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The National Competition Council

The National Competition Council was established on 6 November 1995 by the *Competition Policy Reform Act 1995* following agreement by the Commonwealth, State and Territory governments.

It is a federal statutory authority which functions as an independent advisory body for all governments on the implementation of the National Competition Policy reforms. The Council's aim is to 'improve the well being of all Australians through growth, innovation and rising productivity, and by promoting competition that is in the public interest'.

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

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Abbreviations

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

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

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

Overview of progress and recommendations

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

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

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

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

Box 1: A snapshot of benefits flowing from the NCP

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

Electricity

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

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

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

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

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

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

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

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

Gas

CoAG established a program of gas reform comprising three key elements:

- the structural separation of the transmission, distribution, production and retail sectors of the gas industry;
- the introduction by all governments of third party access regulation for natural gas pipelines; and
- the provision for all gas consumers to choose their supplier — that is, full retail contestability.

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

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

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

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

Water

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

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

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

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

- The urban pricing performs are substantially complete, although some water businesses are yet to achieve full cost recovery and apply consumption-based pricing. Two governments are close to introducing institutional arrangements that will provide for the independent economic regulation of the water industry, while a third is considering providing greater transparency by reporting annually on water and wastewater pricing. All other governments provide independent regulation or scrutiny of their water businesses.

- The development of water rights separate from land title, with ownership, volume, reliability and tradeability well specified is largely complete. The legislative base for water rights is now settled in all jurisdictions. CoAG is considering a new intergovernmental agreement that may cover water rights arrangements.

- The development of water management arrangements — which allocate water among extractive uses and to the environment — is proceeding in all jurisdictions, with priority given to stressed and overallocated systems. This complex task requires judgments about environmental allocations based on the available science and accounting for the interests of water users. Where systems are stressed or overallocated, governments are reducing the water available for extraction, or instigating arrangements that allow the possibility of future reductions if environmental monitoring indicates this is warranted.

- Water trading is in its infancy but is expanding. The Murray–Darling Basin Commission has work under way on interstate water trading, including the development of: exchange rates to allow trading between regions and between different water entitlements in different States; environmental controls for trading; administrative arrangements for processing and approving trades; and a system to provide access to State-based registry systems. The commission is also examining alternatives to the restrictions on water trading in place in some jurisdictions.

- All States and Territories are developing integrated catchment management frameworks, including in the context of bilateral agreements with the Commonwealth on the National Action Plan for Salinity and Water Quality and the Natural Heritage Trust extension. All governments are continuing to implement the National Water Quality Management Strategy, although there is variation in the scope and speed of reform.

- All States and Territories have robust arrangements for examining proposals for new rural water infrastructure against CoAG's twin tests of economic viability and ecological sustainability. This 2003 NCP assessment considered new infrastructure projects in three jurisdictions.

- All States and Territories reviewed their water industry legislation in line with their NCP obligations.

- All States and Territories recognise the importance of improving community understanding of water reform. Governments are introducing elements of the reforms, via public processes that include stakeholders.

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

Road transport

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

The NCP road transport reform program comprises 31 initiatives covering six areas — registration charges for heavy vehicles, transport of dangerous goods, vehicle operations, heavy vehicle registration, driver licensing, and compliance and enforcement. For the 1999 NCP assessment, CoAG endorsed a framework covering 19 of the initiatives and assessment criteria and target dates for their implementation. CoAG endorsed a further framework of six reforms for the 2001 NCP assessment.

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

Legislation review and reform

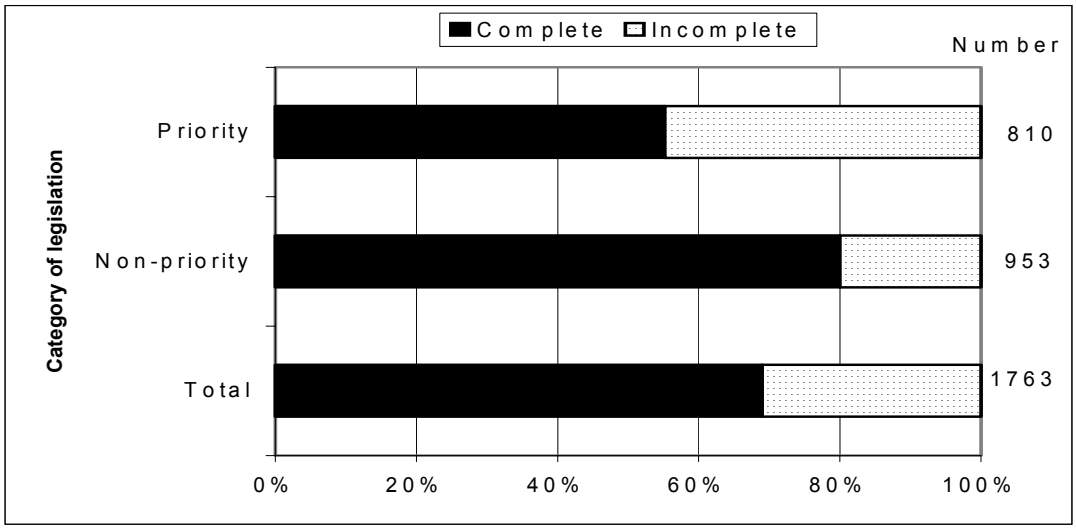
The legislation review and reform program is a vital element of the NCP. Each government developed an extensive legislation review agenda in June 1996, nominating, in total, around 1800 pieces of legislation for review. If a restriction on competition cannot be shown to provide a net community

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

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

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

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



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

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

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

Key areas where reforms are incomplete

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

Primary industries

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

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

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

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

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

Retailing

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

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

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

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

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

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

Professions and occupations

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

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

Pharmacy legislation

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

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

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

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

Taxis

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

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

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

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

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

National reviews

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

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

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

New legislation that restricts competition

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

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

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

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

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

Reform of government businesses

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

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

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

Competition payments: the Council's approach

The Commonwealth Government makes payments to the States and Territories as a financial incentive to implement the NCP and related reform program. The payments recognise that the States and Territories have responsibility for significant elements of the NCP, yet much of the financial dividend from the economic growth arising from the NCP reforms accrues to the Commonwealth through the taxation system.

Competition payments in 2003-04 are approximately $A765 million and are allocated to the States and Territories on a per capita basis. The Commonwealth Treasurer decides on the actual payments after considering the Council's advice on jurisdictions' progress in meeting their NCP obligations. The Council may recommend a reduction or suspension of payments where it assesses that governments have not implemented the agreed reform program. The Council also assesses the Commonwealth's progress, but the Commonwealth does not receive payments and is therefore not subject to reductions or suspensions.

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

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

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

- *The relative importance of a compliance breach in terms of its impacts on the community and economy.* Single desk arrangements for an agricultural commodity, for example, are more significant than, say, reservation of title for speech therapists.

- *How the effects of anticompetitive impacts are manifested.* Some restrictions on competition:

  – result in financial transfers to incumbent beneficiaries at the expense of potential competitors and users and final consumers;

  – have significant, albeit less tangible, effects on consumer convenience (such as the restrictions on shop trading hours); and

  – have pronounced impacts on the allocation of resource use in other jurisdictions or the economy generally, such as differential restrictions across jurisdictions that raise business costs and distort location decisions.

In addition to accounting for the significance of any particular compliance breach, CoAG has directed the Council, when assessing the nature and quantum of any financial penalty or suspension, to take into account:

- the extent of the relevant State or Territory's overall commitment to the implementation of the NCP; and
- the effect of one State or Territory's reform efforts on other jurisdictions.

The Council interprets this guidance to mean that individual minor breaches of reform obligations should not necessarily have adverse payments implications where a government has generally performed well against the total NCP reform program. Nevertheless, a single breach of obligations in a significant area of reform may be the subject of an adverse recommendation, especially where the breach has a large impact and/or an adverse impact on another jurisdiction. Further, the Council interprets the CoAG guidance as suggesting that the quantum of any payments recommendation should bear some relationship to a government's overall performance in reform implementation, the impact of the breach of reform obligations and whether there are adverse impacts on other jurisdictions.

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

- significant individual compliance breaches should attract penalties (suspensions or deductions) in their own right; and

- other compliance breaches should be agglomerated and a general 'pool suspension' applied.

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

- **Permanent deductions** are irrevocable reductions in governments' 2003-04 competition payments for specific compliance failures. The Council may recommend that the permanent deduction not be imposed for competition payments in subsequent years where governments introduce appropriate reform. In the absence of complying action the Council is likely to recommend in future assessments that the 2003-04 deductions be ongoing.

- **Specific suspensions** apply until pre-determined conditions are met, at which time the suspension is lifted and suspended 2003-04 competition payments released to the relevant jurisdiction. Suspensions of this type recognise that governments are taking action to comply but have not as yet completed that action. The Council will address these matters as and when significant commitments are made, or reforms implemented. Where commitments are not made or met, or reform action not implemented by the 2004 NCP assessment, the Council is likely to recommend that the suspended 2003-04 competition payments be withheld permanently (that is, converted to a permanent deduction). In subsequent years the Council will consider whether further suspensions or permanent deductions should apply.

- **Pool suspensions** apply to a pool of outstanding legislation review and reform compliance failures and relate to payments for 2003-04. The Council will reassess progress with the pool of compliance failures in the 2004 NCP assessment. If satisfactory progress is made, the Council may recommend that the suspension be lifted or reduced and the funds released to the relevant jurisdiction. If satisfactory progress is not made, the Council is likely to recommend that all or part of the suspension be converted to a permanent deduction for the 2003-04 NCP competition payment and that the deduction be ongoing.

New South Wales

Energy

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

- New South Wales implemented the reforms to establish the NEM and has met its commitment to full retail contestability. The Council:

  – is concerned about the potential for barriers to further retail competition in the electricity market created by the level and delivery

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

– will further examine the electricity tariff equalisation fund in the context of the wider issues raised by regulated retail tariffs in its 2004 NCP assessment.

- In 1996, New South Wales provided stimulus to national gas reform by legislating consistently with the work undertaken by the Gas Reform Task Force on developing a gas access code. Subsequently, all governments agreed to adopt this code with some refinements. New South Wales has implemented the National Gas Access Code, removed barriers to free and fair trade in gas, removed restrictions on gas use, adopted national pipeline construction standards, and introduced contestability to the household level.

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

Water

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

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

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

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

Legislation review

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

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

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

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

Other NCP obligations

New South Wales:

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

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

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

Assessment

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

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

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

- *Regulation of liquor sales*: The *Registered Clubs Act 1976* and the *Liquor Act 1982* underpin an anticompetitive needs test that benefits incumbent sellers of liquor. Despite having commenced a review of its liquor licensing legislation in 1998, the Government has not yet finalised its review and reform activity. The Council recommends a permanent deduction of 5 per cent of competition payments for 2003–04 for noncompliance in this area.

- *Other compliance failures*: The Council recommends a suspension of 10 per cent of competition payments for 2003-04 for the remaining legislation review compliance failures, until reforms have progressed (see below). In particular, the Council will look for progress on domestic rice marketing (whether or not a Commonwealth rice export authority proceeds), grain marketing, the health professions (especially pharmacies), fisheries, and taxis and hire cars.

New South Wales: 'suspension pool'

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

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

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

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

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

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

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

- ***a permanent deduction of 5 per cent for noncompliance in respect of chicken meat industry legislation (estimated at A$12.86 million);***

- ***a permanent deduction of 5 per cent for noncompliance in respect of the regulation of liquor sales (estimated at A$12.86 million); and***

- ***a pool suspension of 10 per cent for outstanding legislation review items (estimated at A$25.72 million).***

Victoria

Energy

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

- Victoria implemented the reforms to establish the NEM and met its commitment to full retail contestability. Its approach to meeting community service obligation objectives, by providing rebates for regional customers faced with higher distribution charges, minimises adverse impacts on competition. This provides a lead to other governments in implementing policies to achieve social objectives that are compatible with NEM objectives.

- Victoria has undertaken major reform of its gas industry. It divided the then state-owned gas transmission, distribution and retailing activities into separate corporations, and privatised the three stapled gas distribution/retail businesses. The former gas transmission corporation became Transmission Pipelines Australia (and was privatised in 1999) and the independent system operator VENCorp. Victoria has implemented the National Gas Access Code, removed barriers to free and fair trade in gas, adopted national pipeline construction standards and introduced contestability to the household level. It is continuing with review and reform of gas-related legislation and the implementation of the national gas quality standard.

Water

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

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

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

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

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

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

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

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

Legislation review

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

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

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

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

Other NCP obligations

Victoria:

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

Assessment

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

Victoria: 'suspension pool'

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

Primary industries: Fisheries management; and mining legislation

Transport: Tow trucks*; port services

Other: Gambling (lotteries*); building approvals

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

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

Victoria has substantially completed the total NCP reform agenda and its overall progress has been impressive. In making its recommendations on competition payments, the Council has taken account of Victoria's considerable reform progress and successes as a reflection of a commitment to NCP reform, and the likely impact of reform failures. Balanced against these considerations, the Council considers that, in relation to Victoria's 2003-04 NCP competition payments, the matters identified in this assessment warrant a pool suspension of 5 per cent for outstanding legislation review items (estimated at A$9.48 million).

Queensland

Energy

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

- Queensland implemented the reforms to establish the NEM. In October 2001, it announced that it would not implement full retail contestability, but would:

  – review the decision in 2004 once the impact of the introduction of full retail contestability in other jurisdictions was known; and

  – consider extending contestability to small business customers consuming less than 200 megawatt hours of electricity per year.

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

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

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

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

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

Water

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

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

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

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

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

Legislation review

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

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

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

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

Other NCP obligations

Queensland:

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

Assessment

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

- *Failure to progress electricity reform*: Full retail contestability has not been introduced as required under the NCP electricity reform agreements. Queensland has, however, agreed to immediately consider introducing contestability for tranche 4A customers and undertaking the further review of introducing full retail contestability immediately. The Council recommends a suspension of 10 per cent of competition payments for 2003–04 pending implementation of contestability for tranche 4A customers and a suspension of 15 percent of competition payments pending the outcome of the wider review of full retail contestability.

- *Regulation of liquor sales*: The *Liquor Act 1992* requires sellers of packaged liquor to hold a hotel licence and provide bar facilities. It also regulates the number of bottle shops per licence (limit of three) and their configuration. The restrictions apply statewide, notwithstanding an objective of protecting country hotels. The Council recommends a permanent deduction of 5 per cent of competition payments for 2003–04 for noncompliance in this area.

- *Other compliance failures*: The Council recommends a suspension of 10 per cent of competition payments for 2003-04 for the remaining legislation review compliance failures, until reforms have progressed (see below). In particular, progress will be required in the health professions (especially pharmacies), fisheries, and taxis and hire cars.

Queensland: 'suspension pool'

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

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

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

Primary industries: Fisheries management; food regulation; sawmilling

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

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

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

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

In making its recommendations on competition payments, the Council has taken account of Queensland's considerable reform progress and successes as a reflection of its commitment to NCP reform, and the

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

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

Western Australia

Energy

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

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

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

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

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

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

Water

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

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

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

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

Legislation review

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

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

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

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

Other NCP obligations

Western Australia:

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

- has applied its competitive neutrality obligations to its significant businesses and has in place a competitive neutrality complaints mechanism — it does not, however, apply competitive neutrality principles to its health business activities;

- continues to meet its obligations under the Conduct Code; and

- has not yet met its NCP road transport reform obligations — it has two elements of the reform program to implement.

Assessment

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

- *Regulation of retail trading hours*: Under the *Retail Trading Hours Act 1987*, Western Australia is the only jurisdiction to heavily restrict weekday trading hours and to prohibit large retailers from opening on Sundays (outside of tourist precincts). The Government announced that trading hours will not be extended before mid-2005. The Council does not consider that this decision to postpone reform accords with CoAG's direction for an appropriate transitional reform program to be underpinned by a robust public interest case. The Council recommends a permanent deduction of 10 per cent of competition payments for 2003–04 for noncompliance in this area.

- *Lack of transparency in water pricing*: The lack of transparency raises questions about whether water pricing principles have been met and will be in the future. The Council recommends a suspension of 10 per cent of competition payments for 2003–04 for noncompliance in this area. The suspension should be lifted and reimbursed when the Government establishes the Economic Regulation Authority and announces terms of reference for an investigation by the authority of water and wastewater pricing against the CoAG pricing principles.

- *Regulation of liquor sales*: The *Liquor Licensing Act 1988* contains a needs test, whereby a licence application can be rejected because there are liquor outlets in the area. The legislation further discriminates between hotels and liquor stores, with only hotels able to trade on Sundays. The Government announced that reforms will not take effect before mid-2005. The Council does not consider that this decision to postpone reform accords with CoAG's direction for an appropriate transitional reform program to be underpinned by a robust public interest case. The Council recommends a permanent deduction of 5 per cent of competition payments for 2003–04 for noncompliance in this area.

- *Potato marketing*: Western Australia is the only jurisdiction to regulate potato marketing. The *Marketing of Potatoes Act 1946* empowers the Potato Marketing Corporation to restrict the availability of land for

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

- *Egg marketing*: Western Australia is the only jurisdiction to retain egg marketing regulation. The *Marketing of Eggs Act 1945* restricts supply through licenses and production quotas and prohibits supply other than to the Egg Marketing Board. The Government announced that the restrictions will be removed not later than 2007. To expedite this process, the Council recommends a suspension of 5 per cent of competition payments for 2003–04. The suspension may be lifted on commencement of an appropriate reform implementation program.

- *Other compliance failures*: The Council recommends a suspension of 20 per cent of competition payments for 2003-04 for the remaining legislation review compliance failures, until reforms have progressed (see below). In particular, progress will be required in water legislation, the professions (especially pharmacies), fisheries, and taxis and hire cars.

Western Australia: 'suspension pool'

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

Separate health legislation: medical practitioners; pharmacists; veterinarians

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

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

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

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

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

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

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

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

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

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

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

South Australia

Energy

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

- South Australia implemented the reforms to establish the NEM. It introduced full retail contestability in 2003, satisfying its electricity reform commitments. The Council is concerned, however, about the potential for overlap between NEM regulatory processes for new interconnection and South Australia's licensing regimes for new transmission companies. The Council will consider the issue further in its 2004 NCP assessment in the context of amended governance and regulatory arrangements in the NEM.
- South Australia was lead legislator for the national gas code legislation, setting up derogations and transitional arrangements consistent with the gas agreements. It has completed its structural reform commitments and reviewed legislation that restricts intra-field competition in the Cooper Basin, in accordance with the gas agreements and the CPA, and implemented appropriate reforms. South Australia implemented the National Gas Access Code, removed barriers to free and fair trade in gas,

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

Water

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

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

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

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

Legislation review

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

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

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

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

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

Other NCP obligations

South Australia:

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

Assessment

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

- *Barley marketing*: A second review of the *Barley Marketing Act 1993* has been completed. Currently, unlike Victoria, which deregulated domestic and export marketing, South Australia has a marketing monopoly. The second review did not produce credible public interest evidence to maintain the monopoly. The Council recommends a suspension of 5 per cent of competition payments 2003–04 until South Australia provides details of a complying reform implementation program.

