition payments and imposed a suspension of 5 per cent of 2004-05 competition payments until South Australia instituted a complying reform implementation program.

There has been no further progress, so the Council recommends a permanent deduction of 5 per cent of 2005-06 competition payments for continued noncompliance. The lack of progress in this area is disappointing given the demonstrable benefits afforded the Western Australian community (particularly grain growers) from that state's reforms.

- *Regulation of liquor sales.* South Australia's Liquor Licensing Act contains a needs test, whereby the licensing authority can reject a licence application because the area already has liquor outlets that cater to the needs of the public. The Australian Government imposed a permanent deduction of 5 per cent of 2003-04 competition payments and 5 per cent of 2004-05 competition payments for noncompliance.

There has been no further progress, so the Council recommends a permanent deduction of 5 per cent of 2005-06 competition payments, for continued noncompliance.

- *Suspension pool.* For the 2004 NCP assessment, the Australian Government imposed a 10 per cent pool suspension of the state's 2004-05 competition payment, with 5 percentage points attaching to the state's failure to complete reform of its health practitioner legislation.

#### **South Australian pool**

*Primary industries:* fisheries; opal mining

*Transport:* taxis; tow trucks

*Health:* pharmacy; dentists; occupational therapists; optometrists; psychological practices

*Professions/occupations:* employment agents; architects

*Retail trading:* shop trading hours; petroleum products regulation

*Other:* lotteries exclusive licence

*National reviews:* legal practitioners; agricultural and veterinary chemicals; drugs and poisons; trade measurement

For this 2005 NCP assessment, South Australia made good progress in reforming its health practitioner legislation. The Council thus recommends releasing to the state the 5 percentage points of 2004-05 competition payments suspended for failure to reform health practitioner legislation. The Council recommends permanently deducting the remaining 5 percentage points of the suspended 2004-05 competition payments, reflecting South Australia's failure to progress other pool items.

In relation to 2005-06 competition payments, the Council recommends a permanent deduction of 5 per cent for continued failure to address the remaining pool items.

## Assessment

*In relation to South Australia's 2004-05 competition payments, the Council recommends:*

- *permanently deducting the payments suspended for noncompliance with obligations relating to barley marketing*
- *releasing one half (5 percentage points) of 2004-05 competition payments suspended for outstanding legislation review items (pool) and permanently deducting the remainder (5 percentage points).*

*In relation to 2005-06 competition payments, the Council considers that the matters identified in this assessment warrant:*

- *a permanent deduction of 5 per cent for noncompliance with obligations in relation to barley marketing arrangements*
- *a permanent deduction of 5 per cent for noncompliance with obligations in relation to the regulation of liquor sales*
- *a permanent deduction of 5 per cent for outstanding legislation review items (pool).*

## Tasmania

<i>Prices oversight</i>	<i>Energy reform</i>	<i>Road reform</i>	<i>Competitive neutrality</i>	<i>Structural reform</i>	<i>Legislation review</i>	<i>Gatekeeping (out of five)</i>
✓	✓	✓	✓	✓	✓	✓✓

Tasmania has completed the review and, where appropriate, reform of 91 per cent of its stock of legislation, including 84 per cent of its priority legislation and 96 per cent of its non-priority legislation.

The items remaining in Tasmania’s pool do not warrant any reduction in 2005-06 competition payments.

<p><b>Tasmanian pool</b></p> <p><i>Health:</i> pharmacy</p> <p><i>Professions/occupations:</i> auctioneers and estate agents; plumbers and gas-fitters</p> <p><i>Other:</i> racing; gaming machine exclusive licences</p> <p><i>National reviews:</i> legal practitioners; drugs and poisons; agricultural and veterinary chemicals</p>
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## Assessment

*The Council recommends that Tasmania receive its full allocation of 2005-06 competition payments.*

## The ACT

<i>Prices oversight</i>	<i>Energy reform</i>	<i>Road reform</i>	<i>Competitive neutrality</i>	<i>Structural reform</i>	<i>Legislation review</i>	<i>Gatekeeping (out of five)</i>
✓	✓	x	✓	✓	✓	✓

The ACT has completed the review and, where appropriate, reform of 93 per cent of its stock of legislation, including 82 per cent of its priority legislation and 98 per cent of its non-priority legislation.

The items remaining in the ACT’s pool do not warrant any reduction to 2005-06 competition payments.

<p><b>ACT pool</b></p> <p><i>Primary industries:</i> veterinary surgeons</p> <p><i>Transport:</i> taxis</p> <p><i>Health:</i> pharmacy; dental technicians and prosthetists</p> <p><i>Professions/occupations:</i> employment agents</p> <p><i>Other:</i> betting exclusive licence; gaming machine exclusivity; interactive gambling; public sector superannuation</p> <p><i>National reviews:</i> travel agents; drugs and poisons; legal practitioners; trade measurement</p>
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## Assessment

*The Council recommends that the ACT receive its full allocation of 2005-06 competition payments.*

## The Northern Territory

<i>Prices oversight</i>	<i>Energy reform</i>	<i>Road reform</i>	<i>Competitive neutrality</i>	<i>Structural reform</i>	<i>Legislation review</i>	<i>Gatekeeping (out of five)</i>
✓	✓	✓	✓	✓	✓	✓✓

The Northern Territory has completed the review and, where appropriate, reform of 85 per cent of its stock of legislation, including 82 per cent of its priority legislation and 90 per cent of its non-priority legislation.

