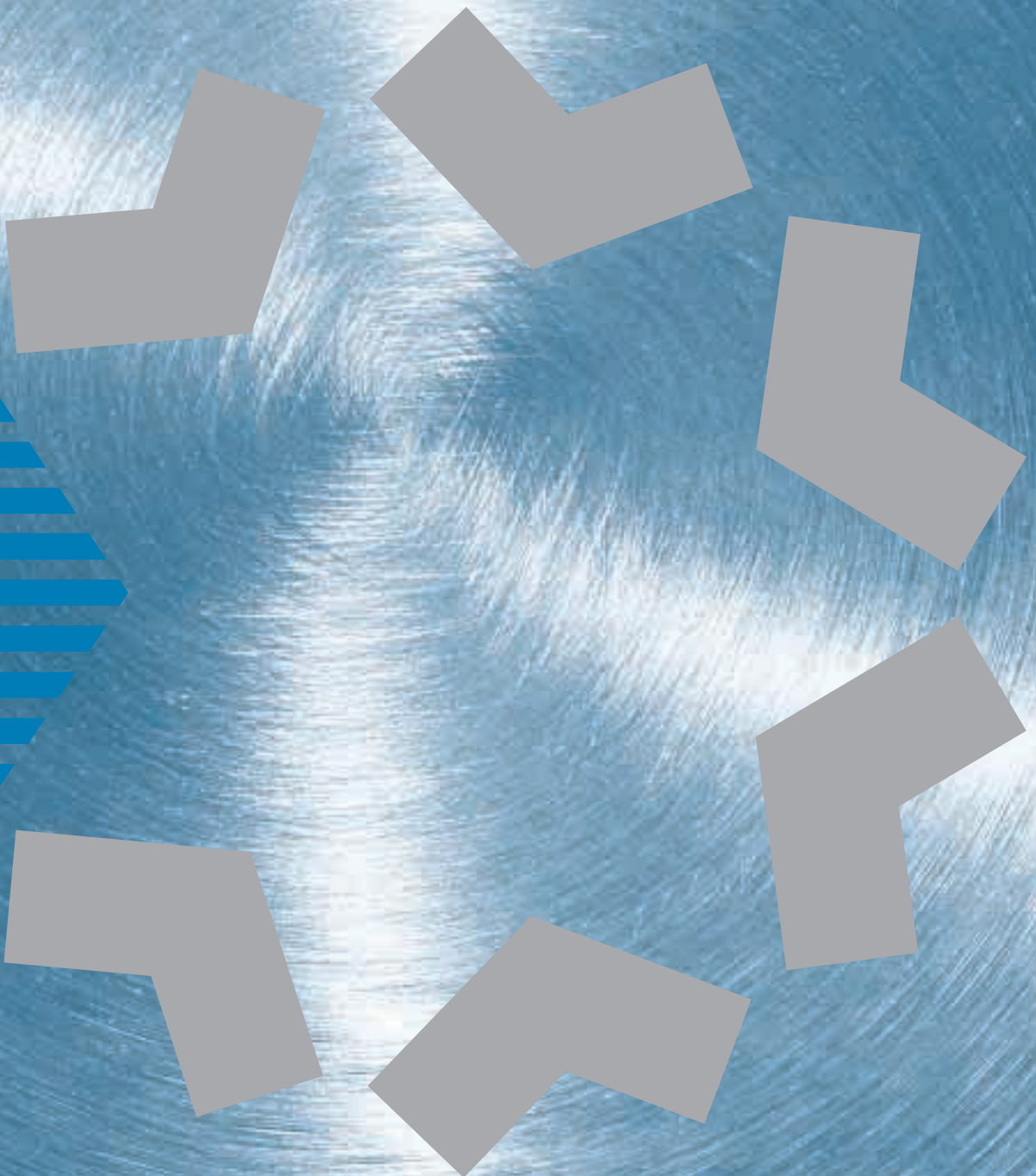


National Competition Council

Legislation Review Compendium

Third Edition
December 1999



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Compendium**

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Introduction

Australia's nine governments signed three agreements establishing the National Competition Policy (NCP) on 11 April 1995, namely:

- the Competition Principles Agreement (CPA);
- the Conduct Code Agreement; and
- the Agreement to Implement the National Competition Policy and Related Reforms.

