

**Government Response to the Report of the Senate
Select Committee on the Socio-Economic
Consequences of the National Competition Policy**

RIDING THE WAVES OF CHANGE

August 2000

RESPONSE TO THE REPORT OF THE SENATE SELECT COMMITTEE ON THE SOCIO-ECONOMIC CONSEQUENCES OF THE NATIONAL COMPETITION POLICY

National Competition Policy (NCP) is an important element of the Government's economic policy which is delivering strong economic and employment growth to Australia. The overall aim of NCP is to improve the efficiency with which resources are used and hence to maximise the community benefits from economic activity through raised living standards, wider choice of products and services and lower prices for consumers.

The Government welcomes the contribution of the Committee's report to the discussion and understanding of NCP. Evidence provided to the Committee supported the Productivity Commission finding in its Report on the Impact of Competition Policy Reforms on Rural and Regional Australia that, overall, NCP has brought benefits to the community. The Committee was concerned though that the benefits that flow from NCP generally flow to larger businesses and to those people resident in metropolitan areas (or the larger provincial areas) whereas the greatest costs appear to be generally borne by smaller businesses and those resident in smaller towns.

The Commission also found that the direct costs of some NCP reforms to date have tended to show up more in country areas than in the cities and there has been more variance in the incidence of benefits and costs of NCP reforms in rural and regional Australia compared with metropolitan areas.

At the same time, the Committee's deliberations also revealed that there is some misunderstanding of the benefits of NCP since it is often associated with economic changes which are due to other factors such as social and technological change or other Government policies. The Committee concluded that governments have at times contributed to the confusion by citing NCP as a reason for the reduction of funding for an activity, for the rejection of infrastructure projects, and for policies such as compulsory competitive tendering. The Government agrees with the Committee that such actions bring NCP into disrepute.

Similarly, the Commission also found that NCP was not responsible for a range of (state) government policies that were the cause of concern in regional areas. These included: asset sales and privatisation, compulsory competitive tendering, contracting out, removing community service obligations, local government amalgamations, and reductions in welfare or social services.

Much of the implementation of NCP is the responsibility of State and Territory governments. The Prime Minister will write to Premiers and Chief Ministers, asking them to give due consideration to the issues raised in the Report.

The following are the Commonwealth Government's responses to the recommendations. For this purpose the recommendations are grouped by subject.

COAG OVERSIGHT

Recommendation 26: *That as a matter of urgency, COAG should determine and implement the post 2000 agenda for NCP.*

Recommendation 34: *That there be a review of NCP by COAG to ensure that its economic and social objectives are being met, and that the policy be subject to ongoing monitoring by COAG.*

Recommendation 17: *That the issue of the distribution of tranche funds should be a matter addressed by COAG in the review of NCP.*

Government Response

The inter-governmental agreements underpinning the National Competition Policy (NCP) provide for the agreements to be reviewed during 2000. A Working Group of Commonwealth, State, Territory and local government officials is undertaking a review and will report to COAG through Commonwealth Senior Officials.

The review is examining the terms and operation of the *Conduct Code Agreement*, the *Competition Principles Agreement (CPA)* and the *Agreement to Implement the National Competition Policy and Related Reforms (Implementation Agreement)*. The need for, and operation of, the National Competition Council (NCC), including the roles the NCC should undertake and its relationship with COAG, is also being considered.

The Implementation Agreement provides for the Commonwealth to make NCP payments to those States and Territories meeting scheduled reform commitments. How these NCP payments are used is a matter for the State or Territory Government concerned.

However, the Commonwealth would encourage the States and Territories to share with local government, industry and community groups the benefits of competition reform through the competition payments they receive. These payments give the States and Territories the capacity to directly address the impact of competition policy reforms on specific industries, regions or parts of the community.

The Commonwealth, State and Territory Governments will be able to consider the NCP framework to apply post-2000 in the light of the Working Group's report.

PUBLIC INTEREST TEST

Recommendation 1: *For the purposes of measuring outcomes of the policy, a method of assessment be agreed by COAG which will provide a numerical weighting that can be attributed to environmental, social, and employment factors wherever possible.*

Government Response

The review of the NCP agreements is considering the application of the public interest test established by the relevant clauses of the CPA. However, the Government does not favour the application of numerical weightings to particular matters which may be taken into account in the public interest test. In practice, it would be difficult to agree on the relative numerical weight to be

assigned to particular matters. Even then, it may not be desirable to constrain the weighting which a Government may consider appropriate in a particular case.

