

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

<i>Government</i>	<i>Date on which Council received 2003 annual report</i>	<i>Date on which Council received draft 2003 annual report (where relevant)^a</i>
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

<i>Jurisdiction</i>	<i>NCP payments in 2003-04 (A\$m)</i>
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.

