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The National Competition Council

The National Competition Council was established on 6 November 1995 by the *Competition Policy Reform Act 1995* following agreement by the Commonwealth, State and Territory governments.

It is a federal statutory authority which functions as an independent advisory body for all governments on the implementation of the National Competition Policy reforms. The Council's aim is to 'improve the well being of all Australians through growth, innovation and rising productivity, and by promoting competition that is in the public interest'.

Information on the National Competition Council, its publications and its current work program can be found on the internet at www.ncc.gov.au or by contacting NCC Communications on (03) 9285 7474.

Table of contents

Boxes

Tables

Abbreviations

ACCC	Australian Competition and Consumer Commission
ACT	Australian Capital Territory
ACTEW	ACTEW Corporation
Agvet	Agricultural and veterinary
AHMAC	Australian Health Ministers Advisory Council
AMA	Australian Medical Association
ANZECC	Australian and New Zealand Environment and Conservation Council
ANZFA	Australia New Zealand Food Authority
ANZFSC	Australia New Zealand Food Standards Council
ANZMEC	Australian and New Zealand Minerals and Energy Council
APRA	Australian Prudential Regulation Authority
ARMCANZ	Agriculture and Resource Management Council of Australia and New Zealand
AWBI	AWB International Limited
CASA	Civil Aviation Safety Authority
CBH	Cooperative Bulk Handling Limited
CCNCO	Commonwealth Competitive Neutrality Complaints Office
CIA	Competition Impact Analysis
CIE	Centre for International Economics
CMS	Centralised monitoring system
CoAG	Council of Australian Governments
CPA	Competition Principles Agreement
CRR	Committee on Regulatory Reform (CoAG)

CSIRO	Commonwealth Scientific and Industrial Research Organisation
CSO	Community service obligation
CTP	Compulsory Third Party
EP&A Act	*Environmental Planning and Assessment Act 1979* (NSW)
ETEF	Electricity Tariff Equalisation Fund
EWP	Environmental water provision
EWR	Environmental water requirements
FRC	Full retail contestability
FSANZ	Food Standards Australia New Zealand
GBE	Government business enterprises
GPAL	Gas Pipelines Access Law
GPOC	Government Prices Oversight Commission (Tasmania)
HAL	Horticulture Australia Limited
HEC	Hydro Electric Corporation (Tasmania)
ICRC	Independent Pricing and Regulatory Commission (ACT)
IPART	Independent Pricing and Regulatory Tribunal
MDBC	Murray–Darling Basin Commission
NCC	National Competition Council
NCP	National Competition Policy
NECA	National Electricity Code Administrator
NEM	National electricity market
NEMMCO	National Electricity Market Management Company
NEVDIS	National Exchange of Vehicle and Driver Information System
NSWRMB	New South Wales Rice Marketing Board
NT	Northern Territory

OECD	Organisation for Economic Co-operation and Development
ORR	Office of Regulation Review (Commonwealth)
PAWA	Power and Water Authority
PBS	Pharmaceutical Benefits Scheme
PBT	Public benefit test
PC	Productivity Commission
RFA	Regional Forest Agreements
RIS	Regulatory/regulation impact statement
ROP	Resource Operations Plan
SCARM	Standing Committee on Agriculture and Resource Management
SEVS	Specialist and Enthusiast Vehicle Scheme
SMA	Statutory marketing authority
TAB	Totalisator agency board
TAC	Total allowable catch
TAFE	Technical and Further Education
TPA	*Trade Practices Act 1974*
VEETAC	Vocational Education, Employment and Training Committee
VORR	Office of Regulation Reform (Victoria)
WEA	Wheat Export Authority
WRP	Water Resource Plan
WSAA	Water Services Association of Australia

Overview of progress and recommendations

The National Competition Policy (NCP) is a product of all Australian governments. Adopted unanimously in 1995, it is the most extensive economic reform program in Australia's history. The NCP builds on the recognition that competitive forces drive economic growth that, in turn, promotes better living standards. Indeed, all governments had introduced some pro-competitive reforms prior to 1995, albeit that implementation was often piecemeal within and across the States and Territories. In adopting the NCP, governments embarked on a nationally coordinated program of reforms, under the auspices of the Council of Australian Governments (CoAG).

The NCP is founded on agreements between the Commonwealth, State and Territory governments. (Local governments, while not direct parties to the agreements, are also implementing the NCP.) The agreements specify principles and processes aimed primarily at improving the quality of regulation and the performance of government businesses. The agreements are augmented by further sector-specific intergovernmental agreements on electricity, gas, water resource policy and road transport.

While the aim of the NCP is to promote competition to encourage businesses to use resources more effectively, reduce prices and respond better to consumer needs, it is not about competition for its own sake. Rather, the NCP aims to promote outcomes that enhance the welfare of Australians. The suite of NCP programs, thus, comprises a balanced mix of policy initiatives and measures to advance social and environmental needs. Now in its eighth year, the NCP continues to deliver tangible benefits for consumers, households, businesses and the environment (box 1).

The NCP entails staged reforms assessed against agreed implementation timeframes. CoAG's direction that the review and reform of existing legislation containing restrictions on competition be completed by 30 June 2002 is a key milestone. As the National Competition Council could not assess all such activity for the 2002 NCP assessment, this 2003 NCP assessment — which considers activity to 30 June 2003 — has afforded governments an additional 12 months beyond the CoAG target. In relation to this, the Council advised all governments that the 2002 NCP assessment was the last for which it would accept assurances on legislation review and reform action. It further advised that review and/or reform activity that was incomplete or not consistent with NCP principles at 30 June 2003 would not comply with NCP obligations and that the Council was likely to make adverse recommendations on competition payments.

Box 1: A snapshot of benefits flowing from the NCP

- A national electricity market, currently operating in southern and eastern Australia, gives large consumers (including some households) choice of electricity supplier. The net present value of these reform benefits over 1995–2010 is estimated at A$15.8 billion in 2001 prices (Short et al 2001). In national market jurisdictions, labour and capital productivity have improved significantly and household electricity prices in Brisbane, Melbourne and Sydney fell in real terms by 1 to 7 per cent between 1990-91 and 2000-01 — a saving to households in 2000-01 of around A$70 million (PC 2002g).
- Free and fair trade in gas has been instituted nationally and most jurisdictions, with others to follow, offer customers a choice of gas supplier. The reforms have stimulated gas production and pipeline developments. Since 1995 over A$1 billion has been invested each year in upstream, transmission and distribution assets, and transmission pipeline infrastructure grew from 9000 to 17 000 kilometres from 1989 to 2001.
- Governments have removed legislative restrictions found not to provide a net community benefit. For example, NCP reviews have shown that restricting retail trading hours is not in the public interest and consumers have embraced the resulting introduction of more liberal arrangements. In Sydney and Melbourne around 35 per cent of consumers buy groceries on Sunday where supermarkets are permitted to open. In Perth and Adelaide, where only small food stores can trade on Sundays, the comparative figure is 7–8 per cent (Jebb Holland Dimasi 2000).
- The performance of government businesses has improved substantially through structural reforms and the application of principles to ensure that such enterprises face normal commercial disciplines. Competitive neutrality has promoted a more dynamic culture within government businesses arising from increased transparency and accountability and this contributes to greater efficiency, better services and cost-reflective prices for goods and services.
- Progress towards an economically viable and ecologically sustainable water industry is occurring. Consumption-based pricing is encouraging efficient water use, and lower water bills for customers. Full cost recovery pricing means water businesses are better placed to maintain and replace infrastructure, ensuring more reliable and better quality service. Increased water trading means water is being used where it is most valued. Trade out of Victoria's Sunraysia region into South Australia increased to over 4000 megalitres in 2000-01, with water leaving lower-value horticulture, cropping and grazing. The increase in irrigation return in Victoria alone in 2000-01 was estimated at A$12 million, but would be higher nationally given the water was used for higher-value activities across the border (DNRE 2001). All jurisdictions are developing water management plans that recognise the environment as a legitimate user of water.

Electricity

A competitive and efficient electricity industry is a key objective of the NCP. New South Wales, Victoria, Queensland, South Australia and the ACT are part of an interconnected national electricity market (NEM). Tasmania expects to join in 2005 on completion of a link to the mainland. Significant benefits of the NEM include providing for customers to choose suppliers (generator, retailer and trader), the ability of generation and retail suppliers to enter the market, and the capacity for interstate and intrastate trade in electricity. Although outside the NEM, Western Australia intends to restructure its electricity monopoly (Western Power) to provide for greater competition and the Northern Territory has introduced an access regime for transmission and distribution, and a licensing scheme to enable competition in generation and retail.

Although significant progress has been made, CoAG's objective of a fully competitive national market is yet to be realised. Both the CoAG Energy Market Review (2002) — the Parer Review — and CoAG itself have identified deficiencies in the operation of the NEM. Aspects targeted for further reform relate to governance arrangements and the regionalisation of the NEM arising from poor incentives for transmission investment, a lack of locational pricing structures and an absence of cost-reflective network pricing. Further concerns revolve around a lack of sufficient competition in generation, limited demand-side participation and the state of financial contracts markets.

Governments are considering ways to develop appropriate reforms to achieve a fully competitive NEM. The Ministerial Council on Energy will report to CoAG on necessary reforms to:

- strengthen the quality, timeliness and national character of governance of energy markets to improve the climate for investment;
- streamline and improve the quality of economic regulation across energy markets to lower its cost and complexity for investors, enhance certainty and lower barriers to competition;
- improve planning and development of electricity transmission networks to create a stable framework for efficient investment in new (including distributed) generation and transmission capacity; and
- enhance the participation of energy users including through demand management and the further introduction of retail competition to increase the value of energy services to households and business. (Ministerial Council on Energy 2003a).

The Council will consider in the 2004 NCP assessment jurisdictions' responses to addressing the deficiencies identified by the Parer Review and any reform initiatives coordinated through CoAG, the Ministerial Council and the NEM Ministers' Forum.

Some of the deficiencies in the electricity market relate to existing reform commitments. In its 2002 NCP assessment the Council identified full retail contestability as a significant outstanding issue for some NEM participants. Queensland is now the only jurisdiction that has not met its commitment to introduce full retail contestability. Queensland has undertaken to immediately consider introducing contestability for customers using between 100 and 200 megawatt hours per year (tranche 4A) and to bring forward a review of the costs and benefits of full retail contestability. Queensland has agreed to consult with the Council on the terms of reference for the cost–benefit review. The Council regards this undertaking as progress towards acceptable compliance and on that basis has decided that specific suspensions of competition payments pending finalisation of these matters are appropriate. Had such progress not occurred the Council would have recommended significant permanent deductions.

The Council has concerns about the potential for regulated retail tariffs and the level and delivery method of community service obligations to create barriers to further retail competition. Regulatory oversight of retail electricity tariffs should be transitional and cease when retail markets develop sufficiently. Programs for phasing out such arrangements, including price caps, will be of particular significance in future NCP assessments, including specific state-based arrangements such as the electricity tariff equalisation fund (New South Wales) and the benchmark pricing agreement (Queensland).

The Council will examine these issues and the progress made by all NEM jurisdictions in its 2004 NCP assessment. The Council will also monitor jurisdictions' derogations from the National Electricity Code and seek explanations for any ongoing derogations and a timetable for their expiration.

Gas

CoAG established a program of gas reform comprising three key elements:

- the structural separation of the transmission, distribution, production and retail sectors of the gas industry;
- the introduction by all governments of third party access regulation for natural gas pipelines; and
- the provision for all gas consumers to choose their supplier — that is, full retail contestability.

CoAG's objectives for national free and fair trade in gas are now largely in place and the benefits of reform are being realised. The Parer review found that the Australian gas market is increasingly competitive, dynamic and efficient. It further noted that 'removal of restrictions on interstate trade in gas and provision of access to pipelines (transmission and distribution) and to customers (removal of exclusive franchises) has encouraged new pipelines to be built. Similarly, exploration for and development of new gas reserves has been encouraged' (CoAG Energy Market Review 2002).

All governments have met their commitments in relation to structural reform and franchising and licensing principles. And, although the review and reform of legislation is incomplete in several areas, jurisdictions are generally committed to finalising their obligations in this area.

New South Wales, Victoria, Western Australia, South Australia and the ACT have removed regulatory barriers to full retail contestability. Western Australia and South Australia expect that impediments to the practical attainment of full retail contestability will be removed in 2004. Queensland deferred implementing full retail contestability without the agreement of all jurisdictions, and subsequently announced that it did not intend to implement it at all. Queensland therefore has not complied with its gas

reform obligations. The Council will assess Queensland's actions in the 2004 NCP assessment, after Queensland completes its consultation process, and makes a final decision on implementation. The Council will also consider jurisdictions' progress in implementing the national gas quality standard and Tasmania's progress in seeking certification of its gas access regime.

Water

Water is a significant Australian industry — in value added terms, water and wastewater is almost one quarter the size of agriculture and almost three times the size of the gas industry. While water use by agricultural industries accounts for about 70 per cent of all water used, urban and industrial consumption is significant. Many Australian river systems are stressed, with resulting loss of productive land, poor water quality and reduced biodiversity — for example, one third of assessed river reaches have impaired aquatic biota, over 85 per cent have significantly modified environmental features and over half have modified habitat (NLWRA 2001).

Recognising these and other problems, CoAG agreed in 1994 to a water resource policy and a strategic framework for water reform. This framework, which was subsequently incorporated into the NCP, encompasses: reforms based on consumption-based pricing and full cost recovery; the elimination of inefficient cross-subsidies and the transparency of remaining cross-subsidies; requirements for new rural water infrastructure to be economically viable and ecologically sustainable; the clarification of water entitlements and their separation from land title; the allocation of water to the environment; the facilitation of water trading to allow water to be used where it is most valued; various institutional reforms to improve efficiency; and measures to enhance public consultation in the reform program.

Reflecting the scope of the reform task, elements of the program are scheduled for consideration in each NCP assessment. The 2003 NCP assessment considered governments' progress with urban water and wastewater pricing reforms, intrastate water trading arrangements, the various institutional reform matters, and the implementation of the National Water Quality Management Strategy. The 2003 assessment also considered some matters that the Council had found in previous assessments not to be sufficiently advanced. The 2004 NCP water assessment will consider rural water pricing and cost recovery, water trading arrangements and the implementation of water entitlements systems, including allocations to the environment. The 2005 NCP assessment will consider governments' implementation of the entire program. Given the importance of an efficient and ecologically sustainable water industry, the scope of the reforms, the complexity of the task confronting governments and the longevity of the program, water reform warrants its own separate findings and recommendations — this is provided in volume 3 of this assessment.

All governments are making progress towards implementing the water resource policy, although in different ways. The variances reflect the diversity of the administrative and legislative environments across jurisdictions, differences in the health of river systems and differences in the interests of the relevant stakeholder groups.

- The urban pricing performs are substantially complete, although some water businesses are yet to achieve full cost recovery and apply consumption-based pricing. Two governments are close to introducing institutional arrangements that will provide for the independent economic regulation of the water industry, while a third is considering providing greater transparency by reporting annually on water and wastewater pricing. All other governments provide independent regulation or scrutiny of their water businesses.

- The development of water rights separate from land title, with ownership, volume, reliability and tradeability well specified is largely complete. The legislative base for water rights is now settled in all jurisdictions. CoAG is considering a new intergovernmental agreement that may cover water rights arrangements.

- The development of water management arrangements — which allocate water among extractive uses and to the environment — is proceeding in all jurisdictions, with priority given to stressed and overallocated systems. This complex task requires judgments about environmental allocations based on the available science and accounting for the interests of water users. Where systems are stressed or overallocated, governments are reducing the water available for extraction, or instigating arrangements that allow the possibility of future reductions if environmental monitoring indicates this is warranted.

- Water trading is in its infancy but is expanding. The Murray–Darling Basin Commission has work under way on interstate water trading, including the development of: exchange rates to allow trading between regions and between different water entitlements in different States; environmental controls for trading; administrative arrangements for processing and approving trades; and a system to provide access to State-based registry systems. The commission is also examining alternatives to the restrictions on water trading in place in some jurisdictions.

- All States and Territories are developing integrated catchment management frameworks, including in the context of bilateral agreements with the Commonwealth on the National Action Plan for Salinity and Water Quality and the Natural Heritage Trust extension. All governments are continuing to implement the National Water Quality Management Strategy, although there is variation in the scope and speed of reform.

- All States and Territories have robust arrangements for examining proposals for new rural water infrastructure against CoAG's twin tests of economic viability and ecological sustainability. This 2003 NCP assessment considered new infrastructure projects in three jurisdictions.

- All States and Territories reviewed their water industry legislation in line with their NCP obligations.

- All States and Territories recognise the importance of improving community understanding of water reform. Governments are introducing elements of the reforms, via public processes that include stakeholders.

For the purposes of reporting governments' compliance with their NCP obligations, this overview and recommendations provides only a brief treatment of developments in each State and Territory. It draws essentially only on matters that directly bear on the Council's recommendations with respect to 2003-04 NCP competition payments.

Road transport

The NCP road transport reforms arose from concerns about inconsistent and anomalous rules that governed road transport across the States and Territories. Lack of a consistent approach to road transport regulation increases compliance costs for interstate operators, potentially compromises road safety and creates incentives for users to take advantage of systemic and communications inconsistencies. Nationally consistent regulation with minimal impediments to interstate operations further enhances Australia's road transport industry — already efficient by world standards.

The NCP road transport reform program comprises 31 initiatives covering six areas — registration charges for heavy vehicles, transport of dangerous goods, vehicle operations, heavy vehicle registration, driver licensing, and compliance and enforcement. For the 1999 NCP assessment, CoAG endorsed a framework covering 19 of the initiatives and assessment criteria and target dates for their implementation. CoAG endorsed a further framework of six reforms for the 2001 NCP assessment.

The comprehensive road transport reform commitments are almost complete. Western Australia has two reforms outstanding and the Commonwealth and the ACT have one each. These initiatives are expected to be implemented during 2003-04. That said, because it is the Ministerial Council for Road Transport that specifies which reforms are subject to the Council's assessment, some of the reform modules have not been assessed.

Legislation review and reform

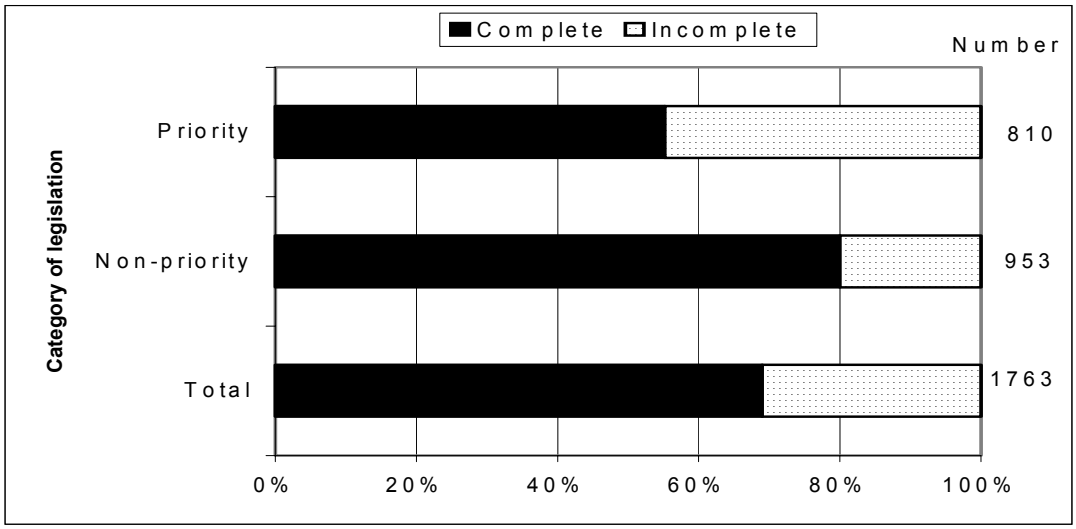
The legislation review and reform program is a vital element of the NCP. Each government developed an extensive legislation review agenda in June 1996, nominating, in total, around 1800 pieces of legislation for review. If a restriction on competition cannot be shown to provide a net community

benefit and to be necessary to achieve the objectives of the legislation, the government is obliged to remove the restriction.

Regulation that promotes the interests of the community provides the foundation for an internationally competitive economy. In contrast, laws designed to favour particular groups can result in beneficiaries commanding more resources than otherwise, and users and consumers paying more for the goods and services given regulatory protection. Consumers, in turn, have less to spend elsewhere, which means that providers of other goods and services produce less, use less capital and employ fewer people. Protecting incumbents erects a barrier not only to new entrants, but also to new ideas and innovative practices. A further loss to the community is the diversion of entrepreneurial effort away from undertaking core business activities to preserving (or seeking) a privileged position through legislative restrictions on competition.

Given that restrictions on competition are usually couched in terms of the interests of the community, the NCP requires that such claims are subject to robust and transparent scrutiny. Recognising the resource intensity of conducting legislation reviews, in 2001 the Council identified reform areas that it considered governments should address as priorities. These areas, many of which have been characterised by endemic restriction, include primary industries, retailing, the occupations, transport, finance, social regulation and construction and development activity.

Figure 1: Overall compliance with the review and reform of the stock of legislation (excluding water and energy legislation): all governments



While no jurisdiction managed to complete its review and reform activity at 30 June 2003, substantial progress has been achieved (figure 1). Many laws regulating significant areas of economic activity have been reviewed, and restrictions found not to provide a community benefit removed. Australia-wide, around 70 per cent of governments' nominated legislation has been reviewed and, where appropriate, reformed. For priority legislation, the rate

of compliance is substantially lower, at around 56 per cent overall. However, much of the priority legislation activity still under way at 30 June 2003 is likely to be completed in the near future.

As in earlier NCP assessments, the Council identified instances of review and reform activity that are inconsistent with NCP principles. In previous years, the Council typically discussed an appropriate way forward with relevant governments. This constructive engagement increased the opportunity for reforms in the public interest. As the Council's primary objective is to assist governments to achieve reform outcomes that are consistent with the interests of the community, it recommended the suspension or reduction of NCP payments only as a last resort. For the 2003 assessment, however, the Council had to make a final assessment on whether governments had met fully their agreed obligations against a firm implementation deadline.

Key areas where reforms are incomplete

Despite solid progress, addressing restrictive legislation remains contentious as evidenced by the lower success rate in the more difficult priority legislation review areas. Processes that subject restrictions on competition to public interest testing invariably generate opposition from incumbent beneficiaries. This opposition creates a political environment that is not always conducive to reform. Some areas where reform has been problematic are noted below.

Primary industries

At the commencement of the NCP, there were numerous statutory marketing arrangements for agricultural products. While review and reform outcomes have been mixed, there have been some notable successes. For instance, all governments repealed price and supply controls on drinking milk; Queensland ended its export marketing monopoly for wheat and barley; Victoria deregulated its barley marketing arrangements and a recent NCP review of similar arrangements in South Australia recommended deregulation; Western Australia is progressing reforms to liberalise its grain marketing; Queensland and Tasmania removed supply and marketing restrictions on eggs; Western Australia and South Australia have removed entry and pricing restrictions in bulk handling; Queensland expedited reform of the sugar industry; and centralised price fixing for poultry growing services has been replaced in several jurisdictions. In contrast, the Commonwealth Government's decision to not remove its wheat marketing restrictions, as recommended by its NCP review, has discouraged some State reforms in the public interest from proceeding.

Despite the pro-competitive outcomes in many areas of agricultural marketing, several often arcane arrangements remain reflecting that reform in this area continues to be difficult for governments that face resistance from well-mobilised and vocal beneficiaries of long-standing arrangements. This is

despite the inability of many relevant producer groups to unite to retain restrictions on competition because typically the most efficient and/or innovative producers are penalised by the 'averaging' practices of statutory marketing arrangements. For example, productivity losses can arise through pooling arrangements that can reduce rewards for quality and innovation, foster inefficient logistical arrangements and stymie the development of risk-spreading opportunities for producers and competing domestic marketers.

The retention of marketing boards for some commodities has contributed to lobbying from other commodity producers for similar market interventions. Unchecked, such an environment can be self-perpetuating as interest groups perceive the benefits of eschewing competitive processes in favour of lobbying for regulatory constraints on competition. In particular, governments face lobbying pressure from chicken meat growers and, at least in one State, dairy farmers, for re-regulation. The differential treatment of similar commodities across jurisdictions has the potential to direct mobile investment into areas with favourable regulatory environments (jurisdiction shopping) rather than for sound commercial reasons. For these reasons the Council regards agricultural marketing as a high priority area. It will scrutinise closely all new legislation in this area to highlight any threats to the gains that the community has won from reforms to date.

Governments are also using the NCP to consider how best to improve the efficiency of activities such fishing and forestry and to achieve the sustainable development of these resources.

Retailing

Prescribed shop trading hours discriminate among sellers on the basis of location, size or product and prevent them from trading, and consumers from shopping, at the times they consider appropriate. Such regulations are out of step with the social and demographic characteristics of modern economies where many people reside in two income households and desire flexibility in when and where they make their purchases of goods and services.

With the exception of Western Australia, all governments have substantially deregulated trading hours. The liberalisation of trading hours across Australia reflects that no properly constituted NCP review has determined that the restrictions provide a net community benefit. On the contrary, evidence from reviews and from the experience of deregulated jurisdictions negate the arguments put by proponents of such restrictions. For example, small retail business employment in Victoria has grown since it removed restrictions in 1996 whereas it has fallen by almost 10 per cent over the period in Western Australia.

Liquor licensing laws that focus on the public interest via nondiscriminatory provisions aimed at harm minimisation are consistent with NCP principles. More often than not, however, liquor licensing laws preclude entry by responsible sellers and favour some sellers at the expense of others.

Legislation governing the sale of liquor involves three broad categories of competition restrictions.

- Barriers to entry: Legislation in several jurisdictions contain tests that require licence applicants to demonstrate a need for an additional outlet.

- Discrimination between sellers: In Queensland, only holders of a general (hotel) licence can sell packaged liquor. In Western Australia, hotels can sell packaged liquor on Sundays while liquor stores are prohibited from opening. And, until recently, nonhotel retailers of packaged liquor in Tasmania could not sell less than nine litres of liquor in one any sale, whereas hotel bottle shops could sell any quantity.

- Market conduct: In Queensland, hotels are limited to three bottle shops, which must be detached from the hotel. Each bottle shop must be no larger than 150 square metres and drive-in facilities are prohibited.

These arbitrary restrictions have adverse implications for potential new businesses, for consumer convenience and community amenity more generally. As in previous assessments, the Council regards retail-related restrictions to be high priority matters. For the 2003 assessment, it looked for an appropriate balance between social goals and regulation that did not involve explicit references to competitive effects on incumbents.

Professions and occupations

The review and reform of laws regulating professions and occupations is a significant element of the NCP legislation review and reform program. Review and reform activity by individual governments in many of these areas is complete and complies with NCP principles. However, reform outcomes are still to be implemented in some important areas, including health practitioners — in particular, pharmacists — building related trades (including architects) and legal practitioners.

The Council identified compliance failures following some governments' reform activity, including ownership restrictions for dental and optometry practices and the registration of occupational therapists and speech pathologists. Ownership restrictions, in particular, which place occupational standing above business acumen, impede market entry for innovative service providers.

Pharmacy legislation

CoAG commissioned a national review of governments' pharmacy legislation in 1999 — the Wilkinson review. Among other matters, the review recommended: continuing to restrict the practice of pharmacy to pharmacists; retaining ownership restrictions; lifting restrictions on the number of pharmacies that a pharmacist can own; and continuing to permit friendly

societies to own pharmacies, but prohibiting their entry to jurisdictions where they do not operate currently.

CoAG referred the Wilkinson review to a working group which, although questioning the view that restricting pharmacy ownership is in the public interest, considered that deregulating ownership could be disruptive in the short term. The working group proposed that CoAG reject the recommendation to prevent friendly societies operating pharmacies in jurisdictions where they are not already present. It endorsed the recommendation to remove restrictions on the number of pharmacies that a pharmacist may own and recommended that reservation of pharmacy practice be retained only as an interim measure. The working group's findings reinforce the Council's reservations about the veracity of the initial review.

Although the working group reported in August 2002, no government completed the review and reform of its pharmacy legislation, although several indicated that amending legislation will be introduced later in 2003. The Council will look for governments to expedite progress in this important area and will scrutinise reforms to ensure that they do not discriminate against friendly societies operating in jurisdictions where they are located currently or in jurisdictions where they do not have a presence.

Taxis

Throughout Australia taxi and hire cars operate under anticompetitive regulations. State and Territory legislation generally provides for taxi licences to be issued infrequently on a discretionary basis. This has led to a decline in taxis per head of population. One indication of the regulation-induced scarcity of taxis is the artificially high values attached to taxi licences — often in the range of A$200 000 to A$300 000. Ultimately, this cost is borne by taxi users. The adverse efficiency impacts and the transfers from taxi users to licence holders from regulation are significant. The Victorian NCP review, for instance, estimated that the annual cost to the community of taxi supply restrictions was A$72 million, comprising transfers from passengers to plate owners of A$66 million and deadweight losses of A$6 million.

All jurisdictions have completed NCP reviews of their taxi and hire car legislation. The Victorian, Western Australian, ACT and Northern Territory reviews recommended removing restrictions on taxi licence numbers and compensating incumbents through licence buybacks. The New South Wales and Tasmanian reviews recommended transitional approaches involving annual increases in licence numbers. Despite the evidence from NCP reviews that taxi supply restrictions are not in the public interest, governments have found it difficult to make major progress in this area.

Apart from a reform program in Victoria involving a twelve year program of staged releases of taxi licences, progress has been disappointing. The difficulties faced by governments is exemplified by the experience of the Northern Territory which in the late 1990s bought back all taxi licences in

tandem with opening the market to new participants. Notwithstanding that taxi users continue to pay for this licence buyback, the government subsequently reintroduced entry restrictions, thereby creating the conditions for a future adjustment problem. From the community's perspective, it is not clear what benefit was gained from funding the compensation package.

To help break the impasse in this field of regulation, the Council wrote to all jurisdictions in 2002 to advise that it accepted that a more gradual transition to open competition could be consistent with the NCP. It provided guidelines on acceptable reform programs extending beyond 2003. Some governments have started to consider reform initiatives, whereas others have found the task too daunting.

National reviews

Where a review raises issues with a national dimension, the NCP provides that it can be undertaken on a national basis. There have been 12 such reviews to date. In many cases, governments have not yet implemented the recommended reforms because of delays arising from protracted intergovernmental consultation. Areas where governments' review and reform of legislation is incomplete because of a need to resolve interjurisdictional processes include: agricultural and veterinary chemicals; drugs, poisons and controlled substances; trade measurement and travel agents.

In addition, the Council did not finalise the assessment of governments' obligations with respect to the review and reform of statutory monopoly provision of insurance. This reflects the commencement of a Productivity Commission inquiry into Australia's workers compensation schemes. Given the commonality of issues with monopoly provision of compulsory third party, and legal professional indemnity, insurance, the Council also did not complete its assessment in these areas.

There are demonstrable benefits from thorough interjurisdictional consultation on issues with a national dimension. Nevertheless, while a national focus can improve regulatory consistency across jurisdictions, the Council is concerned that in some cases the processes are not progressing within a reasonable period.

New legislation that restricts competition

As well as the obligation to review the stock of existing legislation, governments have continuing obligations to scrutinise all proposals for new legislation. This provides the community with some assurance that unwarranted anticompetitive restrictions on competition are not removed from existing legislation only to resurface in new legislation.

Where new legislation restricts competition, governments must establish that the restriction provides a net benefit to the community as a whole and is necessary to achieve the objective of the legislation. Accordingly, each government has established procedures for scrutinising new regulations — known as 'gatekeeping' processes. The Commonwealth Government's gatekeeping procedures represent best practice as they require impact assessment for all regulatory proposals and are underpinned by detailed guidelines on the conduct of impact analysis. An independent Office of Regulation Review is empowered to examine agencies' impact assessments and to advise Cabinet on their adequacy. The office also monitors and reports annually on compliance with the regulation impact analysis guidelines.

Other jurisdictions generally subject all primary and subordinate legislation to their gatekeeping requirements. New South Wales, however, does not subject direct amendments to legislation to its gatekeeping requirements. The Council considers this a material omission. In other respects there are divergences between the models adopted by each jurisdiction. For example many jurisdictions use Cabinet processes to implement gatekeeping mechanisms for primary legislation and therefore may not require the final impact assessment to be made available publicly. Others lack the rigorous monitoring and reporting systems of the Commonwealth, or their systems have not been in place long enough to be properly assessed.

Despite the efficacy of the gatekeeping system, governments have implemented some legislation that restricts competition in the absence of evidence of a net community benefit. For example, the Council is concerned about the introduction in some states of restrictions, based on tenuous public interest arguments, on advertising by lawyers for personal injury services.

An effective gatekeeping process is a necessary condition for guarding against the introduction of legislation that is not in the public interest, but does not obviate the need for the Council to scrutinise governments' new legislation to ensure that it accords with their obligations under the NCP.

Reform of government businesses

Governments continue to reform their business activities in accordance with the NCP through the structural reform, and prices oversight, of public monopolies. Significant publicly owned businesses in all jurisdictions apply competitive neutrality principles and each government has a mechanism for investigating complaints that their businesses are not doing so appropriately.

The coverage of governments' competitive neutrality policies is generally satisfactory and most governments continue to address business structure issues. For the 2003 assessment, the Council focussed on governments' forestry businesses. It assessed all jurisdictions, apart from Victoria, as being well advanced in meeting their NCP obligations. However, the Council could not assess that governments' forestry businesses comply with NCP because they are yet to establish track records of earning adequate profits.

Commonwealth, State and Territory complaints mechanisms are operating satisfactorily but could be improved in two areas. First, some jurisdictions provide for Ministers to decide whether an independent body should hear complaints and this can bring into question the independence of the complaints process. Second, complaints processes have been inordinately slow in some cases. While these concerns do not indicate widespread systemic failures, the Council encourages governments to consider options for accelerating investigation processes and any subsequent actions.

Competition payments: the Council's approach

The Commonwealth Government makes payments to the States and Territories as a financial incentive to implement the NCP and related reform program. The payments recognise that the States and Territories have responsibility for significant elements of the NCP, yet much of the financial dividend from the economic growth arising from the NCP reforms accrues to the Commonwealth through the taxation system.

Competition payments in 2003-04 are approximately $A765 million and are allocated to the States and Territories on a per capita basis. The Commonwealth Treasurer decides on the actual payments after considering the Council's advice on jurisdictions' progress in meeting their NCP obligations. The Council may recommend a reduction or suspension of payments where it assesses that governments have not implemented the agreed reform program. The Council also assesses the Commonwealth's progress, but the Commonwealth does not receive payments and is therefore not subject to reductions or suspensions.

In terms of the CoAG target for the completion of the legislation review program, for the 2003 NCP assessment the Council regarded a government as failing to meet its obligations where (a) the review and reform of legislation was not completed or (b) completed reviews and/or reforms did not satisfy NCP principles. Where review and reform activity was incomplete owing to a need to resolve outstanding national reviews or other interjurisdictional processes, the Council considered that there should not be adverse payment implications.

The significance of an individual compliance failure can reflect an array of considerations, including:

- *The extent of anticompetitive restrictions remaining.* Significance may vary across jurisdictions for the same area of regulation, depending on the extent of the restriction. Two jurisdictions might have identical barriers to entry to an industry, but one jurisdiction might allow greater entry to providers of a closely substitutable service, thereby mitigating the impact of the primary restriction (such as for taxis and hire cars).

- *The relative importance of a compliance breach in terms of its impacts on the community and economy.* Single desk arrangements for an agricultural commodity, for example, are more significant than, say, reservation of title for speech therapists.

- *How the effects of anticompetitive impacts are manifested.* Some restrictions on competition:

  – result in financial transfers to incumbent beneficiaries at the expense of potential competitors and users and final consumers;

  – have significant, albeit less tangible, effects on consumer convenience (such as the restrictions on shop trading hours); and

  – have pronounced impacts on the allocation of resource use in other jurisdictions or the economy generally, such as differential restrictions across jurisdictions that raise business costs and distort location decisions.

In addition to accounting for the significance of any particular compliance breach, CoAG has directed the Council, when assessing the nature and quantum of any financial penalty or suspension, to take into account:

- the extent of the relevant State or Territory's overall commitment to the implementation of the NCP; and
- the effect of one State or Territory's reform efforts on other jurisdictions.

The Council interprets this guidance to mean that individual minor breaches of reform obligations should not necessarily have adverse payments implications where a government has generally performed well against the total NCP reform program. Nevertheless, a single breach of obligations in a significant area of reform may be the subject of an adverse recommendation, especially where the breach has a large impact and/or an adverse impact on another jurisdiction. Further, the Council interprets the CoAG guidance as suggesting that the quantum of any payments recommendation should bear some relationship to a government's overall performance in reform implementation, the impact of the breach of reform obligations and whether there are adverse impacts on other jurisdictions.

In taking account of the significance of an individual compliance failure and CoAG's direction that a jurisdiction's overall performance in meeting the suite of NCP obligations should also condition payments recommendations, the Council determined that, for each State and Territory:

- significant individual compliance breaches should attract penalties (suspensions or deductions) in their own right; and

- other compliance breaches should be agglomerated and a general 'pool suspension' applied.

For the purposes of the 2003 NCP assessment, the categories of penalties are elaborated on below.

- **Permanent deductions** are irrevocable reductions in governments' 2003-04 competition payments for specific compliance failures. The Council may recommend that the permanent deduction not be imposed for competition payments in subsequent years where governments introduce appropriate reform. In the absence of complying action the Council is likely to recommend in future assessments that the 2003-04 deductions be ongoing.

- **Specific suspensions** apply until pre-determined conditions are met, at which time the suspension is lifted and suspended 2003-04 competition payments released to the relevant jurisdiction. Suspensions of this type recognise that governments are taking action to comply but have not as yet completed that action. The Council will address these matters as and when significant commitments are made, or reforms implemented. Where commitments are not made or met, or reform action not implemented by the 2004 NCP assessment, the Council is likely to recommend that the suspended 2003-04 competition payments be withheld permanently (that is, converted to a permanent deduction). In subsequent years the Council will consider whether further suspensions or permanent deductions should apply.

- **Pool suspensions** apply to a pool of outstanding legislation review and reform compliance failures and relate to payments for 2003-04. The Council will reassess progress with the pool of compliance failures in the 2004 NCP assessment. If satisfactory progress is made, the Council may recommend that the suspension be lifted or reduced and the funds released to the relevant jurisdiction. If satisfactory progress is not made, the Council is likely to recommend that all or part of the suspension be converted to a permanent deduction for the 2003-04 NCP competition payment and that the deduction be ongoing.

New South Wales

Energy

New South Wales is a leading state in energy markets reform and with one exception has met all obligations relating to electricity and gas reform for this 2003 NCP assessment.

- New South Wales implemented the reforms to establish the NEM and has met its commitment to full retail contestability. The Council:

  – is concerned about the potential for barriers to further retail competition in the electricity market created by the level and delivery

method of the community service obligations provided to franchised customers; and

– will further examine the electricity tariff equalisation fund in the context of the wider issues raised by regulated retail tariffs in its 2004 NCP assessment.

- In 1996, New South Wales provided stimulus to national gas reform by legislating consistently with the work undertaken by the Gas Reform Task Force on developing a gas access code. Subsequently, all governments agreed to adopt this code with some refinements. New South Wales has implemented the National Gas Access Code, removed barriers to free and fair trade in gas, removed restrictions on gas use, adopted national pipeline construction standards, and introduced contestability to the household level.

  New South Wales has extended a derogation from the National Gas Access Code relating to the treatment of some transmission pipelines as distribution pipelines. It did not, however, secure Commonwealth agreement to continue the derogation — the Commonwealth supported a three year extension rather than the five years proposed by New South Wales. Consequently, New South Wales is in breach of the intergovernmental agreement on gas.

Water

New South Wales substantially implemented the water pricing obligations for its urban sector. The Independent Pricing and Regulatory Tribunal regulates the four large urban metropolitan businesses, which set prices on a consumption basis to achieve full cost recovery. Many nonmetropolitan urban service providers also impose consumption-based prices for water services and achieve full cost recovery. The Government released guidelines to facilitate best practice pricing in February 2003, and annually benchmarks the performance of its nonmetropolitan urban water and wastewater providers.

New South Wales gazetted the State Water Management Outcomes Plan in 2002 and subsequently gazetted 35 water sharing plans covering 80 per cent of the State's water, including most stressed and overallocated systems. The Government deferred commencement of the water sharing plans until January 2004, after CoAG announced that it would consider a new intergovernmental water agreement. The State's new licensing and approvals system and its water rights registry will also commence on 1 January 2004.

As well as the new licensing system and registry, the trading rules in the water sharing plans are important to the development of water trading. While the trading rules significantly improve the State's arrangements, the rules in some plans appear to restrict trading beyond the need to protect the environment or to manage trading systems. There are also prohibitions on net trade of water out of some irrigation districts.

New South Wales completed the review and reform of its stock of water industry legislation, repealing a range of water industry legislation. The Council defers the 2003 assessment of New South Wales' actions to provide water for the environment and establish its licensing and registry system to February 2004.

Legislation review

New South Wales had 216 pieces of existing legislation (excluding electricity, gas and water) for review comprised of 118 priority and 98 nonpriority pieces of legislation. It completed the review and reform of over 70 per cent of its stock of legislation. New South Wales reviewed, and where appropriate, reformed nearly 70 per cent of its priority legislation and nearly 80 per cent of its nonpriority legislation. Compared to other jurisdictions, its performance was above average.

New South Wales had eight areas in which review and reform outcomes did not meet NCP obligations:

- vesting arrangements for grains (*Grain Marketing Act 1991)*;
- centralised bargaining arrangements (*Poultry Meat Industry Act 1986)*;
- restrictions on taxis and hire cars (*Passenger Transport Act 1990*);
- compulsory mediation for acquisition of farm debt (*Farm Debt Mediation Act 1994*);
- ownership restrictions for dentists (*Dentists Act 1989*) and optometrists (*Optical Dispensers Act 1963* and *Optometrists Act 1930);*
- exclusive gaming machine investment licences (*Gaming Machines Act 2001)*; and
- requirements for minimum bets and advertising restrictions (*Racing Administration Act 1998*).

New South Wales had a further 20 areas where review and reform was incomplete, including 9 instances where a commitment to finalising activity for this NCP assessment was not evident. (It had six incomplete reform areas pending final resolution of interjurisdictional processes.)

Other NCP obligations

New South Wales:

- subjects all proposals for new legislation, apart from direct amendments, to testing for compliance with competition principles — the exclusion of

direct amendments from scrutiny means that its gatekeeping process may not provide sufficient analysis of new legislative proposals;

- continues to meet its obligations in relation to the structural reform of public monopolies and prices oversight of its monopoly businesses;
- meets its competitive neutrality obligations through appropriate coverage of government businesses and by virtue of a suitable competitive neutrality complaints mechanism;
- continues to meet its obligations under the Conduct Code; and
- has completed its road transport reform obligations.

Assessment

For the purposes of the 2003 NCP assessment, New South Wales had significant compliance breaches in the following areas.

- *Vesting for grains:* Monopoly arrangements for certain grains under the *Grain Marketing Act 1991* are inconsistent with the interests of the community and of producers. The Government reported that it could not expedite the expiry of the restrictions because of binding agreements with Grainco, the holder of the monopoly right. It presented no further evidence that its original decision to retain the restrictions was in the public interest. The Council notes, however, that the Government has legislated to remove the restrictions in September 2005.
- *Monopoly on domestic rice sales*: The NCP review of the statutory rice marketing monopoly, under the *Marketing of Primary Products Act 1983*, recommended removing the domestic monopoly while retaining the export monopoly. The Government failed to implement the recommendations. To progress matters, in 1999 a model for a Commonwealth rice export authority, which would enable liberalisation of domestic rice marketing arrangements, was developed by a working group. The New South Wales Premier agreed in principle to the model. The Commonwealth subsequently consulted other States and Territories but is yet to advise the outcome of these consultations. The Council understands that New South Wales will undertake a new review of the rice vesting arrangements. The Council expects the Government to undertake an independent review and, if it recommends reform, to implement such reform without delay unless there is a clear public interest in a reform transition against a firm timetable.
- *Chicken meat industry negotiations*: The *Poultry Meat Industry Act 1986* restricts competition between processors and growers by setting base rates for growing fees and prohibiting agreements not approved by an industry committee. The Government failed to show that these restrictions were in the public interest and, moreover, failed to conduct an open NCP review

process. The Council recommends a permanent deduction of 5 per cent of competition payments for 2003–04 for noncompliance in this area.

- *Regulation of liquor sales*: The *Registered Clubs Act 1976* and the *Liquor Act 1982* underpin an anticompetitive needs test that benefits incumbent sellers of liquor. Despite having commenced a review of its liquor licensing legislation in 1998, the Government has not yet finalised its review and reform activity. The Council recommends a permanent deduction of 5 per cent of competition payments for 2003–04 for noncompliance in this area.

- *Other compliance failures*: The Council recommends a suspension of 10 per cent of competition payments for 2003-04 for the remaining legislation review compliance failures, until reforms have progressed (see below). In particular, the Council will look for progress on domestic rice marketing (whether or not a Commonwealth rice export authority proceeds), grain marketing, the health professions (especially pharmacies), fisheries, and taxis and hire cars.

New South Wales: 'suspension pool'

Professions and occupations: Veterinarians; dentists*; nurses; podiatrists; optometrists*; pharmacists; architects; hairdressers; commercial and private inquiry agents; wool, skin and hide dealers

Primary industries: Fisheries management; food legislation; farm debt mediation*; rice marketing; grain marketing

Transport: Taxis and hire cars*; tow trucks; marine safety

Other: Funeral funds regulation; child care; gambling (lotteries, casinos, gaming machines*, minor gambling, racing*)

Activity delayed by ongoing national processes: Agricultural and veterinary chemicals; stock medicines; legal practice; travel agents; statutory monopoly workers compensation insurance; trade measurement

Notes: A * denotes that outcomes are not consistent with NCP obligations. Underline denotes that the relevant legislation is before Parliament.

In making its recommendations on competition payments, the Council has taken account of New South Wales considerable reform progress and successes as a reflection of its general commitment to NCP reform, and the likely impact of its reform failures. Balanced against these considerations, the Council considers that, in relation to New South Wales 2003-04 NCP competition payments, the matters identified in this assessment warrant:

- ***a permanent deduction of 5 per cent for noncompliance in respect of chicken meat industry legislation (estimated at A$12.86 million);***

- ***a permanent deduction of 5 per cent for noncompliance in respect of the regulation of liquor sales (estimated at A$12.86 million); and***

- ***a pool suspension of 10 per cent for outstanding legislation review items (estimated at A$25.72 million).***

Victoria

Energy

Victoria is a leading state in NCP energy markets reform and has met all obligations under the electricity and gas reform agreements for the purposes of this 2003 NCP assessment.

- Victoria implemented the reforms to establish the NEM and met its commitment to full retail contestability. Its approach to meeting community service obligation objectives, by providing rebates for regional customers faced with higher distribution charges, minimises adverse impacts on competition. This provides a lead to other governments in implementing policies to achieve social objectives that are compatible with NEM objectives.

- Victoria has undertaken major reform of its gas industry. It divided the then state-owned gas transmission, distribution and retailing activities into separate corporations, and privatised the three stapled gas distribution/retail businesses. The former gas transmission corporation became Transmission Pipelines Australia (and was privatised in 1999) and the independent system operator VENCorp. Victoria has implemented the National Gas Access Code, removed barriers to free and fair trade in gas, adopted national pipeline construction standards and introduced contestability to the household level. It is continuing with review and reform of gas-related legislation and the implementation of the national gas quality standard.

Water

Victoria's four urban metropolitan providers of water and wastewater services set prices to achieve full cost recovery. Several regional urban water and wastewater businesses are still to reach commercial viability. Volumetric pricing is widespread, so water users face an incentive to use water efficiently.

The Government introduced a Bill to establish the Essential Services Commission, with jurisdiction for the water industry from 1 January 2004. The commission's first price determination for the water industry will apply from 1 July 2005. In addition, the Government is canvassing water industry issues in a green paper review of the State's water industry.

Victoria completed flow rehabilitation plans for two of five priority stressed rivers. It anticipates that flow rehabilitation plans for two other rivers will be completed shortly. The Government referred one river plan to the relevant catchment management authority.

Victoria established a technical audit panel to consider whether the information and methods used to develop environmental flows are the best available at the time, and to decide whether the assessment of risks is properly done. The Government will make the panel's reviews and a range of other information publicly available.

Water rights are well defined, with Victoria well advanced in converting the existing rights of water authorities to clearly-defined bulk entitlements. Victoria has a well-established trading market for high security water, and trading plays an important role in the State's agricultural production.

Victoria will review two of the remaining constraints on water trading — the requirement for water entitlements to attach to land and the differential returns on bulk water supply. A further constraint in some irrigation districts is the provision that a trade may be refused if it would result in more than 2 per cent (net) of the total water entitlement being transferred out of the district in a given year.

Victoria reviewed its water industry legislation in 2001. The Government endorsed many of the recommendations of this review and is well advanced with implementing these. Victoria is considering other recommendations in its green paper review of the water industry.

The Council defers the 2003 assessment of Victoria's actions to provide water for the environment and establish its licensing and registry system to February 2004.

Legislation review

Victoria had 210 pieces of existing legislation (excluding electricity, gas and water) for review comprised of 91 priority and 119 nonpriority pieces of legislation. It completed the review and reform of over 80 per cent of its stock of legislation. Victoria reviewed, and where appropriate, reformed 78 per cent of its priority legislation and over 80 per cent of its nonpriority legislation. Compared to other jurisdictions, Victoria's performance was well above average.

Victoria had two areas in which review and reform outcomes were assessed as not meeting NCP obligations:

- barriers to entry to the provision of accident towing services (*Transport (Tow truck) Act 1983* and Transport (Tow truck) Regulations); and
- exclusive lottery licence arrangements (*Tattersall Consultation Act 1958* and *Public Lotteries Act 2000*).

Victoria had a further eight areas where review and reform was incomplete, including six instances where a commitment to finalising activity for this NCP assessment was not evident. (It had seven incomplete reform areas pending final resolution of interjurisdictional processes.)

Other NCP obligations

Victoria:

- subjects all proposals for new legislation to testing for compliance with competition principles via an NCP impact assessment;
- continues to meet its obligations in relation to the structural reform of public monopolies and prices oversight of its monopoly businesses;
- has promoted competitive neutrality reform of its government businesses and has a robust competitive neutrality complaints mechanism;
- continues to meet its obligations under the Conduct Code; and
- has met all of its road transport reform obligations.

Assessment

For the purposes of the 2003 NCP assessment, the Council recommends a suspension of 5 per cent of Victoria's competition payments for 2003-04 for legislation review compliance failures, until reforms have progressed (see below). In particular, progress will be required in the professions (especially pharmacies) and tow trucks.

Victoria: 'suspension pool'

Professions and occupations: Pharmacists; private agents; architects; surveyors

Primary industries: Fisheries management; and mining legislation

Transport: Tow trucks*; port services

Other: Gambling (lotteries*); building approvals

Activity delayed by ongoing national processes: Agricultural and veterinary chemicals; drugs, poisons and controlled substances; legal practice; travel agents; statutory monopoly provision of workers compensation and third party vehicle insurance; trade measurement

Note: A * denotes that outcomes are not consistent with NCP obligations.

Victoria has substantially completed the total NCP reform agenda and its overall progress has been impressive. In making its recommendations on competition payments, the Council has taken account of Victoria's considerable reform progress and successes as a reflection of a commitment to NCP reform, and the likely impact of reform failures. Balanced against these considerations, the Council considers that, in relation to Victoria's 2003-04 NCP competition payments, the matters identified in this assessment warrant a pool suspension of 5 per cent for outstanding legislation review items (estimated at A$9.48 million).

Queensland

Energy

Queensland made substantial progress with energy reform. With two exceptions it met its obligations under the electricity and gas reform agreements for the purposes of this 2003 NCP assessment.

- Queensland implemented the reforms to establish the NEM. In October 2001, it announced that it would not implement full retail contestability, but would:

  – review the decision in 2004 once the impact of the introduction of full retail contestability in other jurisdictions was known; and

  – consider extending contestability to small business customers consuming less than 200 megawatt hours of electricity per year.

  This decision followed a cost–benefit analysis that Queensland argued demonstrated that the costs of implementing full retail contestability outweigh the benefits. The Council considered this analysis in its 2002 NCP assessment and concluded that Queensland had not demonstrated that the costs of implementing full retail contestability outweigh the benefits because it had failed to make provision for dynamic benefits.

  Queensland has now undertaken to immediately consider introducing contestability for customers using between 100 and 200 megawatt hours per year (tranche 4A) and commencing the planned 2004 review of the costs and benefits of full retail contestability. Queensland has agreed to consult with the Council on the terms of reference for the cost–benefit review. The Council regards these undertakings as the minimum acceptable level of progress towards compliance and on that basis has decided that specific suspensions of competition payments pending finalisation of these matters are appropriate. Had such progress not occurred the Council would have recommended significant permanent deductions and if the actions undertaken were not to occur it is highly likely that the Council will recommend the suspensions recommended as part of this assessment be converted into permanent deductions.

- In terms of its NCP obligations with respect to gas, Queensland has implemented the National Gas Access Code, removed barriers to free and fair trade in gas, removed regulatory restrictions on gas use, and adopted uniform national pipeline construction standards. Queensland has not, however, met fully its national gas reform obligations. It deferred the introduction of full gas retail contestability from 1 September 2001 to 1 January 2003 without the required consent of all governments. Queensland released for public consultation a cost–benefit analysis that found that the introduction of full retail contestability would impose significant net costs. It informed the Council that it intends, subject to

issues raised in public consultation, not to introduce retail contestability for gas users consuming less than 100 terajoules per year.

The Council considers that Queensland has not complied with the processes required under its national gas reform obligations. The Council will assess Queensland's actions against its commitment to introduce full retail contestability in its 2004 NCP assessment, after Queensland completes its consultation process, and makes a final decision on implementation.

Water

Queensland substantially implemented its urban water pricing obligations. Most businesses with over 1000 connections are achieving full cost recovery and implementing consumption-based pricing.