The agreements are reproduced in the National Competition Council publication, *Compendium of National Competition Policy Agreements - Second Edition* (June 1998), and are accessible on the Council's website: <http://www.ncc.gov.au>

As part of the NCP, governments are reviewing and reforming, where appropriate, all existing legislation that restricts competition, by 31 December 2000. The principles guiding legislation review and reform are outlined in Clause 5 of the CPA.¹

In short, governments agree that legislation should not restrict competition unless they can show that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

All governments have a timetable for reviewing their restrictive legislation over the period to 2000. Governments also report annually on their progress against their review schedule. Timetables and annual reports are available from respective State and Territory competition policy officials. Contact details for State and Territory competition policy officials are provided in Appendix B.

¹ The full text of clause 5 is reproduced at Appendix A.

The legislation review compendium

The third edition, the Council incorporated data from jurisdictions' most recent NCP annual reports. Jurisdictions have provided further data current to the dates listed below.

Commonwealth:	31 October 1999
New South Wales:	31 October 1999
Victoria:	5 November 1999
Queensland:	3 November 1999
Western Australia:	6 December 1999
South Australia:	15 November 1999
Tasmania:	14 November 1999
Australian Capital Territory:	9 November 1999
Northern Territory:	31 October 1999

The compendium provides summary information for each government's program. The following information is provided, where it is available from jurisdictions' timetables and reports:

- **Name of legislation;**
- **Agency** — the department, authority or Minister responsible for the legislation;
- **Description/Comment on review** — identifies the nature of the restriction on competition, and indicates where governments have proposed legislation be reviewed on a national or joint basis, proposed a particular type of review process or provided guidelines for prioritising reviews;
- **Review scheduled** — some governments have indicated the year (calendar or financial) in which the review would commence or conclude, while some have detailed the month and year;
- **Review complete** — the date the review was completed; and
- **Review/Reform progress** — a summary of the review status or the outcome of the review.

The compendium is a guide to review programs and their progress, and does not replace the legislation review timetables or annual reports produced by each government.

What is legislation that restricts competition?

While there is almost no regulatory activity that is neutral in its implications for competition, the types of regulation which impact on competition most directly are those which restrict entry to markets and those which restrict competitive conduct by participants in markets.²

Legislation affecting competition may directly or indirectly:

- govern the entry and exit of firms or individuals into or out of markets;
- control prices or production levels;
- restrict the quality, level or location of goods and services available;
- restrict advertising and promotional activities;
- restrict price or type of inputs used in the production process;
- be likely to confer significant costs on businesses; or
- provide advantages to some firms over others by, for example, sheltering some activities from the pressures of competition.

Legislation is defined broadly in the CPA to include Acts, enactments, Ordinances or regulations.

The terms of reference for reviews

The CPA provides guidance on the matters that should be taken into account in undertaking a review of anti-competitive legislation. Without limiting the terms of reference, a review should:

- clarify the objectives of the legislation;
- identify the nature of the restriction on competition;
- analyse the likely effect of the restriction on competition and on the economy generally;
- assess and balance the costs and benefits of the restriction; and

² Hilmer, F., Rayner, M. and Taperell, G. (The Independent Committee of Inquiry into a National Competition Policy) 1993, *National Competition Policy*, AGPS, Canberra. p. 191.

- consider alternative means of achieving the same result including non-legislative approaches.³

National reviews

In some cases, particular legislation will have a national dimension or effect on competition (or both), and a national rather than a State based review may be appropriate. National reviews of similar legislation may be proposed where some or all jurisdictions agree on terms of reference. The COAG Committee on Regulatory Reform (CRR) facilitates identification of possible national reviews and agreement by jurisdictions on review arrangements.

Several governments identified legislation which they considered would be suitable for review on a national basis in their June 1996 schedules. In a few instances, there has been subsequent agreement among governments to national processes. However, for the most part, it has proven difficult for governments to establish national review processes. As a consequence, governments have either rescheduled reviews which they originally identified for national consideration within their own timetable, or are in the process of doing so.

Using the compendium

To assist readers in using the compendium, for each jurisdiction, the legislation scheduled for review is arranged alphabetically.

The government agencies responsible for administering the legislation are listed in the tables in abbreviated form, with a key to the abbreviations included in the introduction to each jurisdiction's chapter.

For information about specific reviews, users should contact the relevant jurisdiction's competition policy unit. Contact details are provided in Appendix B of this compendium.

If you have questions about competition policy and legislation review you are welcome to contact the Council through its Secretariat located in Melbourne. The telephone number of the Secretariat is (03) 9285 7474.

³ See CPA subclause 5(9). Clause 5 is reproduced at Appendix A of this compendium.