

National Competition Policy Health and Other Amendments (Commonwealth Financial Penalties) Bill 2004

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The National Competition Policy (**NCP**) reform program was established on 11 April 1995 under the auspices of the Council of Australian Governments. The NCP is implemented through three agreements:

- (a) the *Conduct Code Agreement*,
- (b) the *Competition Principles Agreement*,
- (c) the *Agreement to Implement the National Competition Policy and Related Reforms (Implementation Agreement)*.

Under the *Competition Principles Agreement*, all governments agreed to put in place a range of structural reforms, including the review and reform of all legislation that restricts competition. Reform of legislation is required unless the benefits of restrictions to the community as a whole outweigh the costs, and the objectives of the legislation can only be achieved by restricting competition. In return for complying with the obligations set out in the three NCP agreements, including legislation review and reform, the Commonwealth agreed to provide annual competition payments to the States and Territories. The NCP agreements recognised that while the States and Territories have responsibility for implementing the major competition reforms, much of the financial dividend from the economic growth arising out of NCP reforms accrues to the Commonwealth rather than the States and Territories through higher income tax receipts. Competition payments to the States and Territories represent their share of the financial benefits arising from the NCP reforms. In 2003–2004, New South Wales' maximum competition payment entitlement is \$254.4 million. The National Competition Council (**NCC**) has assessed New South Wales as having fulfilled all of its obligations under the three NCP agreements, with the exclusion of certain legislation review and reform activity. Among other areas, the Council has expressed dissatisfaction in relation to the degree of reform undertaken in the regulation of farm debt mediation and the dentistry, optometry and pharmacy professions.

The Commonwealth has accepted the NCC's recommendation to impose a penalty for New South Wales' 2003–04 competition payments of \$50.8 million. The legislative amendments made by this Bill seek to ensure that this penalty is not imposed in future years and, subject to the NCC's assessment and recommendation, may enable New South Wales to earn back a portion of this penalty.

The Bill effects the following amendments:

- (a) the *Dentists Act 1989* and the *Dental Practice Act 2001* are amended to remove restrictions on the persons or bodies who may employ dentists or in association with whom dentists may practise, and to prohibit employers of dentists from directing or inciting them to engage in misconduct,
- (b) the *Optometrists Act 2002* is amended to remove restrictions on the persons or bodies who may carry on the business of optometry, and to prohibit employers of optometrists from directing or inciting them to engage in misconduct,
- (c) the *Pharmacy Act 1964* is amended:
 - (i) to remove restrictions on who may have a pecuniary interest in a pharmacy business, on the number of such businesses that

pharmacists may carry on or in which they may have a pecuniary interest and on the ability of friendly societies to carry on such businesses, and

(ii) to allow an incorporated practice of pharmacists to carry on a pharmacy business (rather than just pharmacists or partnerships of pharmacists) and to allow any person to participate in (but not control) the carrying on of a pharmacy business, and

(iii) to prohibit persons who have a pecuniary interest or who participate in carrying on the business of a pharmacist from directing or inciting the pharmacist to engage in misconduct,

(d) the *Farm Debt Mediation Act 1994* is amended:

(i) to remove a provision that prohibits action under the Act being taken within the 12 months following the Rural Assistance Authority's refusal of an application for a certificate declaring that the Act does not apply to a particular farm mortgage, and

(ii) to remove a provision that makes certain decisions of the Rural Assistance Authority reviewable by the Administrative Decisions Tribunal.

The Bill also makes ancillary and consequential amendments to the Acts referred to in paragraphs (a)–(d) above.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 is a formal provision that gives effect to the Schedules to the proposed Act containing the amendments.

Clause 4 makes it clear that the explanatory notes contained in the Schedules do not form part of the proposed Act.

Schedules 1–5 amend the *Dentists Act 1989*, the *Dental Practice Act 2001*, the *Optometrists Act 2002*, the *Pharmacy Act 1964* and the *Farm Debt Mediation Act 1994*. The amendments made by each Schedule are explained in detail in the explanatory note contained in the Schedule concerned.