- *Chicken meat industry negotiations*: The recently passed *Chicken Meat Industry Act 2003* provides for compulsory arbitration for negotiating disputes on terms and conditions and for non-renewal of contracts. The legislation has implications for other States and could affect the distribution of growing and processing activities. The Council recommends a permanent deduction of 5 per cent of competition payments for 2003–04 for noncompliance in this area. (The Council considers that noncompliance technically represents a breach of clause 5(1) of the CPA relating to the review and reform of the stock of legislation, or a prima facie breach of clause 5(5) relating to obligations with respect to new legislation.)

- *Regulation of liquor sales*: South Australia's *Liquor Licensing Act 1997* contains a needs test, whereby the licensing authority can reject a licence application because there are already liquor outlets in the area. The Council recommends a permanent deduction of 5 per cent of competition payments for 2003–04 for noncompliance in liquor licensing.

- *Other compliance failures*: The Council recommends a suspension of 15 per cent of competition payments for 2003-04 for the remaining legislation review compliance failures, until reforms have progressed (see below). In particular, progress will be required in the health professions (especially pharmacies), fisheries, and taxis and hire cars. The Council will look for South Australia to further liberalise retail trading hours.

South Australia: 'suspension pool'

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

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

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

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

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

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

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

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

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

Tasmania

Energy

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

- As a party to the national electricity market agreements, Tasmania has obligations in relation to connection to the national market, but these do not acquire full effect until interconnection with the mainland is established. In preparation for meeting the obligations that will arise, Tasmania has enacted the National Electricity Law and reviewed and reformed structural arrangements for electricity utilities. It also enacted the Tasmanian Electricity Code for third party access to transmission and distribution services which is consistent with how the National Electricity Code provides for the access regime in the national electricity market.
- Tasmania initially had limited NCP reform obligations in relation to gas, but its obligations under the national gas agreements have been triggered by the development of its gas industry, in particular the construction of a transmission pipeline from Victoria. Tasmania has implemented the National Gas Access Code, removed barriers to free and fair trade in gas, removed regulatory restrictions on gas use and adopted uniform national pipeline construction standards. Given that construction of the pipeline from Victoria is now completed, the Council expects Tasmania to apply for certification of its access regime in the near future. Tasmania is continuing with reform of gas-related legislation and is considering implementation of the national gas quality standard.

Water

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

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

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

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

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

Legislation review

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

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

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

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

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

Other NCP obligations

Tasmania:

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

Assessment

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

Tasmania: 'suspension pool'

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

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

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

Transport: Taxis and hire cars

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

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

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

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

The ACT

Energy

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

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

Water

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

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

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

Legislation review

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

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

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

Other NCP obligations

The ACT:

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

Assessment

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

The ACT: 'suspension pool'

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

Separate health legislation: pharmacists; veterinarians

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

Other occupations: employment agents*

Transport: Taxis and hire cars; transport of dangerous goods

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

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

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

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

The Northern Territory

Energy

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

Water

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

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

Legislation review

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

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

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

Other NCP obligations

The Northern Territory:

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

Assessment

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

- *Regulation of liquor sales*: The *Liquor Act* contains a needs test whereby a licence application can be rejected if it is determined that existing sellers can meet consumer needs. The legislation further discriminates between hotels and liquor stores, with only hotels able to trade on Sundays. The Council recommends a permanent deduction of 5 per cent of competition payments for 2003–04 for noncompliance in this area.

- *Other compliance failures*: The Council recommends a suspension of 15 per cent of competition payments for 2003-04 for the remaining legislation review compliance failures, until reforms have progressed (see below). In particular, progress will be required in the health professions (especially pharmacies) and taxis and hire cars.

The Northern Territory: 'suspension pool'

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

Separate health legislation: radiographers; pharmacists; veterinarians

Building and related trades: architects;

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

Transport: Taxis and hire cars*

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

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

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

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

- ***a permanent deduction of 5 per cent for noncompliance in respect of the regulation of liquor sales (estimated at A$0.38 million); and***

- ***a pool suspension of 15 per cent for outstanding legislation review items (estimated at A$1.14 million).***

The Commonwealth

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

- has implemented the National Gas Access Code and associated legislation and is rewriting the *Petroleum (Submerged Lands) Act 1967* consistent with the recommendations of the national review — amending legislation is to be introduced to Parliament in late 2003. It is participating with other relevant governments in the design of further reforms to meet the identified deficiencies in the NEM.

- has best practice arrangements to vet new legislation restricting competition. Regulation impact statements must be prepared for all proposed new and amending regulation (including quasi-regulation and treaties) with the potential to restrict competition. The Office of Regulation Review advises on whether the requirements have been met, and reports annually on the Commonwealth's overall performance;

- has undertaken structural reforms in relation to its government businesses and met its obligations in relation to the prices oversight of its monopoly businesses. However, the Council assessed in 2002 that the Commonwealth had not met its structural reform obligations arising from the Wheat Marketing Act. The Commonwealth has not addressed the 2000 review committee's recommendations to amend the Act to ensure the independence of the Wheat Export Authority, particularly its role in controlling exports;

- has implemented a best practice competitive neutrality regime with an independent competitive neutrality complaints mechanism; and

- is still to implement one remaining component of its national road transport reform agenda.

Legislation review

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

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

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

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

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

Assessment

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

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

- *Other legislation review compliance failures*

  – Export controls for dairy produce, food and wood; food regulation; imported food control; plant and animal quarantine; and mining.

  – Shipping registration; navigation; and motor vehicle standards.

  – Superannuation; restrictions on services covered by private health insurance; pathology collection centre licensing; interactive gambling; radiocommunications; antidumping legislation.

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

1 The National Competition Policy and related reforms

Obligations under the National Competition Policy agreements

The National Competition Policy (NCP) agreements of April 1995 establish the program of NCP and related reforms. These agreements are augmented by sector-specific intergovernmental agreements on four related areas of reforms: electricity, gas, water resource policy and road transport (NCC 1998a). To meet obligations for the 2003 NCP assessment, governments must have:

- become a party to the Competition Principles Agreement (CPA) and consequently;
  - applied competitive neutrality principles to significant government-owned businesses where appropriate (CPA clause 3) — chapter 2;
  - undertaken structural reform of public monopolies where competition is to be introduced or before a monopoly is privatised (CPA clause 4) — chapter 3;
  - reviewed existing legislation that restricts competition and, where appropriate, removed any restrictions, and undertaken a regulatory impact analysis of proposed legislation or legislative amendments that would restrict competition (CPA clause 5) — chapter 4;
- become a party to the Conduct Code Agreement and implemented the Competition Code — chapter 5;
- ensured national standards are set in accordance with the principles and guidelines for good regulatory practice as endorsed by the Council of Australian Governments (CoAG) in 1997 (Implementation Agreement) — chapter 6;
- achieved (if a relevant jurisdiction) effective participation in the fully competitive national electricity market, including completion of all transitional arrangements — chapter 7;
- fully implemented (if relevant) free and fair trading in gas across and within jurisdictions — chapter 8;

- achieved satisfactory progress in implementing the 1994 CoAG strategic framework for the reform of the water industry, consistent with timeframes established through intergovernmental agreement — chapter 9; and

- have fully implemented the road transport reforms developed by the Australian Transport Council and endorsed by CoAG — chapter 10.

The CPA also commits governments to consider establishing independent prices oversight arrangements for government business enterprises that have the potential to engage in monopolistic pricing behaviour. Such oversight arrangements operate in all States and Territories (apart from Western Australia) with Ministers, sector-specific regulators and public sector officials performing economic regulatory functions. The Western Australian Government has committed to establishing an independent multi-industry economic regulator — the Economic Regulation Authority — to perform a range of functions, including making recommendations to the Government on tariffs and charges for the government's monopoly services. (The Economic Regulation Authority Bill 2002 is before the Western Australian Parliament.)

Agreements reached by Heads of Government following CoAG's review of the NCP and the role of the National Competition Council in 2000 also provide direction on the implementation of the NCP. Heads of Government agreed to measures to clarify and fine tune implementation, particularly jurisdictions' legislation review and reform obligations and competitive neutrality obligations. In addition, CoAG extended the deadline for completing the legislation review and reform program from 2000 to 30 June 2002.

The lack of congruence between the extended CoAG deadline and governments' annual reporting obligations (typically the end of March) meant that it was not possible for the Council to assess all activity to 30 June 2002 when preparing its 2002 assessment report. This 2003 assessment report, however, is based on governments' annual reports on activity beyond 30 June 2002. Accordingly, the Council can achieve substantial closure of the legislation review and reform program, although some 12 months after the target date set by CoAG.

Fully participating jurisdictions

The *Competition Policy Reform Act 1995* defines 'fully participating jurisdictions' as those States and Territories that are party to the Conduct Code Agreement and that apply the Competition Code as law, either with or without modifications. Each State and Territory signed the Conduct Code Agreement to extend the operation of part IV of the *Trade Practices Act 1974* to all business activities within their jurisdiction, and each enacted a modified version of part IV (the Competition Code). Each State and Territory is a fully participating jurisdiction for the purpose of the 2003 NCP assessment.

Governments' NCP annual reports

The CPA obliges all governments to produce annual reports on their progress against their legislation review and reform obligations and competitive neutrality obligations. The aim of these reports is to ensure governments' full public reporting on these areas of NCP activity.

As part of the 1997 NCP assessment, governments agreed that reporting on NCP activity more broadly would be beneficial, recognising that the reports provide significant input to the Council's NCP assessments and to community awareness of the NCP. Governments agreed to provide their annual reports by the end of March in each assessment year, detailing their NCP activity to at least the end of the previous year.

All governments provided annual reports in 2003, thus meeting reporting obligations under the CPA. Except for the Commonwealth Government, each government made its report publicly available at 30 June 2003. The Commonwealth provided a draft annual report that it will subsequently publish. At the request of the Council, all governments provided additional information augmenting and/or clarifying the material in their NCP reports for 2003. Table 1.1 sets out the dates when governments made their reports available to the Council.

Table 1.1: Governments' provision of 2003 NCP annual reports

Government	*Date on which Council received 2003 annual report*	*Date on which Council received draft 2003 annual report (where relevant)*[a]
Commonwealth		17 April 2003
New South Wales	6 May 2003[b]	na
Victoria	31 March 2003	na
Queensland	11 April 2003	na
Western Australia	26 June 2003	29 May 2003
South Australia	14 April 2003	na
Tasmania	2 June 2003	7 May 2003
ACT	18 April 2003	2 April 2003
Northern Territory	27 May 2003	15 April 2003

[a] To assist the Council, some governments made their reports available initially in draft form, before endorsing the draft for public release. [b] New South Wales provided its NCP water report separately on 27 June 2003. **na** Not applicable.

NCP payments

Under the Agreement to Implement the National Competition Policy and Related Reforms, the Commonwealth agreed to make NCP payments to the States and Territories as a financial incentive to implement the NCP and related reform program. The payments recognise that while the States and Territories have responsibility for significant elements of the NCP, much of the financial dividend from the economic growth arising from the NCP reforms accrues to the Commonwealth Government through the taxation system. The payments are a means, therefore, of distributing across the community the gains that arise from NCP reform.

The Council assesses governments' progress against the NCP obligations and makes recommendations to the Commonwealth Treasurer on the distribution of NCP payments. The prerequisite for States and Territories to receive NCP payments is satisfactory progress against the NCP obligations: that is, if governments do not implement the agreed reforms, then there are no reform dividends to share. The Council may recommend that the Commonwealth Treasurer reduce or suspend the NCP payments otherwise available to a State and Territory if that State or Territory has not invested in the reform program in the public interest.

The Council's primary objective, however, is to assist governments to achieve reform outcomes that are consistent with the interests of the community. Consequently, the Council recommends the suspension or reduction of NCP payments only as a last resort — that is, only where a government does not propose a satisfactory path to dealing with identified breaches of reform obligations. In the case of the legislation review and reform program, however, the Council must assess whether governments had fully met their agreed obligations at 30 June 2002.

CoAG has asked the Council, when assessing the nature and level of a payment reduction or suspension recommended for a particular State or Territory, to account for:

- the extent of the jurisdiction's overall commitment to the implementation of the NCP;
- the effect of one jurisdiction's reform efforts on other jurisdictions; and
- the impact of the jurisdiction's failure to undertake a particular reform (CoAG 2000).

The Council interprets CoAG's guidance to mean that individual minor breaches of reform obligations should not necessarily have adverse payment implications if the responsible government has generally performed well against the total NCP program. Nevertheless, a single breach of obligations in an important area of reform may be the subject of an adverse recommendation, especially if the breach has a large impact on another jurisdiction. The Council interprets CoAG's guidance as suggesting that any

payment recommendation should reflect the responsible government's overall performance in reform implementation, the impact of the breach of reform obligations and whether the breach has adverse impacts on other jurisdictions.

The Council's advice to the Commonwealth Treasurer in this 2003 NCP assessment informs the Treasurer's decisions on the distribution of NCP payments in 2003-04.[1] Approximately A$765 million is available in 2003-04, on the basis that the States and Territories meet their reform obligations. This amount will be distributed among the States and Territories on a per capita basis, as shown in Table 1.2. The Council also assesses the Commonwealth Government's progress in implementing the NCP program, although the Commonwealth does not receive NCP payments.

Table 1.2: Estimated maximum NCP payments for 2003-04[a]

Jurisdiction	*NCP payments in 2003-04 (A$m)*
New South Wales	257.2
Victoria	189.5
Queensland	146.2
Western Australia	75.2
South Australia	58.5
Tasmania	18.1
ACT	12.5
Northern Territory	7.6
Total	764.8

[a] Estimates are revised as new inflation and population growth rates are released.

Source: Commonwealth of Australia 2003b.

[1] Following the 2001 NCP assessment, Heads of Government asked the Council to annually assess governments' performance in meeting their NCP and related reform obligations. Prior to 2003, the Council conducted assessments in 1997, 1999, 2001 and 2002.

2 Competitive neutrality

Competitive neutrality policy aims to ensure that government businesses do not enjoy any competitive advantages over private companies as a result of their public ownership. Clause 3 of the Competition Principles Agreement (CPA) sets down governments' competitive neutrality obligations, requiring governments, 'where appropriate', to:

- corporatise large government enterprises and impose full Commonwealth, State and Territory taxes, debt guarantee fees and regulations equivalent to those faced by private sector businesses;

- implement the same measures for other 'significant' government business activities or ensure the prices that those activities charge for goods and services account for tax or tax equivalents, debt guarantee fees and equivalent regulations, and reflect full cost attribution;

- publish competitive neutrality policy statements (by June 1996); and

- publish an annual report on the implementation of competitive neutrality principles, including allegations of noncompliance (complaints).

Each government is free to determine its own agenda for implementing competitive neutrality principles and is required to implement the principles only to the extent that the benefits are expected to exceed the costs. Clause 7 of the CPA requires governments to apply competitive neutrality principles to local government business activities.

The Council of Australian Governments (CoAG) refined aspects of competitive neutrality at its November 2000 meeting. CoAG agreed that:

- the National Competition Council's assessment of governments' application of competitive neutrality to government businesses over which they have no executive control (such as universities) should be based on a 'best endeavours' approach;

- the term 'full cost attribution' could cover a range of methods, including fully distributed cost, marginal cost and avoidable cost;

- governments are not required to establish a competitive process for their delivery of community service obligations (CSOs); and

- governments are free to determine who should receive a CSO payment or subsidy, but such payments should be transparent, appropriately costed and budget funded.

Benefits of competitive neutrality

The aim of competitive neutrality is to ensure Australia's resources are used efficiently by removing any net competitive advantage that public businesses accrue from their government ownership. The application of competitive neutrality principles allows resources to flow to efficient government and private businesses as a result of merit rather than any artificial advantage from public ownership.

By placing government business activities on a similar competitive footing to that of their actual or potential private competitors, competitive neutrality establishes conditions for increased private sector participation in industries, thus promoting competition with flow-on benefits to consumers. Competitive neutrality also promotes a more dynamic culture within government businesses, partly as a result of the stronger discipline for transparency and accountability. Government businesses cannot rely on the advantages of public ownership, which often encourage complacency and reduce incentives to improve performance. The application of competitive neutrality principles thus contributes to greater efficiency, better services and cost-reflective prices for users. In this way, competitive neutrality underpins and complements the performance monitoring regimes that many governments have introduced for their businesses in recent years.

With a competitive neutrality policy in place, governments can better assess the future of their businesses. Full attribution of costs, for example, often leads governments to reassess whether they wish to provide a good or service directly through a government business, allow competitive bidding for the provision of the good or service, or withdraw from the market.

In a similar manner, competitive neutrality can assist governments to address issues surrounding the provision of CSOs. Full cost attribution and greater transparency provide better quality information to governments, which can thus make more informed decisions about whether to fund a CSO directly (thus removing a competitive disadvantage faced by the government entity) or consider its competitive provision.

Governments' progress in implementing their obligations

The Council assesses each government's compliance with its competitive neutrality obligations by accounting for:

- the government's application of competitive neutrality principles to all government business enterprises and significant government business activities (including local government businesses) to the extent that the benefits outweigh the costs; and

- the government's use of effective processes for investigating and acting on complaints that significant government business activities are not applying appropriate competitive neutrality arrangements.

Competitive neutrality coverage

Governments' interpretation of the phrases 'significant business activities' and 'where appropriate' in CPA clause 3 has largely driven the scope of activities to which governments have applied competitive neutrality principles. Also influencing the scope of competitive neutrality is subclause 3(6), which requires governments to implement competitive neutrality principles to the extent that the benefits outweigh the costs. In this context, subclause 1(3) states that governments weighing up the benefits and costs shall account for the following matters 'where relevant':[1]

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including CSOs;
- government legislation and policies relating to occupational health and safety, industrial relations, and access and equity;
- economic and regional development, including employment and investment growth;
- the interests of consumers generally or a class of consumers;
- the competitiveness of Australian business; and
- the efficient allocation of resources.

The competitive neutrality policies that different jurisdictions have adopted reflect the degree of discretion provided by the CPA. Governments have adopted various criteria for establishing an entity's significance, for example, including the entity's absolute size and perceived impact on the market.

Assessment of competitive neutrality principles

The following sections summarise each jurisdiction's approach to applying competitive neutrality principles.

[1] The CPA states that governments are not limited to considering these matters. At the CoAG meeting of November 2000, governments agreed that they should document decisions in which they apply these subclause 1(3) matters.

The Commonwealth

The Commonwealth requires its business enterprises, companies, business units and other significant business activities to implement competitive neutrality principles. Nonsignificant businesses (those with a turnover of less than A$10 million) are not formally required to apply competitive neutrality. However, all businesses are subject to the complaints mechanism which allows complaints to be directed to the Commonwealth Competitive Neutrality Complaints Office if a competitor (or other party) considers that a Commonwealth Government business is not complying with competitive neutrality principles. In line with CPA subclause 3(6), Commonwealth policy states that competitive neutrality should be implemented where the benefits exceed the costs.