The CPA establishes that jurisdictions are free to consider a range of factors in examining various reform options. In addition to efficient resource allocation, these issues may include, but are not limited to, those associated with employment growth, regional development, the environment, consumer interests, welfare and equity. This provides for the full range of benefits and costs to be considered in establishing whether a particular course of action will provide a net benefit to the community as a whole. This process essentially embodies the public interest test. This flexibility provides that jurisdictions may apply different emphasis to particular factors contained within the public interest test.

Recommendation 2: *That the NCC publish a detailed explanation of the public interest test and how it can be applied and produce a listing of case histories where the public interest test has been applied as a regularly updated service of decisions. This may form part of the information available through the proposed 'one-stop-shop' advisory service.*

Government Response

The Government supports the availability of detailed information regarding the scope and application of the public interest test.

It notes that the NCC released a publication entitled *Considering the Public Interest under the NCP* in November 1996. The Centre for International Economics and the NCC released a further publication outlining a general framework for conducting NCP legislation reviews in February 1999. In addition, a number of jurisdictions have documented their own arrangements. For example, Queensland released public benefit test guidelines in October 1999.

The application of the public interest test is described in each jurisdiction's annual report on the progress made in implementing legislation review commitments. This information is generally reflected in the NCC assessments of jurisdictions against scheduled reform commitments, which are publicly available. Furthermore, at the Commonwealth level, the Office of Regulation Review provides an annual assessment of Commonwealth compliance with legislation review requirements. (See also the responses to Recommendations 5 and 19.)

Recommendation 3: *That COAG agree on a standardised public interest test procedure to be used in cases where a review has implications across state or territory borders.*

Government Response

The CPA provides that where a review raises issues with a national dimension or effect on competition, or both, the party responsible for the review will consider whether the review should be undertaken on a national (inter-jurisdictional) basis. Where this is considered appropriate, other interested parties must be consulted prior to determining the terms of reference and the appropriate body to conduct the review. National reviews do not necessarily require the involvement of all jurisdictions.

The Government considers that the current arrangements for the application of the public interest test on a national or inter-jurisdictional basis are appropriate. Considerable work is undertaken through the COAG Committee on Regulatory Reform (CRR) in identifying and ensuring

consistency of outcomes for those reviews with national implications. Governments have charged CRR with coordinating NCP legislation reviews that have national or cross-jurisdictional impacts. This provides for a consistent review process and, at a minimum, a sharing of information between jurisdictions undertaking similar reviews.

National reviews have been, or are in the process of being, conducted in relation to the mutual recognition agreements, agricultural and veterinary chemicals legislation, pharmacy legislation, food acts, drugs, poisons and controlled substances legislation and the regulation of architects.

At the Commonwealth level, the public consultation process associated with legislation reviews allows for contributions from any interested party, including other jurisdictions.

Recommendation 5: *That a 'hotline' service be set up for organisations seeking information and assistance on how to use the public interest test and review processes. This service should be reviewed after twelve months.*

Government Response

It is each jurisdiction's responsibility to establish review processes and, as noted in the Government's response to Recommendation 1, to apply the public interest test in a manner that is appropriate to the particular circumstances in that jurisdiction.

While the provision of information about the public interest test and review processes is also a matter for each jurisdiction, the NCC currently provides assistance regarding the NCP review process. It is also able to provide a referral service to the various competition policy units within each jurisdiction.

At the Commonwealth level, the Office of Regulation Review advises on the conduct of legislation reviews. The model terms of reference for legislation reviews developed by the Office specify that the terms of reference should be made publicly available and include requirements to advertise the review in newspapers, consult with key interest groups and affected parties, to specify a reporting date (depending on the complexity of issues to be considered), and to publish the findings of the review.

PUBLIC EDUCATION

Recommendation 4: *That the NCC and state and territory agencies with responsibility for implementing NCP, undertake expanded public education programmes about the policy and how it is to be implemented.*

Recommendation 19: *That the Federal Government in consultation with local government and industry and community bodies and the NCC, create a 'one-stop-shop' advisory service to provide local government, industry bodies, individuals, companies and community groups with advice which will enable them to tackle competition policy issues*

Recommendation 20: *That this service should also be a mechanism by which concerns or complaints can be channeled to the appropriate authority for resolution*

Government Response

The Government recognises the importance of improved public awareness of the need for reform for the realisation of NCP objectives.