Water allocations are separate from land title, and their ownership, volume and location are clearly specified. Water resource plans specify the rules for the allocation of water, water security objectives and environmental flow provisions. The plans, which have effect for 10 years, are implemented through resource operations plans detailing day-to-day operational rules. Queensland has completed water resource plans for six river systems (with a further three expected soon) and a resource operations plan for the Burnett Basin.

Queensland's sole (potentially) overallocated river system is the Condamine–Balonne Basin. It is developing new water management arrangements for the basin, which it expects to finalise by mid-2004.

Queensland is in the early stages of permanent water trading. It commenced a trial of permanent trading in 1999 and has subsequently extended this. Queensland amended or repealed a range of water industry legislation via the *Water Act 2000*.

The Government announced its intention to proceed with the Burnett Water Infrastructure Project. The project comprises construction of the 300-gigalitre Burnett River Dam and construction or enhancement of associated weirs. With the exception of the raising of one weir, the project has passed through Queensland's environmental assessment processes and has been approved under the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999*. Studies commissioned by the Queensland Government show that the project will deliver significant net economic benefits and that regional water demand will be sufficient to take up the new entitlements from the Burnett project at appropriate prices.

Legislation review

Queensland had 178 pieces of existing legislation (excluding electricity, gas and water) for review comprised of 118 priority and 60 nonpriority pieces of legislation. It completed the review and reform of over 70 per cent of its legislation. Queensland reviewed, and where appropriate, reformed 61 per cent of its priority legislation and over 90 per cent of its nonpriority legislation. Compared to other jurisdictions, Queensland's performance was above average.

Queensland had six areas in which review and reform outcomes were assessed as not meeting NCP obligations:

- discriminatory restrictions on packaged liquor sales (*Liquor Act 1992);*
- restrictions on taxis and hire cars (*Transport Operations (Passenger Transport) Act 1994*);
- reservation of title for occupational therapists (*Occupational Therapists Act 1979*) and speech pathologists (*Speech Pathologists Act 1979*);
- restrictions on activities outside of ports (Transport Infrastructure (Ports) Regulation 1994 under the *Transport Infrastructure Act 1994*); and
- statutory monopoly provision of public sector superannuation (*Superannuation (Government and Other Employees) Act 1998*).

Queensland had a further 18 areas where review and reform is incomplete, including 11 instances where a commitment to finalising activity for this NCP assessment was not evident. (It had seven incomplete reform areas pending final resolution of interjurisdictional processes.)

Other NCP obligations

Queensland:

- ensures that all proposals for new legislation are tested for compliance with competition principles through a formal public benefit test before consideration by the Cabinet;
- continues to meet its obligations in relation to the structural reform of public monopolies and prices oversight of its monopoly businesses;
- has promoted competitive neutrality reform of its government businesses and was one of the first jurisdictions to establish a competitive neutrality complaints mechanism;
- continues to meet its obligations under the Conduct Code; and
- has met its road transport reform obligations.

Assessment

For this 2003 NCP assessment, Queensland did not meet its NCP obligations in the following areas.

- *Failure to progress electricity reform*: Full retail contestability has not been introduced as required under the NCP electricity reform agreements. Queensland has, however, agreed to immediately consider introducing contestability for tranche 4A customers and undertaking the further review of introducing full retail contestability immediately. The Council recommends a suspension of 10 per cent of competition payments for 2003–04 pending implementation of contestability for tranche 4A customers and a suspension of 15 percent of competition payments pending the outcome of the wider review of full retail contestability.

- *Regulation of liquor sales*: The *Liquor Act 1992* requires sellers of packaged liquor to hold a hotel licence and provide bar facilities. It also regulates the number of bottle shops per licence (limit of three) and their configuration. The restrictions apply statewide, notwithstanding an objective of protecting country hotels. The Council recommends a permanent deduction of 5 per cent of competition payments for 2003–04 for noncompliance in this area.

- *Other compliance failures*: The Council recommends a suspension of 10 per cent of competition payments for 2003-04 for the remaining legislation review compliance failures, until reforms have progressed (see below). In particular, progress will be required in the health professions (especially pharmacies), fisheries, and taxis and hire cars.

Queensland: 'suspension pool'

Aggregated health legislation: chiropractors and osteopaths; dentists; medical practitioners; optometrists and optical dispensers; physiotherapists; podiatrists

Separate health legislation: nurses; occupational therapists*; speech pathologists*; pharmacists

Other occupations: hairdressers; pawnbrokers and second-hand dealers; auctioneers and agents; surveyors

Primary industries: Fisheries management; food regulation; sawmilling

Transport: Taxis and hire cars*; rail; port activities*

Other: Superannuation*; funeral businesses; credit legislation; gambling (Keno, gaming, wagering); schools and child care

Activity delayed by ongoing national processes: Agricultural and veterinary chemicals; drugs, poisons and controlled substances; legal practice; travel agents; statutory monopoly workers compensation insurance; trade measurement; interactive gambling

Notes: A * denotes that outcomes are not consistent with NCP obligations. Underline denotes that the relevant legislation is before Parliament.

In making its recommendations on competition payments, the Council has taken account of Queensland's considerable reform progress and successes as a reflection of its commitment to NCP reform, and the

likely impact of reform failures. Balanced against this progress, the Council considers that, in relation to Queensland's 2003-04 NCP competition payments, the matters identified in this assessment warrant:

- ***a permanent deduction of 5 per cent for noncompliance in the regulation of liquor sales (estimated at A$7.31 million);***
- ***a specific suspension of 10 per cent for noncompliance with respect to tranche 4A electricity reforms (estimated at A$14.62 million);***
- ***a specific suspension of 15 per cent for noncompliance with obligations in respect of full retail contestability for electricity consumers (estimated at $A21.93 million); and***
- ***a pool suspension of 10 per cent for outstanding legislation review items (estimated at A$14.62 million).***

Western Australia

Energy

Western Australia does not have specific obligations under the NCP electricity reform agreements although some arise from the general NCP agreements. Western Australia is in the process of implementing significant electricity reform and has made good progress with gas reform.

- All jurisdictions, other than Western Australia, undertook structural reform of their electricity sectors. The Western Australian Government established an independent Electricity Reform Task Force in August 2001 to develop recommendations on the structural reform of the State's electricity sector and the incumbent service provider, Western Power Corporation. The task force issued its final report in October 2002 and the Government endorsed all recommendations and the indicative reform timetable. The key elements of the electricity reform program are:
  - the vertical disaggregation of Western Power into generation, networks (transmission and distribution) and retail entities, and the establishment of a fourth entity, the Regional Power Corporation, with responsibility for electricity supply in the north west interconnected system and Western Power's noninterconnected system;
  - the establishment of a bilateral contracts market with an associated residual trading market;
  - the mitigation of Western Power's generation market power through the auctioning of its capacity, a requirement that it participate in the

residual trading market and restrictions on its ability to invest in new or replacement fossil-fuelled generation plant;

- the retention of uniform tariffs and retail price caps;
- the implementation of retail contestability for all customers above 50 megawatt hours per year from 1 January 2005, then full implementation once the other reforms have been completed; and
- the development of an Electricity Access Code (to be administered by an independent regulator) by 1 January 2004 and the operation of the new access framework and licensing regime by 1 January 2005.

The Council recognises that this is a significant reform program and is satisfied with Western Australia's progress in meeting its obligations in relation to structural reform in the electricity sector. As part of the 2004 NCP assessment, the Council will consider the Government's review and enactment of necessary legislation and continued progress in implementing structural reform. Western Australia has some outstanding legislation review and reform commitments in the electricity area that will be considered as part of its broader structural reform program.

- Western Australia met all obligations under the national gas reform agreements for the purposes of this assessment. It has implemented the National Gas Access Code, removed barriers to free and fair trade in gas, removed restrictions on the use of gas, adopted uniform national pipeline construction standards and removed legislative barriers preventing contestability down to the household level. Western Australia is continuing with review and reform of gas-related legislation.

Water

Western Australia has a Bill before the Parliament to establish an independent economic regulatory authority with responsibility for several industries, including water. The Government is preparing a reference that will ask the authority to examine water and wastewater industry pricing.

Water rights are well specified in Western Australia. Licences are issued for between five and 10 years, but may be extended. There is also a presumption that licences are renewed if licence conditions are met. Water management plans, which continue indefinitely, make provision for environmental water. Most plans will be completed by 2005. The State has no stressed river systems, and relies primarily on groundwater.

Western Australia has a fully operational system for water trading, although trade is in its infancy and is concentrated in the South West Irrigation Scheme. There is legislative protection of environmental values and a capacity to refuse trades that would have an adverse environmental impact.

The Government undertook a substantial program of review of water industry legislation, but in many cases is still to implement recommended reforms.

Legislation review

Western Australia had 274 pieces of existing legislation (excluding electricity, gas and water) for review comprised of 117 priority and 157 nonpriority pieces of legislation. It completed the review and reform of 44 per cent of its stock of legislation. Western Australia reviewed, and where appropriate, reformed 31 per cent of its priority legislation and 54 per cent of its nonpriority legislation. Western Australia's performance was below that of all other jurisdictions.

Western Australia had seven areas in which review and reform outcomes were assessed as not meeting NCP obligations:

- discriminatory shop trading hours (*Retail Trading Hours Act 1987*);
- restrictions on packaged liquor sales (*Liquor Licensing Act 1988*);
- marketing of potatoes (*Marketing of Potatoes Act 1946*);
- fishery controls and licensing (*Fish Resources Management Act 1994*);
- price notification and fuel supply (*Petroleum Products Pricing Amendment Act 2000* and *Petroleum Legislation Amendment Bill 2001*);
- regulation conferring market power for the local fuel refinery (*Environmental Protection (Diesel and Petrol) Regulations 1999*); and
- exclusive licence and minimum bet levels (*Betting Control Act 1954*, *Totalisator Agency Board Betting Act 1960, Racing Restrictions Act 1917*).

Western Australia had a further 42 areas where review and reform is incomplete, including 31 instances where a commitment to finalising activity for this NCP assessment was not evident. (It had seven incomplete reform areas pending final resolution of interjurisdictional processes.)

Other NCP obligations

Western Australia:

- provides for all proposals for new legislation to be tested for compliance with competition principles by the Department of Treasury and Finance;
- legislation to establish an independent Economic Regulation Authority with jurisdiction over the electricity, gas, rail and water industries is before Parliament;

- has applied its competitive neutrality obligations to its significant businesses and has in place a competitive neutrality complaints mechanism — it does not, however, apply competitive neutrality principles to its health business activities;

- continues to meet its obligations under the Conduct Code; and

- has not yet met its NCP road transport reform obligations — it has two elements of the reform program to implement.

Assessment

For the purposes of the 2003 NCP assessment, Western Australia did not meet its NCP obligations in the following areas.

- *Regulation of retail trading hours*: Under the *Retail Trading Hours Act 1987*, Western Australia is the only jurisdiction to heavily restrict weekday trading hours and to prohibit large retailers from opening on Sundays (outside of tourist precincts). The Government announced that trading hours will not be extended before mid-2005. The Council does not consider that this decision to postpone reform accords with CoAG's direction for an appropriate transitional reform program to be underpinned by a robust public interest case. The Council recommends a permanent deduction of 10 per cent of competition payments for 2003–04 for noncompliance in this area.

- *Lack of transparency in water pricing*: The lack of transparency raises questions about whether water pricing principles have been met and will be in the future. The Council recommends a suspension of 10 per cent of competition payments for 2003–04 for noncompliance in this area. The suspension should be lifted and reimbursed when the Government establishes the Economic Regulation Authority and announces terms of reference for an investigation by the authority of water and wastewater pricing against the CoAG pricing principles.

- *Regulation of liquor sales*: The *Liquor Licensing Act 1988* contains a needs test, whereby a licence application can be rejected because there are liquor outlets in the area. The legislation further discriminates between hotels and liquor stores, with only hotels able to trade on Sundays. The Government announced that reforms will not take effect before mid-2005. The Council does not consider that this decision to postpone reform accords with CoAG's direction for an appropriate transitional reform program to be underpinned by a robust public interest case. The Council recommends a permanent deduction of 5 per cent of competition payments for 2003–04 for noncompliance in this area.

- *Potato marketing*: Western Australia is the only jurisdiction to regulate potato marketing. The *Marketing of Potatoes Act 1946* empowers the Potato Marketing Corporation to restrict the availability of land for

growing potatoes for fresh consumption and to fix the wholesale price of such potatoes. The Government announced that the restrictions will be retained in the public interest. The Council does not consider that the outcomes of the NCP review or the Government's stated arguments for retention of these arrangements are consistent with NCP obligations. The Council recommends a permanent deduction of 5 per cent of competition payments for 2003–04 for noncompliance in this area.

- *Egg marketing*: Western Australia is the only jurisdiction to retain egg marketing regulation. The *Marketing of Eggs Act 1945* restricts supply through licenses and production quotas and prohibits supply other than to the Egg Marketing Board. The Government announced that the restrictions will be removed not later than 2007. To expedite this process, the Council recommends a suspension of 5 per cent of competition payments for 2003–04. The suspension may be lifted on commencement of an appropriate reform implementation program.

- *Other compliance failures*: The Council recommends a suspension of 20 per cent of competition payments for 2003-04 for the remaining legislation review compliance failures, until reforms have progressed (see below). In particular, progress will be required in water legislation, the professions (especially pharmacies), fisheries, and taxis and hire cars.

Western Australia: 'suspension pool'

Aggregated health legislation: dentists; chiropractors; optometrists and optical dispensers; nurses; osteopaths; podiatrists; physiotherapists; psychologists; occupational therapists

Separate health legislation: medical practitioners; pharmacists; veterinarians

Building trades: architects; surveyors; land valuers; painters; gasfitters; electricians

Other occupations: auctioneers; settlement agents; pawnbrokers and second-hand dealers; debt collectors; employment agents; hairdressers; real estate and business agents; driving instructors

Primary industries: Grain marketing; chicken meat arrangements; veterinary preparations and feeds; food regulations; fisheries management*; pearling; and sandalwood

Water: Western Australia did not meet its obligations on water industry legislation (reform of eight Acts is before the Parliament and six other Acts are to be amended).

Transport: Taxis and hire cars; dangerous goods; jetties; navigation lights; marine and harbours; shipping and pilotage; airline routes

Fair trading legislation: Petroleum pricing*; diesel/petrol environmental regulations*; retirement villages; credit administration; hire purchase

Other: Superannuation; education service providers; universities; child care; gambling (lotteries, casinos and betting*, racing, and greyhound racing); planning and development

Activity delayed by ongoing national processes: Agricultural and veterinary chemicals; drugs, poisons and controlled substances; legal practice; travel agents; statutory monopoly workers compensation and third party vehicle insurance; trade measurement

Notes: A * denotes that outcomes are not consistent with NCP obligations. Underline denotes that the relevant legislation is before Parliament. The Council excluded consideration of progress with the aggregated health legislation, given an earlier agreement that reforms will be completed by July 2004.

In making its recommendations on competition payments, the Council has taken account of Western Australia's modest overall reform progress, and the likely impact of reform failures. Balanced against these considerations, the Council considers that, in relation to Western Australia's 2003-04 NCP competition payments, the matters identified in this assessment warrant:

- ***a permanent deduction of 10 per cent for noncompliance in respect of retail trading hours legislation (estimated at A$7.52 million);***
- ***a permanent deduction of 5 per cent for noncompliance in respect of the regulation of liquor sales (estimated at A$3.76 million);***
- ***a permanent deduction of 5 per cent for noncompliance in respect of the marketing of potatoes (estimated at A$3.76 million);***
- ***a specific suspension of 10 per cent for lack of transparency in water pricing (estimated at A$7.52 million);***
- ***a specific suspension of 5 per cent for noncompliance in respect of egg marketing (estimated at A$3.76 million); and***
- ***a pool suspension of 20 per cent for outstanding legislation review items (estimated at A$15.04 million).***

South Australia

Energy

South Australia met all obligations under the national electricity and gas reform agreements for the purposes of this assessment.

- South Australia implemented the reforms to establish the NEM. It introduced full retail contestability in 2003, satisfying its electricity reform commitments. The Council is concerned, however, about the potential for overlap between NEM regulatory processes for new interconnection and South Australia's licensing regimes for new transmission companies. The Council will consider the issue further in its 2004 NCP assessment in the context of amended governance and regulatory arrangements in the NEM.
- South Australia was lead legislator for the national gas code legislation, setting up derogations and transitional arrangements consistent with the gas agreements. It has completed its structural reform commitments and reviewed legislation that restricts intra-field competition in the Cooper Basin, in accordance with the gas agreements and the CPA, and implemented appropriate reforms. South Australia implemented the National Gas Access Code, removed barriers to free and fair trade in gas,

removed regulatory restrictions on gas use, adopted uniform pipeline construction standards and removed legislative barriers preventing contestability to the household level. South Australia is continuing with reform of gas-related legislation and the implementation of the national gas quality standard.

Water

South Australia committed to publishing annual transparency statements on water and wastewater prices, with the first statement covering pricing in 2004-05. The statements will establish the relationship of pricing by SA Water — the State's primary supplier of water and wastewater services — to the CoAG pricing principles. The statements will provide information on SA Water's financial performance in the context of pricing decisions and a range of pricing-related matters. The Essential Services Commission of South Australia (ESCOSA) is to review the processes for preparing the transparency statements and advise on the information supporting the pricing decisions. ESCOSA's report will form part of the transparency statements.

South Australia has completed water allocation plans for 17 water resources. It converted water allocations to volumetric licences in most areas of the State. The main area remaining is the South East Catchment, where revised water allocation plans and licence conversions will be completed in 2006.

South Australia's water rights are sufficiently specified to enable efficient water trading. Licences are issued in perpetuity and are separate from land title. Permanent and temporary water trading occurs through a variety of mechanisms, including private trades, brokers or water exchanges. Measures are in place to protect the water rights of users and the environment. The main remaining water trading issue is the limit on the volume of water that may be permanently transferred out of some irrigation districts.

South Australia has substantially completed its program of review and reform of water industry legislation. The Clare Valley Water Supply Scheme is a SA Water project involving the transfer of River Murray water to the Clare Valley. The scheme will provide reticulated water to townships and other areas, and to the Clare Valley for irrigation. South Australia approved the scheme in November 2002, subject to the establishment of an appropriate environmental monitoring program. The economic evaluation showed the scheme would deliver a net benefit, and additional unquantifiable benefits from wider availability of potable water.

Legislation review

South Australia had 171 pieces of existing legislation (excluding electricity, gas and water) for review comprised of 75 priority and 96 nonpriority pieces of legislation — a relatively modest task compared to other jurisdictions. It completed the review and reform of 63 per cent of its stock of legislation. It

reviewed, and where appropriate, reformed 37 per cent of its priority legislation and over 80 per cent of its nonpriority legislation. Compared to other jurisdictions, South Australia's performance was below average.

South Australia had six areas in which review and reform outcomes were assessed as not meeting NCP obligations:

- compulsory arbitration in relation to negotiations between chicken meat growers and processors (*Chicken Meat Industry Act 2003*);
- entry restrictions applying to taxis (*Passenger Transport Act 1994*);
- ownership restrictions relating to dental practices (*Dentists Act 1984)*;
- monopoly provision of superannuation services (*Southern State Superannuation Act 1987*);
- exclusive licensing arrangements (*State Lotteries Act 1966*); and
- shop trading hours restrictions (*Shop Trading Hours Act 1977*).

South Australia had a further 28 areas where review and reform was incomplete, including 25 instances where a commitment to finalising activity for this NCP assessment was not evident. (It had nine incomplete reform areas pending final resolution of interjurisdictional processes.)

Other NCP obligations

South Australia:

- requires all agencies considering new legislation or amendments to existing legislation to consider restrictions on competition and address competition issues in the second reading speech of Bills to Parliament;
- continues to meet its obligations in relation to the structural reform of public monopolies and prices oversight of its monopoly businesses;
- applies competitive neutrality principles to significant government business activities and has established an appropriate complaints mechanism — although, in some instances, processes appear slow;
- continues to meet its obligations under the Conduct Code; and
- has met its road transport reform obligations.

Assessment

For the purposes of the 2003 NCP assessment, South Australia did not meet its NCP obligations in the following areas.

- *Barley marketing*: A second review of the *Barley Marketing Act 1993* has been completed. Currently, unlike Victoria, which deregulated domestic and export marketing, South Australia has a marketing monopoly. The second review did not produce credible public interest evidence to maintain the monopoly. The Council recommends a suspension of 5 per cent of competition payments 2003–04 until South Australia provides details of a complying reform implementation program.

- *Chicken meat industry negotiations*: The recently passed *Chicken Meat Industry Act 2003* provides for compulsory arbitration for negotiating disputes on terms and conditions and for non-renewal of contracts. The legislation has implications for other States and could affect the distribution of growing and processing activities. The Council recommends a permanent deduction of 5 per cent of competition payments for 2003–04 for noncompliance in this area. (The Council considers that noncompliance technically represents a breach of clause 5(1) of the CPA relating to the review and reform of the stock of legislation, or a prima facie breach of clause 5(5) relating to obligations with respect to new legislation.)

- *Regulation of liquor sales*: South Australia's *Liquor Licensing Act 1997* contains a needs test, whereby the licensing authority can reject a licence application because there are already liquor outlets in the area. The Council recommends a permanent deduction of 5 per cent of competition payments for 2003–04 for noncompliance in liquor licensing.

- *Other compliance failures*: The Council recommends a suspension of 15 per cent of competition payments for 2003-04 for the remaining legislation review compliance failures, until reforms have progressed (see below). In particular, progress will be required in the health professions (especially pharmacies), fisheries, and taxis and hire cars. The Council will look for South Australia to further liberalise retail trading hours.

South Australia: 'suspension pool'

Health professions: occupational therapists; chiropractors; medical practitioners; optometrists; physiotherapists; pharmacists; psychologists; chiropodists; veterinarians

Other occupations: architects; surveyors; land valuers; conveyancers; employment agents

Primary industries: Agricultural chemicals and stock foods; dairy; meat hygiene; mining legislation; fisheries management

Transport: Taxis and hire cars*, tow trucks, transport of dangerous substances;

Other: Shop trading hours restrictions*; superannuation*; petrol products regulation; children's protection; gambling (lotteries*, gaming machines, racing and betting)

Activities subject to ongoing national processes: Agricultural and veterinary chemicals; drugs, poisons and controlled substances; legal practice; travel agents; statutory monopoly workers compensation and third party vehicle insurance; trade measurement; harbours and navigation; building contractors

Notes: A * denotes that outcomes are not consistent with NCP obligations. Underline denotes that the relevant legislation is before Parliament.

In making its recommendations on competition payments, the Council has taken account of South Australia's overall reform progress, and the likely impact of reform failures. Balanced against these considerations, the Council considers that, in relation to South Australia's 2003-04 NCP competition payments, the matters identified in this assessment warrant:

- ***a permanent deduction of 5 per cent for noncompliance in respect of chicken meat industry legislation (estimated at A$2.93 million);***
- ***a permanent deduction of 5 per cent for noncompliance in respect of the regulation of liquor sales (estimated at A$2.93 million);***
- ***a specific suspension of 5 per cent for noncompliance in respect of barley marketing arrangements (estimated at A$2.93 million); and***
- ***a pool suspension of 15 per cent for outstanding legislation review items (estimated at A$8.78 million).***

Tasmania

Energy

Tasmania met all obligations under the electricity and gas reform agreements for the purposes of this assessment.

- As a party to the national electricity market agreements, Tasmania has obligations in relation to connection to the national market, but these do not acquire full effect until interconnection with the mainland is established. In preparation for meeting the obligations that will arise, Tasmania has enacted the National Electricity Law and reviewed and reformed structural arrangements for electricity utilities. It also enacted the Tasmanian Electricity Code for third party access to transmission and distribution services which is consistent with how the National Electricity Code provides for the access regime in the national electricity market.
- Tasmania initially had limited NCP reform obligations in relation to gas, but its obligations under the national gas agreements have been triggered by the development of its gas industry, in particular the construction of a transmission pipeline from Victoria. Tasmania has implemented the National Gas Access Code, removed barriers to free and fair trade in gas, removed regulatory restrictions on gas use and adopted uniform national pipeline construction standards. Given that construction of the pipeline from Victoria is now completed, the Council expects Tasmania to apply for certification of its access regime in the near future. Tasmania is continuing with reform of gas-related legislation and is considering implementation of the national gas quality standard.

Water

Retail water and wastewater services are provided by Tasmania's local governments. Annual assessments by the Government Prices Oversight Commission show that most local governments achieve full cost pricing, and that consumption-based pricing (where cost-effective) is widespread.

Tasmania has established a system of transferable water rights that are separate from land title. The conversion of water rights under the previous system to licences and allocations under the new system is largely complete.

The Government is addressing its environmental obligations in two stages. It determines the environmental flow requirements that are needed to maintain a system at a low level of risk. For stressed (or more developed) water sources, the Government preserves an amount of water for the environment determined by agreement or negotiation with the community. Tasmania has established environmental water requirements for 14 water sources. It is close to completing its first water management plan.

Tasmania has made significant progress on water trading. In addition to establishing the new licences and allocations system, the Government removed two restrictions on water trading during 2002-03. Tasmania's arrangements adequately address risks to the environment posed by water trading. It essentially completed its water industry legislation review and reform obligations.

In 2001, the Government announced an intention to proceed with the Meander Dam, a 43-gigalitre project to increase the quantity and surety of irrigation water in the Launceston region. Economic evaluation of the project found that it will provide a net benefit. The project is a controlled action under the Commonwealth Environment Protection and Biodiversity Conservation Act, and is currently being assessed by the Commonwealth on environmental, social and economic grounds.

Legislation review

Tasmania had 238 pieces of existing legislation (excluding electricity, gas and water) for review comprised of 100 priority and 138 nonpriority pieces of legislation. It completed the review and reform of 84 per cent of its stock of legislation. It reviewed, and where appropriate, reformed 77 per cent of its priority legislation and 90 per cent of its nonpriority legislation. In this regard, compared to other jurisdictions, Tasmania's performance was well above average.

Tasmania had two areas in which review and reform outcomes were assessed as not meeting NCP obligations:

- Ministerial discretion over marine leases (*Marine Farming Planning Act 1995*); and

- the composition of the Veterinary Board of Tasmania (*Veterinary Surgeons Act 1987*).

Tasmania had a further 12 areas where review and reform was incomplete, including nine instances where a commitment to finalising activity for this NCP assessment was not evident. (It had five incomplete reform areas pending final resolution of interjurisdictional processes.)

Other NCP obligations

Tasmania:

- has a legislation gatekeeping process that assesses all new legislative proposals against competition principles;
- continues to meet its obligations in relation to the structural reform of public monopolies and prices oversight of its monopoly businesses;
- has made good progress with implementing competitive neutrality reforms and has an appropriate mechanism to handle complaints;
- continues to meet its obligations under the Conduct Code; and
- has met its road transport reform obligations.

Assessment

For the purposes of the 2003 NCP assessment, the Council recommends a suspension of 5 per cent of Tasmania's competition payments for 2003-04 for legislation review compliance failures, until reforms have progressed (see below). In particular, progress will be required in the health professions (especially pharmacies) and taxis and hire cars.

Tasmania: 'suspension pool'

Health professions: medical practitioners; optometrists; pharmacists; veterinarians*

Other occupations: auctioneers and real estate agents; architects; plumbers and gas-fitters

Primary industries: Agricultural and veterinary chemicals use; food regulation; marine farming*

Transport: Taxis and hire cars

Other: Vocational education and training; gambling (racing, and casinos and gaming machines*)

Activities subject to ongoing national processes: Agricultural and veterinary chemicals; drugs, poisons and controlled substances; legal practice; travel agents; statutory monopoly third party motor vehicle insurance

Notes: A * denotes that outcomes are not consistent with NCP obligations. Underline denotes that the relevant legislation is before Parliament.

In making its recommendations on competition payments, the Council has taken account of Tasmania's considerable overall reform progress, and the likely impact of reform failures. Balanced against these considerations, the Council considers that, in relation to Tasmania's 2003-04 NCP competition payments, the matters identified in this assessment warrant a pool suspension of 5 per cent for outstanding legislation review items (estimated at A$0.91 million).

The ACT

Energy

The ACT met its obligations under the electricity and gas reform agreements for the purposes of this 2003 NCP assessment.

- The ACT implemented the necessary reforms to establish the NEM and introduced full retail contestability in 2003, satisfying its electricity reform commitments in this area.
- The ACT has implemented the National Gas Access Code, removed barriers to free and fair trade in gas, removed regulatory restrictions on gas use, adopted uniform pipeline construction standards and introduced contestability to the household level. The ACT is continuing with implementation of the national gas quality standard.

Water

The ACT addressed all urban water pricing obligations. Its Electricity and Water Corporation achieves full cost recovery and its water charges are use-based. The Government applies a water abstraction charge that covers the environmental costs of water use and the scarcity value of water. The Independent Competition and Regulatory Commission commenced an investigation into prices for water and wastewater services to allow for a price determination for water services from 1 July 2004.

Water rights in the ACT are separate from land title, are issued in perpetuity and provide the holder with a right to a share of the available resource. The ACT's Water Resources Management Plan, which commenced in 2000, estimates total water resources, environmental flow requirements and sets the water available for consumption to 2010. Under the ACT's environmental flow guidelines, flows are substantially protected. There are no stressed or overallocated systems within the ACT.

The ACT repealed all five water industry Acts that it identified for review.

Legislation review

The ACT had 256 pieces of existing legislation (excluding electricity, gas and water) for review comprised of 78 priority and 178 nonpriority pieces of legislation. It completed the review and reform of 85 per cent of its stock of legislation. The ACT reviewed, and where appropriate, reformed almost 60 per cent of its priority legislation and 97 per cent of its nonpriority legislation. Compared to other jurisdictions, the ACT's performance was about average.

The ACT had one area in which review and reform outcomes were assessed as not meeting NCP obligations in this NCP assessment — this related to licensing of agents under the *Agents Act 1968*.

The ACT had a further 10 areas where review and reform was incomplete, including eight instances where a commitment to finalising activity for this NCP assessment was not evident. (It had five areas where review and reform was incomplete pending final resolution of interjurisdictional processes.)

Other NCP obligations

The ACT:

- requires government agencies to prepare a regulation impact statement for proposals that restrict competition;
- continues to meet its obligations in relation to the structural reform of public monopolies and prices oversight of its monopoly businesses;
- has made good progress in competitive neutrality reform and has an appropriate competitive neutrality complaints mechanism;
- continues to meet its obligations under the Conduct Code; and
- has not yet met its NCP road transport reform obligations — it intends to implement the one remaining component soon.

Assessment

For the purposes of the 2003 NCP assessment, the Council recommends a suspension of 10 per cent of the ACT's competition payments for 2003-04 for legislation review compliance failures, until reforms have progressed (see below). In particular, progress will be required in the health professions (especially pharmacies), building trades and taxis and hire cars.

The ACT: 'suspension pool'

Aggregated health legislation: dentists; chiropractors and osteopaths; medical practitioners; nurses; optometrists; physiotherapists; psychologists; podiatrists.

Separate health legislation: pharmacists; veterinarians

Building and related trades: architects; builders; electricians; plumbers, drainers and gasfitters

Other occupations: employment agents*

Transport: Taxis and hire cars; transport of dangerous goods

Other: Superannuation; education and schools; gambling (betting and gaming machines)

Activities subject to ongoing national processes: Drugs, poisons and controlled substances; legal practice; travel agents; interactive gambling; public sector superannuation

Note: A * denotes that outcomes are not consistent with NCP obligations.

In making its recommendations on competition payments, the Council has taken account of the ACT's overall reform progress, and the likely impact of reform failures. Balanced against these considerations, the Council considers that, in relation to the ACT's 2003-04 NCP competition payments, the matters identified in this assessment warrant a pool suspension of 10 per cent for the outstanding legislation review items (estimated at A$1.25 million).

The Northern Territory

Energy

The Northern Territory does not have obligations under the NCP electricity reform agreements. However, it has shown a commitment to electricity industry reform through the application of general NCP principles. The Territory has made good progress with gas reform, implementing relevant gas reform legislation without any transitional arrangements or derogations. It has implemented the National Gas Access Code, removed significant barriers to free and fair trade in gas, removed regulatory restrictions on gas use and adopted uniform national pipeline construction standards.

Water

The Territory's Power and Water Corporation complies with urban water and wastewater pricing obligations. The corporation operates, as much as possible, on a similar basis to a private sector corporation. The Territory has a comprehensive system of water entitlements. Water property rights are separate from land title, and ownership, reliability, volume, transferability and, if appropriate, quality are clearly specified. Because water supplies are plentiful relative to demand, there is little, if any, demand for water trading.

The Territory finalised the water allocation plan for the Ti–Tree Water Control District in August 2002. It expects to finalise three other plans in 2003-04. The Government completed five research projects on environmental flows in the Daly and Douglas rivers. This work is being used to guide the drafting of the water allocation plan for the Daly River region and in regional consultation on the plan.

Legislation review

The Northern Territory had 97 pieces of existing legislation (excluding electricity, gas and water) for review comprised of 57 priority and 40 nonpriority pieces of legislation. It completed the review and reform of over 60 per cent of its stock of legislation. It reviewed, and where appropriate, reformed 47 per cent of its priority legislation and 83 per cent of its nonpriority legislation. Compared to other jurisdictions, the Northern Territory's performance was below average.

The Territory had one area in which review and reform outcomes were assessed as not meeting NCP obligations. This related to the re-imposition of entry restrictions to the taxi industry (*Commercial Passenger (Road) Transport Act*) — notwithstanding that it had already compensated all former taxi licence owners when it previously liberalised entry restrictions.

The Northern Territory had a further 15 areas where review and reform is incomplete, including 14 instances where a commitment to finalising activity for this NCP assessment was not evident. (It had five incomplete reform areas pending final resolution of interjurisdictional processes.)

Other NCP obligations

The Northern Territory:

- has an approach to gatekeeping processes for new legislation that approaches best practice — requiring all Cabinet submissions on new legislative proposals to comment on whether the proposed legislation includes restrictions on competition and, if so, an analysis of the restriction's community benefits and costs and whether the restriction is the only way to achieve the objective of the legislation;

- continues to meet its obligations in relation to the structural reform of public monopolies and prices oversight of its monopoly businesses;

- has made significant progress with implementing competitive neutrality reforms and has a competitive neutrality complaints mechanism in place;

- continues to meet its obligations under the Conduct Code; and

- has met its road transport reform obligations.

Assessment

For the purposes of the 2003 NCP assessment, the Northern Territory has not met its NCP obligations in the following areas.

- *Regulation of liquor sales*: The *Liquor Act* contains a needs test whereby a licence application can be rejected if it is determined that existing sellers can meet consumer needs. The legislation further discriminates between hotels and liquor stores, with only hotels able to trade on Sundays. The Council recommends a permanent deduction of 5 per cent of competition payments for 2003–04 for noncompliance in this area.

- *Other compliance failures*: The Council recommends a suspension of 15 per cent of competition payments for 2003-04 for the remaining legislation review compliance failures, until reforms have progressed (see below). In particular, progress will be required in the health professions (especially pharmacies) and taxis and hire cars.

The Northern Territory: 'suspension pool'

Aggregated health legislation: dentists; health practitioners and allied professionals; medical practitioners; nurses; optometrists

Separate health legislation: radiographers; pharmacists; veterinarians

Building and related trades: architects;

Primary industries: Poisons and dangerous chemicals; food regulation; fisheries; mining

Transport: Taxis and hire cars*

Other: Liquor trading; higher education; community welfare; gambling (gaming, gaming machines, betting and racing)

Activities subject to ongoing national processes: Agricultural and veterinary chemicals; drugs, poisons and controlled substances; legal practice; travel agents; statutory monopoly third party motor vehicle insurance

Notes: A * denotes that outcomes are not consistent with NCP obligations. Underline denotes that the relevant legislation is before Parliament.

In making its recommendations on competition payments, the Council has taken account of the Northern Territory's overall reform progress, and the likely impact of reform failures. Balanced against these considerations, the Council considers that, in relation to the Northern Territory's 2003-04 NCP competition payments, the matters identified in this assessment warrant:

- ***a permanent deduction of 5 per cent for noncompliance in respect of the regulation of liquor sales (estimated at A$0.38 million); and***

- ***a pool suspension of 15 per cent for outstanding legislation review items (estimated at A$1.14 million).***

The Commonwealth

The Commonwealth has a mostly coordinating role in the related reform areas. To facilitate appropriate NCP reforms the Commonwealth established the Australian Competition and Consumer Commission and the National Competition Council. The Commonwealth:

- has implemented the National Gas Access Code and associated legislation and is rewriting the *Petroleum (Submerged Lands) Act 1967* consistent with the recommendations of the national review — amending legislation is to be introduced to Parliament in late 2003. It is participating with other relevant governments in the design of further reforms to meet the identified deficiencies in the NEM.

- has best practice arrangements to vet new legislation restricting competition. Regulation impact statements must be prepared for all proposed new and amending regulation (including quasi-regulation and treaties) with the potential to restrict competition. The Office of Regulation Review advises on whether the requirements have been met, and reports annually on the Commonwealth's overall performance;

- has undertaken structural reforms in relation to its government businesses and met its obligations in relation to the prices oversight of its monopoly businesses. However, the Council assessed in 2002 that the Commonwealth had not met its structural reform obligations arising from the Wheat Marketing Act. The Commonwealth has not addressed the 2000 review committee's recommendations to amend the Act to ensure the independence of the Wheat Export Authority, particularly its role in controlling exports;

- has implemented a best practice competitive neutrality regime with an independent competitive neutrality complaints mechanism; and

- is still to implement one remaining component of its national road transport reform agenda.

Legislation review

The Council assessed the Commonwealth's performance against 125 pieces of existing legislation (excluding electricity, gas and water) comprising 57 priority and 68 nonpriority pieces of legislation. It completed the review and reform of around half of this stock of legislation. It reviewed, and where appropriate, reformed around one third of its priority legislation and nearly 70 per cent of its nonpriority legislation. Compared to other jurisdictions, its performance was below average — second only to Western Australia.

The Commonwealth had five areas in which review and reform outcomes were assessed as not meeting NCP obligations:

- single desk export marketing for wheat (*Wheat Marketing Act 1989*);

- a myriad of restrictions on competition in broadcasting (*Broadcasting Services Act 1992* and related legislation);
- reservation of the standard letter service (*Australian Postal Corporation Act 1989*);
- statutory monopoly provision of superannuation (*Parliamentary Contributory Superannuation Scheme 1948*); and
- restrictive standards for second-hand vehicle imports (*Motor Vehicle Standards Act 1989*).

The Commonwealth had a further 17 areas where review and reform was incomplete, including 11 instances where a commitment to finalising activity for this NCP assessment was not evident. (It had three incomplete reform areas pending final resolution of interjurisdictional processes.)

Assessment

For the purposes of the 2003 NCP assessment the Commonwealth has not met NCP obligations in the following areas.

- *Export marketing for wheat*: The review of the *Wheat Marketing Act 1989* recommended reducing restrictions on wheat exports, while retaining the Australian Wheat Board's operations. The Commonwealth did not accept the recommendations designed to reduce restrictions on exports. The review did not show that retaining the wheat export single desk is in the public interest; rather, it found that allowing competition is more likely to be of net benefit to the community. The wheat export single desk will be subject to review in 2004 — nevertheless, as repeatedly stated by the Minister for Agriculture, this will not be an NCP review and will not consider the continuation of the single desk.
- *Broadcasting legislation*: The Commonwealth has not addressed the benefits and costs to the community from the significant restrictions in broadcasting or whether the objectives could be achieved without these restrictions.
- *Competition in postal services*: The Government will have satisfied its NCP obligations in relation to the review of the *Australian Postal Corporation Act 1989* if it establishes an access regime. The Government introduced a Bill to establish such a regime in 2000, but withdrew this in 2001 after failing to get approval in the Senate.
- *Industry assistance*: A review of assistance arrangements for the automotive industry has been completed and complying amending legislation introduced. A review into textile, clothing and footwear arrangements has been completed.

- *Other legislation review compliance failures*

  – Export controls for dairy produce, food and wood; food regulation; imported food control; plant and animal quarantine; and mining.

  – Shipping registration; navigation; and motor vehicle standards.

  – Superannuation; restrictions on services covered by private health insurance; pathology collection centre licensing; interactive gambling; radiocommunications; antidumping legislation.

The Commonwealth Government is not subject to NCP competition payments. In relation to its facilitation role and the demonstration effects of its best practice models for scrutiny of new legislation and the application of competitive neutrality, the Commonwealth has performed well. In contrast, its progress in the review and reform of legislation has set a poor example for the States and Territories.

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

Government	*Date on which Council received 2003 annual report*	*Date on which Council received draft 2003 annual report (where relevant)*[a]
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]

Jurisdiction	*NCP payments in 2003-04 (A$m)*
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.

2 Competitive neutrality

Competitive neutrality policy aims to ensure that government businesses do not enjoy any competitive advantages over private companies as a result of their public ownership. Clause 3 of the Competition Principles Agreement (CPA) sets down governments' competitive neutrality obligations, requiring governments, 'where appropriate', to:

- corporatise large government enterprises and impose full Commonwealth, State and Territory taxes, debt guarantee fees and regulations equivalent to those faced by private sector businesses;

- implement the same measures for other 'significant' government business activities or ensure the prices that those activities charge for goods and services account for tax or tax equivalents, debt guarantee fees and equivalent regulations, and reflect full cost attribution;

- publish competitive neutrality policy statements (by June 1996); and

- publish an annual report on the implementation of competitive neutrality principles, including allegations of noncompliance (complaints).

Each government is free to determine its own agenda for implementing competitive neutrality principles and is required to implement the principles only to the extent that the benefits are expected to exceed the costs. Clause 7 of the CPA requires governments to apply competitive neutrality principles to local government business activities.

The Council of Australian Governments (CoAG) refined aspects of competitive neutrality at its November 2000 meeting. CoAG agreed that:

- the National Competition Council's assessment of governments' application of competitive neutrality to government businesses over which they have no executive control (such as universities) should be based on a 'best endeavours' approach;

- the term 'full cost attribution' could cover a range of methods, including fully distributed cost, marginal cost and avoidable cost;

- governments are not required to establish a competitive process for their delivery of community service obligations (CSOs); and

- governments are free to determine who should receive a CSO payment or subsidy, but such payments should be transparent, appropriately costed and budget funded.

Benefits of competitive neutrality

The aim of competitive neutrality is to ensure Australia's resources are used efficiently by removing any net competitive advantage that public businesses accrue from their government ownership. The application of competitive neutrality principles allows resources to flow to efficient government and private businesses as a result of merit rather than any artificial advantage from public ownership.

By placing government business activities on a similar competitive footing to that of their actual or potential private competitors, competitive neutrality establishes conditions for increased private sector participation in industries, thus promoting competition with flow-on benefits to consumers. Competitive neutrality also promotes a more dynamic culture within government businesses, partly as a result of the stronger discipline for transparency and accountability. Government businesses cannot rely on the advantages of public ownership, which often encourage complacency and reduce incentives to improve performance. The application of competitive neutrality principles thus contributes to greater efficiency, better services and cost-reflective prices for users. In this way, competitive neutrality underpins and complements the performance monitoring regimes that many governments have introduced for their businesses in recent years.

With a competitive neutrality policy in place, governments can better assess the future of their businesses. Full attribution of costs, for example, often leads governments to reassess whether they wish to provide a good or service directly through a government business, allow competitive bidding for the provision of the good or service, or withdraw from the market.

In a similar manner, competitive neutrality can assist governments to address issues surrounding the provision of CSOs. Full cost attribution and greater transparency provide better quality information to governments, which can thus make more informed decisions about whether to fund a CSO directly (thus removing a competitive disadvantage faced by the government entity) or consider its competitive provision.

Governments' progress in implementing their obligations

The Council assesses each government's compliance with its competitive neutrality obligations by accounting for:

- the government's application of competitive neutrality principles to all government business enterprises and significant government business activities (including local government businesses) to the extent that the benefits outweigh the costs; and

- the government's use of effective processes for investigating and acting on complaints that significant government business activities are not applying appropriate competitive neutrality arrangements.

Competitive neutrality coverage

Governments' interpretation of the phrases 'significant business activities' and 'where appropriate' in CPA clause 3 has largely driven the scope of activities to which governments have applied competitive neutrality principles. Also influencing the scope of competitive neutrality is subclause 3(6), which requires governments to implement competitive neutrality principles to the extent that the benefits outweigh the costs. In this context, subclause 1(3) states that governments weighing up the benefits and costs shall account for the following matters 'where relevant':[1]

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including CSOs;
- government legislation and policies relating to occupational health and safety, industrial relations, and access and equity;
- economic and regional development, including employment and investment growth;
- the interests of consumers generally or a class of consumers;
- the competitiveness of Australian business; and
- the efficient allocation of resources.

The competitive neutrality policies that different jurisdictions have adopted reflect the degree of discretion provided by the CPA. Governments have adopted various criteria for establishing an entity's significance, for example, including the entity's absolute size and perceived impact on the market.

Assessment of competitive neutrality principles

The following sections summarise each jurisdiction's approach to applying competitive neutrality principles.

[1] The CPA states that governments are not limited to considering these matters. At the CoAG meeting of November 2000, governments agreed that they should document decisions in which they apply these subclause 1(3) matters.

The Commonwealth

The Commonwealth requires its business enterprises, companies, business units and other significant business activities to implement competitive neutrality principles. Nonsignificant businesses (those with a turnover of less than A$10 million) are not formally required to apply competitive neutrality. However, all businesses are subject to the complaints mechanism which allows complaints to be directed to the Commonwealth Competitive Neutrality Complaints Office if a competitor (or other party) considers that a Commonwealth Government business is not complying with competitive neutrality principles. In line with CPA subclause 3(6), Commonwealth policy states that competitive neutrality should be implemented where the benefits exceed the costs.

Competitive neutrality implementation by the Commonwealth Government involves:

- the corporatisation of significant government business enterprises;
- the payment of all relevant Commonwealth and State direct and indirect taxes or tax equivalents;
- the payment of debt neutrality charges or commercial interest rates;
- the attainment of a commercial rate of return on assets;
- compliance with those regulations to which private sector competitors are normally subject;
- the pricing of all goods and services provided in contestable markets to account for all direct costs attributed to the activity and the competitive neutrality components; and
- explicit government direction to deliver CSOs on a noncommercial basis.

New South Wales

New South Wales applies competitive neutrality to all State-owned companies and other significant government businesses. At the local government level, businesses that have an annual gross operating income higher than A$2 million must adopt a corporatisation model and apply full cost attribution, while businesses below that income threshold must apply full cost attribution and make subsidies explicit.

The Government assumes that the economic and social benefits of competitive neutrality exceed the costs. The onus is thus on a government business to demonstrate that it should not apply competitive neutrality principles because the costs would exceed the benefits. (The Council is unaware of any government business in New South Wales that has sought to use this exemption mechanism.)

The New South Wales corporatisation model is guided by the principles set in 1988 by the Steering Committee on Government Trading Enterprises. These principles include: clear and nonconflicting objectives; managerial autonomy and responsibility for the board of the enterprise; performance evaluation by the government; and rewards and sanctions. Corporations law applies to State-owned companies.

State-owned companies and other significant government businesses apply commercial targets for rates of return based on estimates of the weighted average cost of capital for each business, dividends (reflecting private sector practice) and capital structures. They pay State taxes, Commonwealth tax equivalents and risk-related borrowing fees, and are subject to regular performance monitoring. The Government explicitly funds any CSOs that the government businesses deliver.

Victoria

In Victoria, significant government businesses are determined according to the importance of a business in its market, as measured by its size, its competitive impact and the resources that it commands. The Victorian Government requires the estimation of the potential benefits (usually ongoing) of applying competitive neutrality principles to include: increased market contestability, the improved performance of its businesses and the improved capacity to assess whether its businesses are meeting noncommercial objectives. The costs (usually transitory) to be addressed include: legislative and regulatory changes; the analysis required to set appropriate tax equivalents and debt guarantee fees; and the administration of these financial distributions.

Victoria recommends that a public interest test be applied where the application of competitive neutrality principles may compromise other Government policy objectives. Apart from the matters listed in CPA subclause 1(3), other public interest considerations include any economic development impacts on the local community, and the impacts on the State and national economies.

Measures to achieve competitive neutrality in Victoria include corporatisation, commercialisation and full cost-reflective pricing. The model for corporatisation in Victoria is similar to that in other jurisdictions. The Victorian approach to commercialisation involves organising an activity along commercial lines without creating a separate legal entity.

Queensland

Queensland classifies the significance of government businesses according to the scale of a business and its impact on the market. It applies an indicative expenditure threshold of A$10 million as a guide to significance. The Government requires local governments to subject their larger businesses to

competitive neutrality, while using financial incentives to encourage smaller council businesses also to apply competitive neutrality principles.

Queensland applies three competitive neutrality models to significant business activities: corporatisation, commercialisation and full cost pricing. The first two models apply typically to larger government businesses. Pricing based on full cost attribution is used by government business activities that are proceeding to corporatisation or full commercialisation while in direct competition with other providers, and by those that are not suited to a full corporate structure (usually because they are small).

Western Australia

Western Australia determines the significance of a government business on the basis of its market's importance to the State economy. At the local government level, government businesses with turnover of A$200 000 or more are potentially subject to competitive neutrality.

Western Australia provides for its significant government business activities to be commercialised or corporatised. Corporatisation is the preferred approach for the largest public trading enterprises, particularly energy and water utilities. Commercialisation has been applied to transport and port authorities.

For smaller significant businesses, for which commercialisation or corporatisation may not be cost-effective, the following features apply: taxes or tax equivalents and debt guarantee fees; equivalent planning and environmental approval requirements; and the payment of dividends to, and the funding of CSOs from, the Consolidated Fund. Western Australia has reviewed smaller government businesses to determine whether a competitive neutrality approach would be in the public interest. Recent reviews resulted in the application of competitive neutrality principles to the Gold Corporation, prison industries and the Valuer-General's Office.

The Government endorsed a review of universities in February 2003, which recommended that university businesses adopt competitive neutrality principles, including commercial pricing policies and complaints hearing mechanisms. In June 2003, the Government endorsed the recommendations of the competitive neutrality review of TAFE colleges. The Government proposes to ensure that TAFE ancillary services are not provided to the public at subsidised prices. However, the Government has decided that competitive neutrality will not apply to WestOne and TAFE International and certain activities of other TAFE colleges. In August 2003, the Government endorsed a recommendation of the competitive neutrality review of the WA Sports Centre Trust that the fitness centres at Challenge Stadium and Arena Joondalup should adopt full cost pricing principles.

South Australia

South Australia uses a government business's impact on its market as the principal determinant of significance. Corporatisation, commercialisation and full cost pricing are applied to significant businesses. The appropriate model for each government business is determined on a case basis, accounting for resources used in the business's supply of the good or service; accountability considerations; and cost–benefit comparisons. The extent to which business activities dominate the total activities of the government entity is a key factor; where they are the main activity, corporatisation and the full range of private sector equivalence measures are preferred. Most councils are involved in small-scale business activities, so cost-reflective pricing is the most common approach to competitive neutrality at the local government level.

Tasmania

In Tasmania, all State and local government business enterprises, public trading enterprises and public financial enterprises apply corporatisation principles if the benefits are expected to exceed the costs. The significance of other government entities for competitive neutrality application is based on an entity's impact on its market. In consultation with the Local Government Association of Tasmania, the Government is undertaking a review that will more clearly identify significant local government business activities and ensure that local governments' competitive neutrality obligations are clearly expressed in the competitive neutrality policy statement.

The ACT

In the ACT, the impact of a Government business on its market is the primary determinant of whether the business is significant. Under ACT policy, competitive neutrality principles apply not only when a business is significant, but also when competitive neutrality would be in the public interest. Competitive neutrality is considered to be a valuable tool for encouraging improved efficiency and resource allocation.

Northern Territory

The Northern Territory considers all Government business divisions and business enterprises to be significant businesses. The Northern Territory's 1996 competitive neutrality policy statement indicates that only the larger businesses, such as the Territory Insurance Office, the Power and Water Authority and the Darwin Port Authority, would be corporatised. The Government commercialises smaller Government businesses, but also considers corporatisation on an individual case basis.

Assessment of coverage

Most jurisdictions have committed to full cost attribution for their significant business activities. Ideally, their costing approaches should:

- require significant government businesses to recover full costs over the medium to long term. In addition to labour, raw materials and the competitive neutrality elements listed above (taxes or tax equivalents, debt guarantee fees and the costs of regulation equivalents), costs include depreciation and reflect a target rate of return;

- base targets for commercial rates of return on the weighted average cost of capital of each significant business activity, so as to reflect the cost of the business activity's equity and debt;

- acknowledge that other costs may be relevant, even if not explicitly mentioned in the CPA. Local government rates and charges (or equivalents), for example, are an element of the full cost price; and

- require significant businesses to recover all costs in the medium to long term, while allowing them to practise marginal pricing in the short term (or to practise commercial pricing strategies) in response to market conditions.

Governments have struggled to deal with some issues, however, especially those relating to the application of marginal pricing or competitive pricing strategies in the short term. A Council staff discussion paper considers these issues (Trembath 2002).

The Council considers that the potential coverage of governments' competitive neutrality policies is generally satisfactory. New South Wales' approach provides for the greatest potential coverage because that Government assumes that competitive neutrality principles apply unless an individual government business presents a case that the costs exceed the benefits.

Nevertheless, coverage could be improved. Western Australia has not required businesses operated by public hospitals to apply competitive neutrality principles. The Council has raised this matter with the Government on several occasions since mid-2002, when a private radiation oncology company advised the Council of its concerns about competing with the radiation oncology department of a Perth public hospital. The Western Australian Health Minister has deferred any decision on this matter until the completion of a national review into radiation oncology. The findings of the Baume inquiry into radiation oncology were released in September 2002, and the Australian Health Ministers' Conference asked the Australian Health Ministers' Advisory Council in November 2002 to provide the conference with reform proposals by 30 November 2003. Notwithstanding this specific review of radiation oncology, the Council considers that Western Australia should review whether to subject business activities of public hospitals to competitive neutrality principles.

