

Frequently Asked Questions

NSW and National Competition Policy

ALCOHOL

Does News South Wales have its hands tied on alcohol reform?

No. New South Wales, like other states and territories, has to reform its legislation to remove anti-competitive restrictions and has control over the content of the legislation that it passes to do this.

Will removing anti-competitive restrictions automatically cause more drinking?

No, since harm minimisation provisions can be included in legislation. New South Wales can remove anti-competitive restrictions but ensure strong harm minimisation provisions are included. In fact, NSW could even strengthen its harm minimisation provisions if it can show that these are in the public interest.

Problem drinking is already an issue with current regulation. NCP does not prevent strict controls to ensure only responsible persons can operate liquor outlets and to ensure the harm that comes from excessive consumption is addressed. It may be easier to implement stricter regulation if license numbers are not restricted. It should be easier to revoke licenses if other outlets can take the place of bad licensees.

For example, in Victoria where anti-competitive restrictions have been removed and harm minimisation provisions are in place, outlets like service stations and convenience stores are banned from selling alcohol.

The specific section of the Act in Victoria reads:

S60. Certain premises not to be licensed:

- (1) The Commission must not grant a license or permit in respect of -
 - (a) premises uses primarily as a drive-in cinema; or
 - (b) premises used primarily as a petrol station; or
 - (c) premises that in the opinion of the Commission are used primarily as a milk bar, convenience store or mixed business.

- (2) The Commission may, with the approval of the Minister, grant a license in respect of premises referred to in sub-section (1)(c) if the Minister is satisfied that the area in which the premises are situated is a tourist area or an area with special needs and that there are not adequate existing facilities or arrangements for the supply of liquor in the area.

Does reform of alcohol mean open slather selling?

No. If a robust review shows that restricting the sale of alcohol from certain places is in the public interest, then New South Wales can include that in its legislation. In fact, harm minimisation is the key concern of alcohol legislation throughout Australia.

What is the problem with current NSW liquor legislation?

Liquor legislation in NSW contains a ‘needs test’ that allows one competitor to object if another competitor tries to join the market – this protects commercial interests and not the public interest – these should not be confused.

Will the National Competition Council consider legislation that restricts the sale of alcohol, for example, in service stations?

It has already done so in the case of Victoria, the ACT and Tasmania, where laws restrict the sale of alcohol from certain premises including service stations.

Is NSW being pressured to make changes it doesn’t want to?

Like all other governments in Australia, NSW committed to reforming its anticompetitive legislation in 1995 and is a signatory to the process. This was part of a broad, national commitment by governments to strengthen Australia’s economy and competitiveness. This is a process that NSW agreed to a long time ago. Further, it is important to stress that the needs test which is the current regulatory tool governing alcohol licencing in NSW restricts competition and is not needed to minimise harm. Harm minimisation involves other restrictions and appropriate legislation in Victoria, the ACT and Tasmania is testimony to this.

Is deregulation the NCC’s policy?

No. The NCC does not make policy. The NCC was set up as a body just to *assess* governments’ progress against their NCP commitments. All the NCC has done is to *assess* NSW’s progress against a reform program that it agreed to in 1995.

Has NSW been pressured to change its laws quickly?

No. This is not the case. NSW agreed to this program seven years ago and has been given several extensions on its original deadlines.

What is the situation in other States and Territories?

Victoria, Tasmania and the ACT have completed reform of liquor regulation, removing needs tests but retaining and enhancing harm minimisation provisions.

Queensland has also removed its needs test, although it continues to reserve the sale of packaged liquor to hotel licensees that provide bar facilities.

Western Australia has agreed to remove its needs test and the NCC expects legislation to give effect to this to be passed in the near future

South Australia and the Northern Territory have various anti-competitive restrictions in place.

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FARM DEBT MEDIATION

Does the NCC oppose the Farm Debt Mediation Act?

No. The NCC is not concerned about mediation and has not asked for the Act to be repealed. It is changes made to the Act in 2002 that are at issue.

How was the Farm Debt Mediation Act changed?

The Act was changed to:

prevent a lender enforcing a mortgage for twelve months if the Rural Assistance Authority believes the lender did participate in mediation in good faith; and

subject decisions of the Authority to appeal by the Administrative Review Tribunal.

What is the problem with these changes?

The Government's review, which recommended the changes, produced no evidence of a problem with lenders failing to mediate in good faith, or with the Authority making poor decisions.

The changes make lending to farm business riskier. Mortgages in default need to be resolved quickly before a bad situation becomes worse. Delays will often only reduce the amount that can be recovered from the business for the owner and lender. More farm businesses will fail as lenders respond by tightening their lending criteria and starting enforcement action earlier. Farm businesses will also face higher interest margins.

In the public interest, and in the interest of farm businesses, the changes need to be reversed.

What was the penalty for this?

There was no specific penalty recommended for NSW's non-compliance with NCP over farm debt mediation. Farm debt mediation was considered along with many other areas of non-compliance. Together these resulted in a suspension of 10 per cent of NSW's competition payment (around \$25m).

The NCC can recommend this suspension be reversed if NSW makes significant progress on the outstanding items before the end of June.

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CHICKEN MEAT

NSW says the NCC wants it to stop collective bargaining by small family chicken growers with powerful processors. Why?

Collective bargaining is not the problem. The problem in NSW is that the legislation goes well beyond allowing collective bargaining between small growers and their processor. In NSW:

- the price for growing chickens is controlled by a committee, and
- nobody can grow chickens for processing unless this committee has approved the agreement with their processor.

This committee is made of grower representatives, processor representatives, and a few other people appointed by the Minister for Agriculture.

So growers and their respective processor don't have to find common ground and agree on a price. Prices are set six monthly by the committee.

And nobody in the industry can do anything different without everybody else knowing.

This is not collective bargaining – its centralised price-fixing by the Government. And it is pushing chicken meat production out of NSW to other states which have more competitive bargaining arrangements, such as Queensland and Victoria. Ultimately the losers are NSW chicken growers.

What penalty did NSW receive for retaining central price-fixing?

The NCC recommended that a deduction of around \$12 million be imposed on NSW for failing to reform the Poultry Meat Industry Act. This recommendation was accepted by the Treasurer.

What must NSW do to get this money?

To get this money in future NSW has two alternatives.

It can adopt legislation like that in Queensland, which allows growers to bargain collectively with their processor if they wish, and which provides for the mediation of bargaining disputes.

Or it can let the ACCC approve collective bargaining arrangements for NSW chicken growers, as it does in Victoria and Tasmania, and in the dairy industry nation-wide.

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OTHER ISSUES

Are the penalties on NSW fair?

The NCC held off recommending penalties until it had no choice. NSW and other States and Territories have had since 1995 to complete a reform programme to which they agreed. The deadline has been extended at least twice.

What about rice?

NSW's review of the rice industry completed almost 8 years ago, recommended deregulation of domestic rice marketing and the retention of the single export desk for rice. The review found that removing the domestic rice market monopoly would have significant benefits for the economy. Despite the review's findings, in 1996, NSW extended the existing regulatory arrangements until January 2004.

The NCC did not include rice marketing in its 2003 assessment because the Australian Government was considering if there was support for a national regime from other States and Territories. This process, however, revealed little support for a single export desk under Australian Government jurisdiction. Thus, NSW will need to progress the reforms recommended on its own.