The responsibilities of the NCC include the promotion of competition reform. The Commonwealth Government provided the NCC with additional funding, commencing in 1999-00, for this purpose.

The Government will draw Recommendation 4 to the attention of the State and Territory Governments.

With regard to Recommendations 19 and 20, the NCC can respond to requests for advice concerning the handling of competition policy issues and assist in channelling complaints to the appropriate authorities for resolution. However, this is also a function for each jurisdiction's competition policy unit and other relevant bodies. Consequently, these Recommendations need to be considered by the State and Territory Governments.

In relation to the application of competitive neutrality, each jurisdiction has established a formal complaint mechanism. Independent prices oversight arrangements for government business enterprises have also been established. Although, in some instances issues need to be referred to such tribunals for them to look at the prices of certain industries.

(See also the Government's responses to Recommendations 2 and 5.)

REVIEW PROCESSES

Recommendation 6: *That all reviews be undertaken in a fully transparent way with opportunity for contribution from the public at all stages.*

Recommendation 7: *That review panels be required to actively seek out contributions from all interested groups and represent the range of views in the report to government.*

Government Response

The Government agrees that legislation reviews need to be comprehensive and accessible to those who are affected by outcomes. Improved community understanding will assist in ensuring that

reviews are based on genuine public input. In turn, open and transparent reviews will help inform the community of the nature and effects of the NCP reforms. Public awareness of, and participation in, a review is critical to the success and ultimate acceptance of its findings.

As noted in response to Recommendation 5, the Commonwealth's legislation review requirements include that the terms of reference should be publicly available, that the review is to be advertised nationally and that there should be consultation with key interest groups and affected parties. A reporting date is to be specified (depending on the complexity of issues to be considered) and the findings of the review are to be made public.

In most cases, in addition to the opportunity to make submissions, the public will have the opportunity to comment on a draft report.

Recommendation 8: *That all reports be made public at least 30 days before the government is to consider the review.*

Government Response

The Government agrees that all review reports should be made public. However, where it is appropriate, the Government will continue the established practice of releasing reports at the time of the announcement of the Government's response to the report recommendations.

Recommendation 9: *That CSO commitments be publicly acknowledged, monitored, and regularly reported on.*

Government Response

The Government agrees that CSOs should be reported and monitored. It considers that, wherever possible, information relating to specific CSOs, including the cost of provision, should be provided in the annual reports of each Commonwealth government-owned entity, including the Departments responsible for that particular CSO.

Commonwealth authorities and companies must include details of CSOs in their corporate plans, including the strategies and policies to be followed to carry out those obligations, as required under the *Commonwealth Authorities and Companies Act 1997*.

Recommendation 10: *That the NCC no longer be required to carry out legislative reviews; and that Governments, through COAG, undertake to agree broad systems and processes for reviews, including mechanisms for proper consideration of the submissions and views of any interested parties, in the formulation of the initial recommendations.*

Government Response

The role and functions of the NCC were agreed by the Commonwealth, the States and the Territories in the CPA. The Government notes that the conduct of legislation reviews by the NCC may overlap with the Council's more significant function of advising the Commonwealth Government on jurisdictions' compliance with NCP obligations.

The review of the NCP Agreements is examining the roles the NCC should undertake and its relationship with COAG. **The Commonwealth has decided that no further legislation**

reviews will be referred to the NCC pending consideration of this matter by the inter-governmental review of the NCP agreements.

Recommendation 11: *That other governments be provided the opportunity for input to each others reviews as a way to contribute to impartial outcomes based on national rather than state or regional perspective.*

Government Response

At the Commonwealth level, there is a requirement for all legislation reviews to be advertised on a national basis and for submissions to be invited from all interested parties, which may include other jurisdictions. (See also the Government's response to Recommendation 3.)