More generally, the potential coverage of competitive neutrality policies has been partly eroded by governments allowing slow policy implementation by some government businesses (for example, some businesses in the entertainment or recreational sectors). Also to enhance coverage, the Council encourages governments to ensure local government businesses apply competitive neutrality principles. (A large proportion of competitive neutrality complaints relate to local government businesses.)

For this 2003 NCP assessment, the Council scrutinised the application of competitive neutrality principles to forestry operations in all States and the ACT (see volume 2, chapter 1). The Council assessed all jurisdictions except Victoria to be well advanced in meeting their CPA clause 3 obligations, but could not be confident of full compliance because government forestry businesses are yet to establish track records of earning adequate profits. The Council noted that most government forestry businesses are not liable for land rates and related local taxes and charges (some jurisdictions are reviewing this matter). The Council also notes that governments may need to require government forestry businesses to disclose the timber prices that they assume for forest valuation purposes to be confident that the aims of competitive neutrality are being achieved.

Effective processes for handling complaints

CPA clause 3 requires governments to have a mechanism for considering complaints that particular government businesses are not appropriately applying competitive neutrality principles. All governments have instituted complaints processes, and their NCP annual reports document allegations and actions taken in response. Some governments require complaints to be made first to the relevant government business and then to an independent complaints body. In some jurisdictions, the independent body considers a complaint only if the relevant Minister(s) decides that this action is appropriate. Box 2.1 summarises jurisdictions' complaints mechanisms.

Box 2.1: Complaints mechanisms

In those jurisdictions where complaints can be made to an independent body, that body usually has been established to promote competition, pricing and market conduct outcomes, especially for government entities. Such bodies include **New South Wales'** Independent Pricing and Regulatory Tribunal, the **Queensland** Competition Authority, **South Australia's** Competition Commissioner, **Tasmania's** Government Prices Oversight Commission and the **ACT's** Independent Competition and Regulatory Commission. In New South Wales, the Premier can refer competitive neutrality complaints about tender bids to the State Contracts Control Board for independent assessment. The **Commonwealth Government's** complaints unit is the Commonwealth Competitive Neutrality Complaints Office, which is located within the Productivity Commission.

(*continued*)

Box 2.1 continued

In **Victoria**, the Competitive Neutrality Unit (located in Treasury) considers all complaints, although the unit encourages parties to first seek to resolve the differences themselves. In **Western Australia**, the Expenditure Review Committee of Cabinet handles complaints, with administrative support from the Competitive Neutrality Complaints Secretariat. In the **Northern Territory**, the Treasury handles complaints.

Some governments allow complaints to be lodged against only government businesses that are subject to competitive neutrality principles. In most States, complaints against local government businesses must be made first to the local government and then to the complaints body of that State.

Complaints highlighted in the 2003 NCP annual reports

The Commonwealth, State and Territory 2003 NCP annual reports indicated that some governments received competitive neutrality complaints in 2002 and 2003, and several governments completed their consideration of complaints made in earlier years.

The Commonwealth

The Commonwealth Competitive Neutrality Complaints Office did not receive any competitive neutrality complaints in 2002 or the first quarter of 2003, although the Commonwealth Government's 2003 NCP annual report describes a complaint received in November 2001. A representative of several hire and recruitment companies submitted a complaint against OzJobs, which is a business division of Employment National. OzJobs offers recruitment and personnel services. The complainant alleged that the Commonwealth Government subsidises OzJobs and that OzJobs does not pay payroll tax and insurance premiums on a basis equivalent to that of its private sector competitors. The Commonwealth Competitive Neutrality Complaints Office finalised its report in May 2002, finding that OzJobs met all of its competitive neutrality obligations and that no action was necessary in response to the complaint.

New South Wales

New South Wales' 2003 annual report states that no new competitive neutrality complaints were received over the year to March 2003.

Victoria

The Competitive Neutrality Unit in Victoria investigated several complaints in 2002, many of which related to the business activities of local governments, including child care centres, leisure centres, community transport services and waste collection services. Complaints were also made against a Government department, a Government water retailer and cemetery trusts.

Some of the complaints were made in 2001. Several investigations were completed expeditiously, but the period of investigation in a few cases was more than a year. Several investigation reports concluded that the government businesses breached competitive neutrality principles, and the relevant businesses have subsequently rearranged their affairs. The Competitive Neutrality Unit has followed up on several businesses' adjustments. Some investigations are ongoing.

Queensland

The Queensland Competition Authority and the Queensland Treasury did not report any competitive neutrality complaints in 2002. A small number of complaints were received by other Government agencies and local governments, and resolved after initial discussions. The Department of Main Roads received a complaint from a commercial road paving company about the department's commercialised service delivery business. The complainant is concerned about the prices paid by the business under a standing offer arrangement. The department engaged a consultancy firm to investigate this complaint, and the complainant has been advised of the findings. The consultants found no evidence that the department's commercialised service delivery business had a purchasing advantage.

Queensland's 2003 NCP annual report noted that for 92 of the 653 local government businesses that are subjected or committed to competitive neutrality reform, the local government 'parent' has not established valid complaints hearing processes. The Queensland Government believes that this number will fall during 2003-04.

Western Australia

A private company that exports potatoes to Mauritius submitted a complaint to the Western Australian Complaints Secretariat that the Potato Marketing Corporation had undercut the private company's export prices as a result of competitive advantages arising from the corporation's monopoly status in the domestic market. The Government recently conducted a NCP review of the *Marketing of Potatoes Act 1946* and advised the private complainant to resubmit its complaint if the review does not address its concerns. Following the completion of the review, the Minister for Agriculture announced on 5 August 2003 that the Government would not change the Act. As of late August, the complainant had not resubmitted its complaint.

The Complaints Secretariat has been considering complaints against government businesses that are not formally required to comply with competitive neutrality principles. Apart from the earlier complaint by the radiation oncology company, these complaints include:

- a complaint about the Department of Conservation and Land Management providing trees below cost through funding provided via the

Natural Heritage Trust — the complainant was informed that this pricing is part of Government policy to further environmental aims; and

- a complaint about a product manufactured in prisons — the Government has since introduced full cost pricing throughout its prison industries program.

South Australia

The South Australian Competition Commissioner carried over unfinished investigation of three 2001 complaints to 2002.

- Investigating a complaint about the Public Transport Board's provision of buses to special events, the Competition Commissioner reported in March 2002 that the board is not a significant business activity and therefore is not required to apply competitive neutrality principles.

- The Competition Commissioner reported in June 2002 that State Flora's nursery revegetation and forestry seedling propagation and sale activities at Murray Bridge constitute a significant business activity and thus should use cost reflective pricing. This pricing approach was implemented on 1 June 2003.

- The Competition Commissioner reported in December 2002 that penguin tours operated on Kangaroo Island by National Parks and Wildlife SA in competition with a private operator comprised a significant business activity and that cost-reflective pricing should apply. The complainant then approached the Council on several occasions, starting in April 2003, to express concerns about the slowness of the complaints investigation and implementation of the Commissioner's recommendations. More than 18 months elapsed between the complaint being made in November 2001 and the Government entity introducing a new pricing approach on 1 July 2003. The Council considers that the South Australian Government should seek to ensure complaints investigations and the implementation of recommendations occur expeditiously.

Tasmania

The Government Prices Oversight Commission did not receive any formal competitive neutrality complaints in 2002, but during that year it advised an earlier complainant, Ambulance Private, about an investigation completed in 2001. The relevant Minister directed the Department of Health and Human Services to make changes in line with the investigation report.

The ACT

In December 2002, the Independent Competition and Regulatory Commission provided the ACT Government with its final report on a 2000 complaint

relating to horse agistment. Government-owned paddocks comprise around 20 per cent of the total ACT agistment market, and the current contractor (chosen following a competitive tender) is a private company that does not enjoy any advantages in taxes, charges, borrowings or regulations. The commission concluded that the Government has met its competitive neutrality obligations in providing horse agistment facilities.

The Northern Territory

The Northern Territory Treasury received a competitive neutrality complaint in June 2003 relating to Data Centre Services, which is a government business division that provides data storage and other information technology services to the public sector. A private data services provider lodged a formal complaint that Data Centre Services had not fully reflected its costs in its bid for a tender. The Northern Territory Treasury is investigating the complaint.

Assessment of complaints handling

The Council considers that Commonwealth, State and Territory complaints mechanisms are operating satisfactorily. Nevertheless, competitive neutrality processes could be improved in two areas.

- Some jurisdictions provide for Ministers to decide whether an independent body should hear complaints. Such an arrangement may reduce the degree of independence with which a complaint is considered, and increase the time between the complaint's lodgement and resolution.

- Complaints must be dealt with expeditiously and effectively; otherwise, the complainant may be adversely affected and confidence in the competitive neutrality arrangements may be undermined. Complaints processes appear to have been inordinately slow in some cases.

While these concerns do not indicate widespread systemic failures, the Council encourages governments to consider options for accelerating investigation processes and any subsequent actions. The Council expects improvements in the speed with which complaints are investigated and resolved, and will be monitoring jurisdictions' performance in this regard.

Financial performance of government trading enterprises

In the 2002 NCP assessment, the Council noted that many government trading enterprises had low rates of return on capital. The Council considered that such low returns might reflect a range of factors — such as weak market

conditions or high inherited costs — but also, in some instances, the nonapplication of competitive neutrality principles such as full cost pricing.

For the 2003 assessment, the Council asked governments to provide the reasons for some government businesses earning rates of return below the risk-free government bond rate. Governments indicated in their NCP reports that a wide range of factors affected rates of return, including:

- the regulation of prices and higher costs than regulators provided for in price determinations;
- increases in asset and equity bases in particular years as certain government trading enterprises sought to expand and upgrade their operations;
- changes in the accounting treatment of leased assets;
- ports holding land required for future port development that is not currently in productive use;
- drought conditions adversely affecting water corporations; and
- the demand for services being less than expected.

The Council is satisfied that these influences help to explain the identified low rates of return but notes that such factors may require responses by the enterprises to address such sources of underperformance over time.

3 Structural reform of public monopolies

The protection of some public monopolies from competition, through regulation or other government policies, has allowed structures to develop that do not readily respond to market conditions. Rectifying strategies include removing the relevant legislative restrictions and applying competitive neutrality principles. These strategies, however, will not always be sufficient to establish effective competition. Structural reform may be needed to dismantle an integrated government monopoly business. Such reform involves splitting the monopoly (or parts of it) into smaller entities, including separating the competitive or potentially competitive elements from the monopoly elements.

Structural reform is particularly important where a public monopoly is to be privatised. Privatisation without appropriate structural reform is likely to result in a private monopoly supplanting the public monopoly, with few real gains and potentially considerable risks.

Clause 4 of the Competition Principles Agreement sets out obligations relating to the structural reform of public monopolies. Under this clause, governments agreed to relocate regulatory functions away from a public monopoly before introducing competition to the market served by that monopoly. The aim is to prevent the former monopolist from enjoying a regulatory advantage over existing or potential competitors.

Clause 4 also sets out review obligations aimed at ensuring reform paths lead to competitive outcomes. Before privatising a public monopoly or introducing competition to a sector supplied by a public monopoly, governments have undertaken to review:

- the appropriate commercial objectives of the public monopoly;
- the merits of separating potentially competitive elements of the public monopoly from the natural monopoly elements and into independent competing businesses;
- the best way of separating regulatory functions from the monopoly's commercial functions;
- the most effective way of implementing competitive neutrality;
- the merits of any community service obligations provided by the public monopoly, and the best means of funding and delivering any mandated community service obligations;

- price and service regulations to be applied to the relevant industry; and
- the appropriate financial relationship between the owner of the public monopoly and the public monopoly.

In its NCP assessments, the Council has considered each jurisdiction's structural review and reform activity (including the location of industry regulation) where competition is introduced to public monopoly markets or where privatisation is proposed or under way. The Council previously determined that the relevant jurisdictions met their clause 4 obligations in relation to:

- the statutory diary authorities in all States and the ACT;
- the Queensland Sugar Corporation;
- the rail sector in New South Wales, Western Australia and Victoria;
- port authorities in New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania; and
- the Sydney basin airports (a Commonwealth Government matter).

Areas previously determined to be noncompliant with clause 4 obligations are confined to the Commonwealth jurisdiction, namely AWB Limited (see volume 2, chapter 1) and Telstra (see volume 2, chapter 11).

In its 2003 NCP assessment, the Council considered the structural reform of the Western Australian electricity sector (see chapter 7).

4 Legislation review

The National Competition Policy (NCP) introduced measures to improve the effectiveness of Australia's regulatory arrangements. This chapter focuses on governments' obligations under clause 5 of the Competition Principles Agreement (CPA) to review and, where appropriate, reform legislation that restricts competition. The CPA clause 5 originally set a target date of 2000 for governments to complete the review and reform of all legislation (at June 1996) that contained restrictions on competition. In November 2000, the Council of Australian Governments (CoAG) extended this target date to 30 June 2002 (CoAG 2000). However, because governments are subject to a March–April annual reporting requirement, the National Competition Council could not assess all relevant activity to 30 June 2002 for its 2002 NCP assessment. Accordingly, in that assessment, the Council advised all governments that:

> *The co-incidence of the deadline for review and reform completion and the 2002 NCP assessment posed some difficulties for the Council. It was not practical for the Council to report on all activity to 30 June 2002 … The Council believes it appropriate, therefore, to consider some review and reform activity in the 2003 NCP assessment … The 2003 assessment will consider only completed review and reform activity. Review and/or reform activity that is incomplete or not consistent with NCP principles at June 2003 will be considered to not comply with NCP obligations. Where noncompliance is significant, because it involves an important area of regulation or several areas of regulation, the Council is likely to make adverse recommendations on payments. Governments should ensure they provide adequate reporting in time for the 2003 assessment, to show they have met review and reform obligations*. (NCC 2002, pp. xv– xvi)

This advice was again relayed to all governments in late 2002 as part of the lead-up to this 2003 NCP assessment.

The legislation review and reform program represented a comprehensive reform effort over a relatively short time span. Governments were tasked with reviewing around 1800 pieces of legislation from 1996 to 2003. The scope of legislation for review encompassed, for example, agricultural marketing, forestry, fishing, transport services, occupations, compulsory insurance arrangements, retail trading hours, liquor licensing, education, gambling, communications, and planning, construction and development services. (Volume 2 provides detailed commentary on governments' compliance with the CPA clause 5 obligations in these and other areas. Electricity-, gas- and water-related legislation is discussed in chapters 7–9 of this volume.)

The CPA clause 5 obligations

Clause 5 of the CPA obliges governments to review and, where appropriate, reform all existing legislation (at June 1996) that restricts competition. It requires governments to remove restrictions on competition unless they can demonstrate that the restrictions are warranted — that is, that restricting competition benefits the community overall (being in the public interest) and that the restriction is necessary. Clause 5(1) states:

> *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.* (CoAG 1995)

In addition to requiring the review and reform of existing legislation, the CPA clause 5 contains two ongoing obligations.

- It obliges governments to review, at least once every 10 years, any restrictive legislation against the guiding principle. The aim is to ensure that regulation remains relevant in the face of changes in circumstances and/or in government and community priorities.

- It specifies that governments must ensure new legislation that restricts competition is demonstrably consistent with the clause 5(1) guiding principle.

Clause 5 thus relates to (1) the review and reform of the stock of legislation, (2) systematic reviews of continuing legislation at least once every 10 years and (3) the assessment of all new legislation against the guiding principle via governments' 'gatekeeper' processes (discussed below).

Obligations in other NCP agreements aim to improve the effectiveness of Australia's regulatory base. These include:

- governments' ongoing commitments under the Conduct Code Agreement to notify the Australian Competition and Consumer Commission of legislation that relies on s. 51(1) of the *Trade Practices Act 1974* (TPA) (see chapter 5); and

- governments' obligations to ensure decisions by Ministerial councils and national standard-setting bodies accord with the CoAG-endorsed guidelines that reflect the guiding principle (see chapter 6).

Legislation and the public interest

The public interest lies at the heart of good quality regulation. This principle aims to ensure restrictions on competition serve the wider community, rather than advance the interests of those able to exert undue influence on decision-makers. Given that restrictions on competition have typically been couched in terms of furthering the interests of the community, the NCP places an onus of proof on proponents of such restrictions to subject claims of public interest to robust and transparent analysis. The NCP thus acknowledges that political interests and the interests of the wider community can diverge.

Regulation that genuinely promotes the interests of the wider community provides the foundation for a flexible, responsive and internationally competitive economy. In contrast, regulation that only serves the interests of certain groups, industries and occupations often represents a cost to the community as a whole (box 4.1). This cost can arise in several ways:

- *Transfers from users/consumers to the beneficiaries.* In some instances, relatively large benefits are appropriated by concentrated, readily identifiable and politically astute groups at the expense of the wider community which is comprised of a diffuse group of users and consumers. These arrangements tend to continue because the costs to individual consumers (who often are unaware of potential alternative outcomes) may be relatively small and because consumers as a collective are not well organised and generally lack direct input into the making of regulations.

- *Resource allocation impacts.* Regulation that favours particular groups tends to result in the beneficiaries commanding more resources than they would otherwise. This can be manifested through a diminution of direct competitors and/or alternative providers of substitute goods and services. Users and consumers pay more for the goods and services that are conferred regulatory protection than they would in a more competitive environment. Consumers thus have less to expend on other goods and services, which means other providers of goods and services produce less and use fewer labour and capital inputs (a negative multiplier effect).

- *Dynamic efficiency effects.* Restrictions on competition — whether direct, such as exclusive licences, or indirect, such as registration and ownership restrictions — stifle innovation. Protecting incumbents erects a barrier not only to new entrants, but also to new ideas and innovative practices. A relatively 'comfortable' business operating environment tends to engender complacency. A further source of loss to the community is the diversion of entrepreneurial effort away from undertaking core business activities to preserving (or seeking) a privileged position through legislative restrictions on competition. Vigorous competition promoting dynamism and innovation is the hallmark of economies that deliver high community living standards.

Box 4.1: Examples of how costs arise from restrictive legislation

Restrictions on trading hours and the loss of consumer choice: Australia has undergone major social changes in recent decades, including a rise in female labour force participation and a corresponding rise in two income households. Retailers have responded by offering extended trading hours to 'time-poor' consumers and specialist traders have emerged in, for example, furniture and electrical goods. These outlets with large floor plans, often in fringe areas to take advantage of low rents and better parking, offer a vast array of goods. Retail malls have made shopping a family oriented activity by providing food outlets and cinemas. In some jurisdictions, however, governments have restricted the hours that large and specialist traders can operate, and their citizens can shop. The aim of the restrictions is to allow small retailers to trade at certain times without competition from large retailers. The evidence is that such restrictions are not in the public interest.

- In Sydney and Melbourne around 35 per cent of consumers buy groceries on Sunday (where supermarkets are open). In Perth and Adelaide, only small food stores can trade on Sundays and the comparative figure is 7–8 per cent (Jebb Holland Dimasi 2000).
- Tasmania's NCP review found 'consumers are inconvenienced by … restrictions on shop trading hours in terms of where they purchase their groceries and … the times in the week when they purchase them' (Workplace Standards Tasmania 2002).
- In Victoria, local councils may hold a plebiscite to determine if a community wishes to reimpose limits on shop trading hours. To date, only the City of Greater Bendigo exercised this option. The voluntary poll, conducted in 1998, attracted 72 per cent of voters, of which 77 per cent voted to support the continuation of Sunday trading.
- An attempt by the ACT Government to reinstitute trading hours restrictions, after consumers had experienced a trial period of deregulation, failed after a public outcry.

Agricultural marketing — efficiency, choice and the environment: In Western Australia, legislation establishes a marketing corporation with a monopoly over the domestic wholesale marketing of all potatoes grown in the State for fresh consumption, and empowers it to licence growing areas. The beneficiaries of the legislation are existing growers who enjoy higher returns — evidenced by the trading of production quota at an average price of $7000 per hectare or $25 per tonne. As the quotas make it difficult for growers to expand production area it encourages practices to increase area yields. Thus, Western Australian growers spend three times more on fertiliser than South Australian growers. The NCP review noted evidence of adverse impacts on ground water quality from high fertiliser application. Quotas also make it difficult for growers to switch between crops to suit their farming program.

The prices paid by Western Australian consumers for fresh potatoes must over time be higher than they otherwise would (this is disputed by proponents of regulation). Western Australian consumers also have more restricted choice in potato varieties than consumers in other states. Finally, the review also indicated that the marketing corporation's administration and compliance costs are nearly $3 million per year (excluding growers' compliance costs).

Ownership restrictions and access to dentists: New South Wales' legislation restricts the ownership of dental practices by nondentists. There is an exemption for health funds and people who can demonstrate to a Dental Board that it is in the public interest for them to own a dental practice. Depending on how it is interpreted, the exemption process can create a barrier to entry. For example, the Victorian Branch of the Australian Dental Association claims that more than 100 nondentist owned practices have established in Victoria since the deregulation of ownership restrictions in June 2000.

Reservation of practice and the cost of conveyancing: Several States and Territories have legislation permitting nonlawyers to undertake certain activities traditionally reserved for lawyers. This was not always the case. In New South Wales in the early 1990s, the legal profession was opened up to allow conveyancing to be practiced by appropriately qualified nonlawyers. Fees scales and advertising restrictions were also removed. Conveyancing fees subsequently fell by 17 per cent resulting in a saving to New South Wales consumers of at least $86 million (Baker 1996).

Much of the legislation subject to NCP review and, where appropriate, reform involves restrictions on competition that may not have significant impacts in their own right. Nevertheless, a plethora of smaller regulatory impacts on users and consumers across a range of activities (that is, over 1800 pieces of legislation subject to review) has a cumulative effect. Such an environment tends to be self-perpetuating because other interest groups perceive the benefits of eschewing competitive processes in favour of lobbying for regulatory constraints on competition. For these reasons the NCP aims to ensure all governments (and interjurisdictional processes) deliver quality regulation.

The Council's approach to assessing compliance

Under the NCP agreements, each State's and Territory's receipt of NCP payments depends on the extent to which it complied with its CPA obligations. In relation to governments' obligations for existing legislation, the Council considered both review activity and reform implementation when assessing governments' compliance. It looked for transparent, robust and objective reviews, because these increase the likelihood of policy outcomes that are in the public interest. The Council also looked for governments to implement review recommendations expeditiously, unless a government could demonstrate that review recommendations were not in the public interest. The Council continues to consider whether new legislation restricting competition is in the public interest.

This 2003 NCP assessment considers review and reform activity by governments since the last assessment. It covers activity to and beyond 30 June 2002 — the date set by CoAG for completing reviews and implementing appropriate reforms of existing legislation. As in previous NCP assessments, the Council concentrated on regulation most likely to have significant impacts on competition, prioritising the areas in which reform would provide the greatest community benefit.

Review and reform priorities

Recognising the resource demands on governments from completing all reviews and implementing reforms, the Council considered that the greatest benefit to the community would arise from prioritising review and reform activity to address those restrictions with a greater impact on competition.[1]

[1] The legislation covered in this NCP assessment is a subset of all legislation for review and reform. The Council updates the full list of legislation in its *Legislation review compendium*, now in its fourth edition (NCC 2002).

Accordingly, in its 2001 NCP assessment, the Council identified priority areas of regulation likely to have nontrivial impacts on competition (box 4.2). It asked governments to complete review and reform activity in these areas by no later than the CoAG target date.

The prioritisation process meant that the Council scrutinised governments' review and reform activity for around 800 separate pieces of legislation. While this 2003 NCP assessment continued the focus on priority areas, it finalised the Council's assessment of governments' progress in reviewing and reforming all remaining (existing) legislation review and reform matters, including the nonpriority areas.

Box 4.2: Priority legislation areas

Water
Legislation relating to water management, supply, irrigation, trading and water corporations

Primary industries
Barley/coarse grains; dairy; poultry meat; rice; sugar; wheat; fishing; forestry; mining; food regulation; agricultural and veterinary chemicals; quarantine; bulk handling

Communications
Australian Postal Corporation Act 1989: third party access regime; *Broadcasting Services Act 1992* and related legislation; *Radiocommunications Act 1992*

Fair trading legislation and consumer legislation
Fair trading legislation; consumer credit legislation; trade measurement legislation

Insurance and superannuation services
Workers compensation insurance; compulsory third party motor vehicle insurance; professional indemnity insurance; public sector superannuation scheme choice

Health and pharmaceutical sector
Chiropractors; dentists and dental paraprofessionals; *Health Insurance Act 1973* (Cwlth); medical practitioners; Medicare provider numbers for medical practitioners; nurses; occupational therapists; optometrists, opticians and optical paraprofessionals; osteopaths; pathology collection centre licensing; pharmacists; physiotherapists; podiatrists; psychologists; radiographers; speech pathologists; traditional Chinese medicine

Legal services and other professions
Legal services; conveyancers; real estate agents, security providers, motor vehicle dealers; travel agents; employment agents

Planning, construction and development services
Planning and approvals; building regulations and approvals; related professions and occupations, such as architects

Retail regulation
Shop trading hours; liquor licensing; petroleum retailing

Social regulation
Education services; gambling; child care services

Transport services
Road freight transport (tow trucks, dangerous goods); rail services; taxis and hire cars; ports and sea freight; international liner cargo shipping (part X of the TPA); air transport

Objective and robust reviews

The Council has always emphasised the link between high quality reviews and well-considered, effective policy outcomes. Open, independent and objective review processes provide the best opportunity to identify and assess all costs and benefits of restrictions on competition, and to implement regulations (including alternatives to restrictions) that best achieve the community's goals.

The Council has consistently encouraged governments to adopt independent review processes. Governments sometimes argue, however, that the inclusion of stakeholder representatives on review panels is necessary. The Council's experience is that it is often difficult for direct stakeholders to agree on key issues and that agreement between directly interested parties is less likely to reflect fully the interests of the wider community. The Council therefore supports the approach proposed by the Commonwealth Office of Regulation Review that 'if direct representation by industry or other groups were considered desirable, a preferable approach would be to include them on a reference group' (PC 1999b, p. xviii).

CoAG (2000) asked the Council to consider, when assessing jurisdictions' compliance with the CPA clause 5 guiding, whether review conclusions are within a range of outcomes that could reasonably be reached based on the information available to a 'properly constituted review process'. Other guidance provided by CoAG included:

- requesting that governments document the public interest reasons supporting their reform decisions and make this reasoning publicly available;

- requesting that governments consider the likely impacts of reform measures on specific industry sectors and communities, including the likely adjustment costs; and

- recognising that satisfactory reform implementation may include a firm transitional arrangement that extends beyond 30 June 2002, where justified by a public interest assessment.

CoAG's guidance points to the need for a rigorous analytical approach whereby reviews consider all relevant evidence and logically draw conclusions and recommendations from that evidence. Policy actions in line with review findings and recommendations based on flawed analysis or incomplete evidence may not satisfy the CPA guiding principle. The Council's approach in assessing compliance, therefore, is to look for evidence that reviews:

- had terms of reference based on the CPA clause 5(9), supported by publicly available explanatory documentation such as an issues paper;

- were conducted by an appropriately constituted review panel able to undertake an independent and objective assessment of all matters

relevant to the legislation under review, including restrictions on competition and public interest matters;

- provided for public participation (including participation by directly interested parties) through appropriate consultative processes;
- assessed and balanced all costs and benefits of existing restrictions on competition and considered alternative means of achieving the objective of the legislation;
- considered all relevant evidence and reached reasonable conclusions and recommendations based on the evidence before the review; and
- demonstrated a net public benefit when recommending that a government introduce or retain restrictions on competition.

In assessing jurisdictions' compliance, the Council accounted for whether flaws — such as a failure of the review's terms of reference to encompass relevant questions, deficient analysis leading to recommendations that are inconsistent with the evidence, or a failure to consider relevant evidence — might have compromised the review's recommendations

The need to address the guiding principle

To test whether restrictions on competition are warranted, governments need to consider the public interest factors in the CPA clause 1(3). The community-wide perspective means that restrictions must benefit the whole community, not just particular groups. In assessing compliance with the CPA clause 5, the Council looked for governments to have provided at least a statement of the findings/recommendations of each relevant review, along with a clear and comprehensive explanation of their response to the review and its supporting rationale.

Arguments supporting a restriction usually arise through the evidence and recommendations of the relevant review. In this context, transparent policy-making offers a public benefit, which is enhanced where the public can participate in reviews and access review reports. For these reasons, the Council encouraged governments to make their review reports publicly available when developing a public interest case (recognising, however, that the NCP agreements do not require the public release of reports).

Implementation of appropriate reform

The CPA guiding principle means that a government needs to change its legislation if it cannot justify the restrictions. Appropriate reform implementation requires a government to remove restrictions on competition

unless it can demonstrate via a robust net community benefit case that the restrictions are warranted

Appropriate reform implementation may include, where justified by a public interest assessment, having a firm transitional arrangement that extends beyond 30 June 2002. For this 2003 NCP assessment, the Council considered that governments met their CPA obligations, even if they did not complete reforms by 30 June 2002, where they:

- presented a robust net community benefit case to support the (temporary) retention of restrictions beyond June 2002; and
- announced a transitional strategy for removing the restriction within a reasonable period from June 2002 (for example, by 'locking in' the reform through legislation).

More generally, the Council looked for governments to ensure reform outcomes that restrict competition have regard to review recommendations (assuming reviews were properly constituted and conducted). For compliance, governments needed to provide a public interest rationale for competition restrictions that is supported by relevant evidence and robust analysis. Where a government introduced or retained competition restrictions on the basis of review recommendations, but the review does not provide clear reasoning and argument to support its recommendations, the Council looked for the government to show the evidence and logic underlying its decision. Where a government's introduction or retention of competition restrictions was not an approach reasonably drawn from the recommendations of the review, the Council looked for the government to provide a rigorous supporting case, including a demonstration of flaws in the review's analysis and reasoning.

The CPA guiding principle does not mean that governments must always conduct a full public review before reforming restrictions. Governments sometimes repeal redundant legislation after preliminary scrutiny shows that the legislation provides no public benefit. Such action meets the CPA objectives. Similarly, a government may choose to disregard a review recommendation supporting a restriction or seek to achieve policy outcomes via an approach other than that recommended by a review. Where a government did not implement the recommendation of a properly constituted rigorous review, however, the Council looked for the government to provide a robust net community benefit argument, explaining why the approach recommended by the review was inappropriate.

Notwithstanding the above, the Council adopted a more expeditious process in assessing governments' obligations to review and reform nonpriority legislation. This reflects the likelihood that such legislation involves 'lower order' restrictions on competition and that the Council's resources are used more effectively in engaging with governments on priority legislation review matters.

Divergent approaches across jurisdictions

The NCP provides for the possibility that different governments might evaluate similar issues differently and thus reach different conclusions on an appropriate approach. Given that Australia is essentially one national market, however, uniform or consistent regulation across jurisdictions is likely to benefit the community by reducing divergent regulatory imposts on businesses and service providers, and ultimately leading to lower prices to consumers.

The NCP facilitates legislative consistency in various ways. First, the CPA offers scope for national reviews. It provides that a government, where one of its reviews has a national dimension or effect on competition (or both), should consider whether the review should be national in scope. Twelve national reviews have been scheduled under the NCP. Nine have been completed, although the relevant governments still have to undertake the necessary legislative action in many cases. Progress with national reviews is discussed in chapter 14, volume 2.

Second, governments have implemented mutual recognition since 1993. Mutual recognition is aimed at creating a regulatory environment that will 'encourage enterprise, enable business and industry to maximise their efficiency, and promote international competitiveness' (CoAG 1998). The Commonwealth *Mutual Recognition Act 1992* and related State and Territory mutual recognition legislation aim to achieve a national market in goods and services via two principles:

- that goods that may be sold legally in one State or Territory may be sold in a second State or Territory, regardless of differences in standards applying to goods in the relevant jurisdictions; and

- that a person who is registered to practise an occupation in one State or Territory be able to register to practise an equivalent occupation in a second State or Territory.

Questions of mutual recognition may arise where occupations are registered in some but not all jurisdictions. The NCP assessment implications are discussed in volume 2 — see for example, chapter 3 (health and pharmaceutical services), chapter 5 (other professions and occupations) and chapter 10 (planning, construction and development services).

Compliance with the review and reform of the stock of legislation

In volume 2 (chapters 1–12) of this NCP assessment the Council concluded its assessment of outstanding priority legislation review matters for the

Commonwealth, State and Territory governments. Tables 4.2–10 (at the end of this chapter) summarise instances of noncompliance. The tables indicate those areas of review and reform in which the Council determined a failure to comply with CPA clause 5 obligations.

Reasons for a compliance failure assessment

For jurisdictions to be assessed as meeting CPA obligations, the requirements are that:

- the review and, where appropriate, reform of a particular piece of legislation fully meets the CPA clause 5(1) guiding principle; or
- the review and reform is consistent with the CPA clause 5(1) guiding principle, but reform is yet to be completed because it involves a transitional implementation program, supported by a robust public interest test, that extends beyond 2003 (CoAG 2000).

Failure to comply with the CPA requirements can arise for a range of reasons. In some instances, the Council assessed that outcomes are not consistent with the obligations under the CPA clause 5(1). In other cases, noncompliance was the result of a timing failure — that is, a government did not meet the (extended) deadline of 30 June 2003.[2]

Tables 4.2–10 adopt the following categories of compliance failure.

1. Review and reform is incomplete owing to a need to resolve outstanding national reviews or other interjurisdictional processes.
2. Reform commenced but involves transitional phasing beyond 30 June 2003 without a public interest justification.
3. Review and reform is incomplete but the relevant government has demonstrated a firm commitment to complete its reforms on time.
4. Review and reform is incomplete and the relevant government did not demonstrate a firm commitment to meeting its obligations on time.
5. The review and reform outcome fails to comply with the CPA clause 5 guiding principle.

These categories are elaborated in the following sections.

[2] The Council accepted, nonetheless, reforms implemented after 30 June 2003 up to the finalisation of this 2003 NCP assessment.

Review and reform incomplete pending outcomes from national processes

A Government in this category is not reasonably in a position to progress appropriate reforms until outstanding national processes are resolved. The Council considers that these instances of noncompliance (shaded in tables 4.2–10) should not have implications for NCP payments.

Reform involving transitional phasing beyond 30 June 2003 without a public interest justification

As noted, CoAG asked the Council to recognise that satisfactory reform implementation may include a firm transitional arrangement that extends beyond 30 June 2002 (extended to 2003 for the purposes of this NCP assessment) where justified in the public interest. The Council thus assessed a government as having failed to comply fully with its CPA obligations if it introduced a transitional reform program but did not provide a robust public interest case. The Council did not accept that a decision to simply postpone reform implementation constituted a transitional reform program.

Review and reform incomplete, but firm commitment demonstrated

A government in this category failed to complete its review and reform obligations by 30 June 2003, but demonstrated a firm commitment to that date by introducing potentially compliant legislation to Parliament or by commencing the implementation of some reforms in advance of legislative changes. The Council did not accept that undertakings to implement reforms in the near future — such as plans to introduce legislation in Parliamentary sittings later in 2003 (or beyond) — constituted a demonstrated commitment to complete review and reform by 30 June 2003.

Review and reform incomplete and no commitment demonstrated

A government in this category failed to demonstrate a concerted effort to conclude reform implementation by 30 June 2003. Its progress might have been inordinately slow, ranging from reviews that were not completed to failure to introduce a legislative response (where warranted). This category includes instances where a government is drafting legislation, has circulated exposure draft Bills or has listed legislation for introduction to the Parliament later in 2003. It also includes instances where legislative proposals would not, if implemented, comply with CPA obligations (including legislation currently before Parliaments).

Failure to comply with CPA obligations

A government in this category completed review and/or reform that resulted in outcomes that breached the CPA clause 5(1) guiding principle.

The significance of a compliance failure

The above categories of compliance failures specify the reason for a noncompliance finding but do not indicate the importance to the community of the reform failure.

The significance of a compliance failure is a 'judgement call' reflecting the following considerations, among others.

- *The relative importance of a compliance breach in terms of its impacts on the community and economy.* Single desk arrangements for an agricultural commodity, for example, are more significant than, say, reservation of title for speech therapists.

- *The extent of anticompetitive restrictions remaining.* Significance may vary across jurisdictions for the same area of regulation, depending on the extent of the restriction. Two jurisdictions might have identical barriers to entry to an industry, but one jurisdiction might allow greater entry to providers of a closely substitutable service, thereby mitigating the impact of the primary restriction (such as for taxis and hire cars).

- *How the effects of anticompetitive impacts are manifested.* Some restrictions on competition:

  - result in transfers to incumbent beneficiaries at the expense of potential competitors, leading to worse financial outcomes for users/consumers;

  - have major, albeit less tangible, effects on consumer convenience (such as the restrictions on shop trading hours); and

  - have pronounced impacts on the allocation of the resource use in other jurisdictions or the economy generally, such as differential restrictions across jurisdictions that encourage the inefficient relocation of mobile capital.

Governments' overall compliance

In terms of potential NCP payments implications arising from compliance failures (see the 'Overview of progress and recommendations' section at the front of this volume), the Council accounted for:

- the reason for the compliance failure;

- the significance, in terms of impacts on the community, of remaining restrictions on competition; and

- CoAG guidelines, including the extent of a jurisdiction's overall commitment to the implementation of the NCP (see chapter 1, volume 1).

Table 4.1 provides an overview of each government's record of compliance with its legislation review obligations, including for both priority and non priority legislation.

Table 4.1: Overall outcomes with the review and reform of legislation[a]

	Priority legislation	*Nonpriority legislation*	*Total legislation*	*Proportion of priority complying*	*Proportion of non-priority complying*	*Proportion of total complying*
				%	%	%
Commonwealth[b]	57	68	125	33	66	51
New South Wales	118	98	216	69	79	73
Victoria	91	119	210	78	83	81
Queensland	118	60	178	61	92	71
Western Australia	117	157	274	31	54	44
South Australia	75	96	171	37	82	63
Tasmania	100	138	238	77	90	84
ACT	78	178	256	59	97	85
Northern Territory	57	40	97	47	83	62
TOTAL	811	954	1765	56	81	69

a Includes the stock of legislation identified by each jurisdiction in their original legislation review schedules, jurisdictions' periodic additions (as other existing legislation containing restrictions on competition has been identified), and existing, amending and new legislation containing restrictions on competition identified by the Council. Excludes water-related legislation, apart from three pieces of such legislation that include matters relevant to non-water legislation areas. Excludes regulation related to electricity, gas and road transport (except where it relates to professions such as electricians and gasfitters covered in volume 2 of this report), which are treated separately in chapters 7, 8 and 9 (volume 1) respectively.

b The Commonwealth raised concerns about the Council assessing outcomes with respect to the review and reform of legislation not included on the Commonwealth's original 1996 Cabinet-approved list of legislation — the Commonwealth Legislation Review Schedule (CLRS). The Commonwealth reported that the CLRS contains 101 pieces of legislation rather than the 125 pieces of legislation assessed by the Council. This situation is not unique to the Commonwealth. As explained in note a, for a number of reasons, the estimates may not accord with Governments' original legislation review schedules as at 1996. Other Governments did not raise concerns about these data.

Source: Derived from the National Competition Council's legislation review database.

The estimates for compliance rates noted in table 4.1 (in the final three columns) are indicative only. The main purpose is to highlight differences in the relative performance of jurisdictions and to indicate the magnitude of their legislation review task. In interpreting the data, some important caveats are as follows.

- The estimates can reflect differential treatment of legislation review matters between jurisdictions — for example, where a jurisdiction has a 'Chiropractors and Osteopaths Act' it will be counted once, whereas

separate legislation for each profession in another jurisdiction would be counted twice.

- In some cases a jurisdiction's review and reform activity for one issue might encompass several pieces of legislation, which can skew outcomes. For instance, the Commonwealth's compliance rate for its priority legislation was around 32 per cent. Noncompliance in the review and reform of its superannuation and broadcasting involved, respectively, ten and five discrete pieces of legislation (some of which were not on its 1996 Commonwealth Legislation Review Schedule). If each compliance failure involved one piece of legislation, the Commonwealth's compliance rate for priority legislation would be around 40 per cent.

For these reasons, the Council did not place undue importance on small deviations in absolute compliance ratios across jurisdictions. Indeed, tables 4.2–10 list outstanding priority reform *areas* rather than ascribing compliance failures to each piece of legislation individually.

The following section provides an overview of each jurisdiction's overall performance in the review and reform of its stock of legislation. In relation to the review and, where appropriate, reform of the priority legislation areas, the performance of the Commonwealth, Western Australia, South Australia and the Northern Territory was markedly below average.

Commonwealth

The Commonwealth Government completed the review and reform of around half of its stock of legislation. It reviewed, and where appropriate, reformed 33 per cent of its priority legislation and 66 per cent of its nonpriority legislation. Compared to other jurisdictions, the Commonwealth's performance was well below average and not commensurate with its leadership role in other areas of the NCP.

Excluding areas subject to ongoing interjurisdictional processes, the Commonwealth had 22 areas of noncompliance in priority legislation, including the following five instances of reform outcomes that breached the clause 5 guiding principle:

- export marketing arrangements for wheat (2002);
- broadcasting regulation (2003);
- regulation of postal services (2003);
- standards for imported motor vehicles (2002); and
- statutory monopoly provision of parliamentary superannuation (2003).

The Commonwealth had 11 instances of incomplete activity where a commitment to appropriate reform was not evident.

The most significant areas of noncompliance for the Commonwealth include:

- legislation on wheat marketing, broadcasting, and postal services that is in breach of CPA clause 5; and
- the incomplete review and reform of health-related legislation (pathology collection centre licensing and services covered by private health insurance) and legislation on industry assistance.

New South Wales

The New South Wales Government completed the review and reform of over 70 per cent of its stock of legislation. It reviewed, and where appropriate, reformed almost 70 per cent of its priority legislation and nearly 80 per cent of its nonpriority legislation. Compared to other jurisdictions, New South Wales' performance was above average.

Excluding areas subject to ongoing interjurisdictional processes, New South Wales had 28 areas of noncompliance in priority legislation including the following eight instances of reform outcomes that breached the clause 5 guiding principle:

- grain marketing (2002);
- poultry meat industry negotiation framework (2002);
- taxis and hire cars (2003);
- ownership restrictions for dental practices (2003) and for optical dispensers (2003);
- farm debt mediation provisions (2003); and
- regulation of gaming machines (2003) and racing and betting (2002).

New South Wales had 9 instances of incomplete activity where a commitment to appropriate reform was not evident.

The most significant areas of noncompliance for New South Wales include:

- legislation on grain marketing, poultry meat bargaining, taxis and hire cars and ownership restrictions applying to the dental and optical dispensing professions that is in breach of CPA clause 5; and
- the incomplete review and reform of regulation of liquor sales, a number of professions and fisheries management legislation.

Victoria

The Victorian Government completed the review and reform of over 80 per cent of its stock of legislation. It reviewed, and where appropriate, reformed 78 per cent of its priority legislation and over 80 per cent of its nonpriority legislation. Compared to other jurisdictions, Victoria's performance was well above average.

Excluding areas subject to ongoing interjurisdictional processes, Victoria had 10 areas of noncompliance in priority legislation, including the following two instances of reform outcomes that breached the clause 5 guiding principle:

- regulation of the tow truck industry (2003);
- regulation affording exclusive lottery licences (2003).

Victoria had six instances of incomplete activity where a commitment to appropriate reform was not evident.

The most significant areas of noncompliance for Victoria include:

- legislation on entry restrictions applying to the tow truck industry that is in breach of CPA clause 5; and
- the incomplete review and reform of legislation on pharmacies, fisheries management and some building-related occupations.

Queensland

The Queensland Government completed the review and reform of over 70 per cent of its stock of legislation. It reviewed, and where appropriate, reformed 61 per cent of its priority legislation and over 90 per cent of its nonpriority legislation. Compared to other jurisdictions, Queensland's performance was above average.

Excluding areas subject to ongoing interjurisdictional processes, Queensland had 24 areas of noncompliance in priority legislation, including the following six instances of reform outcomes that breached the clause 5 guiding principle.

- liquor licensing (2003);
- taxis and hire cars (2003);
- reservation of title for occupational therapists (2002) and for speech pathologists (2002);
- regulation of activities outside of ports (2002); and
- monopoly provision of public sector superannuation (2003).

Queensland had 11 instances of incomplete activity where a commitment to appropriate reform was not evident.

The most significant areas of noncompliance for Queensland include:

- legislation on packaged liquor sales and taxis and hire cars that is in breach of CPA clause 5; and
- the incomplete review and reform of fisheries management legislation and the regulation of several health-related professions.

Western Australia

The Western Australian Government completed the review and reform 44 per cent of its stock of legislation. It reviewed, and where appropriate, reformed 31 per cent of its priority legislation and 54 per cent of its nonpriority legislation. Western Australia's performance was below that of all other jurisdictions.

Excluding areas subject to ongoing interjurisdictional processes, Western Australia had 49 areas of noncompliance in priority legislation, including the following seven instances of reform outcomes that breached the clause 5 guiding principle:

- retail trading hours (2003);
- liquor licensing (2003);
- marketing of potatoes (2003);
- fish resources management (2003);
- petroleum products pricing (2003) and regulations establishing fuel standards (2003); and
- casinos and betting (2003).

Western Australia had 31 instances of incomplete activity where a commitment to appropriate reform was not evident.

The most significant areas of noncompliance for Western Australia include:

- legislation on retail trading hours, liquor licensing, and potato marketing that is in breach of CPA clause 5; and
- the incomplete review and reform of legislation in grain marketing, poultry meat bargaining, egg marketing, most health-related professions and some water related legislation.

South Australia

The South Australian Government completed the review and reform over 60 per cent of its stock of legislation. It reviewed, and where appropriate, reformed almost 40 per cent of its priority legislation and over 80 per cent of its nonpriority legislation. Compared to other jurisdictions, South Australia's performance was below average.

Excluding areas subject to ongoing interjurisdictional processes, South Australia had 34 areas of noncompliance in priority legislation, including the following six instances of reform outcomes that breached the clause 5 guiding principle:

- poultry meat industry negotiation framework (2003);
- taxis and hire cars (2003);
- ownership restrictions for dental practices (2003);
- regulation of retail trading hours (2003)
- monopoly provision of public sector superannuation (2003); and
- regulation of lotteries (2003).

South Australia had 25 instances of incomplete activity where a commitment to appropriate reform was not evident.

The most significant areas of noncompliance for South Australia include:

- legislation on poultry meat negotiations and taxis (moderated by liberal conditions for hire cars) that is in breach of CPA clause 5; and
- the incomplete review and reform of legislation on liquor licensing; barley marketing, fisheries, a number of health-related professions and building-related trades.

Tasmania

The Tasmanian Government completed the review and reform 84 per cent of its stock of legislation. It reviewed, and where appropriate, reformed 77 per cent of its priority legislation and 90 per cent of its nonpriority legislation. Compared to other jurisdictions, Tasmania's performance was well above average.

Excluding areas subject to ongoing interjurisdictional processes, Tasmania had 14 areas of noncompliance in priority legislation, including the following two instances of reform outcomes that breached the clause 5 guiding principle:

- marine farming planning legislation (2003); and
- the composition of the Veterinary Board of Tasmania (2003).

Tasmania had nine instances of incomplete activity where a commitment to appropriate reform was not evident.

The most significant areas of noncompliance for Tasmania are the incomplete review and reform of legislation on taxis and hire cars, some health- and building-related professions and gambling.

ACT

The ACT Government completed the review and reform around 85 per cent of its stock of legislation. It reviewed, and where appropriate, reformed nearly 60 per cent of its priority legislation and nearly all of its nonpriority legislation. Compared to other jurisdictions, the ACT's performance was above average.

Excluding areas subject to ongoing interjurisdictional processes, the ACT had 11 areas of noncompliance in priority legislation, including the following instance of a reform outcome that breached the clause 5 guiding principle:

- licensing of employment agents (2003).

The ACT had eight instances of incomplete activity where a commitment to appropriate reform was not evident.

The most significant areas of noncompliance for the ACT are the incomplete review and reform of legislation on taxis and hire cars, health-related professions and some building-related trades.

The Northern Territory

The Northern Territory Government completed the review and reform around 60 per cent of its stock of legislation. It reviewed, and where appropriate, reformed 47 per cent of its priority legislation and over 80 per cent of its nonpriority legislation. Compared to other jurisdictions, the Northern Territory's performance was below average.

Excluding areas subject to ongoing interjurisdictional processes, the Northern Territory had 16 areas of noncompliance in priority legislation, including the following instance of a reform outcome that breached the clause 5 guiding principle:

- taxis and hire cars (2003).

The Northern Territory had 14 instances where a commitment to appropriate reform was not evident.

The most significant areas of noncompliance for the Northern Territory include legislation on the reintroduction of entry restrictions to the taxi industry that is in breach of CPA clause 5, and the incomplete review and reform of legislation on liquor licensing and the health-related professions.

New legislation that restricts competition

The CPA clause 5(5) obliges governments to show that proposed new legislation that restricts competition provides a net benefit to the community and that the restriction is necessary to achieve the objectives of the legislation. The obligation regarding new legislation has been ongoing for governments since the signing of the NCP agreements in 1995.

As the 2003 NCP assessment aimed to finalise the review and reform of the stock of legislation, the CPA clause 5(5) obligations assume elevated importance. It would be undesirable for unwarranted anticompetitive restrictions on competition to be removed from existing legislation, only to resurface in new legislation.

The Council wrote to all governments on this matter in late 2002, noting that it considered the CPA clause 5(5) obligation to mean that governments should have in place legislation gatekeeping arrangements that maximise the opportunity for regulatory quality. The Council outlined that it considered that the following principles underpin effective gatekeeping arrangements.

- All legislation that contains nontrivial restrictions on competition should be subject to formal regulatory impact assessment to determine the most effective and efficient approach to achieving the government's regulatory objective, including alternatives to regulation. The impact analysis must explicitly consider competition impacts.

- All government agencies that review or make regulations that restrict competition must follow guidelines for the conduct of regulation impact analysis.

- An independent body with relevant expertise advises agencies on when and how to conduct regulatory impact assessment. The body is empowered to examine regulatory impact assessments and to advise the Cabinet on whether they provide an adequate level of analysis.

- The regulatory impact assessment body monitors and reports annually on compliance with the regulation impact analysis guidelines.

All governments have established arrangements for gatekeeper scrutiny of the competition impacts of new and amended legislation. The Council examined governments' gatekeeping mechanisms to ensure that appropriate processes are in place to ensure new legislation complies with the CPA guiding principle (see chapter 13, volume 2).

The Commonwealth Government's gatekeeping procedures represent best practice as they require impact assessment for all regulatory proposals (primary, subordinate, quasi-regulation and treaties) and are underpinned by detailed guidelines on the conduct of impact analysis. An independent Office of Regulation Review is empowered to examine agencies' regulatory impact assessments and to advise on the adequacy of the analysis at the decision-making and tabling/transparency stages. It also monitors and reports annually on compliance with the regulation impact analysis guidelines.

Other jurisdictions subject all primary and subordinate legislation to their gatekeeping requirements. New South Wales, however, does not subject direct amendments to legislation to its gatekeeping requirements. The Council considers this to be a material omission. On other aspects there is a degree of divergence between the models adopted by each jurisdiction and the best practice model adopted by the Commonwealth. For example many States and the ACT use Cabinet processes to implement gatekeeping mechanisms for primary legislation and therefore may not require the final RIS to be made available publicly. The quality and independence of monitoring and reporting also varies considerably across the States and Territories.

The Council conducted checks on the efficacy of jurisdictions' gatekeeping mechanisms by examining some new legislation in priority areas to ensure compliance with the CPA clause 5 guiding principle. (Subsequent chapters in volume 2 discuss such relevant legislation.) These checks revealed examples where, despite the efficacy of the gatekeeping system, governments have implemented legislation that restricts competition even where it has not been demonstrated that it provides a net benefit to the community and/or the objectives of the legislation could have been achieved without restricting competition. This indicates that while an effective gatekeeping mechanism is necessary to achieve good regulatory outcomes, it will not always be sufficient.

Gatekeeping systems need to be supported by governments and the departments and agencies responsible for undertaking regulatory impact analyses. Ongoing scrutiny is important. Over time experience may highlight deficiencies in gatekeeping systems that need to be addressed or improvements that could be made that lead to more effective and efficient regulatory and administrative outcomes. Responsibility for scrutinising the gatekeeping systems rests with all governments and the Council will continue to monitor new legislation and gatekeeping arrangements to ensure that governments continue to strive for best practice regulation.

