Assessment of Governments' Progress in Implementing the National Competition Policy and Related Reforms

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NATIONAL COMPETITION COUNCIL

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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 'help raise the living standards of the Australian community by ensuring that conditions for competition prevail throughout the economy which promote growth, innovation and productivity'.

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.

Summary

This third assessment of progress with implementing the National Competition Policy (NCP) builds on the 1997 first tranche assessment and the 1999 second tranche assessment. Under the 1995 NCP agreements, the third assessment was to be the last: the essential reform ingredients of the NCP were to have been fully implemented by the end of the year 2000.

However, NCP implementation has proved more challenging than originally envisaged. Since 1995, the Council of Australian Governments (CoAG) has amended some elements of the program to extend reform timetables beyond 2001. Thus, rural water reform will not be completed until at least 2005, and probably much later. The National Electricity Market will not be fully implemented for several years. A timetable for the remaining road transport reforms is yet to be developed. Most recently, governments agreed to set back the deadline for completion of the legislation review and reform program by eighteen months to mid-2002. Consequently, in reaffirming their commitment to the NCP in November 2000, governments also agreed that the Council would conduct annual assessments of reform implementation until at least the year 2005. CoAG will conduct a further review of the terms and conditions of the NCP agreements and the Council's assessment role before September 2005.

The timetable amendments have changed the nature of this assessment. Rather than a comprehensive appraisal of the extent of each government's completion of the reform program, this assessment is a progress report more akin to the first and second assessments. No government has entirely completed any of the major reform elements of the NCP, except for the extension of part IV of the *Trade Practices Act 1974* (TPA) to apply to all businesses in Australia. Nonetheless, the Council has addressed the NCP reform agenda more comprehensively than in previous assessments to provide guidance on, and establish a foundation for, the remaining reforms and the Council's annual assessments from 2002 to 2005 inclusive.

The report begins with some background to the assessment and a summary of the NCP reform obligations. It follows with brief explanations of three reform components of general relevance to most sectors:

- competitive neutrality principles for competition between public and private sector businesses;
- the structural reform of public monopolies; and
- the legislation (regulation) review and reform program.

After explaining the context of the assessment, the report then considers governments' progress on a sector basis, beginning with electricity, gas, water

services and road transport — the four sectors of the economy that are subject to sector-specific NCP agreements. Governments' progress against the NCP water reform commitments is summarised in chapter 8 and discussed in detail in the related reports on water reform. The comprehensive discussion of water reflects the far-reaching nature of the NCP water reform program, encompassing urban and rural water and wastewater industries and including economic, environmental and social objectives.

The report then examines activity in other sectors of the economy. The Council identified these sectors on the basis of governments' legislation review programs and the likely impacts on competition. For each industry sector in the report, governments had scheduled several regulations for review. The report's discussion of each sector reflects the scope of the competition questions associated with that sector rather than the sector's size and importance within the Australian economy.

Overall, the Council has found that much has been accomplished in the five years of the NCP. While governments still have some work to do to complete their NCP legislation review programs, much has already been done. Many areas of the economy — including water management, the utilities, transport, communications, agricultural marketing, professions, finance and retail trading — have undergone extensive pro-competitive change.

Water reform

The importance of these developments to the community is nowhere better exemplified than in the water reform commitments of the NCP. In its first annual report in 1996, the Council said that:

> *The* (water) *reforms proposed extend beyond competition policy matters, and if fully implemented, will probably have a far greater impact on community welfare in the longer term (including explicit consideration of the environment) than any other measure.* (NCC 1996, p.31)

Events since then have only confirmed this view. Excessive and inappropriate use of water to date has created Australia's largest economic, social and environmental problems. The need for changes to the way Australia has traditionally exploited water resources is now accepted throughout the community. The NCP water reform program provides the framework and an implementation agenda for these much needed changes to management of both urban and rural water systems.

Urban water reforms are nearly complete in most jurisdictions. The NCP urban water reforms include consumption based pricing of water to discourage wasteful use, cost recovery by water service providers to help ensure adequate investment in infrastructure, protection against inadequate

service standards and/or monopoly pricing by water service providers and programs to improve water quality.

This assessment has identified one area of inadequate progress against the urban water reform agenda in Queensland. Townsville City Council, one of the State's largest water service providers, is yet to meet reform commitments relating to consumption based pricing. The CoAG strategic water reform framework required implementation of two-part tariffs (where these are found to be cost-effective) by the end of 1998. The Council first raised this matter with Queensland during the second tranche NCP assessment in June 1999. The 2001 assessment found that Townsville has not given due consideration to implementing two-part tariffs in water pricing.

However, the Council has recognised the considerable efforts and progress made by Queensland in relation to urban water reform generally since the second tranche assessment. The Council regards the Townsville City Council pricing matter as isolated and not indicative of a lack of commitment to water reform by the Queensland Government. The Queensland Government shares its competition payments with local government on the basis of implementation of the NCP reforms. Recognising Queensland's general support for water reform, the Council has recommended that Queensland's competition payments be reduced by only the amount that Queensland will deny Townsville for lack of progress on water reform. The Council has therefore recommended a permanent reduction in Queensland's payments for 2001-02 of $270 000. The Council will consider progress by Townsville in the 2002 NCP assessment. If progress is insufficient, the Council will consider whether a further reduction in competition payments is warranted.

Rural water reform primarily relates to arrangements for the use of water in irrigated agricultural activities. More than seventy per cent of water use in Australia is in irrigation. Excessive allocations of water to irrigation over most of the last century have caused extensive damage to river systems and groundwater resources, while salinity associated with rising water tables has destroyed large tracts of productive land. Water reform (in conjunction with such measures as the national action plan on salinity and water quality) is an essential component of a range of national initiatives seeking to avoid further and more extensive damage.

The NCP rural water reforms are designed to address these problems at their root cause by ensuring:

- adequate water is available to protect the environment;
- the maintenance and efficient development of water infrastructure;
- the clear allocation of rights to use water; and
- the separation of water rights from the ownership of land, and the introduction of trading rules, to provide for trading of water rights to help ensure that water is used where it is most valued.

The rural water reforms were the last element of the NCP package to be assessed. Reform obligations did not arise until this assessment. Despite this, progress in rural water reform has been impressive. All jurisdictions have reform paths in place to:

- institute efficient water pricing;
- ensure adequate allocation of water to the environment; and
- provide for clear property rights for water, separate from land title.

Embryonic water trading arrangements are gradually extending and expanding.

