

# Appendix A Legislation review – clause 5 of the Competition Principles Agreement

*Clause 5 of the CPA is reproduced below.*

1. The guiding principle is that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated 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.
2. Subject to subclause (3), each Party is free to determine its own agenda for the reform of legislation that restricts competition.
3. Subject to subclause (4) each Party will develop a timetable by June 1996 for the review, and where appropriate, reform of all existing legislation that restricts competition by the year 2000.
4. Where a State or Territory becomes a Party at a date later than December 1995, that Party will develop its timetable within six months of becoming a Party.
5. Each Party will require proposals for new legislation that restricts competition to be accompanied by evidence that the legislation is consistent with the principle set out in subclause (1).
6. Once a Party has reviewed legislation that restricts competition under the principles set out in subclauses (3) and (5), the Party will systematically review the legislation at least once every ten years.
7. Where a review issue has a national dimension or effect on competition (or both), the Party responsible for the review will consider whether the review should be a national review. If the Party determines a national review is appropriate, before determining the terms of reference for, and the appropriate body to conduct the national review, it will consult Parties that may have an interest in those matters.
8. Where a Party determines a review should be a national review, the Party may request the Council to undertake the review. The Council may undertake the review in accordance with the Council's work program.

9. Without limiting the terms of reference of a review, a review should:
- (c) clarify the objectives of the legislation;
  - (d) identify the nature of the restriction on competition;
  - (e) analyse the likely effect of the restriction on competition and on the economy generally;
  - (f) assess and balance the costs and benefits of the restriction; and
  - (g) consider alternative means for achieving the same result including non-legislative approaches.
10. Each Party will publish an annual report on its progress towards achieving the objective set out in subclause (3). The Council will publish an annual report consolidating the reports of each Party.

# **Appendix B Changes to National Competition Policy Arrangements (Council of Australian Governments November 2000)**

*Attachment B of the Council of Australian Governments (CoAG) November 2000 communiqué is reproduced below.*

## **TRANSPARENCY**

- In meeting the requirements of sub-clauses 1(3)(a)(b) and (c) of the CPA, which relate to the application of the public interest test, Governments should document the public interest reasons supporting a decision or assessment and make them available to interested parties and the public.
- When examining those matters identified under clause 1(3) of the CPA, Governments should give consideration to explicitly identifying the likely impact of reform measures on specific industry sectors and communities, including expected costs in adjusting to change.
- COAG to undertake an enhanced role in guiding the NCC in relation to its role in explaining and promoting NCP policy to the community.

## **NCC WORK PROGRAM**

- The NCC will determine its forward work program in consultation with COAG Senior Officials.
- The NCC will provide a six monthly report to Senior Officials detailing its draft forward work program and current activities, including its communications and future assessment activities.
- Senior Officials will continue to provide guidance to the NCC to clarify COAG's requirements in relation to the interpretation of reform commitments under the NCP and related reform agreements, including appropriate assessment benchmarks, as required.

## FUTURE ASSESSMENT PROCESSES

- The NCC's assessment as to whether jurisdictions have met their commitments under clause 5(1) of the CPA will be guided by the following amendment to the CPA.

"In assessing whether the threshold requirement of Clause 5 has been achieved, the NCC should consider whether the conclusion reached in the report is within a range of outcomes that could reasonably be reached based on the information available to a properly constituted review process. Within the range of outcomes that could reasonably be reached, it is a matter for Government to determine what policy is in the public interest."

- Following the third tranche assessment to be conducted before 1 July 2001, the NCC will undertake an annual assessment of each party's performance in meeting its reform obligations, as specified in the *Agreement to Implement the National Competition Policy and Related Reforms* or as subsequently advised by COAG, and provide a recommendation on the level of competition payments to be received by each State and Territory.
- In making a recommendation that a penalty be applied to a particular State or Territory, the NCC is to have regard to the following statement:

*When assessing the nature and level of any financial penalty or suspension, the NCC must take into account:*

*the extent of overall commitment to the implementation of NCP by the relevant jurisdiction; the effect of one jurisdiction's reform efforts on other jurisdictions; and the impact of failure to undertake a particular reform.*

- Where the NCC recommends a penalty, a statement of reasons identifying the basis for this penalty is to be published in the NCC's annual assessment.
- Commencing in 2001, the assessments should be provided to the Commonwealth Treasurer and each State and Territory at the same time, but will remain confidential until a decision has been made by the Commonwealth on the level of competition payments.
- Where an assessment recommends a penalty be applied to a State or Territory, the Commonwealth will provide a period of one month following receipt of the assessment before making a decision on the level of competition payments to be received by that jurisdiction. This will allow the relevant jurisdiction to respond to the Commonwealth on the recommendation made by the NCC.
- The timing of the imposition of any penalty will be discussed on a bilateral basis between the Commonwealth and the affected jurisdiction.