Competitive neutrality implementation by the Commonwealth Government involves:

- the corporatisation of significant government business enterprises;
- the payment of all relevant Commonwealth and State direct and indirect taxes or tax equivalents;
- the payment of debt neutrality charges or commercial interest rates;
- the attainment of a commercial rate of return on assets;
- compliance with those regulations to which private sector competitors are normally subject;
- the pricing of all goods and services provided in contestable markets to account for all direct costs attributed to the activity and the competitive neutrality components; and
- explicit government direction to deliver CSOs on a noncommercial basis.

New South Wales

New South Wales applies competitive neutrality to all State-owned companies and other significant government businesses. At the local government level, businesses that have an annual gross operating income higher than A$2 million must adopt a corporatisation model and apply full cost attribution, while businesses below that income threshold must apply full cost attribution and make subsidies explicit.

The Government assumes that the economic and social benefits of competitive neutrality exceed the costs. The onus is thus on a government business to demonstrate that it should not apply competitive neutrality principles because the costs would exceed the benefits. (The Council is unaware of any government business in New South Wales that has sought to use this exemption mechanism.)

The New South Wales corporatisation model is guided by the principles set in 1988 by the Steering Committee on Government Trading Enterprises. These principles include: clear and nonconflicting objectives; managerial autonomy and responsibility for the board of the enterprise; performance evaluation by the government; and rewards and sanctions. Corporations law applies to State-owned companies.

State-owned companies and other significant government businesses apply commercial targets for rates of return based on estimates of the weighted average cost of capital for each business, dividends (reflecting private sector practice) and capital structures. They pay State taxes, Commonwealth tax equivalents and risk-related borrowing fees, and are subject to regular performance monitoring. The Government explicitly funds any CSOs that the government businesses deliver.

Victoria

In Victoria, significant government businesses are determined according to the importance of a business in its market, as measured by its size, its competitive impact and the resources that it commands. The Victorian Government requires the estimation of the potential benefits (usually ongoing) of applying competitive neutrality principles to include: increased market contestability, the improved performance of its businesses and the improved capacity to assess whether its businesses are meeting noncommercial objectives. The costs (usually transitory) to be addressed include: legislative and regulatory changes; the analysis required to set appropriate tax equivalents and debt guarantee fees; and the administration of these financial distributions.

Victoria recommends that a public interest test be applied where the application of competitive neutrality principles may compromise other Government policy objectives. Apart from the matters listed in CPA subclause 1(3), other public interest considerations include any economic development impacts on the local community, and the impacts on the State and national economies.

Measures to achieve competitive neutrality in Victoria include corporatisation, commercialisation and full cost-reflective pricing. The model for corporatisation in Victoria is similar to that in other jurisdictions. The Victorian approach to commercialisation involves organising an activity along commercial lines without creating a separate legal entity.

Queensland

Queensland classifies the significance of government businesses according to the scale of a business and its impact on the market. It applies an indicative expenditure threshold of A$10 million as a guide to significance. The Government requires local governments to subject their larger businesses to

competitive neutrality, while using financial incentives to encourage smaller council businesses also to apply competitive neutrality principles.

Queensland applies three competitive neutrality models to significant business activities: corporatisation, commercialisation and full cost pricing. The first two models apply typically to larger government businesses. Pricing based on full cost attribution is used by government business activities that are proceeding to corporatisation or full commercialisation while in direct competition with other providers, and by those that are not suited to a full corporate structure (usually because they are small).

Western Australia

Western Australia determines the significance of a government business on the basis of its market's importance to the State economy. At the local government level, government businesses with turnover of A$200 000 or more are potentially subject to competitive neutrality.

Western Australia provides for its significant government business activities to be commercialised or corporatised. Corporatisation is the preferred approach for the largest public trading enterprises, particularly energy and water utilities. Commercialisation has been applied to transport and port authorities.

For smaller significant businesses, for which commercialisation or corporatisation may not be cost-effective, the following features apply: taxes or tax equivalents and debt guarantee fees; equivalent planning and environmental approval requirements; and the payment of dividends to, and the funding of CSOs from, the Consolidated Fund. Western Australia has reviewed smaller government businesses to determine whether a competitive neutrality approach would be in the public interest. Recent reviews resulted in the application of competitive neutrality principles to the Gold Corporation, prison industries and the Valuer-General's Office.

The Government endorsed a review of universities in February 2003, which recommended that university businesses adopt competitive neutrality principles, including commercial pricing policies and complaints hearing mechanisms. In June 2003, the Government endorsed the recommendations of the competitive neutrality review of TAFE colleges. The Government proposes to ensure that TAFE ancillary services are not provided to the public at subsidised prices. However, the Government has decided that competitive neutrality will not apply to WestOne and TAFE International and certain activities of other TAFE colleges. In August 2003, the Government endorsed a recommendation of the competitive neutrality review of the WA Sports Centre Trust that the fitness centres at Challenge Stadium and Arena Joondalup should adopt full cost pricing principles.

South Australia

South Australia uses a government business's impact on its market as the principal determinant of significance. Corporatisation, commercialisation and full cost pricing are applied to significant businesses. The appropriate model for each government business is determined on a case basis, accounting for resources used in the business's supply of the good or service; accountability considerations; and cost–benefit comparisons. The extent to which business activities dominate the total activities of the government entity is a key factor; where they are the main activity, corporatisation and the full range of private sector equivalence measures are preferred. Most councils are involved in small-scale business activities, so cost-reflective pricing is the most common approach to competitive neutrality at the local government level.

Tasmania

In Tasmania, all State and local government business enterprises, public trading enterprises and public financial enterprises apply corporatisation principles if the benefits are expected to exceed the costs. The significance of other government entities for competitive neutrality application is based on an entity's impact on its market. In consultation with the Local Government Association of Tasmania, the Government is undertaking a review that will more clearly identify significant local government business activities and ensure that local governments' competitive neutrality obligations are clearly expressed in the competitive neutrality policy statement.

The ACT

In the ACT, the impact of a Government business on its market is the primary determinant of whether the business is significant. Under ACT policy, competitive neutrality principles apply not only when a business is significant, but also when competitive neutrality would be in the public interest. Competitive neutrality is considered to be a valuable tool for encouraging improved efficiency and resource allocation.

Northern Territory

The Northern Territory considers all Government business divisions and business enterprises to be significant businesses. The Northern Territory's 1996 competitive neutrality policy statement indicates that only the larger businesses, such as the Territory Insurance Office, the Power and Water Authority and the Darwin Port Authority, would be corporatised. The Government commercialises smaller Government businesses, but also considers corporatisation on an individual case basis.

Assessment of coverage

Most jurisdictions have committed to full cost attribution for their significant business activities. Ideally, their costing approaches should:

- require significant government businesses to recover full costs over the medium to long term. In addition to labour, raw materials and the competitive neutrality elements listed above (taxes or tax equivalents, debt guarantee fees and the costs of regulation equivalents), costs include depreciation and reflect a target rate of return;

- base targets for commercial rates of return on the weighted average cost of capital of each significant business activity, so as to reflect the cost of the business activity's equity and debt;

- acknowledge that other costs may be relevant, even if not explicitly mentioned in the CPA. Local government rates and charges (or equivalents), for example, are an element of the full cost price; and

- require significant businesses to recover all costs in the medium to long term, while allowing them to practise marginal pricing in the short term (or to practise commercial pricing strategies) in response to market conditions.

Governments have struggled to deal with some issues, however, especially those relating to the application of marginal pricing or competitive pricing strategies in the short term. A Council staff discussion paper considers these issues (Trembath 2002).

The Council considers that the potential coverage of governments' competitive neutrality policies is generally satisfactory. New South Wales' approach provides for the greatest potential coverage because that Government assumes that competitive neutrality principles apply unless an individual government business presents a case that the costs exceed the benefits.

Nevertheless, coverage could be improved. Western Australia has not required businesses operated by public hospitals to apply competitive neutrality principles. The Council has raised this matter with the Government on several occasions since mid-2002, when a private radiation oncology company advised the Council of its concerns about competing with the radiation oncology department of a Perth public hospital. The Western Australian Health Minister has deferred any decision on this matter until the completion of a national review into radiation oncology. The findings of the Baume inquiry into radiation oncology were released in September 2002, and the Australian Health Ministers' Conference asked the Australian Health Ministers' Advisory Council in November 2002 to provide the conference with reform proposals by 30 November 2003. Notwithstanding this specific review of radiation oncology, the Council considers that Western Australia should review whether to subject business activities of public hospitals to competitive neutrality principles.

More generally, the potential coverage of competitive neutrality policies has been partly eroded by governments allowing slow policy implementation by some government businesses (for example, some businesses in the entertainment or recreational sectors). Also to enhance coverage, the Council encourages governments to ensure local government businesses apply competitive neutrality principles. (A large proportion of competitive neutrality complaints relate to local government businesses.)

For this 2003 NCP assessment, the Council scrutinised the application of competitive neutrality principles to forestry operations in all States and the ACT (see volume 2, chapter 1). The Council assessed all jurisdictions except Victoria to be well advanced in meeting their CPA clause 3 obligations, but could not be confident of full compliance because government forestry businesses are yet to establish track records of earning adequate profits. The Council noted that most government forestry businesses are not liable for land rates and related local taxes and charges (some jurisdictions are reviewing this matter). The Council also notes that governments may need to require government forestry businesses to disclose the timber prices that they assume for forest valuation purposes to be confident that the aims of competitive neutrality are being achieved.

Effective processes for handling complaints

CPA clause 3 requires governments to have a mechanism for considering complaints that particular government businesses are not appropriately applying competitive neutrality principles. All governments have instituted complaints processes, and their NCP annual reports document allegations and actions taken in response. Some governments require complaints to be made first to the relevant government business and then to an independent complaints body. In some jurisdictions, the independent body considers a complaint only if the relevant Minister(s) decides that this action is appropriate. Box 2.1 summarises jurisdictions' complaints mechanisms.

Box 2.1: Complaints mechanisms

In those jurisdictions where complaints can be made to an independent body, that body usually has been established to promote competition, pricing and market conduct outcomes, especially for government entities. Such bodies include **New South Wales'** Independent Pricing and Regulatory Tribunal, the **Queensland** Competition Authority, **South Australia's** Competition Commissioner, **Tasmania's** Government Prices Oversight Commission and the **ACT's** Independent Competition and Regulatory Commission. In New South Wales, the Premier can refer competitive neutrality complaints about tender bids to the State Contracts Control Board for independent assessment. The **Commonwealth Government's** complaints unit is the Commonwealth Competitive Neutrality Complaints Office, which is located within the Productivity Commission.

(*continued*)

Box 2.1 continued

In **Victoria**, the Competitive Neutrality Unit (located in Treasury) considers all complaints, although the unit encourages parties to first seek to resolve the differences themselves. In **Western Australia**, the Expenditure Review Committee of Cabinet handles complaints, with administrative support from the Competitive Neutrality Complaints Secretariat. In the **Northern Territory**, the Treasury handles complaints.

Some governments allow complaints to be lodged against only government businesses that are subject to competitive neutrality principles. In most States, complaints against local government businesses must be made first to the local government and then to the complaints body of that State.

Complaints highlighted in the 2003 NCP annual reports

The Commonwealth, State and Territory 2003 NCP annual reports indicated that some governments received competitive neutrality complaints in 2002 and 2003, and several governments completed their consideration of complaints made in earlier years.

The Commonwealth

The Commonwealth Competitive Neutrality Complaints Office did not receive any competitive neutrality complaints in 2002 or the first quarter of 2003, although the Commonwealth Government's 2003 NCP annual report describes a complaint received in November 2001. A representative of several hire and recruitment companies submitted a complaint against OzJobs, which is a business division of Employment National. OzJobs offers recruitment and personnel services. The complainant alleged that the Commonwealth Government subsidises OzJobs and that OzJobs does not pay payroll tax and insurance premiums on a basis equivalent to that of its private sector competitors. The Commonwealth Competitive Neutrality Complaints Office finalised its report in May 2002, finding that OzJobs met all of its competitive neutrality obligations and that no action was necessary in response to the complaint.

New South Wales

New South Wales' 2003 annual report states that no new competitive neutrality complaints were received over the year to March 2003.

Victoria

The Competitive Neutrality Unit in Victoria investigated several complaints in 2002, many of which related to the business activities of local governments, including child care centres, leisure centres, community transport services and waste collection services. Complaints were also made against a Government department, a Government water retailer and cemetery trusts.

Some of the complaints were made in 2001. Several investigations were completed expeditiously, but the period of investigation in a few cases was more than a year. Several investigation reports concluded that the government businesses breached competitive neutrality principles, and the relevant businesses have subsequently rearranged their affairs. The Competitive Neutrality Unit has followed up on several businesses' adjustments. Some investigations are ongoing.

Queensland

The Queensland Competition Authority and the Queensland Treasury did not report any competitive neutrality complaints in 2002. A small number of complaints were received by other Government agencies and local governments, and resolved after initial discussions. The Department of Main Roads received a complaint from a commercial road paving company about the department's commercialised service delivery business. The complainant is concerned about the prices paid by the business under a standing offer arrangement. The department engaged a consultancy firm to investigate this complaint, and the complainant has been advised of the findings. The consultants found no evidence that the department's commercialised service delivery business had a purchasing advantage.

Queensland's 2003 NCP annual report noted that for 92 of the 653 local government businesses that are subjected or committed to competitive neutrality reform, the local government 'parent' has not established valid complaints hearing processes. The Queensland Government believes that this number will fall during 2003-04.

Western Australia

A private company that exports potatoes to Mauritius submitted a complaint to the Western Australian Complaints Secretariat that the Potato Marketing Corporation had undercut the private company's export prices as a result of competitive advantages arising from the corporation's monopoly status in the domestic market. The Government recently conducted a NCP review of the *Marketing of Potatoes Act 1946* and advised the private complainant to resubmit its complaint if the review does not address its concerns. Following the completion of the review, the Minister for Agriculture announced on 5 August 2003 that the Government would not change the Act. As of late August, the complainant had not resubmitted its complaint.

The Complaints Secretariat has been considering complaints against government businesses that are not formally required to comply with competitive neutrality principles. Apart from the earlier complaint by the radiation oncology company, these complaints include:

- a complaint about the Department of Conservation and Land Management providing trees below cost through funding provided via the

Natural Heritage Trust — the complainant was informed that this pricing is part of Government policy to further environmental aims; and

- a complaint about a product manufactured in prisons — the Government has since introduced full cost pricing throughout its prison industries program.

South Australia

The South Australian Competition Commissioner carried over unfinished investigation of three 2001 complaints to 2002.

- Investigating a complaint about the Public Transport Board's provision of buses to special events, the Competition Commissioner reported in March 2002 that the board is not a significant business activity and therefore is not required to apply competitive neutrality principles.

- The Competition Commissioner reported in June 2002 that State Flora's nursery revegetation and forestry seedling propagation and sale activities at Murray Bridge constitute a significant business activity and thus should use cost reflective pricing. This pricing approach was implemented on 1 June 2003.

- The Competition Commissioner reported in December 2002 that penguin tours operated on Kangaroo Island by National Parks and Wildlife SA in competition with a private operator comprised a significant business activity and that cost-reflective pricing should apply. The complainant then approached the Council on several occasions, starting in April 2003, to express concerns about the slowness of the complaints investigation and implementation of the Commissioner's recommendations. More than 18 months elapsed between the complaint being made in November 2001 and the Government entity introducing a new pricing approach on 1 July 2003. The Council considers that the South Australian Government should seek to ensure complaints investigations and the implementation of recommendations occur expeditiously.

Tasmania

The Government Prices Oversight Commission did not receive any formal competitive neutrality complaints in 2002, but during that year it advised an earlier complainant, Ambulance Private, about an investigation completed in 2001. The relevant Minister directed the Department of Health and Human Services to make changes in line with the investigation report.

The ACT

In December 2002, the Independent Competition and Regulatory Commission provided the ACT Government with its final report on a 2000 complaint

relating to horse agistment. Government-owned paddocks comprise around 20 per cent of the total ACT agistment market, and the current contractor (chosen following a competitive tender) is a private company that does not enjoy any advantages in taxes, charges, borrowings or regulations. The commission concluded that the Government has met its competitive neutrality obligations in providing horse agistment facilities.

The Northern Territory

The Northern Territory Treasury received a competitive neutrality complaint in June 2003 relating to Data Centre Services, which is a government business division that provides data storage and other information technology services to the public sector. A private data services provider lodged a formal complaint that Data Centre Services had not fully reflected its costs in its bid for a tender. The Northern Territory Treasury is investigating the complaint.

Assessment of complaints handling

The Council considers that Commonwealth, State and Territory complaints mechanisms are operating satisfactorily. Nevertheless, competitive neutrality processes could be improved in two areas.

- Some jurisdictions provide for Ministers to decide whether an independent body should hear complaints. Such an arrangement may reduce the degree of independence with which a complaint is considered, and increase the time between the complaint's lodgement and resolution.

- Complaints must be dealt with expeditiously and effectively; otherwise, the complainant may be adversely affected and confidence in the competitive neutrality arrangements may be undermined. Complaints processes appear to have been inordinately slow in some cases.

While these concerns do not indicate widespread systemic failures, the Council encourages governments to consider options for accelerating investigation processes and any subsequent actions. The Council expects improvements in the speed with which complaints are investigated and resolved, and will be monitoring jurisdictions' performance in this regard.

Financial performance of government trading enterprises

In the 2002 NCP assessment, the Council noted that many government trading enterprises had low rates of return on capital. The Council considered that such low returns might reflect a range of factors — such as weak market

conditions or high inherited costs — but also, in some instances, the nonapplication of competitive neutrality principles such as full cost pricing.

For the 2003 assessment, the Council asked governments to provide the reasons for some government businesses earning rates of return below the risk-free government bond rate. Governments indicated in their NCP reports that a wide range of factors affected rates of return, including:

- the regulation of prices and higher costs than regulators provided for in price determinations;
- increases in asset and equity bases in particular years as certain government trading enterprises sought to expand and upgrade their operations;
- changes in the accounting treatment of leased assets;
- ports holding land required for future port development that is not currently in productive use;
- drought conditions adversely affecting water corporations; and
- the demand for services being less than expected.

The Council is satisfied that these influences help to explain the identified low rates of return but notes that such factors may require responses by the enterprises to address such sources of underperformance over time.

3 Structural reform of public monopolies

The protection of some public monopolies from competition, through regulation or other government policies, has allowed structures to develop that do not readily respond to market conditions. Rectifying strategies include removing the relevant legislative restrictions and applying competitive neutrality principles. These strategies, however, will not always be sufficient to establish effective competition. Structural reform may be needed to dismantle an integrated government monopoly business. Such reform involves splitting the monopoly (or parts of it) into smaller entities, including separating the competitive or potentially competitive elements from the monopoly elements.

Structural reform is particularly important where a public monopoly is to be privatised. Privatisation without appropriate structural reform is likely to result in a private monopoly supplanting the public monopoly, with few real gains and potentially considerable risks.

Clause 4 of the Competition Principles Agreement sets out obligations relating to the structural reform of public monopolies. Under this clause, governments agreed to relocate regulatory functions away from a public monopoly before introducing competition to the market served by that monopoly. The aim is to prevent the former monopolist from enjoying a regulatory advantage over existing or potential competitors.