Table 4.2: Noncompliance with legislation review and reform — Commonwealth Government

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Wheat Marketing Act 1989	Does not meet CPA obligations (2002)	Review did not show the export 'single desk' is in the public interest. Further review in 2004 will not address NCP issues.	1
Dairy Produce Act 1986 (export control)	Incomplete — firm commitment demonstrated	Most restrictions on competition removed.	1
Agricultural and Veterinary Chemicals Code Act 1994 *Agricultural and Veterinary Chemicals (Administration) Act 1992*	Incomplete — interjurisdictional process		1
Imported Food Control Act 1992	Incomplete — firm commitment demonstrated	Some reforms were implemented and further amendments were introduced to Parliament.	1
Quarantine Act 1908 (plant and animal)	Incomplete — firm commitment demonstrated	Phased response is being implemented and further review foreshadowed in 2003.	1
Export Control Act 1982 (food)	Incomplete — commitment not demonstrated	Consultation on review outcomes is under way.	1
Aboriginal Land Rights (Northern Territory) Act 1976	Incomplete — commitment not demonstrated	The Government did not respond to the review.	1
Regulations under the Export Control Act related to wood	Incomplete — commitment not demonstrated	The review recommended repeal of the regulations.	1
Shipping Registration Act 1912	Incomplete — commitment not demonstrated	Reforms are being held up by broader shipping reform matters.	2
Navigation Act 1912	Incomplete — commitment not demonstrated	Government is considering the review.	2
Motor Vehicle Standards Act 1989	Does not meet CPA obligations (2002)	Restrictions, although minor, were not shown to be in the public interest.	2
Therapeutic Goods Act 1989 (drugs and poisons)	Incomplete — interjurisdictional process		3

(*continued*)

Table 4.2 continued

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Health Insurance Act 1973 (*Part IIA*) (pathology collection centre licensing)	Incomplete — commitment not demonstrated	The Government would comply if it announced a review as recommended by steering committee.	3
National Health Act 1953 *Health Insurance Act 1973* (restrictions on services covered by private health insurance)	Incomplete — commitment not demonstrated	Trialling of less restrictive approach was delayed to late 2003.	3
Superannuation Act 1976 *Superannuation Act 1990* *Superannuation Guarantee (Administration) Act 1992*	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	6
Parliamentary Contributory Superannuation Act 1948	Does not meet CPA obligations (2003)	Monopoly provision of superannuation.	6
Superannuation Industry (Supervision) Act 1993 *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987* *Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Act 1991* *Superannuation (Resolution of Complaints) Act 1993* *Occupational Superannuation Standards Regulations Applications Act 1992* *Superannuation (Financial Assistance Funding) Levy Act 1993*	Incomplete — firm commitment demonstrated	Government response was in accord with review recommendations, and exposure draft legislation was circulated. In other instances, the Government has undertaken actions consistent with the review recommendations.	6
Safety, Rehabilitation and Compensation Act 1988	Incomplete — interjurisdictional process		6

(*continued*)

Table 4.2 continued

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Interactive Gambling Act 2001	Incomplete — commitment not demonstrated	Draft review report is expected in 2003.	9
Broadcasting Services Act 1992 *Radio Licence Fees Act 1964* *Television Licence Fee Act 1964*	Does not meet CPA obligations (2003)	Retains numerous restrictions on competition without a public interest case.	11
Radiocommunications Act 1992 and related legislation	Incomplete — commitment not demonstrated	The Government has made some progress and is considering some other recommendations.	11
Australian Postal Corporation Act 1989	Does not meet CPA obligations (2003)	Pro-competitive legislation was defeated in the Senate, but some minor reforms were made.	11
Anti-dumping Authority Act 1998 *Customs Act 1901 part XVB* *Customs Tariff (Anti-dumping) Act 1975*	Incomplete — commitment not demonstrated	Review has not commenced.	12
Customs Tariff Act 1995 – Automotive Industry Arrangements	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	12
Customs Tariff Act 1995 – Textiles Clothing and Footwear	Incomplete — commitment not demonstrated	Review is completed and under consideration by the Government.	12

Table 4.3: Noncompliance with legislation review and reform — New South Wales

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Grain Marketing Act 1991	Does not meet CPA obligations (2002)	Monopoly is legislated to the end of 2005 without public interest justification.	1
Poultry Meat Industry Act 1986	Does not meet CPA obligations (2002)	Restricts competition between processors and between growers.	1
Agricultural and Veterinary Chemicals (New South Wales) Act 1994	Incomplete — interjurisdictional process		1
Marketing of Primary Products Act 1983 (Rice Marketing Board)	Incomplete — see next column	Outcome of Commonwealth consultations with other jurisdictions on export authority proposal not announced. The New South Wales Government has extended vesting for a further five years pending new NCP review.	1
Fisheries Management Act 1994	Incomplete — firm commitment demonstrated	The Government made considerable progress.	1
Stock Medicines Act 1989	Incomplete — interjurisdictional process		1
Food Act 1989	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	1
Farm Debt Mediation Act 1994	Does not meet CPA obligations (2003)	The Act enforces compulsory mediation between lenders and farmers and deferral of farm debt appropriation.	1
Mines Inspection Act 1901	Incomplete — commitment not demonstrated	Act is slated for repeal in 2003.	1
Veterinary Surgeons Act 1986	Incomplete — commitment not demonstrated	Draft Bill is under preparation.	1
Passenger Transport Act 1990 (taxis)	Does not meet CPA obligations (2003)	Limited liberalisation of entry restrictions.	2
Tow Truck Industry Act 1998	Incomplete — firm commitment demonstrated	Further review will occur after trial allocation system.	2

(*continued*)

Table 4.3 continued

Title of legislation	Assessment	Comment	Chapter reference (Vol. 2)
Marine Safety Act 1998	Incomplete — firm commitment demonstrated	Awaiting advice from the Commonwealth on the National Review of the Uniform Shipping Laws Code.	2
Dentists Act 1989	Does not meet CPA obligations (2003)	Act contains ownership restrictions.	3
Nurses Act 1991	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	3
Optical Dispensers Act 1963 *Optometrists Act 1930*	Does not meet CPA obligations (2003)	Act contains ownership restrictions.	3
Podiatrists Act 1989	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	3
Pharmacy Act 1964	Incomplete – commitment not demonstrated	Proposals for reform before the Cabinet	3
Legal Professions Act 1987	Incomplete – interjurisdictional process		4
Wool, Skin and Hide Dealers Act 1935	Incomplete — commitment not demonstrated	Legislative reform is anticipated in 2003.	5
Travel Agents Act 1986	Incomplete – interjurisdictional process		5
Shops and Industries Act 1962 (hairdressers)	Incomplete — commitment not demonstrated	Legislative reform is anticipated in 2003.	5
Commercial Agents and Private Inquiry Agents Act 1963	Incomplete — commitment not demonstrated	Legislative reform is anticipated in 2003.	5
Workers Compensation Act 1987	Incomplete – interjurisdictional process		6
Registered Clubs Act 1976 (liquor) *Liquor Act 1982* (liquor)	Incomplete — commitment not demonstrated	Review completed. Awaiting Government response.	7
Funeral Funds Act 1979	Incomplete — firm commitment demonstrated	The Government is considering if new legislation may be required to implement the review's recommendations.	8
Trade Measurement Administration Act 1989	Incomplete – interjurisdictional process		8

(*continued*)

Table 4.3 continued

Title of legislation	Assessment	Comment	Chapter reference (Vol. 2)
Child (Care and protection) Act 1987 *Children and Young Persons (Care and Protection) Act 1988*	Incomplete — firm commitment demonstrated	Reform implementation expected soon.	9
NSW Lotteries Corporatisation Act 1996 *Public Lotteries Act 1996*	Incomplete — commitment not demonstrated	Government is considering the review report.	9
Casino Control Act 1992	Incomplete — commitment not demonstrated	Government is considering the review report.	9
Gaming Machines Act 2001	Does not meet CPA obligations (2003)	Act provides for an exclusive licence.	9
Racing Administration Act 1998	Does not meet CPA obligations (2002)	Legislation retains provisions for minimum telephone bets and restrictions on advertising of interstate betting services.	9
Environmental Planning and Assessment Act 1979 and planning and land use reform projects	Incomplete — firm commitment demonstrated	The Government made good progress in planning/land use projects.	10
Architects Act 1921	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	10

Table 4.4: Noncompliance with legislation review and reform — Victoria

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Agriculture and Veterinary Chemicals (Victoria) Act 1994 *Agriculture and Veterinary Chemicals (Control of Use) Act 1992*	Incomplete — interjurisdictional process		1
Fisheries Act 1995	Incomplete — firm commitment demonstrated	The Government made considerable progress.	1
Extractive Industries Development Act 1995	Incomplete —commitment not demonstrated	New legislation slated for Parliament in 2003.	1
Transport Act 1983 (provisions relating to tow trucks) and Transport (Tow Truck) Regulations	Does not meet CPA obligations (2003)	Legislation retains barriers to entry.	2
Port Services Act 1995	Incomplete — firm commitment demonstrated	Reform was partly implemented and a further Bill is slated for Parliament in spring 2003.	2
Drugs, Poisons and Controlled Substances Act 1981	Incomplete — interjurisdictional process		3
Pharmacists Act 1974	Incomplete – commitment not demonstrated	Review recommendations under consideration	3
Legal Practice Act 1996	Incomplete — interjurisdictional process	Act complies in other respects.	4
Private Agents Act 1966	Incomplete — commitment not demonstrated	Legislative reform is anticipated in 2004.	5
Travel Agents Act 1986	Incomplete — interjurisdictional process		5
Accident Compensation Act 1985 *Accident Compensation (Workcover Insurance) Act 1983*	Incomplete — interjurisdictional process		6
Transport Accident Act 1986	Incomplete — interjurisdictional process		6
Trade Measurement (Administration) Act 1995	Incomplete — interjurisdictional process		8
Tattersall Consultation Act 1958; Public Lotteries Act 2000	Does not meet CPA obligations (2003)	The Government extended the exclusive licence.	9
Building Act 1993 (building approvals)	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in 2003.	10
Architects Act 1991	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in 2003.	10
Surveyors Act 1978	Incomplete — commitment not demonstrated	Progression of Bill is under consideration.	10

Table 4.5: Noncompliance with legislation review and reform — Queensland

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Agricultural and Veterinary Chemicals (Queensland) Act 1994	Incomplete — interjurisdictional process		1
Agricultural Chemicals Distribution Control Act 1966	Incomplete — firm commitment demonstrated	Amended Act to be proclaimed in October 2003.	1
Fisheries Act 1994	Incomplete — firm commitment demonstrated	The Government made considerable progress.	1
Sawmills Licensing Act 1936	Incomplete — commitment not demonstrated	The review recommended the act be repealed.	1
Transport Operations (Passenger Transport) Act 1994 (taxis)	Does not meet CPA obligations (2003)	No progress in reducing barriers to entry.	2
Transport Infrastructure (Rail) Regulation 1996 — *Transport Infrastructure Act 1994*	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	2
Transport Infrastructure (Ports) Regulation 1994 — *Transport Infrastructure Act 1994* (activities outside ports)	Does not meet CPA obligations (2002)	Legislation limits certain activities to authorised ports.	2
Health practitioner legislation (practice restrictions): *Chiropractors and Osteopaths Act 1979* *Dental Act 1971; Dental Technicians and Dental Prosthetists Act 1991* *Medical Act 1939* *Optometrists Act 1974 / Optometrists Registration Act 2001* *Physiotherapy Act 1964* *Physiotherapists Registration Act 2001* *Podiatrists Act 1969* *Podiatrists Registration Act 2001*	Incomplete — firm commitment demonstrated	Amending legislation is before Parliament.	3

(*continued*)

Table 4.5 continued

Title of legislation	Assessment	Comment	Chapter reference (Vol. 2)
Nursing Act 1992	Incomplete — commitment not demonstrated	Review completed in August 2003.	3
Occupational Therapists Act 1979	Does not meet CPA obligations (2002)	Act provides for reservation of title.	3
Speech Pathologists Act 1979	Does not meet CPA obligations (2002)	Act provides for reservation of title.	3
Pharmacy Act 1976	Incomplete – commitment not demonstrated	Reforms to be introduced in 2003	3
Health Act 1937 (drugs and poisons)	Incomplete — interjurisdictional process		3
Legal Practitioners Act 1995	Incomplete — interjurisdictional process		4
Health Act 1937 (hairdressing)	Incomplete — commitment not demonstrated	Reforms are expected to commence in July 2004.	5
Pawnbrokers Act 1984 *Second-hand Dealers and Collectors Act 1984*	Incomplete — commitment not demonstrated	New legislation is expected in 2003.	5
Travel Agents Act 1988	Incomplete — interjurisdictional process		5
Auctioneers and Agents Act 1971 (maximum commissions for auctioneers and real estate agents) *Property Agents and Motor Dealers Act 2000*	Incomplete — commitment not demonstrated	Review is under consideration.	5
*Workcover Queensland Act 1996 (*monopoly insurance provision)	Incomplete — interjurisdictional process		6
Superannuation (Government and other Employees) Act 1998	Does not meet CPA obligations (2003)	Act underpins monopoly provision of superannuation.	6
Liquor Act 1992	Does not meet CPA obligations (2003)	Hotel monopoly on the sale of packaged liquor and restrictions on the ownership, location and configuration of bottle shops.	7

(*continued*)

Table 4.5 continued

Title of legislation	Assessment	Comment	Chapter reference (Vol. 2)
Funeral Benefit Business Act 1982	Incomplete — commitment not demonstrated	Bill may be introduced in late August 2003.	8
Credit Act 1987	Incomplete — firm commitment demonstrated	Reform completion depends on the resolution of matters before the courts.	8
Keno Act 1996 *Charitable and Non-profit Gambling Act 1999*	Incomplete — commitment not demonstrated	Review report is expected in July 2003.	9
Gaming Machine Act 1991	Incomplete — commitment not demonstrated	Government is considering the review report.	9
Wagering Act 1998 (TAB)	Incomplete — commitment not demonstrated	Draft review was released in April 2003.	9
Interactive Gambling (Player Protection) Act 1998	Incomplete — interjurisdictional process	Reform completion depends on resolution of Commonwealth legislation.	9
Grammar Schools Act 1975	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in late 2003.	9
Child Care Act 1991 Child Care (Child Care Centres) Regulation 1991 and Child Care (Family Day Care) Regulation 1991	Incomplete — firm commitment demonstrated	Act and Regulations come into effect on 1 September 2003.	9
Surveyors Act 1977	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	10

Table 4.6: Noncompliance with legislation review and reform — Western Australia

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Agricultural and Veterinary Chemicals (Western Australia) Act 1995 *Agricultural Produce (Chemical Residues) Act 1983* *Aerial Spraying Control Act 1966*	Incomplete — interjurisdictional process		1
Veterinary Preparations and Animal Feeding Stuffs Act 1976	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	1
Grain Marketing Act 1975	Incomplete — firm commitment demonstrated	Regulations and Ministerial guidelines are to be finalised.	1
Marketing of Eggs Act 1945	Incomplete — commitment not demonstrated	Removal of restrictions is slated for no later than 2007.	1
Chicken Meat industry Act 1977	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	1
Marketing of Potatoes Act 1946	Does not meet CPA obligations (2003)	Restrictions were retained without adequate public interest evidence.	1
Health Act 1911 and Food regulations under the Health Act	Incomplete — commitment not demonstrated	The Regulations are under review.	1
Veterinary Surgeons Act 1960	Incomplete — commitment not demonstrated	Legislative amendments are to be drafted.	1
Fish Resources Management Act 1994	Does not meet CPA obligations (2003)	Restrictions were retained without public interest evidence.	1
Pearling Act 1990	Incomplete — commitment not demonstrated	The recommended reforms have not been implemented. The Government also intends to retain hatchery quota against the recommendations of the NCP review.	1
Sandalwood Act 1929	Incomplete — firm commitment demonstrated	Legislation is before Parliament	1

(*continued*)

Table 4.6 continued

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Taxi Act 1994	Incomplete — commitment not demonstrated	First-stage reforms were announced.	2
Explosives and Dangerous Goods Act 1961	Incomplete — firm commitment demonstrated	Legislation is before Parliament	2
Jetties Act 1926 and Regulations *Lights (Navigation) Protection Act 1938* *Marine and Harbours Act 1981* and Regulations *Shipping and Pilotage Act 1967* and Regulations *Marine Act 1982*	Incomplete — commitment not demonstrated	Drafting of legislation is slated for late 2003.	2
Transport Co-ordination Act 1966	Incomplete — commitment not demonstrated	The Government is yet to finalise legislation.	2
Health practitioner legislation: *Dental Act 1939; Dental Prosthetists Act 1985* *Chiropractors Act 1964* *Optical Dispensers Act 1966; Optometrists Act 1940* *Nurses Act 1992* *Osteopaths Act 1997* *Physiotherapists Act 1950* *Podiatrists Registration Act 1984* *Psychologists Registration Act 1976* *Occupational Therapists Registration Act 1980*	Incomplete — see next column	The Council and Western Australia previously agreed that the State's health practitioner core practices review would be completed and implemented fully by June 2004. The Government did not, however, introduce important template health practitioner legislation for which drafting commenced in 2001. Nevertheless, in July 2003, it advised the Council that a steering committee had been established and that its draft review report is expected soon. The Government indicated that '[t]his will enable legislative amendment to be implemented by June 2004'.	3
Medical Act 1894	Incomplete — commitment not demonstrated	New legislation slated for late 2003	
Poisons Act 1964 *Health Act 1911* (Part VIIA) *(*drugs and poisons)	Incomplete — interjurisdictional process		3

(*continued*)

Table 4.6 continued

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Pharmacy Act 1964	Incomplete — commitment not demonstrated	Department of Health is considering review outcomes	3
Legal Practitioners Act 1893	Incomplete — interjurisdictional process		4
Motor Vehicle Driving Instructors Act 1963	Incomplete — commitment not demonstrated	Review report is expected in late 2003.	5
Auction Sales Act 1973	Incomplete — commitment not demonstrated	Review report endorsed by Cabinet.	5
Travel Agents Act 1985 and Regulations	Incomplete — interjurisdictional process		5
Settlement Agents Act 1981	Incomplete — commitment not demonstrated	Review report was endorsed by Cabinet.	5
Pawnbrokers and Second-hand Dealers Act 1994	Incomplete — commitment not demonstrated	Draft Bill is ready for Ministerial endorsement.	5
Debt Collectors Licensing Act 1964	Incomplete — commitment not demonstrated	Review report endorsed by Cabinet.	5
Employment Agents Act 1976	Incomplete — commitment not demonstrated	Review report is expected in late 2003.	5
Hairdressers Registration Act 1946	Incomplete — commitment not demonstrated	Review was completed.	5
Real Estate and Business Agents Act 1978	Incomplete — commitment not demonstrated	Legislative amendments are being drafted.	5
Motor Vehicle (Third Party Insurance) Act 1943	Incomplete — interjurisdictional process		6
State Superannuation Act 2000	Incomplete — commitment not demonstrated	Restricted review is under way.	6
Workers Compensation and Rehabilitation Act 1981	Incomplete — interjurisdictional process		6
Retail Trading Hours Act 1987	Does not meet CPA obligations (2003)	The Government will take no further action until 2005.	7
Liquor Licensing Act 1988	Does not meet CPA obligations (2003)	The Government will take no further action until 2005.	7

(*continued*)

Table 4.6 continued

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Petroleum Products Pricing Amendment Act 2000 *Petroleum Legislation Amendment Act 2001*	Does not meet CPA obligations (2003)	Price notification and fuel supply arrangements found by the ACCC not to be in the public interest.	7
Environmental Protection (Diesel and Petrol) Regulations 1999	Does not meet CPA obligations (2003)	Legislation confers monopoly status on the local refinery.	7
Retirement Villages Act 1992	Incomplete — commitment not demonstrated	Amendments are being drafted.	8
Credit (Administration) Act 1984	Incomplete — commitment not demonstrated	Draft amendments caused delay.	8
Hire Purchase Act 1959	Incomplete — firm commitment demonstrated	Parliament is to visit legislation in August 2003.	8
Weights and Measures Act 1915	Incomplete — interjurisdictional process		8
Education Service Providers (Full Fee Overseas Students) Registration Act 1992	Incomplete — commitment not demonstrated	Review is under way.	9
Curtin University of Technology Act 1966 *Edith Cowan University Act 1984* *Murdoch university Act 1973* *University of Notre Dame Australia Act 1989* *University of Western Australia Act 1911*	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	9
Community Services Act 1972 and the Community Services (Child Care) Regulations 1988	Incomplete — commitment not demonstrated	Bill under development	9
Lotteries Commission Act 1990; Gaming Commission Act 1987	Incomplete — commitment not demonstrated	Government is considering the review reports.	9
Betting Control Act 1954 (casinos and betting) *Totalisator Agency Board Betting Act 1960* (betting) *Racing Restrictions Act 1917*	Does not meet CPA obligations (2003)	Acts provide for exclusive TAB licence and bookmakers' minimum bets.	9

(*continued*)

Table 4.6 continued

Title of legislation	Assessment	Comment	Chapter reference (Vol. 2)
Western Australian Greyhound Racing Association Act 1981	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	9
Casino (Burswood Island) Agreement Act 1985 Casino Control (Burswood Island)(Licensing of Employees) Regulations 1985 *Casino Control Act 1984*	Incomplete — commitment not demonstrated	Legislative reforms did not address key restrictions. (Exclusive licence has expired.)	9
Gaming Commission Act 1987	Incomplete — commitment not demonstrated	The review has been completed.	9
Town Planning and Development Act 1928 *Western Australian Planning Commission Act 1985* *Metropolitan Region Town Planning Scheme Act 1959*	Incomplete — commitment not demonstrated	Legislation is slated for Parliament 2004.	10
Local Government (Miscellaneous Provisions) Act 1960 and Building Regulations 1989	Incomplete — commitment not demonstrated	Drafting of new legislation was delayed.	10
Architects Act 1921	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in 2003.	10
Licensed Surveyors Act 1909	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	10
Valuation of Land Act 1987	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	10
Painters Registration Act 1961	Incomplete — commitment not demonstrated	Review report is to be referred to the Minister.	10
Gas Standards Act 1972 and Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999	Incomplete — commitment not demonstrated	Review is under way.	10
Electricity Act 1945 and Electricity (Licensing) Regulations 1991	Incomplete — commitment not demonstrated	Review is with the Minister for Energy.	10

Table 4.7: Noncompliance with legislation review and reform — South Australia

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Agricultural and Veterinary Chemicals (South Australia) Act 1994	Incomplete — interjurisdictional process		1
Agricultural Chemicals Act 1955; Stock Foods Act 1941; Stock Medicines Act 1939	Incomplete — firm commitment demonstrated	Legislation was passed in August 2002 and Regulations are expected to be finalised soon.	1
Chicken Meat Industry Act 2003	Does not meet CPA obligations (2003)	Act contains compulsory arbitration provisions.	1
Barley Marketing Act 1993	Incomplete — commitment not demonstrated	Government is yet to fully respond to the review.	1
Dairy Industry Act 1992 *Meat Hygiene Act 1994*	Incomplete — commitment not demonstrated	Framework consultation is planned for August 2003 for dairy. Meat hygiene to be addressed in late 2003.	1
Veterinary Surgeons Act 1985	Incomplete — firm commitment demonstrated	Legislation is before Parliament and scheduled to commence in 2004.	1
Mining Act 1971 *Mines and Works Inspection Act 1920* *Opal Mining Act 1995*	Incomplete — commitment not demonstrated	Review was completed in December 2002 and legislation is slated for 2003.	1
Fisheries Act 1982	Incomplete — commitment not demonstrated	Amendments expected in spring 2003.	1
Fisheries (Gulf St Vincent Prawn Fishery Rationalisation) Act 1987	Incomplete — firm commitment demonstrated	Legislation is slated for repeal.	1
Passenger Transport Act 1994	Does not meet CPA obligations (2003)	Barriers to entry into the taxi industry.	2
Motor Vehicles Act 1959 (tow trucks)	Incomplete — commitment not demonstrated	Draft Bill slated for August 2003	2
Dangerous Substances Act 1979	Incomplete — commitment not demonstrated	Legislation is yet to be introduced.	2
Harbours and Navigation Act 1993	Incomplete — see next column	Intergovernmental agreement is delaying reform.	2

(*continued*)

Table 4.7 continued

Title of legislation	Assessment	Comment	Chapter reference (Vol. 2)
Dentists Act 1984	Does not meet CPA obligations (2003)	Act contains ownership restrictions.	3
Occupational Therapists Act 1974	Incomplete — commitment not demonstrated	Proposed legislation for introduction in 2004 will not comply.	3
Chiropractors Act 1991	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in 2003.	3
Medical Practitioners Act 1983	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in 2003.	3
Optometrists Act 1920	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in 2004.	3
Physiotherapists Act 1991	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in 2004.	3
Pharmacy Act 1991	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in 2003.	3
Psychological Practices Act 1973	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in 2004.	3
Chiropodists Act 1950s	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in 2003.	3
Controlled Substances Act 1984	Incomplete — interjurisdictional process		3
Legal Practitioners Act 1981	Incomplete — interjurisdictional process		4
Conveyancers Act 1994	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in late 2003.	5
Employment Agents Registration Act 1993	Incomplete — commitment not demonstrated	Review report is under consideration.	5
Travel Agents Act 1986	Incomplete — interjurisdictional process		5
Motor Vehicles Act 1959 (monopoly insurance provision)	Incomplete — interjurisdictional process		6
Workers Rehabilitation and Compensation Act 1986	Incomplete — interjurisdictional process		6
Southern State Superannuation Act 1987	Does not meet CPA obligations (2003)	Act underpins monopoly provision of superannuation.	6

(*continued*)

Table 4.7 continued

Title of legislation	Assessment	Comment	Chapter reference (Vol. 2)
Liquor Licensing Act 1997	Incomplete — commitment not demonstrated	Review is under way.	7
Shop Trading Hours Act 1977	Does not meet CPA obligations (2003)	Substantial reforms were introduced in 2003.	7
Petrol Products Regulation Act 1995	Incomplete — commitment not demonstrated	Legislation is being drafted.	7
Trade Measurement Administration Act 1993	Incomplete — interjurisdictional process		8
Children's Protection Act 1993	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in 2004.	9
State Lotteries Act 1966	Does not meet CPA obligations (2003)	The Act provides for an exclusive licence.	9
Gaming Machines Act 1992	Incomplete — commitment not demonstrated	The Government is yet to respond fully to the review.	9
Authorised Betting Operations Act 2000 (racing and betting)	Incomplete — commitment not demonstrated	The Government is considering the review report.	9
Lottery and Gaming Act 1936	Incomplete — commitment not demonstrated	Review reported in March 2003.	9
Architects Act 1939	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in 2003.	10
Survey Act 1992	Incomplete — commitment not demonstrated	Draft Bill was prepared.	10
Land Valuers Act 1994	Incomplete — commitment not demonstrated	The Government endorsed the review recommendations.	10
Building Work Contractors Act 1995	Incomplete — interjurisdictional process	Finalisation of the review of financial resources and building indemnity insurance requirements was deferred pending completion of a national process. Legislation is anticipated in late 2003.	10

Table 4.8: Noncompliance with legislation review and reform — Tasmania

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Agricultural and Veterinary Chemicals (Tasmania) Act 1994	Incomplete — interjurisdictional process		1
Agricultural and Veterinary Chemicals (Control of Use) Act 1995	Incomplete — firm commitment demonstrated	Legislation is before Parliament.	1
Food Act	Incomplete — firm commitment demonstrated	New Act is yet to be proclaimed.	1
Veterinary Surgeons Act 1987	Does not meet CPA obligations (2003)	The Board is dominated by veterinarians.	1
Marine Farming Planning Act 1995	Does not meet CPA obligations (2003)	The Government did not adequately demonstrate the public interest in Ministerial discretion to allocate water area via leases.	1
Taxi and Luxury Hire Car Industries Act 1995	Incomplete — commitment not demonstrated	The Government is considering the review recommendations.	2
Medical Practitioners Registration Act 1996	Incomplete — commitment not demonstrated	Consultation on review outcomes is under way.	3
Pharmacy Act 1908 (replaced by *Pharmacy Registration Act 2001*).	Incomplete — commitment not demonstrated	Considering amending legislation in light of national review	3
Optometrists Registration Act 1994	Incomplete — commitment not demonstrated	Review recommendations are being considered.	3
Poisons Act 1971 *Alcohol and Drug Dependency Act 1968* *Pharmacy Act 1908* (replaced by *Pharmacy Registration Act 2001*) *Criminal Code Act 1924* (drugs and poisons)	Incomplete — interjurisdictional process		3
Legal Profession Act 1993	Incomplete — interjurisdictional process		4
Auctioneers and Real Estate Agents Act 1991	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in spring 2003 session.	5

(*continued*)

Table 4.8 continued

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Travel Agents Act 1987	Incomplete — interjurisdictional process		5
Motor Accidents (Liabilities and Compensation) Act 1973	Incomplete — interjurisdictional process		6
Vocational Education and Training Act 1994	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in spring 2003.	9
Racing Act 1983 *Racing and Gaming Act 1952* (except as it relates to minor gaming), which was replaced by the *Racing Regulation Act 1952*	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in spring 2003.	9
Gaming Control Act 1993 (gaming machines)	Incomplete — commitment not demonstrated	Proposed exclusive licence before Parliament would not comply.	9
Architects Act 1929	Incomplete — firm commitment demonstrated	Majority or reforms were implemented. Residual matters will be dealt with in 2003–04.	10
Plumbers and Gas-fitters Registration Act 1951	Incomplete — commitment not demonstrated	Cabinet to consider review recommendations.	10

Table 4.9: Noncompliance with legislation review and reform — ACT

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Veterinary Surgeons Registration Act 1965	Incomplete — commitment not demonstrated	Draft Bill was not finalised.	1
Dangerous Goods Act 1984 (applies New South Wales legislation to ACT)	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in spring 2003.	2
Motor Traffic Act 1936 (taxis) *Road transport (General) Act 1999* *Road transport (Passenger Services) Act 2001*	Incomplete — commitment not demonstrated	The Government announced a potentially flawed liberalisation arrangement.	2
Health practitioner legislation: *Dental Technicians and Dental Prosthetists Registration Act 1988* *Dentists Act 1931* *Chiropractors and Osteopaths Act 1983* *Medical Practitioners Act 1930* *Nurses Act 1988* *Optometrists Act 1956* *Physiotherapists Act 1977* *Psychologists Act 1994* *Podiatrists Act 1994*	Incomplete — commitment not demonstrated	New legislation is scheduled for introduction to Parliament in spring 2003.	3
Pharmacy Act 1931	Incomplete — commitment not demonstrated	Revised legislation is being prepared	3
Drugs of Dependence Act 1989 *Poisons Act 1933; Poisons and Drugs Act 1978* (drugs and poisons)	Incomplete — interjurisdictional process		3
Legal Practitioners Act 1970	Incomplete — interjurisdictional process		4
Agents Act 1968 (travel agents)	Incomplete — interjurisdictional process		5

(*continued*)

Table 4.9 continued

Title of legislation	Assessment	Comment	Chapter reference (Vol. 2)
*Agents Act 1968 (*employment agents)	Does not meet CPA obligations (2003)	Act retains licencing, but licence fees reduced substantially.	5
Public Sector Management Act 1994 (superannuation)	Incomplete — interjurisdictional process	Reform depends on Commonwealth legislation.	6
Education Act 1937 *Schools Authority Act 1976* *Public Instruction Act 1880 (NSW)* *Free Education Act 1906 (NSW)*	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in spring 2003.	9
Betting (ACTTAB Limited) Act 1964 *Betting (Corporatisation) (Consequential Provisions) Act 1996*	Incomplete — firm commitment demonstrated	Reform deferred pending the findings of a national task force on cross-border betting.	9
Gaming Machine Act 1987	Incomplete — commitment not demonstrated	Review report is under consideration.	9
Interactive Gambling Act 1998	Incomplete — interjurisdictional process	Reform depends on Commonwealth legislation.	9
Architects Act 1959	Incomplete — commitment not demonstrated	Consultation failed to gain agreement on proposed new Act. A rewrite of the 1959 Act is to be undertaken.	10
Building Act 1972 *Electricity Act 1971* (electricians licensing) *Electricity Safety Act 1971* *Plumbers, Drainers and Gasfitters Board Act 1982*	Incomplete — firm commitment demonstrated	Amending legislation has been introduced.	10

Table 4.10: Noncompliance with legislation review and reform — Northern Territory

Title of legislation	*Assessment*	*Comment*	*Chapter reference (Vol. 2)*
Agricultural and Veterinary Chemicals (Northern Territory) Act	Incomplete — interjurisdictional process		1
Poisons and Dangerous Drugs Act	Incomplete — commitment not demonstrated	Draft Bill is under consideration.	1
Food Act 1986	Incomplete — commitment not demonstrated	Amendments expected in 2003.	1
Veterinarians Act 1994	Incomplete — firm commitment demonstrated	Some reforms implemented	1
Fisheries Act 1996	Incomplete — commitment not demonstrated	The Government has accepted some review recommendations and is considering others.	1
Mining Act 1980	Incomplete — commitment not demonstrated	The Government announced its response to the review.	1
Commercial Passenger (Road) Transport Act (taxis)	Does not meet CPA obligations (2003)	Legislation was previously assessed as complying, but the Government re-introduced restrictions.	2
Health practitioner legislation: *Dental Act* *Health Practitioners and Allied Professionals Registration Act* *Medical Act* *Nursing Act* *Optometrists Act*	Incomplete — commitment not demonstrated	New legislation is scheduled for Parliament in November 2003.	3
Radiographers Act	Incomplete — commitment not demonstrated	Legislation slated for Parliament in November 2003	3
Pharmacy Act	Incomplete — commitment not demonstrated	Legislation slated for Parliament in 2003	3

(*continued*)

Table 4.10 continued

Title of legislation	Assessment	Comment	Chapter reference (Vol. 2)
Poisons and Dangerous Drugs Act *Therapeutic Goods and Cosmetics Act* (drugs and poisons)	Incomplete — interjurisdictional process		3
Legal Practitioners Act	Incomplete — interjurisdictional process		4
Consumer Affairs and Fair Trading Act (NT Regulations) and Amendment Act 1996 (travel agents)	Incomplete — interjurisdictional process		5
Territory Insurance Office Act *Motor Accidents (Compensation) Act*	Incomplete — interjurisdictional process		6
Liquor Act	Incomplete — commitment not demonstrated	Review report is being finalised.	7
Education Act (higher education)	Incomplete — commitment not demonstrated	Review is under consideration.	9
Community Welfare Act	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in November 2003.	9
Gaming Control Act and regulations *Gaming Machine Act* and regulations	Incomplete — commitment not demonstrated	The Government is considering the review report.	9
Totalisator Licensing and Regulation Act *Sale of NT TAB Act*	Incomplete — commitment not demonstrated	Government response to review is expected late 2003.	9
Racing and Betting Act and regulations *Unlawful Betting Act* and regulations	Incomplete — commitment not demonstrated	Government is considering the review report.	9
Architects Act	Incomplete — commitment not demonstrated	Legislation is slated for Parliament in August 2003.	10

5 The Conduct Code Agreement obligations

In addition to obligations in the Competition Principles Agreement (CPA), National Competition Policy (NCP) commitments aim to improve the effectiveness of regulation in the Conduct Code Agreement. Clause 2(1) of the Conduct Code Agreement requires all governments to notify the Australian Competition and Consumer Commission (ACCC) of legislation or provisions in legislation that rely on s. 51(1) of the *Trade Practices Act 1974* (the TPA) within 30 days of the legislation being enacted or made.

Section 51(1) of the TPA provides that conduct that would be an offence under the Act's restrictive trade practices provisions may be permitted if authorised under a Commonwealth, State or Territory Act. As such, legislation that is relevant to clause 2(1) of the Conduct Code Agreement is new legislation restricting competition, so it needs to satisfy the tests in clause 5 of the CPA.

Each of the National Competition Council's NCP assessment reports lists the legislation relevant to clause 2(1) that governments enacted since the previous assessment, along with the date of notification to the ACCC. Since 1 July 2002 — the commencement date of the period for the current NCP assessment — several State and Territory governments have enacted legislation relying on s. 51(1) of the TPA.[1]

The Conduct Code Agreement also required (under clause 2[3]) governments to notify the ACCC by 20 July 1998 of all continuing legislation that relies on s.51(1) of the TPA.[2] As part of the 1999 NCP assessment, all governments stated that they had notified the ACCC of all relevant legislation.

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1 For legislation passed between 11 April 1995 (the earliest date stated in the agreement) and 30 June 1999 and notified by jurisdictions, see NCC 1999b, pp. 172-7. For legislation passed between 1 July 1999 and 30 June 2002 and notified by jurisdictions, see NCC 2001, p. 26.2 and NCC 2002, p. 16.2.

2 For this list, see NCC 1999b, pp. 172–7.

Legislation notified to the ACCC

In accordance with clause 2(1) of the Conduct Code Agreement, the following governments notified the ACCC of legislation that relies on s. 51(1) of the TPA:

- New South Wales — *Poultry Meat Industry Amendment (Price Determination) Act,* notified on 18 November 2002.
- Western Australia — *Grain Marketing Act 2002*, notified on 22 November 2002.
- Northern Territory — *Consumer and Fair Trading (Tow Truck Operators Code of Practice) Regulations*, notified on 10 April 2003.
- Queensland — *Transport (Busway and Light Rail) Amendment Act 2000*, notified on 20 May 2003.

6 National standard setting obligations

The Agreement to Implement the National Competition Policy and Related Reforms (the Implementation Agreement) obliges governments to ensure Ministerial councils and intergovernmental standard-setting bodies set national regulatory standards in accord with principles and guidelines endorsed by the Council of Australian Governments (CoAG). It also obliges governments to seek advice from the independent Commonwealth Office of Regulation Review (ORR) on compliance with these principles and guidelines. The national standard-setting obligation is a collective responsibility of all governments.

The CoAG principles and guidelines aim to promote good regulatory practice in decisions by Ministerial councils and intergovernmental standard-setting bodies. The national standard-setting obligations seek to ensure standards are the minimum necessary, such that they avoid imposing excessive or unnecessary requirements on businesses while accounting for governments' economic, environmental, health and safety concerns. CoAG aims for standards to be subject to a nationally consistent process that assesses their effectiveness in meeting these objectives. Accordingly, CoAG's principles and guidelines:

- set out a consistent process for Ministerial councils and intergovernmental standard-setting bodies to determine whether associated laws and regulations are appropriate; and

- describe, for where regulation is warranted, the features of good regulation and recommend principles for setting standards and taking regulatory action.

CoAG's focus on ensuring effective national standard setting via the 1995 National Competition Policy (NCP) program arose from the concerns of major business associations that Australia's regulatory system could undermine the economy's capacity to compete internationally and attract investment. In the mid-1990s, these associations considered Australia's regulatory system to be unnecessarily complex, generating delays, inconsistencies and additional costs for business investment, and inhibiting risk taking. The Mutual Recognition Agreement, by highlighting discrepancies in standards among jurisdictions, was an impetus for the development of national standards. Under the agreement, Ministerial councils can be called on to create a standard for any product or develop nationally uniform criteria for the registration of any occupation.

Principal or delegated legislation, administrative directions or other measures can give effect to the regulatory agreements or decisions of Ministerial councils and national standard-setting bodies. The ORR, governments and standard-setting bodies usually agree on the types of agreement and decision that the CoAG guidelines cover.

Around 40 Ministerial councils and national standard-setting bodies can make national decisions that have a regulatory impact (PC 2002d, p. xiii). Bodies that develop voluntary codes and other advisory instruments need to account for the CoAG principles and guidelines if promotion and dissemination of the code or instrument could be widely interpreted as requiring compliance (CoAG 1997).

If a Ministerial council or intergovernmental standard-setting body proposes to agree to a regulatory action or adopt a standard, then it must first certify that a regulatory impact statement (RIS) has been completed and that the RIS analysis justifies adoption of the regulatory measure. The RIS must:

- demonstrate the need for the regulation;
- detail the objectives of the measures proposed;
- outline the alternative approaches considered (including nonregulatory options) and explain why they were not adopted;
- document which groups benefit from regulation and which groups pay the direct and indirect costs of implementation;
- demonstrate that the benefits of regulation outweigh the costs (including the administrative costs);
- demonstrate that the regulation is consistent with relevant international standards (or justify any inconsistencies); and
- set a review or sunset date for regulatory instruments (CoAG 1997).

The CoAG principles and guidelines state that the RIS process must be open and public, with advertisements placed in all jurisdictions to notify the intention to adopt regulatory measures, advise that the RIS is available on request, and invite submissions. The RIS must list the persons who made submissions or were consulted, and contain a summary of their views. The Ministerial council or intergovernmental standard-setting body is required to consider views expressed during the consultation process. The RIS forms part of the community consultation and helps to inform standard setting.

The Commonwealth Office of Regulation Review

Under the CoAG guidelines, the ORR has a significant role in the RIS process. It advises Ministerial councils and intergovernmental standard-setting bodies on whether a draft RIS is consistent with CoAG principles and guidelines.

Bodies that set national standards that require a complying RIS are:

- Ministerial councils (for example, the Australian Transport Council, the Environment Protection and Heritage Council and the Australia and New Zealand Food Regulation Ministerial Council); and

- national entities (for example, the National Occupational Health and Safety Commission, the Australian Building Codes Board and the Australian Radiation Protection and Nuclear Safety Agency).

The relevant Ministerial council or intergovernmental standard-setting body must notify the ORR that a RIS is to be drafted on a relevant topic. The ORR assesses each RIS at two stages: first, before the RIS is distributed for consultation with parties affected by the proposed regulation; and, second, just before the relevant body makes a decision. The ORR advises the Ministerial council or intergovernmental standard-setting body of its assessment at each stage. Under the CoAG requirements, the analysis in the consultation RIS does not have to be as detailed as in the final RIS, which should reflect information obtained in consultation and more complete consideration. While not obliged to adopt the advice of the ORR, Ministerial councils and intergovernmental standard-setting bodies should respond to any significant matters that have not been addressed as recommended by the ORR.

The ORR assesses a RIS against the following characteristics.

- Whether the RIS guidelines have been followed.

- Whether the type and level of RIS analysis are adequate and commensurate with the potential economic and social impacts of the proposal.

- Whether the RIS adequately considers alternatives to regulation.

The ORR advises the relevant Ministerial council or intergovernmental standard-setting body of each RIS's assessed compliance with RIS requirements. It also reports to Heads of Government (through the CoAG Committee on Regulatory Reform) on significant decisions of Ministerial councils and intergovernmental standard-setting bodies that it considers are inconsistent with the CoAG guidelines. In addition, it reports to the CoAG

Committee on Regulatory Reform annually on overall compliance with the regulatory practice guidelines.

The ORR annually advises the National Competition Council on governments' compliance with the national standard-setting obligations. The ORR's advice identifies regulatory proposals that should have been subject to the CoAG guidelines and also proposals for which the RIS did not meet requirements (or for which a RIS was not prepared). The ORR's report to the Council also covers broad planning and strategy decisions that have regulatory implications, along with best practice measures such as 'model' legislation that Ministerial councils and intergovernmental standard-setting bodies sometimes agree on to influence the conduct of regulated entities. The ORR's reports to the Council do not comment on administrative decisions where the regulatory framework is already established. Further, the ORR does not comment on decisions that have an insignificant impact and thus would benefit little from undergoing a RIS process.

In its latest annual report to the Council, the ORR commented that it and decision-makers in governments, Ministerial councils and standard-setting bodies usually, but not always, agree on the types of regulatory decision and agreement covered by the CoAG principles and guidelines. The ORR clarified that the CoAG requirements apply to the following areas (in addition to those areas to which the principles and guidelines clearly apply):

- agreements on regulatory approaches, standards and measures of a quasi-regulatory nature;
- agreements of ad hoc bodies of interjurisdictional Ministers or officials addressing national regulatory issues;
- CoAG decisions on national regulatory problems, where the body proposing the regulation is responsible for compliance with the CoAG principles and guidelines; and
- regulatory decisions that require national implementation, and for which States and Territories will prepare their own RISs (ORR 2003).

The ORR's annual advice underpins the Council's consideration of governments' compliance with the national standard-setting obligation in the Implementation Agreement. For the 2003 NCP assessment, the Council sought ORR advice on governments' compliance over the period 1 April 2002 to 31 March 2003. The ORR thus had time to consult with Ministerial councils and intergovernmental standard-setting bodies on its draft findings before finalising its compliance report for the Council. The ORR's compliance report is replicated in full in appendix B of volume 2.

Governments' compliance with CoAG requirements

The NCP obliges governments to demonstrate that bodies setting national standards have prepared an RIS, consistent with the CoAG principles and guidelines, for a proposed regulatory measure. The specification of the standard-setting obligation in the Implementation Agreement implies that the obligation is a collective responsibility of all governments.

In its 2003 compliance report to the Council, the ORR identified 24 decisions made during the year to 31 March 2003 for which CoAG RIS requirements applied and were met. Table 6.1 lists these cases.

Table 6.1: Regulatory matters where RIS requirements were met, 1 April 2002 to 31 March 2003

Regulatory matter	*Body responsible*	*Date of decision*
Ban on human cloning and other 'unacceptable practices', and regulation of the use of excess human embryos for stem cell and related research	Australian Health Ministers Conference. The RIS was prepared for the conference's final consideration of the proposal; this consideration was overtaken by CoAG's decision on the proposal on 5 April 2002.	5 April 2002
Adoption in the Food Standards Code of a new standard for infant formula	Australia New Zealand Food Standards Council. On 1 July 2002, the Australia and New Zealand Food Regulation Ministerial Council replaced the council.	May 2002
Updating the provisions for residential buildings used to accommodate the aged, to align with the *Commonwealth Aged Care Act 1997*	Australian Building Codes Board	1 May 2002
Agreement to manage risks associated with GM crops to agricultural production and trade through industry self-regulation supplemented by government monitoring	Primary Industries Ministerial Council	2 May 2002
Australian Standard for the Hygienic Rendering of Animal Products	Primary Industries Ministerial Council	2 May 2002
Model code of practice for the welfare of animals (domestic poultry)	Primary Industries Ministerial Council	2 May 2002
Track, Civil and Infrastructure Code (volume 4 of the Code of Practice for the Defined Interstate Network)	Australian Transport Council	6 May 2002

(*continued*)

Table 6.1 continued

Regulatory matter	*Body responsible*	*Date of decision*
Radiation Protection Standard for Maximum Exposure Levels to Radiofrequency Fields — 3 kHz to 300 GHz	Australian Radiation Protection and Nuclear Safety Agency	7 May 2002
National Standards for Group Training Companies	Australian National Training Authority Ministerial Council	24 May 2002
National Standard for Commercial Vessels — Part B: General Requirements	Australian Transport Council/National Marine Safety Authority	Out-of-session decision; process completed by July 2002
National Standard for Commercial Vessels — Part C, Section 5: Engineering	Australian Transport Council /National Marine Safety Authority	Out-of-session decision; process completed by July 2002
National Standard for Commercial Vessels (NSCV) — Part F, subsections 1A and 1B: Category F1 Fast Craft	Australian Transport Council /National Marine Safety Authority	Out-of-session decision; process completed by July 2002
Requirements for labelling statements for certain milk products	Australia and New Zealand Food Regulation Ministerial Council	30 August 2002
Endorsement of recommendations arising from the NCP review of Radiation Protection Legislation	Australian Health Ministers Conference	10 October 2002
Model code of practice for the welfare of animals (the farming of ostriches)	Primary Industries Ministerial Council	10 October 2002
Energy efficiency measures in housing provisions of the Building Code of Australia	Australian Building Codes Board	1 November 2002
Nationally consistent legislative framework for key aspects of the national vocational education and training (VET) system ('model clauses')	Australian National Training Authority Ministerial Council	15 November 2002
Permission in the Food Standards Code for the importation of raw milk very hard cooked-curd cheeses	Australia and New Zealand Food Regulation Ministerial Council	6 December 2002
Requirements for certain warning statements for products containing royal jelly, bee pollen and propolis	Australia and New Zealand Food Regulation Ministerial Council	9 December 2002
Australian Design Rule for fuel consumption labelling	Australian Transport Council	September 2002
Freight Loading Manual (Component of volume 5 of the Code of Practice for the Defined Interstate Network)	Australian Transport Council	20 December 2002
Review of Australian Design Rules for vehicle noise	Australian Transport Council	February 2003
Technical review recommendations for the Draft Disability Standards for Accessible Transport	Australian Transport Council	6 March 2003
Compulsory vaccination of poultry for Newcastle disease	Primary Industries Ministerial Council	13 March 2003

The ORR reports that CoAG's requirements were not met in three cases of regulation in the period 1 April 2002 to 31 March 2003. These three cases are summarised in table 6.2 and then discussed.

Table 6.2: Regulatory matters for which RIS requirements were not met, 1 April 2002 to 31 March 2003

Regulatory matter	*Body responsible*	*Date of decision*
Uniform credit code — mandatory comparison of interest rates	Ministerial Council on Consumer Affairs	April 2002
Public liability and the Review of the Law of Negligence	Insurance Ministers	15 November 2002
National reform of hand gun laws	Australasian Police Ministers Council. The council agreed on the regulatory proposals on 28 November 2002 and CoAG endorsed most in December 2002.	28 November 2002

The Ministerial Council on Consumer Affairs introduced mandatory comparison of interest rates into the Uniform Consumer Credit Code with the royal assent of Queensland template legislation in April 2002. The amendments to the code require credit providers to calculate all of the costs of their loans — including the interest rate and all fees and charges — as a single percentage rate, and include this calculation in the information that they provide to consumers. Consumers can thus compare the full cost of credit products offered by different providers. The ORR advised the Ministerial council in August 2001 that it should follow the CoAG principles and guidelines, but a CoAG RIS was not distributed for consultation or provided to the Ministerial council before the changes to the credit code.

Reflecting concerns about the increased costs of public liability insurance, Commonwealth, State and Territory Ministers held a number of meetings during 2002 and commissioned the Review of the Law of Negligence by Justice Ipp. The Ministerial group accepted the Ipp Report recommendations, some of which involve significant changes to the law of negligence. The recommendations include: limiting the liability of defendants to foreseeable risk; allowing findings of 100 per cent contributory negligence by plaintiffs; and introducing measures to limit damages payments. The Ipp Report did not include a cost–benefit assessment of its proposals, and a RIS was not prepared.

CoAG ministers asked the Australasian Police Ministers Council in October 2002 to develop proposals for a national approach to handgun control measures. The Ministers council put forward 19 measures for CoAG consideration in late November 2002, and CoAG adopted most of these measures in December 2002. The ORR reports that a CoAG RIS was not prepared, while noting the tight timeframe for the development of the proposals.

Compliance rate

In summary, 24 of the 27 decisions by Ministerial councils and intergovernmental standard-setting bodies reported during the year to 31 March 2003 satisfied CoAG requirements. The compliance rate of 89 per cent represented a decline on the 97 per cent rate in the previous year, but an improvement on the 71 per cent compliance rate reported in the ORR's first report to the Council (which covered the 11 months to 31 May 2001). Of the 27 decisions reported over the year to 31 March 2003, the ORR considered six to be more significant than others, based on the magnitude of the problem and the regulatory proposals, and the scope and intensity of the proposals' impacts on the affected parties and the community. Two of these six decisions were made without complying with CoAG requirements: (1) the introduction of mandatory comparison of interest rates and (2) the acceptance of the Ipp recommendations on public liability.

The ORR attributes the decline in compliance in the latest reporting year to the following factors:

- the allocation of decision-making in some cases to ad hoc groups or committees that are not aware of CoAG requirements;
- some Ministerial councils' lack of awareness of the requirements, possibly due to the alternating of the secretariat function between jurisdictions;
- some decision-making bodies not being aware that the CoAG requirements extend beyond legislation to decisions implemented through other means;
- a mistaken belief in some cases that a CoAG RIS is not required if a decision on a broad national approach necessitates a regulatory response at the State or Territory level; and
- deliberate non-compliance with the CoAG requirements.

The ORR notes that several secretariats of Ministerial councils and intergovernmental standard-setting bodies have sought to improve the quality of their adherence to the CoAG requirements. Further, the ORR has continued to provide relevant government officials with training on the requirements.

Assessment

The compliance indicators show that jurisdictions' adherence during 1 April 2002 to 31 March 2003 to CoAG's requirements for preparation of RISs was not of the high standard achieved in the previous year. The Council encourages Ministerial councils and intergovernmental standard-setting bodies to adhere to the CoAG approach to making regulation. A particular

concern is the ORR's view that some decision-makers did not prepare a RIS despite knowing the RIS requirements.

Except when facing deliberate noncompliance, the secretariats of Ministerial councils can help to improve compliance by ensuring Ministers and new officials are regularly briefed on the CoAG principles and guidelines for setting standards and taking regulatory action. Such action would alleviate the adverse impact on institutional memory of the significant rate of turnover of the Ministerial council secretariats.

7 Electricity

Background

In the early 1990s, governments embarked on a program of reform of the electricity sector. Traditionally, each State and Territory operated vertically integrated utilities with little interconnection between electricity grids in different jurisdictions. This structure led to inefficiencies and to higher prices for some users.

The Council of Australian Governments (CoAG) agreed to reforms to create a fully competitive national electricity market (NEM), featuring a national wholesale electricity market and an interconnected national electricity grid. To support this objective, governments agreed to a range of reforms aimed at breaking down barriers to interstate and intrastate competition, including dismantling State-owned monopolies and implementing a system of third party access to transmission and distribution.

The benefits of electricity sector reform include electricity prices that are now competitive with those in other Organisation for Economic Cooperation and Development (OECD) countries, the improvement of market signals to induce appropriate generation investment, and a substantial improvement in the participation of consumers in the market through having a choice of retailer. The Australian Bureau of Agricultural and Resource Economics estimated that Australia's gross domestic product by 2010 will be 0.26 per cent (A$2.4 billion in 2001 prices) higher than in the absence of reform, with the net present value of benefits of reform between 1995 and 2010 totalling A$15.8 billion (in 2001 prices) (Short et al. 2001, p. 84).

The reform program, however, is not complete — the original CoAG vision of a fully competitive NEM has yet to be realised. Both the CoAG Energy Market Review (2002) (known as the Parer Review) and a CoAG communiqué (CoAG 2001) identified significant deficiencies in the operation of the NEM. As recognised in the Parer Review, not only will failure to address these market deficiencies result in the electricity sector falling short of reaching its full potential, it may also result in the loss of benefits achieved over the past decade.

NCP and electricity agreement commitments

State and Territory governments' electricity commitments under the National Competition Policy (NCP) arise from the Agreement to Implement the National Competition Policy and Related Reforms, the Competition Principles Agreement (CPA) and other agreements on related reforms for the electricity

sector (electricity agreements). The CPA commitments relating to structural reform and legislation review are relevant to all jurisdictions, while the electricity agreements apply specifically to jurisdictions that are part of the NEM: New South Wales, Victoria, Queensland, South Australia and the ACT. The commitments are also relevant to Tasmania, which intends to enter the NEM in May 2005.

The cornerstone of the agreed reforms under the electricity agreements was a commitment to establish a fully competitive NEM. CoAG communiqués set out specific reform commitments intended to achieve this original vision. The reform commitments included:

- implementing necessary structural changes to allow for the operation of a competitive NEM;
- allowing customers to choose the supplier (including generators, retailers and traders) with which they will trade;
- establishing an interstate transmission network and nondiscriminatory access to the interconnected transmission and distribution network;
- ensuring there are no discriminatory legislative or regulatory barriers to entry for new participants in generation or retail supply, and to interstate and/or intrastate trade;
- implementing cost-reflective pricing for transmission services with greater scope for averaging for distribution network services, and transparency and interjurisdictional consistency of network pricing and access charges; and
- facilitating interjurisdictional merit-order dispatch of generation and the interstate sourcing of generation where it is cost-effective.