## LEGISLATION REVIEW SCHEDULE

- The deadline for legislation reviews conducted under clause 5(3) of the CPA is extended so that all jurisdictions must complete all legislation reviews and implement appropriate reforms by 30 June 2002.
- Satisfactory implementation of reforms may include, where justified by a public interest assessment, having in place a firm transitional arrangement that may extend beyond the revised deadline.
- The revision to the deadline does not alter the schedule of competition payments.

## COMPETITIVE NEUTRALITY – ASSESSMENT

The assessment of a party's compliance with the competitive neutrality requirements under clause 3 of the CPA should have regard to:

- the adoption of a 'best endeavours' approach to assessment, in those circumstances where a government business is not subject to the executive control of a party. This would require parties, at a minimum, to provide a transparent statement of CN obligations to the entity in question;
- the term 'full cost attribution' accommodating a range of costing methodologies, including fully distributed cost, marginal cost, avoidable cost etc., as appropriate in each particular case;
- there being no requirement for parties to undertake a competitive process for the delivery of Community Service Obligations (CSO); and
- parties being free to determine who should receive a CSO payment or subsidy, which should be transparent, appropriately costed and directly funded by government. This position refers directly to the implementation of CN requirements under the CPA, and is not intended to impact on consideration of CSO matters arising in the context of the related reform agreements.

## REVIEW

- The terms and operation of the *Conduct Code Agreement*, the *Competition Principles Agreement* and the *Agreement to Implement the National Competition Policy and Related Reforms*, and the NCC's assessment role, will be reviewed before September 2005.
- The Commonwealth and States give early consideration to the best means of ensuring NCP commitments arising from the CCA continue to be met in light of the High Court case *re:Hughes*.

### PROPOSED AMENDMENTS TO THE *CONDUCT CODE AGREEMENT*

- The reference in clause 2(2) of the CCA to paragraph 51(1B)(f) of the *Trade Practices Act 1974* should be changed to paragraph 51(1C)(f), to correct a previous drafting error.
- References in clause 7 of the CCA to ‘the Parties’ should be replaced with ‘fully participating jurisdictions’; the words ‘the Party initiating the consultation’ should be replaced with ‘the Commonwealth’; and the words ‘or some of them’ should be deleted.

### PROPOSED AMENDMENTS TO THE *AGREEMENT TO IMPLEMENT THE NATIONAL COMPETITION POLICY AND RELATED REFORMS*

- References to the per capita Financial Assistance Grants (FAGs) component of the NCP payments to be removed, and ‘States’ to be replaced with ‘States and Territories’;
- The payments table attached to the Agreement to be deleted.

# Appendix C National Competition Policy contacts

For further information about National Competition Policy, please contact the National Competition Council or the relevant Commonwealth, State or Territory competition policy unit.

## National

National Competition Council  
Level 9,  
128 Exhibition Street  
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Telephone: (03) 9285 7474  
Facsimile: (03) 9285 7477  
[www.ncc.gov.au](http://www.ncc.gov.au)

## Commonwealth

Competition and Consumer Policy  
Division  
Markets Group  
The Treasury  
Langton Crescent  
PARKES ACT 2600  
Telephone: (02) 6263 2874  
Facsimile: (02) 6263 2937  
[www.treasury.gov.au](http://www.treasury.gov.au)

## New South Wales

Inter-governmental &  
Regulatory Reform Branch  
The Cabinet Office  
Level 39  
Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000  
Telephone: (02) 9228 4324  
Facsimile: (02) 9228 4408  
[www.nsw.gov.au](http://www.nsw.gov.au)

## Victoria

Economic, Social and Environmental  
Group  
Department of Treasury and Finance  
10th Floor, 1 Macarthur Street  
EAST MELBOURNE VIC 3002  
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Facsimile: (03) 9651 2048  
[www.vic.gov.au](http://www.vic.gov.au)

## Queensland

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Queensland Treasury  
100 George Street  
BRISBANE QLD 4000  
Telephone: (07) 3238 3358  
Facsimile: (07) 3225 1600  
[www.treasury.qld.gov.au](http://www.treasury.qld.gov.au)

## Western Australia

Competition Policy Unit  
Department of Treasury and Finance  
Level 12, 197 St George's Terrace  
PERTH WA 6000  
Telephone: (08) 9222 9825  
Facsimile: (08) 9222 9914  
[www.treasury.wa.gov.au](http://www.treasury.wa.gov.au)

### **South Australia**

Strategic Policy Division  
Department of Premier and Cabinet  
State Administration Centre  
200 Victoria Square  
ADELAIDE SA 5000  
Telephone: (08) 8226 1931  
Facsimile: (08) 8226 2707  
[www.premcab.sa.gov.au](http://www.premcab.sa.gov.au)

### **Tasmania**

Economic Policy Branch  
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Franklin Square Offices  
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### **Australian Capital Territory**

Micro Economic Reform Section  
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Level 1, Nara Centre  
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### **Northern Territory**

Policy and Coordination Division  
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4th Floor, NT House  
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[www.nt.gov.au/ntt/](http://www.nt.gov.au/ntt/)



# References

CoAG (Council of Australian Governments) 2000, *Communiqué*, Canberra, 3 November.

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