

1 The National Competition Policy and related reforms

The National Competition Policy agreements

The National Competition Policy (NCP) agreements of April 1995—the Competition Principles Agreement (CPA), the Conduct Code Agreement and the Agreement to Implement the National Competition Policy and Related Reforms (the Implementation Agreement)—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). All related reform areas were assessed by the National Competition Council up to 2004. In accordance with the Intergovernmental Agreement on a National Water Initiative, the National Water Commission will conduct the 2005 assessment of jurisdictions' compliance with water commitments.

To meet obligations for the 2005 NCP assessment, governments must have:

- become a party to the 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
 - removed legislative restrictions on competition unless it is demonstrated that restricting competition is in the public interest and is necessary to achieve the objectives of the legislation and, ensured that new legislation that restricts competition is similarly assessed — chapter 4
- become a party to the Conduct Code Agreement, implemented the Competition Code and ensured national standards are set in accord with the principles and guidelines for good regulatory practice as endorsed by the Council of Australian Governments (COAG) (as per the Implementation Agreement)—chapter 5

- achieved (if a relevant jurisdiction) effective participation in the fully competitive national electricity market—chapter 6
- implemented (if relevant) free and fair trading in gas across and within jurisdictions—chapter 7
- implemented the road transport reforms developed by the Australian Transport Council and endorsed by COAG—chapter 8
- achieved satisfactory progress in implementing the 1994 COAG strategic framework for the reform of the water industry, consistent with established timeframes—subject to separate assessment by the National Water Commission.

In addition, the CPA obliged governments to review all legislation identified in 1996 as restricting competition and, where appropriate, remove the restrictions. COAG specified 30 June 2002 as the completion date for this element of the NCP. However, at the time of the 2004 NCP assessment, all governments had outstanding obligations for this program. The Council's approach to these outstanding matters is discussed in chapter 9.

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.

Governments' National Competition Policy annual reports

The CPA obliges all governments to produce annual reports on their progress in meeting NCP obligations. Table 1.1 sets out the dates when governments made their reports available to the Council.

Table 1.1: Governments' provision of 2005 NCP annual reports

<i>Government</i>	<i>Date on which the Council received the 2005 annual report^a</i>
Australian Government	2 May 2005
New South Wales	5 May 2005
Victoria	2 May 2005
Queensland	11 May 2005
Western Australia	27 July 2005
South Australia	28 April 2005
Tasmania	10 June 2005
ACT	23 May 2005
Northern Territory	2 August 2005

^a To assist the Council, some governments made their reports available initially in draft form.

National Competition Policy payments

Under the Implementation Agreement, the Australian Government agreed to make NCP payments to the states and territories as a financial incentive to implement the NCP and related reforms. The payments recognise that while the states and territories have responsibility for significant elements of the NCP, the Australian Government accrues (through the taxation system) a financial dividend from the economic growth arising from the NCP reforms. 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 Australian Government 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 Australian Government Treasurer reduce or suspend the NCP payments otherwise available to a state or 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 has recommended the suspension or reduction of NCP payments only as a last resort. For the 2003 NCP assessment, however, the Council was required to assess whether governments had met their agreed obligation to conclude the legislation review and reform program at 30 June 2002. No government met this obligation, so the Council recommended the most significant competition payment reductions since the commencement of the NCP. Furthering the work of the 2003 NCP assessment (and the 2004 NCP assessment), this 2005 NCP assessment considers governments' progress in the outstanding areas of noncompliance.

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

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's advice in this 2005 NCP assessment informs the Australian Government's distribution of NCP payments in 2005-06. Approximately \$800 million is available in 2005-06, based on the states and territories meeting their reform obligations. This amount will be distributed among the states and territories on a per person basis (table 1.2). The Council also assesses the Australian Government's progress in implementing the NCP program, although the Australian Government does not receive NCP payments.

Table 1.2: Estimated maximum NCP payments for 2005-06^a

<i>Government</i>	<i>NCP payments in 2005-06 (\$m)</i>
New South Wales	266.2
Victoria	197.3
Queensland	156.3
Western Australia	79.3
South Australia	60.3
Tasmania	19.0
ACT	12.7
Northern Territory	7.9
Total	799.2

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

Source: Government of Australia 2005.