A key component was the enactment of the National Electricity Law, which gave effect to the National Electricity Code in each NEM-participating jurisdiction. The National Electricity Market Management Company (NEMMCO) and the National Electricity Code Administrator (NECA) were established as the market operator and the code administrator respectively. These arrangements formed the basic framework for the NEM, which commenced operation in December 1998.

In its June 2001 meeting, CoAG reaffirmed its existing commitment to electricity reform. It also established a Ministerial Council on Energy — to provide policy direction for further energy sector reform — and a NEM Ministers' Forum (comprising Ministers from NEM-participating jurisdictions, the Commonwealth Government and Tasmania) with specific policy responsibilities in relation to the NEM. CoAG required the NEM Ministers Forum to urgently attend to:

- impediments to investment in interconnection;

- transmission pricing;
- regulatory overlap;
- market behaviour;
- the effectiveness of regulatory arrangements in promoting efficient market outcomes;
- regional boundaries; and
- demand side participation.

In addition, CoAG established the Parer Review, with terms of reference that reflected these priority areas.

Parer Review findings

The Parer Review released its final report in December 2002. The review identified significant deficiencies in Australian electricity and gas markets, and made recommendations to address these deficiencies.

All of the Parer Review's findings on the electricity sector relate to the general NCP commitment to establish a fully competitive NEM. In addition, findings can be grouped into broad categories, each of which relate to electricity agreement commitments. The following sections are a summary of the findings as they relate to specific electricity commitments and the Council's previous NCP assessments.

Governance arrangements

The Parer Review concluded that the energy sector governance arrangements are confused, that there is excessive regulation and that there are perceptions of conflict of interest where governments are asset owners. The review identified seven specific problems in this area, including problems with the Code change process, too many regulators, overlaps in regulatory responsibility, the absence of clear government policy direction, barriers to embedded generation and distorted signals from network regulation.

In its 2001 NCP assessment, the Council noted that the institutional framework may have weaknesses and thus required jurisdictions to examine the framework, particularly in relation to market operations and regulation. The Council also noted weaknesses in the interconnect approval processes. In its 2002 NCP assessment, the Council noted that the NEM framework did not enable effective NEM policy to be developed and implemented.

Governments broadly acknowledged the need to streamline and reform the electricity sector's governance arrangements.

Market structure

The Parer Review concluded that the gross pool design of the NEM is appropriate but needs to be improved to lessen the potential for generator market power, excessive pool price volatility and market gaming. It considered that schemes such as the Electricity Tariff Equalisation Fund (ETEF) in New South Wales and the Benchmark Pricing Agreement in Queensland (discussed later in the chapter) contribute significantly to the price volatility problem.

In its 2001 NCP assessment, the Council noted that high and volatile pool prices raised the question of whether there is adequate competition in generation. It also noted that large interregional differences in electricity prices are inconsistent with the notion of a competitive national market. In its 2002 NCP assessment, the Council noted that generation and dispatch trading arrangements needed to be improved. Both the 2001 and 2002 NCP assessments contained concerns about ETEF.

The Parer Review findings on deficiencies in market structure can be linked to the specific electricity commitments of nondiscriminatory access to generation and retail supply, and facilitating merit-order dispatch and cost-effective generation.

Transmission and interconnection

The Parer Review identified transmission concerns as one of the most significant problems facing the NEM. The review noted that inadequate interconnection and poor transmission arrangements effectively regionalise the NEM and remove most of the benefits envisaged for a national market. The review identified five particular problems:

1. poor incentives for regulated transmission;

2. the lack of locational price signals;

3. the inability to buy firm financial transmission rights;

4. the absence of cost-reflective network pricing; and

5. the state-based (rather than energy needs-based) delineation of trading regions.

The review's findings accord with the Council's 1999, 2001 and 2002 analysis of deficiencies in transmission and interconnection arrangements. In particular, the Council expressed concern in the three NCP assessments about the transmission/interconnection planning and approval processes.

The transmission and interconnection concerns raised by the review relate to specific electricity commitments, including those to facilitate network access

and interstate/intrastate trade, implement cost-reflective transmission pricing and facilitate interjurisdictional merit-order dispatch.

Financial contract market issues

The Parer Review found that the energy financial contracts market is illiquid and that this is a significant problem in the NEM's gross pool system. The review considered that problems arise from schemes such as the ETEF and the Benchmark Pricing Agreement, transmission problems that inhibit interstate contracting, generator market power that increases contract risk, regulatory uncertainty and credit quality concerns. The Council discussed issues in relation to ETEF, generator strategic bidding and transmission/interconnection in both its 2001 and 2002 NCP assessments.

Demand-side participation issues

The Parer Review discussed the importance of demand-side participation to the effective operation of the NEM. The review noted the low extent of demand-side involvement in the NEM, attributing it to demand inelasticity and consumers not facing cost-reflective retail prices. The review recommended the implementation of full retail contestability, the removal of price caps, a mandated interval meter roll-out and the introduction of pay-as-bid mechanisms to reduce demand.

The Council considers the introduction of full retail contestability to be an essential component of the electricity reforms. It expressed this view in all previous NCP assessments of jurisdictions' compliance with the specific electricity commitments. Further, the Council noted that regulatory oversight of retail tariffs should be only a transitional arrangement and should cease when retail markets develop sufficiently. Regulatory oversight of retail tariffs and programs for phasing out such arrangements, including price caps, will be of particular significance in the Council's future NCP assessments and will need to be addressed by all jurisdictions.

Government responses to the Parer Review findings

The Council asked all jurisdictions to report on their responses to the Parer Review findings that have NCP implications. All NEM jurisdictions, the Commonwealth Government and Tasmania noted that they are developing a reform response as part of the NEM Ministers Forum. All NEM jurisdictions also noted their full participation in the Ministerial Council on Energy.

At its July 2002 meeting, the NEM Ministers Forum agreed to initiate a process to review the framework for transmission development and pricing. NEM Ministers are expected to consider the findings of this review in late-2003.

In June 2003, the Ministerial Council on Energy met to consider the strategy for future energy reform in Australia. It agreed that it would report to CoAG that further reform is needed to:

- strengthen the quality, timeliness and national character of governance of the energy markets, to improve the climate for investment;
- streamline and improve the quality of economic regulation across energy markets, to lower the cost and complexity of regulation facing investors, enhance regulatory certainty and lower barriers to competition;
- improve the planning and development of electricity transmission networks, to create a stable framework for efficient investment in new (including distributed) generation and transmission capacity;
- enhance the participation of energy users in the markets, including through demand side management and the further introduction of retail competition, to increase the value of energy services to households and business; and
- further increase the penetration of natural gas, to lower energy costs and improve energy services, particularly in regional Australia, and reduce greenhouse emissions. (Ministerial Council on Energy 2003a, p. 2)

The Ministerial Council on Energy has agreed a number of reform initiatives, with timelines, to address the concerns about governance and economic regulation in the Australian energy markets. CoAG will consider these reform recommendations. (Ministerial Council on Energy 2003a, 2003b)

The Council considers that many of the deficiencies in the electricity market identified by the Parer review relate to existing reform commitments. A coordinated approach by governments is required to most effectively address these market deficiencies. Governments need some time to formulate and coordinate a future reform program. For this reason, in this 2003 NCP assessment, the Council did not focus on jurisdictions' response to addressing market deficiencies identified in the Parer Review. Rather, the Council will consider coordinated government reform initiatives through CoAG, the Ministerial Council on Energy and the NEM Ministers Forum in the context of its 2004 NCP assessment. However, there are a number of commitments that clearly predate the Parer Review and progress to meeting these is subject to assessment now.

Assessment issues

The Council's approach to the 2003 NCP assessment was to focus on the outstanding reform commitments highlighted in the 2002 NCP assessment. Progress in relation to these matters was required and the Parer Review and

associated processes provide no rationale for delay. The areas of focus identified are:

- structural reform in Western Australia;
- legislation review and reform activity;
- full retail contestability in Queensland, South Australia and the ACT;
- the ETEF in New South Wales and the Benchmark Pricing Agreement in Queensland;
- inconsistent intra-NEM interconnect approval arrangements; and
- derogations to the National Electricity Code.

Structural reform

All jurisdictions, other than Western Australia, undertook structural reform of their electricity sectors consistent with the framework set out in clause 4 of the CPA. The Western Australian Government established an independent Electricity Reform Task Force in August 2001 to develop recommendations on the structural reform of the State's electricity sector and the incumbent service provider, Western Power Corporation.

The task force issued its final report in October 2002. The Government endorsed all the report recommendations including the indicative reform timetable. The key elements of the Government's electricity reform program are:

- the vertical disaggregation of Western Power into generation, networks (transmission and distribution) and retail entities, and the establishment of a fourth entity, the Regional Power Corporation, with responsibility for electricity supply in the north west interconnected system and Western Power's noninterconnected system;
- the establishment of a bilateral contracts market with an associated residual trading market;
- the mitigation of Western Power's generation market power through the auctioning of its capacity, a requirement that it participate in the residual trading market and restrictions on its ability to invest in new or replacement fossil-fuelled generation plant;
- the retention of uniform tariffs and retail price caps;
- the implementation of retail contestability for all customers above 50 megawatt hours per year from 1 January 2005, then full implementation once the other reforms have been completed; and

- the development of an Electricity Access Code (to be administered by an independent regulator) by 1 January 2004 and the operation of the new access framework and licensing regime by 1 January 2005.

The Electricity Reform Implementation Steering Committee was convened in January 2003 to implement the Government's electricity reform agenda. The *Electricity Act 1945* and the *Electricity Corporation Act 1994* are being amended as part of the Government's electricity industry reform agenda.

An independent Economic Regulation Authority with economic regulatory functions across gas, rail, water and electricity will be established. It will be responsible for administering and determining terms of access under the Electricity Access Code. The Economic Regulation Authority Bill 2002 was introduced to Parliament on 4 December 2002.

The Parer Review expressed concerns about the Electricity Reform Task Force's recommendations on market mechanisms and structural issues. While aware of these concerns, the Council noted that Western Australia's obligation under the CPA clause 4 commitment is to undertake an independent, rigorous review and to appropriately deal with any reform recommendations, rather than to adopt a particular industry structure model.

The Western Australian Government recently re-affirmed its commitment to electricity reform, with Cabinet agreeing to the budget and costs associated with the implementation program. The Cabinet agreed to:

- pushing back the establishment of the wholesale electricity market by one year (until July 2006) to allow sufficient time for the development of market arrangements and industry consultation;

- dividing Western Power into four separate Government corporations as planned on 1 July 2004; and

- introducing legislation in the 2003 spring session of Parliament to create the four corporations, wholesale market arrangements, consumer protection and the electricity licensing regime.

According to the Western Australian Government, independent analysis recently suggested that the benefits of reform would be an average 8.5 per cent cut in electricity prices, an increase in gross State product of up to A$300 million per year by 2010, and the creation of 2900 new jobs.

The Council recognises that this is a significant reform program and thus it is satisfied with Western Australia's progress in meeting its CPA clause 4 obligations in relation to structural reform in the electricity sector. As part of the 2004 NCP assessment, the Council will consider the Government's enactment of necessary legislation and continued progress in implementing structural reform.

Legislation review and reform activity

Table 7.1 details jurisdictions' progress in reviewing and reforming their electricity-related legislation in compliance with CPA clause 5 commitments. In the 2002 NCP assessment, the Council stated that it would finalise its assessment of governments' compliance with clause 5 in the 2003 assessment.

Jurisdictions other than Western Australia, the Northern Territory and the ACT met their clause 5 CPA obligations in this area. As noted above, Western Australia is involved in implementing significant electricity sector structural reform, so it will conduct its clause 5 review and reform of electricity-related legislation as part of its broader structural reform program. The Council will consider Western Australia's compliance in this area as part of its assessment of Western Australia's overall electricity reform program in 2004.

The Northern Territory satisfied its clause 5 obligations in relation to all electricity-related provisions other than the provision that exempts Government-owned corporations from local government rates (s. 19, *Power and Water Corporations Act 2002*). These corporations have, however, been paying local government rate equivalents since 1 July 2001.

The ACT satisfied its clause 5 obligations in relation to all electricity-related provisions other than provisions relating to licensing and business conduct requirements for electricians. Draft legislation giving effect to review recommendations will be presented to the ACT Legislative Assembly in the 2003 spring session (see chapter 10, volume 2).

Full retail contestability

Full retail contestability is a key reform commitment set out in the electricity agreements. Governments must implement reforms to enable customers to choose the supplier, including generators, retailers and traders, with which they will trade.

The benefits of full retail contestability include the potential for lower energy prices, enhanced consumer choice, improved product and service offerings, and greater efficiency in electricity investment infrastructure through more accurate investment price signals. Such benefits were noted by the Parer Review, which recommended the introduction of full retail contestability into all markets.

Full retail contestability involves costs as well as benefits. Nevertheless, all of the jurisdictions that undertook a cost/benefit analysis (except Queensland) determined that the overall benefits outweigh the costs. The electricity agreements do not specifically allow for cost/benefit analysis; nevertheless, in past NCP assessments, the Council considered that a strict reading of the agreements — that is, requiring full retail contestability irrespective of net public benefit — was not appropriate.

Each NEM-participating jurisdiction introduced customer contestability to varying degrees. At the time of the 2002 NCP assessment, all customers in New South Wales and Victoria were contestable. Both South Australia and the ACT re-affirmed their commitment to the introduction of full retail contestability ahead of the 2003 NCP assessment. Queensland, however, refused to proceed with full retail contestability implementation at that time, arguing that the costs of doing so outweighed the benefits. The following sections contain the Council assessment of the progress of South Australia, the ACT and Queensland in this matter.

South Australia

Full retail contestability commenced in South Australia on 1 January 2003, satisfying the State's NCP commitment in this area.

The full retail contestability arrangements in South Australia, to a large extent, mirror arrangements in other States. Retail prices are subject to monitoring by the Essential Services Commission of South Australia, which has the power to cap retail prices through its price determination powers. In addition, an obligation for an electricity retailer to supply all small customers (<160MWh per annum) at justifiable standing offer prices was established, with the incumbent retailer AGL SA having the obligation to provide standing offers in South Australia. Of the 11 current retailers licensed in South Australia, Origin Energy, TXU and AGL SA have met the requirements to make offers to small customers in South Australia.

ACT

Full retail contestability commenced in the ACT on 1 July 2003, satisfying the Territory's NCP commitment in this area.

The ACT was due to implement full retail contestability from 1 March 2003. However, following severe bushfires in January 2003 that significantly damaged the ACT's electricity infrastructure, the ACT announced that it would delay the introduction of full retail contestability to 1 July 2003. The ACT Government explained to the Council that the delay was necessary because the ACT's distribution network operator, ActewAGL Distribution, would focus on rebuilding the bushfire-damaged distribution network rather than on the customer transfer and settlement systems necessary for effective full retail contestability. The Council accepted that a delay of four months was justified in the circumstances.

Queensland

In October 2001, Queensland announced that it would not implement full retail contestability at that time, but that it would:

- review the decision in 2004 once the impact of the introduction of full retail contestability in other jurisdictions was known; and

- consider extending contestability to small business customers consuming less than 200 megawatt hours of electricity per year.

This decision followed a cost–benefit analysis that Queensland argued demonstrated that the costs of implementing full retail contestability outweigh the benefits.

The Council considered the cost–benefit analysis in detail in its 2002 NCP assessment. It concluded that Queensland had failed to demonstrate that the costs of implementing full retail contestability outweigh the benefits because it had failed to account for the dynamic and nonquantifiable benefits. The Council concluded that Queensland's breach of its obligation in this area was serious.

Queensland wrote to NEM jurisdictions seeking their support for its decision not to introduce full retail contestability at this stage. In particular, Queensland sought support for the position that only reforms providing a net community benefit should be implemented — including reforms under the electricity agreements. In its letters to the other Governments, Queensland stated that the Council's position was that the provisions for cost–benefit analysis did not apply to electricity market reforms.

This assertion is not an accurate reflection of the Council's position. The Council considers that while the electricity reform agreements did not provide for further cost-benefit analysis before introducing full retail contestability, it is not inappropriate for such work to be undertaken. In the Council's view it was unnecessary for Queensland to seek the agreement of other jurisdictions for the position that a cost-benefit review was appropriate and allowed by the NCP agreements.

The Council's position, as reflected in the 2002 NCP assessment, is that it is always open to Queensland, as with any other jurisdiction, to seek to have the NCP agreements amended to relieve them of the commitment to introduce a particular reform — in this case full retail contestability.

Queensland's letter to the other jurisdictions did not seek this amendment. The Council considers the responses received by Queensland do not reflect an agreement to either relieve Queensland of the commitment to introduce full retail contestability or require the Council to accept what it considers is an inadequate cost-benefit analysis. In its 2003 NCP annual report, Queensland reiterated its view that it would not implement full retail contestability at this time because the benefits did not outweigh the costs. Queensland relied on the same evidence that it presented to the Council for the 2002 NCP assessment.

Having completed a further cost–benefit analysis, Queensland is determining whether to extend contestability to more than 7100 small business customers representing a further 3 percent of load within the State, with energy

consumption of 100–200 megawatt hours per year (tranche 4A customers). At the time of this assessment, the Deputy Premier wrote to the Council indicating that he would be shortly taking a recommendation to Cabinet that Tranche 4A be introduced.

The Deputy Premier also stated that Cabinet will be considering a proposal to bring forward the cost–benefit analysis of introducing retail contestability for the below 100 megawatt hours per year sector of the market. The review, originally intended for 2004, would commence in 2003. Queensland has agreed to consult with the Council on the terms of reference for the cost–benefit review.

The Council considers that Queensland has breached its commitment to implement full retail contestability and that this breach is serious. While the undertakings made by the Deputy Premier are positive indications of Queensland's preparedness to undertake further reform, only implementing Tranche 4A, undertaking the immediate cost–benefit review of full retail contestability and implementing review recommendations will meet Queensland's electricity reform commitments in this area.

The ETEF in New South Wales

In its 2002 NCP assessment, the Council noted concerns by market participants that ETEF had an adverse impact on the efficient operation of the NEM. The Parer Review expressed concern that the ETEF motivated State-owned generators to adopt pricing and bidding strategies intended to cause price spikes. The review noted that such conduct potentially creates barriers to new investment and entry by generators seeking to compete with government-owned generators. The review also expressed concern about the ETEF's effect on the contract market and about the barriers to entry for new retailers in New South Wales.

The ETEF mechanism has operated in New South Wales since 1 January 2001. A comprehensive description of the mechanism is available on the New South Wales Treasury web site. (The Council has relied on this description in summarising the key features of the ETEF mechanism.)

The New South Wales Treasurer determines a regulated energy cost for each retailer based on a determination by the Independent Pricing and Regulatory Tribunal (IPART) under s. 43EB of the *Electricity Supply Act 1995*. Under the Act, the Treasurer has the right to require IPART to consider any matters that he considers relevant to a determination.

The regulated energy cost is essentially a wholesale cost; it varies between peak and off-peak periods. A final regulated retail cost is determined, allowing retailers to recoup a margin over their wholesale energy costs. All standard retail suppliers and State owned generators in New South Wales are required to participate in the ETEF and offer a regulated tariff. All contestable customers using less than 160 megawatt hours per year can

choose to be supplied under the regulated tariff. They have the right to switch between market and regulated tariffs as frequently as they like.

The core component of the ETEF is a series of transfers between retailers and the fund. When the pool price is higher than the regulated energy cost, retailers receive a payment; when the reverse is true, they are required to make a payment. The size of the payment is determined by the level of load that each retailer supplies to regulated customers, the difference between the regulated and pool prices, and the relevant transmission loss factor. The relevant transfer is calculated for each 30-minute trading interval, but payment is made only weekly. In the year to June 2002, retailers made payments of A$332.7 million to the fund, and received A$290.2 million — a net contribution from retailers of A$43.9 million.

All State-owned generators in New South Wales are required to contribute to the fund when its resources are insufficient to make the required payments to retailers. The contribution required from each generator is based on its share of the revenue earned by all generators when the pool price exceeds the average regulated energy cost. These contributions are repaid when there are sufficient resources in the fund. In the year to 30 June 2002, generators made no payments to the fund because retailers provided sufficient net revenue. Payments of A$5 million were made from the fund to generators to repay generators' net contribution.

There is significant market concern about the bidding behaviour of New South Wales generators and their apparent ability to affect significant price spikes when demand is not high and no major plants fail (CoAG Energy Market Review 2002, p. 114).

In responding to these concerns, New South Wales argued that State owned generators do not engage in strategic bidding behaviour in response to the ETEF. This argument was evidenced by the strong relationship between pool prices and demand in the State, the tendency for pool prices in other trading regions to follow prices in New South Wales, and retail prices in the State being the lowest in mainland Australia. New South Wales argued that price spikes send clear price signals to market participants, as was the intention of the NEM.

At this time the Council has no evidence that the ETEF exacerbates generators' market power. The Council will, however, continue to monitor the ETEF in this context.

New South Wales also disputed the finding in the Parer Review that the ETEF adversely affects the contract market, reducing liquidity and raising barriers to entry for new retailers in New South Wales. New South Wales argued that the most recent Australian financial markets annual report shows that the volume of financial contracts traded in New South Wales increased by 45 per cent in the period 2000-01 to 2001-02 and that trading of hedges in Victoria decreased by almost 50 per cent. In 2001-02, the ratio of derivative contracts to the physical market was 1.4 in New South Wales and 0.84 in Victoria.

The volume of New South Wales' demand covered by the ETEF fell from 38 per cent in 2001 to 33 per cent in 2003. The proportion of demand covered by the ETEF is still very significant, however — 12 per cent of total NEM demand. In the Council's view, the operation of the ETEF is likely to reduce the liquidity in the financial and physical hedges market. This effect may increase the prices of such financial instruments and increase the costs for other retailers, both in New South Wales, and (to the extent that the market for financial instruments is wider than New South Wales) in the NEM generally. As long term contracts provide a signal for new investment in generation, reduced efficiency in the contract market may also affect investment in the generation sector.

New South Wales argues that ETEF is a transparent mechanism through which the New South Wales government delivers a community service obligation (CSO) to price regulated electricity consumers:

> *The Government needed a mechanism for ensuring these standard retailers could meet their obligation to supply regulated customers without exposing the retailers to unmanageable electricity purchasing risks.*
>
> *These risks derive from the fact that, if the retailer was left with the job of arranging hedging contracts for this load, they may not be able to purchase power cheaper than the regulated selling price (set independently of the market price of these contracts), which would result in a financial loss for the retailer. This is not an issue with a retailers' contestable customer load, since the retailer can determine the price they are willing to sell to customers and they do this in relation to the market price for hedging instruments.*
>
> *The Government considered a number of options for managing the purchase of electricity for regulated customers, including:*
>
> - *Establishing a suite of vesting contracts;*
> - *Relying on standard retailers to buy electricity on behalf of the Government;*
> - *A centralised (market based) process based on either:*
>
> *- a periodic central auction for hedging contracts to underpin the electricity purchasing costs for regulated customers with contracts being allocated to standard retailers in proportion to their regulated load;*
>
> *- an auction of the right to supply the regulated customer load for a fixed price; or*
>
> *- the Government buying electricity from the competitive pool for regulated customers and paying the standard retailers a (small)*

margin for providing billing and other services to regulated customers (the ETEF).

The ACCC made it absolutely clear that it would not authorise another suite of vesting contracts. The Government therefore decided to not further consider this option. In any case the Government wanted to use a less intrusive, more market based mechanism to support the purchasing of electricity for the regulated customer load.

The option of relying on the government owned retailers to purchase electricity on behalf of the Government was discounted for a range of reasons. The key reason is that this would be extremely difficult for the Government to monitor and would provide these retailers with an unfair advantage in the competitive retail market.

The standard retailers would have a strong incentive to allocate their most expensive contracts to regulated customers and make the Government pay for any losses resulting if the costs of these contracts exceed the regulated revenues earned by the retailers.

To the extent the Government retailers had this opportunity, this would put them in a powerful competitive position as they would have a ready source for dumping their uncompetitive contracts, which would effectively allow them to cross subsidise their contestable customers. This would make it very difficult, if not impossible, for new entrant retailers to compete with the Government retailers.

It may be possible for the Government to audit the retailers' full suite of contracts on a regular basis in an attempt to prevent this type of behaviour. However, this is not straightforward as the process would:

- *be highly intrusive;*
- *require the Government to make decisions as to how contracts of various kinds, and spot exposure, should be valued and allocated between customer groups. This process will inevitably raise questions about Government intervention in the retail market, it will weaken the accountability of managers and therefore undermine the proper functioning of the retail market;*
- *provide the retailers with easy opportunities to game and therefore would be likely to be ineffective; and*
- *be very expensive.*

In terms of the market based arrangements:

- *the option of a central, periodic auction for hedging contracts, although having strong market credentials, was not adopted because of the complexity and associated costs of the arrangements,*

particularly as there was another auction (the pool) already available.

- *For similar reasons the option of auctioning the retailer's regulated load was not adopted.*

- *The option of the Government buying electricity from the pool was the Government's preferred option because:*

  – *it provided a transparent, market based price which did not rely on complicated data collection and monitoring systems required by the contract auction alternatives;*

  – *it did not require the Government to intrude into the affairs of the businesses to guard against the standard retailers cross subsidising their contestable customer business; and*

  – *the operation of ETEF is based on matching the net system load profile data with the corresponding pool price for each half hour, which are two pieces of information NEMMCO routinely collects, so ETEF provides a low cost, mechanical, transparent system for allowing standard retailers to purchase electricity, on behalf of the Government without exposing them to any unmanageable market risks.* (R B Wilkins (Director-General of The Cabinet Office, New South Wales), 2003, pers. comm., 28 July)

New South Wales has stated that the ETEF is a transitional arrangement that is due to expire in July 2004, but that before that time, the Government will examine the continued need for such an arrangement in light of retail market developments.

The Council accepted that the ETEF provides New South Wales with an efficient method for delivery of its CSO to franchised customers. The Council, however, was concerned that the method of CSO delivery may provide a barrier to new entrant retailers. While new retailers are free to compete for customers against the standard retailers, only standard retailers are able to supply franchise customers. The ETEF then removes all risk in supplying these customers, giving the standard retailers access to a large, secure customer base. The level of the regulated tariff for franchise customers is also a crucial factor in encouraging new entry in the retail sector. If the level is set too low, it is not possible for new retailers to attract franchise customers away from the regulated tariff. These factors can combine to reduce scale economies for new entrants, increasing their costs and making it more difficult for them to compete.

The Council will monitor the effect of the ETEF on retail competition in New South Wales. However, it is likely that the level of regulated tariffs and the contestability of CSO delivery are at least as important in promoting retail competition. The Council expects that New South Wales, in its consideration of the future of ETEF beyond July 2004, will revisit how the CSO is delivered and the level and means of transition from regulated tariffs. The Council will

consider these matters together with New South Wales' decisions on ETEF in its next assessment.

The Benchmark Pricing Agreement in Queensland

The Parer Review expressed concerns about the Benchmark Pricing Agreement in Queensland. The Council had not specifically considered the agreement in its earlier NCP assessments, so it requested that Queensland provide it with information on the operation of the agreement and in response to the concerns of the Parer Review.

In its 2003 NCP annual report, Queensland argued that the Parer Review's analysis of the Benchmark Pricing Agreement was 'simplistic and disregards the fact that the Queensland arrangements have no adverse impact on, and indeed encourage, a competitive wholesale market in Queensland' (Government of Queensland 2003, p. 65). Queensland also argued that the Parer Review's recommendation to abolish the agreement was inappropriate because it was based on a misunderstanding of the distinction between the agreement and community service obligations (CSOs), and on a lack of understanding of the agreement's design and impacts on market participants.

The Benchmark Pricing Agreement is a component of Queensland's broader CSO calculation. The CSO obligation arises because the Queensland Government provides a system of regulated uniform tariffs for domestic and small business customers in Queensland (referred to as franchise customers). The two host retailers, Ergon Energy and ENERGEX, purchase electricity from the wholesale market to supply franchise customers.

The uniform tariff arrangements provide for customers in the same customer class to pay the same per unit charge regardless of the customer's location. Historically, however, uniform tariff revenue has not been sufficient to cover the costs of supplying customers in regional and remote areas of the State, resulting in a net CSO payment from the Government to the retailers. The CSO arrangement between the Queensland Government and the franchise retailers is designed to overcome any revenue shortfall from supplying franchise customers throughout Queensland.

The CSO is calculated as the difference between (1) the revenue received from franchise customers and (2) the retailer's costs of supplying electricity to franchise customers. The Queensland Government receives from the retailers the revenue that they received from the franchise customers; in turn, the Government pays each retailer the costs of supplying franchise customers. These costs include energy purchase costs, network costs (transmission and distribution), ancillary service costs, NEMMCO pool fees, the costs of renewable energy certificates and a retail margin.

The arrangement for the purchase of energy involves a commercial negotiation between the Queensland Government and the retailers, whereby

the Government compensates retailers for efficiently purchased contracts. As part of the commercial negotiation, the Queensland Government conducts a benchmarking process.

Queensland's response to the Council's queries stated:

> *The [Benchmark Pricing Agreement] sits outside the wholesale electricity market and has been put in place to ensure that Ergon Energy and ENERGEX purchase wholesale electricity to supply franchise customers on an efficient basis.*
>
> *Both retailers are responsible for energy purchases on behalf of franchise customers and conduct this purchasing on a commercial basis. This arrangement is competitively neutral in that the retailer is permitted to contract with generators, irrespective of whether they are private or Government-owned. The [Benchmark Pricing Agreement] ensures that the actual purchasing and hedging of energy remains the responsibility of the retailers.*
>
> *As part of the commercial negotiation, the Office of Energy on behalf of the Queensland Government benchmarks contracts purchased by Ergon Energy and ENERGEX against publicly available quotes for contract cover; and contracts purchased on behalf of contestable customers to ensure the retailers' contracts are efficiently priced. The BPA also involves a financial risk sharing arrangement between the Government and the retailers for any residual pool purchases and thereby places incentives on the retailers to efficiently manage pool price outcomes.* (Government of Queensland 2003, p. 18)

The Council is satisfied that the agreement, in the context of the Queensland electricity market, does not significantly reduce the incentives for retailers to engage in the contract market to manage their wholesale market risk.

However, limited retail contestability, the extent of cross-subsidisation between customer types and the level of, and delivery method for, CSOs — which the Benchmark Pricing Agreement supports — are likely to distort or limit competition in the electricity sector in Queensland.

The Council will reconsider the potential effect of the Benchmark Pricing Agreement in the context of full retail contestability, regulated retail tariffs and CSO delivery in Queensland in future assessments.

Licensing arrangements

The Council continues to be concerned about the potential for overlap between the NEM regulatory processes for new interconnects and South Australia's licensing requirements for new transmission companies. This issue arose in the context of the SNI interconnect project, which was approved

through NEM regulatory processes but also subject to a customer benefits test under South Australian licensing arrangements.

The Council notes that the Parer Review identified the need to harmonise governance and regulatory arrangements within the NEM as a priority. As noted above, at its June 2003 meeting, the Ministerial Council on Energy agreed to a proposed program of reform, including the establishment of an Australian Energy Regulator to regulate the transmission and wholesale sectors of the NEM. The Council will consider the proposed reform initiatives together with governments' responses, in the 2004 NCP assessment.

Code derogations

Derogations from the National Electricity Code (the Code), could fragment the NEM, reducing its effectiveness and limiting the scope for competition. The Council considers that derogations are warranted only when necessary to provide a smooth transition to the NEM or when related to unique characteristics within a particular jurisdiction. Transitional derogations should be limited in scope and duration. Many of the original derogations have expired, although more recently jurisdictions have obtained derogations to facilitate the effective implementation of full retail contestability.

The ACCC is required to assess the public benefit of proposed derogations against the likely competitive detriment under the *Trade Practices Act 1974*. While the Council considers that the ACCC's public benefit assessment provides market participants with confidence that the overall impact of particular derogations will be positive, the ACCC process may be unable to consider the policy implications of continued derogations.

The Council will continue to monitor jurisdictions' current derogations. It will seek the timetable for their expiration, along with jurisdictions' explanations of the need for particular ongoing derogations.

Table 7.1: Review and reform of electricity-related legislation

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Electricity (Pacific Power) Act 1950*	Provides for the constitution of Pacific Power and to define its principal objectives, powers, authorities, duties and functions. Amends and repeals certain other Acts.	Not for review, as the Government has established new state-owned corporations from Pacific Power's generation and transmission businesses.	The Act will be retained until 30 June 2003 to allow for the redeployment of the remaining staff who did not transfer to Connell Wagner. It is expected that the Act will be repealed in the Spring Session 2003.	Meets CPA obligations (June 2003)
	Electricity Safety Act 1945	Provides for the development of electricity supply; confers certain powers, authorities, duties and functions on the Energy Corporation of NSW; provides for the regulation of the sale and hiring of electrical apparatus and amends certain Acts.	Review completed in March 2002. The review recommended that: • the legislation be retained; • government intervention regarding consumer electrical articles and installations is warranted and should be retained; and • the provisions applying to the safety of second-hand consumer electrical articles be retained.	The Government approved the review's recommendations in May 2002. There are no NCP-related changes to the legislation.	Meets CPA obligations (June 2003)

(*continued*)

Table 7.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales (continued)	*Electricity Supply Act 1995*	Regulates the supply of electricity in the wholesale and retail markets; sets out the functions of persons engaged in the conveyance and supply of electricity The Act does not contain anti-competitive provisions.	Review will be undertaken after trends in the fully contestable retail market become clear.	Extensive amendments were made to the Act in late 2000 to facilitate the introduction of full retail contestability for all electricity customers in NSW from 1 January 2002.	Meets CPA obligations (June 2003)
	Electricity Transmission Authority Act 1994	Constitution of the New South Wales Electricity Transmission Authority		Act repealed.	Meets CPA obligations (June 2001)
	Energy Administration Act 1987 (Electricity-related provisions)	Constitution of the Energy Corporation of New South Wales	Review completed.	Licence and approval requirements repealed.	Meets CPA obligations (June 2001)
Victoria	*Electricity Industry Act 1993*	Implements electricity industry reform	Review completed.	Act replaced by the Electricity Industry Act 2000. The Electricity Industry (Residual Provisions) Act 1993 contains remaining provisions relevant for historical purposes.	Meets CPA obligations (June 2001)

(*continued*)

Table 7.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria (continued)	*Electricity Industry Act 2000*	Implements electricity industry reform	Assessed against NCP principles at introduction. Assessment found the Act's provisions to be consistent with NCP principles, that is they do not restrict competition, but rather underpin existing competition and facilitate its introduction for domestic and small business customers.		Meets CPA obligations (June 2001)
	Electric Light and Power Act 1958			Act repealed and replaced by the Electricity Safety Act 1998.	Meets CPA obligations (June 2001)
	Electricity Safety Act 1998	Safety standards for equipment, licensing of electrical workers	Assessed against NCP principles at introduction. Assessment found the restrictions justified in the public interest on public safety and consumer protection grounds. Act addresses consumers' inability to detect hazardous products and assess the competency of tradespeople.	Restrictive provisions retained.	Meets CPA obligations (June 2001)

(*continued*)

Table 7.1 continued

Jurisdiction	*Legislation*	Key restrictions	Review activity	Reform activity	Assessment
Victoria (continued)	*Electricity Safety (Equipment) Regulations 1999*	Standard-setting and approval requirements for electrical equipment	Assessed against NCP principles at introduction. Assessment found the restrictions justified in the public interest on public safety and consumer protection grounds. Regulations address consumers' inability to detect hazardous products.	Restrictive provisions retained.	Meets CPA obligations (June 2001)
	Snowy Mountains Hydro-Electric Agreements Act 1958			Act repealed.	Meets CPA obligations (June 2001)
	State Electricity Commission Act 1958		Scoping study has shown that the Act does not restrict competition.		Meets CPA obligations (June 2001)
Queensland	*Electricity Act 1994*	Conduct requirements, restrictions on trading activities, Ministerial pricing powers	Review of non-safety provisions completed in April 2002. Review made nine recommendations. Government accepted all recommendations with legislative amendments to be implemented in regard to six of the recommendations, departmental reviews for a further two and ongoing implementation of existing processes in regard to the remaining recommendation.	Legislative amendments to give effect to recommendations relating to non-safety provisions were assented to in May 2003 in the *Electricity and Other Legislation Amendment Act 2003*.	Meets CPA obligations (June 2003)

(*continued*)

Table 7.1 continued

Jurisdiction	*Legislation*	Key restrictions	Review activity	Reform activity	Assessment
Western Australia	*Electricity Act 1945 – Part 1 of 2*	Regulations concerning mandated supply, determination of interconnection prices, restrictions on the sale/hire of non-approved electrical appliances, uniform pricing	Initial review completed in 1998. The review recommendations have been superseded by wider reform of the electricity industry.	The Government is proposing new legislation based on the recommendations of the Electricity Reform Taskforce.	Council to finalise assessment in 2004
	Electricity Corporation Act 1994	Exclusive retail franchise of Western Power, entry restrictions for generation, competitive neutrality restrictions	Initial review completed. Further review being conducted as part of wider electricity sector reform.	The Government has endorsed the recommendations of the Electricity Reform Task Force. Some minor competitive neutrality advantages have been removed by the Statutes (Repeals and Minor Amendments) Act 1998. Any remaining restrictions will be removed within the context of electricity reform implementation.	Council to finalise assessment in 2004
South Australia	*Electricity Act 1996*	Restrictions on market entry and market conduct	Review completed in September 2000. No reforms recommended as Act facilitates regulation of electricity supply in conjunction with other national electricity market reforms	No reform required	Meets CPA obligations (June 2003)

(*continued*)

Table 7.1 continued

Jurisdiction	*Legislation*	Key restrictions	Review activity	Reform activity	Assessment
South Australia (continued)	*Electricity Corporation Act 1994*	Restrictions on market entry and market conduct	Review completed in September 2000. No reforms recommended as Act facilitates establishment of state owned corporations in SA in conjunction with other national electricity market reforms.	No reform required	Meets CPA obligations (June 2003)
	National Electricity (South Australia) Act 1996	Restrictions on market entry and market conduct	Review completed in September 2000. No reforms recommended as sole object is to implement a national electricity market. Review process: consultation with other jurisdictions.	No reform required	Meets CPA obligations (June 2003)
Tasmania	*Electricity Supply Industry Act 1995*	Conduct requirements, exclusive retail provisions, tariff-setting procedures	Review completed in late 2001.	Review recommendations were either enacted or are redundant following passage of legislation enabling Tasmania's entry into the NEM.	Meets CPA obligations (June 2003)
	Electricity Consumption Levy Act 1986			Act repealed.	Meets CPA obligations (June 2001)
	Hydro-Electric Commission Act 1944, Hydro-Electric Commission (Doubts Removal) Act 1972 and *Hydro-Electric Commission (Doubts Removal) Act 1982*			Acts repealed and replaced by the Electricity Supply Industry Act 1995 and the Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995.	Meets CPA obligations (June 2001)

(*continued*)

Table 7.1 continued

Jurisdiction	*Legislation*	Key restrictions	Review activity	Reform activity	Assessment
ACT	*Utilities Act 2000*	Licensing requirements, restrictions on business conduct	The Act's introduction followed public consultation and review of both existing regulatory arrangements and principles for effective regulation.	Restrictive provisions retained. Other Acts amended or repealed include the *Electricity Supply Act 1997*, the *Electricity Act 1971*, the *Energy and Water Act 1988* and the *Essential Services (Continuity of Supply) Act 1992*.	Meets CPA obligations (June 2001)
Northern Territory	*Electricity Act*		Act reviewed as part of a broad review of the Power and Water Authority, and under a departmental review.	Act repealed and replaced by the Electricity Reform Act, the Electricity Networks (Third Party Access) Act and the Utilities Commission Act.	Meets CPA obligations (June 2001)

(*continued*)

Table 7.1 continued

Jurisdiction	*Legislation*	Key restrictions	Review activity	Reform activity	Assessment
Northern Territory (continued)	*Power and Water Authority Act*		Review completed.	Act was replaced by the Power and Water Corporations Act from 1 July 2002. All electricity-related amendments made except for the removal of GOC's local government rate exemption (s.19). There is no specific timetable for repeal of s.19. GOC to continue to pay local government rate equivalents through the Territory's Tax Equivalent Regime until complexities regarding the existing local government funding arrangements are resolved. GOC began paying local government rate equivalents on 1 July 2001.	Does not meet CPA obligations (June 2003)

8 Gas

National Competition Policy commitments

Between 1992 and 1997, the Council of Australian Governments (CoAG) struck agreements relating to reform of the natural gas industry. These agreements include: the 1994 CoAG Gas Agreement, under which CoAG agreed to a timetable and framework for introducing free and fair trade in natural gas; the 1995 competition policy agreements, which linked reform of the natural gas industry to National Competition Policy (NCP) payments; and the 1997 Natural Gas Pipelines Access Agreement, under which jurisdictions agreed to enact uniform gas access legislation incorporating the National Gas Access Code.

The main aim of the CoAG agreements is to create a national gas market characterised by more competitive supply arrangements. This aim recognises that a well-developed and competitive gas industry is vital to Australia's economic and environmental future. The core elements of the NCP commitments are (1) the removal of all legislative and regulatory barriers to the free trade of gas both within and across State and Territory boundaries, and (2) the provision of third party access to gas pipelines. Other objectives are to introduce uniform national pipeline construction standards; increase the commercialisation of the operations of publicly owned gas utilities; remove restrictions on the uses of natural gas (for example, for electricity generation); and ensure gas franchise arrangements are consistent with free and fair competition in gas markets and third party access. Table 8.1 contains a summary of jurisdictions' NCP commitments.

Table 8.1: Summary of jurisdictions' obligations

Obligation	*Source of obligation*
Corporatisation, vertical separation of transmission and distribution activities and structural reform of government-owned gas utilities	1994 gas agreement and the Competition Principles Agreement
Ringfencing of privately owned transmission and distribution activities	1994 gas agreement
Implementation of AS 2885 to achieve uniform pipeline construction standards	1994 gas agreement

(*continued*)

Table 8.1 continued

Gas access regime	
Enactment of regime	1997 gas agreement, clause 5
Nonamendment of regime without agreement of all Ministers	1997 gas agreement, clause 6
Amendment of conflicting legislation and no introduction of new conflicting legislation (except regulation of retail gas prices)	1997 gas agreement, clause 7
Certification	1997 gas agreement, clause 10.1
Continued effectiveness of regime after certification	1997 gas agreement, clause 10.2
Transitional provisions and derogations that do not go beyond annex H and annex I	1997 gas agreement, clause 12
Licensing principles	1997 gas agreement, annex E
Franchising principles	1997 gas agreement, annex F
Legislation review	
Upstream issues, particularly petroleum (submerged lands) Acts and petroleum Acts	CPA
Industry standards, trade measurement Acts and national measurement Acts	CPA
Consumer protection	CPA
Safety	CPA
Other legislative restrictions (for example, shareholding restrictions, licensing regulations, agreement Acts)	CPA

Progress in meeting NCP commitments

The National Competition Council considers that CoAG's objectives for national free and fair trade in gas are now largely in place. Progress in undertaking NCP gas reform has been slower than CoAG envisaged in its early agreements, largely because the original timetable was ambitious, with many complex issues needing to be resolved. The Council considers that the NCP assessments — which have provided independent monitoring of governments' implementation of their gas reform commitments — have provided a strong incentive to jurisdictions to meet their agreed reform obligations.

Completed reforms

In previous NCP assessments, the Council concluded that completed reforms met many of jurisdictions' NCP obligations in relation to the implementation of a uniform national access regime, the structural reform of gas utilities, and franchising and licensing principles. The Council also assessed jurisdictions

as having met their NCP commitments in relation to the review and reform of a number of legislative restrictions on competition.

Two areas of reform were judged in previous NCP assessments to have been fully implemented: (1) the structural reform of gas utilities and (2) adherence to franchising and licensing principles. Jurisdictions have obligations under the 1994 gas agreement and the Competition Principles Agreement (CPA) relating to the structural reform of government-owned gas utilities. Specifically, jurisdictions are required to corporatise and vertically separate publicly owned transmission and distribution pipeline entities, and to ring-fence privately owned transmission and distribution activities. The Council's 1997 and 1999 NCP assessments found that jurisdictions had complied with these obligations.

Regarding franchising and licensing, jurisdictions have obligations under the 1997 gas agreement to adhere to franchising and licensing principles. The franchising principles require that jurisdictions allow bypass and interconnection of pipelines and not grant new exclusive franchises except in exceptional circumstances. The licensing principles include that licences must be unbundled from other types of licence, must not be used to restrict the construction or operation of competing pipelines, must not limit the services that an operator may provide, and should allow bypass and interconnection to contestable customers. In the 2001 NCP assessment, the Council concluded that jurisdictions had adhered to these franchising and licensing principles so had met their NCP obligations in this area.

In the 2002 NCP assessment the Council identified several outstanding assessment issues. Jurisdictions' progress in addressing these issues, along with their previous progress in implementing related reform, is discussed in the section 'Assessment issues'.

Benefits of reform

The benefits of NCP reform in the gas sector have begun to be realised. The Parer Review found that the Australian gas market is developing and becoming more competitive, dynamic and efficient (CoAG Energy Market Review 2002, p. 190). It found:

> *COAG's implementation of the free and fair trade in gas principles has been a significant factor in the industry's development. Removal of restrictions on interstate trade in gas and provision of access to pipelines (transmission and distribution) and to customers (removal of exclusive franchises) has encouraged new pipelines to be built. … Similarly, exploration for and development of new gas reserves has been encouraged. (CoAG Energy Market Review 2002, pp. 189–90)*

The Parer Review noted that the length of Australia's transmission pipeline system nearly doubled from 9000 kilometres in 1989 to over 17 000 kilometres in 2001. It outlined the significant development in

transmission pipeline infrastructure since 1995, with major new pipelines including: the Goldfields Gas Pipeline, from the north west of Western Australia to the goldfields region; the Culcairn interconnect which allows gas to flow between New South Wales and Victoria; the South West Pipeline in Victoria; the Eastern Gas Pipeline from Victoria to New South Wales and the ACT; the Tasmanian natural gas pipeline from Victoria to Tasmania; and the South East Australia (SEA) Gas Pipeline, which is being constructed between Victoria and South Australia (CoAG Energy Market Review 2002, pp. 186–8). The Parer Review commented that '[i]t is worth noting … that this investment has been made with the Gas Code in operation' (CoAG Energy Market Review 2002, p. 193). It also noted that new gas fields are mooted for development in the near future and that proposals have been made to transport large quantities of gas from Papua New Guinea and Timor (CoAG Energy Market Review 2002, p. 198).

Assessment issues

The Council considered several significant outstanding issues in the 2003 NCP assessment: the enactment and certification of the national gas access regime; the implementation of full retail contestability; progress with the remaining legislative review issues (including the review and reform of acreage management legislation); and implementation of the national gas quality standard.

National gas access regime

Enactment and certification of the regime

The 1997 gas agreement requires jurisdictions to enact legislation to introduce a uniform Gas Pipelines Access Law (GPAL) and National Gas Access Code establishing a regime for third party access to the services of natural gas pipelines. Jurisdictions are then required to seek certification of their gas access regimes under part IIIA of the *Trade Practices Act 1974* (TPA).

The Council previously assessed that all governments except Tasmania had met their obligations to enact the national access regime. In particular, each jurisdiction has passed a Gas Access Act enacting the GPAL and the National Gas Access Code. The Council notes that, with the exception of Queensland, these governments have now obtained certification of their access regimes. The Council is satisfied that these regimes remained effective post-certification, in line with the requirements of the 1997 gas agreement.

Table 8.2 summarises jurisdictions' positions in relation to the enactment and certification of their gas access regimes. In the 2002 NCP assessment, the Council identified two outstanding issues relating to the enactment and certification of the National Gas Access Regime: (1) the application for certification of the Tasmanian gas access regime and (2) approval for amendments to the New South Wales gas access regime.

Table 8.2: Enactment and certification of access regimes

Jurisdiction	*Legislation enacted*	*Certified effective*
New South Wales	Yes	Certified effective March 2001 for 15 years
Victoria	Yes	Certified effective March 2001 for 15 years
Queensland	Yes	Recommendation of the Council is with the Commonwealth Minister. The recommendation is that the regime does not meet the requirements for effectiveness under part IIIA of the TPA.
Western Australia	Yes	Certified effective May 2000 for 15 years
South Australia	Yes	Certified effective December 1998 for 15 years
Tasmania	Yes	No application yet made to Council
ACT	Yes	Certified effective September 2000 for 15 years
Northern Territory	Yes	Certified effective October 2001 for 15 years

Tasmanian certification

Tasmania was exempted from having to comply with its obligations to enact the National Gas Access Regime and have its regime certified until the State's first natural gas pipeline was approved, or until a competitive tendering process for a natural gas pipeline in the State commenced.[1] In 1998, Tasmania selected Duke Energy International to develop a natural gas supply to Tasmania. Duke constructed and tested a transmission pipeline from Victoria to Tasmania along with lateral pipelines to the south and north west of the State. In 2001, Tasmania commenced a tender process to award an exclusive franchise for the distribution and retail of gas. This process was terminated in 2002 in response to the bids' reliance on financial support and acceptance of risk by the State. Following bilateral discussions, Powerco Limited was selected as the distribution developer.

The Government implemented the National Gas Access Code through its *Gas Pipelines Access (Tasmania) Act 2000*, which was passed in November 2000. It also enacted the *Gas Pipelines Act 2000*, which regulates gas pipeline facilities (through, for example, licensing provisions and the development and approval of gas safety cases) and the *Gas Act 2000*, which regulates the distribution and retailing of natural gas.

[1] This exemption was granted under clauses 4.3 and 10.1 of the 1997 gas agreement.

Tasmania began to prepare an application for certification of its access regime, but informed the Council that it had to delay submitting it due to the termination of the tender process and the need to amend the legislative and regulatory framework. Tasmania also noted that aspects of the distribution franchise arrangements do not comply with the requirements of the national gas access regime — notably, the process for the selection of the franchise distributor, bypass arrangements and the duration of the franchise. Tasmania informed the Council that it received the agreement of all jurisdictions to the transitional derogation relating to these arrangements.

The Council will assess Tasmania's access regime, including retail and distribution arrangements, when it receives Tasmania's application for certification. Given that the transmission pipeline from Victoria to Tasmania has been built, the Council expects Tasmania to apply for the regime's certification in the near future.

New South Wales derogation

Under the 1997 gas agreement, transitional arrangements and derogations from the GPAL are allowed only if they have been approved by all Ministers (clause 12.1) and must be phased out no later than 1 September 2001 except where noted in annex H or annex I to the Agreement or approved by all Ministers (clause 12.2). In the 2002 NCP assessment, the Council found that New South Wales had contravened this requirement by extending a derogation without the approval of all Ministers. It concluded, therefore, that New South Wales had not met fully its national gas reform obligations.

Under transitional provisions in the *Gas Pipelines Access (New South Wales) Act 1998*, a number of pipelines (described as transmission pipelines in schedule A of the National Gas Access Code) were deemed to be distribution pipelines until 1 July 2002. The pipelines were Wilton–Newcastle (including Wilton–Horsley Park, Horsley Park–Plumpton, Plumpton–Killingworth and Killingworth–Walsh Point) and Wilton–Wollongong. The effect of the derogation was that the Independent Pricing and Regulatory Tribunal, rather than the Australian Competition and Consumer Commission, would regulate access to the pipelines.

The New South Wales Government, after undertaking a cost–benefit analysis, decided to extend the derogation for a further five years — this period being chosen to avoid regulatory uncertainty. As required by the 1997 gas agreement, it sought other jurisdictions' approval of the five-year extension, to which all but the Commonwealth Government agreed. The Commonwealth Government approved the extension for a three-year period, on the basis that future developments in the gas industry and prospective changes to the National Gas Access Code might affect the desirability of the derogation.

New South Wales considers that it met the intent of the 1997 gas agreement because the Commonwealth Government had no objection to the extension of the derogation, albeit for a lesser time than proposed. New South Wales

stated that it would be able to amend the derogation to meet any future CoAG agreements on national energy reforms.

In the 2002 NCP Assessment, the Council noted that the Commonwealth Government was willing to reconsider its position on the length of the extension, given appropriate assurances from New South Wales on the derogation's future and support for review and reform of gas regulatory arrangements. Despite discussions between New South Wales and the Commonwealth Government, however, the Commonwealth Government has not approved the extension. It remains concerned that the extension may preclude the earlier implementation of a nationally consistent regulatory framework for natural gas.

The Council notes that the New South Wales Government does not have the approval of all Ministers to extend the derogation for a five-year period. It considers, therefore, that New South Wales has not complied fully with its national gas reform obligations.

Full retail contestability

In the 1997 gas agreement, governments agreed to progressively introduce full retail contestability for all gas consumers. Full retail contestability means providing consumers with the right to choose the retailer from whom they purchase their gas. It results in competition among gas retailers and gas producers, thus promoting improved services, more efficient energy industries and lower prices for customers.

The introduction of full retail contestability is important to realise the benefits of competition in the gas sector as a whole. To promote competition effectively, however, the introduction of full retail contestability requires more than the removal of legal barriers. Governments must also implement a package of business rules, including:

- processes for measuring gas use (whether through metering or other processes);
- protocols for transferring customers from one gas supplier to another;
- consumer protection requirements; and
- safety requirements and gas specification requirements to be met before interconnection can take place.

The legal removal of most barriers to competition occurred with the enactment of the GPAL, including the National Gas Access Code (although some barriers may remain). The business rules must make it practical for customers to select from among suppliers, thus encouraging suppliers to compete to secure customers. Similar processes of supplier selection have promoted effective competition in other industries such as telecommunications.