Nonetheless, this area of NCP reform is extremely complex and difficult. There are no easy paths forward. There have been tensions between the objectives of:

- getting reform in place as quickly as possible;
- devoting the time and effort needed to ensure meaningful consultation with interested parties and that the best possible approach to reform is delivered; and
- in the meantime, accommodating the vital ongoing interests of farmers and other water users in the transition to the new arrangements, including through structural adjustment assistance where needed.

While the Council is generally satisfied with reform progress, and recognises that in some areas progress has been extensive, there remains a great deal to be done. Delays in reform implementation involve high costs. The Council has some concerns, which are discussed in the following paragraphs.

New South Wales has not achieved sufficient progress against commitments on water property rights. In particular, the Council notes that:

- New South Wales's water sharing plans — which will provide for environmental needs in stressed rivers (including unregulated systems) and groundwater, allocate water between uses and allow for further development of water trading — will not be available until December 2001; and
- the absence of a formal registry of water property rights in New South Wales, coupled with the transition to a new licensing system, results in insufficient security for licence-holders.

However, the Council recognises that New South Wales has achieved considerable progress in water reform, particularly over the past 18 months, and that the New South Wales Government has agreed on an appropriate reform path over the next 18 months. As a consequence, the Council does not consider that competition payments for New South Wales should be reduced for this assessment.

The Council intends to conduct a number of further assessments for New South Wales on this issue. First, the Council will conduct a supplementary assessment in December 2001 to consider the outcomes from public consultation on property rights including the ability of third party interests listed on the register to have priority over non-registered interests. It is the Council's view that the introduction of a registry system that provides evidence of ownership and third party interests, and priority accorded to registered third party interests over non-registered interests should be able to be accommodated. Second, the Council will assess progress against the property rights timetable provided by New South Wales including development of the water sharing plans and the interim register for the 2002 NCP assessment. The Council will recommend a permanent reduction in payments to New South Wales in the 2002 assessment should New South Wales fail to adhere to this agreed reform path.

For Victoria, the remaining issue for this assessment is how the State proposes to implement environmental flows for stressed rivers. The Council considers that Victoria has not yet met its reform commitments in this area. To address the Council's concerns, the Victorian Government has developed a proposal for a comprehensive three year action plan as a path forward on this issue. Consequently, the Council considers that Victoria's commitment to this reform path means that a reduction in payments for Victoria for the financial year 2001-02 is not warranted. The Council will recommend a permanent reduction in payments to Victoria for the following financial year should Victoria fail to adhere to the milestones in the agreed, three-year reform path.

There is also an unresolved question for the South Australian Government regarding the separation of price regulation from service provision for the water industry. While not a clear obligation under the agreements, all other governments have implemented independent price regulation. The Council is not satisfied that South Australia's current arrangements provide sufficient transparency to meet the obligation to, 'as far as possible', separate regulation from water service supply. The Council will address this issue in future assessments.

Finally, Queensland has acknowledged that the Condamine-Balonne is now a stressed river system. Consequently, the establishment of water allocations for the environment and consumptive use is now overdue. The Council will address this issue in the 2002 assessment. The Council is not satisfied that any of the options for setting environmental allocations specified in the draft water resources plan would be adequate to meet the environmental needs of the lower Balonne basin and the internationally listed Narren Lakes wetlands. More generally, the Council is not satisfied with the transparency of current arrangements for reporting the Government's final decisions for setting allocations. Queensland has agreed to address these concerns over the next 12 months.

Electricity reform

In electricity, all relevant governments have shown continued commitment towards meeting National Electricity Market related objectives. CoAG recently re-affirmed electricity reform principles and implementation targets, and governments have agreed to review market arrangements. The Council has raised matters in chapter 6 of this report that could assist this review process.

The National Electricity Market has been a remarkable achievement by governments. The market has already conferred enormous benefits to medium and large businesses. The Australian Bureau of Agricultural and Resource Economics recently estimated that Australia's gross domestic product by 2010 will be 0.26 per cent ($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 $15.8 billion in 2001 prices (Short et al. 2001, p. 84). The New South Wales 2001 NCP annual report cited estimates by the Treasury that electricity customers in the State saved over $1.6 billion (in real terms) between the commencement of reform in May 1995 and December 2000. Victoria's annual report cited:

- a 1998 report by the Australian Chamber of Manufactures, which found that industrial and commercial businesses achieved an average reduction in electricity costs of 23 per cent between 1994 and 1998; and

- a 2000 report by the National Electricity Code Administrator (NECA), which found that the average wholesale electricity price in Victoria was 16 per cent lower than the average price at market start.

Even for households in most National Electricity Market regions (who currently cannot choose their electricity supplier and so have yet to benefit from competition in electricity generation and retailing activities), there have been benefits from more efficient provision of electricity services overall. For example, a recent Victorian Office of the Regulator-General determination reduced average distribution charges by between 12 and 22 per cent from 1 January 2001, saving households up to $65 on annual electricity bills. However, in South Australia, households have not derived benefits due to deficient competition in the electricity wholesale market.

Despite these substantial benefits from the National Electricity Market, there have been many critics of electricity reform. The criticisms are made against a background of rising energy costs world-wide (driven by rising oil prices and demand for energy) and the gradual exhaustion of excess electricity generation capacity as demand rises, eroding opportunities for low wholesale electricity prices. Some have suggested that the electricity market is inevitably following the path of problems experienced overseas, particularly the high profile failures in California, and that governments should immediately and intrusively re-regulate the industry.

Indeed, the National Electricity Market is approaching a watershed in its development and decisions made by governments over the next six to twelve months will determine its future structure and performance. However, the issues arise because of a need to refine the market arrangements, rather than overturn them. The overall market framework, which provides for competition between generators and retailers of electricity and shared used of transmission and distribution infrastructure, provides the best opportunity for an efficient electricity industry and competitive prices to consumers in the long run. Possible market refinements include:

- addressing deficiencies in approval processes for new transmission system interconnection to help ensure inter-regional competition, and the sharing of reserve capacity, in electricity generation;

- improvements to institutional arrangements, particularly between NECA, the National Energy Market Management Company (NEMMCO) and the Australian Competition and Consumer Commission (ACCC), to help ensure efficient market operation and regulation;

- the settling of appropriate and consistent arrangements for extending competition to the sale of electricity to households;

- the appropriate phasing out of transitional arrangements that impede the full operation of the market; and

- safeguarding against changes in market structure or conduct that may impede or reduce competition between generators.

Of critical importance is the retention of independent operation and regulation of the National Electricity Market.