Clause 4 also sets out review obligations aimed at ensuring reform paths lead to competitive outcomes. Before privatising a public monopoly or introducing competition to a sector supplied by a public monopoly, governments have undertaken to review:

- the appropriate commercial objectives of the public monopoly;
- the merits of separating potentially competitive elements of the public monopoly from the natural monopoly elements and into independent competing businesses;
- the best way of separating regulatory functions from the monopoly's commercial functions;
- the most effective way of implementing competitive neutrality;
- the merits of any community service obligations provided by the public monopoly, and the best means of funding and delivering any mandated community service obligations;

- price and service regulations to be applied to the relevant industry; and
- the appropriate financial relationship between the owner of the public monopoly and the public monopoly.

In its NCP assessments, the Council has considered each jurisdiction's structural review and reform activity (including the location of industry regulation) where competition is introduced to public monopoly markets or where privatisation is proposed or under way. The Council previously determined that the relevant jurisdictions met their clause 4 obligations in relation to:

- the statutory diary authorities in all States and the ACT;
- the Queensland Sugar Corporation;
- the rail sector in New South Wales, Western Australia and Victoria;
- port authorities in New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania; and
- the Sydney basin airports (a Commonwealth Government matter).

Areas previously determined to be noncompliant with clause 4 obligations are confined to the Commonwealth jurisdiction, namely AWB Limited (see volume 2, chapter 1) and Telstra (see volume 2, chapter 11).

In its 2003 NCP assessment, the Council considered the structural reform of the Western Australian electricity sector (see chapter 7).

4 Legislation review

The National Competition Policy (NCP) introduced measures to improve the effectiveness of Australia's regulatory arrangements. This chapter focuses on governments' obligations under clause 5 of the Competition Principles Agreement (CPA) to review and, where appropriate, reform legislation that restricts competition. The CPA clause 5 originally set a target date of 2000 for governments to complete the review and reform of all legislation (at June 1996) that contained restrictions on competition. In November 2000, the Council of Australian Governments (CoAG) extended this target date to 30 June 2002 (CoAG 2000). However, because governments are subject to a March–April annual reporting requirement, the National Competition Council could not assess all relevant activity to 30 June 2002 for its 2002 NCP assessment. Accordingly, in that assessment, the Council advised all governments that:

> *The co-incidence of the deadline for review and reform completion and the 2002 NCP assessment posed some difficulties for the Council. It was not practical for the Council to report on all activity to 30 June 2002 … The Council believes it appropriate, therefore, to consider some review and reform activity in the 2003 NCP assessment … The 2003 assessment will consider only completed review and reform activity. Review and/or reform activity that is incomplete or not consistent with NCP principles at June 2003 will be considered to not comply with NCP obligations. Where noncompliance is significant, because it involves an important area of regulation or several areas of regulation, the Council is likely to make adverse recommendations on payments. Governments should ensure they provide adequate reporting in time for the 2003 assessment, to show they have met review and reform obligations.* (NCC 2002, pp. xv– xvi)

This advice was again relayed to all governments in late 2002 as part of the lead-up to this 2003 NCP assessment.

The legislation review and reform program represented a comprehensive reform effort over a relatively short time span. Governments were tasked with reviewing around 1800 pieces of legislation from 1996 to 2003. The scope of legislation for review encompassed, for example, agricultural marketing, forestry, fishing, transport services, occupations, compulsory insurance arrangements, retail trading hours, liquor licensing, education, gambling, communications, and planning, construction and development services. (Volume 2 provides detailed commentary on governments' compliance with the CPA clause 5 obligations in these and other areas. Electricity-, gas- and water-related legislation is discussed in chapters 7–9 of this volume.)

The CPA clause 5 obligations

Clause 5 of the CPA obliges governments to review and, where appropriate, reform all existing legislation (at June 1996) that restricts competition. It requires governments to remove restrictions on competition unless they can demonstrate that the restrictions are warranted — that is, that restricting competition benefits the community overall (being in the public interest) and that the restriction is necessary. Clause 5(1) states:

> *The guiding principle is that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:*
>
> *(a) the benefits of the restriction to the community as a whole outweigh the costs; and*
>
> *(b) the objectives of the legislation can only be achieved by restricting competition.* (CoAG 1995)

In addition to requiring the review and reform of existing legislation, the CPA clause 5 contains two ongoing obligations.

- It obliges governments to review, at least once every 10 years, any restrictive legislation against the guiding principle. The aim is to ensure that regulation remains relevant in the face of changes in circumstances and/or in government and community priorities.

- It specifies that governments must ensure new legislation that restricts competition is demonstrably consistent with the clause 5(1) guiding principle.

Clause 5 thus relates to (1) the review and reform of the stock of legislation, (2) systematic reviews of continuing legislation at least once every 10 years and (3) the assessment of all new legislation against the guiding principle via governments' 'gatekeeper' processes (discussed below).

Obligations in other NCP agreements aim to improve the effectiveness of Australia's regulatory base. These include:

- governments' ongoing commitments under the Conduct Code Agreement to notify the Australian Competition and Consumer Commission of legislation that relies on s. 51(1) of the *Trade Practices Act 1974* (TPA) (see chapter 5); and

- governments' obligations to ensure decisions by Ministerial councils and national standard-setting bodies accord with the CoAG-endorsed guidelines that reflect the guiding principle (see chapter 6).

Legislation and the public interest

The public interest lies at the heart of good quality regulation. This principle aims to ensure restrictions on competition serve the wider community, rather than advance the interests of those able to exert undue influence on decision-makers. Given that restrictions on competition have typically been couched in terms of furthering the interests of the community, the NCP places an onus of proof on proponents of such restrictions to subject claims of public interest to robust and transparent analysis. The NCP thus acknowledges that political interests and the interests of the wider community can diverge.

Regulation that genuinely promotes the interests of the wider community provides the foundation for a flexible, responsive and internationally competitive economy. In contrast, regulation that only serves the interests of certain groups, industries and occupations often represents a cost to the community as a whole (box 4.1). This cost can arise in several ways:

- *Transfers from users/consumers to the beneficiaries.* In some instances, relatively large benefits are appropriated by concentrated, readily identifiable and politically astute groups at the expense of the wider community which is comprised of a diffuse group of users and consumers. These arrangements tend to continue because the costs to individual consumers (who often are unaware of potential alternative outcomes) may be relatively small and because consumers as a collective are not well organised and generally lack direct input into the making of regulations.

- *Resource allocation impacts.* Regulation that favours particular groups tends to result in the beneficiaries commanding more resources than they would otherwise. This can be manifested through a diminution of direct competitors and/or alternative providers of substitute goods and services. Users and consumers pay more for the goods and services that are conferred regulatory protection than they would in a more competitive environment. Consumers thus have less to expend on other goods and services, which means other providers of goods and services produce less and use fewer labour and capital inputs (a negative multiplier effect).

- *Dynamic efficiency effects.* Restrictions on competition — whether direct, such as exclusive licences, or indirect, such as registration and ownership restrictions — stifle innovation. Protecting incumbents erects a barrier not only to new entrants, but also to new ideas and innovative practices. A relatively 'comfortable' business operating environment tends to engender complacency. A further source of loss to the community is the diversion of entrepreneurial effort away from undertaking core business activities to preserving (or seeking) a privileged position through legislative restrictions on competition. Vigorous competition promoting dynamism and innovation is the hallmark of economies that deliver high community living standards.

Box 4.1: Examples of how costs arise from restrictive legislation

Restrictions on trading hours and the loss of consumer choice: Australia has undergone major social changes in recent decades, including a rise in female labour force participation and a corresponding rise in two income households. Retailers have responded by offering extended trading hours to 'time-poor' consumers and specialist traders have emerged in, for example, furniture and electrical goods. These outlets with large floor plans, often in fringe areas to take advantage of low rents and better parking, offer a vast array of goods. Retail malls have made shopping a family oriented activity by providing food outlets and cinemas. In some jurisdictions, however, governments have restricted the hours that large and specialist traders can operate, and their citizens can shop. The aim of the restrictions is to allow small retailers to trade at certain times without competition from large retailers. The evidence is that such restrictions are not in the public interest.

- In Sydney and Melbourne around 35 per cent of consumers buy groceries on Sunday (where supermarkets are open). In Perth and Adelaide, only small food stores can trade on Sundays and the comparative figure is 7–8 per cent (Jebb Holland Dimasi 2000).
- Tasmania's NCP review found 'consumers are inconvenienced by … restrictions on shop trading hours in terms of where they purchase their groceries and … the times in the week when they purchase them' (Workplace Standards Tasmania 2002).
- In Victoria, local councils may hold a plebiscite to determine if a community wishes to reimpose limits on shop trading hours. To date, only the City of Greater Bendigo exercised this option. The voluntary poll, conducted in 1998, attracted 72 per cent of voters, of which 77 per cent voted to support the continuation of Sunday trading.
- An attempt by the ACT Government to reinstitute trading hours restrictions, after consumers had experienced a trial period of deregulation, failed after a public outcry.

Agricultural marketing — efficiency, choice and the environment: In Western Australia, legislation establishes a marketing corporation with a monopoly over the domestic wholesale marketing of all potatoes grown in the State for fresh consumption, and empowers it to licence growing areas. The beneficiaries of the legislation are existing growers who enjoy higher returns — evidenced by the trading of production quota at an average price of $7000 per hectare or $25 per tonne. As the quotas make it difficult for growers to expand production area it encourages practices to increase area yields. Thus, Western Australian growers spend three times more on fertiliser than South Australian growers. The NCP review noted evidence of adverse impacts on ground water quality from high fertiliser application. Quotas also make it difficult for growers to switch between crops to suit their farming program.

The prices paid by Western Australian consumers for fresh potatoes must over time be higher than they otherwise would (this is disputed by proponents of regulation). Western Australian consumers also have more restricted choice in potato varieties than consumers in other states. Finally, the review also indicated that the marketing corporation's administration and compliance costs are nearly $3 million per year (excluding growers' compliance costs).

Ownership restrictions and access to dentists: New South Wales' legislation restricts the ownership of dental practices by nondentists. There is an exemption for health funds and people who can demonstrate to a Dental Board that it is in the public interest for them to own a dental practice. Depending on how it is interpreted, the exemption process can create a barrier to entry. For example, the Victorian Branch of the Australian Dental Association claims that more than 100 nondentist owned practices have established in Victoria since the deregulation of ownership restrictions in June 2000.

Reservation of practice and the cost of conveyancing: Several States and Territories have legislation permitting nonlawyers to undertake certain activities traditionally reserved for lawyers. This was not always the case. In New South Wales in the early 1990s, the legal profession was opened up to allow conveyancing to be practiced by appropriately qualified nonlawyers. Fees scales and advertising restrictions were also removed. Conveyancing fees subsequently fell by 17 per cent resulting in a saving to New South Wales consumers of at least $86 million (Baker 1996).

Much of the legislation subject to NCP review and, where appropriate, reform involves restrictions on competition that may not have significant impacts in their own right. Nevertheless, a plethora of smaller regulatory impacts on users and consumers across a range of activities (that is, over 1800 pieces of legislation subject to review) has a cumulative effect. Such an environment tends to be self-perpetuating because other interest groups perceive the benefits of eschewing competitive processes in favour of lobbying for regulatory constraints on competition. For these reasons the NCP aims to ensure all governments (and interjurisdictional processes) deliver quality regulation.

The Council's approach to assessing compliance

Under the NCP agreements, each State's and Territory's receipt of NCP payments depends on the extent to which it complied with its CPA obligations. In relation to governments' obligations for existing legislation, the Council considered both review activity and reform implementation when assessing governments' compliance. It looked for transparent, robust and objective reviews, because these increase the likelihood of policy outcomes that are in the public interest. The Council also looked for governments to implement review recommendations expeditiously, unless a government could demonstrate that review recommendations were not in the public interest. The Council continues to consider whether new legislation restricting competition is in the public interest.

This 2003 NCP assessment considers review and reform activity by governments since the last assessment. It covers activity to and beyond 30 June 2002 — the date set by CoAG for completing reviews and implementing appropriate reforms of existing legislation. As in previous NCP assessments, the Council concentrated on regulation most likely to have significant impacts on competition, prioritising the areas in which reform would provide the greatest community benefit.

Review and reform priorities

Recognising the resource demands on governments from completing all reviews and implementing reforms, the Council considered that the greatest benefit to the community would arise from prioritising review and reform activity to address those restrictions with a greater impact on competition.[1]

[1] The legislation covered in this NCP assessment is a subset of all legislation for review and reform. The Council updates the full list of legislation in its *Legislation review compendium*, now in its fourth edition (NCC 2002).

Accordingly, in its 2001 NCP assessment, the Council identified priority areas of regulation likely to have nontrivial impacts on competition (box 4.2). It asked governments to complete review and reform activity in these areas by no later than the CoAG target date.

The prioritisation process meant that the Council scrutinised governments' review and reform activity for around 800 separate pieces of legislation. While this 2003 NCP assessment continued the focus on priority areas, it finalised the Council's assessment of governments' progress in reviewing and reforming all remaining (existing) legislation review and reform matters, including the nonpriority areas.

Box 4.2: Priority legislation areas

Water
Legislation relating to water management, supply, irrigation, trading and water corporations

Primary industries
Barley/coarse grains; dairy; poultry meat; rice; sugar; wheat; fishing; forestry; mining; food regulation; agricultural and veterinary chemicals; quarantine; bulk handling

Communications
Australian Postal Corporation Act 1989: third party access regime; *Broadcasting Services Act 1992* and related legislation; *Radiocommunications Act 1992*

Fair trading legislation and consumer legislation
Fair trading legislation; consumer credit legislation; trade measurement legislation

Insurance and superannuation services
Workers compensation insurance; compulsory third party motor vehicle insurance; professional indemnity insurance; public sector superannuation scheme choice

Health and pharmaceutical sector
Chiropractors; dentists and dental paraprofessionals; *Health Insurance Act 1973* (Cwlth); medical practitioners; Medicare provider numbers for medical practitioners; nurses; occupational therapists; optometrists, opticians and optical paraprofessionals; osteopaths; pathology collection centre licensing; pharmacists; physiotherapists; podiatrists; psychologists; radiographers; speech pathologists; traditional Chinese medicine

Legal services and other professions
Legal services; conveyancers; real estate agents, security providers, motor vehicle dealers; travel agents; employment agents

Planning, construction and development services
Planning and approvals; building regulations and approvals; related professions and occupations, such as architects

Retail regulation
Shop trading hours; liquor licensing; petroleum retailing

Social regulation
Education services; gambling; child care services

Transport services
Road freight transport (tow trucks, dangerous goods); rail services; taxis and hire cars; ports and sea freight; international liner cargo shipping (part X of the TPA); air transport

Objective and robust reviews

The Council has always emphasised the link between high quality reviews and well-considered, effective policy outcomes. Open, independent and objective review processes provide the best opportunity to identify and assess all costs and benefits of restrictions on competition, and to implement regulations (including alternatives to restrictions) that best achieve the community's goals.

The Council has consistently encouraged governments to adopt independent review processes. Governments sometimes argue, however, that the inclusion of stakeholder representatives on review panels is necessary. The Council's experience is that it is often difficult for direct stakeholders to agree on key issues and that agreement between directly interested parties is less likely to reflect fully the interests of the wider community. The Council therefore supports the approach proposed by the Commonwealth Office of Regulation Review that 'if direct representation by industry or other groups were considered desirable, a preferable approach would be to include them on a reference group' (PC 1999b, p. xviii).

CoAG (2000) asked the Council to consider, when assessing jurisdictions' compliance with the CPA clause 5 guiding, whether review conclusions are within a range of outcomes that could reasonably be reached based on the information available to a 'properly constituted review process'. Other guidance provided by CoAG included:

- requesting that governments document the public interest reasons supporting their reform decisions and make this reasoning publicly available;

- requesting that governments consider the likely impacts of reform measures on specific industry sectors and communities, including the likely adjustment costs; and

- recognising that satisfactory reform implementation may include a firm transitional arrangement that extends beyond 30 June 2002, where justified by a public interest assessment.

CoAG's guidance points to the need for a rigorous analytical approach whereby reviews consider all relevant evidence and logically draw conclusions and recommendations from that evidence. Policy actions in line with review findings and recommendations based on flawed analysis or incomplete evidence may not satisfy the CPA guiding principle. The Council's approach in assessing compliance, therefore, is to look for evidence that reviews:

- had terms of reference based on the CPA clause 5(9), supported by publicly available explanatory documentation such as an issues paper;

- were conducted by an appropriately constituted review panel able to undertake an independent and objective assessment of all matters

relevant to the legislation under review, including restrictions on competition and public interest matters;

- provided for public participation (including participation by directly interested parties) through appropriate consultative processes;
- assessed and balanced all costs and benefits of existing restrictions on competition and considered alternative means of achieving the objective of the legislation;
- considered all relevant evidence and reached reasonable conclusions and recommendations based on the evidence before the review; and
- demonstrated a net public benefit when recommending that a government introduce or retain restrictions on competition.

In assessing jurisdictions' compliance, the Council accounted for whether flaws — such as a failure of the review's terms of reference to encompass relevant questions, deficient analysis leading to recommendations that are inconsistent with the evidence, or a failure to consider relevant evidence — might have compromised the review's recommendations

The need to address the guiding principle

To test whether restrictions on competition are warranted, governments need to consider the public interest factors in the CPA clause 1(3). The community-wide perspective means that restrictions must benefit the whole community, not just particular groups. In assessing compliance with the CPA clause 5, the Council looked for governments to have provided at least a statement of the findings/recommendations of each relevant review, along with a clear and comprehensive explanation of their response to the review and its supporting rationale.

Arguments supporting a restriction usually arise through the evidence and recommendations of the relevant review. In this context, transparent policy-making offers a public benefit, which is enhanced where the public can participate in reviews and access review reports. For these reasons, the Council encouraged governments to make their review reports publicly available when developing a public interest case (recognising, however, that the NCP agreements do not require the public release of reports).

Implementation of appropriate reform

The CPA guiding principle means that a government needs to change its legislation if it cannot justify the restrictions. Appropriate reform implementation requires a government to remove restrictions on competition

unless it can demonstrate via a robust net community benefit case that the restrictions are warranted

Appropriate reform implementation may include, where justified by a public interest assessment, having a firm transitional arrangement that extends beyond 30 June 2002. For this 2003 NCP assessment, the Council considered that governments met their CPA obligations, even if they did not complete reforms by 30 June 2002, where they:

- presented a robust net community benefit case to support the (temporary) retention of restrictions beyond June 2002; and
- announced a transitional strategy for removing the restriction within a reasonable period from June 2002 (for example, by 'locking in' the reform through legislation).

