

REVIEW PANEL MEMBERSHIP GUIDELINE

(For general reviews of legislation containing competition restrictions) July 2003

INTRODUCTION

This guideline has been prepared to assist the selection of a review panel to conduct a general review of legislation which contains restrictions on competition. The focus of such reviews is broader than a specific NCP review, and the NCP guidelines referred to below need to be applied with this in mind.

This guideline should therefore be read in conjunction with the existing *1998 Guideline for NCP reviews* at

http://www.premcab.sa.gov.au/dpc/publications_competition_documents.html. Another useful guideline is the 1999 CIE *Guidelines for NCP legislation reviews* (especially pp17-24) available on the NCC website (<http://www.ncc.gov.au>).

The 1996 schedule for review of legislation restricting competition is nearly completed. However, there is a continuing obligation to review new legislation containing restrictions on competition to ensure that these restrictions provide a net public benefit. This obligation is contained in –

- ▶ *Competition Principles Agreement 1995*, Clause 5(1) (<http://www.ncc.gov.au/>)
- ▶ *DPC Circular #19 – Preparing Cabinet Submissions* (<http://intra.sa.gov.au/Policies/premier>)

There is also an ongoing obligation in the CPA Clause 5(6) to review legislation with restrictions on competition every 10 years. This obligation can be met by combining any such review into any planned general review of the legislation.

In order to meet the NCP requirements for review of restrictions on competition during a general review, the following aspects should be included.

STANDARD OF REVIEW

Each review should be competently conducted and credible and should consider relevant issues including –

- ▶ Costs and benefits of the restrictions on competition
- ▶ Alternatives to the restrictions including non legislative options
- ▶ Potential impact of the proposal upon the community
- ▶ Implementation plan for proposal

SELECTION OF REVIEW PANEL, INCLUDING CHAIR

The composition of the panel will be influenced, firstly, by the potential level of impact of the proposals on the community and, secondly, by the severity of the restrictions on competition. Appointment of external panel members is likely to incur a cost and this will not be justified for all reviews.

TIMING OF REVIEW

Ideally, a review should be undertaken early enough in the policy development process so that a range of options is considered, and before a commitment is made to a particular option. Public consultation, if required, may need to be undertaken more than once, firstly on a range of options (for example, on a discussion paper), then later on the option the Government has chosen (for example, on a draft Bill).

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CONSULTATION

See DPC Circular No. 19 *Preparing Cabinet Submissions*. Consultation is required for all reviews dealing with restrictions on competition, excepting those where the restrictions are trivial. Consultation on NCP issues should be an integral part of any general review of legislation which contains restrictions on competition. It does not need to be undertaken separately.

Each review panel should determine the appropriate form and extent of consultation.

REPORT PUBLICATION

Publication on the agency website or elsewhere generally accessible to public is always desirable.

Where there are restrictions on competition that are not trivial, the NCC is entitled to a copy of the report or, alternatively, a statement of the public interest reasons justifying the retention or introduction of any restrictions on competition.

GLOSSARY

The following notes explain terms used in the attached Summary Table.

Review panel membership – There should be sufficient knowledge and expertise to ensure a competently conducted and credible review. This may require a mix of government and industry representatives. These representatives should not benefit directly or indirectly from retention or introduction of competition restrictions. If this is not feasible, working groups reporting to a review panel or steering committee should be considered.

External chair – recommended for complex reviews of matters likely to have a high impact upon the community. The Chairperson should be able to demonstrate sufficient independence to ensure a credible review process where the outcome is not unduly influenced by vested interests. This may require selection of a person with sufficient knowledge of the industry to have credibility with industry stakeholders but without having any direct commercial interest. If that is not possible, it may be necessary to select other members who have that knowledge.

Independent chair – a person from within government but not involved directly or indirectly in the area under review. Needs to be capable of providing a independent scrutiny for reviews which are less complex or have a lower potential community impact.

External expertise – for complex reviews of matters likely to have a high impact upon the community. Needed to ensure a sound basis of assessment and an adequate consideration of issues requiring specialised knowledge.

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Severity of restriction - For the conduct of legislation reviews, South Australia has adopted a methodology of giving restrictions on competition an initial analysis and categorising them as either trivial, intermediate or serious.

A trivial restriction has only a minimal impact on competition within a market. Public consultation is not required for trivial restrictions. An intermediate restriction imposes substantial costs upon competition, where substantial indicates other than a minimal effect. A serious restriction imposes high costs or imposes high barriers to market entry or re-entry.

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Community impact ↓	Severity of restriction	→ Serious	Intermediate	Trivial
High	Chair	External	Independent	Internal or Independent
	Review panel	No vested interests directly represented External expertise available if needed	No vested interests directly represented	Internal
	Consultation	Extensive	Extensive	Targeted (stakeholders) Not required for NCP purposes
	Report	Publish & copy to NCC	Publish & copy to NCC	Copy to stakeholders Not required for NCP purposes
Medium	Chair	External or independent	Independent	Internal
	Review panel	No vested interests directly represented	No vested interests directly represented	Internal
	Consultation	Extensive	Targeted (stakeholders)	Targeted (stakeholders) Not required for NCP purposes
	Report	Publish & copy to NCC	Publish & copy to NCC	Copy to stakeholders Not required for NCP purposes
Low	Chair	Independent	Internal	Internal
	Review panel	No vested interests directly represented	Internal	Internal – single person
	Consultation	Targeted (stakeholders)	Targeted (stakeholders)	None
	Report	Publish & copy to NCC	Copy to stakeholders & NCC	No publication