Recommendation 12: *That reviews and public interest tests must include Employment and Community Impact Statements.*

Government Response

The CPA establishes those factors that may be considered in assessing the public interest. These include, but are not limited to, economic and regional development, employment and investment growth, the interests of consumers generally or a class of consumers, and social welfare and equity considerations. This will require that both positive and negative impacts of proposed NCP reforms on regional communities continue to be assessed and identified in the application of the public interest test to which all NCP legislative reviews are subject. (See also the response to Recommendation 1.)

Recommendation 28: *That, where a case can be made for assistance in meeting the costs of reviews that community and industry groups are required to meet due to their involvement in prolonged or complicated industry reviews, such organisations should be able to apply to State and Federal NCP Units for financial assistance paid from the tranche funds on a discretionary basis (as determined by the State/Federal NCP Units).*

Government Response

The use made of NCP payments is a matter for the State or Territory government concerned. However, as noted in the Government's response to Recommendation 17, the Commonwealth encourages the States and Territories to share with the community the benefits of competition reform through the competition payments they receive.

EMPLOYMENT AND TRANSITIONAL ARRANGEMENTS

Recommendation 27: *That the issue of the lack of data and information on the impacts of NCP be addressed in two ways:*

- *Governments should ensure information is gathered about structural adjustment needs in various sectors. Governments could commission specific studies or obtain this information from the NCC's tranche payment assessment process from the states/territories and on advice from the states/territories. Local government should be encouraged to feed into this process with its own statistical information. Governments should commission studies where appropriate; and*
- *Where necessary, the Productivity Commission, under reference from the Commonwealth Treasurer should be directed to undertake specific studies where major impacts are envisaged and transitional arrangements/structural adjustment may be desirable: eg a major agricultural industry.*

Government Response

At the Commonwealth level, information on the impact of specific reforms on particular sectors of the community or regions is required to be identified in legislation review reports.

Where appropriate, the Government will continue to refer regulatory and structural adjustment issues to the Productivity Commission for review.

Recommendation 13: *That reviews of legislation consider and report on transitional arrangements, including compensation and re-training. The costs of such and how these arrangements are to be implemented should also be outlined.*

Recommendation 18: *That all reviews of regulations recommend action in regard to transitional arrangements, development programmes, and compensation when proposing change which will negatively impact on communities.*

Government Response

The Government recognises that in some cases adjustment assistance may be desirable to facilitate the achievement of reforms which involve net benefits to the community as a whole. As noted in response to other Recommendations, Commonwealth legislation reviews are required to identify the different groups likely to be affected by the various reform options.

While the Government considers that this information should be identified, it does not agree that review reports should address specific compensation and re-training measures as proposed in Recommendations 13 and 18. These matters need to be considered by Governments in the context of broader policy considerations, including general budgetary priorities.

ENVIRONMENT

Recommendation 21: *That in reviewing legislation and arrangements which will involve environmental impacts, Governments should ensure that a broad interpretation of the public interest test is undertaken, including an account of environmental effects of changes to regulations or failures to change.*

Recommendation 22: *That greater rigour be applied to ensuring that the processes of reviewing legislation and assessing the public interest in areas involving impacts on the environment are as open and transparent as possible.*

Recommendation 25: *That jurisdictions ensure, that in implementing the public benefit test, environmental 'externalities', including greenhouse gas emissions, are appropriately considered.*

Government Response

As indicated in the response to Recommendation 1, it is for each Government to apply the public interest test in a manner appropriate to the particular circumstances under review.

The Commonwealth's general approach is to provide for the open, transparent conduct of legislation reviews, which allows all potential costs and benefits of possible reform options to be identified. The public consultation process provides an opportunity for specific input on environmental impacts by interested parties.

The Government notes that environmental externalities are a difficult issue. To assist jurisdictions in considering water-related externalities, including environmental, the ARMCANZ-ANZECC High Level Steering Group on Water has produced a guide to costing and charging for externalities in a broader sense such as for greenhouse gas emissions.

Recommendation 23: *That the NCC work with Commonwealth and State environmental agencies to ensure that reviews of related legislation are coordinated. The aim of this is to eliminate anomalies in legislation and regulation that may lead to environmental degradation.*

Government Response

See the response to Recommendation 3. The Government notes that the NCC received technical assistance from Environment Australia in relation to the second tranche assessment of State and Territory compliance with the COAG water reform commitments.