More generally, the Council looked for governments to ensure reform outcomes that restrict competition have regard to review recommendations (assuming reviews were properly constituted and conducted). For compliance, governments needed to provide a public interest rationale for competition restrictions that is supported by relevant evidence and robust analysis. Where a government introduced or retained competition restrictions on the basis of review recommendations, but the review does not provide clear reasoning and argument to support its recommendations, the Council looked for the government to show the evidence and logic underlying its decision. Where a government's introduction or retention of competition restrictions was not an approach reasonably drawn from the recommendations of the review, the Council looked for the government to provide a rigorous supporting case, including a demonstration of flaws in the review's analysis and reasoning.

The CPA guiding principle does not mean that governments must always conduct a full public review before reforming restrictions. Governments sometimes repeal redundant legislation after preliminary scrutiny shows that the legislation provides no public benefit. Such action meets the CPA objectives. Similarly, a government may choose to disregard a review recommendation supporting a restriction or seek to achieve policy outcomes via an approach other than that recommended by a review. Where a government did not implement the recommendation of a properly constituted rigorous review, however, the Council looked for the government to provide a robust net community benefit argument, explaining why the approach recommended by the review was inappropriate.

Notwithstanding the above, the Council adopted a more expeditious process in assessing governments' obligations to review and reform nonpriority legislation. This reflects the likelihood that such legislation involves 'lower order' restrictions on competition and that the Council's resources are used more effectively in engaging with governments on priority legislation review matters.

Divergent approaches across jurisdictions

The NCP provides for the possibility that different governments might evaluate similar issues differently and thus reach different conclusions on an appropriate approach. Given that Australia is essentially one national market, however, uniform or consistent regulation across jurisdictions is likely to benefit the community by reducing divergent regulatory imposts on businesses and service providers, and ultimately leading to lower prices to consumers.

The NCP facilitates legislative consistency in various ways. First, the CPA offers scope for national reviews. It provides that a government, where one of its reviews has a national dimension or effect on competition (or both), should consider whether the review should be national in scope. Twelve national reviews have been scheduled under the NCP. Nine have been completed, although the relevant governments still have to undertake the necessary legislative action in many cases. Progress with national reviews is discussed in chapter 14, volume 2.

Second, governments have implemented mutual recognition since 1993. Mutual recognition is aimed at creating a regulatory environment that will 'encourage enterprise, enable business and industry to maximise their efficiency, and promote international competitiveness' (CoAG 1998). The Commonwealth *Mutual Recognition Act 1992* and related State and Territory mutual recognition legislation aim to achieve a national market in goods and services via two principles:

- that goods that may be sold legally in one State or Territory may be sold in a second State or Territory, regardless of differences in standards applying to goods in the relevant jurisdictions; and

- that a person who is registered to practise an occupation in one State or Territory be able to register to practise an equivalent occupation in a second State or Territory.

Questions of mutual recognition may arise where occupations are registered in some but not all jurisdictions. The NCP assessment implications are discussed in volume 2 — see for example, chapter 3 (health and pharmaceutical services), chapter 5 (other professions and occupations) and chapter 10 (planning, construction and development services).

Compliance with the review and reform of the stock of legislation

In volume 2 (chapters 1–12) of this NCP assessment the Council concluded its assessment of outstanding priority legislation review matters for the

Commonwealth, State and Territory governments. Tables 4.2–10 (at the end of this chapter) summarise instances of noncompliance. The tables indicate those areas of review and reform in which the Council determined a failure to comply with CPA clause 5 obligations.

Reasons for a compliance failure assessment

For jurisdictions to be assessed as meeting CPA obligations, the requirements are that:

- the review and, where appropriate, reform of a particular piece of legislation fully meets the CPA clause 5(1) guiding principle; or
- the review and reform is consistent with the CPA clause 5(1) guiding principle, but reform is yet to be completed because it involves a transitional implementation program, supported by a robust public interest test, that extends beyond 2003 (CoAG 2000).

Failure to comply with the CPA requirements can arise for a range of reasons. In some instances, the Council assessed that outcomes are not consistent with the obligations under the CPA clause 5(1). In other cases, noncompliance was the result of a timing failure — that is, a government did not meet the (extended) deadline of 30 June 2003.[2]

Tables 4.2–10 adopt the following categories of compliance failure.

1. Review and reform is incomplete owing to a need to resolve outstanding national reviews or other interjurisdictional processes.
2. Reform commenced but involves transitional phasing beyond 30 June 2003 without a public interest justification.
3. Review and reform is incomplete but the relevant government has demonstrated a firm commitment to complete its reforms on time.
4. Review and reform is incomplete and the relevant government did not demonstrate a firm commitment to meeting its obligations on time.
5. The review and reform outcome fails to comply with the CPA clause 5 guiding principle.

These categories are elaborated in the following sections.

[2] The Council accepted, nonetheless, reforms implemented after 30 June 2003 up to the finalisation of this 2003 NCP assessment.

Review and reform incomplete pending outcomes from national processes

A Government in this category is not reasonably in a position to progress appropriate reforms until outstanding national processes are resolved. The Council considers that these instances of noncompliance (shaded in tables 4.2–10) should not have implications for NCP payments.

Reform involving transitional phasing beyond 30 June 2003 without a public interest justification

As noted, CoAG asked the Council to recognise that satisfactory reform implementation may include a firm transitional arrangement that extends beyond 30 June 2002 (extended to 2003 for the purposes of this NCP assessment) where justified in the public interest. The Council thus assessed a government as having failed to comply fully with its CPA obligations if it introduced a transitional reform program but did not provide a robust public interest case. The Council did not accept that a decision to simply postpone reform implementation constituted a transitional reform program.

Review and reform incomplete, but firm commitment demonstrated

A government in this category failed to complete its review and reform obligations by 30 June 2003, but demonstrated a firm commitment to that date by introducing potentially compliant legislation to Parliament or by commencing the implementation of some reforms in advance of legislative changes. The Council did not accept that undertakings to implement reforms in the near future — such as plans to introduce legislation in Parliamentary sittings later in 2003 (or beyond) — constituted a demonstrated commitment to complete review and reform by 30 June 2003.

Review and reform incomplete and no commitment demonstrated

A government in this category failed to demonstrate a concerted effort to conclude reform implementation by 30 June 2003. Its progress might have been inordinately slow, ranging from reviews that were not completed to failure to introduce a legislative response (where warranted). This category includes instances where a government is drafting legislation, has circulated exposure draft Bills or has listed legislation for introduction to the Parliament later in 2003. It also includes instances where legislative proposals would not, if implemented, comply with CPA obligations (including legislation currently before Parliaments).

Failure to comply with CPA obligations

A government in this category completed review and/or reform that resulted in outcomes that breached the CPA clause 5(1) guiding principle.

The significance of a compliance failure

The above categories of compliance failures specify the reason for a noncompliance finding but do not indicate the importance to the community of the reform failure.

The significance of a compliance failure is a 'judgement call' reflecting the following considerations, among others.

- *The relative importance of a compliance breach in terms of its impacts on the community and economy.* Single desk arrangements for an agricultural commodity, for example, are more significant than, say, reservation of title for speech therapists.

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

- *How the effects of anticompetitive impacts are manifested.* Some restrictions on competition:

  – result in transfers to incumbent beneficiaries at the expense of potential competitors, leading to worse financial outcomes for users/consumers;

  – have major, albeit less tangible, effects on consumer convenience (such as the restrictions on shop trading hours); and

  – have pronounced impacts on the allocation of the resource use in other jurisdictions or the economy generally, such as differential restrictions across jurisdictions that encourage the inefficient relocation of mobile capital.

Governments' overall compliance

In terms of potential NCP payments implications arising from compliance failures (see the 'Overview of progress and recommendations' section at the front of this volume), the Council accounted for:

- the reason for the compliance failure;

- the significance, in terms of impacts on the community, of remaining restrictions on competition; and

- CoAG guidelines, including the extent of a jurisdiction's overall commitment to the implementation of the NCP (see chapter 1, volume 1).

Table 4.1 provides an overview of each government's record of compliance with its legislation review obligations, including for both priority and non priority legislation.

Table 4.1: Overall outcomes with the review and reform of legislation[a]

	Priority legislation	*Nonpriority legislation*	*Total legislation*	*Proportion of priority complying*	*Proportion of non-priority complying*	*Proportion of total complying*
				%	%	%
Commonwealth[b]	57	68	125	33	66	51
New South Wales	118	98	216	69	79	73
Victoria	91	119	210	78	83	81
Queensland	118	60	178	61	92	71
Western Australia	117	157	274	31	54	44
South Australia	75	96	171	37	82	63
Tasmania	100	138	238	77	90	84
ACT	78	178	256	59	97	85
Northern Territory	57	40	97	47	83	62
TOTAL	811	954	1765	56	81	69

[a] Includes the stock of legislation identified by each jurisdiction in their original legislation review schedules, jurisdictions' periodic additions (as other existing legislation containing restrictions on competition has been identified), and existing, amending and new legislation containing restrictions on competition identified by the Council. Excludes water-related legislation, apart from three pieces of such legislation that include matters relevant to non-water legislation areas. Excludes regulation related to electricity, gas and road transport (except where it relates to professions such as electricians and gasfitters covered in volume 2 of this report), which are treated separately in chapters 7, 8 and 9 (volume 1) respectively.

[b] The Commonwealth raised concerns about the Council assessing outcomes with respect to the review and reform of legislation not included on the Commonwealth's original 1996 Cabinet-approved list of legislation — the Commonwealth Legislation Review Schedule (CLRS). The Commonwealth reported that the CLRS contains 101 pieces of legislation rather than the 125 pieces of legislation assessed by the Council. This situation is not unique to the Commonwealth. As explained in note a, for a number of reasons, the estimates may not accord with Governments' original legislation review schedules as at 1996. Other Governments did not raise concerns about these data.

Source: Derived from the National Competition Council's legislation review database.

The estimates for compliance rates noted in table 4.1 (in the final three columns) are indicative only. The main purpose is to highlight differences in the relative performance of jurisdictions and to indicate the magnitude of their legislation review task. In interpreting the data, some important caveats are as follows.

- The estimates can reflect differential treatment of legislation review matters between jurisdictions — for example, where a jurisdiction has a 'Chiropractors and Osteopaths Act' it will be counted once, whereas

separate legislation for each profession in another jurisdiction would be counted twice.

- In some cases a jurisdiction's review and reform activity for one issue might encompass several pieces of legislation, which can skew outcomes. For instance, the Commonwealth's compliance rate for its priority legislation was around 32 per cent. Noncompliance in the review and reform of its superannuation and broadcasting involved, respectively, ten and five discrete pieces of legislation (some of which were not on its 1996 Commonwealth Legislation Review Schedule). If each compliance failure involved one piece of legislation, the Commonwealth's compliance rate for priority legislation would be around 40 per cent.

For these reasons, the Council did not place undue importance on small deviations in absolute compliance ratios across jurisdictions. Indeed, tables 4.2–10 list outstanding priority reform *areas* rather than ascribing compliance failures to each piece of legislation individually.

The following section provides an overview of each jurisdiction's overall performance in the review and reform of its stock of legislation. In relation to the review and, where appropriate, reform of the priority legislation areas, the performance of the Commonwealth, Western Australia, South Australia and the Northern Territory was markedly below average.

Commonwealth

The Commonwealth Government completed the review and reform of around half of its stock of legislation. It reviewed, and where appropriate, reformed 33 per cent of its priority legislation and 66 per cent of its nonpriority legislation. Compared to other jurisdictions, the Commonwealth's performance was well below average and not commensurate with its leadership role in other areas of the NCP.

Excluding areas subject to ongoing interjurisdictional processes, the Commonwealth had 22 areas of noncompliance in priority legislation, including the following five instances of reform outcomes that breached the clause 5 guiding principle:

- export marketing arrangements for wheat (2002);
- broadcasting regulation (2003);
- regulation of postal services (2003);
- standards for imported motor vehicles (2002); and
- statutory monopoly provision of parliamentary superannuation (2003).

The Commonwealth had 11 instances of incomplete activity where a commitment to appropriate reform was not evident.

The most significant areas of noncompliance for the Commonwealth include:

- legislation on wheat marketing, broadcasting, and postal services that is in breach of CPA clause 5; and
- the incomplete review and reform of health-related legislation (pathology collection centre licensing and services covered by private health insurance) and legislation on industry assistance.

New South Wales

The New South Wales Government completed the review and reform of over 70 per cent of its stock of legislation. It reviewed, and where appropriate, reformed almost 70 per cent of its priority legislation and nearly 80 per cent of its nonpriority legislation. Compared to other jurisdictions, New South Wales' performance was above average.

Excluding areas subject to ongoing interjurisdictional processes, New South Wales had 28 areas of noncompliance in priority legislation including the following eight instances of reform outcomes that breached the clause 5 guiding principle:

- grain marketing (2002);
- poultry meat industry negotiation framework (2002);
- taxis and hire cars (2003);
- ownership restrictions for dental practices (2003) and for optical dispensers (2003);
- farm debt mediation provisions (2003); and
- regulation of gaming machines (2003) and racing and betting (2002).

New South Wales had 9 instances of incomplete activity where a commitment to appropriate reform was not evident.

The most significant areas of noncompliance for New South Wales include:

- legislation on grain marketing, poultry meat bargaining, taxis and hire cars and ownership restrictions applying to the dental and optical dispensing professions that is in breach of CPA clause 5; and
- the incomplete review and reform of regulation of liquor sales, a number of professions and fisheries management legislation.

Victoria

The Victorian Government completed the review and reform of over 80 per cent of its stock of legislation. It reviewed, and where appropriate, reformed 78 per cent of its priority legislation and over 80 per cent of its nonpriority legislation. Compared to other jurisdictions, Victoria's performance was well above average.

Excluding areas subject to ongoing interjurisdictional processes, Victoria had 10 areas of noncompliance in priority legislation, including the following two instances of reform outcomes that breached the clause 5 guiding principle:

- regulation of the tow truck industry (2003);
- regulation affording exclusive lottery licences (2003).

Victoria had six instances of incomplete activity where a commitment to appropriate reform was not evident.

The most significant areas of noncompliance for Victoria include:

- legislation on entry restrictions applying to the tow truck industry that is in breach of CPA clause 5; and
- the incomplete review and reform of legislation on pharmacies, fisheries management and some building-related occupations.

Queensland

The Queensland Government completed the review and reform of over 70 per cent of its stock of legislation. It reviewed, and where appropriate, reformed 61 per cent of its priority legislation and over 90 per cent of its nonpriority legislation. Compared to other jurisdictions, Queensland's performance was above average.

Excluding areas subject to ongoing interjurisdictional processes, Queensland had 24 areas of noncompliance in priority legislation, including the following six instances of reform outcomes that breached the clause 5 guiding principle.

- liquor licensing (2003);
- taxis and hire cars (2003);
- reservation of title for occupational therapists (2002) and for speech pathologists (2002);
- regulation of activities outside of ports (2002); and
- monopoly provision of public sector superannuation (2003).

Queensland had 11 instances of incomplete activity where a commitment to appropriate reform was not evident.

The most significant areas of noncompliance for Queensland include:

- legislation on packaged liquor sales and taxis and hire cars that is in breach of CPA clause 5; and
- the incomplete review and reform of fisheries management legislation and the regulation of several health-related professions.

Western Australia

The Western Australian Government completed the review and reform 44 per cent of its stock of legislation. It reviewed, and where appropriate, reformed 31 per cent of its priority legislation and 54 per cent of its nonpriority legislation. Western Australia's performance was below that of all other jurisdictions.

Excluding areas subject to ongoing interjurisdictional processes, Western Australia had 49 areas of noncompliance in priority legislation, including the following seven instances of reform outcomes that breached the clause 5 guiding principle:

- retail trading hours (2003);
- liquor licensing (2003);
- marketing of potatoes (2003);
- fish resources management (2003);
- petroleum products pricing (2003) and regulations establishing fuel standards (2003); and
- casinos and betting (2003).

Western Australia had 31 instances of incomplete activity where a commitment to appropriate reform was not evident.

The most significant areas of noncompliance for Western Australia include:

- legislation on retail trading hours, liquor licensing, and potato marketing that is in breach of CPA clause 5; and
- the incomplete review and reform of legislation in grain marketing, poultry meat bargaining, egg marketing, most health-related professions and some water related legislation.

South Australia

The South Australian Government completed the review and reform over 60 per cent of its stock of legislation. It reviewed, and where appropriate, reformed almost 40 per cent of its priority legislation and over 80 per cent of its nonpriority legislation. Compared to other jurisdictions, South Australia's performance was below average.

Excluding areas subject to ongoing interjurisdictional processes, South Australia had 34 areas of noncompliance in priority legislation, including the following six instances of reform outcomes that breached the clause 5 guiding principle:

- poultry meat industry negotiation framework (2003);
- taxis and hire cars (2003);
- ownership restrictions for dental practices (2003);
- regulation of retail trading hours (2003)
- monopoly provision of public sector superannuation (2003); and
- regulation of lotteries (2003).

South Australia had 25 instances of incomplete activity where a commitment to appropriate reform was not evident.

The most significant areas of noncompliance for South Australia include:

- legislation on poultry meat negotiations and taxis (moderated by liberal conditions for hire cars) that is in breach of CPA clause 5; and
- the incomplete review and reform of legislation on liquor licensing; barley marketing, fisheries, a number of health-related professions and building-related trades.

Tasmania

The Tasmanian Government completed the review and reform 84 per cent of its stock of legislation. It reviewed, and where appropriate, reformed 77 per cent of its priority legislation and 90 per cent of its nonpriority legislation. Compared to other jurisdictions, Tasmania's performance was well above average.

Excluding areas subject to ongoing interjurisdictional processes, Tasmania had 14 areas of noncompliance in priority legislation, including the following two instances of reform outcomes that breached the clause 5 guiding principle:

- marine farming planning legislation (2003); and
- the composition of the Veterinary Board of Tasmania (2003).

Tasmania had nine instances of incomplete activity where a commitment to appropriate reform was not evident.

The most significant areas of noncompliance for Tasmania are the incomplete review and reform of legislation on taxis and hire cars, some health- and building-related professions and gambling.

ACT

The ACT Government completed the review and reform around 85 per cent of its stock of legislation. It reviewed, and where appropriate, reformed nearly 60 per cent of its priority legislation and nearly all of its nonpriority legislation. Compared to other jurisdictions, the ACT's performance was above average.

Excluding areas subject to ongoing interjurisdictional processes, the ACT had 11 areas of noncompliance in priority legislation, including the following instance of a reform outcome that breached the clause 5 guiding principle:

- licensing of employment agents (2003).

The ACT had eight instances of incomplete activity where a commitment to appropriate reform was not evident.

The most significant areas of noncompliance for the ACT are the incomplete review and reform of legislation on taxis and hire cars, health-related professions and some building-related trades.

The Northern Territory

The Northern Territory Government completed the review and reform around 60 per cent of its stock of legislation. It reviewed, and where appropriate, reformed 47 per cent of its priority legislation and over 80 per cent of its nonpriority legislation. Compared to other jurisdictions, the Northern Territory's performance was below average.

Excluding areas subject to ongoing interjurisdictional processes, the Northern Territory had 16 areas of noncompliance in priority legislation, including the following instance of a reform outcome that breached the clause 5 guiding principle:

- taxis and hire cars (2003).

