

## **PART 2: WHAT CONSTITUTES SATISFACTORY PROGRESS**

The Agreement to Implement the National Competition Policy and Related Reforms (Implementation Agreement) establishes the framework which the Council has used to assess jurisdictions' compliance with first tranche NCP objectives.<sup>11</sup> For the electricity, gas and road transport reforms, the Implementation Agreement is augmented by agreements reached at various meetings of Heads of Governments and in correspondence between Heads of Government, and by the requirements of the Competition Principles Agreement. The Council has assessed progress against these reform frameworks, including examining the adequacy of reform agendas set out in policy statements and the progress achieved against the objectives set out in the policy statements.

Many of the NCP reforms are statements of principle rather than specific implementation benchmarks. This recognises the sovereignty of governments in determining the form of change which, in their judgment, best meets the needs of their communities. It means that different governments might adopt different policies and still achieve satisfactory progress against the agreements. This possibility is accentuated for the local government reform program where a further sphere of government, with potentially different objective sets, is involved in translating the principles into specific actions.

All of this means that, for a large part of the NCP agenda, there may be a variety of outcomes which satisfy the requirement for adequate progress against the objectives set out in the inter-governmental agreements, particularly in relation to the Competition Principles Agreement commitments. In effect, it means that in some areas jurisdictions are required to judge for themselves whether particular reform processes and outcomes satisfy the spirit and intent of the NCP program.

Inevitably, there have been occasions where jurisdictions have taken actions or adopted policies and processes which the Council does not regard as complying with the inter-governmental agreements. In these circumstances, the Council has assessed progress, for the purpose of recommending on the competition transfers, in terms of a demonstrated commitment to the NCP program, both in substance and spirit. This has involved judgments about whether governments have committed themselves to a genuine and comprehensive competition policy reform program, rather than to technical compliance with a preferred interpretation.

Together with the parties to the NCP agreements, the Council has a responsibility for ensuring that the scope and pace of reform is maintained. This means that the commitments specified in the Attachment to the Implementation Agreement, unless modified by formal agreement of the parties, must form the basis of the Council's assessment of progress. As a result, the Council is compelled to reject variations to the scope of the agenda and the implementation timetable, except where a formal agreement exists between all parties to vary the terms of the original agreements through COAG. In this respect, the Council notes that for the first tranche assessment:

- the scope and timing of the undertakings in the Conduct Code Agreement and the Competition Principles Agreement are unchanged;
- the reform objectives for electricity have been modified by the agreement of all parties;
- the framework for implementation of a National Access Code for gas pipelines is that set out by the Prime Minister on 10 December 1996; and

---

<sup>11</sup> The Attachment to the Agreement to Implement the National Competition Policy and Related Reforms is reproduced in the discussion in Part 1.

- the Council, in the absence of specific reform objectives established by Heads of Government, will assess compliance with road transport reforms in accordance with the program and timetable agreed by the MCRT on 14 February 1997.

## **LINKING PROGRESS AND THE NATIONAL COMPETITION POLICY PAYMENTS**

The provision of NCP payments by the Commonwealth is conditional on States and Territories achieving satisfactory progress against the obligations under the Agreement to Implement the National Competition Policy and Related Reforms. First tranche NCP payments are to be provided by the Commonwealth to each State and Territory over two financial years commencing in 1997-98, on the recommendation by the Council that the State or Territory has achieved satisfactory progress.

The Council has looked for substantial compliance with the NCP obligations, both in terms of processes and reform outcomes. The Council has viewed failure to achieve substantial compliance as:

- a failure to implement significant agreed reforms such as participation in the national electricity market and arrangements to enable free and fair trade in gas;
- a series of flawed processes or inadequate reform outcomes, which, while not significant in themselves, together demonstrate a lack of commitment; or
- inadequate reform agendas for legislation review, competitive neutrality and local government reform (as tested against the Competition Principles Agreement) or a failure to sufficiently progress these agendas.

Part 3 of this report contains the Council's assessments of the progress achieved by each State and Territory government against first tranche reform obligations and the Council's consequent recommendations on the distribution of first tranche payments. The Council has identified three types of non-compliance with reform obligations below, and has made consequent recommendations for NCP payments. In doing so, it has taken account of the complexities associated with some reforms and the likely influence of factors beyond the direct control of individual jurisdictions.

Where there is a substantial lack of compliance or considerable delays in implementation against agreed timetables, but the Council judges that there are good prospects that the matter will be remedied within the next 12 months, the Council proposes that a jurisdiction receive all of the first part of the first tranche payment due in 1997-98, pending a further assessment of progress by the Council prior to July 1998. Where the matter is found to be satisfactorily progressed in this further assessment, the whole of the second part of the first tranche payment would become available in 1998-99. If the matter is unable to be resolved prior to the Council again reporting to the Treasurer, the Council would recommend to the Treasurer on whether part or all of the second part of the first tranche payment be retained by the Commonwealth.

Where the Council assesses there is substantial non-compliance with a first tranche obligation which cannot be remedied without a change in policy, but the relevant Government has indicated that it may reconsider the matter within the next 12 months, the Council recommends that the whole of the first tranche payment be suspended until it is able to advise the Commonwealth Treasurer that the change in policy has taken place.

Where there is a substantial failure, and the relevant Government has indicated that the matter will not be addressed, the Council has recommended a negative assessment. A negative assessment involving a recommendation of partial payment of the first tranche transfers may be appropriate in some cases.