Governments have a clear role, from an economic policy perspective, in ensuring that the National Electricity Market architecture is and remains appropriate given the over-riding objective of an efficient and effective set of market arrangements.

Some have criticised the National Electricity Market because there has been an increase in coal-fired electricity generation, exacerbating environmental problems. The Senate Environment, Communications, Information Technology and the Arts Committee recommended that the Council's assessments incorporate benchmarks for the reduction of the greenhouse intensity of power generation (Recommendation 31) (Commonwealth of Australia 2000). As the Senate Committee recognised, however, this is beyond the current scope of the NCP agreements (see Recommendation 30). It is open to governments to introduce policies designed to deal with the social implications of electricity supply and consumption, such as rules or general tax or subsidy measures to correct for the environmental costs of electricity. Indeed, the National Electricity Market's separation of generation activities from other parts of electricity supply facilitates such policies. New South Wales, for example, has introduced measures to allow consumers to choose 'green' electricity without impeding the operation of the market.

But governments should not seek to become involved in the day-to-day operation of the market. In particular, governments should continue to recognise that some electricity wholesale price volatility in the short to medium term is an inevitable, indeed efficient, aspect of the market's operation, to encourage appropriate electricity supply and demand responses. Already, there is some evidence that rising wholesale prices are encouraging expansion of, and new entry in, generation activities; as well as changes in the ways that businesses use electricity. These developments are essential to ensure competitive prices in the long run. Market refinements along the lines outlined above should reinforce these incentives, but overly intrusive government action risks defeating them. Notably, the primary cause of problems in California has been inadequate market incentives in the supply of, and demand for, electricity.

Gas reform

Gas reform has been one of the major success stories of the NCP. CoAG agreements on gas reform date back to 1991, but little happened for five years until the gas reform commitments were rolled into the NCP program. CoAG's objectives for national free and fair trade in gas are now largely in place. As discussed in chapter 7, the only significant outstanding matter is the extension of competition in gas production and retailing to the household level.

Gas reform under the NCP has transformed the gas industry in Australia. The introduction of the National Gas Access Code, particularly in relation to gas distribution pipelines, and increased competition in gas exploration, has stimulated gas production and pipeline development activities. There is unprecedented interest in the development of gas resources in Bass Strait, the Cooper Basin, the Otway Basin, the Timor Sea and elsewhere. A major new pipeline has been completed recently, linking gas processing facilities at Longford in Victoria and consumers in Sydney, Canberra and elsewhere in New South Wales and Victoria. There are competing proposals to build new pipelines linking gas fields in Victoria and consumers in South Australia, and linking gas fields in the Timor Sea to consumers in south-east Australia. Other pipeline proposals include linking Longford to Tasmania and gas fields in Papua New Guinea to Queensland and possibly south-east Australia.

The NCP is stimulating the rapid development of a vibrant and competitive gas industry in Australia. The gas industry is likely to play an increasing role in meeting Australia's energy needs, including because gas is likely to increase its role in electricity generation for environmental reasons. A well developed and competitive gas industry is vital to Australia's economic and environmental future.

Road transport reform

Governments have also made advances with road transport reform during the third tranche period. They have implemented 'on the ground' the vast bulk of the 19 components of the national second tranche program and will have implemented the six elements of the third tranche program by the end of this year. Although the reform programs that CoAG endorsed for the three NCP tranches have not incorporated the entire road reform package envisaged in 1995, the NCP has resulted in a faster and better coordinated reform process. Uniform mass limits is the most significant element of the 1995 program not in the three tranches of reforms to date.

Effective, nationally-consistent regulation – the focus of the NCP road transport reform program – is necessary to transform the Australian road transport industry, already one of the most efficient in the world, into a truly national industry with minimal impediments to interstate operations. An efficient national road transport industry provides benefits to all Australians through more timely and lower cost transport services, particularly for regional communities. Efficient transport also enables better decisions about the location of industries that rely on transport, by helping to overcome the disadvantages of transporting goods long distances. Chapter 9 outlines developments in road transport reform.

Rail and other transport reform

Improvements in the competitiveness of the road transport industry have tended to exacerbate problems associated with slow progress in rail reform, and possibly pre-existing biases toward road transport in the funding of infrastructure and in taxation arrangements (Bureau of Transport Economics 1999 and PC 1999a). In some respects, the rail sector is the poor cousin of the NCP. Intergovernmental agreements on rail reform have been confined to the establishment of one-stop shop services for interstate train-paths provided by the Australian Rail Track Corporation. These agreements are not part of the NCP and the Council has no role in ensuring that obligations entered are actually met.

Nonetheless, the application of general NCP principles has generated significant reform in the rail sector. While not an assessment issue, State access regimes are facilitating competition in rail haulage operations, especially in intrastate bulk haulage operations. New South Wales coal mining operations in the Hunter Valley have benefited from large reductions in haulage costs, helping to ensure the viability of these operations despite an increasingly competitive world market. Similar benefits are in prospect for mining operations and other users of bulk haulage services in Queensland and Western Australia with the impending finalisation of intrastate access regimes. The NCP structural reform, legislation review and competitive

neutrality commitments are also helping to ensure a more competitive rail sector. These developments are discussed in chapter 10.

The general reform principles of the NCP have also stimulated the development of more efficient transport infrastructure in other sectors. Ports, sea freight and airports developments are discussed in chapter 12. Chapter 13 outlines developments in bulk handling and storage services for agricultural commodities.

Communications infrastructure

Communications infrastructure and services are vital to the Australian economy. Further, given the growing importance of this sector, rapidly changing technology and convergence between communications technologies (such as between data and voice traffic technologies), competition policy issues in communications services are increasingly important for economic growth and employment in Australia. Relevant NCP activity includes reviews of telecommunications structure and regulation, reviews of postal services structure and regulation, and reviews of broadcasting services regulation (in particular, the Productivity Commission's review of digital television services regulation). These issues are exclusively Commonwealth responsibilities and are discussed in chapter 25.

Professions and occupations

Professionals, such as doctors, lawyers and engineers, generally provide services alone or in partnership with other professionals. Until the NCP extended the operation of the restrictive trade practices provisions of the TPA to all businesses in Australia, professionals were effectively exempt. Five years later, some professional groups are recognising that many past practices and business arrangements that restrict competition between professionals risk contravening the TPA. For example, the ACCC is considering an application from the Royal Australasian College of Surgeons for 'authorisation' of co-operative training practices in order to avoid any risk of prosecution under the TPA. The ACCC will authorise the practices if it concludes that they are in the interests of the community overall.

