

1 Introduction

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

- 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>.

Under clause 5 of the Competition Principles Agreement (CPA)¹, governments undertook to conduct a program for the review, and where appropriate, reform of legislation that restricts competition. The CPA originally set 2000 as the deadline for governments to complete their programs. The Council of Australian Governments (CoAG) extended this timeframe on 3 November 2000 to allow a target date of 30 June 2002 (CoAG 2000). The date for finalisation of the National Competition Council's 2002 assessment of governments' progress in implementing National Competition Policy coincided with this date. This coincidence of timing meant that the National Competition Council, in preparing the 2002 assessment, did have complete information for reviewing governments' legislation review and reform activity up that date. The Council thus accorded jurisdictions an extension of twelve months, to 30 June 2003, to complete their review and reform activity.

The principles guiding legislation review and reform are outlined in Clause 5 of the CPA. 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.

¹ The full text of clause 5 is reproduced in appendix A.

New legislation that restricts competition must also be shown to meet these guiding principles. All States and Territories have legislation gatekeeping processes to assess new legislation against the CPA principles.

Each government established a timetable for reviewing its restrictive legislation over the period June 1996 to June 2002 and each reports annually on its progress. Review 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 C.

The legislation review compendium

The compendium provides summary information, provided by each government, current to February 2004.

- Name of legislation
- Agency — the department, authority or Minister responsible for the legislation
- Major restrictions — the nature of the restriction(s) on competition
- Review activity — the nature and status of review activity
- Reform activity — a summary of the reforms implemented following the review

The compendium reports governments' legislation review and reform activity relating to the NCP water reform program in chapter 11.

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 (Hilmer, Rayner and Taperell 1993, p. 191).

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 anticompetitive 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
- consider alternative means of achieving the same result including non-legislative approaches.²

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

² See CPA subclause 5(9). Clause 5 is reproduced in appendix A of this compendium.

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 facilitates identification of possible national reviews and agreement by jurisdictions on review arrangements.

Water industry legislation

Chapter 11 reports on progress by State and Territory governments in reviewing and reforming legislation relating to the water industry. The chapter reports on both the work undertaken by governments as a result of the Competition Principles Agreement legislation review and reform obligation and on actions by governments to address the water reform obligations set by the Council of Australian Governments. The information in the chapter is current to February 2004.

Using the compendium

For each jurisdiction, the compendium reports the legislation being reviewed 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 C of this compendium.

Readers who have questions about competition policy and legislation review are welcome to contact the National Competition Council Secretariat located in Melbourne. The telephone number of the Secretariat is (03) 9285 7474.