The Northern Territory had 14 instances where a commitment to appropriate reform was not evident.

The most significant areas of noncompliance for the Northern Territory include legislation on the reintroduction of entry restrictions to the taxi industry that is in breach of CPA clause 5, and the incomplete review and reform of legislation on liquor licensing and the health-related professions.

New legislation that restricts competition

The CPA clause 5(5) obliges governments to show that proposed new legislation that restricts competition provides a net benefit to the community and that the restriction is necessary to achieve the objectives of the legislation. The obligation regarding new legislation has been ongoing for governments since the signing of the NCP agreements in 1995.

As the 2003 NCP assessment aimed to finalise the review and reform of the stock of legislation, the CPA clause 5(5) obligations assume elevated importance. It would be undesirable for unwarranted anticompetitive restrictions on competition to be removed from existing legislation, only to resurface in new legislation.

The Council wrote to all governments on this matter in late 2002, noting that it considered the CPA clause 5(5) obligation to mean that governments should have in place legislation gatekeeping arrangements that maximise the opportunity for regulatory quality. The Council outlined that it considered that the following principles underpin effective gatekeeping arrangements.

- All legislation that contains nontrivial restrictions on competition should be subject to formal regulatory impact assessment to determine the most effective and efficient approach to achieving the government's regulatory objective, including alternatives to regulation. The impact analysis must explicitly consider competition impacts.

- All government agencies that review or make regulations that restrict competition must follow guidelines for the conduct of regulation impact analysis.

- An independent body with relevant expertise advises agencies on when and how to conduct regulatory impact assessment. The body is empowered to examine regulatory impact assessments and to advise the Cabinet on whether they provide an adequate level of analysis.

- The regulatory impact assessment body monitors and reports annually on compliance with the regulation impact analysis guidelines.

All governments have established arrangements for gatekeeper scrutiny of the competition impacts of new and amended legislation. The Council examined governments' gatekeeping mechanisms to ensure that appropriate processes are in place to ensure new legislation complies with the CPA guiding principle (see chapter 13, volume 2).

The Commonwealth Government's gatekeeping procedures represent best practice as they require impact assessment for all regulatory proposals (primary, subordinate, quasi-regulation and treaties) and are underpinned by detailed guidelines on the conduct of impact analysis. An independent Office of Regulation Review is empowered to examine agencies' regulatory impact assessments and to advise on the adequacy of the analysis at the decision-making and tabling/transparency stages. It also monitors and reports annually on compliance with the regulation impact analysis guidelines.

Other jurisdictions subject all primary and subordinate legislation to their gatekeeping requirements. New South Wales, however, does not subject direct amendments to legislation to its gatekeeping requirements. The Council considers this to be a material omission. On other aspects there is a degree of divergence between the models adopted by each jurisdiction and the best practice model adopted by the Commonwealth. For example many States and the ACT use Cabinet processes to implement gatekeeping mechanisms for primary legislation and therefore may not require the final RIS to be made available publicly. The quality and independence of monitoring and reporting also varies considerably across the States and Territories.

The Council conducted checks on the efficacy of jurisdictions' gatekeeping mechanisms by examining some new legislation in priority areas to ensure compliance with the CPA clause 5 guiding principle. (Subsequent chapters in volume 2 discuss such relevant legislation.) These checks revealed examples where, despite the efficacy of the gatekeeping system, governments have implemented legislation that restricts competition even where it has not been demonstrated that it provides a net benefit to the community and/or the objectives of the legislation could have been achieved without restricting competition. This indicates that while an effective gatekeeping mechanism is necessary to achieve good regulatory outcomes, it will not always be sufficient.

Gatekeeping systems need to be supported by governments and the departments and agencies responsible for undertaking regulatory impact analyses. Ongoing scrutiny is important. Over time experience may highlight deficiencies in gatekeeping systems that need to be addressed or improvements that could be made that lead to more effective and efficient regulatory and administrative outcomes. Responsibility for scrutinising the gatekeeping systems rests with all governments and the Council will continue to monitor new legislation and gatekeeping arrangements to ensure that governments continue to strive for best practice regulation.

Table 4.2: Noncompliance with legislation review and reform — Commonwealth Government

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Wheat Marketing Act 1989	Does not meet CPA obligations (2002)	Review did not show the export 'single desk' is in the public interest. Further review in 2004 will not address NCP issues.	1
Dairy Produce Act 1986 (export control)	Incomplete — firm commitment demonstrated	Most restrictions on competition removed.	1
Agricultural and Veterinary Chemicals Code Act 1994 *Agricultural and Veterinary Chemicals (Administration) Act 1992*	Incomplete — interjurisdictional process		1
Imported Food Control Act 1992	Incomplete — firm commitment demonstrated	Some reforms were implemented and further amendments were introduced to Parliament.	1
Quarantine Act 1908 (plant and animal)	Incomplete — firm commitment demonstrated	Phased response is being implemented and further review foreshadowed in 2003.	1
Export Control Act 1982 (food)	Incomplete — commitment not demonstrated	Consultation on review outcomes is under way.	1
Aboriginal Land Rights (Northern Territory) Act 1976	Incomplete — commitment not demonstrated	The Government did not respond to the review.	1
Regulations under the Export Control Act related to wood	Incomplete — commitment not demonstrated	The review recommended repeal of the regulations.	1
Shipping Registration Act 1912	Incomplete — commitment not demonstrated	Reforms are being held up by broader shipping reform matters.	2
Navigation Act 1912	Incomplete — commitment not demonstrated	Government is considering the review.	2
Motor Vehicle Standards Act 1989	Does not meet CPA obligations (2002)	Restrictions, although minor, were not shown to be in the public interest.	2
Therapeutic Goods Act 1989 (drugs and poisons)	Incomplete — interjurisdictional process		3

(*continued*)

Table 4.2 continued

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Health Insurance Act 1973 (*Part IIA*) (pathology collection centre licensing)	Incomplete — commitment not demonstrated	The Government would comply if it announced a review as recommended by steering committee.	3
National Health Act 1953 *Health Insurance Act 1973* (restrictions on services covered by private health insurance)	Incomplete — commitment not demonstrated	Trialling of less restrictive approach was delayed to late 2003.	3
Superannuation Act 1976 *Superannuation Act 1990* *Superannuation Guarantee (Administration) Act 1992*	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	6
Parliamentary Contributory Superannuation Act 1948	Does not meet CPA obligations (2003)	Monopoly provision of superannuation.	6
Superannuation Industry (Supervision) Act 1993 *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987* *Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Act 1991* *Superannuation (Resolution of Complaints) Act 1993* *Occupational Superannuation Standards Regulations Applications Act 1992* *Superannuation (Financial Assistance Funding) Levy Act 1993*	Incomplete — firm commitment demonstrated	Government response was in accord with review recommendations, and exposure draft legislation was circulated. In other instances, the Government has undertaken actions consistent with the review recommendations.	6
Safety, Rehabilitation and Compensation Act 1988	Incomplete — interjurisdictional process		6

(*continued*)

Table 4.2 continued

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Interactive Gambling Act 2001	Incomplete — commitment not demonstrated	Draft review report is expected in 2003.	9
Broadcasting Services Act 1992 *Radio Licence Fees Act 1964* *Television Licence Fee Act 1964*	Does not meet CPA obligations (2003)	Retains numerous restrictions on competition without a public interest case.	11
Radiocommunications Act 1992 and related legislation	Incomplete — commitment not demonstrated	The Government has made some progress and is considering some other recommendations.	11
Australian Postal Corporation Act 1989	Does not meet CPA obligations (2003)	Pro-competitive legislation was defeated in the Senate, but some minor reforms were made.	11
Anti-dumping Authority Act 1998 *Customs Act 1901 part XVB* *Customs Tariff (Anti-dumping) Act 1975*	Incomplete — commitment not demonstrated	Review has not commenced.	12
Customs Tariff Act 1995 – Automotive Industry Arrangements	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	12
Customs Tariff Act 1995 – Textiles Clothing and Footwear	Incomplete — commitment not demonstrated	Review is completed and under consideration by the Government.	12

Table 4.3: Noncompliance with legislation review and reform — New South Wales

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Grain Marketing Act 1991	Does not meet CPA obligations (2002)	Monopoly is legislated to the end of 2005 without public interest justification.	1
Poultry Meat Industry Act 1986	Does not meet CPA obligations (2002)	Restricts competition between processors and between growers.	1
Agricultural and Veterinary Chemicals (New South Wales) Act 1994	Incomplete — interjurisdictional process		1
Marketing of Primary Products Act 1983 (Rice Marketing Board)	Incomplete — see next column	Outcome of Commonwealth consultations with other jurisdictions on export authority proposal not announced. The New South Wales Government has extended vesting for a further five years pending new NCP review.	1
Fisheries Management Act 1994	Incomplete — firm commitment demonstrated	The Government made considerable progress.	1
Stock Medicines Act 1989	Incomplete — interjurisdictional process		1
Food Act 1989	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	1
Farm Debt Mediation Act 1994	Does not meet CPA obligations (2003)	The Act enforces compulsory mediation between lenders and farmers and deferral of farm debt appropriation.	1
Mines Inspection Act 1901	Incomplete — commitment not demonstrated	Act is slated for repeal in 2003.	1
Veterinary Surgeons Act 1986	Incomplete — commitment not demonstrated	Draft Bill is under preparation.	1
Passenger Transport Act 1990 (taxis)	Does not meet CPA obligations (2003)	Limited liberalisation of entry restrictions.	2
Tow Truck Industry Act 1998	Incomplete — firm commitment demonstrated	Further review will occur after trial allocation system.	2

(*continued*)

Table 4.3 continued

Title of legislation	Assessment	Comment	Chapter reference (Vol. 2)
Marine Safety Act 1998	Incomplete — firm commitment demonstrated	Awaiting advice from the Commonwealth on the National Review of the Uniform Shipping Laws Code.	2
Dentists Act 1989	Does not meet CPA obligations (2003)	Act contains ownership restrictions.	3
Nurses Act 1991	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	3
Optical Dispensers Act 1963 *Optometrists Act 1930*	Does not meet CPA obligations (2003)	Act contains ownership restrictions.	3
Podiatrists Act 1989	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	3
Pharmacy Act 1964	Incomplete – commitment not demonstrated	Proposals for reform before the Cabinet	3
Legal Professions Act 1987	Incomplete – interjurisdictional process		4
Wool, Skin and Hide Dealers Act 1935	Incomplete — commitment not demonstrated	Legislative reform is anticipated in 2003.	5
Travel Agents Act 1986	Incomplete – interjurisdictional process		5
Shops and Industries Act 1962 (hairdressers)	Incomplete — commitment not demonstrated	Legislative reform is anticipated in 2003.	5
Commercial Agents and Private Inquiry Agents Act 1963	Incomplete — commitment not demonstrated	Legislative reform is anticipated in 2003.	5
Workers Compensation Act 1987	Incomplete – interjurisdictional process		6
Registered Clubs Act 1976 (liquor) *Liquor Act 1982* (liquor)	Incomplete — commitment not demonstrated	Review completed. Awaiting Government response.	7
Funeral Funds Act 1979	Incomplete — firm commitment demonstrated	The Government is considering if new legislation may be required to implement the review's recommendations.	8
Trade Measurement Administration Act 1989	Incomplete – interjurisdictional process		8

(*continued*)

Table 4.3 continued

Title of legislation	Assessment	Comment	Chapter reference (Vol. 2)
Child (Care and protection) Act 1987 *Children and Young Persons (Care and Protection) Act 1988*	Incomplete — firm commitment demonstrated	Reform implementation expected soon.	9
NSW Lotteries Corporatisation Act 1996 *Public Lotteries Act 1996*	Incomplete — commitment not demonstrated	Government is considering the review report.	9
Casino Control Act 1992	Incomplete — commitment not demonstrated	Government is considering the review report.	9
Gaming Machines Act 2001	Does not meet CPA obligations (2003)	Act provides for an exclusive licence.	9
Racing Administration Act 1998	Does not meet CPA obligations (2002)	Legislation retains provisions for minimum telephone bets and restrictions on advertising of interstate betting services.	9
Environmental Planning and Assessment Act 1979 and planning and land use reform projects	Incomplete — firm commitment demonstrated	The Government made good progress in planning/land use projects.	10
Architects Act 1921	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	10

Table 4.4: Noncompliance with legislation review and reform — Victoria

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Agriculture and Veterinary Chemicals (Victoria) Act 1994 *Agriculture and Veterinary Chemicals (Control of Use) Act 1992*	Incomplete — interjurisdictional process		1
Fisheries Act 1995	Incomplete — firm commitment demonstrated	The Government made considerable progress.	1
Extractive Industries Development Act 1995	Incomplete —commitment not demonstrated	New legislation slated for Parliament in 2003.	1
Transport Act 1983 (provisions relating to tow trucks) and Transport (Tow Truck) Regulations	Does not meet CPA obligations (2003)	Legislation retains barriers to entry.	2
Port Services Act 1995	Incomplete — firm commitment demonstrated	Reform was partly implemented and a further Bill is slated for Parliament in spring 2003.	2
Drugs, Poisons and Controlled Substances Act 1981	Incomplete — interjurisdictional process		3
Pharmacists Act 1974	Incomplete – commitment not demonstrated	Review recommendations under consideration	3
Legal Practice Act 1996	Incomplete — interjurisdictional process	Act complies in other respects.	4
Private Agents Act 1966	Incomplete — commitment not demonstrated	Legislative reform is anticipated in 2004.	5
Travel Agents Act 1986	Incomplete — interjurisdictional process		5
Accident Compensation Act 1985 *Accident Compensation (Workcover Insurance) Act 1983*	Incomplete — interjurisdictional process		6
Transport Accident Act 1986	Incomplete — interjurisdictional process		6
Trade Measurement (Administration) Act 1995	Incomplete — interjurisdictional process		8
Tattersall Consultation Act 1958; Public Lotteries Act 2000	Does not meet CPA obligations (2003)	The Government extended the exclusive licence.	9
Building Act 1993 (building approvals)	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in 2003.	10
Architects Act 1991	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in 2003.	10
Surveyors Act 1978	Incomplete — commitment not demonstrated	Progression of Bill is under consideration.	10

Table 4.5: Noncompliance with legislation review and reform — Queensland

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Agricultural and Veterinary Chemicals (Queensland) Act 1994	Incomplete — interjurisdictional process		1
Agricultural Chemicals Distribution Control Act 1966	Incomplete — firm commitment demonstrated	Amended Act to be proclaimed in October 2003.	1
Fisheries Act 1994	Incomplete — firm commitment demonstrated	The Government made considerable progress.	1
Sawmills Licensing Act 1936	Incomplete — commitment not demonstrated	The review recommended the act be repealed.	1
Transport Operations (Passenger Transport) Act 1994 (taxis)	Does not meet CPA obligations (2003)	No progress in reducing barriers to entry.	2
Transport Infrastructure (Rail) Regulation 1996 — *Transport Infrastructure Act 1994*	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	2
Transport Infrastructure (Ports) Regulation 1994 — *Transport Infrastructure Act 1994* (activities outside ports)	Does not meet CPA obligations (2002)	Legislation limits certain activities to authorised ports.	2
Health practitioner legislation (practice restrictions): *Chiropractors and Osteopaths Act 1979* *Dental Act 1971; Dental Technicians and Dental Prosthetists Act 1991* *Medical Act 1939* *Optometrists Act 1974 / Optometrists Registration Act 2001* *Physiotherapy Act 1964* *Physiotherapists Registration Act 2001* *Podiatrists Act 1969* *Podiatrists Registration Act 2001*	Incomplete — firm commitment demonstrated	Amending legislation is before Parliament.	3

(*continued*)

Table 4.5 continued

Title of legislation	Assessment	Comment	Chapter reference (Vol. 2)
Nursing Act 1992	Incomplete — commitment not demonstrated	Review completed in August 2003.	3
Occupational Therapists Act 1979	Does not meet CPA obligations (2002)	Act provides for reservation of title.	3
Speech Pathologists Act 1979	Does not meet CPA obligations (2002)	Act provides for reservation of title.	3
Pharmacy Act 1976	Incomplete – commitment not demonstrated	Reforms to be introduced in 2003	3
Health Act 1937 (drugs and poisons)	Incomplete — interjurisdictional process		3
Legal Practitioners Act 1995	Incomplete — interjurisdictional process		4
Health Act 1937 (hairdressing)	Incomplete — commitment not demonstrated	Reforms are expected to commence in July 2004.	5
Pawnbrokers Act 1984 *Second-hand Dealers and Collectors Act 1984*	Incomplete — commitment not demonstrated	New legislation is expected in 2003.	5
Travel Agents Act 1988	Incomplete — interjurisdictional process		5
Auctioneers and Agents Act 1971 (maximum commissions for auctioneers and real estate agents) *Property Agents and Motor Dealers Act 2000*	Incomplete — commitment not demonstrated	Review is under consideration.	5
*Workcover Queensland Act 1996 (*monopoly insurance provision)	Incomplete — interjurisdictional process		6
Superannuation (Government and other Employees) Act 1998	Does not meet CPA obligations (2003)	Act underpins monopoly provision of superannuation.	6
Liquor Act 1992	Does not meet CPA obligations (2003)	Hotel monopoly on the sale of packaged liquor and restrictions on the ownership, location and configuration of bottle shops.	7

(*continued*)

Table 4.5 continued

Title of legislation	Assessment	Comment	Chapter reference (Vol. 2)
Funeral Benefit Business Act 1982	Incomplete — commitment not demonstrated	Bill may be introduced in late August 2003.	8
Credit Act 1987	Incomplete — firm commitment demonstrated	Reform completion depends on the resolution of matters before the courts.	8
Keno Act 1996 *Charitable and Non-profit Gambling Act 1999*	Incomplete — commitment not demonstrated	Review report is expected in July 2003.	9
Gaming Machine Act 1991	Incomplete — commitment not demonstrated	Government is considering the review report.	9
Wagering Act 1998 (TAB)	Incomplete — commitment not demonstrated	Draft review was released in April 2003.	9
Interactive Gambling (Player Protection) Act 1998	Incomplete — interjurisdictional process	Reform completion depends on resolution of Commonwealth legislation.	9
Grammar Schools Act 1975	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in late 2003.	9
Child Care Act 1991 Child Care (Child Care Centres) Regulation 1991 and Child Care (Family Day Care) Regulation 1991	Incomplete — firm commitment demonstrated	Act and Regulations come into effect on 1 September 2003.	9
Surveyors Act 1977	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	10