Some anti-competitive practices and arrangements by professionals are endorsed by State and Territory legislation, thus avoiding the need for authorisation by the ACCC. The NCP requires all governments to review these arrangements as part of the legislation review and reform program. The test applied in these reviews parallels the public benefit test applied by the ACCC in authorisations.

Restrictions on the services that professionals can provide, or on the ways that they provide them, should only be retained where there is a good public interest reason, such as the protection of consumers. The regulation of service standards will often be desirable in relation to the provision of professional services, particularly because consumers may find it difficult to form judgments about service standards. Where this is the case, competition restrictions via standards regulation meet the NCP tests.

But some regulation of the professions may not be in the interests of the community as a whole. For example, reviews of the regulation of some medical professionals in Queensland recommended the removal of many restrictions on commercial practices that do not have an impact on care. Generally, however, the reviews have recommended retaining registration requirements, reservation of title (such as 'doctor') to professionals with the necessary qualifications, and disciplinary procedures to maintain consumer protection. Regulation review and reform activity in relation to the professions is discussed in chapters 13 (veterinary services), 16 (health and pharmaceutical services), 17 (legal services), 24 (planning, construction and development services) and 18 (other professional and occupational groups).

Forestry and fisheries

The forestry and fisheries industries are important parts of the economy where regulation of exploitative activities is critically important to ensure protection of the environment, preservation of resources and the long-term viability of the industries. Equally, however, excessive regulation may overly burden businesses and undermine the health of these industries. The application of the NCP principles is helping to ensure effective regulation in the interests of the community.

There are also important competitive neutrality issues in the forestry industry, particularly in relation to the environment for the exploitation of (usually privately owned) plantation timber vis-à-vis the exploitation of (usually publicly owned) native forests. Submissions to the Council suggest that biases currently exist in favour of the exploitation of native forests due to inappropriate pricing of native hardwood.

This is an area that has not been a focus of the NCP assessment process to date. Governments are now examining their application of the NCP principles to forest management. The Victorian Government, for example, released an issues paper for its review of timber pricing in June this year, for report in October 2002. The NCP issues in relation to forestry and fisheries are outlined in chapter 14.

Mining

Similarly, regulation of mining activities is important to protect the environment, to ensure the health and safety of mine workers, to provide certainty to mining interests and, in some cases, to reflect the respective responsibilities of mining companies and governments in developing supporting infrastructure and services. Some of the current legislation is old and possibly no longer meets the community's needs. Relevant review and reform activity is outlined in chapter 15.

Planning and development

The regulation of planning, construction and development services was one of the areas identified by the Productivity Commission (previously Industry Commission) where the application of the NCP would confer large benefits to the community (IC 1995). Historically, planning, construction and development regulation has suffered from unnecessary delays in approvals processes, due in part to faulty regulation, and a lack of consistency between jurisdictions. Effective regulation provides for efficient and timely approvals processes with adequate community consultation and reflecting a balance of social, environmental and development interests. Review activity for planning, construction and development services legislation is outlined in chapter 24.

Other legislation review

Other areas of the legislation review and reform program involving important and difficult public interest issues, and in some cases also difficult adjustment assistance issues, include the taxi and hire car industry (chapter 11), grain marketing arrangements (chapter 13), fair trading and consumer legislation (chapter 19), the regulation of finance, insurance and superannuation services (chapter 20), retail trading arrangements (chapter 21), education services (chapter 22) and specific social regulation with implications for competition (chapter 23).

Legislating for national standards

Because of their concern that Australia's regulatory system was overly complex, was inconsistent and imposed unnecessary costs, governments entered a specific commitment in relation to the development through

national and/or joint government processes of new legislation restricting competition. The purpose of this commitment is to ensure that bodies that set national standards (such as Ministerial councils) apply consistent processes aimed at achieving effective regulation. Consequently, governments agreed that where a national standards-setting body proposes to establish a regulation or adopt a standard it must first show that a regulatory impact statement has been prepared and that this justifies adopting the regulatory measure.

The Commonwealth Office of Regulation Review is responsible for advising governments on compliance with the national standards-setting regulatory impact processes. The Office of Regulation Review identified several cases of where an appropriate regulatory impact statement had not been prepared. However, in almost all of these cases there are processes in place (either specific to the national standard or general legislation gatekeeping procedures) that should help to improve the effectiveness of legislation introduced to support the national standard. The Council has recommended that governments' compliance with the national standards-setting obligation be monitored in future NCP assessments. This matter is discussed in chapter 26.

Finalising the legislation review and reform program

The legislation review program poses the greatest challenges of all the general reform components. Each government accepted a large burden by agreeing to review, and where appropriate, reform within a five-year period all legislation restricting competition. This involves around 1700 separate pieces of legislation. Further, political considerations (including elections) and resource constraints mean that reform programs have not always run smoothly. The CoAG decision to extend the timeframe for completion of the legislation review and reform program to 30 June 2002 recognises the work involved. Nonetheless, important reforms have been achieved and more are in prospect. Importantly, the NCP has instilled within governments a greater appreciation of the effects of business regulation and a culture of rigorous justification of the need for, and design of, new and existing regulation.

The Council will further consider review and reform progress in these areas as part of assessing governments' compliance with overall legislation review and reform commitments in 2002. The Council did not make recommendations on competition payments relating to legislation review as part of this assessment. The CoAG decision to extend the timeframe for the review and reform program provides additional time for each government to resolve legislation review questions consistent with the Competition Principles Agreement objective that restrictions must be in the public interest and necessary to achieve the government's policy objectives.

Conclusion

Inevitably, the Council's assessment of progress by each government with NCP reform focuses on the problems that governments need to address and the things that are yet to be done. This assessment is no different in that it identifies areas where governments must do more to achieve the goals they set for themselves in 1995.

But the Council's judgment from this assessment is that there has been considerable achievement by governments. This achievement has been won in the face of sometimes difficult circumstances. Reform implementation has been associated with challenging political environments and intensive debate. Some reforms have been difficult to execute and have highlighted the need for governments to consider the impacts of reform measures on specific industries and communities, including the costs of adjusting to change. Governments should be congratulated for their commitment to reform, which reflects a commitment to good governance in the interests of Australia.

NCP reform in Australia has already delivered a more competitive economy in the interests of all Australians. The surge in Australia's aggregate productivity and output growth in the 1990s of one percentage point above trend levels for the past six years is hard to explain other than by the changes that have been made to the Australian economy during the 1980s and 1990s, including competition policy. This has contributed to sustained growth in productivity and employment and general economic growth in Australia, despite political and economic upheavals in the Asia-Pacific region. Australia's successes in developing a more competitive economy are likely to provide extensive and longstanding benefits.