Table 8.3: Contestability timetables for the national gas access regime

Date	*New South Wales*	*Victoria*	*Queensland*	*Western Australia*	*South Australia*	*ACT*	*Northern Territory*
1 July 1999					>10 TJ per year		
1 September 1999		Customers using >100 TJ per year					
1 October 1999	Customers using >1 TJ per year					Customers using >1 TJ per year	No phase-in arrangements
1 January 2000				Customers using >100 TJ per year			
1 July 2000	All customers				Industrial and commercial customers using <10 TJ per year		
1 September 2000		Customers using >10 TJ per year					
1 July 2001			Customers using >100 TJ per year		All customers		
1 September 2001		Customers using >5 TJ per year and <10 TJ per year					
1 January 2002				Customers using >1 TJ per year		All customers[d]	
1 July 2002				All customers[c]			
1 October 2002		All customers[a]					
1 January 2003			All customers[be]				
1 July 2003							

Unit of measurement: 1 terajoule (TJ) = 1012 joules.

[a] Modified from previous timetable of all customers by 1 September 2001.

[b] Modified from previous timetable of all customers by 1 September 2001.

[c] Legal barriers removed but practical implementation delayed till 1 May 2004.

[d] Modified from previous timetable of all customers by 1 July 2000.

[e] Contestability delayed pending decision on implementation.

The 1997 gas agreement nominated 1 September 2001 as the latest date by which governments had to provide access for all customers and suppliers.[2] Governments experienced significant difficulties, however, in introducing effective full retail contestability in accordance with their contestability timetables. Some announced deferrals of up to 18 months for smaller customers. The difficulties relate to:

- the introduction of information technology systems to handle customer billing and transfer;
- a need for the industry to develop market rules to allow for the orderly management of customer transfers between retailers; and
- the choice and costs of a method of metering (that is, how to measure cost effectively the gas use by smaller customers).

The 2002 NCP assessment outlined jurisdictions' progress in removing legal and other barriers to full retail contestability. It noted that the ACT implemented full retail contestability from January 2002. New South Wales implemented full retail contestability in July 2000, but customers were unable to choose their supplier until January 2002 because the necessary market structures were not in place. The 2002 NCP assessment also noted that Western Australian and South Australian gas consumers had been legally contestable from July 2002 and July 2001 respectively, but that full retail contestability had been delayed in practice. Other jurisdictions were yet to implement full retail contestability. Table 8.3 outlines the contestability timetables for the national gas access regime.

Victoria

Victoria introduced full retail contestability for natural gas on 1 October 2002, having deferred the final stage of contestability from September 2001. According to Victoria, the deferral was a result of delays in the development of systems and processes necessary to manage customer transfers and metering data. During 2002, the State completed a number of tasks to allow for full retail contestability, including the development and implementation of customer transfer and metering systems, business-to-business communication systems, industry tests and market readiness strategy, and the approval of retail market rules. Victoria advised that as at 30 June 2003, 104 000 (7 per cent) of domestic and small business customers have elected to change retailer since the implementation of full retail contestability.

Victoria used its reserve pricing power to constrain price rises sought by retailers in standard gas contracts in 2003. According to Victoria, this approach was necessary to protect consumers from the exercise of retail

[2] Except for Western Australia, where the date was 1 July 2002.

market power. Victoria has extended its reserve power of gas price regulation from August 2004 to the end of 2004, when the need for its continuation will be reviewed. Victoria anticipates that the need for price caps will diminish or end once full retail competition is fully effective.

In the 2002 NCP assessment, the Council noted that Victoria had consulted with, but not sought the consent of, all governments before amending its full retail contestability timetable, as required by the 1997 gas agreement. The Council concluded, therefore, that Victoria had not met fully its national gas reform obligations. Given the successful implementation of full retail contestability in the State, however, the Council now considers that Victoria has met its NCP obligations in this area.

Queensland

The Council noted in the 2002 NCP assessment that Queensland had amended its *Gas Act 1965* to defer the introduction of retail contestability for gas users consuming less than 100 terajoules per year from 1 September 2001 to 1 January 2003. Queensland had sought the approval by all jurisdictions of this deferral. It received approval from all governments except the Commonwealth Government. The Council concluded that Queensland, in proceeding with the deferral, had contravened the 1997 gas agreement's requirement that any extension of transitional arrangements be approved by all jurisdictions so had not met its national gas reform obligations.

On 26 July 2003, Queensland released for public consultation a cost–benefit analysis, undertaken by consultants McLennan Magasanik Associates, which found that the introduction of full retail contestability would impose significant net costs. Queensland has informed the Council that it intends, subject to issues raised in the public consultation, not to introduce retail contestability for gas users consuming less than 100 terajoules per year. A final decision will be made after the 30–day public consultation period ends. If the decision is not to introduce full retail contestability, Queensland will seek the agreement of other jurisdictions as required by the 1997 gas agreement. Any such decision would be reviewed in 2007.

Until Queensland completes its consultation on the costs and benefits of full retail contestability, and makes a final decision on implementation, the Council cannot assess Queensland's actions against its commitment to introduce full retail contestability. The Council will therefore defer consideration of this issue until the 2004 NCP assessment.

However, the Council notes that Queensland retains an obligation under the 1997 gas agreement to introduce full retail contestability on 1 September 2001. Queensland still has not received the agreement of all other jurisdictions to defer the implementation of full retail contestability until 1 January 2003. Queensland has now delayed full retail contestability further and for an unspecified period, without having received the agreement of other jurisdictions. Accordingly, the Council considers that, at the time of

the 2003 NCP assessment, Queensland had not complied with the processes required under its national gas reform obligations.

Western Australia

All Western Australian natural gas customers have been legally contestable since 1 July 2002. Contestability has been delayed in practice, however, until an expected date of May 2004 because establishing the necessary rules, systems and regulatory framework is taking longer than expected. To address these issues, the Western Australian Government established a Gas Retail Deregulation Project Steering Group (GRDPSG), comprising gas industry participants, government representatives and consumer interests. The GRDPSG's role is to consider issues necessary to facilitate full retail contestability, including: the determination of a market operator; arrangements to manage customer transfers between retailers; consumer protection and education; and emergency gas supply management and procedures.

Western Australia advised that it made progress in achieving practical full retail contestability. In particular, Western Australia and South Australia jointly established a Retail Energy Market Company (REMCo) to establish and administer retail market administration systems across the two States, and developed retail market rules. Western Australia also finalised a consultant's report on gas metering issues.

The Western Australian Government introduced an Energy Legislation Amendment Bill to Parliament in June 2003. The Bill establishes a legal framework for REMCo and the retail market rules, and enables the approval of retail marketing schemes and the introduction of customer protection measures (such as a gas marketing code of conduct, a gas industry ombudsman scheme and 'supplier of last resort' arrangements). The Bill also allows the granting, after a competitive tender, of exclusive gas distribution and trading licences to reticulate gas to regional communities. The Bill had yet to be passed at the time of publication.

South Australia

In South Australia, all natural gas consumers have been legally contestable since 1 July 2001, but full retail contestability has been delayed in practice by a lack of access to infrastructure, limited gas supply and the lack of information systems to allow for the orderly management of customer transfer between retailers. The South Australian Government noted that full retail contestability is expected in 2004 as these impediments are overcome.

- Problems associated with access to infrastructure were largely addressed by the Australian Competition and Consumer Commission's approval of the transmission pipeline access agreement in August 2002 and the South Australian Independent Pricing and Access Regulator's final approval of the distribution system access arrangements in April 2003.

- Lack of gas supply will be mitigated by construction of the SEA Gas Pipeline from Port Campbell in Victoria to Adelaide, which is expected to be completed by late 2003.

- Amendments to the *Gas Act 1997* (operational 1 July 2003) provides for the licensing of a retail market administrator, retail market rules and customer protection provisions. The regulatory framework adopted is consistent with the South Australian *Electricity Act 1997*. This will facilitate the development of dual-fuel products and convergence of energy markets.

Legislative restrictions on competition

For natural gas, jurisdictions have an obligation to review legislation that restricts competition and to remove restrictions that cannot be shown to provide a net community benefit and to be necessary to achieve the objectives of the legislation. Legislation relating to natural gas generally falls into one or more of the following categories: petroleum (onshore and submerged lands) legislation; pipelines legislation; restrictions on shareholding in gas sector companies; standards and licensing legislation; and State and Territory agreement Acts. Additional areas that may be relevant are mining legislation (particularly to the extent that it deals with coal and oil shale, which can produce coal methane gas) and environmental planning legislation.

Governments' progress in reviewing and reforming relevant legislation is reported in table 8.5. Review and reform of natural gas legislation were completed in most areas, although some reviews have not been finalised and some necessary reform has yet to be implemented. For the 2003 NCP assessment, the most significant issue was the review and reform of offshore and onshore petroleum acreage management legislation (upstream issues).

Upstream issues

An efficient gas production sector is essential to ensure gas sales markets are able to develop and grow. In 1998, the Upstream Issues Working Group reported to CoAG, identifying three areas that were significant in the development of a more competitive upstream gas sector: marketing arrangements used by gas producers; third party access to upstream processing facilities; and acreage management legislation.

All jurisdictions are engaged in the review and reform of their acreage management legislation, both offshore and onshore. The offshore legislation — the petroleum (submerged lands) Acts — was reviewed through a national process. Each State and Territory with onshore acreage management legislation is reviewing that legislation individually.

Submerged lands legislation

All States and the Northern Territory have petroleum (submerged lands) legislation that forms part of a national scheme that regulates exploration for, and the development of, undersea petroleum resources. These Acts were reviewed in 1999-2000. The Australian and New Zealand Minerals and Energy Council Ministers endorsed the national review report, which was made public in March 2001, following consideration by CoAG.

The review's main conclusion was that the legislation is essentially pro-competitive and that any restrictions on competition (in relation to safety, the environment and resource management, for example) are appropriate given the net benefits to the community. The review recommended two specific legislative amendments, focusing on administrative streamlining and measures to enhance the certainty and transparency of decision-making. One amendment sought to address potential compliance costs associated with retention leases and the other sought to expedite the rate at which exploration acreage can be made available to explorers. A third recommendation was to rewrite the *Commonwealth Petroleum (Submerged Lands) Act 1967.*

The two specific legislative amendments were incorporated into the Commonwealth's *Petroleum (Submerged Lands) Amendment Act 2002,* which was enacted in October 2002. The Council understands that the rewriting of the Commonwealth Petroleum (Submerged Lands) Act is under way, and that a Bill incorporating the changes is expected to be introduced to the Commonwealth Parliament in late 2003. All relevant jurisdictions indicated that they will amend their legislation to reflect the changes to the Commonwealth legislation, but none has done so to date. The Council notes that review and reform in this area are incomplete, but that jurisdictions are committed to implementing reform when the Commonwealth's outstanding matters are resolved.

Onshore acreage management legislation

The Council previously assessed that New South Wales, Victoria and South Australia had met their NCP obligations to review and reform their onshore acreage management legislation. The Commonwealth, ACT and Tasmania do not have onshore acreage management legislation.

Queensland has reviewed the *Petroleum Act 1923* in conjunction with the Gas Act, and drafted the Petroleum and Gas (Production and Safety) Bill and the Gas Supply Bill to replace these two Acts. The Petroleum and Gas (Production and Safety) Bill regulates exploration, production and processing, pipeline and facility licensing, and safety and technical standards. It regulates all exploration and production tenures granted after December 1996. The Petroleum Act 1923 may need to be retained in a limited way to preserve the rights of holders of petroleum tenures granted before that date. Queensland noted that the Bill incorporates all acreage management reforms identified by the Upstream Issues Working Group. It expects the Bill

to be enacted by mid 2004. The Council notes that the Bill is yet to be enacted but that Queensland's implementation of reform in this area is near completion.

Western Australia reviewed the *Petroleum Act 1967* and Petroleum Regulations 1987. The review, which was endorsed by the Government in February 2003, recommended that the State implement the findings of the national review of the submerged lands legislation. It also recommended that potentially restrictive provisions in the Act and Regulations — provisions covering drilling reservations, exploration permit splitting and special prospective authorities with an acreage option — be retained on the grounds that they do not restrict competition and that they provide a net public benefit. The Council notes that amendments arising from the national review of the submerged lands legislation have not been implemented but that Western Australia has committed to doing so.

The Northern Territory reviewed the *Petroleum Act* and the Government approved implementation of the review recommendations. Some recommendations were implemented by the *Petroleum Amendment Act 2003*. The Northern Territory is preparing a proposal to draft a Bill to amend the Petroleum Act to implement the remaining review recommendations. The Northern Territory intends to introduce the Bill to the Legislative Assembly in September 2003. The Council notes that the Bill has yet to be enacted but that the Northern Territory's implementation of reforms in this area is near completion.

Victorian significant producer legislation

In the 1999 NCP assessment, the Council raised concerns regarding the significant producer provisions of the Gas Industry Act. These provisions restrict the conduct of significant producers (entities that hold a petroleum production licence in the Commonwealth waters adjacent to Victoria and have a substantial degree of market power in one or more Victorian gas markets). In particular, the provisions prohibit significant producers from engaging in conduct that discriminates among gas retailers in a manner that would be likely to substantially lessen competition, and from retailing gas to any customer using less than 5 petajoules per year. The Council noted that elements of the legislation could be anticompetitive, but recognised Victoria's objective of seeking to ensure the behaviour of dominant upstream players does not frustrate increased downstream competition. The Parer Review also noted that the provisions may restrict significant producers' ability to separately market gas, which the review considered may increase intra-basin competition (CoAG Energy Market Review 2002, p. 219).

In accordance with the Government's intention at the time of the 1999 NCP assessment, Victoria's Essential Services Commission undertook a review of the significant producer provisions. The review's terms of reference directed the Commission to consider whether the provisions are necessary to enable a competitive wholesale market to develop for the supply of natural gas in

Victoria. The review was completed and forwarded to the Minister on 30 June 2003. The Council notes that review and reform of the significant producer provisions are incomplete, but that the provisions form part of new legislation. The Council will consider Victoria's response to the review in its 2004 NCP assessment.

Outstanding legislation review and reform matters

Review and/or reform is incomplete for three other pieces of natural gas legislation: Victoria's *Pipelines Act 1967*, Queensland's Gas Act and Tasmania's *Launceston Gas Company Act 1982*.

Victoria's Pipelines Act regulates the construction and operation of gas pipelines in the State. An NCP review of the Act was completed in February 1997, to which the Victorian Government responded in July 2002. The Government is undertaking a broader review of the Act to develop a regulatory framework contemporary with other forms of infrastructure. The Government accepted most recommendations of the initial review except some that it considered had been superseded, were impractical or would conflict with the National Gas Access Code. The Government is progressing its implementation of the accepted recommendations and considering some in the context of the current review. Victoria expects the new legislation to be in operation by 2005. The Council accepts that this timeframe is not unreasonable for updating regulation in this area.

Queensland is reviewing the Gas Act in conjunction with the Petroleum Act, and drafted the Petroleum and Gas (Production and Safety) Bill and the Gas Supply Bill to replace these two Acts. As discussed above, Queensland expects to enact the Petroleum and Gas (Production and Safety) Bill by mid 2004. The Gas Supply Bill regulates distribution pipeline licensing, retail sale of fuel gas and insufficiency of supply. It was passed by Parliament and became operational on 1 July 2003. The Council notes that the Petroleum and Gas (Production and Safety) Bill has yet to be enacted, but that Queensland's implementation of reform in this area is near completion.

Tasmania's Launceston Gas Company Act gives that company powers that are not available to potential competitors in the gas supply market. Tasmania substantially amended the Act by new legislation and intends to repeal the remaining sections once an accurate map of the pipeline network has been completed. The Council notes that reform of the Act has not been completed but that Tasmania has demonstrated a firm commitment to the reform.

Industry standards

The Australian gas industry has been developing a national gas quality standard so processed gas can move through all interlinked pipeline networks without adversely affecting pipelines or gas appliances. The Council considers

that such a standard is important to achieving a national gas market through the removal of barriers to interstate gas trade, and to implementing free and fair trade in gas.

Following a gas quality appliance testing program, undertaken by the Australian Gas Association and funded by governments and industry, the Natural Gas Quality Specification Committee was formed to write a new gas quality standard specification for general purpose natural gas. The standard, known as AS 4564/AG 864, defines the requirements for providing natural gas suitable for transportation in transmission and distribution systems within or across State borders, and provides the range of gas properties consistent with the safe operation of natural gas appliances supplied to the Australian market. Relevant gas sales contracts, legislation and/or government guidelines provide temporary departures from the standard.

AS 4564/AG 864 was endorsed in January 2003. All jurisdictions other than Western Australia and Tasmania stated their intention to implement the standard, although none had done so. Jurisdictions' positions on this matter are outlined in table 8.4.

The Council notes the intention of New South Wales, Victoria, Queensland and South Australia to legislate to implement the national standard. While these jurisdictions have not completed this reform, the Council considers that they have demonstrated a commitment to doing so.

Western Australia's Gas Standards (Gas Supply and System Safety) Regulations 2000 call up the national standard, but provide for deviations from the national standard's specification of hydrocarbon dewpoints, heating values, mercury levels and sulphur levels. Western Australia requested that a review of the national standard consider its concerns about these matters. It does not intend to amend its standards to reflect the national standard until such a review is carried out. Western Australia also noted that its gas quality regulations and proposed broadest specification for transmission pipelines are more detailed than the national standard because they cover high pressure, long distance pipelines. Each of the major transmission pipelines in the State has its own gas quality specifications. Western Australia noted no serious intention at this stage to connect any pipelines to any other State; any such pipeline would be purpose built and have its own gas specification to suit a national agenda.

Adoption of the national standard is an important element in building a national gas market, and its implementation needs to be effective. The Council accepts that, for those jurisdictions that do not have interstate pipelines, a decision not to implement the national standard will not create a barrier to interstate trade in natural gas at this stage. Nevertheless, the Council notes that the inconsistent application of the standard across jurisdictions may have adverse impacts in other areas, for instance the construction, sale or use of gas appliances. The Council intends to monitor how jurisdictions are implementing the national standard and any issues that may arise as a result of its partial application.

The Council understands that Tasmania has not made a formal decision on whether to adopt the national standard and that the Government is discussing the matter with other jurisdictions. The Council considers that it would be appropriate for Tasmania to implement the standard as part of the roll-out of gas supply in the State.

The ACT and the Northern Territory indicated that they intend gas industry participants to adopt the national standard. The Council considers that, in order for the national standard to be effective in reducing barriers to interstate trade in gas, it needs to be clearly implemented. Adopting the national standard legislatively would be a suitable way of achieving this.

Table 8.4: Implementation of AS 4564/AG 864

Jurisdiction	*Action*
New South Wales	The Government has adopted gas specifications that are identical to the national standard. The NSW Regulations will be amended to reference the standard later this year.
Victoria	The Government undertook, in consultation with industry, to amend its Regulations to ensure consistency with the national standard. Current Regulations are substantially consistent with the final draft version.
Queensland	The Government is advising stakeholders pending implementation of the standard under Regulation, which was expected to occur by July 2003.
Western Australia	The State's gas quality standards for distribution and transmission networks differ from the national standard in some areas, and the Government does not intend to align them with the national standard at this stage.
South Australia	The South Australian Regulations set the same natural gas quality specifications as those in the national standard. The Government intends to amend the Regulations (prior to the end of 2003) so they call up the standard rather than specifying the parameters and values directly.
Tasmania	The Government is discussing the adoption of the standard with other jurisdictions.
ACT	The ACT gas distributor will adopt the standard in time to replace the gas specifications set out in the existing access arrangement.
Northern Territory	The Government understands that the national standard is a technical standard and is to be applied by the gas industry on a national basis. It will consider the application of the standard as part of the national standard-setting process.

Table 8.5: Review and reform of legislation relevant to natural gas

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Petroleum (Submerged Lands) Act 1967*	Regulates exploration for, and the development of, undersea petroleum resources. This legislation forms part of a national scheme.	National review was completed in 1999-2000 and endorsed by the Australian and New Zealand Minerals and Energy Council (ANZMEC) Ministers.	Two specific legislative amendments flowed from the review. One addresses potential compliance costs associated with retention leases and the other expedites the rate at which exploration acreage can be made available to explorers. These amendments were incorporated into the *Petroleum (Submerged Lands) Amendment Act 2002,* which was enacted in October 2002. A third recommendation was for the *Commonwealth Petroleum (Submerged Lands) Act 1967* to be rewritten. The Council understands that the rewriting is under way and that a Bill incorporating the changes is expected to be introduced to Parliament in late 2003. These amendments are to be reflected in mirror State and Territory legislation.	Review and reform incomplete (the Council assesses below the States' and Territories' progress in amending their petroleum (submerged lands) Acts and rewriting counterpart legislation)
New South Wales	*Petroleum (Submerged Lands) Act 1982*	Regulates exploration for, and the development of, undersea petroleum resources. This legislation forms part of a national scheme.	National review was completed in 1999-2000 and endorsed by ANZMEC Ministers.	Amendments made by the Commonwealth Government are to be reflected in State and Territory legislation. New South Wales is awaiting the completion of Commonwealth amendments before amending its own legislation.	Review and reform incomplete

(*continued*)

Table 8.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales (continued)	*Energy Administration Act 1987*	Establishes the Ministry of Energy and the Energy Corporation of New South Wales, and defines their functions.	Review was completed.	Licence and approval requirements were repealed by the *Electricity Supply Act 1995*. Sections 35A and 35B were dealt with as part of structural reform of the gas industry.	Meets CPA obligations (June 1999)
	Gas Industry Restructuring Act 1986	Makes provisions regarding the structure of AGL.	Review was unnecessary due to repeal of Act.	Act was repealed by the *Gas Supply Act 1996*, which corporatised AGL.	Meets CPA obligations (June 1997)
	Liquefied Petroleum Gas Act 1961 and *Liquefied Petroleum Gas (Grants) Act 1980*		Review was completed.	Act was repealed by the Gas Supply Act, among others.	Meets CPA obligations (June 1997)
	Petroleum (Onshore) Act 1991	Regulates the search for, and mining of, petroleum.	Review was completed.	Review recommendations were dealt with under the licence reduction program. Authority for exploration is retained. Business compliance costs are minimised.	Meets CPA obligations (June 1999)
	Pipelines Act 1967	Regulates the construction and operation of pipelines in New South Wales.	Review was completed, finding that the legislation did not contain any significant anticompetitive provisions.	No reform is planned.	Meets CPA obligations (June 2001)
Victoria	*Energy Consumption Levy Act 1982*			Act was repealed.	Meets CPA obligations (June 2001)

(*continued*)

Table 8.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria (continued)	*Gas Industry Act 1994* and Amendment Acts	Provide for: (1) a licensing regime administered by the Office of Regulator-General; (2) market and system operation rules for the Victorian gas market; (3) cross-ownership restrictions to prevent re-aggregation of the Victorian gas industry; and (4) prohibitions on significant producers (the Bass Strait producers) engaging in anticompetitive conduct.		The *Gas Industry Act 1994* was replaced by the *Gas Industry Act 2001* and the *Gas Industry (Residual Provisions) Act 1994* on 1 September 2001. The Gas Industry Act gives effect to Victorian reforms that are in line with the introduction and implementation of full retail contestability. The Gas Industry (Residual Provisions) Act contains provisions of historical import, particularly the restructure and privatisation of the gas industry. A review of the significant producer provisions of the new Gas Industry Act is under way. The 'safety net' provisions, which include interim reserve price regulation power, will be reviewed before their scheduled expiry on 31 December 2004.	Meets CPA obligations (June 2003)
	Gas Safety Act 1997 and Regulations	Introduce new restrictive regulations in relation to the Gas Appeals Board, gas installations, and gas quality and safety. Uniform gas quality specifications aim to ensure gas in distribution pipelines is safe for end use.		Efforts were made to minimise compliance costs by limiting the scope of restrictions to minimum functional requirements and avoiding the prescription of style or format. No further reforms are planned.	Meets CPA obligations (June 2001)

(*continued*)

Table 8.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria (continued)	*Petroleum (Submerged Lands) Act*	Regulates exploration for, and the development of, undersea petroleum resources. This legislation forms part of a national scheme.	National review was completed in 1999-2000 and endorsed by ANZMEC Ministers.	Amendments made by the Commonwealth are to be reflected in State and Territory legislation. Victoria will amend the Act to mirror the Commonwealth amendments by 2004.	Review and reform incomplete
	Petroleum Act 1958			Act was repealed and replaced by the *Petroleum Act 1998*. New Act retains Crown ownership of petroleum resources and permits a lease system, and removes obstacles to exploration, production and administrative efficiency.	Meets CPA obligations (June 1999)
	Pipelines Act 1967	Regulates the construction and operation of pipelines in Victoria.	Review was completed in February 1997. A broader review of the Act is under way.	The Government released its response to the initial review in July 2002. It accepted most recommendations, except some that had been superseded, were impractical or would have been in conflict with the National Gas Access Code. The Government is progressing its implementation of the accepted recommendations and considering some in the context of the current review.	Review and reform incomplete

(*continued*)

Table 8.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Gas Act 1965* and Gas Regulations 1989	Establish a virtual statutory monopoly via provisions on granting of gas franchises and requirements for Government approval of large gas contracts. Legislation also enables the Government to place quantitative restrictions on the supply of gas in certain (emergency) situations, and gives the Gas Tribunal the power to recommend price restrictions.	Queensland reviewed the *Petroleum Act 1923* in conjunction with the *Gas Act 1965*. The review covered those parts of the two Acts that were not the subject of the national review of the *Petroleum (Submerged Lands) Act*.	Queensland drafted the Gas Supply Bill to replace the existing Act. The Gas Supply Bill regulates distribution pipeline licensing, retail sale of fuel gas and insufficiency of supply. The Gas Supply Bill was passed by Parliament and became operational on 1 July 2003.	Meets CPA obligations (June 2003)
	Gas Suppliers (Shareholding) Act 1972	Statutory limitation on the level of ownership of shares in a nominated gas supplier.	Review not undertaken.	Act was repealed in October 2000.	Meets CPA obligations (June 2001)
	Petroleum Act 1923		Act was reviewed in conjunction with the Gas Act (see above).	Queensland drafted the Petroleum and Gas (Production and Safety) Bill to replace the existing Act. The Petroleum and Gas (Production and Safety) Bill regulates exploration, production and processing, gathering and transmission pipeline and petroleum facility licensing and safety and technical standards. Queensland expects the Bill to be enacted by mid 2004.	Review and reform incomplete

(*continued*)

Table 8.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland (continued)	*Petroleum (Submerged Lands) Act 1982*	Regulates exploration for, and the development of, undersea petroleum resources. This legislation forms part of a national scheme.	National review was completed in 1999-2000 and endorsed by ANZMEC Ministers.	Amendments made by the Commonwealth are to be reflected in State and Territory legislation. Queensland will prepare amending legislation once reform of the Commonwealth legislation has been finalised.	Review and reform incomplete
Western Australia	Dampier-to-Bunbury Pipeline Regulations 1998		No review undertaken.	Regulations were repealed on 1 January 2000.	Meets CPA obligations (June 2001)
	Energy Coordination Act 1994	Amended to introduce a gas licensing system that provides for the regulation of companies operating distribution systems and supplying gas to customers using less than 1 TJ per year.	Review of new provisions found restrictions were minimal and the most cost-effective means of protecting small customers.	No reform is planned.	Meets CPA obligations (June 2001)
	Energy Operators (Powers) Act 1979 (formerly *Energy Corporations (Powers) Act 1979*)	Provides monopoly rights over the sale of LPG and provides energy corporations with powers of compulsory land acquisition and disposal, powers of entry, certain planning approval and water rights, and indemnity against compensation claims.	Review was completed in 1998. It recommended removing the monopoly over sale of LPG and retaining the land use powers of energy corporations. Land use powers are necessary to facilitate energy supply.	Restrictions on LPG trading were lifted with the enactment of the *Energy Coordination Amendment Act 1999* and *Gas Corporation (Business Disposal) Act 1999*.	Meets CPA obligations (June 2001)

(*continued*)

Table 8.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)	*Gas Corporation Act 1994*	Creates the Gas Corporation to run certain publicly owned gas assets.		Act was repealed December 2000.	Meets CPA obligations (June 2001)
	Gas Transmission Regulations 1994	Access provisions.		Regulations were repealed. Access and related matters are now regulated under the *Gas Pipelines Access (WA) Act 1998*.	Meets CPA obligations (June 2001)
	North West Gas Development (Woodside) Agreement Act 1979		Not for review.	Act was repealed and replaced by the 1994 Act of same name (see next entry).	Meets CPA obligations (June 1999)
	North West Gas Development (Woodside) Agreement Amendment Act 1994	Differential treatment.	Review completed in 1998.	Act was retained without reform in view of sovereign risk implications of unilateral amendment or repeal.	Meets CPA obligations (June 1999)

(*continued*)

Table 8.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)	*Petroleum Act 1967*	Regulates exploration for, and the development of, onshore petroleum reserves.	Review was endorsed by the Government in February 2003. Review recommended that findings of the national review of submerged lands Acts be implemented. It also recommended that potentially restrictive provisions in the Act — provisions that cover drilling reservations, exploration permit splitting and special prospective authorities with an acreage option — be retained on the grounds that they do not restrict competition and that they provide a net public benefit.	Recommendations of the national review of submerged lands Acts were to be implemented in the proposed 2003 Western Australian petroleum legislation amendment program. No other reform arose from the review of the Petroleum Act.	Review and reform incomplete

(*continued*)

Table 8.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)	*Petroleum (Submerged Lands) Act 1982* and Regulations	Regulate exploration for, and the development of, undersea petroleum resources. This legislation forms part of a national scheme.	National review was completed in 1999-2000 and endorsed by ANZMEC Ministers.	Amendments made by the Commonwealth are to be reflected in State and Territory legislation. Western Australia is to amend its legislation during the proposed 2003 petroleum legislation amendment program. Acts to be amended include the Petroleum (Submerged Lands) Act and the Petroleum Act.	Review and reform incomplete
	Petroleum Pipelines Act 1969 and Regulations	Regulate the construction and operation of petroleum pipelines in Western Australia.	Review was completed in 2001. Recommended one amendment with respect to issuing pipeline licences.	Review recommendation is to be implemented via legislative amendment.	Meets CPA obligations (June 2001)
South Australia	*Cooper Basin (Ratification) Act 1975*	Ratifies the contract for the supply of gas by Cooper Basin producers to AGL.	Review was completed, finding substantial public benefits in continuing granted concessions and exemptions on grounds of sovereign risk.	Amendments to be introduced to Parliament in mid-2003.	Meets CPA obligations (June 1997)
	Gas Act 1997	Provides for separate licences to operate pipelines and to undertake gas retailing.	Review in 1999 found restrictions to be in the public interest.	No reform is planned.	Meets CPA obligations (June 1999)

(*continued*)

Table 8.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia (continued)	*Natural Gas (Interim Supply) Act 1985*	Provides for Ministerial power to restrict the production and sale of gas from outside the Cooper Basin, determine the use of ethane from the basin, and restrict the Natural Gas Authority from interstate trading in gas.	Reviewed was completed in 1996.	Key restrictions were repealed in 1996.	Meets CPA obligations (June 1997)
	Natural Gas Pipelines Access Act 1995	Establishes the access regime for natural gas pipelines in South Australia.		Act was repealed by s. 50 of the *Gas Pipelines Access (South Australia) Act 1997*. For transitional purposes, the Act continues until access arrangements are set under the National Gas Access Code and any continuing arbitration proceedings are finalised.	Meets CPA obligations (June 1999)
	Petroleum (Submerged Lands) Act 1982	Regulates exploration for, and the development of, undersea petroleum resources. This legislation forms part of a national scheme.	National review was completed in 1999-2000 and endorsed by ANZMEC Ministers.	Amendments made by the Commonwealth are to be reflected in State and Territory legislation. South Australia intends to amend its legislation following the completion of Commonwealth legislative amendments for the creation of the National Offshore Petroleum Safety Authority.	Review and reform incomplete

(*continued*)

Table 8.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia (continued)	*Petroleum Act 1940*	Regulates onshore exploration for and development of petroleum reserves.		Act was replaced by the *Petroleum Act 2000*. The new Act incorporates principles proposed by the ANZMEC Petroleum Sub-Committee in regard to acreage management. The Government directed efforts to facilitate new explorers entering Cooper Basin and to encourage the development of a voluntary access code for access to production facilities.	Meets CPA obligations (June 2001)
	Santos Limited (Regulation of Shareholdings) Act 1989	Restricts any one shareholder from having more than a 15 per cent shareholding in Santos Limited.	Review was completed in July 2001.	In July 2001, the Government announced that it had considered the findings of the independent review and resolved to make no change to the Act. The Government considered that the benefits of the restrictions outweighed the costs, and that the objectives of the legislation could be achieved only through restrictions on competition. The main reason is the importance to South Australia of gas supply from the Cooper Basin where Santos has a majority interest in the production of gas.	Meets CPA obligations (June 2002)

(*continued*)

Table 8.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia (continued)	*Stony Point (Liquids Project) Ratification Act 1981*	Authorises behaviour contrary to the TPA.	Review was completed in October 2000. It concluded, given that many of the benefits to the producers constituted past or historic benefits, that no significant continuing effect would amount to a restriction on competition. No reform was recommended.	No reform is planned.	Meets CPA obligations (June 2002)
Tasmania	*Gas Act 2000*	Regulates the distribution and retailing of gas in Tasmania. It includes provisions for the appointment of the Director of Gas and the Director of Gas Safety and for the licensing of gas distributors and retailers.	Assessed as complying with the legislation review program gatekeeper requirements.	Gas (Safety) Regulations 2002 were made under the Act in June 2002. Further regulations are expected to be made in mid-2003 to deal with applications for distribution and retail licences and the contestability arrangements for the retail gas market.	Review and reform incomplete
	Gas Franchises Act 1973			Act was repealed.	Meets CPA obligations (June 2001)
	Hobart Town Gas Company's Act 1854			Act was repealed	Meets CPA obligations (June 2001)
	Hobart Town Gas Company's Act 1857			Act was repealed.	Meets CPA obligations (June 2001)

(*continued*)

Table 8.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania (continued)	*Launceston Gas Company Act 1982*	Gives the Launceston Gas Company powers that are not available to potential competitors in the gas supply market — for example, the power to 'break up public roads' without council approval, needing to give only 24 hours notice.		Act was substantially amended by new legislation. Remaining sections are to be repealed once an accurate map of the pipeline network has been completed.	Review and reform incomplete
	Petroleum (Submerged Lands) Act 1982	Regulates exploration for, and the development of, undersea petroleum resources. This legislation forms part of a national scheme.	National review was completed in 1999-2000 and endorsed by ANZMEC Ministers.	Amendments made by the Commonwealth are to be reflected in State and Territory legislation. Tasmania is to amend its legislation to reflect the Commonwealth amendments.	Review and reform incomplete
ACT	*Essential Services (Continuity of Supply) Act 1992*		Review not required.	Act was repealed and replaced by the *Utilities Act 2000*.	Meets CPA obligations (June 2001)
	Gas Act 1992			Act was repealed.	Meets CPA obligations (June 1999)
	Gas Levy Act 1991			Act was repealed in 1998.	Meets CPA obligations (June 1999)
	Gas Supply Act 1998			Act was repealed and replaced by the *Utilities Act 2000* and the *Gas Safety Act 2000*.	Meets CPA obligations (June 2001)

(*continued*)

Table 8.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory	*Energy Pipelines Act*	Establishes the regulatory framework for the construction, operation and maintenance of energy pipelines in the Northern Territory.	Review was completed and found anticompetitive provisions in the Act were justified in the public interest. Impact of restrictions was considered to be low. Approaches such as negative licensing, co-regulation and self-regulation were rejected as being unlikely to achieve the objective of the Act more efficiently than the existing legislative framework achieves it.	No reform is planned.	Meets CPA obligations (June 2001)
	Oil Refinery Agreement Ratification Act	Imposes conditions on the Mereenie Joint Venture in relation to the proposed oil refinery in Alice Springs. Refinery was not constructed because it is uneconomic, so legislation is of no practical effect.	Review was completed. Act is not considered to be anticompetitive.	Act was repealed effective November 2002.	Meets CPA obligations (June 2003)

(*continued*)

Table 8.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory (continued)	*Petroleum Act*	Regulates onshore exploration and recovery of petroleum in the Territory; grants exclusive rights; and provides for technical and financial prescriptions.	Review was completed in 2002.	Some recommendations were implemented by the *Petroleum Amendment Act 2003*. The Northern Territory is preparing a proposal to draft a Bill to amend the Petroleum Act to implement the remaining review recommendations. It intends to introduce the Bill to the Legislative Assembly in September 2003.	Review and reform incomplete
	Petroleum (Submerged Lands) Act	Regulates exploration for, and the development of, undersea petroleum resources. This legislation forms part of a national scheme.	National review was completed in 1999-2000 and endorsed by ANZMEC Ministers.	Amendments made by the Commonwealth are to be reflected in State and Territory legislation. The Northern Territory intends to amend its legislation following the completion of Commonwealth legislative amendments.	Review and reform incomplete
	Petroleum (Prospecting and Mining) Act			Act was repealed by the *Petroleum Act*.	Meets CPA obligations (June 1999)

9 Water

Water is a significant Australian industry. It has assets of similar magnitude to those of the electricity, telecommunications and airline sectors. In value added terms, water and sewerage is almost one quarter the size of agriculture, about 40 per cent of the size of the electricity industry and almost three times the size of the gas industry. Australians use around 24 000 gigalitres of water each year, of which about 80 per cent comes from surface water and 20 per cent from groundwater. In particular, water use by agricultural industries is substantial, accounting for about 70 per cent of all water used. Urban and industrial consumption is also significant.

Australia has a history of excessive water extraction, which has had some severe consequences. Many river systems are stressed, with resulting loss of productive land, poor water quality and reduced biodiversity. The 2000 National Land and Water Resources Audit found, for example, that one-third of assessed river reaches had impaired aquatic biota, over 85 per cent had significantly modified environmental features, over 80 per cent were affected by catchment disturbance and over half had modified habitat (NLWRA 2000).

Recognising these and other problems, the Council of Australian Governments (CoAG) agreed in 1994 to a water resource policy for Australia and a strategic framework for water reform, with the objective of developing an economically viable and ecologically sustainable water industry. CoAG incorporated water reform into the National Competition Policy (NCP) in 1995, after considering a 1994 report by the Working Group on Water Resource Policy. This report found that, while there were some advances, there were problems within the water industry including:

- approaches to pricing that often resulted in commercial and industrial users of water services, in particular, paying more than the costs of service provision;
- past investment decisions that were proving to be suboptimal both from an economic and an environmental perspective;
- major asset refurbishment needs in rural areas for which, in general, adequate financial provision had not been made;
- limits on opportunities to trade water entitlements to enable water to be employed in higher value uses;

- service delivery inefficiencies;
- a lack of a clear definition concerning the roles and responsibilities of institutions in the industry; and
- issues involving water use and the wider natural resource base, including widespread natural resource degradation that has an impact on the quality and/or quantity of the nation's water resources.

This chapter discusses the elements of the CoAG water resource policy and strategic reform framework (the CoAG water reform agreement) that the Council considered in this 2003 NCP assessment. It also summarises the progress that each State and Territory made in implementing the CoAG water reform agreement, focusing on the reforms assessed in 2003. Finally, it provides a brief overview of relevant work being undertaken by the Murray–Darling Basin Commission. The commission manages the River Murray system and advises the Murray–Darling Basin Ministerial Council on matters relating to the use of environmental resources in the basin, and its business unit (River Murray Water) provides bulk water services to New South Wales, Victoria and South Australia. Volume 3 of the Council's 2003 NCP assessment report contains a detailed discussion of each State and Territory's water reform activity and the Council's assessment of this activity against the requirements of the CoAG water reform agreement. Volume 3 also discusses relevant work by the Murray–Darling Basin Commission.

The CoAG water reform agreement

The CoAG water reform agreement established principles to guide all governments' reform of water industry arrangements. The agreement encompasses: pricing reforms based on the principles of consumption-based pricing and full cost recovery; the elimination of inefficient cross-subsidies and the transparency of remaining cross-subsidies; requirements for new rural water infrastructure to be economically viable and ecologically sustainable; the clarification of water entitlements and their separation from land title; the allocation of water to the environment; the facilitation of water trading to allow water to be used where it is most valued; various institutional reforms aimed at improving efficiency; and measures to enhance public consultation and participation in the reform program. Water reform thus shares the economic efficiency objectives of the other elements of the NCP. It is unique, however, in that it takes an integrated approach that addresses together the environmental, economic and social issues associated with water use.

When it reached the agreement on water reform, CoAG considered that the program could be implemented in five to seven years, although it noted that factors such as the availability of financial resources to help with structural adjustment and asset refurbishment would influence this timetable. CoAG established completion dates for the major reform elements over the period to the 2001 NCP assessment. The 14 January 1999 tripartite meeting on water reform extended the timeframe for implementing the water allocation (including to the environment) and trading obligations to 2005, by which time allocation and trading arrangements need to be substantially in place for all river systems and groundwater resources in governments' endorsed implementation programs. The extension also recognised constraints on implementation, including: the complexity of some of the reforms; the need for extensive public consultation and education before implementing changes; the significance (including financial significance) of some of the demands on governments, institutions and other stakeholders; and the low base from which many of the reforms have commenced.

Because of the broad scope of the reform program, CoAG senior officials scheduled different elements for consideration in each annual NCP assessment. In this context, the 2003 NCP assessment considered governments' progress with implementing urban water and wastewater pricing reforms, intrastate water trading arrangements, institutional reform matters, and the implementation of the National Water Quality Management Strategy. The 2003 NCP assessment also considered two matters that the Council found in previous assessments not to be sufficiently advanced: progress in several jurisdictions towards making water available for environmental purposes in river systems that are overallocated or deemed to be stressed, and New South Wales's implementation of its new access licence system and registry. Also, in accord with the Competition Principles Agreement, the 2003 assessment considered all governments' programs of review and reform of their stock of water industry legislation that restricts competition. Under the Competition Principles Agreement, governments must remove competition restrictions unless they are shown to provide a net benefit to the community and are necessary to achieve the objective of the legislation. Finally, this 2003 NCP assessment considered two matters that are standing items in every assessment: the economic and ecological justification for new investment in rural water infrastructure (where there are relevant projects) and public education and consultation activity.

The 2004 NCP water assessment will consider rural water pricing and cost recovery, the implementation of water rights systems, including allocations to the environment, and water trading arrangements (both interstate and intrastate). The NCP assessment in 2005 will consider governments' implementation of the entire program. In this 2003 NCP assessment, the Council reported on governments' progress towards achieving the CoAG objectives in these areas.

Water and wastewater pricing

Full cost recovery

Water and wastewater businesses are to set prices to earn sufficient revenue to ensure their ongoing commercial viability but avoid monopoly returns. To this end, governments agreed that prices should be set by the nominated jurisdictional regulator (or its equivalent) as follows.

- To be viable, a water business should recover at least the operational, maintenance and administrative costs, externalities, taxes or tax equivalents (not including income tax), the interest cost on debt, dividends (if any) and make provision for future asset refurbishment/replacement. Dividends should be set at a level that reflects commercial realities and simulates a competitive market outcome.
- To avoid monopoly rents, a water business should not recover more than the operational, maintenance and administrative costs, externalities (defined for the purpose of the pricing obligation to be the natural resource management costs attributable to and incurred by the water business), taxes or tax equivalent regimes, provision for the cost of asset consumption and cost of capital, the latter being calculated using a weighted average cost of capital.
- In determining prices, the economic regulator or equivalent should determine the level of revenue for a water business based on efficient resource pricing and business costs. Specific circumstances may justify transition arrangements to that level. Cross subsidies that are not consistent with efficient and effective service, use and provision should ideally be removed.
- Where service deliverers are required to provide water services to classes of customer at less than full cost, the cost of this should be fully disclosed and ideally paid to the service deliverer as a community service obligation.
- Asset values should be based on deprival value methodology unless an alternative approach can be justified, and an annuity approach should be used to determine medium to long term cash requirements for asset replacement/refurbishment.
- Transparency is required in the treatment of community service obligations, contributed assets, the opening value of assets, externalities including resource management costs, tax equivalent regimes and any remaining cross subsidies.

Reference: CoAG water reform agreement clauses, 3(a)–3(d); guidelines for the application of section 3 of the CoAG water reform agreement and related recommendations in section 12 of the expert group report (the CoAG pricing principles)

Pricing has a significant impact on the amount of water used, the provision of future supply capacity and the total amount of investment in the water industry. Recognising the linkage between prices and consumption and investment activity, the CoAG water reform agreement sought to address a range of problems. Notably, the price of water and wastewater services in urban areas often had little regard to patterns of production, usually incorporated cross-subsidies that disadvantaged industrial and commercial customers, and, most importantly, provided no incentive to conserve water. For rural water, below-cost pricing distorted rural production decisions, encouraged wasteful water use and often led to water providers making insufficient financial provision for asset maintenance and replacement.

As recognised by the Expert Group on Asset Valuation Methods and Cost Recovery Definitions for the Australian Water Industry, prices need to reflect all known resource costs (Expert Group 1995, p. 14). In both urban and rural areas, the CoAG water agreement obliges water and wastewater businesses to set prices that are consumption-based and fully recover costs (including operating and maintenance expenses, administrative costs, natural resource management costs imposed on and incurred by the business, finance costs, depreciation expenses and a non-negative rate of return reflecting the opportunity cost of capital). Because most of the cost of providing wastewater services to domestic and small commercial consumers is fixed, use-based charges for services provided to these categories of consumers are less relevant, although charges for services provided to high level waste dischargers should be linked to use.

Water and wastewater businesses are generally the only provider of water and wastewater services in a geographic area. Reflecting this, the CoAG pricing principles impose a stricture that businesses avoid monopoly pricing. Prices should be set to recover no more than efficient business and resource management costs, with the rate of return on capital calculated using the weighted average cost of capital. Most States and Territories subject their monopoly water businesses to price regulation by the jurisdictional economic regulator.

Where service providers are required to provide services to classes of customers at a price below full cost, the cost should be fully disclosed and ideally paid to the service provider as a community service obligation. Cross-subsidies that create inefficiencies should be eliminated and those retained reported transparently. Governments have an obligation to explain the intent of any community service obligations and cross-subsidies to show that they do not undermine CoAG's overall policy objective of an efficient and sustainable water industry. The National Competition Council does not assess the adequacy of governments' explanations — rather it seeks to understand how in totality the community service obligations and cross-subsidies do not undermine CoAG's policy objective.

The water reform agreement set a timeframe for implementing the pricing reforms: 1998 for urban service providers and 2001 for those in rural areas. Following the 2001 NCP assessment, CoAG senior officials asked the National Competition Council to assess governments' implementation of urban and rural water pricing reforms in 2003 and 2004 respectively. Consequently, in this 2003 NCP assessment, the Council examined cost recovery by urban metropolitan and nonmetropolitan water and wastewater businesses, focusing on those with more than 1000 property connections. The Council also reported on progress towards cost recovery by rural water businesses. The Council considered the following questions in assessing governments' compliance with the CoAG obligation on cost recovery.

- Are urban water and wastewater businesses setting prices that achieve full cost recovery in accordance with the CoAG pricing principles? Pricing by water and wastewater businesses that fully recovers costs and is based on efficient resource pricing and business costs encourages efficient customer-driven service provision and appropriate price signals for consumers.

- Are urban water and wastewater businesses applying appropriate asset valuation methods and are businesses earning a real rate of return on the written-down replacement cost of their assets? Robust information on the replacement cost (real cost) of providing water infrastructure, rather than on measures such as historic cost (original purchase price), enables service providers to properly provide for asset replacement/refurbishment in prices. Achieving a non-negative rate of return safeguards against undermining the business's asset base. Factoring the cost of infrastructure into water and wastewater service prices using asset values based on the deprival value method (unless an alternative approach can be justified) better signals the true cost of water consumption.

- Are dividend payment policies and the dividend distributions by water and wastewater businesses reflecting commercial reality and simulating a competitive market outcome? Setting an upper limit for dividend distribution by government water service businesses — on the basis of the corporations law requirement that dividends be paid only out of profits (the current year's profit plus accumulated retained profits) — guards against water and wastewater service providers having insufficient financial resources to conduct their business and is consistent with the Competition Principles Agreement obligations on competitive neutrality.

- What natural resource management requirements are imposed on water businesses and what are the costs of these requirements? Are the costs transparently passed on to water users in prices? To remain viable, water and wastewater businesses need to recover the costs of any environmental and natural resource management obligations imposed on them by governments. Prices that reflect an appropriate level of environmental costs encourage environmentally-aware water use.

- Have cross-subsidies that are not consistent with efficient service provision been eliminated or, at a minimum, has the objective and quantum of remaining cross-subsidies been transparently reported? The Council does not consider whether the rationale for a cross-subsidy is appropriate. Rather, it looks for an explanation of the intent of any cross-subsidies, to ensure that they are consistent with an efficient and sustainable water industry.

- Do community service obligations (CSOs) have an explicit public benefit objective? Are they clearly defined, transparently reported and directly funded, with the cost fully disclosed? The Council does not consider whether the rationale for an individual CSO is appropriate. Rather, it looks for governments to demonstrate that CSOs are provided in a way that does not undermine the achievement of an efficient and sustainable water industry.

- Are urban water and wastewater businesses recovering rates and taxes (or rate and tax equivalents)? The CoAG pricing principles recognise taxes (or tax equivalents) as a component of the full (economic) cost that water businesses are to recover to ensure viability. Most urban water authorities have introduced tax equivalent regimes.

Consumption-based pricing

Water businesses are to set prices that reflect the volume of water supplied to encourage more economical water use. Businesses should implement a two-part tariff (comprising a fixed access component and a volumetric cost component), where this is cost-effective. Bulk water suppliers should set use-based charges (or a two-part tariff with an emphasis on the volumetric component).

Reference: CoAG water reform agreement, clauses 3(a)–(c)

Consumption-based (or volumetric) pricing provides a financial incentive to use water efficiently, thus rewarding water conservation. Conserving water can defer the need to invest in new water infrastructure, meaning potentially substantial savings to the community and environmental benefits. Most urban water providers had introduced consumption-based pricing by the 2002 NCP assessment. Some water businesses, however, were still setting prices linked to factors such as property value and providing free water allowances. Water charges linked to property value are less likely to provide a strong volumetric signal, and free water allowances in most cases inhibit incentives for economical water use. Wastewater charges can also have a volumetric focus where the charge is linked to the volume of waste and pollutant/toxicity load.

The Council looked for evidence that customers of water businesses with more than 1000 connections face a strong volumetric signal, and for entities discharging large volumes of waste and/or high-strength waste to face charges linked to the volume or strength of the discharge. Because use-based charges for domestic and small commercial consumers of wastewater are unlikely to be cost-effective, a fixed charge for wastewater services provided to these categories of consumers is appropriate.

Where businesses had not introduced consumption-based pricing by 30 June 2003 or committed to do so, the Council looked for robust evidence that the introduction of consumption-based pricing would not be cost effective. Where water charges (or a component of charges) continued to be based on property value or some other measure, the Council looked for governments to show that the method of charging does not undermine the principle of consumption-based pricing or lead to nontransparent cross-subsidies among different customer classes. Where free water allowances are retained or are being phased out over a period beyond 30 June 2003, the Council looked for evidence that most customers face a strong volumetric signal for the bulk of the water that they receive.

Water allocations and entitlements, including provision of water to the environment

Governments are to establish comprehensive systems of water entitlements backed by the separation of water property rights from land title and the clear specification of entitlements in terms of ownership, volume, reliability, transferability and, if appropriate, quality. Governments must have determined and specified water rights, including reviewing dormant rights.

A comprehensive system of water entitlements is defined as '*establishing water allocations to be put in place which recognise both consumptive and environmental needs. The system is to be applicable to both surface and ground water. However, applications to individual water sources will be determined on a priority needs basis (as determined by an agreed jurisdiction-specific implementation program).'*

Reference: COAG water reform agreement clause 4 and the January 1999 tripartite meeting. The tripartite meeting was held between representatives of the National Competition Council, the High Level Steering Group on Water (augmented by representatives from the Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ) and the Australian and New Zealand Environment and Conservation Council (ANZECC)) and the Committee on Regulatory Reform to consider the implementation of the CoAG water reform framework. CoAG subsequently endorsed the recommendations from the meeting.

The CoAG water reform agreement acknowledged a need to better define the nature of water rights and to separate them from land title. The agreement also obliged governments to specify the amount of water (in terms of ownership, volume, reliability, transferability and, if appropriate, quality) available for extractive uses and to formally recognise the environment as a legitimate user of water. Governments must make an appropriate amount of water available for the environment. This amount should be determined, wherever possible, on the basis of the best scientific information available and account for the water required to enhance/restore the health of river systems and groundwater basins.

In previous NCP assessments, the Council found that all governments had legislated to establish systems of water rights separate from land title. Implementing these systems involves converting existing water allocations to the new entitlements systems, developing operational systems for registering entitlements, and developing and implementing water management plans for river systems and groundwater basins. Water management plans establish the amount of water that is available in a system and set out the arrangements for sharing that water among different users, including the environment.

In previous NCP assessments, the Council considered the legislative basis for establishing water rights in each jurisdiction. It also previously considered governments' progress in water management planning and in implementing the institutional arrangements needed to support effective water rights systems. On these matters, the Council draws the following interpretations from CoAG decisions.

- Water rights should be linked to a robust adaptive resource planning system.

- Water rights should be clearly specified so as to promote efficient trade within the social, physical and ecological constraints of the catchments.

- Water rights should be specified over the long term, exclusive, enforceable and enforced, transferable and divisible to provide for sustainability and community needs and to reflect the scarcity value of water.

- Water users should have the highest possible level of security in terms of the nature of the right, and absolute security of ownership. (While a 'lease in perpetuity' maximises security, it is not required by the CoAG water reform agreement.)

- Governments may provide compensation where, for example, reductions in reliabilities or other parameters of entitlements are abrupt or extensive, but the CoAG water reform agreement does not require them to provide compensation. Consequently, whether compensation is provided is not relevant to the assessment of compliance.

- Any constraints on the capacity to trade water rights should be based on a sound public benefit justification and minimise impacts on efficient trading.

This 2003 NCP assessment reported on governments' progress in implementing new water rights arrangements following the passage of legislation in all jurisdictions that created water rights that are separate from land title. The major implementation issues centre on progress with water management planning, the conversion of existing water allocations to new licence systems and the development of systems for registering entitlements. The Council also considered one matter remaining from the 2002 NCP assessment. New South Wales was to have established a new access licensing system (including regulations under the *Water Management Act 2000* to put in place a system for renewing access licences) and a new system for registering water rights in January 2003. The New South Wales Government deferred these measures — along with the commencement of its water sharing plans — to 1 January 2004 as a result of the Commonwealth Government foreshadowing CoAG work on a new intergovernmental agreement on water.