- *Regulation of liquor sales.* At the time of the 2003 NCP assessment, the Northern Territory's Liquor Act contained a needs test whereby a licence application could be rejected if existing sellers could meet consumer needs. The legislation further discriminated between hotels and liquor stores, with only hotels able to sell packaged liquor on Sundays. The Australian Government thus imposed a permanent deduction of 5 per cent of 2003–04 competition payments, for noncompliance.

The Northern Territory subsequently demonstrated substantial progress by removing the anticompetitive needs test. However, it rejected the recommendation of its review to remove provisions that discriminate between sellers. It did not provide a convincing public interest case for this action. The Australian Government thus imposed a permanent deduction of 5 per cent of 2004-05 competition payments, for noncompliance.

In August 2005, the Northern Territory Government reported that, as part of the implementation of an alcohol framework, it was embarking on a complete overhaul of the Liquor Act and that the restriction on Sunday takeaway sales would therefore continue 'at this time'. However, it confirmed the overhaul of the Act would not lead to the reintroduction of a needs test because the principle of the public interest is enshrined in the Liquor Act. It also confirmed that the overhaul of the Act will involve a competition impact analysis—including a cost-benefit assessment of alternative options to address harm minimisation—and that any legislative change will be subject to the territory's gate keeping requirements (which the Council considers are robust).

The Council is encouraged by the government's commitments. However, as discriminatory Sunday trading arrangements remain in force, the Council recommends a permanent deduction of 5 per cent of 2005-06 competition payments, for continued noncompliance.

- *Other noncompliant legislation review and reform matters (pool).* The items remaining in the territory's pool do not warrant any reduction in 2005-06 competition payments.

**Northern Territory pool**

*Primary industries:* fisheries

*Transport:* taxis

*Health:* pharmacy; occupational therapists

*Other:* community welfare

*National reviews:* agricultural and veterinary chemicals; legal practitioners; drugs and poisons; trade measurement

**Assessment**

*In relation to the Northern Territory’s 2005-06 competition payments, the Council considers that the matters identified in this assessment warrant a permanent deduction of 5 per cent for noncompliance with obligations in relation to the regulation of liquor sales.*

**Australian Government**

Prices oversight	Energy reform	Road reform	Competitive neutrality	Structural reform	Legislation review	Gatekeeping (out of five)
✓	✓	x	✓	x	x	✓✓✓✓

The Australian Government has completed the review and, where appropriate, reform of 78 per cent of its stock of legislation, including around 64 per cent of its priority legislation and 89 per cent of its non-priority legislation.

**Australian Government pool**

*Primary industries:* wheat; quarantine; export controls (food and wood); mining

*Communications:* broadcasting; radiocommunications; postal services

*Transport:* shipping

*Health:* pathology collection centres

*Industry:* anti-dumping

*Other:* interactive gambling

*National reviews:* agricultural and veterinary chemicals; drugs and poisons

**Assessment**

*The Australian Government does not receive competition payments. As in previous assessments, the Council notes that the Australian Government is still to appropriately address some significant legislative restrictions.*

**Table 2: Council's recommendations on 2005-06 competition payments and suspended 2004-05 competition payments<sup>a b</sup>**

	<i>Decision by the Australian Government on 2004-05 payments</i>	<i>Council's recommendations for suspended 2004-05 payments</i>	<i>Council's recommendations for 2005-06 payments</i>
<b>New South Wales</b>			
Water reform obligations	10% suspension	National Water Commission matter	na
Rice marketing legislation	5% suspension	5% permanent deduction <sup>c</sup>	5% permanent deduction (\$13.3m) <sup>c</sup>
Chicken meat industry legislation	5% suspension	Release suspended funds in full	na
<b>Queensland</b>			
Full retail contestability electricity reforms	15% suspension	Release suspended funds in full	na
Full retail contestability gas reforms	5% suspension	Release suspended funds in full	na
Regulation of liquor sales	5% permanent deduction	na	5% permanent deduction (\$7.8m)
<b>Western Australia</b>			
Structural electricity reforms	15% suspension	Release suspended funds in full	na
Retail trading hours regulation	10% permanent deduction	na	10% permanent deduction (\$7.9m)
Regulation of liquor sales	5% permanent deduction	na	5% permanent deduction (\$3.9m)
Regulation of potato marketing	5% permanent deduction	na	5% permanent deduction (\$3.9m)
Outstanding legislation review items	15% pool suspension	Release 5%; permanently deduct 10%	10% permanent deduction (\$7.9m)
<b>South Australia</b>			
Regulation of liquor sales	5% permanent deduction	na	5% permanent deduction (\$3m)
Barley marketing arrangements	5% suspension	5% permanent deduction	5% permanent deduction (\$3m)
Outstanding legislation review items	10% pool suspension	Release 5%; permanently deduct 5%	5% permanent deduction (\$3m)
<b>Northern Territory</b>			
Regulation of liquor sales	5% permanent deduction	na	5% permanent deduction (\$0.4m)

<sup>a</sup> The Australian Government applied a range of reductions (permanent deductions and suspensions) to governments' 2004-05 competition payments. In this 2005 NCP assessment, the Council has made recommendations on whether some or all of the suspended 2004-05 payments should be released, in addition to recommendations relating to reductions in governments' 2005-06 competition payments. <sup>b</sup> All dollar estimates in the table are subject to minor revision to reflect changes in population and inflation. <sup>c</sup> If New South Wales enacts proposed reforms to rice marketing arrangements by 30 November 2005, the Council recommends release of the suspended 5 per cent of 2004-05 competition payments and payment in full of 2005-06 competition payments.