But more important is the fact that the NCP is developing a more competitive economy in combination with, rather than in isolation from, addressing important social and environmental problems. So, for example, water reform is being implemented to specifically address environmental problems associated with water use, as well as to address competition issues such as property rights in water and water trading arrangements. Similarly, reform in the electricity and gas industries is leading to more competitive energy supply, and also assisting Australia to deal with environmental problems such as greenhouse gas emissions. Energy reform does this, first, by providing a market structure that is amenable to targeted, market-based environmental measures and, second, by providing dynamic energy production that can adapt to a changing world environment. Similarly, the application of the NCP to the forestry, fishing and mining industries jointly addresses development, social and environmental issues and reviews of the regulation of the professions deal jointly with consumer protection and competition issues. The NCP, because of its clear focus on a rigorous assessment of the public interest, means that reforms that are implemented serve the broad interests of all Australians.

Table of contents

Abbreviations

AC	Alternating current
ACCC	Australian Competition and Consumer Commission
ACT	Australian Capital Territory
ANZECC	Australian and New Zealand Environment and Conservation Council
ANZMEC	Australian and New Zealand Minerals and Energy Council
ANZFA	Australia New Zealand Food Authority
ANZFSC	Australia New Zealand Food Standards Council
ARMCANZ	Agriculture and Resource Management Council of Australia and New Zealand
AS	Australian Standard
ATC	Australian Transport Council
AVCC	Australian Vice Chancellors' Committee
BCA	Building Code of Australia
CAPEC	Conference of Asia Pacific Express Carriers
CCNCO	Commonwealth Competitive Neutrality Complaints Office
CIE	Centre for International Economics
CoAG	Council of Australian Governments
CPA	Competition Principles Agreement
CRR	Committee on Regulatory Reform (CoAG)
CSO	Community service obligation
CTP	Compulsory Third Party
DC	Direct current
DPI	Department of Primary Industries (Queensland)

DSAP	Dairy Structural Adjustment Program
ESCC	Essential Services Consumer Council (ACT)
FAC	Federal Airports Corporation
GBE	Government business enterprises
GDP	Gross Domestic Product
GPAL	Gas Pipelines Access Law
GPOC	Government Prices Oversight Commission (Tasmania)
GRMCo	Gas Retail Market Company
GST	Goods and services tax
GWh	Gigawatt hour
HEC	Hydro Electric Corporation (Tasmania)
IPART	Independent Pricing and Regulatory Tribunal
ICRC	Independent Pricing and Regulatory Commission (ACT)
IRPC	Inter-Regional Planning Committee
KPa	Kilopascal
LPG	Liquid Petroleum Gas
MPa	Megapascal
MW	Megawatt
MWh	Megawatt hour
NCC	National Competition Council
NCP	National Competition Policy
NCTC	Network and Consumer Transfer Code
NECA	National Electricity Code Administrator
NEM	National electricity market
NEMMCO	National Electricity Market Management Company
NRTC	National Road Transport Commission
OCBA	Office of Consumer and Business Affairs (South Australia)

ORR	Office of Regulation Review
PAWA	Power and Water Authority
PBS	Pharmaceutical Benefits Scheme
PC	Productivity Commission
QCA	Queensland Competition Authority
QIRC	Queensland Industrial Relations Commission
QNI	Queensland – New South Wales Interconnector
QR	Queensland Rail
RIS	Regulatory/regulation impact statement
SACL	Sydney Airport Corporation Limited
SA Water	South Australian Water Corporation
SEVS	Specialist and Enthusiast Vehicle Scheme
SMA	Statutory marketing authority
SNI	South Australia – New South Wales Interconnector
TJ	Terajoules
TPA	*Trade Practices Act 1974*
VEETAC	Vocational Education, Employment and Training Committee
WSAA	Water Services Association of Australia

1 Background

Australian governments introduced the National Competition Policy (NCP) in 1995, acknowledging the importance of a competitive, dynamic and innovative economy to delivering Australia's economic, social and environmental objectives. The NCP program, possibly Australia's most far-reaching microeconomic reform initiative, is set out in three intergovernmental agreements.[1] These focus on:

- infrastructure monopolies such as electricity transmission grids and rail networks (many of which have been, or are, government monopolies) where competition matters are addressed through the infrastructure access regime under part IIIA of the *Trade Practices Act 1974* (TPA) and through reforms specific to electricity and gas called up by the Agreement to Implement the National Competition Policy and Related Reforms;

- monopolistic activities addressed through the extended reach of the TPA under the Conduct Code Agreement; and

- legislated restrictions, where pro-competitive reforms are considered under clause 5 of the Competition Principles Agreement (CPA).

Two other key elements of the NCP are that:

- it addresses concerns about the performance of government businesses by requiring governments to apply competitive neutrality principles to significant government businesses under clause 3 of the CPA and to review the structure of public monopolies under clause 4 of the CPA; and

- it requires governments to focus on the management of Australia's water industry, to ensure appropriate use of water (including use by the environment).

The reform program applies to all sectors of the economy. It also recognises that Australia is essentially one national market and focuses on creating, where possible, integrated national markets by breaking down barriers to trade among jurisdictions.

The program particularly targets the public sector, given the importance of an efficient public sector to the strength of the economy and its protection from competition. However, the NCP also has reform implications for other areas that have traditionally enjoyed protection from competition, such as the professions and agricultural statutory marketing arrangements.

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1 The three NCP agreements are reproduced in NCC (1998). See also CoAG (2000).

Australia's 700 local governments are not formally a party to the NCP agreements. However, significant elements of the NCP program, particularly the application of competitive neutrality principles, the review and reform of restrictive legislation and the water reform program are directly relevant to local government.

NCP payments to the States and Territories

The States and Territories have responsibility for significant elements of the NCP yet much of the financial return from NCP reform accrues to the Commonwealth. This occurs because increases in income and business taxation revenue from greater economic activity flow to the Commonwealth. To share the returns generated from reform across the community, the Commonwealth makes NCP payments to each State and Territory. Over the five years from 2001-02, an estimated $3.8 billion in NCP payments is potentially available. To receive full NCP payments, the States and Territories must show satisfactory progress against the agreed reform agenda.