Recommendation 24: *That the Government commission a review of subsidies and other incentives to use publicly owned natural resources which are inhibiting private investment in competing products, to the detriment of the environment.*

Government Response

The Government notes this Recommendation. The Government has established a high level Ministerial Group to consider goals and policy directions for natural resource management.

INFRASTRUCTURE

Recommendation 29: *That the Commonwealth Treasurer have the power to impose a time limit or direct the NCC to complete an access evaluation recommendation within a certain time frame. The Committee believes that to be any more prescriptive would have the potential to hasten what may be a very complicated and delicate investigation.*

Government Response

The Government does not support this recommendation. While the Commonwealth acknowledges the concerns about the time that may be taken in considering proposals for infrastructure access, it also notes that this may be attributable to the complexity and delicacy of the issues involved and to the availability of necessary information.

Recommendation 30: *That a public consultation process be mandatory in relation to applications for access to major public infrastructure facilities.*

Government Response

The Government agrees that it is desirable for the NCC to engage in a consultation process on declaration and certification applications for access to major infrastructure facilities. The NCC already consults widely. At this stage, the Government does not see the need to establish a mandatory requirement.

Recommendation 31: *Given the significance of road and rail infrastructure, that transport be a matter for priority consideration by COAG.*

Government Response

In cooperation with the States and Territories, the Commonwealth is working through the Australian Transport Council (ATC) to foster strategic thinking across all jurisdictions on transport issues of national concern. The ATC, which consists of Commonwealth, State, and Territory Ministers responsible for transport, is the most appropriate forum to develop a coherent planning process for strategic land transport infrastructure.

In November 1999, the ATC agreed to set up a National Transport Secretariat to advise the Council on transport issues so that it can best address cross-modal, cross-jurisdictional and strategic issues of national significance. The expert group will greatly enhance ATC's ability to progress national planning and reform.

Recommendation 32: *That the NCC address the issue of road-rail competition for freight as a matter of urgency.*

Government Response

The Government does not support this Recommendation. The Government notes that competition between modes of transport is a policy matter for governments rather than the NCC. (See also the response to Recommendation 31.)

Recommendation 33: *That issues relating to the regulation of infrastructure services are of serious concern and should be a matter for priority discussion by COAG.*

Government Response

The Government is conscious of the need to ensure that regulation is appropriately co-ordinated and strikes a balance between protecting the interests of consumers and providing incentives for firms to invest.

The reforms to date in national energy markets have delivered clear benefits to Australian industry and consumers. The Government is keen to ensure that these benefits are built upon by ensuring that the regulatory structures that have been put in place are able to continue to deliver efficient outcomes in energy markets.

The Commonwealth will draw this Recommendation to the attention of the State and Territory Governments.

COMMUNITY-BASED WELFARE

Recommendation 14: *That all reviews of legislation and changes to competitive arrangements in the social welfare sector adhere to the broad principles of the public interest and take account of the difficult to measure social factors rather than relying on narrow, more easily measurable, economic factors. That all contracting out arrangements and competitive **tendering processes and documentation in the social welfare sector be public and transparent. There should be a presumption that all documents will be public and any claims of commercial confidentiality should be kept to a minimum and where essential.***

Government Response

The Commonwealth agrees that all legislation reviews, including those impacting on the social welfare sector, should give full consideration to the public interest.

Reviews of Commonwealth legislation and changes to competitive arrangements currently, and will continue to, involve consideration of a wide range of issues including public interest and social factors. For example, the Government acknowledges the effectiveness of competitive tendering depends on the existence of, or the potential to create an environment for, competition. Where inputs are expensive and scarce, for example some medical specialists in rural areas, the scope to create competition may be limited. Accordingly, in rural areas, the Government has allocated considerable resources to developing collaborative, community-based approaches to the delivery of health and aged care services.

National Competition Policy does not require competitive tendering and contracting in the area of welfare service delivery. In accordance with the *Commonwealth Procurement Guidelines*, competitive tendering processes are required to be open and accountable. On transparency the Commonwealth policy is:

- publicly available procurement opportunities must be notified consistently in ways that provide bidders with reasonable opportunity to:
 - meet any pre-qualification requirements for participation in government business; and

- bid against particular requirements;
- the evaluation criteria for any particular procurement should clearly identify the relative importance of all relevant factors, and provide a sound basis for a procurement decision. Agencies should evaluate each offer applying only the evaluation criteria and methodology notified to bidders in the request for tender documentation;
- those wishing to respond to opportunities must be given adequate information to enable them to do so effectively; and
- agencies offer bidders a written or oral debriefing on why their offers were successful or failed.