Provision of water to the environment

Governments are to establish a sustainable balance between the environment and other uses, including formal provisions for the environment for surface water and groundwater. In doing so, governments are to have regard for the ARMCANZ/ANZECC National Principles for the Provision of Water for Ecosystems (box 1.1).

Environmental requirements are to be determined wherever possible on the best available scientific information and governments are to have regard to the intertemporal and interspatial water needs required to maintain the health and viability of river systems and groundwater basins. For river systems that are overallocated or deemed to be stressed, governments are to provide a better balance in water resource use, including appropriate allocations to the environment to enhance/restore the health of river systems.

Governments should also consider environmental contingency allocations, with a review of allocations five years after they have been initially determined.

The 1999 tripartite meeting clarified the commitment to provide water for the environment and timeframes:

For the second tranche [1999], jurisdictions submitted individual implementation programs, outlining a priority list of river systems and/or groundwater resources, including all river systems which have been over-allocated, or are deemed to be stressed and detailed implementation actions and dates for allocations and trading to the NCC for agreement, and to Senior Officials for endorsement. This list is to be publicly available.

For the third tranche [2001], States and Territories will have to demonstrate substantial progress in implementing their agreed and endorsed implementation programs. Progress must include at least allocation to the environment in all river systems which have been over-allocated, or are deemed to be stressed.

By 2005, allocations and trading must be substantially completed for all river systems and groundwater resources identified in the agreed and endorsed individual implementation programs.

Reference: CoAG water reform agreement, clauses 4(b)–4(f); and 1999 tripartite meeting

Provision of water to the environment recognises the importance of maintaining biodiversity, addressing salinity, visually improving waterways, lakes and dams, improving habitats for fauna and flora and contributing to reduced land degradation. Achieving improved environmental outcomes is a central objective of the CoAG water reform agreement. Clause 4 of the agreement obliges governments to determine comprehensive systems of water allocations including environmental allocations for surface and groundwater resources. The 1999 tripartite meeting on water determined that progress should involve allocations for environmental purposes in all stressed and overallocated river systems by 2001. By 2005, allocations must be substantially completed for all river systems and groundwater resources identified in governments' endorsed programs.

A further outcome of the tripartite meeting was that governments, in demonstrating a sustainable balance between the environment and other uses for surface water and groundwater, should provide formal allocations for water systems consistent with the Agriculture and Resource Management Council of Australia and New Zealand/Australian and New Zealand Environment and Conservation Council (ARMCANZ/ANZECC) National Principles for the Provision of Water for Ecosystems (box 9.1). The national principles, while not the framework for decisions on water allocation, provide direction on how water management processes should deal with the issue of providing water for ecosystems. The key objective of the national principles is to sustain and, where necessary, restore ecological processes and the biodiversity of water-dependent ecosystems, recognising that adequate water flow is critical for maintaining natural ecological processes and biodiversity.

National principle 5 requires action (including reallocation) be taken to meet environmental needs where environmental water requirements cannot be met because of existing uses. Principle 4 states that the provision of water for ecosystems should go as far as possible to meeting the water regime necessary to sustain the ecological values of aquatic ecosystems while recognising the existing rights of other users. This principle thus introduces scope for socioeconomic decisions also to guide water allocations. Principle 12 requires that all relevant environmental, social and economic stakeholders be involved in water allocation planning and decision-making on environmental water provisions.

The national principles (specifically principles 4 and 5) recognise that, where there are existing users, appropriate allocations of water for consumptive and environmental purposes should be decided on the basis of full information about the ecological requirements of systems and the impacts on existing users, with the objective of ultimately achieving appropriate environmental outcomes. Integral to this is that the reference groups developing water management arrangements (and therefore determining the amount of water for extractive uses and environmental allocations) be broadly representative of the affected community. The appropriate application of the CoAG water reform agreement (incorporating the national principles) thus depends on governments ensuring that reference groups and their communities have access, wherever possible, to information on: the science-based calculation of the water requirements for sustaining ecological values; the extent of any socioeconomic trade-offs from the recommended water requirements and the rationales for the trade-offs; and the expected impact of any trade-offs on ecological values. The availability of this information (particularly an awareness of the consequences of departing from scientifically-recommended environmental flows), and access to the views of a well-informed community, mean that reference groups will be better placed to decide how much water should be provided for environmental purposes.

Obligations relating to environmental allocations were relevant in the 2003 NCP assessment for New South Wales, Victoria and Queensland — all of which have stressed or overallocated river systems. The Council considered the progress made by New South Wales and Queensland in this area in supplementary NCP assessments in 2002. Victoria provided a three-year program for improving the health of its stressed rivers in 2001. Under this program, Victoria committed to establish river health/flow rehabilitation plans for five priority river systems by 30 June 2003. Apart from assessing progress by these three jurisdictions, the Council reported on all governments' implementation of their water management arrangements against the 2005 CoAG deadline for substantial completion of allocations.

Other elements of the CoAG water reform agreement also have implications for environmental outcomes. Clauses 3(a)–(d) require water pricing regimes to be based on the principle of consumption-based pricing, thus providing a greater incentive for water conservation. Clause 3(d)(3) obliges governments to show that new rural infrastructure projects or extensions to existing schemes are ecologically sustainable before investing in those schemes. Clause 5, which seeks to facilitate water trading, recognises that trading (particularly cross-border trading) may be legitimately constrained for ecological reasons. Clause 6(c) requires that, as far as possible, the role of water industry standards-setting and regulation — including environmental regulation — be separated institutionally from businesses providing water and wastewater services. Clause 8 defines several obligations relating to the environment including the implementation of the National Water Quality Management Strategy (NWQMS) and the establishment of land care practices to protect rivers with significant environmental value.

Box 9.1: ARMCANZ/ANZECC National Principles for the Provision of Water for Ecosystems

Principle 1: River regulation and/or consumptive use should be recognised as potentially impacting on ecological values.

Principle 2: Provision of water for ecosystems should be on the basis of the best scientific information available on the water regimes necessary to sustain the ecological values of water dependent ecosystems.

Principle 3: Environmental water provisions should be legally recognised.

Principle 4: In systems where there are existing users, provision of water for ecosystems should go as far as possible to meet the water regime necessary to sustain the ecological values of aquatic ecosystems whilst recognising the existing rights of other water users.

Principle 5: Where environmental water requirements cannot be met due to existing uses, action (including reallocation) should be taken to meet environmental needs.

Principle 6: Further allocation of water for any use should only be on the basis that natural ecological processes and biodiversity are sustained (that is, ecological values are sustained).

Principle 7: Accountabilities in all aspects of management of environmental water should be transparent and clearly defined.

Principle 8: Environmental water provisions should be responsive to monitoring and improvements in understanding of environmental water requirements.

Principle 9: All water uses should be managed in a manner which recognises ecological values.

Principle 10: Appropriate demand management and water pricing strategies should be used to assist in sustaining ecological values of water resources.

Principle 11: Strategic and applied research to improve understanding of environmental water requirements is essential.

Principle 12: All relevant environmental, social and economic stakeholders will be involved in water allocation planning and decision-making on environmental water provisions.

Intrastate water trading

Water trading arrangements are to maximise water's contribution to national income and welfare, within the social, physical and ecological constraints of catchments.

Reference: CoAG water reform agreement, clause 5

The CoAG water reform agreement emphasises the importance of maximising the contribution of water to national income and welfare (within the social, physical and ecological constraints of catchments) through water trading. Where they have not already done so, governments are to implement arrangements for water trading once they have settled water entitlements. The CoAG agreement recognises a need for consistency in trading arrangements, to facilitate cross-border trading where this is possible.

In most jurisdictions, water rights may be traded temporarily (for an agreed number of seasons, including consecutive seasonal assignments) or permanently. In some jurisdictions, it is also possible to lease rights with no limit on the duration of the lease. The water management arrangements being developed under State and Territory legislation establish the quantum of tradeable volumetric allocations and set the rules governing trading.

Several implementation issues need to be resolved to achieve effective trading outcomes. The Murray–Darling Basin Commission is examining how best to manage many of these issues.

- Definitions of tradeable water rights (the commodity being traded) need to be consistent across supply systems. Where this is not possible, mechanisms such as exchange rates need to be in place to equate levels of entitlement across systems.

- Environmental clearance processes need to be robust.

- Appropriate administrative arrangements, including reliable and accessible water rights registers are necessary. Ready access to data on the price and volume of water being traded will help to develop water markets.

- Institutional and regulatory arrangements and operational decisions by licence holders (including irrigation trusts) need to facilitate trade unless there is a clear public interest argument for restricting trade.

CoAG determined that the National Competition Council should assess governments' progress with intrastate water trading in 2003 and interstate water trading in 2004. By 2005, arrangements to enable trading must be substantially in place. Some of the matters that are important for intrastate trading are also relevant for interstate trading. The Council may therefore revisit matters considered in this and previous assessments (such as consistency in registry systems) when it examines interstate trade in 2004.

Institutional reform

As far as possible, the roles of water resource management, standard setting and regulatory enforcement, and service provision are to be separated institutionally.

Service providers, in metropolitan areas in particular, are to have a commercial focus, whether achieved by contracting out, corporatisation or privatisation as determined by the relevant government. Service providers are to benchmark their performance and should seek to achieve international best practice.

Constituents are to be given greater responsibility in the management of irrigation areas, for example, through devolution of operational responsibility to local bodies, subject to appropriate regulatory frameworks being established.

Governments are to adopt an integrated approach to natural resource management practices, including:

- demonstrated administrative arrangements and decision-making processes to ensure an integrated approach to natural resource management and integrated catchment management;
- an integrated catchment approach to water resource management, including consultation with local government and the wider community in individual catchments; and
- a consideration of land care practices to protect rivers with high environmental values.

Reference: CoAG water reform agreement, clause 6

Governments should, at a minimum, separate the responsibility for the provision of water and wastewater services from the responsibility for regulation, water resource and environmental management and standards-setting in areas such as health and plumbing. The separation of roles is intended to remove the potential for conflicts of interest, which might arise if, for example, a monopoly water business (or its Minister) has responsibility both for providing water and determining the price and quality of that water. Independent economic regulation is appropriate, given water and wastewater businesses are public monopolies. Independent economic regulation, where the regulator recommends on prices taking account of the CoAG pricing principles and provides its recommendations in a public report, also addresses pricing obligations. If water businesses are too small to justify full monitoring (as is often the case for local government businesses), then there should at least be transparency and accountability in the setting and reporting of prices and service standards. The CoAG agreement does not rule out a water industry regulator and a service provider being responsible to the same Minister, but the relevant government must adequately address potential conflicts of interest in such cases.

The devolution of irrigation scheme management to local bodies can take different forms, ranging from the scheme manager's consultation with local constituents on irrigation management issues to the devolution of operational responsibility to the local level, although the obligation does not require governments to go that far. Any devolution of operational responsibility should occur within an appropriate regulatory framework.

The focus of integrated catchment management is the establishment of institutional arrangements to manage the sustainable use of land and water resources. Catchment management addresses problems such as salinity, river degradation and pollution, biodiversity loss and soil degradation — which threaten agriculture, rural communities, urban communities and other environmental assets. Institutional arrangements best have a statutory underpinning and incorporate mechanisms for effective stakeholder participation. Catchment management should be implemented via partnerships among the different levels of government and nongovernment organisations. Relevant approaches include regional strategies developed under bilateral agreements between the Commonwealth, State and Territory governments on the National Action Plan for Salinity and Water Quality and the Natural Heritage Trust extension.

The requirement to benchmark businesses' performance and the objective that businesses seek to achieve international best practice aim at ensuring that water services are delivered as efficiently as possible. Consistent with this, and with the pricing reforms that seek to ensure water and wastewater businesses earn sufficient revenue to maintain and refurbish their infrastructure, services in metropolitan areas must have a commercial focus. It is up to each State and Territory government to determine how its businesses achieve a commercial focus, whether by contracting out, corporatisation or privatisation.

National Water Quality Management Strategy

Governments are to support ANZECC and ARMCANZ in developing the National Water Quality Management Strategy, by adopting market-based and regulatory measures, water quality monitoring, catchment management policies, town wastewater and sewage disposal measures, and community consultation and awareness.

Governments are to demonstrate a high level of political commitment and a jurisdictional response to the ongoing implementation of the principles contained in the National Water Quality Management Strategy guidelines, including on-the-ground action to achieving the policy objectives.

Reference: CoAG water reform agreement, clauses 8(b) and 8(d)

The National Water Quality Management Strategy (NWQMS) is a response to community concern about the condition of the nation's water. The policy objective is to achieve sustainable use of Australia's water resources by protecting their quality, while maintaining economic and social development. The strategy incorporates a full mix of approaches including, but not limited to, regulatory and market based approaches, education and guidance. It is based on principles of ecologically sustainable development, an integrated approach to water quality management and community involvement in setting water quality objectives. The strategy requires each government to adopt an overarching water quality management plan, supported by endorsed objectives for particular water bodies, catchments or uses.

The NWQMS comprises 21 guidelines for delivering a nationally consistent approach to water quality management. The guidelines have a shared national objective but offer governments the flexibility to respond differently to circumstances at regional and local levels. In particular, developments in integrated resource management (for example, through the National Action Plan for Salinity and Water Quality and the Natural Heritage Trust extension) have enhanced the original NWQMS guidelines.

The Commonwealth Government, after consulting with the States and Territories, proposed a two-yearly review to assess the implementation of the NWQMS guidelines. The Council indicated in the 2001 NCP assessment that it would look in subsequent assessments for governments to show how they have adopted the NWQMS guidelines. Because the two-year timeframe expired in 2003, the Council expected State and Territory governments to have largely implemented the NWQMS by this NCP assessment.

The process for water quality management is described in the NWQMS Implementation Guidelines (1998), the Australian and New Zealand Guidelines for Fresh and Marine Water Quality (2000) and the Australian Guidelines for Water Quality Monitoring and Reporting (2000). While flexible, the following key elements should be implemented.

- There should be active consultation and engagement with the community in setting the environmental values of water, determining water quality objectives and undertaking management actions, including water quality monitoring.

- Environmental values (values of water use for aquatic ecosystems, primary industries, recreation, aesthetics and drinking) of water resources (freshwater, groundwater, marine water and estuarine water) should be identified. Values should be reported according to the scale (the State, regional or local level) at which they have been determined through public consultation. Governments should detail processes and mechanisms for identifying and amending environmental values, and describe the extent to which they have been implemented.

- Water quality and quantity issues that threaten environmental values should be identified and reported. Governments should detail the mechanisms or processes for identifying and reporting water quality and quantity issues in the context of identified environmental values.

- Water quality objectives and environmental water provisions to protect the declared environmental values should be identified and implemented. Water quality and quantity issues are intrinsically linked. Altered flow regimes cause or exacerbate many water quality problems, so integrated management is required.

- Management actions to achieve water quality objectives should be identified and implemented. Governments should describe the extent to which management actions attain and protect environmental values, water quality objectives and environmental flow provisions and their status (for example, drafted, gazetted, reviewed). Examples of management actions include protocols for environmental impact assessment, environmental protection policies, load-based licensing, codes of practice, pollution offset programs and catchment management plans and policies.

- Monitoring programs to review and refine water quality objectives, identify the sources of pollution and evaluate the effectiveness of management actions in meeting water quality objectives should be designed and implemented. The programs should include the role of community water quality monitoring.

- There should be public processes for periodic independent auditing and reporting on the effectiveness of actions to achieve water quality objectives and protect environmental values.

- There should be systematic/mainstream application of relevant national guidelines (for example, application for stormwater and sewage systems).

Water industry legislation review and reform

As well as implementing the CoAG water reform agreement, governments are to review and, where appropriate, reform water industry legislation that restricts competition. In accord with the Competition Principles Agreement, governments must ensure that existing and new legislation does not restrict competition unless:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can be achieved only by restricting competition.

Reference: Competition Principles Agreement, clause 5

Governments had to review and, where appropriate, reform all legislation that restricts competition that existed at June 1996 by 30 June 2002. Reform is appropriate where competition restrictions do not provide a net benefit to the whole community and are not necessary to achieve the objective of the legislation. Any new legislation that restricts competition must also meet this test.

Completion of review and appropriate reform obligations is a key element of the 2003 NCP assessment. Where review and reform implementation was not complete (or a firm transitional path to reform that is in the public interest was not in place) at 30 June 2003, the Council assessed the relevant jurisdiction as having not complied with its legislation review and reform obligation. The Council considered water industry legislation review and reform activity by each jurisdiction, focusing on activity that was still to be completed at the time of the 2002 NCP assessment. Appendix B in volume 3 of this 2003 NCP assessment report summarises the status of water legislation review and reform activity by all jurisdictions at 30 June 2003.

New rural water infrastructure

Investments in new rural water schemes or extensions to existing rural schemes are to be undertaken only after appraisal indicates that the scheme/extension is economically viable and ecologically sustainable.

Reference: CoAG water reform agreement, clause 3(d)(3)

In the past, it was not uncommon for governments to invest in new water infrastructure without appropriate justification. Capital subsidies encouraged investment in noneconomic facilities and overengineering of systems, with adverse economic and fiscal outcomes. Subsidies also encouraged fragmentation, for example where their availability encouraged smaller communities to develop their own facility rather than seek to obtain services from nearby larger authorities. Also, there was often insufficient regard to environmental outcomes.

The CoAG water reform agreement seeks to ensure investment in water infrastructure is justified by requiring that all new investments in rural water schemes or extensions to existing schemes be undertaken only if they are shown, prior to construction commencing, to be economically viable and ecologically sustainable. The Council considers evidence on economic viability where governments contribute funds to a project. It considers evidence on ecological sustainability for all new rural projects, including private investments.

The Council found in previous NCP assessments that State and Territory government mechanisms for appraising the economic and ecological aspects of new schemes are generally satisfactory. Governments' processes appear to provide for appropriate independence, public consultation and scrutiny, and have enough flexibility to match the depth of analysis with the size and significance of the project. The Council's task of assessing compliance involves considering whether governments are applying approval processes appropriately, so new infrastructure decisions are based on robust economic and environmental assessments.

For evidence of economic viability, the Council looks for governments to have analysed relevant economic and social costs and benefits, including any costs of mitigating adverse environmental effects resulting from the new scheme.[1] For large developments, a robust cost–benefit analysis is an effective way of meeting the CoAG obligation. Appraisals should be based on the best information available, with any assumptions and limitations clearly stated. For appraisals of ecological sustainability, the Council looks for information on the nature of the assessment and decision-making processes as well as mechanisms to monitor the impacts of the development and its compliance with environmental standards. The Council considered economic and ecological evidence on the following three projects in this 2003 NCP assessment.

- The Burnett Water Infrastructure Project in Queensland is a proposal for the construction of the 300-gigalitre Burnett River Dam (previously referred to as the Paradise Dam), Eidsvold Weir and Barlil Weir, and the raising of Jones Weir and Ned Churchward (formerly Walla) Weir. The capital cost of the project is estimated at around A$210 million.

[1] Economic viability assessments should discount cash flows using an appropriate discount rate such as a project specific weighted average cost of capital.

- The Clare Valley Water Supply Scheme in South Australia involves the construction of 83 kilometres of new pipeline, two pumping stations and a 4-megalitre water storage to transfer up to 7.3 gigalitres per year of filtered and treated River Murray water to the Clare Valley. The water will be used to improve the reticulated supply of high quality water to several townships, to augment supplies to the Mid-North region, and to supply water to the Clare Valley region for irrigation and bulk water purposes. While initially expected to be a private sector project, the project proceeded as a SA Water project. It is expected to be completed in November 2003.

- The Meander Dam Project in Tasmania is a proposal for the construction of a 43-gigalitre dam on the Meander River to supply licensed water users including irrigation, town domestic water supplies, and a proposed mini hydroelectric power plant, and to provide environmental flow requirements for the Meander River.

Public education and consultation

Governments are to consult on the significant CoAG reforms (especially water pricing and cost recovery for urban and rural services, water allocations and trade in water entitlements). They should implement education programs on the benefits of reform.

Reference: CoAG water reform agreement, clauses 7(a)–7(e)

CoAG recognises the importance of governments consulting on water reform and involving the community in taking decisions on policy, and putting in place educational programs that show the benefits of reform. Wide consultation and community involvement produces more and better information on which to base decisions. Decisions that are consensus driven are more likely to satisfy stakeholders, and a community that is better informed about water issues and their importance is much more likely to accept change.

The Council assesses governments' performances against public education and consultation obligations each year, focusing on the areas of reform that are due for assessment. Consequently, for the 2003 NCP assessment, the Council considered governments' public education and consultation activity concerning urban pricing, water management planning (including allocations to the environment), institutional reform, intrastate water trading, integrated catchment management and water quality commitments relating to the NWQMS.

Reform progress

The remainder of this chapter summarises the progress that each State and Territory made in implementing the CoAG water reform agreement and provides a brief overview of work by the Murray–Darling Basin Commission, focusing on the reforms scheduled for assessment in 2003. Volume 3 of the Council's 2003 NCP assessment report contains a detailed discussion of each State and Territory's water reform activity and the Council's 2003 assessment of each State and Territory's performance in implementing the water reform agreement. Volume 3 also discusses relevant work by the Murray–Darling Basin Commission.

New South Wales

Urban water and wastewater pricing

The four metropolitan urban water and wastewater service businesses — the Sydney Water Corporation, the Hunter Water Corporation, the Gosford City Council and the Wyong Shire Council — all set prices on a consumption basis to achieve full cost recovery (the Sydney Water Corporation will eliminate its few remaining property-based charges by June 2005). The Sydney Catchment Authority, which owns the headworks infrastructure and supplies bulk water to the Sydney Water Corporation, also sets prices to achieve full cost recovery. The Independent Pricing and Regulatory Tribunal (IPART) regulates the prices of services provided by the four urban businesses and the Sydney Catchment Authority. The current IPART price determinations for the urban metropolitan businesses and the Sydney Catchment Authority apply to 30 June 2005.

Except for Gosford and Wyong, which do not apply taxes or tax equivalents, prices for urban metropolitan water and wastewater services include all components for viability identified in the CoAG pricing principles. New South Wales legislated during 2003 to require all local government businesses to make tax equivalent payments. New South Wales anticipated that the next price path for the Gosford and Wyong water and wastewater businesses will incorporate tax equivalents.

New South Wales has 87 nonmetropolitan urban local government water and wastewater utilities with more than 1000 connected properties. About three-quarters of these utilities set prices that achieved full cost recovery in 2001-02. The utilities that are yet to achieve full cost recovery are relatively small, and collectively represent about 3 per cent of all property connections held by utilities with more than 1000 connections. About 70 per cent of water utilities with more than 1000 connections apply consumption-based pricing.

Some of those yet to introduce fully consumption-based pricing impose an access charge and free water allowance, with a use-based charge for excess water consumption. These arrangements may approximate consumption-based pricing if the free water allowance is limited to the quantity needed to meet public health requirements and if there is an appropriate charge for discretionary use above the allowance. Several utilities are reducing their free water allowances. Although some still provide relatively high allowances, these utilities represent only a small proportion of the total number of water connections in the State.

New South Wales issued best practice pricing guidelines in February 2003, which will assist the remaining utilities to move to full cost recovery and adopt consumption-based pricing. In addition, the *Local Government Amendment (National Competition Policy) Review Act 2003* introduced best practice management guidelines for water and wastewater utilities. The management guidelines incorporate arrangements that increase the incentive for utilities to price appropriately. New South Wales anticipates an increased number of utilities to fully recover costs in 2003-04 as a result of the best practice pricing and management guidelines.

Water entitlements: access licences and the register of entitlements

At the time of the 2002 NCP assessment, New South Wales was converting its system of five-year licences under the *Water Act 1912* to a new system of 15-year access licences under the *Water Management Act 2000*. The Government was giving priority to converting licences for water sources covered by its first round of water sharing plans (which cover about 80 per cent of the State's water). Regulations under the Water Management Act define the arrangements for licence renewals. The Regulations give priority to existing licence holders, with licences expected to be renewed subject to standard environmental assessments. New South Wales was also working on a system for registering water rights at the time of the 2002 NCP assessment. The register is intended to give licence holders certainty in their right to water, such that access licences can be used as mortgage security in the same way that property can.

The new licensing and approvals system and the register were to be operational by January 2003. Following the Deputy Prime Minister's announcement on 4 June 2003 foreshadowing a new intergovernmental agreement on water, New South Wales deferred the application of its water management arrangements, including the commencement date for the new licensing system and registry, to 1 January 2004.

Provision of water to the environment in stressed and overallocated systems

New South Wales gazetted water sharing plans for 35 surface water and groundwater systems, which provide allocations of water for environmental purposes. The plans are due to commence on 1 January 2004, following the New South Wales Government's decision to defer the plans' commencement by six months to accommodate CoAG work on water industry matters. This work may alter the approach to some areas of the 1994 CoAG water agreement, including the allocation of water to the environment (which is a matter covered by the New South Wales water sharing plans).

Several aspects of the water sharing process in New South Wales suggest the likelihood of better environmental outcomes than are available under pre-existing processes. The plans allocate water for extractive and environmental purposes, and so recognise the environment as a legitimate user of water. For the unregulated rivers, the plans provide the first formal allocation of water to the environment. The plans were developed by water management committees, which had access to a range of scientific and other information, via an extensive public process. The plans incorporate processes for monitoring environmental outcomes and make provision for increasing the amount of water for the environment if monitoring outcomes indicate this is warranted. New South Wales published summary guides and fact sheets that provide information on the plans for licence holders and the wider community. The Government advised that it also intends to provide more detailed information on the environmental benefits of its water sharing plans.

Intrastate trade in water

The New South Wales Government's gazetted water sharing plans and the Statewide access licence dealing principles will govern water trading in the State. The Government's decision to defer commencement of the gazetted water sharing plans and the new registry system until 1 January 2004 will delay the commencement of water trading under the new arrangements. Trading will occur in the interim under the Water Act.

The new arrangements provide greater scope for water trading than those previously in place. The trading rules in the water sharing plans contain restrictions on water trading, however, some of which appear to be related to objectives other than environmental protection or the practical management of trading systems. There are also some remaining prohibitions on trade out of some irrigation districts.

Institutional reform

Structural separation

New South Wales transferred responsibility for State Water, previously a ring-fenced business unit within the (former) Department of Land and Water Conservation, to the Ministry of Energy and Utilities. This separation, which followed consultation with water users, clearly distinguishes between the manager of built assets and the natural resource regulator. IPART has responsibility for price regulation of the four urban water and wastewater service providers, the Sydney Catchment Authority and State Water. New South Wales annually benchmarks the performance of its nonmetropolitan urban water and wastewater providers, which enables customers to compare the standard of service of the different providers.

Integrated catchment management

New South Wales continued to make progress in implementing its integrated catchment management obligations. The principal achievement since the 2001 NCP assessment is the development of 21 catchment blueprints covering the whole of the State. Other developments include: improved coordination of natural resource management; bilateral agreements on the National Action Plan for Salinity and Water Quality and the Natural Heritage Trust extension with the Commonwealth Government; ongoing work by the Healthy Rivers Commission; and the Wentworth Group Report into land clearing and catchment-related issues.

National Water Quality Management Strategy

New South Wales continued to make progress in implementing the NWQMS framework. Significant developments since 2001 include:

- the development of long-term environmental objectives by the Healthy Rivers Commission for a number of river systems, drawing on NWQMS guidelines;
- the release of an Environment Protection Authority consultation paper on marine water quality objectives, drawing on NWQMS guidelines;
- the establishment of the State Water Management Outcomes Plan to set overarching policy contexts, targets and strategic outcomes for water resources, with regard to NWQMS requirements;
- the incorporation of water quality initiatives in water sharing plans;

- the release of an interim approach to reviewing, coordinating and streamlining water monitoring arrangements;
- the development of new water quality benchmarks in accord with NWQMS methods;
- ongoing work on market-based measures to improve water quality; and
- the extended funding of stormwater management programs.

Legislation review and reform

The New South Wales Water Management Act repealed a range of water industry legislation. (New South Wales's schedule of legislation review and reform activity lists 18 Acts that have been repealed.) The Water Management Act considerably improves the arrangements for water management (including water trading) in the State. The provisions in the Water Management Act relating to water licensing and trading, as well as the first round of water sharing plans, are scheduled to commence on 1 January 2004.

Public education and consultation

Public education and consultation activity by New South Wales in 2002-03 concerned the development and implementation of water sharing arrangements, integrated catchment management activity, water and wastewater pricing, and structural reform matters.

New South Wales developed its State Water Management Outcomes Plan providing overarching State water management targets and its first round of water sharing plans via public processes. Preparation of the water sharing plans involved the release of draft plans for public consultation, and the water management committees considering public submissions prior to finalising their recommendations on water sharing arrangements.

Some stakeholders involved in developing the first round of draft water sharing plans commented adversely on a range of matters, including the timing of the release of the interim State Water Management Outcomes Plan, delays in the availability of advisory notes and delays in finalising the plan. Some water management committees also raised concerns with the timing of the release of key sources of technical and scientific information. New South Wales undertook to monitor future processes for developing water sharing plans to ensure that similar problems do not arise. The Government noted that the gazettal of the State Water Management Outcomes Plan and the experience gained from developing the first round of water sharing plans will help to inform the process for future plans. New South Wales published summary guides and fact sheets on almost all of its completed water sharing plans. These provide an overview of the main elements of each of the plans, including their environmental water provisions.

New South Wales has 21 catchment blueprints establishing specific and measurable catchment targets covering biodiversity, water quality and flow, salinity, riverine ecosystems, soil health and native vegetation. The blueprints were drafted by catchment management boards and were endorsed by the New South Wales Government in 2002 following public consultation. All blueprints are public documents.

Independent economic regulation of the four urban metropolitan service providers, the Sydney Catchment Authority and State Water assists public understanding of the cause-and-effect relationship between infrastructure performance and standards of service and related costs. Similarly, the Government's best practice pricing guidelines and management guidelines for local water and wastewater utilities, and its conduct of information seminars, should assist public understanding of this element of water reform. Before transferring responsibility for State Water from the (former) Department of Land and Water Conservation to the Ministry of Energy and Utilities, New South Wales consulted with water users.

Victoria

Urban water and wastewater pricing

There are four urban metropolitan providers of water and wastewater services in Melbourne. Melbourne Water is the wholesaler providing bulk water supply, sewerage treatment, drainage, and floodplain management services to the three retail service providers. These are City West Water, South East Water and Yarra Valley Water. Outside of metropolitan Melbourne, there are 15 regional urban water authorities providing services to country towns. There are some two million property connections in Victoria, of which about 30 per cent are supplied by the regional urban authorities.

Victoria's 2001 price review of water, sewerage and drainage services established a three-year price determination for these services (including regional urban services) from 1 July 2001 to 30 June 2004. The review sought to establish prices that would fall between a floor price that ensures commercial viability and a ceiling price that avoids monopoly rents, consistent with CoAG pricing principles. Victoria's cost recovery estimates indicate that all regional urban water authorities achieved at least the floor price for full cost recovery in 2002-03. Victoria's widespread adoption of volumetric charges as part of a two-part tariff and the absence of free water allowances ensures that water users across the State have a strong incentive to use water efficiently.

The Victorian Government is canvassing structural and pricing issues in a green paper review of the State's water industry. In addition, Victoria will bring the water industry under the jurisdiction of the Essential Services Commission from 1 January 2004, with the commission's first price determination for water to take effect on 1 July 2005.

Water entitlements

Under the *Water Act 1989*, bulk entitlements are issued to rural and urban water authorities and are a legal entitlement to water. Bulk entitlements define the amount of water that an authority may take from a river or storage, the rate at which it may be taken and the reliability of the entitlement. They are granted to rural water authorities for the regulated river systems and to urban authorities irrespective of whether they are supplied by regulated or unregulated rivers.

In the regulated irrigation districts, bulk entitlements are issued to the rural water authorities as the basis for providing water to irrigators. Irrigators who pump directly from rivers require a licence to take and use water. Individual water rights in the irrigation districts are listed in a schedule to the bulk entitlement. In the unregulated river systems, water rights are provided through licences that allow the holder to divert water. In water supply protection areas, diversions are managed via streamflow management plans, which are being developed on a priority needs basis. Streamflow management plans include rules covering the granting of new water licences and flow sharing (including environmental flows) under a range of flow conditions. Lower priority rivers are subject to Statewide management rules rather than a formal plan. Licences are required to extract groundwater. Where water allocations exceed 70 per cent of the sustainable yield of an aquifer, a groundwater supply protection area is established and a groundwater management plan developed.

Bulk entitlements now cover approximately 85 per cent of the State's total water resources. Victoria expected to complete the conversions for all major systems (except the Loddon River and possibly Melbourne) by the end of 2003, and to grant all bulk entitlements by the end of 2004. For the unregulated rivers, three streamflow management plans were completed at March 2003, a further 28 were in progress and 11 were still to commence. Of the 28 plans in progress, Victoria expected to complete 10 by late 2003 and virtually all of the remaining plans by June 2004. For groundwater sources, the Government had established 18 water supply protection areas by March 2003, and was seeking declaration for a further four areas. Victoria had approved seven groundwater management plans by March 2003, and expected to submit a further seven plans for approval by mid-2003. Initial meetings of consultative committees were being held in the remaining four areas.

The Department of Sustainability and Environment maintains a register of bulk entitlements, which is publicly available. Rural water authorities are required to maintain registers of water entitlements in irrigation districts and licences for diversions from unregulated rivers. Third party interests can be noted on the registers.

Provision of water to the environment

Victoria progressed its flow rehabilitation strategies for the Thomson, Macalister, Maribyrnong and Lerderderg rivers and Badger Creek — five of the State's stressed river systems. Victoria has completed flow rehabilitation plans for two of these systems (the Maribyrnong and Lerderderg rivers) and determined a course of action for Badger Creek. The Government anticipated that flow rehabilitation plans for the Thomson and Macalister rivers would soon be completed.

Victoria committed funding to modify the Lerderderg Weir to enable it to pass fresher and flushing flows. For Badger Creek, the Government proposes to connect Healesville to an alternative water supply, which it has scheduled for 2012. As an interim measure, Melbourne Water committed funding to undertake works to improve the health of Badger Creek. Victoria decided not to implement the flow rehabilitation plan for the Maribyrnong River, considering that the Statewide return in terms of environmental outcomes from flow restoration activities would be greater for other rivers. While noting that the recommended environmental flows are provided in most reaches of the river, Victoria considers that there is a need (as identified in the plan) for additional information before it commits funds to restoring flows in all reaches. The Government referred the Maribyrnong plan to the Port Phillip and Westernport Catchment Management Authority to incorporate specific actions to improve river health into its regional catchment strategy and river health planning processes. Instead of implementing the Maribrynong plan, Victoria will implement a streamflow management plan for the King Parrot Creek. Victoria indicated that this plan provides a greater environmental outcome than the Maribyrnong plan for the level of commitment required.

Victoria established a technical audit panel to consider whether the information and method used in the development of environmental flows are the best available at the time, and whether the assessment of risks is properly done. The audit panel's reviews will be made public. Victoria also produced guidelines for the preparation of streamflow and groundwater management plans, which require reference committees to obtain comments from the technical audit panel, including comments on the risks to the environment of the committee's recommended flow regime. The draft plan must incorporate the comments before it is made available for public comment. In addition, the Department of Sustainability and Environment makes environmental flow assessments and related documentation available in its library and on the Internet.

Intrastate trade in water

Victoria has a well-established trading market for high security water, and trading plays an important role in the State's agricultural production. The Water Act and associated Regulations provide the basis for water trading within the State. The bulk of water trade (94 per cent in 1999-2000) takes place among irrigators in regulated systems. Unregulated systems account for only around 5 per cent of total water entitlements, and trade is correspondingly smaller. Almost 90 per cent of all permanent trade occurs in the large regulated systems in northern Victoria.

Water rights in Victoria are sufficiently specified to allow for efficient trade. While Victoria's registry arrangements do not provide indefeasibility or surety of title, third parties can register an interest in a water right. Trades may not be approved without the agreement of these third parties. Trading arrangements contain measures to protect the water rights of other users and the environment.

Adding to the scope for private trades and the use of brokers, Victoria extended the operations of its water exchange, Watermove, to temporary transfers throughout the State and to and from southern New South Wales. Victoria is considering options for the leasing of water. It also significantly improved the transparency of its trading arrangements. Victoria continued to progress the conversion of the existing rights of water authorities to clearly defined bulk entitlements, and outside the irrigation districts is specifying water entitlements in streamflow and groundwater management plans. Victoria is reviewing two of the remaining constraints on water trading — (1) the requirement for water entitlements to attach to land and (2) the differential returns on bulk water supply — as part of its green paper review of the water industry.

Institutional reform

Structural separation

Victoria will bring the water industry under the economic jurisdiction of the Essential Services Commission from 1 January 2004. Victoria also intends to develop obligations statements for its Melbourne metropolitan, regional urban and rural water businesses to clearly and formally articulate the businesses' obligations. It expects to issue the statements (which will be publicly available) by March 2004.

Devolution of irrigation scheme management

Rural customer consultative committees will continue to provide input to determining pricing proposals and service level requirements for the rural water authorities after the water industry is brought under the economic jurisdiction of the Essential Services Commission. Victoria indicated that it is committed to strengthening the committees and more effectively involving the broader customer base, to increase the transparency of negotiations on service levels and prices.

Integrated catchment management

Since the 2001 NCP assessment, Victoria has focused on reforming its administrative framework and reviewing regional catchment strategies. These initiatives are interrelated, and aim to ensure that integrated catchment management is administered in accord with the requirements of the National Action Plan for Salinity and Water Quality and the Natural Heritage Trust extension.

Victoria has in place, via its Victorian River Health Strategy, a means of coordinating the management of river health issues, including water quality and quantity issues. The strategy has been designed to align with the catchment management authority/regional catchment strategy framework, and reflects the administrative approaches and management processes required under the national action plan. Victoria's natural resource management framework facilitates consideration of, and support for, land care practices to protect rivers with high environmental values. In particular, Victoria's action plan for second generation land care (released in 2002) sets directions for the next 15 years.

Catchment management authorities face the concurrent and interrelated tasks of revising their regional catchment strategies and developing river health strategies. Moreover, they are developing strategies against evolving national and state policy contexts, including the national action plan and Natural Heritage Trust extension. This has meant some delay in Victoria's review and renewal of regional catchment strategies against the State's original milestones.

National Water Quality Management Strategy

Victoria is implementing the NWQMS framework via regional catchment strategies, river health strategies and action plans covering water quality, water quality monitoring and wastewater and effluent management at the regional level. Significant developments since the 2001 NCP assessment, some of which are still under way, include:

- policy development in frameworks for setting regional water quality and river health targets through the Victorian River Health Strategy, with NWQMS guidelines used as input in the development of targets;
- the proposed incorporation of risk-based environmental quality objectives, derived from objectives set out in the NWQMS;
- the development of an assets register, drawing in part on environmental values in the NWQMS;
- the completion of the Catchment Condition Indicators project, and its publication on a web site; and
- the introduction of the Safe Drinking Water Bill in April 2003 and the proposed introduction of new regulatory measures and drinking water quality standards based on NWQMS guidelines.

Legislation review and reform

Victoria commissioned an independent review of the State's water legislation and associated regulations in 1999. The review examined the Water Act, *Water Industry Act 1994*, the *Melbourne and Metropolitan Board of Works Act 1958* and the *Melbourne Water Corporation Act 1992* and associated subordinate legislation to identify all the key competitive restrictions in the provision of water and sewerage services. The review was undertaken via an extensive public process.

The review considered and recommended on: restrictions on the ability of the three urban retail water and sewerage licensees and authorities to perform functions and/or act outside defined areas; provisions relating to the allocation and trading of water entitlements; the powers of authorities and licensees, including the power to require connection to the sewerage system; the arrangements and criteria for issuing licences and permits; and consistency in legislation and regulation. The Government accepted the majority of the recommendations and work to progress implementation is under way.

Key outcomes include: the introduction of legislation to give effect to the economic regulation of the water industry by the Essential Services Commission; the release for public comment of legislative proposals to allow leasing of water entitlements; the canvassing of options for managing structural change; a commitment to review the requirement to own land as a condition of owning a licence; a commitment to review the differential rate of return on bulk water supplies before the Essential Services Commission sets prices for bulk water; and a commitment to develop a Statewide legislative framework, to be informed by the findings of the green paper review of the water industry.

Public education and consultation

Victoria undertakes public education and consultation through public programs on major reform issues.

- The Government consults with the community and stakeholders in developing and implementing bulk entitlements, streamflow management plans, groundwater management plans, and river health plans and other natural resource management programs.

- The renewal of Victoria's regional catchment strategies involved considerable consultation with regional communities.

- The State's review of water industry legislation involved an extensive public process.

- The urban water businesses have customer consultation obligations via operating licences and water services agreements. Rural water authorities engage with their customers via water services committees.

- The Victorian Farm Dams (Irrigation) Review Committee held a series of public meetings and public hearings across the State. A discussion paper was released for comment and the submissions considered by the review committee.

- Legislative proposals to establish the arrangements for a Statewide drinking water quality framework were established following a consultation process involving the release of a proposals paper and a discussion paper and consideration of submissions from interested parties.

- The consultation process to develop arrangements to establish the Essential Services Commission included the release of an issues paper and a proposals paper for public comment.

- The Government adopted the Melbourne Water Resources Strategy with the objective of raising general awareness and understanding within the Melbourne area community of the need to change prevailing attitudes to water. The strategy aims at achieving the sustainable management of greater Melbourne's water resources over the next 50 years. The Government is also taking steps to raise community awareness of the need to conserve water supplies. The Victorian Water Industry Association is assisting in making educational material regarding water available to Victorian schools by cataloguing information developed and held by Victorian water businesses.

Queensland

Urban water and wastewater pricing

The water and sewerage businesses of Queensland's 18 largest local governments are required under the *Local Government Act 1993* to achieve full cost-recovery. They must also apply consumption-based pricing unless they can show that this would not be cost-effective. The Queensland Government does not require the water and sewerage businesses of the other 106 local governments to implement the pricing reforms, although the Government encourages implementation via NCP financial incentives for local governments that implement reform and via its Business Management Assistance Program.

All but one of the 18 largest businesses and all 11 of those with more than 5000 connections (apart from the 18 largest) achieved full cost recovery in 2001-02. There were preliminary figures only for Thuringowa City Council, the one exception among the 18 largest local governments. Some 50 of the 68 businesses with over 1000 connections achieved full cost recovery in 2001-02, and another 11 recovered most costs

Implementation of consumption-based pricing for water services is well advanced. Of the 18 largest businesses, 15 have implemented use-based pricing and two are proposing to do so by 2004-05. Townsville City Council has not implemented consumption-based pricing arrangements, but there is now a sufficiently robust case that this would not be cost-effective at the present time. Nine of the 11 local government businesses with more than 5000 connections (apart from the 18 largest) price on a consumption basis, and one has shown that introducing use-based pricing would not be cost-effective. Some 22 of the 39 businesses with 1000–5000 connections price their water service on a consumption basis, with a further eight proposing to do so, undertaking a cost-effectiveness study or operating a pricing regime with some use-based elements. Some 28 local governments in urban and regional areas apply a use-based trade waste charge, including all but three of the 18 largest local government service providers.

Water entitlements

Under Queensland's *Water Act 2000*, water resource plans specify the rules for the allocation of water, water allocation security objectives and environmental flow provisions. The plans, which have effect for 10 years, are implemented through resource operations plans detailing day-to-day operational rules. Infrastructure operators must hold a resource operations licence and comply with the relevant resource operations plan.

Once a resource operations plan is approved, water licences under the previous system are converted to water allocations. A water allocation is an authority to take water in accordance with a water resource plan and resource operations plan. Water allocations are separate from land title and are clearly specified in terms of ownership, volume and location. A water allocations register records details of all water allocations and the corresponding interests and dealings. Compensation is payable under the Water Act if allocations are changed during the 10-year life of a water resource plan in a way that reduces their market value.

The Queensland Government intends to develop water resource plans and resource operations plans for all of its major water resources. It completed water resource plans for six river systems and expects a further three to be completed soon. At May 2003, it had completed one resource operations plan — for the Burnett Basin. The State's most recent timetable for completing its water resource and resource operations plans indicates that some plans are not scheduled to be completed until after 2005.

Provision of water to the environment

In the 2002 NCP assessment, the Queensland Government announced an independent scientific review of the assessment of the current and future condition of the Lower Balonne River system and committed to act on the recommendations of the review. The scientific review reported in February 2003, finding that the Lower Balonne system is in a reasonable ecological condition but may be overallocated. The review recommended arrangements for wetting national parks and wetlands within the system and proposed further research to refine environmental flow requirements. The Queensland Government is developing new water management arrangements for the Condamine–Balonne Basin. It anticipates that the water resource plan and the resource operations plan that will implement the water resource plan will be finalised by mid-2004.

The Burnett Basin resource operations plan finalised in May 2003 reserves allocations of water to be made available via the proposed Burnett Water Infrastructure Project. The plan will require amendment (once the detailed design of the infrastructure is known) to allow for the release of the water. Under the plan, this amendment can be made without the usual public consultation process. The resource operations plan specifies, however, that amendments to accommodate the new infrastructure cannot be made until it is demonstrated that the supply of water would not have an impact on the water allocation security and environmental flow objectives in the water resource plan. Queensland advised that it will consult with water users prior to any amendment to the resource operations plan to accommodate the design of the new infrastructure.

Intrastate trade in water

Queensland is in the early stages of permanent water trading. A trial of permanent trading commenced in the Mareeba Dimbulah scheme in 1999 and was extended to a small proportion of the water allocated in the Nogoa McKenzie scheme and to the lower parts of the Mary River scheme. At May 2003, Queensland had finalised one resource operations plan. Final resource operations plans are necessary to enable permanent trading (outside areas covered by the trading trial) and to define the water trading rules. Queensland's revised timetable for developing its resource operations plans indicates that plans for several basins will not be completed until after 2005.

Several provisions in Queensland's interim arrangements for permanent trades under the trading trial in the Mareeba Dimbulah, lower Mary River and Nogoa McKenzie schemes are inconsistent with the CoAG water trading obligations. In particular, an interim water allocation must be re-attached to land and the water transferred must be used for primary production or stock and domestic purposes. These are interim arrangements, however, pending finalisation of the relevant resource operations plans. The trading rules in the Burnett Basin resource operations plan appear to facilitate trading, with restrictions in the plan reflecting environmental and physical constraints.

Institutional reform

Queensland has implemented water reform requirements to structurally separate water institutions, ensure that service delivery organisations in metropolitan areas have a commercial focus, ensure that service providers implement performance monitoring arrangements, and devolve a greater degree of responsibility for the management of irrigation areas to local constituents.

Queensland's major remaining institutional reform obligation relates to integrated catchment management. Queensland's recent focus appears to have been on revising the administrative framework to implement integrated catchment management in accord with the requirements of the National Action Plan for Salinity and Water Quality and the Natural Heritage Trust extension. Under the new arrangements, 14 regional bodies will develop and implement regional natural resource management plans, drawing on the work previously undertaken by catchment committees and regional strategy groups, and covering the whole of the State. Queensland's natural resource management framework — including, for example, land care initiatives to reduce broadacre clearing of remnant vegetation — appears to account for the protection of rivers with significant environmental values.

National Water Quality Management Strategy

Queensland continues to make progress in implementing the NWQMS framework. Developments since the 2001 NCP assessment, some of which are still in train, include:

- progress towards developing environmental values, based on NWQMS methods, for several major river systems;
- measures to improve water quality monitoring and information dissemination;

- implementation of NWQMS principles in the South East Queensland Regional Water Quality Management Strategy; and
- a review of drinking water quality arrangements to align with the NWQMS guidelines.

The State continues to refine the Queensland Water Quality Guidelines and expects to publish draft guidelines by the end of 2003.

Legislation review and reform

The Queensland Water Act amended or repealed a range of water industry legislation. Queensland also reviewed and reformed several other water Acts.

Investment in new rural water schemes

The Queensland Government confirmed in June 2003 that it intends to proceed with the Burnett Water Infrastructure Project. As reported in the environmental impact assessment study for the project, the Government investigated other supply and demand management options but found that these would not adequately address the region's water requirements.

Except for the raising of the Ned Churchward Weir, the project passed through Queensland's environmental assessment processes. It was also approved by the Commonwealth Minister for the Environment and Heritage under the *Environment Protection and Biodiversity Conservation Act 1999*. The modified water resource plan for the Burnett Basin, which accommodates the project, complies with CoAG requirements. The final resource operations plan requires demonstration that the supply of water will not have an impact on the water allocation security and environmental flow objectives in the water resource plan.

Burnett Water and the Queensland Department of State Development commissioned studies of the economic and commercial aspects of the project. The economic analysis undertaken by Network Economics Consulting Group (NECG) as part of the environmental impact assessment process concluded that the project would deliver significant net economic benefits, estimated at A$1.7–$2.2 billion (at a real discount rate of 6 per cent). A subsequent study by ACIL Consulting supported the level of increase in agricultural production projected in the NECG study. In addition, PricewaterhouseCoopers' studies indicated that regional water demand would be sufficient to take up the new entitlements from the Burnett project and that these entitlements could be sold and/or leased at price levels that address CoAG requirements.

Some stakeholders disputed the economic analysis. The Queensland Conservation Council and the Australian Conservation Foundation commissioned a study that questioned the level of likely demand for water at CoAG-complying prices, particularly given the likelihood of depressed sugar and cane prices. The study also adopted a significantly higher estimate of environmental costs than the NECG evaluation. Based on available data, the study concluded that the project's rate of return would be lower than that required for it to be economically viable.

Queensland responded to these criticisms of the project's viability through further work by NECG and PricewaterhouseCoopers. NECG pointed to several deficiencies in the Queensland Conservation Council/Australian Conservation Foundation study. It advised that 'the Burnett River Dam is an economically and commercially robust project'. PricewaterhouseCoopers also criticised the Queensland Conservation Council/Australian Conservation Foundation study and supported the project's viability.

Public education and consultation

Queensland undertook public education and consultation activity on the development and implementation of water resource and resource operations plans, integrated catchment management activity, water and wastewater pricing and the Burnett Water Infrastructure Project. In particular, Queensland responded to criticisms in the 2001 NCP assessment about the need for greater transparency on changes to water resource plans between the draft and final plans. Regarding this, Queensland released its first two consultation reports, following finalisation of the water resource plans for the Barron River and the Pioneer Valley in December 2002. Each report includes: a summary of the content of the plan (including differences between the draft and final plans) and the plan's implications; a record of the consultation undertaken in developing the plan; a summary of the issues raised during the consultation process; and an explanation of how the issues raised have been addressed in the final plan. The reports are available on the Department of Natural Resources and Mines' web site.

Western Australia

Urban water and wastewater pricing

In the 2001 NCP assessment, the Council recognised that Western Australia's metropolitan urban water and wastewater services were, for the most part, pricing to recover costs, but raised concerns about the lack of transparency of the State's pricing process and about whether pricing in the future would continue to address CoAG obligations. At the time of the 2001 assessment, Western Australia indicated a commitment to establishing an independent economic regulator that would deal with the economic regulatory aspects in the water sector, in particular price regulation.

The Western Australian Government has a Bill before the Parliament that will create the Economic Regulation Authority. The authority will be an independent pricing and regulatory body with coverage of several industries that are currently regulated by Ministers, sector specific regulators and public sector officials. Its functions will include recommending to the Government about tariffs and charges for government monopoly services. Western Australia intended the authority to commence on 1 July 2003, but the Bill has been delayed in the Legislative Council and the 1 July commencement date was not met. The Government advised that, in anticipation of the establishment of the Economic Regulation Authority, it would develop a draft reference that asks the authority to consider water and wastewater pricing.

The State's major urban water service providers all apply two-part tariffs for water services. Western Australia applies wastewater charges for residential customers across the State based on gross rental value, which may lead to cross-subsidies between consumers particularly if waste discharge is relatively uniform across the residential sector. The Water Corporation will publish information on the distribution of wastewater charges in its annual report. The Water Corporation and the Western Australian Department of Treasury and Finance are to determine the means of illustrating any cross-subsidies.

Water entitlements

Water rights are sufficiently well specified in Western Australia. Licences are issued for between five and 10 years or for an indefinite period. There is also a presumption that fixed-term licences will be renewed if licence conditions are met. Most water management plans, which determine the amount of water available for allocation including to the environment, are still to be finalised or are under review. Apart from those assessed as being low priority, almost all plans are scheduled to be completed by 2005.

Western Australia has a register of water licences and entitlements, which is maintained by the Water and Rivers Commission. Although the register does not provide indefeasibility of title, it does allow the entitlement holder to register third party interests. A copy of the register is available for public viewing at Water and Rivers Commission offices or on request from the commission. An Internet register has been developed but is not yet operational.

Provision of water to the environment

Western Australia derives most of its water supply from groundwater. The State has no stressed river systems. Western Australia's approach to allocating water to the environment (formalised in the Rights in Water and Irrigation Act) is delivered via a tiered system of statutory water management plans (regional, sub-regional and local). Environmental water provisions are set in the plans either as notional or interim allocation limits, or as formal assignments where the water resource is highly or fully committed. Water management plans continue indefinitely, with review every seven years (or later if water use has not increased). Western Australia considered that the water planning process is on track against its implementation program.

Intrastate trade in water

Western Australia has established a fully operational system for water trading. It has policy guidelines for water trading and an interim subpolicy to guide the operational management of trading. Trading is not permitted without the agreement of registered third party interests. The Water and Rivers Commission has the role of collecting and providing market information until the market further develops. The Rights in Water and Irrigation Act and the *Environment Protection Act 1986* contain measures to protect environmental values.

Trade is concentrated in the South West Irrigation Scheme, reflecting the infancy of trading and the low level of demand for trading in the many parts of the State where water resources are not fully allocated. Most water management plans — which contain trading rules and are integral to the development of water trading — are still to be finalised or are under review.