The Federal Treasurer allocates NCP payments on the basis of the National Competition Council's assessments of this progress. The 2001 assessment informs the Treasurer's decision on payments for 2001-02. The annual assessments from 2002, which the Council of Australian Governments (CoAG) has asked the Council to undertake, will inform the Treasurer's decisions on payments to States and Territories in subsequent years.[2] The Council also assesses the Commonwealth's progress in implementing the NCP program but the Commonwealth, although a party to the NCP agreements, does not receive NCP payments.

The Council may recommend that the Treasurer reduce or suspend the NCP payments otherwise available to a State and Territory where that State or Territory has not invested in the reform program in the public interest. The Council considers recommending reduction or suspension because a failure to implement the program as agreed can contribute to a decline in economic activity and, consequently, to a reduction in the overall financial dividend from reform. Under the terms of the NCP agreements, governments that do not implement the program as agreed may receive a reduced reform dividend because there is less to be shared.

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[2] On 3 November 2000, CoAG determined that the National Competition Council should undertake an annual assessment of each party's performance in meeting its reform obligations. See CoAG (2000).

When assessing the nature and level of the reduction or suspension that it recommends for a particular State or Territory, the Council must take into account:

- 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's objective is to work with governments to achieve reform outcomes consistent with the interest of the community. Consequently, the Council recommends reductions in NCP payments only as a last resort: that is, only where no satisfactory path to dealing with implementation questions is agreed. The Council prefers to encourage governments to address competition concerns as comprehensively as possible, rather than to recommend penalties for noncompliance.

Governments' NCP annual reports

The CPA obliges all governments to produce annual reports outlining their progress against their legislation review and competitive neutrality obligations. The aim of these reports is to provide full public reporting on these areas of NCP activity by governments.

As part of the first tranche NCP assessment, governments agreed that it would be beneficial to report on NCP activity more broadly, recognising that the reports provide significant input to the assessments and to community awareness of the NCP. Governments agreed to provide their annual reports in each assessment year by the end of March, detailing their NCP activity to at least the end of the previous year.

All governments provided annual reports on their NCP progress in 2001, so meeting reporting obligations under the CPA. The governments made their reports available at the dates in table 1.1. With the exception of the Commonwealth and Victoria, each government's report was publicly available by the end of June 2001. Victoria indicated it would release its report when the Federal Treasurer announces his decisions on the assessment. The Commonwealth provided a draft annual report on its NCP progress and will publish this subsequently as it has in previous years.

All governments, at the request of the Council, provided additional information augmenting and/or clarifying the material in their NCP reports for 2001. Queensland provided substantial additional information on 25 July. This was too late for the Council to consider the information as part of this

assessment. The Council will consider the material provided by Queensland in the 2002 NCP assessment.

Table 1.1: Governments' provision of NCP annual reports

Government	*Date on which the Council received the 2001 annual report*
Commonwealth	6 July 2001
New South Wales	All components (excluding legislation review and water) received on 4 May 2001. Water received on 8 May 2001. Legislation review received in three stages (12 June, 25 June and 12 July 2001).
Victoria	29 March 2001
Queensland	23 April 2001
Western Australia	17 May 2001
South Australia	30 March 2001
Tasmania	31 May 2001
ACT	2 April 2001
Northern Territory	1 May 2001

2 Summary of NCP reform obligations for the 2001 assessment

The three NCP agreements of April 1995 establish the NCP reform program. To meet agreed obligations for the 2001 assessment, governments must:

- be a fully participating jurisdiction — that is, have implemented the Competition Code (a modified version of part IV of the *Trade Practices Act 1974* (TPA)), including;
  - notifying the Australian Competition and Consumer Commission (ACCC) of all legislation or provisions in legislation enacted or made in reliance on s51 of the TPA, within 30 days of the legislation being enacted or made (legislation made since that notified for the second tranche assessment);
- be a party to the Competition Principles Agreement (CPA) and have implemented the major elements of the CPA program, including;
  - applying competitive neutrality principles to all significant government-owned businesses, including local government businesses, where appropriate (clause 3);
  - undertaking structural reform of public monopolies where competition is to be introduced or before a monopoly is privatised (clause 4);
  - reviewing legislation that restricts competition (including Acts, enactments, ordinances or regulations) and removing restrictions, where appropriate (clause 5); and
  - undertaking gatekeeper regulatory impact analysis (including systematic and transparent assessment of alternatives to regulation) of proposed new or amended legislation that restricts competition (clause 5);
- achieve effective participation in the fully competitive national electricity market (NEM), if a relevant jurisdiction, including completing all transitional arrangements;
- implement fully, if a relevant jurisdiction, free and fair trading in gas between and within jurisdictions;
- achieve satisfactory progress in implementing the 1994 Council of Australian Governments (CoAG) Strategic Framework for the reform of

the water industry, consistent with timeframes established through intergovernmental agreement;

- implement fully the road transport reforms developed by the Australian Transport Council and endorsed by CoAG; and

- ensure national standards are set in accordance with the principles and guidelines for good regulatory practice endorsed by CoAG.

The CPA also commits governments to consider establishing independent prices oversight arrangements for government business enterprises. Such businesses often have the potential to engage in monopolistic pricing behaviour, either because they are legislated or natural monopolies or because they operate in markets where competition is weak. Prices oversight arrangements now exist in all States and Territories except Western Australia. In the previous NCP assessments, the Council found that all States and Territories had satisfied this obligation.

Fully participating jurisdictions

The *Competition Policy Reform Act 1995* defines 'fully participating jurisdictions' as those States and Territories that are parties to the Conduct Code Agreement and that apply the Competition Code as law, either with or without modifications. All States and Territories signed the Conduct Code Agreement to extend the operation of part IV of the TPA to all business activities within their jurisdiction. Constitutional limitations had previously prevented application of part IV, which prohibits a range of anticompetitive trade practices, to unincorporated businesses operating in only one State. In addition, many State and Territory government businesses had Shield of the Crown immunity from the TPA. Each State and Territory has enacted a modified version of part IV of the TPA (the Competition Code). Other than Western Australia, all jurisdictions enacted the legislation by the agreed date of 20 July 1996. Western Australia enacted its legislation in September 1996, but made it retrospective to the earlier date, so meeting its obligation to apply the code.

3 Competitive neutrality

Traditionally, many government business activities were able to obtain certain advantages over their private sector rivals simply as a result of their public sector ownership. These advantages included, for example, exemption from income tax, the lower costs of borrowing enabled by government guarantees, and exemption from regulation that affected the private sector. Such distorting advantages favour resources flowing to the public sector business regardless of that business's level of efficiency. It is in the interests of efficiency, therefore, to remove such distortions so resources are used where they are most valued. NCP competitive neutrality principles aim to remove resource allocation distortions by ensuring that significant government-owned businesses face the same commercial environment as that of their private sector counterparts.