Table 4.6: Noncompliance with legislation review and reform — Western Australia

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Agricultural and Veterinary Chemicals (Western Australia) Act 1995 *Agricultural Produce (Chemical Residues) Act 1983* *Aerial Spraying Control Act 1966*	Incomplete — interjurisdictional process		1
Veterinary Preparations and Animal Feeding Stuffs Act 1976	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	1
Grain Marketing Act 1975	Incomplete — firm commitment demonstrated	Regulations and Ministerial guidelines are to be finalised.	1
Marketing of Eggs Act 1945	Incomplete — commitment not demonstrated	Removal of restrictions is slated for no later than 2007.	1
Chicken Meat industry Act 1977	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	1
Marketing of Potatoes Act 1946	Does not meet CPA obligations (2003)	Restrictions were retained without adequate public interest evidence.	1
Health Act 1911 and Food regulations under the Health Act	Incomplete — commitment not demonstrated	The Regulations are under review.	1
Veterinary Surgeons Act 1960	Incomplete — commitment not demonstrated	Legislative amendments are to be drafted.	1
Fish Resources Management Act 1994	Does not meet CPA obligations (2003)	Restrictions were retained without public interest evidence.	1
Pearling Act 1990	Incomplete — commitment not demonstrated	The recommended reforms have not been implemented. The Government also intends to retain hatchery quota against the recommendations of the NCP review.	1
Sandalwood Act 1929	Incomplete — firm commitment demonstrated	Legislation is before Parliament	1

(*continued*)

Table 4.6 continued

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Taxi Act 1994	Incomplete — commitment not demonstrated	First-stage reforms were announced.	2
Explosives and Dangerous Goods Act 1961	Incomplete — firm commitment demonstrated	Legislation is before Parliament	2
Jetties Act 1926 and Regulations *Lights (Navigation) Protection Act 1938* *Marine and Harbours Act 1981* and Regulations *Shipping and Pilotage Act 1967* and Regulations *Marine Act 1982*	Incomplete — commitment not demonstrated	Drafting of legislation is slated for late 2003.	2
Transport Co-ordination Act 1966	Incomplete — commitment not demonstrated	The Government is yet to finalise legislation.	2
Health practitioner legislation: *Dental Act 1939; Dental Prosthetists Act 1985* *Chiropractors Act 1964* *Optical Dispensers Act 1966; Optometrists Act 1940* *Nurses Act 1992* *Osteopaths Act 1997* *Physiotherapists Act 1950* *Podiatrists Registration Act 1984* *Psychologists Registration Act 1976* *Occupational Therapists Registration Act 1980*	Incomplete — see next column	The Council and Western Australia previously agreed that the State's health practitioner core practices review would be completed and implemented fully by June 2004. The Government did not, however, introduce important template health practitioner legislation for which drafting commenced in 2001. Nevertheless, in July 2003, it advised the Council that a steering committee had been established and that its draft review report is expected soon. The Government indicated that '[t]his will enable legislative amendment to be implemented by June 2004'.	3
Medical Act 1894	Incomplete — commitment not demonstrated	New legislation slated for late 2003	
Poisons Act 1964 *Health Act 1911* (Part VIIA) *(*drugs and poisons)	Incomplete — interjurisdictional process		3

(*continued*)

Table 4.6 continued

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Pharmacy Act 1964	Incomplete — commitment not demonstrated	Department of Health is considering review outcomes	3
Legal Practitioners Act 1893	Incomplete — interjurisdictional process		4
Motor Vehicle Driving Instructors Act 1963	Incomplete — commitment not demonstrated	Review report is expected in late 2003.	5
Auction Sales Act 1973	Incomplete — commitment not demonstrated	Review report endorsed by Cabinet.	5
Travel Agents Act 1985 and Regulations	Incomplete — interjurisdictional process		5
Settlement Agents Act 1981	Incomplete — commitment not demonstrated	Review report was endorsed by Cabinet.	5
Pawnbrokers and Second-hand Dealers Act 1994	Incomplete — commitment not demonstrated	Draft Bill is ready for Ministerial endorsement.	5
Debt Collectors Licensing Act 1964	Incomplete — commitment not demonstrated	Review report endorsed by Cabinet.	5
Employment Agents Act 1976	Incomplete — commitment not demonstrated	Review report is expected in late 2003.	5
Hairdressers Registration Act 1946	Incomplete — commitment not demonstrated	Review was completed.	5
Real Estate and Business Agents Act 1978	Incomplete — commitment not demonstrated	Legislative amendments are being drafted.	5
Motor Vehicle (Third Party Insurance) Act 1943	Incomplete — interjurisdictional process		6
State Superannuation Act 2000	Incomplete — commitment not demonstrated	Restricted review is under way.	6
Workers Compensation and Rehabilitation Act 1981	Incomplete — interjurisdictional process		6
Retail Trading Hours Act 1987	Does not meet CPA obligations (2003)	The Government will take no further action until 2005.	7
Liquor Licensing Act 1988	Does not meet CPA obligations (2003)	The Government will take no further action until 2005.	7

(*continued*)

Table 4.6 continued

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Petroleum Products Pricing Amendment Act 2000 *Petroleum Legislation Amendment Act 2001*	Does not meet CPA obligations (2003)	Price notification and fuel supply arrangements found by the ACCC not to be in the public interest.	7
Environmental Protection (Diesel and Petrol) Regulations 1999	Does not meet CPA obligations (2003)	Legislation confers monopoly status on the local refinery.	7
Retirement Villages Act 1992	Incomplete — commitment not demonstrated	Amendments are being drafted.	8
Credit (Administration) Act 1984	Incomplete — commitment not demonstrated	Draft amendments caused delay.	8
Hire Purchase Act 1959	Incomplete — firm commitment demonstrated	Parliament is to visit legislation in August 2003.	8
Weights and Measures Act 1915	Incomplete — interjurisdictional process		8
Education Service Providers (Full Fee Overseas Students) Registration Act 1992	Incomplete — commitment not demonstrated	Review is under way.	9
Curtin University of Technology Act 1966 *Edith Cowan University Act 1984* *Murdoch university Act 1973* *University of Notre Dame Australia Act 1989* *University of Western Australia Act 1911*	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	9
Community Services Act 1972 and the Community Services (Child Care) Regulations 1988	Incomplete — commitment not demonstrated	Bill under development	9
Lotteries Commission Act 1990; Gaming Commission Act 1987	Incomplete — commitment not demonstrated	Government is considering the review reports.	9
Betting Control Act 1954 (casinos and betting) *Totalisator Agency Board Betting Act 1960* (betting) *Racing Restrictions Act 1917*	Does not meet CPA obligations (2003)	Acts provide for exclusive TAB licence and bookmakers' minimum bets.	9

(*continued*)

Table 4.6 continued

Title of legislation	Assessment	Comment	Chapter reference (Vol. 2)
Western Australian Greyhound Racing Association Act 1981	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	9
Casino (Burswood Island) Agreement Act 1985 Casino Control (Burswood Island)(Licensing of Employees) Regulations 1985 *Casino Control Act 1984*	Incomplete — commitment not demonstrated	Legislative reforms did not address key restrictions. (Exclusive licence has expired.)	9
Gaming Commission Act 1987	Incomplete — commitment not demonstrated	The review has been completed.	9
Town Planning and Development Act 1928 *Western Australian Planning Commission Act 1985* *Metropolitan Region Town Planning Scheme Act 1959*	Incomplete — commitment not demonstrated	Legislation is slated for Parliament 2004.	10
Local Government (Miscellaneous Provisions) Act 1960 and Building Regulations 1989	Incomplete — commitment not demonstrated	Drafting of new legislation was delayed.	10
Architects Act 1921	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in 2003.	10
Licensed Surveyors Act 1909	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	10
Valuation of Land Act 1987	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	10
Painters Registration Act 1961	Incomplete — commitment not demonstrated	Review report is to be referred to the Minister.	10
Gas Standards Act 1972 and Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999	Incomplete — commitment not demonstrated	Review is under way.	10
Electricity Act 1945 and Electricity (Licensing) Regulations 1991	Incomplete — commitment not demonstrated	Review is with the Minister for Energy.	10

Table 4.7: Noncompliance with legislation review and reform — South Australia

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Agricultural and Veterinary Chemicals (South Australia) Act 1994	Incomplete — interjurisdictional process		1
Agricultural Chemicals Act 1955; Stock Foods Act 1941; Stock Medicines Act 1939	Incomplete — firm commitment demonstrated	Legislation was passed in August 2002 and Regulations are expected to be finalised soon.	1
Chicken Meat Industry Act 2003	Does not meet CPA obligations (2003)	Act contains compulsory arbitration provisions.	1
Barley Marketing Act 1993	Incomplete — commitment not demonstrated	Government is yet to fully respond to the review.	1
Dairy Industry Act 1992 *Meat Hygiene Act 1994*	Incomplete — commitment not demonstrated	Framework consultation is planned for August 2003 for dairy. Meat hygiene to be addressed in late 2003.	1
Veterinary Surgeons Act 1985	Incomplete — firm commitment demonstrated	Legislation is before Parliament and scheduled to commence in 2004.	1
Mining Act 1971 *Mines and Works Inspection Act 1920* *Opal Mining Act 1995*	Incomplete — commitment not demonstrated	Review was completed in December 2002 and legislation is slated for 2003.	1
Fisheries Act 1982	Incomplete — commitment not demonstrated	Amendments expected in spring 2003.	1
Fisheries (Gulf St Vincent Prawn Fishery Rationalisation) Act 1987	Incomplete — firm commitment demonstrated	Legislation is slated for repeal.	1
Passenger Transport Act 1994	Does not meet CPA obligations (2003)	Barriers to entry into the taxi industry.	2
Motor Vehicles Act 1959 (tow trucks)	Incomplete — commitment not demonstrated	Draft Bill slated for August 2003	2
Dangerous Substances Act 1979	Incomplete — commitment not demonstrated	Legislation is yet to be introduced.	2
Harbours and Navigation Act 1993	Incomplete — see next column	Intergovernmental agreement is delaying reform.	2

(*continued*)

Table 4.7 continued

Title of legislation	Assessment	Comment	Chapter reference (Vol. 2)
Dentists Act 1984	Does not meet CPA obligations (2003)	Act contains ownership restrictions.	3
Occupational Therapists Act 1974	Incomplete — commitment not demonstrated	Proposed legislation for introduction in 2004 will not comply.	3
Chiropractors Act 1991	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in 2003.	3
Medical Practitioners Act 1983	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in 2003.	3
Optometrists Act 1920	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in 2004.	3
Physiotherapists Act 1991	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in 2004.	3
Pharmacy Act 1991	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in 2003.	3
Psychological Practices Act 1973	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in 2004.	3
Chiropodists Act 1950s	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in 2003.	3
Controlled Substances Act 1984	Incomplete — interjurisdictional process		3
Legal Practitioners Act 1981	Incomplete — interjurisdictional process		4
Conveyancers Act 1994	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in late 2003.	5
Employment Agents Registration Act 1993	Incomplete — commitment not demonstrated	Review report is under consideration.	5
Travel Agents Act 1986	Incomplete — interjurisdictional process		5
Motor Vehicles Act 1959 (monopoly insurance provision)	Incomplete — interjurisdictional process		6
Workers Rehabilitation and Compensation Act 1986	Incomplete — interjurisdictional process		6
Southern State Superannuation Act 1987	Does not meet CPA obligations (2003)	Act underpins monopoly provision of superannuation.	6

(*continued*)

Table 4.7 continued

Title of legislation	Assessment	Comment	Chapter reference (Vol. 2)
Liquor Licensing Act 1997	Incomplete — commitment not demonstrated	Review is under way.	7
Shop Trading Hours Act 1977	Does not meet CPA obligations (2003)	Substantial reforms were introduced in 2003.	7
Petrol Products Regulation Act 1995	Incomplete — commitment not demonstrated	Legislation is being drafted.	7
Trade Measurement Administration Act 1993	Incomplete — interjurisdictional process		8
Children's Protection Act 1993	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in 2004.	9
State Lotteries Act 1966	Does not meet CPA obligations (2003)	The Act provides for an exclusive licence.	9
Gaming Machines Act 1992	Incomplete — commitment not demonstrated	The Government is yet to respond fully to the review.	9
Authorised Betting Operations Act 2000 (racing and betting)	Incomplete — commitment not demonstrated	The Government is considering the review report.	9
Lottery and Gaming Act 1936	Incomplete — commitment not demonstrated	Review reported in March 2003.	9
Architects Act 1939	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in 2003.	10
Survey Act 1992	Incomplete — commitment not demonstrated	Draft Bill was prepared.	10
Land Valuers Act 1994	Incomplete — commitment not demonstrated	The Government endorsed the review recommendations.	10
Building Work Contractors Act 1995	Incomplete — interjurisdictional process	Finalisation of the review of financial resources and building indemnity insurance requirements was deferred pending completion of a national process. Legislation is anticipated in late 2003.	10

Table 4.8: Noncompliance with legislation review and reform — Tasmania

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Agricultural and Veterinary Chemicals (Tasmania) Act 1994	Incomplete — interjurisdictional process		1
Agricultural and Veterinary Chemicals (Control of Use) Act 1995	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	1
Food Act	Incomplete — firm commitment demonstrated	New Act is yet to be proclaimed.	1
Veterinary Surgeons Act 1987	Does not meet CPA obligations (2003)	The Board is dominated by veterinarians.	1
Marine Farming Planning Act 1995	Does not meet CPA obligations (2003)	The Government did not adequately demonstrate the public interest in Ministerial discretion to allocate water area via leases.	1
Taxi and Luxury Hire Car Industries Act 1995	Incomplete — commitment not demonstrated	The Government is considering the review recommendations.	2
Medical Practitioners Registration Act 1996	Incomplete — commitment not demonstrated	Consultation on review outcomes is under way.	3
Pharmacy Act 1908 (replaced by *Pharmacy Registration Act 2001*).	Incomplete — commitment not demonstrated	Considering amending legislation in light of national review	3
Optometrists Registration Act 1994	Incomplete — commitment not demonstrated	Review recommendations are being considered.	3
Poisons Act 1971 *Alcohol and Drug Dependency Act 1968* *Pharmacy Act 1908* (replaced by *Pharmacy Registration Act 2001*) *Criminal Code Act 1924* (drugs and poisons)	Incomplete — interjurisdictional process		3
Legal Profession Act 1993	Incomplete — interjurisdictional process		4
Auctioneers and Real Estate Agents Act 1991	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in spring 2003 session.	5

(*continued*)

Table 4.8 continued

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Travel Agents Act 1987	Incomplete — interjurisdictional process		5
Motor Accidents (Liabilities and Compensation) Act 1973	Incomplete — interjurisdictional process		6
Vocational Education and Training Act 1994	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in spring 2003.	9
Racing Act 1983 *Racing and Gaming Act 1952* (except as it relates to minor gaming), which was replaced by the *Racing Regulation Act 1952*	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in spring 2003.	9
Gaming Control Act 1993 (gaming machines)	Incomplete — commitment not demonstrated	Proposed exclusive licence before Parliament would not comply.	9
Architects Act 1929	Incomplete — firm commitment demonstrated	Majority or reforms were implemented. Residual matters will be dealt with in 2003–04.	10
Plumbers and Gas-fitters Registration Act 1951	Incomplete — commitment not demonstrated	Cabinet to consider review recommendations.	10

Table 4.9: Noncompliance with legislation review and reform — ACT

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Veterinary Surgeons Registration Act 1965	Incomplete — commitment not demonstrated	Draft Bill was not finalised.	1
Dangerous Goods Act 1984 (applies New South Wales legislation to ACT)	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in spring 2003.	2
Motor Traffic Act 1936 (taxis) *Road transport (General) Act 1999* *Road transport (Passenger Services) Act 2001*	Incomplete — commitment not demonstrated	The Government announced a potentially flawed liberalisation arrangement.	2
Health practitioner legislation: *Dental Technicians and Dental Prosthetists Registration Act 1988* *Dentists Act 1931* *Chiropractors and Osteopaths Act 1983* *Medical Practitioners Act 1930* *Nurses Act 1988* *Optometrists Act 1956* *Physiotherapists Act 1977* *Psychologists Act 1994* *Podiatrists Act 1994*	Incomplete — commitment not demonstrated	New legislation is scheduled for introduction to Parliament in spring 2003.	3
Pharmacy Act 1931	Incomplete — commitment not demonstrated	Revised legislation is being prepared	3
Drugs of Dependence Act 1989 *Poisons Act 1933; Poisons and Drugs Act 1978* (drugs and poisons)	Incomplete — interjurisdictional process		3
Legal Practitioners Act 1970	Incomplete — interjurisdictional process		4
Agents Act 1968 (travel agents)	Incomplete — interjurisdictional process		5

(*continued*)

Table 4.9 continued

Title of legislation	Assessment	Comment	Chapter reference (Vol. 2)
*Agents Act 1968 (*employment agents)	Does not meet CPA obligations (2003)	Act retains licencing, but licence fees reduced substantially.	5
Public Sector Management Act 1994 (superannuation)	Incomplete — interjurisdictional process	Reform depends on Commonwealth legislation.	6
Education Act 1937 *Schools Authority Act 1976* *Public Instruction Act 1880 (NSW)* *Free Education Act 1906 (NSW)*	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in spring 2003.	9
Betting (ACTTAB Limited) Act 1964 *Betting (Corporatisation) (Consequential Provisions) Act 1996*	Incomplete — firm commitment demonstrated	Reform deferred pending the findings of a national task force on cross-border betting.	9
Gaming Machine Act 1987	Incomplete — commitment not demonstrated	Review report is under consideration.	9
Interactive Gambling Act 1998	Incomplete — interjurisdictional process	Reform depends on Commonwealth legislation.	9
Architects Act 1959	Incomplete — commitment not demonstrated	Consultation failed to gain agreement on proposed new Act. A rewrite of the 1959 Act is to be undertaken.	10
Building Act 1972 *Electricity Act 1971* (electricians licensing) *Electricity Safety Act 1971* *Plumbers, Drainers and Gasfitters Board Act 1982*	Incomplete — firm commitment demonstrated	Amending legislation has been introduced.	10

Table 4.10: Noncompliance with legislation review and reform — Northern Territory

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Agricultural and Veterinary Chemicals (Northern Territory) Act	Incomplete — interjurisdictional process		1
Poisons and Dangerous Drugs Act	Incomplete — commitment not demonstrated	Draft Bill is under consideration.	1
Food Act 1986	Incomplete — commitment not demonstrated	Amendments expected in 2003.	1
Veterinarians Act 1994	Incomplete — firm commitment demonstrated	Some reforms implemented	1
Fisheries Act 1996	Incomplete — commitment not demonstrated	The Government has accepted some review recommendations and is considering others.	1
Mining Act 1980	Incomplete — commitment not demonstrated	The Government announced its response to the review.	1
Commercial Passenger (Road) Transport Act (taxis)	Does not meet CPA obligations (2003)	Legislation was previously assessed as complying, but the Government re-introduced restrictions.	2
Health practitioner legislation: *Dental Act* *Health Practitioners and Allied Professionals Registration Act* *Medical Act* *Nursing Act* *Optometrists Act*	Incomplete — commitment not demonstrated	New legislation is scheduled for Parliament in November 2003.	3
Radiographers Act	Incomplete — commitment not demonstrated	Legislation slated for Parliament in November 2003	3
Pharmacy Act	Incomplete — commitment not demonstrated	Legislation slated for Parliament in 2003	3

(*continued*)

Table 4.10 continued

Title of legislation	Assessment	Comment	Chapter reference (Vol. 2)
Poisons and Dangerous Drugs Act *Therapeutic Goods and Cosmetics Act* (drugs and poisons)	Incomplete — interjurisdictional process		3
Legal Practitioners Act	Incomplete — interjurisdictional process		4
Consumer Affairs and Fair Trading Act (NT Regulations) and Amendment Act 1996 (travel agents)	Incomplete — interjurisdictional process		5
Territory Insurance Office Act *Motor Accidents (Compensation) Act*	Incomplete — interjurisdictional process		6
Liquor Act	Incomplete — commitment not demonstrated	Review report is being finalised.	7
Education Act (higher education)	Incomplete — commitment not demonstrated	Review is under consideration.	9
Community Welfare Act	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in November 2003.	9
Gaming Control Act and regulations *Gaming Machine Act* and regulations	Incomplete — commitment not demonstrated	The Government is considering the review report.	9
Totalisator Licensing and Regulation Act *Sale of NT TAB Act*	Incomplete — commitment not demonstrated	Government response to review is expected late 2003.	9
Racing and Betting Act and regulations *Unlawful Betting Act* and regulations	Incomplete — commitment not demonstrated	Government is considering the review report.	9
Architects Act	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in August 2003.	10

5 The Conduct Code Agreement obligations

In addition to obligations in the Competition Principles Agreement (CPA), National Competition Policy (NCP) commitments aim to improve the effectiveness of regulation in the Conduct Code Agreement. Clause 2(1) of the Conduct Code Agreement requires all governments to notify the Australian Competition and Consumer Commission (ACCC) of legislation or provisions in legislation that rely on s. 51(1) of the *Trade Practices Act 1974* (the TPA) within 30 days of the legislation being enacted or made.