There is a need to classify some of the documentation as commercial-in-confidence when it is identified that specific elements of the document or information are confidential. This is done on a case-by-case basis.

In addition it would be normal for the agency to consult with contractors before disclosing confidential information.

Recommendation 15: *That Governments critically examine competitive tendering processes for social welfare services with a view to ensuring that a sophisticated and flexible approach is taken to the provision of service. The process should consider as part of the public interest test: quality, consistency and continuity of service; the value of local co-operative arrangements and the personal nature of such service.*

Government Response

In the areas of social welfare, the Government considers a wide range of issues including quality, consistency and continuity of services, the extent and nature of the market, transaction costs, public access, and externalities such as the impact on communities and volunteers. Consideration of this wide range of issues necessitates a flexible approach, with competitive tendering being only one of a number of possible mechanisms. (See also the Government's response to Recommendation 14.)

Recommendation 16: *That, where appropriate, the Commonwealth Departments of Health and Aged Care and Community Services, examine competitive tendering programs and determine which services are properly and efficiently competitively tendered and which may be contracted out on a benchmark of service basis. Particular attention should be paid to rural and remote communities where locally provided co-operative services may be integral to the success of service delivery.*

Government Response

Where agencies undertake competitive tendering programs they must do so in accordance with the *Commonwealth Procurement Guidelines: Core Policies and Principles* and *Competitive Tendering and Contracting: Guidance for Managers*. These documents provide considerable assistance to managers in identifying the scope for competitive tendering of services, and making decisions on which services should be contracted out. (See also the Government's response to Recommendation 14.)

The Commonwealth Government attaches considerable importance to the successful delivery of services under Commonwealth programs to rural and remote communities. Over the last two budgets, for example, the Government has provided considerable funds to guide the delivery of innovative, flexible and integrated health and aged care services in rural and regional areas.

These services acknowledge the key role of collaboration and co-operation between communities and various levels of government in achieving real improvements in the quality of health outcomes.

The *Commonwealth Procurement Guidelines* state that the Commonwealth uses its procurement to support a range of policies and that Government purchasers should ensure that where projects:

- involve expenditure over \$5 million (\$6 million in the case of construction and/or facilities involved); and
- are in locations where there are significant indigenous populations and where there are limited private-sector employment and training opportunities for indigenous peoples;

that they:

- consider employment opportunities for training and employment for local indigenous communities and document the outcomes;
- consider the capabilities of local indigenous suppliers when researching sources of supply; and
- consult the Aboriginal and Torres Strait Islander Commission (ATSIC) and/or the relevant community council or group, as appropriate, in the planning stages of proposed projects.

ADDITIONAL RECOMMENDATIONS – Senator the Hon Bob Brown

Recommendation 1: *That COAG commission an independent assessment of the extent to which consumers in different parts of Australia have actually benefited from NCP and related reforms, not only in relation to prices, but also factors such as choice, availability, service standards and convenience.*

Recommendation 2: *That COAG commission an independent assessment of the social and environmental impacts of NCP.*

Government Response

The Government considers that the Productivity Commission's Report on the Impact of Competition Policy Reforms on Rural and Regional Australia and the Senate Select Committee's own Report already provide a comprehensive assessment of the impact of NCP.

Recommendation 3: *That local government participate in the COAG 2000 review of NCP; and that local government be invited to recommend an appropriate form of representation.*

Recommendation 4: *That the COAG 2000 review should:*

- *assess the need to revise the agreements and legislation under which NCP operates;*
- *ensure that social and environmental goals are not compromised by NCP;*
- *address the need to compensate or otherwise ameliorate the impact on people who have been made worse-off by NCP and associated economic rationalist policies;*
- *guarantee that processes are transparent and accountable.*

Government Response

Local government is represented at COAG by the Australian Local Government Association. Accordingly, a representative of the Association is a member of the Working Group undertaking the review of the NCP agreements.

The Government will have regard to Senator Brown's other recommendations in considering the review of the NCP agreements.