Clause 3 of the Competition Principles Agreement (CPA) obliges the Commonwealth, State and Territory governments to introduce competitive neutrality, where it is in the public interest, for significant government business activities. Clause 7 extends the obligation to significant local government business activities. The Commonwealth and the Australian Capital Territory have no local government sectors. In addition, as part of the first tranche NCP assessment, the National Competition Council accepted that the relatively small size of local government businesses in the Northern Territory meant that these businesses need not apply competitive neutrality principles under CPA clause 3.

Sometimes competitive disadvantages relate to public ownership; for example, government businesses may have additional accountability and reporting requirements and higher superannuation costs than those of their private sector competitors. Governments may address such disadvantages, but the CPA does not require them to do so. Clause 3(7) of the CPA allows jurisdictions to retain regulation that applies to a government business (but not to the private sector) if the jurisdiction considers the regulation appropriate.

Competitive neutrality obligations under the NCP

Competitive neutrality obligations under the CPA involve:

- the adoption of a corporatisation model for significant government business enterprises classified as 'public trading enterprises' and 'public financial enterprises', and, where appropriate, for significant business

activities that government agencies conduct as part of a broader range of functions;

- the payment of full Commonwealth, State and Territory taxes or tax equivalent payments;
- the payment of debt guarantee fees to offset the competitive advantages provided by government guarantees;
- compliance with regulations to which private sector companies are normally subject; and
- the investigation and public reporting of allegations that significant government businesses are not implementing competitive neutrality principles appropriately.

Government businesses, like their private sector counterparts, must earn sufficient revenue to cover their costs. The CPA states that significant government business activities should set prices for their goods and services that 'reflect full cost attribution for these activities'. The Council of Australian Governments (CoAG) defines 'full cost attribution' as accommodating a range of costing methods, including fully distributed cost, marginal cost and avoidable cost, as appropriate in each case (CoAG 2000).

In addition to labour, raw materials and the competitive neutrality elements listed above, costs include the cost of capital, which is met if a government business earns a commercial return on assets over a reasonable period of time. Other costs may also be relevant, even if not explicitly mentioned in the CPA. All jurisdictions' competitive neutrality policy statements note that local government rates and charges (or equivalents), for example, are an element of the full cost price. Unless government businesses undertake full cost attribution, they may be able to operate at lower profit levels than their competitors can, and thus be able to undercut their competitors even if less efficient.

Assessing jurisdictions' progress in implementing their obligations

In line with CPA clause 3 and the efficient resource allocation objective of competitive neutrality, the Council assesses jurisdictions' NCP compliance by looking for:

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

- a jurisdiction's delivery of governments' social objectives in a way that is consistent with competitive neutrality obligations — that is, the delivery of clearly defined and costed community service obligations (CSOs) that are directly funded by government;[1] and

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

The Council has consistently emphasised the importance of effective competitive neutrality arrangements. In the June 1997 first tranche NCP assessment, the Council said:

> *As the reform process continues, the Council will look in more detail at matters related to the effectiveness of jurisdictions' reform programs. This will encompass, in particular, consideration of the effectiveness of approaches to corporatisation, including performance monitoring arrangements, application of full cost pricing principles and delivery of CSOs.* (NCC 1999a, p.57)

In relation to complaints handling, the Council noted the importance of an effective, generally accessible mechanism, stating that for the second and third tranche NCP assessments it would take account of:

> *… the degree of independence of the mechanism, the intended scope of coverage including the nature of complaints which can be lodged, the transparency of reporting of complaints and findings and the ease of access for complainants.* (NCC 1999a, p.58)

The Council considers that governments should give their complaints bodies scope to investigate competitive neutrality complaints about all public businesses, particularly where the government does not require all businesses to apply competitive neutrality. Even where businesses are small (so the net benefit from applying competitive neutrality principles may not be clear), the investigation of complaints can provide the government with useful advice about appropriate policy action. In the first tranche assessment, regarding the scope of coverage of complaints mechanisms, the Council stated that it considers:

> *… the handling and reporting of all non-trivial competitive neutrality complaints as important rather than only those about businesses to which competitive neutrality principles are applied.* (NCC 1999a, p.58)

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[1] At its meeting on 3 November 2000 CoAG determined that governments, in implementing competitive neutrality requirements under the CPA, are free to determine who should receive a CSO payment or subsidy, which should be transparent, appropriately costed and directly funded by government (CoAG 2000).

Full coverage of significant businesses

Now five years after the publication of competitive neutrality policy statements, the Council expects that all significant businesses (including at local government level) should be subject to competitive neutrality where appropriate, as intended by CPA clause 3. In the two earlier NCP assessments, the Council accepted that it was appropriate for governments to apply competitive neutrality principles to their larger businesses as a transitional measure. However, the Council has always regarded business size thresholds as arbitrary and relatively inflexible measures of significance, and has consistently noted that significant businesses should be identified on the basis of their effect or potential effect on their relevant market(s).

Mechanisms are available to jurisdictions to ensure that thresholds-based prioritisation does not inadvertently exclude below-threshold businesses that have a significant impact on their markets. The Commonwealth, for example, uses its competitive neutrality complaints handling mechanism to investigate concerns that a business has not been exposed to competitive neutrality (with the possibility of a recommendation to the relevant Minister that competitive neutrality principles be applied). Western Australia initially made use of size thresholds to prioritise the implementation of competitive neutrality, but subsequently reviewed smaller government businesses to determine whether there is a net public benefit in applying competitive neutrality principles.

Consistent with this approach, the Council required for 2001 NCP compliance that:

- competitive neutrality principles be in place for all government business activities that have a significant impact on their relevant market(s), to the extent that the benefits from application outweigh the costs; and

- all transitional arrangements, such as the phased introduction of competitive neutrality principles to smaller State and Territory businesses and local government businesses, be substantially complete.

While this assessment focused on those businesses that jurisdictions' policy statements identified as being significant, the Council sought evidence of jurisdictions' progress in applying competitive neutrality principles to businesses below the threshold size, where such businesses have a clear effect on their market. The Council looked for governments to have some means of (a) identifying these businesses and (b) considering whether it would be appropriate to apply competitive neutrality principles.