Section 51(1) of the TPA provides that conduct that would be an offence under the Act's restrictive trade practices provisions may be permitted if authorised under a Commonwealth, State or Territory Act. As such, legislation that is relevant to clause 2(1) of the Conduct Code Agreement is new legislation restricting competition, so it needs to satisfy the tests in clause 5 of the CPA.

Each of the National Competition Council's NCP assessment reports lists the legislation relevant to clause 2(1) that governments enacted since the previous assessment, along with the date of notification to the ACCC. Since 1 July 2002 — the commencement date of the period for the current NCP assessment — several State and Territory governments have enacted legislation relying on s. 51(1) of the TPA.[1]

The Conduct Code Agreement also required (under clause 2[3]) governments to notify the ACCC by 20 July 1998 of all continuing legislation that relies on s.51(1) of the TPA.[2] As part of the 1999 NCP assessment, all governments stated that they had notified the ACCC of all relevant legislation.

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1 For legislation passed between 11 April 1995 (the earliest date stated in the agreement) and 30 June 1999 and notified by jurisdictions, see NCC 1999b, pp. 172-7. For legislation passed between 1 July 1999 and 30 June 2002 and notified by jurisdictions, see NCC 2001, p. 26.2 and NCC 2002, p. 16.2.

2 For this list, see NCC 1999b, pp. 172–7.

Legislation notified to the ACCC

In accordance with clause 2(1) of the Conduct Code Agreement, the following governments notified the ACCC of legislation that relies on s. 51(1) of the TPA:

- New South Wales — *Poultry Meat Industry Amendment (Price Determination) Act*, notified on 18 November 2002.
- Western Australia — *Grain Marketing Act 2002*, notified on 22 November 2002.
- Northern Territory — *Consumer and Fair Trading (Tow Truck Operators Code of Practice) Regulations*, notified on 10 April 2003.
- Queensland — *Transport (Busway and Light Rail) Amendment Act 2000*, notified on 20 May 2003.

6 National standard setting obligations

The Agreement to Implement the National Competition Policy and Related Reforms (the Implementation Agreement) obliges governments to ensure Ministerial councils and intergovernmental standard-setting bodies set national regulatory standards in accord with principles and guidelines endorsed by the Council of Australian Governments (CoAG). It also obliges governments to seek advice from the independent Commonwealth Office of Regulation Review (ORR) on compliance with these principles and guidelines. The national standard-setting obligation is a collective responsibility of all governments.

The CoAG principles and guidelines aim to promote good regulatory practice in decisions by Ministerial councils and intergovernmental standard-setting bodies. The national standard-setting obligations seek to ensure standards are the minimum necessary, such that they avoid imposing excessive or unnecessary requirements on businesses while accounting for governments' economic, environmental, health and safety concerns. CoAG aims for standards to be subject to a nationally consistent process that assesses their effectiveness in meeting these objectives. Accordingly, CoAG's principles and guidelines:

- set out a consistent process for Ministerial councils and intergovernmental standard-setting bodies to determine whether associated laws and regulations are appropriate; and

- describe, for where regulation is warranted, the features of good regulation and recommend principles for setting standards and taking regulatory action.

CoAG's focus on ensuring effective national standard setting via the 1995 National Competition Policy (NCP) program arose from the concerns of major business associations that Australia's regulatory system could undermine the economy's capacity to compete internationally and attract investment. In the mid-1990s, these associations considered Australia's regulatory system to be unnecessarily complex, generating delays, inconsistencies and additional costs for business investment, and inhibiting risk taking. The Mutual Recognition Agreement, by highlighting discrepancies in standards among jurisdictions, was an impetus for the development of national standards. Under the agreement, Ministerial councils can be called on to create a standard for any product or develop nationally uniform criteria for the registration of any occupation.

Principal or delegated legislation, administrative directions or other measures can give effect to the regulatory agreements or decisions of Ministerial councils and national standard-setting bodies. The ORR, governments and standard-setting bodies usually agree on the types of agreement and decision that the CoAG guidelines cover.

Around 40 Ministerial councils and national standard-setting bodies can make national decisions that have a regulatory impact (PC 2002d, p. xiii). Bodies that develop voluntary codes and other advisory instruments need to account for the CoAG principles and guidelines if promotion and dissemination of the code or instrument could be widely interpreted as requiring compliance (CoAG 1997).

If a Ministerial council or intergovernmental standard-setting body proposes to agree to a regulatory action or adopt a standard, then it must first certify that a regulatory impact statement (RIS) has been completed and that the RIS analysis justifies adoption of the regulatory measure. The RIS must:

- demonstrate the need for the regulation;
- detail the objectives of the measures proposed;
- outline the alternative approaches considered (including nonregulatory options) and explain why they were not adopted;
- document which groups benefit from regulation and which groups pay the direct and indirect costs of implementation;
- demonstrate that the benefits of regulation outweigh the costs (including the administrative costs);
- demonstrate that the regulation is consistent with relevant international standards (or justify any inconsistencies); and
- set a review or sunset date for regulatory instruments (CoAG 1997).

The CoAG principles and guidelines state that the RIS process must be open and public, with advertisements placed in all jurisdictions to notify the intention to adopt regulatory measures, advise that the RIS is available on request, and invite submissions. The RIS must list the persons who made submissions or were consulted, and contain a summary of their views. The Ministerial council or intergovernmental standard-setting body is required to consider views expressed during the consultation process. The RIS forms part of the community consultation and helps to inform standard setting.

The Commonwealth Office of Regulation Review

Under the CoAG guidelines, the ORR has a significant role in the RIS process. It advises Ministerial councils and intergovernmental standard-setting bodies on whether a draft RIS is consistent with CoAG principles and guidelines.

Bodies that set national standards that require a complying RIS are:

- Ministerial councils (for example, the Australian Transport Council, the Environment Protection and Heritage Council and the Australia and New Zealand Food Regulation Ministerial Council); and
- national entities (for example, the National Occupational Health and Safety Commission, the Australian Building Codes Board and the Australian Radiation Protection and Nuclear Safety Agency).

The relevant Ministerial council or intergovernmental standard-setting body must notify the ORR that a RIS is to be drafted on a relevant topic. The ORR assesses each RIS at two stages: first, before the RIS is distributed for consultation with parties affected by the proposed regulation; and, second, just before the relevant body makes a decision. The ORR advises the Ministerial council or intergovernmental standard-setting body of its assessment at each stage. Under the CoAG requirements, the analysis in the consultation RIS does not have to be as detailed as in the final RIS, which should reflect information obtained in consultation and more complete consideration. While not obliged to adopt the advice of the ORR, Ministerial councils and intergovernmental standard-setting bodies should respond to any significant matters that have not been addressed as recommended by the ORR.

The ORR assesses a RIS against the following characteristics.

- Whether the RIS guidelines have been followed.
- Whether the type and level of RIS analysis are adequate and commensurate with the potential economic and social impacts of the proposal.
- Whether the RIS adequately considers alternatives to regulation.

The ORR advises the relevant Ministerial council or intergovernmental standard-setting body of each RIS's assessed compliance with RIS requirements. It also reports to Heads of Government (through the CoAG Committee on Regulatory Reform) on significant decisions of Ministerial councils and intergovernmental standard-setting bodies that it considers are inconsistent with the CoAG guidelines. In addition, it reports to the CoAG

Committee on Regulatory Reform annually on overall compliance with the regulatory practice guidelines.

The ORR annually advises the National Competition Council on governments' compliance with the national standard-setting obligations. The ORR's advice identifies regulatory proposals that should have been subject to the CoAG guidelines and also proposals for which the RIS did not meet requirements (or for which a RIS was not prepared). The ORR's report to the Council also covers broad planning and strategy decisions that have regulatory implications, along with best practice measures such as 'model' legislation that Ministerial councils and intergovernmental standard-setting bodies sometimes agree on to influence the conduct of regulated entities. The ORR's reports to the Council do not comment on administrative decisions where the regulatory framework is already established. Further, the ORR does not comment on decisions that have an insignificant impact and thus would benefit little from undergoing a RIS process.

In its latest annual report to the Council, the ORR commented that it and decision-makers in governments, Ministerial councils and standard-setting bodies usually, but not always, agree on the types of regulatory decision and agreement covered by the CoAG principles and guidelines. The ORR clarified that the CoAG requirements apply to the following areas (in addition to those areas to which the principles and guidelines clearly apply):

- agreements on regulatory approaches, standards and measures of a quasi-regulatory nature;
- agreements of ad hoc bodies of interjurisdictional Ministers or officials addressing national regulatory issues;
- CoAG decisions on national regulatory problems, where the body proposing the regulation is responsible for compliance with the CoAG principles and guidelines; and
- regulatory decisions that require national implementation, and for which States and Territories will prepare their own RISs (ORR 2003).

The ORR's annual advice underpins the Council's consideration of governments' compliance with the national standard-setting obligation in the Implementation Agreement. For the 2003 NCP assessment, the Council sought ORR advice on governments' compliance over the period 1 April 2002 to 31 March 2003. The ORR thus had time to consult with Ministerial councils and intergovernmental standard-setting bodies on its draft findings before finalising its compliance report for the Council. The ORR's compliance report is replicated in full in appendix B of volume 2.

Governments' compliance with CoAG requirements

The NCP obliges governments to demonstrate that bodies setting national standards have prepared an RIS, consistent with the CoAG principles and guidelines, for a proposed regulatory measure. The specification of the standard-setting obligation in the Implementation Agreement implies that the obligation is a collective responsibility of all governments.

In its 2003 compliance report to the Council, the ORR identified 24 decisions made during the year to 31 March 2003 for which CoAG RIS requirements applied and were met. Table 6.1 lists these cases.

Table 6.1: Regulatory matters where RIS requirements were met, 1 April 2002 to 31 March 2003

Regulatory matter	*Body responsible*	*Date of decision*
Ban on human cloning and other 'unacceptable practices', and regulation of the use of excess human embryos for stem cell and related research	Australian Health Ministers Conference. The RIS was prepared for the conference's final consideration of the proposal; this consideration was overtaken by CoAG's decision on the proposal on 5 April 2002.	5 April 2002
Adoption in the Food Standards Code of a new standard for infant formula	Australia New Zealand Food Standards Council. On 1 July 2002, the Australia and New Zealand Food Regulation Ministerial Council replaced the council.	May 2002
Updating the provisions for residential buildings used to accommodate the aged, to align with the *Commonwealth Aged Care Act 1997*	Australian Building Codes Board	1 May 2002
Agreement to manage risks associated with GM crops to agricultural production and trade through industry self-regulation supplemented by government monitoring	Primary Industries Ministerial Council	2 May 2002
Australian Standard for the Hygienic Rendering of Animal Products	Primary Industries Ministerial Council	2 May 2002
Model code of practice for the welfare of animals (domestic poultry)	Primary Industries Ministerial Council	2 May 2002
Track, Civil and Infrastructure Code (volume 4 of the Code of Practice for the Defined Interstate Network)	Australian Transport Council	6 May 2002

(*continued*)

Table 6.1 continued

Regulatory matter	*Body responsible*	*Date of decision*
Radiation Protection Standard for Maximum Exposure Levels to Radiofrequency Fields — 3 kHz to 300 GHz	Australian Radiation Protection and Nuclear Safety Agency	7 May 2002
National Standards for Group Training Companies	Australian National Training Authority Ministerial Council	24 May 2002
National Standard for Commercial Vessels — Part B: General Requirements	Australian Transport Council/National Marine Safety Authority	Out-of-session decision; process completed by July 2002
National Standard for Commercial Vessels — Part C, Section 5: Engineering	Australian Transport Council /National Marine Safety Authority	Out-of-session decision; process completed by July 2002
National Standard for Commercial Vessels (NSCV) — Part F, subsections 1A and 1B: Category F1 Fast Craft	Australian Transport Council /National Marine Safety Authority	Out-of-session decision; process completed by July 2002
Requirements for labelling statements for certain milk products	Australia and New Zealand Food Regulation Ministerial Council	30 August 2002
Endorsement of recommendations arising from the NCP review of Radiation Protection Legislation	Australian Health Ministers Conference	10 October 2002
Model code of practice for the welfare of animals (the farming of ostriches)	Primary Industries Ministerial Council	10 October 2002
Energy efficiency measures in housing provisions of the Building Code of Australia	Australian Building Codes Board	1 November 2002
Nationally consistent legislative framework for key aspects of the national vocational education and training (VET) system ('model clauses')	Australian National Training Authority Ministerial Council	15 November 2002
Permission in the Food Standards Code for the importation of raw milk very hard cooked-curd cheeses	Australia and New Zealand Food Regulation Ministerial Council	6 December 2002
Requirements for certain warning statements for products containing royal jelly, bee pollen and propolis	Australia and New Zealand Food Regulation Ministerial Council	9 December 2002
Australian Design Rule for fuel consumption labelling	Australian Transport Council	September 2002
Freight Loading Manual (Component of volume 5 of the Code of Practice for the Defined Interstate Network)	Australian Transport Council	20 December 2002
Review of Australian Design Rules for vehicle noise	Australian Transport Council	February 2003
Technical review recommendations for the Draft Disability Standards for Accessible Transport	Australian Transport Council	6 March 2003
Compulsory vaccination of poultry for Newcastle disease	Primary Industries Ministerial Council	13 March 2003

The ORR reports that CoAG's requirements were not met in three cases of regulation in the period 1 April 2002 to 31 March 2003. These three cases are summarised in table 6.2 and then discussed.

Table 6.2: Regulatory matters for which RIS requirements were not met, 1 April 2002 to 31 March 2003

Regulatory matter	*Body responsible*	*Date of decision*
Uniform credit code — mandatory comparison of interest rates	Ministerial Council on Consumer Affairs	April 2002
Public liability and the Review of the Law of Negligence	Insurance Ministers	15 November 2002
National reform of hand gun laws	Australasian Police Ministers Council. The council agreed on the regulatory proposals on 28 November 2002 and CoAG endorsed most in December 2002.	28 November 2002

The Ministerial Council on Consumer Affairs introduced mandatory comparison of interest rates into the Uniform Consumer Credit Code with the royal assent of Queensland template legislation in April 2002. The amendments to the code require credit providers to calculate all of the costs of their loans — including the interest rate and all fees and charges — as a single percentage rate, and include this calculation in the information that they provide to consumers. Consumers can thus compare the full cost of credit products offered by different providers. The ORR advised the Ministerial council in August 2001 that it should follow the CoAG principles and guidelines, but a CoAG RIS was not distributed for consultation or provided to the Ministerial council before the changes to the credit code.

Reflecting concerns about the increased costs of public liability insurance, Commonwealth, State and Territory Ministers held a number of meetings during 2002 and commissioned the Review of the Law of Negligence by Justice Ipp. The Ministerial group accepted the Ipp Report recommendations, some of which involve significant changes to the law of negligence. The recommendations include: limiting the liability of defendants to foreseeable risk; allowing findings of 100 per cent contributory negligence by plaintiffs; and introducing measures to limit damages payments. The Ipp Report did not include a cost–benefit assessment of its proposals, and a RIS was not prepared.

CoAG ministers asked the Australasian Police Ministers Council in October 2002 to develop proposals for a national approach to handgun control measures. The Ministers council put forward 19 measures for CoAG consideration in late November 2002, and CoAG adopted most of these measures in December 2002. The ORR reports that a CoAG RIS was not prepared, while noting the tight timeframe for the development of the proposals.

Compliance rate

In summary, 24 of the 27 decisions by Ministerial councils and intergovernmental standard-setting bodies reported during the year to 31 March 2003 satisfied CoAG requirements. The compliance rate of 89 per cent represented a decline on the 97 per cent rate in the previous year, but an improvement on the 71 per cent compliance rate reported in the ORR's first report to the Council (which covered the 11 months to 31 May 2001). Of the 27 decisions reported over the year to 31 March 2003, the ORR considered six to be more significant than others, based on the magnitude of the problem and the regulatory proposals, and the scope and intensity of the proposals' impacts on the affected parties and the community. Two of these six decisions were made without complying with CoAG requirements: (1) the introduction of mandatory comparison of interest rates and (2) the acceptance of the Ipp recommendations on public liability.

The ORR attributes the decline in compliance in the latest reporting year to the following factors:

- the allocation of decision-making in some cases to ad hoc groups or committees that are not aware of CoAG requirements;
- some Ministerial councils' lack of awareness of the requirements, possibly due to the alternating of the secretariat function between jurisdictions;
- some decision-making bodies not being aware that the CoAG requirements extend beyond legislation to decisions implemented through other means;
- a mistaken belief in some cases that a CoAG RIS is not required if a decision on a broad national approach necessitates a regulatory response at the State or Territory level; and
- deliberate non-compliance with the CoAG requirements.

The ORR notes that several secretariats of Ministerial councils and intergovernmental standard-setting bodies have sought to improve the quality of their adherence to the CoAG requirements. Further, the ORR has continued to provide relevant government officials with training on the requirements.

Assessment

The compliance indicators show that jurisdictions' adherence during 1 April 2002 to 31 March 2003 to CoAG's requirements for preparation of RISs was not of the high standard achieved in the previous year. The Council encourages Ministerial councils and intergovernmental standard-setting bodies to adhere to the CoAG approach to making regulation. A particular

concern is the ORR's view that some decision-makers did not prepare a RIS despite knowing the RIS requirements.

Except when facing deliberate noncompliance, the secretariats of Ministerial councils can help to improve compliance by ensuring Ministers and new officials are regularly briefed on the CoAG principles and guidelines for setting standards and taking regulatory action. Such action would alleviate the adverse impact on institutional memory of the significant rate of turnover of the Ministerial council secretariats.