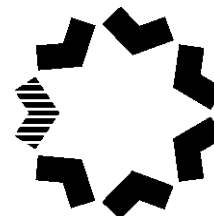


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PRESS RELEASE

2003 NCP assessment outcomes

The Australian Government Treasurer today announced the 2003-04 National Competition Policy (NCP) payments to the States and Territories.
<http://www.treasurer.gov.au/tsr/content/pressreleases/2003/107.asp>

The Treasurer also authorised the publication of the National Competition Council's (NCC's) 2003 assessment report. That report, which is now available from the NCC's web site at www.ncc.gov.au, comprises three volumes covering all aspects of the NCP and related reforms. The report's overview <http://www.ncc.gov.au/pdf/AST5Ov-001.pdf> summarises the NCC's analysis and recommendations.

The NCC assesses the progress of each State and Territory against their NCP obligations, including in water, energy and legislation review, and makes recommendations on competition payments.

Competition payments for 2003-04*

Under NCP the Australian Government makes payments to the States and Territories as a means of sharing the gains from regulatory and other micro-economic reforms, and to provide financial incentives for the States and Territories to implement their agreed NCP commitments.

In assessing governments' progress in implementing NCP, the NCC advises the Treasurer each year on the allocation of the competition payments.

Over the history of NCP the NCC has generally recommended payments proceed as scheduled. While there have been a small number of specific payment suspensions, the Treasurer has lifted these relatively quickly following action by the relevant government to address the identified breach of NCP.

The maximum competition payments available in 2003-4 total approximately \$A765 million. These are allocated to the States and Territories on a per capita basis.

The table below shows the maximum competition payments under NCP by jurisdiction.

Maximum Annual Competition Payments* (\$m) for 1997-98 to 2005-06									
	1997-98	1998-99	1999-2000	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06
NSW	126.5	138.7	209.5	155.9	242.5	251.8	257.2	262.4	268.5
Vic.	92.8	102.0	152.1	114.7	179.6	182.4	189.5	193.7	198.5
Qld	74.2	81.6	118.9	73.0	147.9	138.9	146.2	150.7	155.6
WA	38.4	42.4	61.9	45.5	71.1	72.0	75.2	77.0	79.2
SA	34.3	38.4	53.5	35.9	55.7	57.1	58.5	59.4	60.5
Tas.	12.6	13.9	18.7	11.2	17.4	17.7	18.1	18.4	18.6
ACT	6.2	7.0	10.8	7.5	11.6	12.4	12.5	12.7	13.0
NT	11.2	13.0	14.4	4.5	7.6	7.5	7.6	7.7	7.9
Total	396.2	436.9	639.8	448.0	733.3	739.9	764.8	782.0	801.9

**The competition payments estimates reported in the 2003 NCP Assessment are based on projections from the Australian Government's 2003 budget papers. These estimates are subject to periodic revision as new consumer price index and population data become available. Consequently, the dollar estimates reported in the 2003 NCP Assessment (and reflected in this press release) may differ slightly from the actual payments and penalties determined by the Australian Government in response to the NCC's recommendations.*

2003 payment recommendations

In accord with the deadline set by the Council of Australian Governments (CoAG), 2002 was the last year for governments to complete the NCP legislative review and reform program. For the 2003 assessment, the NCC recommended that the Treasurer reduce or suspend payments to the States or Territories that had not fully implemented their NCP obligations. Because no jurisdiction completed its legislation review and reform program, the NCC's 2003 assessment contains a wide range of penalty recommendations on legislation review and reform matters.

The NCC also recommended that the Treasurer suspend some of the competition payments due to Queensland for failure to sufficiently progress electricity full retail contestability and to Western Australia for failure to sufficiently progress water pricing matters. Queensland has undertaken immediately to consider introducing contestability for customers using between 100 and 200 megawatt hours per year and to bring forward a review of the costs and benefits of full retail contestability.

The Treasurer has now accepted the NCC's recommendations.

The recommended penalties applying to each jurisdiction are set out in the following table:

<i>State/Territory</i>	<i>NCP compliance failure</i>	<i>2003-04 payment deduction</i>	<i>2003-04 payment suspension</i>
New South Wales	Chicken meat industry negotiations: failure to demonstrate restrictions are in the public interest.	5% (\$12.86 m)	
(\$257.2 million)	Liquor licensing: failure to address anticompetitive restrictions.	5% (\$12.86 m)	
	Legislation review suspension pool items.		10% (\$25.72 m)
	Total	10% (\$25.72 m)	10% (\$25.72 m)
Victoria	Legislation review suspension pool items.		5% (\$9.48 m)
(\$189.5 million)	Total		5% (\$9.48 m)
Queensland	Electricity reform: — suspension pending introduction of contestability to tranche 4A* customers; and — suspension pending outcome of wider review of retail contestability generally.		10% (\$14.62) 15% (\$21.93)
(\$146.2 million)	Liquor licensing: failure to address anticompetitive restrictions.	5% (\$7.31 m)	
	Legislation review suspension pool items.		10% (\$14.62 m)
	Total	5% (\$7.31 m)	35% (\$51.17 m)
Western Australia	Retail trading: failure to address restrictions on retail trading hours. Proposal to defer reform not accompanied by public interest case.	10% (\$7.52 m)	
(\$75.2 million)	Liquor licensing: failure to address anticompetitive restrictions. Proposal to defer reform not accompanied by public interest case.	5% (\$3.76 m)	
	Potato marketing: retention of anticompetitive restrictions inconsistent with NCP obligations.	5% (\$3.76 m)	
	Water pricing: suspension pending review of water pricing against CoAG principles.		10% (\$7.52 m)
	Egg marketing: suspension pending appropriate reform implementation program.		5% (\$3.76 m)
	Legislation review suspension pool items.		20% (\$15.04 m)
	Total	20% (\$15.04 m)	35% (\$26.32 m)

