

NATIONAL COMPETITION COUNCIL

**LEGISLATION REVIEW
COMPENDIUM**

Second Edition

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INTRODUCTION

Australia's nine governments signed three agreements establishing the National Competition Policy (NCP) on 11 April 1995. The three agreements are:

- the Competition Principles Agreement (CPA);
- the Conduct Code Agreement; and
- the Agreement to Implement the National Competition Policy and Related Reforms.

The agreements are reproduced in the National Competition Council publication, *Compendium of National Competition Policy Agreements*, second edition.

As part of the NCP, governments undertook to review and reform, where appropriate, all existing legislation which restricts competition by the year 2000. The objective of the legislation review program is to remove restrictions which are shown not to be in the interests of the community. For example, while many regulations help to address legitimate concerns, others which are overly stringent or no longer relevant impose unnecessary costs on the community.

The principles guiding legislation review and reform are outlined in Clause 5 of the CPA. In short, governments agree that legislation should not restrict competition unless they can show 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.¹

All governments have a timetable for reviewing their restrictive legislation over the period to 2000. Governments also report annually on their progress

¹ The full text of clause 5 is reproduced at Appendix A.

against their review schedule. Timetables and annual reports are available from respective State and Territory competition policy officials. Contact details for State and Territory competition policy officials are provided in Appendix B.

The legislation review compendium

The first edition of the NCC's compendium, published in April 1997, combined each government's June 1996 legislation review timetable in a single convenient reference. This second edition of the compendium builds on the original timetables, reporting progress by each jurisdiction since June 1996.

For the second edition, the Council incorporated data from jurisdictions' most recent NCP annual reports and subsequently approached each jurisdiction for a further update of progress. Jurisdictions have provided data which are current as at the dates listed below.

Commonwealth:	31 March 1998
New South Wales:	31 December 1997
Victoria:	31 August 1998
Queensland:	19 June 1998
Western Australia:	30 June 1998
South Australia:	31 May 1998
Tasmania:	30 April 1998
Australian Capital Territory:	1 August 1998
Northern Territory:	31 December 1997

The compendium provides summary information for each government's program. The following information is provided, where it is available from jurisdictions' timetables and reports:

- **Name of legislation;**
- **Agency** —the department, authority or Minister responsible for the legislation;
- **Description of legislation/scope of review** — information on either the objectives of the legislation and/or the nature of the restriction on competition;
- **Comment on review process** — indicates where governments have proposed legislation be reviewed on a national or joint basis, proposed a particular type of review process or provided guidelines for prioritising reviews;
- **Date of review** — some governments have indicated the year (calendar or financial) in which the review would commence or conclude, while some have detailed the month and year;
- **Date review completed** — the date the review was completed; and
- **Comment on reform** — a summary of the reforms put in place (if any) as a result of the review.

The compendium is a guide to review programs and their progress and does not replace the legislation review timetables or annual reports produced by each government.

What is legislation that restricts competition?

While there is almost no regulatory activity that is neutral in its implications for competition, the types of regulation which impact on competition most directly are those which restrict entry to markets and those which restrict competitive conduct by participants in markets.²

² Hilmer, F., Rayner, M. and Taperell, G. (The Independent Committee of Inquiry into a National Competition Policy) 1993, *National Competition Policy*, AGPS, Canberra. p. 191.

Legislation affecting competition may directly or indirectly:

- govern the entry and exit of firms or individuals into or out of markets;
- control prices or production levels;
- restrict the quality, level or location of goods and services available;
- restrict advertising and promotional activities;
- restrict price or type of inputs used in the production process;
- be likely to confer significant costs on businesses; or
- provide advantages to some firms over others by, for example, sheltering some activities from the pressures of competition.

Legislation is defined broadly in the CPA to include Acts, enactments, Ordinances or regulations.

The terms of reference for reviews

The CPA provides guidance on the matters that should be taken into account in undertaking a review of anti-competitive legislation. Without limiting the terms of reference, a review should:

- clarify the objectives of the legislation;
- identify the nature of the restriction on competition;
- analyse the likely effect of the restriction on competition and on the economy generally;
- assess and balance the costs and benefits of the restriction; and
- consider alternative means of achieving the same result including non-legislative approaches.³

³ See CPA subclause 5(9). Clause 5 is reproduced at Appendix A of this compendium.

National reviews

In some cases, particular legislation will have a national dimension or effect on competition (or both), and a national rather than a State based review may be appropriate. If the government responsible for such legislation considers a national review appropriate, it must consult other governments that might have an interest in the matter before determining the terms of reference for and the appropriate body to conduct the review.

Several governments identified legislation which they considered would be suitable for review on a national basis in their June 1996 schedules. In a few instances, there has been subsequent agreement among governments to national processes. However, for the most part, it has proven difficult for governments to establish national review processes. As a consequence, governments have either rescheduled reviews which they nominated for national consideration within their own timetable, or are in the process of doing so.

Using the compendium

To assist readers in using the compendium, for each jurisdiction, the legislation scheduled for review is arranged alphabetically.

The government agencies responsible for administering the legislation are listed in the tables in abbreviated form, with a key to the abbreviations included in the introduction to each jurisdiction's chapter.

For information about specific reviews, users should contact the relevant jurisdiction's competition policy unit. Contact details are provided in Appendix B of this compendium.

If you have questions about competition policy and legislation review you are welcome to contact the Council through its Secretariat located in Melbourne. The telephone number of the Secretariat is (03) 9285 7474.