Several regulatory measures have the potential to constrain water trading. The Rights in Water and Irrigation Act: provides scope for local by-laws to prohibit trades (although none exists at present); requires that a licence holder must be an owner or occupier of land or have access to land; and imposes a time limit for water entitlements to be used (before the entitlement may be forfeited). The Water and Rivers Commission may also refuse trades to prevent monopolies in water. These provisions appear to be a response to concern about potential speculation in the water market and the possible adverse environmental impacts of water trading. They have the potential, however, to reduce the security of entitlements and constrain the movement of water to its highest value use.

Institutional reform

Structural separation

As discussed above, Western Australia has a Bill before the Parliament to establish the Economic Regulation Authority to undertake a range of economic regulatory functions. The Bill provides scope for the Government to refer to the authority for inquiry any matter relating to a regulated industry including electricity, gas, rail and water. The Government indicated its intention to ask the authority to examine water and wastewater pricing.

Increased devolution of management responsibility for irrigation schemes

Western Australia has three main irrigation systems: the South–West Irrigation Cooperative, the Carnarvon Irrigation Scheme and the Ord Irrigation Scheme. The management of the South–West Irrigation Cooperative, which includes both the Preston Valley and the South–West Irrigation District and supplies water used to irrigate more than 9700 hectares, is devolved to local constituents.

In August 2001, the Water Corporation and the Carnarvon Irrigation Cooperative signed an operation and management contract providing for the transfer of the Carnarvon Irrigation Scheme to the irrigation cooperative by 30 June 2003 (subject to Government approval). The transfer will give the Carnarvon Irrigation Cooperative responsibility for retail water service delivery, and the operation, maintenance and renewal of the pipe distribution system and service connections. On 1 July 2002, the management of the Ord Irrigation Scheme was transferred from the Water Corporation to the Ord Irrigation Cooperative, and by December 2003 the assets will also be transferred.

Integrated catchment management

The impetus for natural resource management policy in Western Australia is dryland salinity. The Salinity Action Plan 1996 led to the creation of a State Salinity Council and five regional natural resource management groups. In accord with national and State policy frameworks, including the National Action Plan for Salinity and Water Quality and the Natural Heritage Trust extension, Western Australia's focus on salinity has evolved into a broader natural resource management framework that encompasses catchment issues. Consistent with this, the Government replaced the State Salinity Council with a new community-based body, the Natural Resource Management Council. A Western Australian Government senior officers group on natural resource management, representing the Department of Agriculture, Conservation and Land Management, the Water and Rivers Commission, the Department of Environmental Protection, the Ministry for Planning and the Department of Land Administration, provides whole-of-Government policy coordination.

All regional groups had developed natural resource management strategies by 2001, but the Government had not endorsed any strategies under State processes. The Government indicated that this is due to its lack of access to the accreditation mechanisms under the National Action Plan for Salinity and Water Quality. (The new accreditation mechanisms are not available to Western Australia until the Western Australian Government reaches a bilateral agreement with the Commonwealth Government.) Western Australia has now received Natural Heritage Trust extension funding which should enable it to refine its regional strategies in anticipation of a bilateral agreement on the national action plan.

Western Australia is developing the Waterways WA framework to facilitate the consideration of, and support for, land care practices to protect rivers with high environmental values. It expects to finalise the framework in 2003.

National Water Quality Management Strategy

Western Australia completed preparatory and development work on NWQMS implementation, including publishing the State Water Quality Management Strategy implementation plan setting out the State's processes for achieving its water quality objectives. Western Australia proposes to implement some key NWQMS elements — including guidelines for fresh and marine water quality and water quality monitoring — in 2003-04.

Legislation review and reform

Western Australia listed 35 water industry regulatory instruments for NCP review, of which it has completed reviews of 32. Of the remaining three, Western Australia has commenced one review and proposes to repeal two without review. The reviews recommended repeal of one instrument, reform of 18 others and found no change or no competition issues in 13 cases.

The Government endorsed the findings of each of the 32 completed reviews, mostly in 1999 or 2000. While it has some reform action under way, the Government has not yet completed all recommended reforms. The Government is reforming eight Acts via the Acts Amendment and Repeal (Competition Policy) Bill 2002, now delayed to 2003. These reforms will now be included in a second competition policy omnibus Bill in 2003. The Government is also drafting amendments or is developing drafting instructions for another six Acts, and has work under way on each of the remaining instruments.

Public education and consultation

Western Australia provided little information on its recent public education and consultation activity. The Council, however, received no indication from interested parties suggesting difficulties arising from inadequate consultation. Under the amended *Water Services Coordination Act 1995*, the Economic Regulation Authority will monitor the performance of the water services industry and service providers. For the purpose of this monitoring, the authority will be required to consult with interested groups and persons.

South Australia

Urban water and wastewater pricing

SA Water is South Australia's primary supplier of water and wastewater services to Adelaide and country towns, providing services to over one million people in 2000-01. The prices of SA Water's services are determined by the South Australian Cabinet on the recommendation of the Minister for Government Enterprises. The Government does not make publicly available the information it considers in determining prices, or the reasons for its pricing decisions. The Essential Services Commission of South Australia (ESCOSA) has no pricing oversight role for SA Water, and the Government does not propose that it will in the future.

In this 2003 NCP assessment, the South Australian Government committed to publish annual transparency statements on its decisions on SA Water's water and sewerage prices, with the first statement to address prices in 2004-05. The Government intends that the statement will establish the relationship of the pricing decisions to the CoAG pricing principles, provide information on SA Water's financial performance in the context of decisions on pricing and past and future expenditures, and address details of revenue, community service obligations, SA Water's capital expenditure program, and SA Water's profit and the distribution of that profit. ESCOSA is to review the processes involved in preparing the transparency statements and advise on the information supporting the pricing decisions. ESCOSA's report will form part of the transparency statements.

Water entitlements

South Australia has completed water allocation plans covering all 15 prescribed water resource areas on its original implementation program. It has converted water allocations to a volumetric basis in most areas of the State. The main area remaining is the South East Catchment, where revised water allocation plans and licence conversions will be completed in 2006. This is a significant catchment, having seven prescribed water resources. To assist in the conversion process in the South East Catchment, South Australia is installing meters in around 200 sites to obtain information on the volumes used by irrigators. The information from the metering project will be used in reviewing the water allocation plans in the catchment. The water licences in the catchment will then be converted to a volumetric basis in accordance with the revised water allocation plans.

The first stage of South Australia's upgraded water licence registry system is due to be in place in mid-2003. South Australia expects the system to be fully implemented by 2004-05.

Provision of water to the environment

In prescribed areas, water allocation plans are the primary mechanism for providing water for the environment. Under the *Water Resources Act 1997*, the plans must provide for sustainable allocation and use of the available water. Environmental water provisions are formally recognised and protected through the plans, which also include monitoring arrangements. Under the Act, the Minister may reduce the water allocations stipulated on licences to prevent damage to dependent ecosystems or a reduction in water quality.

South Australia completed the River Murray water allocation plan in 2003. The River Murray plan specifies water for extractive uses and provides up to 200 gigalitres each year for wetland management purposes with a further 22.2 gigalitres for environmental land management (in particular, minimising the effects of rising saline underground water) in the Lower Murray Reclaimed Irrigation Areas.

South Australia prescribed two additional water resources in the South East Catchment: (1) the Tintinara Coonalpyn prescribed wells area and (2) the Morambro Creek prescribed watercourse and prescribed surface water area. The Tintinara Coonalpyn water allocation plan was adopted in January 2003. The South East Catchment Water Management Board is preparing the Morambro Creek plan, which is expected to be completed in 2004. South Australia recently prescribed the Great Artesian Basin (Far North prescribed wells area), Marne River and Saunders Creek, with the water allocation plans expected to be completed in late 2005 or early 2006. South Australia also proposes to prescribe water resources in the Baroota area near Port Germein, in Greenock Creek adjacent to the Barossa Valley, and on Kangaroo Flat on the northern Adelaide plains.

The Government announced a 'Save the Murray' levy of A$30 a year for residential ratepayers and A$135 a year for non-residential ratepayers. The levy is to apply from October 2003 and is expected to raise A$20 million a year. It is to be paid into a Save the Murray Fund. Around A$10 million a year is to be spent on specific restoration programs, with the balance funding South Australia's contribution to a basin-wide initiative to provide water for increased environmental flows.

Intrastate trade in water

South Australia's water rights are sufficiently specified to enable efficient trade. Licences are issued in perpetuity and are separate from land title. In irrigation areas, the irrigation trust holds the water-taking allocation. Whether the trust devolves all or part of this allocation to its members varies among the trusts. Where the allocation is devolved, subject to the trust's approval, the owner of an irrigated property may transfer all or part of their allocation to another landowner within the district or to the trust. An irrigation trust may trade all or part of its surplus allocation (the allocation

held by the trust in excess of the sum of entitlements held by individual irrigators) to another party outside the trust. Outside the irrigation trusts, water licences are vested in the end users and are specifically recognised as personal property. The register of water rights includes provision for the registration of third party interests, and registered third parties must be notified before the Minister can approve a trade.

Permanent and temporary water trading occurs through a variety of mechanisms, including private trades, brokers or water exchanges. The Department of Water, Land and Biodiversity Conservation recently established a web site to improve the availability of water market information throughout the State and facilitate contact between buyers and sellers. There are a range of measures to protect the water rights of users and the environment.

There are limits on the volume of water that may be permanently transferred out of some irrigation districts. The Central Irrigation Trust has a 2 per cent cumulative limit on the proportion of entitlements that can be permanently traded out of the trust's districts, which has been reached in five of the trust's nine districts. The Central Irrigation Trust also limits permanent transfers from a property to 25 per cent of the landholder's original water allocation. There are reports of other constraints, including on temporary trade out of the Central Irrigation Trust and on permanent trade out of other trusts. The Council understands that the trusts limit outwards trade because of concern about possible adverse socioeconomic outcomes for their districts and to ensure that their irrigation infrastructure operates efficiently. Trust members are also concerned about the environment and future uncertainty about the amount of water available for extraction.

While the trading rules are set by the irrigation trusts (rather than the South Australian Government), the CoAG water agreements place responsibility on each State government to facilitate trading to enable water to be used to maximise its contribution to national income and welfare, where socially, physically and ecologically sustainable. Any constraints on trading need to be supported by rigorous evidence to demonstrate that the restriction provides a net public benefit and is necessary to achieve the trust's objective. The institutional reform obligation relating to the devolution of irrigation scheme management envisages devolution on the basis that governments establish appropriate regulatory frameworks for local management.

The trading provisions in South Australia's water allocation plans are generally directed at facilitating trade in a manner that maximises economic benefits while protecting the environment and the interests of other water users. While trade in the area is significant, it seems likely that the reduction factor is restricting trade to some extent. Permanent and temporary transfers are subject to a 20 per cent reduction in the total volume of water allocations transferred, so the amount of water acquired by the buyer is 20 per cent less than that sold. Alternatives to reducing allocations upon transfer include the Government reducing allocations for all water licence holders in an area by a uniform percentage and/or buying allocations in the market. These alternatives are likely to be more effective in reducing water use to a more sustainable level without adversely affecting trade.

Institutional reform

Structural separation

Unlike most other jurisdictions, South Australia has not imposed independent oversight of its major water and wastewater service provider's pricing and service standards. As discussed above, this lack of transparency makes it difficult to be confident that actions by SA Water will be consistently based on the principles in the CoAG water agreement. Production of comprehensive annual public statements on pricing, as the South Australian Government has undertaken to do, provide a means of addressing this matter.

Devolution of management responsibility for irrigation schemes

The South Australian Government owns and operates nine of 24 irrigation schemes in the lower Murray, representing 70 per cent of the irrigation areas. The Government completed a major study of options for improved management and rehabilitation in the areas in June 2001. It announced in 2002-03 that it had approved the study's preferred option of rehabilitation of the most viable parts of the irrigation areas, after a period of restructuring of the dairy industry. To assist with restructuring and rehabilitation works, the Government is providing financial assistance to eligible landowners. For irrigators in the government irrigation districts, conversion of the district into a private irrigation district is a condition of accepting the financial assistance for infrastructure rehabilitation.

The conversion of the Government irrigation districts into private irrigation districts will require the establishment of an irrigation trust (or several trusts). Irrigation and drainage infrastructure assets will be transferred to the trust. The trust will be responsible for the operation, maintenance and future replacement of the infrastructure. Levee banks and waterfront land will remain Government owned.

Integrated catchment management

South Australia continues to make progress in implementing integrated catchment management. There are eight catchment areas covering 95 per cent of the State. Six of these now have catchment water management plans in place. South Australia expects to adopt plans for the two remaining catchments in 2004. The South Australian Water Resources Council reviewed the implementation of the catchment water management plans in 2002.

The Government released a discussion paper on natural resource management and a draft Bill to improve coordination by consolidating 72 regional natural resource management groups into eight boards. The Government has also taken some preliminary steps to improve natural resource management arrangements, including establishing the Department of Water, Land and Biodiversity Conservation, a central natural resource management council and a natural resource management integration project task-force. South Australia signed a bilateral agreement with the Commonwealth Government to implement the National Action Plan for Salinity and Water Quality in June 2001, and the Natural Heritage Trust extension in April 2003.

National Water Quality Management Strategy

The commencement of South Australia's Environment Protection (Water Quality) Policy in October 2003 is a significant milestone in the State's implementation of the NWQMS. The policy establishes protected environmental values and water quality criteria for fresh and marine waters, adopting NWQMS guideline methods.

The State Water Monitoring Coordinating Subcommittee continues to review regional water quality monitoring arrangements and there is work in individual catchments to improve monitoring. The subcommittee made recommendations in 2003 to improve the collection, management and provision of water information. The Environment Protection Authority's review of the State Ambient Water Quality Monitoring Program, scheduled for late 2003, should provide further guidance on work needed to improve the State's water quality monitoring arrangements.

Legislation review and reform

South Australia completed reviews of 13 of the 14 water Acts listed for NCP review. The Government approved repeal of the remaining Act (the *Loans for Fencing and Water Piping Act 1938*) without review, to occur in October 2003. The reviews recommended repealing four Acts, three of which have been repealed. The Government approved repeal of the fourth Act, which is scheduled for September 2003. The review of this legislation, the *Irrigation (Land Tenure) Act 1930*, did not identify any major issues, but recommended that the Act be updated and consolidated. In nine cases, reviews identified no competition issues that required a change to legislation and/or recommended no change.

Investment in new rural water schemes

The Clare Valley Water Supply Scheme, which proceeded as an SA Water project during 2002-03, will involve the transfer of up to 7.3 gigalitres per year of filtered and treated River Murray water via a pipeline to the Clare Valley. The project involves the construction of 83 kilometres of new pipeline, two pumping stations and a 4-megalitre water storage. The scheme has three main objectives: to provide reticulated water to several townships; to enable improved water supplies to other areas of the Mid-North region; and to provide water to the Clare Valley region for irrigation and other bulk water purposes. The provision of water for irrigation is necessary to ensure the scheme is financially viable — the financial evaluation of the scheme assumed that over 95 per cent of the water will be used for irrigation.

An ecological study of the project identified a number of potential adverse environmental effects, including: waterlogging and drainage hazard formation; increased stream baseflow and baseflow salinity in the vicinity of new and existing irrigation; salinisation of the groundwater resource; release of chloraminated water to the environment; disruption to the environment from the pipeline construction works; and ecosystem impacts resulting from changes to the water balance and salinity levels, including potential threats to endangered or vulnerable species.

The study concluded, however, that importing River Murray water into the Clare Region for use in irrigation can be managed to avoid adverse environmental effects. The project does not require approval under the Commonwealth Environment Protection and Biodiversity Conservation Act. SA Water advised that the South Australian Government's approval of the scheme in November 2002 was subject to the establishment of an appropriate groundwater and surface water monitoring program. In cooperation with the Department of Water, Land and Biodiversity Conservation, SA Water confirmed that it is committed to implementing appropriate management measures.

The economic study of the Clare Valley project concluded that the project is economically viable taking account of wider benefits and costs, with a net present value of A$25.5 million (based on a discount rate of 7 per cent). SA Water advised that the economic evaluation incorporated an assessment of likely environmental costs in calculating capital costs but that regional monitoring costs (estimated to be $66 000 annually) were not included. Accounting for these costs would not, however, alter the viability of the scheme.

Public education and consultation

South Australia has undertaken public education and consultation activity relating to the development and implementation of water allocation plans and catchment water management plans. The Government's decision to publish annual transparency statements on its decisions on SA Water's water and wastewater prices should assist public understanding of the cause-and-effect relationship between prices, infrastructure performance, standards of service and related costs, and assist SA Water to provide levels of service that represent the best value for money for the community.

Tasmania

Urban water and wastewater pricing

All urban retail water and wastewater services in Tasmania are provided by local governments. The Government Prices Oversight Commission's Urban Water Pricing Guidelines for Local Government in Tasmania require local governments to set prices to recover costs. The guidelines also require local governments to report environmental costs incurred and community service obligations provided, and move to determining asset values on a fair value basis in accordance with the accounting standard AASB 1041.

The Government Prices Oversight Commission assesses local governments' compliance with the full cost recovery obligation in relation to water and wastewater services each year. The most recent assessment (for 2001-02) found that 21 of 28 local governments were in practical compliance with the full cost recovery obligation, including two that were in an agreed two-year transition to full cost recovery. The Tasmanian Government has taken several steps since the 2002 NCP assessment to assist local governments to achieve full cost recovery, including workshops for local government officers and a presentation on water assets and the NCP given by the Government Prices Oversight Commission.

Tasmanian local governments implement consumption-based pricing where cost-effective. In 1999, Tasmania subjected 34 local governments (selected according to a test developed by the Government Prices Oversight Commission), to cost-effectiveness studies, finding 18 that should change to a two-part tariff. Of these, 17 have now introduced a two-part tariff. The one exception found, in a trial of metering subsequent to the initial work, that a two-part tariff would not be cost-effective. The larger local governments have trade waste agreements with large dischargers or pricing regimes based on the volume and toxicity of discharge.

The Government Prices Oversight Commission audit of local government water and wastewater businesses for 2001-02 found that few local governments were reporting community service obligations. The audit also found that few local governments were identifying and funding own-use transfers, meaning that other water users are cross-subsidising local governments' water consumption. Tasmanian Government officials indicated that the Government would develop a response to these and other issues raised by the Government Prices Oversight Commission.

Water entitlements

Tasmania's *Water Management Act 1999* established a system of water entitlements whereby licences (and water allocations) are not legally attached to land titles and are transferable. Licences are specified in volumetric terms and also indicate the reliability of the water allocations. To obtain a water allocation, a person must generally hold a water licence. Licences are issued for 10 years, with a presumption of renewal, and are subject to a review of conditions after five years. The conversion of water rights under the previous system to licences and allocations under the new system is now largely complete. The Water Management Act established a register of licences, which includes provision for registering financial interests.

The *Irrigation Clauses Act 1973* (as amended in 1997 and 2001) established irrigation rights within irrigation districts that are separated from land and transferable within the district. Only an owner or occupier of land in the district, or a person who may hold land in the district, may hold irrigation rights. A holder of an irrigation right who no longer owns or occupies land in the district must transfer the right within six months or forfeit it. (The Minister may give a single extension of six months.) Compensation is payable where it is necessary to reduce irrigation rights, in situations where total allocations exceed the quantity of water available, as determined by a water management plan, or where there is inconsistency with the objectives of the Water Management Act.

Provision of water to the environment

Tasmania is addressing water allocations for the environment in two stages. First, the Department of Primary Industries, Water and Environment is determining environmental water requirements — the water required to sustain the ecological values of aquatic ecosystems at a low level of risk — to address the flow requirements for the State's rivers. Second, for stressed (or more developed) water sources, the Government preserves an amount of water for the environment determined by agreement or negotiation with the community and incorporated in a water management plan under the Water Management Act. The objectives of the Act include the sustainable use of the water resources and the maintenance of ecological processes and genetic diversity for aquatic ecosystems.

Tasmania identified 14 water sources for which it intends to develop water management plans. Environmental water requirements have now been determined for all of these. The provision of water for environmental purposes depends, however, on the Government also developing the water management plans. At 30 June 2003, Tasmania had completed no water management plans, although it had almost finalised the Great Forester River plan. Tasmania still expected to substantially complete environmental water provisions for the water sources on its agreed implementation program by 2005. The Government noted that an agreement by key stakeholders (including the Tasmanian Conservation Trust and the Tasmanian Farmers and Graziers Association) on generic principles to guide the preparation of the water management plans would greatly accelerate the development of water management plans.

Intrastate trade in water

Tasmania made significant progress in addressing its water trading commitments in 2002-03. It removed two restrictions on water trading identified by the Council in the 2001 NCP assessment as likely to be inconsistent with CoAG water trading commitments. At 30 June 2003, Tasmania had virtually completed the conversion of all former water rights (attached to land titles) to licences and allocations under the new legislation, removing a further constraint to trading.

Water market and trading administration does not appear to represent an impediment to trade. While Tasmania's register of water rights does not provide indefeasibility or surety of title, water rights are sufficiently well defined so as not to provide an impediment to trade. In addition, transfers require the consent of all parties with a registered financial interest in the water right. Tasmania has a register of licences, known as the Water Information Management System, which the Department of Primary Industries, Water and Environment maintains. Tasmania advised that trades are approved on average within seven days in Government-owned irrigation districts and within five to 14 days in unregulated systems, depending on third party interests. There are no Government impediments to the establishment of new trading mechanisms. Tasmania's arrangements also adequately address risks for the environment by requiring, for example, that transfers are consistent with the objectives of the water legislation and any relevant water management plan.

One remaining restriction on trading in irrigation districts is likely to be inconsistent with CoAG obligations — that is, the requirement that only an owner or occupier of land in the district may hold irrigation rights. Tasmania advised that this provision is intended to ensure water from publicly funded irrigation schemes is used for the purpose for which it was provided and to militate against speculation. The restriction is also likely, however, to affect the entry and activities of agents, brokers and other potential participants in the water trading market; as a result, it may reduce returns available to holders of irrigation rights and constrain the extent to which water is used for its highest value purpose. Tasmanian Government officials have indicated a preparedness to consider the continuing need for the measure. The Water Management Act includes a provision applying to unregulated systems that appears to have similar objectives, by providing scope for transfers to be refused if the quantity of water exceeds the amount that could be used sustainably for the intended purpose. The Council will look for Tasmania to consider the need for this provision.

Institutional reform

Structural separation

Tasmania's institutional arrangements appear to provide an adequate level of separation. The Rivers and Water Supply Commission, the Assessment Committee for Dam Construction and the Environmental Management and Pollution Control Board are effectively separate legal entities from the department and must comply with their own specific legislative requirements. Departmental representatives do not comprise a majority on either the Assessment Committee for Dam Construction or the Environmental Management and Pollution Control Board. In approving water management plans and water allocations, the Minister for Primary Industries, Water and Environment must comply with the Water

Management Act. While the Minister for Primary Industries, Water and Environment is also the portfolio Minister for the Rivers and Water Supply Commission, the Minister is bound in this case by the *Government Business Enterprises Act 1995*.

Many Tasmanian local governments have mechanisms for handling complaints and customers of local government water businesses have access to the Ombudsman. Tasmania is also considering arrangements for the handling of complaints as part of a wider review of the *Local Government Act 1993*. An issues paper, released in March 2003, indicates that the review is considering whether local governments should be required to adopt a formal complaints-handling procedure that has the confidence of their local communities. The review is also considering the case for establishing an independent complaints-handling body to deal with local government related matters.

Increased devolution of management responsibility for irrigation schemes

There are three Government owned irrigation schemes in the State: Cressy–Longford, South–East and Winnaleah. On 1 April 2002, management of the Cressy–Longford Irrigation Scheme was devolved from the Rivers and Water Supply Commission to the Cressy–Longford Irrigators Association. Tasmania transferred responsibility for the management of the Winnaleah Irrigation Scheme to local irrigators on 1 July 2003. The Rivers and Water Supply Commission retains ownership of the fixed assets (for water delivery and water storage). The Winnaleah irrigators are responsible for day-to-day scheme operations, administration and management (including price setting and staff management) and own the operational assets. Tasmania has commenced discussions with local irrigators on devolving management responsibility for the South East Irrigation Scheme.

Integrated catchment management

Tasmania's recent work on integrated catchment management appears to have focused on establishing an appropriate administrative framework. Tasmania enacted the *Natural Resource Management Act 2002* in November 2002, and established the Tasmanian Natural Resource Management Council in February 2003. The three regional natural resource management committees have commenced work. The State's natural resource management framework supports land care practices to protect rivers with high environmental values. The Tasmanian and Commonwealth governments signed a partnership agreement to implement integrated catchment management reforms in priority catchments as part of the National Action Plan for Salinity and Water Quality.

National Water Quality Management Strategy

Tasmania continues to implement the NWQMS framework. Significant developments since the 2001 NCP assessment include:

- the completion of the State Water Quality Monitoring Strategy;
- the setting of Protected Environmental Values for most of the State's catchments, and pilot schemes to develop water quality objectives;
- further work on the State of River reports;
- the establishment of linkages between water quantity and water quality issues in water management plans and State of River reporting; and
- the implementation of wastewater and stormwater management strategies.

Legislation review and reform

Tasmania has essentially completed the review and reform of the 18 water Acts on its NCP program. Several Acts were repealed or amended by the Water Management Act. This Act established a system of transferable water rights. The Irrigation Clauses Act (as amended in 1997 and 2001) established district irrigation rights that are separated from land and transferable within the district. The Water Management Act includes a provision applying to unregulated systems that allows transfers of water entitlements to be refused if the quantity of water exceeds the amount that could be used sustainably for the intended purpose. The Irrigation Clauses Act imposes a requirement that appears to have a similar objective — only an owner or occupier of land in the district, or a person who may hold land in the district, may hold irrigation rights. As discussed above in relation to water trading, these provisions may affect the development of the water trading market by limiting the activities of agents, brokers and other potential participants in the market, and as a result, may reduce returns available to holders of irrigation rights and constrain the extent to which water can be used for its highest value purpose.

Investment in new rural water schemes

In 2001, the Tasmanian Government announced an intention to proceed with the design of the Meander Dam project, 50 kilometres south west of Launceston. Water from the 43-gigalitre dam would be used primarily to increase the quantity and surety of irrigation water in the region. A mini hydroelectric power plant, connected to the State grid, is also proposed to operate at the site. The Tasmanian (A$7 million) and Commonwealth governments (A$2.6 million) are to contribute funding for the project.

At the time of the 2002 NCP assessment, the Tasmanian Government was assessing an application for a permit to commence construction of the Meander Dam under the statutory processes of the Water Management Act and the *Environmental Management and Pollution Control Act 1994*. The development proposal is also a controlled activity under the Commonwealth's Environment Protection and Biodiversity Conservation Act on the grounds of potential impacts on listed threatened species and communities, particularly the spotted tailed quoll and the plant species *Epacris aff. exserta*.

In a draft report in December 2002, an economic study commissioned by the Tasmanian Government concluded that the project would have a positive net present value estimated at A$30.4 million (at a 6 per cent real discount rate). The study also reported an alternative evaluation that found a lower, but still positive, estimated net economic benefit of A$9.6 million.

In late 2002, Tasmania's Director of Environmental Management issued an environment protection notice enabling the dam to proceed (subject to conditions) and the Assessment Committee for Dam Construction issued a permit for the dam. In January 2003, however, Tasmania's Resource Management and Planning Appeal Tribunal set aside the dam permit and environment protection notice following an appeal by the Tasmanian Conservation Trust and a private party. The Tasmanian Government subsequently introduced legislation to overcome the tribunal's decision and permit construction of the dam. The *Meander Dam Project Act 2003*, passed in April 2003, reinstates the dam permit and environment protection notice and removes any right of further review or appeal.

In making a decision under the Environment Protection and Biodiversity Conservation Act, the Commonwealth Minister for the Environment and Heritage must consider relevant environmental impacts and social and economic factors. The Council understands that the Commonwealth Government commissioned further work on the economic, social and environmental impacts of the project, which includes investigating ecological evidence of the effects on the spotted tailed quoll and the *Epacris* species. The Commonwealth Government's approval process is still to be completed.

Tasmania commissioned further analysis and recently submitted two additional reports to assist the Commonwealth Government's assessment: an economic analysis and a report on the social and community impacts of the project. The economic analysis reviewed the economic work submitted to the Resource Management and Planning Appeal Tribunal and took into account analyses undertaken for the Tasmanian Conservation Trust and WWF Australia, and initial work from the Commonwealth Government's evaluation. Assessing the project against a variety of deliberately conservative assumptions, the economic analysis found that the project would provide net economic benefits to Australia. The study of social and community impacts concluded that the Meander Dam is likely to result in: positive economic benefits for the agricultural industry and for rural centres and areas; higher employment, including job opportunities for young people; increased vocational education opportunities, particularly in agricultural and related industries; and an overall strengthening of the sustainability of the Meander Valley community.

The Council's preliminary view on the economic evidence is that the recent work commissioned by Tasmania provides a robust case to show that the dam would be economically viable. The analysis accounted for relevant costs and benefits, used an appropriate discount rate and responded appropriately to the issues raised by other parties. Sensitivity analysis indicated that the project is economically viable under a wide range of conservative assumptions. The Council has insufficient information at this time, however, to reach a preliminary view on Tasmania's compliance with the requirements on ecological sustainability.

In the event the Commonwealth Government approves the project, the Council will consider Tasmania's compliance with the CoAG requirements on economic viability and ecological sustainability in a supplementary NCP assessment. In conducting the supplementary assessment, the Council will take into account the economic and environmental studies undertaken by the Commonwealth and Tasmanian governments. It will also take into account the information provided by other parties including the Tasmanian Conservation Trust and WWF Australia.

Public education and consultation

Tasmania recent public education and consultation activity has mainly concerned the development and implementation of water management plans and water and wastewater pricing. Tasmania developed the water management plan for the Great Forester River using a public process. The Government publicly exhibited the draft plan for the catchment in the first half of 2002, providing an opportunity to better understand the issues and processes associated with preparing water management plans. It established a local consultative group, including a representative of environmental groups, to assist in finalising the plan. The consultative group will continue to work with the Department of Primary Industries, Water and Environment on ongoing water management issues associated with the plan. As a result of the Great Forester process, the department established similar consultative groups for other catchments.

In February 2003, the Tasmanian Government conducted workshops for local government officers across the State to raise awareness of full cost recovery and related pricing obligations. Also in 2003, the Government Prices Oversight Commission gave a presentation on water assets and the NCP to a local government accounting seminar. The Government wrote to all local governments that provide water and wastewater services, encouraging them to test their 2003-04 rating policies against full cost recovery obligations.

Australian Capital Territory

Urban water and wastewater pricing

The ACT Electricity and Water Corporation (ACTEW) — a Government owned corporation — supplies metropolitan water and sewerage services in the ACT. ACTEW and AGL have formed a joint venture (ActewAGL) under which ACTEW retains ownership of water and wastewater assets and service delivery is contracted to the partnership entity ActewAGL. Standards for economic performance and prices are set by the Independent Competition and Regulatory Commission.

ACTEW earned a combined water and wastewater rate of return on assets in 2001-02 of 6 per cent. ACTEW is subject to all Commonwealth and ACT taxes and tax equivalents. As an incorporated entity, ACTEW is bound by the *Corporations Act 2001*, which stipulates that dividends may be paid only from profits (including accumulated retained profits). The ACT Government applies a water abstraction charge of 10 cents per kilolitre. This covers the environmental costs of water use and the scarcity value of water, and applies to all customers.

ACTEW implements trade waste acceptance practices that allow for contracts with users of its services. The waste acceptance practices require users to contribute to the costs of monitoring and, in some cases as a transitional measure, to the cost of treating waste based on the volume and strength of the discharge. ACTEW is currently developing a charging regime that accounts for the ACT's specific trade waste circumstances. ACTEW's work will be submitted to the Independent Competition and Regulatory Commission for its review of ACTEW's water and wastewater charges for July 2004 to June 2009.

Water entitlements and the provision of water to the environment: progress report

The *Water Resources Act 1998* is the legal basis for the allocation of water, the issuing of licences to take water, and the determination of environmental flow requirements in the ACT. Water rights are separated from land title, are issued in perpetuity and provide the holder with a right to a share of the available resource. The Environment Management Authority maintains a register of licences and water allocations. There is no facility to record third party interests in an allocation, but the ACT advised that this can be readily addressed when the need arises.

The ACT's Water Resources Management Plan commenced in 2000. The plan sets out estimates of total water resources, environmental flow requirements and water available for consumption over the period to 2010. Under the ACT's environmental flow guidelines, flows are protected up to the 80th percentile (that is, the flow that is exceeded 80 per cent of the time). For most subcatchments, extraction for consumptive use is limited to 10 per cent of flows above the 80th percentile. For water supply catchments, 100 per cent of flows above the 80th percentile are available for abstraction (except for spawning flows). Groundwater extraction is limited to 10 per cent of average annual recharge. There are no stressed or overallocated systems within the ACT.

The ACT component of the Murray–Darling Basin Ministerial Council cap on water diversions is still to be finalised. The Government anticipated reaching a final position on the cap during 2003.

Intrastate trading

There has been no water trading in the ACT or between the ACT and another jurisdiction. The lack of trade largely reflects the available resource and the relatively small industrial and agricultural sectors in the ACT compared with other jurisdictions. Interstate trade involving the ACT depends on the development of trading rules for the Murrumbidgee and Murray rivers and the finalisation of the Murray–Darling Basin Ministerial Council cap on water diversions for the ACT. There is no legislative restriction on trading — the Water Resources Act permits the permanent or temporary transfer of all or part of a water allocation with the approval of the Environment Management Authority. The ACT Government considers there is insufficient demand for trading to warrant developing intraterritory trading rules or an intraterritory market.

Institutional reform

The ACT finalised a number of institutional reform matters, including: a standard customer contract setting out the terms and conditions for the supply of water and sewerage services to customers, encompassing the obligations on both ACTEW and its customers; ACTEW's utility services licence, which includes ACTEW's obligations regarding its operations, the environment and participation in benchmarking processes; and a range of industry and technical codes. ACTEW has a commercial operating focus.

Reflecting its location within the Murray–Darling Basin, the ACT's catchment management framework encompasses the objectives in the Murray–Darling Basin Commission's *Natural Resource Management Strategy 1990*. The ACT participates in the Murray–Darling Basin Initiative, including in activities aimed at halting degradation and improving the quality of resource management in the basin. Lying within the Murrumbidgee River catchment, the Territory participated in the preparation of the Murrumbidgee catchment blueprint by the Murrumbidgee Catchment Management Board (based in New South Wales) and is developing its own integrated natural resource management plan that reflects the approaches in the blueprint. The ACT plan will be the basis for the ACT's participation in the National Action Plan for Salinity and Water Quality. Local level activity is also under way. The ACT published subcatchment plans for Tuggeranong–Tharwa, Woden–Weston and the Southern ACT Catchment Group, and an implementation plan and support strategy for volunteers engaged in natural resource management.

National Water Quality Management Strategy

The ACT continues to implement the NWQMS framework. The ACT became the first Australian government to formally regulate drinking water quality when, in 2001, it adopted the Australian Drinking Water Guidelines 1996. ActewAGL published its first annual report on drinking water quality in 2002. The ACT also published a draft policy for sustainable water resource management (including proposals to improve stormwater and waste management) and developed a draft policy for acceptance of nondomestic trade waste into the sewerage network, based on the NWQMS principles. The ACT is yet to implement the current NWQMS guidelines for fresh and marine water quality and for water quality monitoring and reporting.

Legislation review and reform

The ACT identified five water industry Acts for review in accord with the Competition Principles Agreement. All five Acts have been repealed. The Water Resources Act is the legal basis for the allocation of water, the issuing of licences to take water, and the determination of environmental flow requirements in the ACT. The Act does not restrict water trading: the permanent or temporary transfer of all or part of a water allocation can occur with the approval of the Environment Management Authority.

Public education and consultation

The work by the Independent Competition and Regulatory Commission makes a significant contribution to the community's understanding of ACT water and wastewater prices and the relationship of prices to service quality and reliability. The commission established a price direction for ACTEW's electricity, water and wastewater charges for 1 July 1999–30 June 2004. Following a reference from the ACT Treasurer, the commission is currently investigating ACTEW's water and wastewater services to provide for a price determination from 1 July 2004. The investigation (being undertaken in conjunction with a review of the prices of the electricity services provided by ActewAGL) is a public process. The commission released an issues paper in July 2003 as a first step in a public awareness program. The commission is seeking submissions and community views on all aspects of the price review.

Northern Territory

Urban water and wastewater pricing

The Power and Water Corporation (PowerWater) provides the majority of the Northern Territory's urban water and wastewater services. Under the *Water Supply and Sewerage Services Act 2000*, the regulatory Minister (currently the Treasurer) is responsible for the economic regulation of PowerWater and the setting of service standards, on independent advice from the Utilities Commission.

PowerWater's water and wastewater operations earned income and community service obligation revenue sufficient to recover total operating, debt servicing and asset refurbishment costs in 2001-02, although operating losses were incurred in most urban centres (apart from Darwin) arising from the Northern Territory Government's decision that PowerWater should impose uniform tariffs.

PowerWater must operate in accord with the Territory's competitive neutrality policy framework, which incorporates taxes and rates (or equivalents). Under the Government owned corporation arrangements, dividends are agreed between the shareholding Minister and the PowerWater board. Asset consumption costs are calculated on a written down replacement cost basis. They are also calculated on a replacement annuity basis for comparative purposes and to ensure compliance with CoAG cost recovery requirements.

PowerWater's use of water resources is limited to water allocations defined in extraction licences, which are set at environmentally sustainable levels. This provision is intended to mitigate adverse environmental implications associated with water consumption in the Territory. Most environmental requirements imposed on PowerWater are conditions of extraction and discharge licences issued under the Water Act. While a licence may be issued for up to 50 years, the controller of water may revise licence conditions in the light of ongoing water allocation planning and environmental monitoring programs. In addition, the controller of water may require a licensee, at the licensee's expense, to provide data. There are also operational environmental requirements imposed on PowerWater, including monitoring and reporting water quality and quantity, and costs associated with pollution incident reporting. The costs of complying with water allocation and monitoring and reporting requirements are reported in PowerWater's annual report.

Water charges in the Northern Territory are use-based. There are no free water allowances, ensuring that water customers face a price incentive to use water economically. PowerWater intends to phase out cross-subsidies, and it reports remaining cross-subsidies in its annual reports. The Northern Territory Government provides funding to subsidise water and wastewater charges for pensioners in all Northern Territory centres, and for services in the Katherine, Tennant Creek and Alice Springs regions to maintain uniform tariffs across the Territory. Domestic and nondomestic wastewater charges are based on the number of sanitary units. PowerWater introduced a trade waste management system on 1 January 2002 that charges for trade waste discharged to PowerWater's sewerage system according to the volume and toxicity of waste.

Water entitlements: progress report

The Northern Territory has established a comprehensive system of water entitlements, backed by separation of water property rights from land title and by the specification of entitlements in terms of ownership, reliability, volume, transferability and, if appropriate, quality. Water entitlements are specified in surface water and groundwater extraction licences issued under the Water Act. Licences are generally issued for up to 10 years, with the Minister able to approve a longer period.

The Northern Territory's water rights registry system is a hard copy public database that contains details of licence holders, quantities of water and dates for renewal, but does not register third party interests. A capacity for third parties to register an interest is not likely to be an issue in the Northern Territory until the demand for water increases to the extent that water licences have some value. The Department of Infrastructure, Planning and Environment established a new electronic database to improve the administration of water licences. The department indicated that a formal policy for public access to water licence information (including through the Internet) is to be prepared in accordance with the Territory's *Information Act 2002*, which commenced on 1 July 2003.

Provision of water to the environment: progress report

Water allocation planning in the Northern Territory occurs through an integrated regional resource management process covering both surface water and groundwater. Water allocation plans may be declared for water control districts. The plans include contingent allocations for the environment. The plans are set for 10 years and reviewed every five years. Water advisory committees oversee implementation of the plans.

The Northern Territory Government proposes to develop water allocation plans for four of its six water control districts. It finalised the plan for the Ti–Tree Water Control District in August 2002. The remaining three plans are expected to be finalised in 2003-04.

At 30 June 2003, the Territory had progressed its scientific research on environmental water requirements. It had completed five research projects on environmental flows in the Daly and Douglas rivers and prepared a summary report on the projects. The Government advised that the summary and each report are being used to guide the drafting of the water allocation plan for the Daly River region and as references during the regional consultation on the plan.

Intrastate trade in water

At current levels of development, water supplies in the Territory are plentiful relative to demand. As a result, there is little, if any, demand for water trading and there has been no trade in licensed water entitlements. The Territory's legislation prohibits trade between consumptive and nonconsumptive water uses, to prevent environmental and cultural water allocations being traded to water irrigators and other water users.

The Northern Territory foreshadowed two general restrictions on water trading in all its water allocation plans. For river systems, the trading of entitlements from downstream to upstream within a specific system will not be permitted without approval. The Territory advised that this requirement reflects concern that uncontrolled downstream to upstream trade could have an impact on environmental water provisions and adversely affect the environment. Upstream trade will be approved only after it has been demonstrated that there will be no impact on the environmental provisions of the relevant water allocation plan. For groundwater sources, trading of entitlements will be restricted to within-aquifer transactions, reflecting physical and environmental constraints.

The Territory has finalised only one water allocation plan — the plan for the Ti–Tree Water Control District. Trading of water entitlements is possible, therefore, only in this water control district. In the Ti–Tree plan, trading in groundwater is restricted to within-zone transactions. The Northern Territory Government advised that this provision reflects the management of the groundwater resources within separate zones and the need to limit extractions within each zone to a sustainable level.

Institutional reform

Structural separation

On 1 July 2002, the Power and Water Authority became the first government business to be covered by the Northern Territory's *Government Owned Corporations Act 2001*. The authority is now known as the Power and Water Corporation (or PowerWater). Under the Government Owned Corporations Act, PowerWater's board of directors is accountable to a shareholding Minister (currently the Treasurer) for the performance of the corporation through a formal statement of corporate intent. Under the Water Act, resource management, water allocation and environmental regulation are the responsibility of the Minister for Lands and Planning. Under the Water Supply and Sewerage Services Act, economic regulation and the setting of service standards are the responsibility of the regulatory Minister (currently the Treasurer) acting on independent advice from the Utilities Commission.

The Northern Territory Treasurer continues to be responsible for agreeing on dividends with PowerWater (but as the shareholding Minister rather than as Treasurer), as well as setting prices (as the regulatory Minister). In performing these two roles, the Treasurer is advised by different agencies (by the Northern Territory Treasury on dividends and by the independent Utilities Commission on price regulation) and must comply with the relevant legislation. Dividends are transparently reported (in PowerWater's annual report, the statement of corporate intent and Budget papers) and the Utilities Commission is able to report publicly on pricing and/or in its annual report.

Commercial focus of the metropolitan service provider

The predecessor of PowerWater, the Power and Water Authority, operated on a commercial basis. The commercial focus of PowerWater is enhanced by the new Government Owned Corporations Act. PowerWater is required to operate, as much as possible, on a basis similar to that of a private sector corporation.

Integrated catchment management

The Northern Territory's integrated catchment management activity has progressed since the 2001 NCP assessment, with the principal achievements being:

- bilateral agreements with the Commonwealth Government on the National Action Plan for Salinity and Water Quality and the Natural Heritage Trust extension;
- the publication of the Ilparpa Swamp Rehabilitation Plan (Alice Springs);
- the appointment of an advisory committee, and extensive community consultation for the Darwin Harbour plan of management; and
- the introduction of new land clearing guidelines and controls.

The Northern Territory has published three catchment plans, two of which are being reviewed for compatibility with the national action plan and the Natural Heritage Trust extension. The Territory is developing three additional plans — including the Darwin Harbour plan, which will encompass a coastal marine protection strategy, a management plan for Darwin Harbour and the protection of mangroves. The Territory's natural resource management framework appears to facilitate support for land care practices to protect rivers with high environmental values. The focus on protecting high value rivers is likely to increase as a result of the Territory's participation in the national action plan and the Natural Heritage Trust extension.

National Water Quality Management Strategy

The Northern Territory continues to implement arrangements that take account of the NWQMS, principally via waste discharge licensing, water quality monitoring, and drinking water standards. It improved point source pollution management in 2002 by introducing the Trade Waste Management System and the Trade Waste Code. The Territory contributed to several NWQMS guidelines, including the revised NWQMS guidelines for fresh and marine water quality and for water quality monitoring and reporting. The Territory introduced the Framework for Management of Drinking Water Quality, and PowerWater published the Territory's first comprehensive report on drinking water quality. PowerWater is to review its drinking water monitoring program in 2003 to evaluate its effectiveness.

Legislation review and reform

The Northern Territory reviewed the Water Act and Regulations, the legislation providing for the use, control, protection and management of the Territory's water resources, in 2000. The Territory also reviewed the Water Supply and Sewerage Act. This Act was repealed by the Water Supply and Sewerage Services Act, which retained the single service provider status of PowerWater and implemented an economic regulatory framework.

Public education and consultation

The Northern Territory addressed water reform public education and consultation obligations.

Murray–Darling Basin Commission

In this 2003 NCP assessment, the main element of the water reform program that is relevant for the Murray–Darling Basin Commission is interstate water trading, which is a progress report issue. The commission is examining several issues relating to interstate trade in water, including the development of: a system of exchange rates to allow trading between regions and between different water entitlements in different States; adequate environmental controls for trading; efficient administrative arrangements for processing and approving trades; and a system of access to State-based registry systems to enable those interested in interstate trading to obtain the information necessary to conduct such trades. The commission is also undertaking work on barriers to interstate water trade, in consultation with governments. Recent work focused on two issues: (1) barriers to trade out of irrigation districts and (2) the impact (on interstate trade) of differential financial arrangements for bulk water between the States. The Council will consider further developments in relation to these issues when it assesses progress with interstate trading arrangements in the 2004 NCP assessment.

In 2004, the Council will also consider the implementation by River Murray Water of the recommendations of the independent review of its pricing arrangements undertaken in 2002. As part of this, the Council will consider the adequacy of reporting in the commission's annual report of each government's annual cost shares for River Murray Water and the corresponding bulk water volumes supplied in each State.

10 National road transport reform

Each State and Territory is responsible for road transport regulation in its jurisdiction. This approach led to diverse regulations for driver and vehicle operations and standards, weights and dimensions. In the early 1990s, governments agreed to measures to address the differences in regulation, establishing the Heavy Vehicles Agreement and the Light Vehicles Agreement in 1991 and 1992 respectively. The former agreement provides for the development of uniform or consistent national regulatory arrangements for vehicles over 4.5 tonnes gross mass; the latter extends the national regulatory approach to cover light vehicles.

The National Road Transport Commission developed the initial national road transport reform package, comprising 31 initiatives in six modules: (1) registration charges for heavy vehicles; (2) transport of dangerous goods; (3) vehicle operations; (4) heavy vehicle registration; (5) driver licensing; and (6) compliance and enforcement. The Australian Transport Council oversees implementation of the reforms. The Council of Australian Governments (CoAG) endorsed a framework comprising 19 of the 31 reforms, criteria for assessing reform implementation and target dates for the 1999 National Competition Policy (NCP) assessment, along with another framework comprising six reforms for the 2001 NCP assessment.

Governments have not listed several reforms from the original package — notably, the speeding heavy vehicle policy and the higher mass limits reforms — for assessment under the NCP. (Some governments have implemented these reforms, however, in part or in whole.) Governments have also not listed for NCP assessment the national road transport reforms (such as the second and third heavy vehicle reform packages) developed subsequently to the original six-module package.

Governments did not endorse a road transport reform framework for the 2002 and 2003 NCP assessments. The Council has assessed road transport reform implementation in the 2003 NCP assessment, however, considering governments' progress in undertaking reforms that were not implemented or operational at the time of the 2002 NCP assessment. In the 2002 assessment, the Council found that:

- New South Wales, Victoria, Queensland, South Australia and Tasmania had completed all NCP road transport reform obligations at 30 June 2002; and

- Western Australia, the ACT, the Northern Territory and the Commonwealth Government were continuing to implement those reforms for which they had not met completion targets advised in earlier NCP assessments.

Given that governments had demonstrated significant progress, the Council considered that additional time to complete the reform programs was warranted. It decided to reassess implementation in the 2003 NCP assessment. Tables 10.1 and 10.2 list the 1999 and 2001 reforms outstanding at 30 June 2002 and notes actions that jurisdictions have since taken.

Table 10.1: Incomplete or delayed 1999 NCP reforms, 30 June 2002

Jurisdiction	*Reform number and projection (actual or projected date)*	*Action taken or required to complete reform*
Western Australia	3 Driver licensing (spring 2003)	Final amendments to the Act and Regulations are to be introduced to Parliament in spring 2003.
	4 Vehicle operations (spring 2002)	The *Road Traffic Amendment Act 2001* gained royal assent on 22 December 2001. The supporting amended Regulations commenced operation on 1 November 2002.
	5 Uniform heavy vehicle standards (spring 2002)	
	13 Safe carriage and restraint of loads (spring 2002)	
	9 One driver/one licence (spring 2003)	Final amendments to the Act and Regulations to are to be introduced to Parliament in spring 2003.
ACT	2 Heavy vehicle registration scheme (January 2004)	The Legislative Assembly rejected regulations implementing continuous registration, but the ACT Government plans to implement continuous registration from 1 January 2004.
Commonwealth	2 Heavy vehicle registration scheme (2003-04)	The Commonwealth will decide whether it is required to implement the heavy vehicles registration scheme after a review of the *Interstate Road Transport Act 1983*. If legislative reform is required, then it will occur in 2003-04.

Table 10.2: Incomplete or delayed 2001 NCP reforms, at 30 June 2002

Jurisdiction	*Reform number and description (actual or projected date)*	*Action taken to complete reform*
Western Australia	1 Combined vehicle standards (spring 2002)	The *Road Traffic Amendment Act 2001* gained royal assent on 22 December 2001. The supporting amended Regulations commenced operation on 1 November 2002.
Northern Territory	1 Combined vehicle standards (2003)	Regulations to adopt the combined vehicle standards were gazetted on 1 May 2003.

The overriding consideration for the Council in the 2003 NCP assessment is the importance of a common regulatory platform consistent with the Australian Transport Council assessment frameworks. For a government to be assessed as fully complying, it needed to have made by 30 June 2003 its agreed contribution to achieving the common platform. Except for formal exemptions or accepted alternatives, jurisdictions must have implemented all elements of the assessment frameworks for the reform to be assessed as complete.

Implementation of reforms outstanding at 30 June 2002

Accounting for the formalised and practical exemptions from the road transport reform program, the Council considers that governments had satisfactorily implemented 188 of 192 assessable reforms (98 per cent across all jurisdictions) at 30 June 2003.

- Of the 147 reforms in the 1999 NCP framework across all jurisdictions, 143 (97 per cent) were satisfactorily implemented at 30 June 2003. Western Australia has two remaining reforms, and the ACT and Commonwealth each have one outstanding. These reforms are expected to be implemented during 2003-04.

- All of the 45 reforms in the 2001 NCP assessment framework had been implemented by 30 June 2003. Western Australia and the Northern Territory have completed their reform obligations since the 2002 NCP assessment. New South Wales and Victoria have continued to progress towards their 2006 target completion of changes to street signage and continuous centre line markings on roads.

Table 10.3 lists all of the road transport reforms assessable under the NCP. It indicates the reforms that were incomplete at 30 June 2003, the jurisdictions still to complete these reforms and the expected completion dates.

Table 10.3: Reform implementation, 30 June 2003

Road reform	*Jurisdiction still to complete implementation (expected completion date)*
1997 NCP assessment framework	
First heavy vehicle registration charges determination	
1999 NCP assessment framework	
1 Dangerous goods — nationally consistent registrations and code	
2 Heavy vehicle registration schemes — national consistency	The ACT (January 2004) and the Commonwealth (2003-04)
3 Driver licensing — uniform classes, procedures, renewals, cancellations, medical guidelines, exemptions, demerit points etc.	Western Australia (spring 2003)
4 Vehicle operations — uniform mass and load registrations, consistent oversize/overmass regulations/exemptions/pilots/escorts, restricted access vehicle	
5 Uniform heavy vehicle standards (superseded by combined vehicle standards)	
6 Truck driving hours	
7 Bus driving hours	
8 Common mass and load rules — axle mass spacing schedule up to 42.5 tonnes gross vehicle tonnes for 6 axles; 62.5 tonnes for tri-tri-B-doubles; set fines for exceeding these limits	
9 One driver/one licence	Western Australia (spring 2003).
10 Improved network access — expanded gazetted rotes for B-doubles and approved large vehicles (road trains and 4.6 metre high trucks) in lieu of permits	
11 Common pre-registration standards — nationwide acceptance to enable trucks to be sold and used in any jurisdiction	
12 Common roadworthiness standards — mutual recognition of standards and enforcement practices	
13 Safe carriage and restraint of loads	
14 National bus driving hours	
15 Interstate conversions of driver licences free of cost	
16 Alternative compliance — support for trial and endorsement of model legislation for mass and maintenance management	
17 Three-month and six-month short-term registration	
18 Driver offences/licence status — information provision to employers with employee's consent	
19 National exchange of vehicle and driver information system stage 1 — in-principle agreement to link driver and vehicle information nationally	

(*continued*)

Table 10.3 continued

Road reform	*Jurisdiction still to complete implementation (expected completion date)*
2001 NCP assessment framework	
1 Combined vehicle standards — uniform vehicle design and construction standards	
2 Australian road rules — national rules obeyed by all road users	
3 Combined truck and bus driving hours — nationally consistent driving hours (14 hours, including 12 in any 24-hour period etc.), chain of responsibility (extended offences) provisions; transitional fatigue management scheme etc.	
4 Consistent on-road enforcement for roadworthiness — written warning, minor defect notice, major defect notice	
5 Second heavy vehicles registration charges determination	
6 Rear axle mass increase of 1 tonne for ultra-low-floor buses within the overall 16 tonne gross vehicle mass limit	

Assessment

The Council is satisfied that New South Wales, Victoria, Queensland, South Australia, Tasmania and the Northern Territory had completed all NCP road transport reform obligations at 30 June 2003. The Council notes that the Commonwealth, Western Australia and the ACT are close to completing their outstanding reforms.

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