South Australia	Chicken meat industry negotiations: new legislation introduces restrictions on competition.	5% (\$2.93 m)	
(\$58.5 million)	Liquor licensing: failure to address anticompetitive restrictions.	5% (\$2.93 m)	
	Barley marketing: suspension pending a complying reform implementation program.		5% (2.93m)
	Legislation review suspension pool items.		15% (\$8.78 m)
	Total	10% (\$5.86 m)	20% (\$11.71 m)
Tasmania	Legislation review suspension pool items.		5% (\$0.91 m)
(\$18.1 million)	Total		5% (\$0.91 m)
ACT	Legislation review suspension pool items.		10% (\$1.25 m)
(\$12.5 million)	Total		10% (\$1.25 m)
Northern Territory	Liquor licensing: failure to address anticompetitive restrictions.	5% (\$0.38 m)	
(\$7.6 million)	Legislation review suspension pool items.		15% (\$1.14m)
	Total	5% (\$0.38 m)	15% (\$1.14 m)
TOTAL NCP Payments			
(\$764.8 million)		\$54.31 m (7.1%)	\$127.7 m (16.7%)

*Contestability for customers between 100 – 200 megawatts per year.

Legislative review and reform

The NCC's primary aim is to encourage governments to meet NCP obligations. Where, however, obligations are not met, or where reforms are significantly delayed, the benefits of reform are lost to Australia and this should be reflected in deductions from, or suspensions of, competition payments.

The NCP process is a flexible one. The obligation on governments is to review legislation that restricts competition and remove those restrictions that cannot be properly justified.

Governments are not obliged to remove restrictions that benefit the public, but they need objectively and independently to establish the benefits are real and cannot be achieved by less anticompetitive approaches to regulation.

The NCP program for review and reform commenced in June 1996 when governments published their review timetables. All jurisdictions have therefore had ample opportunity to review regulations that restrict competition and make necessary changes. In many cases restrictive regulations have been able to continue where they are shown to be in the public interest. In other cases regulations have been modified to maintain public benefits while reducing impacts on competition.

Assessing legislation review and reform compliance failure

In terms of the CoAG deadline for governments to complete their legislation review and reform programs, for the 2003 NCP assessment the NCC regarded a government as failing to meet its obligations where it:

- had not completed the review and reform of restrictive legislation; or
- had undertaken reviews and/or implemented reforms that do not satisfy NCP principles¹.

The NCC made no recommendations to reduce competition payments where governments had not completed review and reform activity because of unfinished national reviews or other interjurisdictional processes.

The significance of an individual compliance failure reflects 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 a particular occupation.
- *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, most importantly, 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.

CoAG also directed the NCC 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.

¹ Under NCP governments are obliged to remove restrictions on competition unless they can demonstrate that the restrictions are in the public interest and that the objective of the legislation cannot be met in other ways. CoAG has directed that the legislation review and reform program be completed by 30 June 2002, although it has made provision for transitional reform initiatives to extend beyond that date where justified by an appropriate public interest assessment.

Consequently, minor breaches of reform obligations do 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.

In taking account the above, the NCC 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 considered as a group and a general 'pool suspension' applied.

Penalty types and implications

For the 2003 NCP assessment, the categories of penalties are.

- **Permanent deductions** which are irrevocable reductions in governments' 2003-04 competition payments for specific compliance failures.

The NCC 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 NCC is likely to recommend in future assessments that the 2003-04 deductions be ongoing.

- **Specific suspensions** which apply until specific pre-determined conditions or obligations 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 NCC will re-address these matters as and when significant commitments are made, or reforms implemented.

Where commitments are not made or met, or reform action is not implemented by the 2004 NCP assessment, the NCC 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 NCC will consider whether further suspensions or permanent deductions should apply.

- **Pool suspensions** which apply to a pool of outstanding legislation review and reform compliance failures and relate to payments for 2003-04.

The NCC will reassess progress with the pool of compliance failures in the 2004 NCP assessment. If satisfactory progress is made, the NCC may recommend that the suspension be lifted or reduced and the funds released to the relevant jurisdiction. If satisfactory progress is not made, the NCC is likely to recommend that all or part of the suspension be converted to a

permanent deduction for the 2003-04 NCP competition payments and that the deduction be ongoing.

For further comment contact:

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