Queensland's 1996 competitive neutrality policy statement classifies businesses as 'significant' for the purpose of implementing competitive neutrality principles on the basis of size thresholds such that:

- competitive neutrality principles are applied to declared 'significant' State Government businesses (those with annual expenditure above $10 million) and complaints can be made about only these businesses; and

- at local government level, only significant businesses (those with annual expenditure above $5 million) are required to conduct a public benefit test for the application of competitive neutrality principles. Smaller local government businesses are given financial incentives to apply a voluntary code of conduct based on competitive neutrality principles. As with State Government businesses, complaints can be made about the activities of only those businesses that apply competitive neutrality principles.

Queensland acknowledged that questions concerning the scope of competitive neutrality policy might arise in its 1997 NCP annual report. That report indicated there may be potential for the competitive neutrality complaints mechanism to apply to a broader range of business activities than it does at present. The 1997 report also stated that the current approach had been chosen to limit the application of the complaints mechanism until more experience is gained in administering it for the State's significant business activities.

Queensland considers that it is not necessary to apply competitive neutrality principles to State Government nondeclared business activities as reforms can be applied to these businesses on a case-by-case basis dependent on a net public benefit. Moreover, Queensland believes that its approach to applying competitive neutrality to local government business activities, involving a combination of prescription and incentives, is resulting in appropriate coverage of these businesses.

Queensland advised that its competitive neutrality complaints guidelines apply to complaints that would be excluded on the basis of size thresholds from consideration under the *Queensland Competition Authority Act 1997*. These complaints may be dealt with in the first instance by the Queensland Treasury in consultation with the relevant department. In addition, under section 10(e) of the Act, the Premier and Treasurer have the capacity to refer competitive neutrality matters to the Queensland Competition Authority for investigation where they consider this to be appropriate. Matters referred to the authority may include Government business activities that are not significant in terms of the 1996 policy statement.

Queensland reported that competitive neutrality is being introduced to the Public Trust Office (as recommended by a review) and that it will soon consider reviews of the benefits of applying competitive neutrality to the TAFE sector and Workcover. Queensland also reported that a competitive neutrality review concluded there is no reason to alter the sole provision of superannuation for Queensland public sector agencies via Qsuper (see chapter 20).

Victoria applies competitive neutrality to its government business activities except in a small number of minor cases. Victoria's annual NCP report listed the exceptions and provided explanations for them. In some cases the businesses are not in competition with private industry and in several others the businesses were reviewed and found to be small in relation to the size of the market, with a correspondingly minor competitive impact on their markets.

Western Australia reported that competitive neutrality principles do not apply to the Lotteries Commission of Western Australia or to the Government Employees Superannuation Board. In both cases reviews concluded that the application of competitive neutrality was not in the public interest. However, Western Australia advised it anticipates revisiting the competitive neutrality status of the Government Employees Superannuation Board in 2001, given the recent introduction of choice in superannuation fund membership for government employees. The application of competitive neutrality principles to the Lotteries Commission of Western Australia is discussed in chapter 23.

Tasmania reported that the Port Arthur Historic Site Management Committee although required to price in accordance with full cost attribution principles, has an exemption from the payment of income tax equivalents and dividends. Tasmania stated that the exemption is under review and that the Government is considering the most appropriate structure for the committee. No other jurisdictions reported any exceptions to the application of competitive neutrality policy and the Council assumes that competitive neutrality principles apply to all significant businesses in these jurisdictions.

Particular structural arrangements in some jurisdictions mean that failure by certain government businesses to apply competitive neutrality principles is *not* noncompliance. Where businesses are not subject to Executive control (for example universities and part privatised businesses where the relevant government is a minority shareholder and the privatisation took place before the NCP), CoAG directed that the Council should consider governments' compliance with CPA clause 3 on a 'best endeavours' approach (CoAG 2000). Under this approach, the relevant government must provide at least a transparent statement of competitive neutrality obligations to the government businesses not subject to Executive control. The Council looks for governments, under the best endeavours approach, to actively encourage businesses not under Executive control to apply competitive principles. Jurisdictions stated in their NCP annual reports that they do this.

Clearly defined and costed CSOs

The NCP agreements, while seeking to achieve benefits through competition, do not affect governments' ability to establish and deliver broader social objectives, including the delivery of CSOs. However, it is important to clearly define and cost CSOs to achieve the efficient resource allocation objective of CPA clause 3. Without careful and systematic identification and implementation of CSOs, it is difficult to determine whether the prices charged by a government business reflect full cost attribution (as required by clause 3) or contain an element of subsidy (or penalty) due to government ownership. Visible CSOs enable private firms to readily identify CSO payments to government-owned competitors and adjust their business decisions accordingly.

Further, the ability of complaints processes to resolve pricing complaints expeditiously can often depend on governments clearly defining and costing

CSOs. If this is not done, the complaints procedure may become unnecessarily protracted, potentially disadvantaging the parties to the complaint.

All governments acknowledged, in their competitive neutrality policy statements and related pricing guidelines, the need to clarify the objectives and specify the noncommercial obligations of their businesses. Governments' policies and guidelines generally emphasise the importance to effective public policy of clear identification, definition and costing of CSOs and explicit funding from the purchasing agency's budget. CoAG also recognised the appropriate treatment of CSOs for competitive neutrality purposes, stating that governments are free to determine who should receive a CSO payment or subsidy, which should be transparent, appropriately costed and directly funded by government (CoAG 2000).

Western Australia, Tasmania, the ACT and the Northern Territory identify and cost CSOs in their annual budget process. In New South Wales, Victoria and Queensland, the relevant government business provides details of CSO payments in its financial and annual reports. Victoria also summarised CSO arrangements for all agencies in the supplementary tables of its 2001 NCP annual report. Similarly, the ACT listed all its CSO payments in its 2001 NCP annual report. South Australia reported that its *Public Corporations Act 1993* requires that, where relevant, the arrangements for CSOs be set out in the charter of a public corporation, including their nature and scope and costing and funding. In relation to entities subject to cost reflective pricing, South Australia advised that, in general, there is direct budget funding of non-commercial functions. South Australia also advised that a CSO working group has been formed to improve aspects of CSO policy arrangements. The Commonwealth's policy is that CSOs should be funded from the purchasing portfolio's budget, with costs determined as part of a commercially negotiated agreement.

Under NCP, the Council does not assess whether CSO objectives are appropriate — that is a matter for governments. Rather, governments' provision of public information about their CSOs enables the Council to confirm that CSOs are specified and funded such that effective and transparent provision of CSO services is encouraged, with minimal impact on the efficient provision of other commercial services. Public reporting of information about CSO arrangements is important in verifying that governments' policy approaches are consistent with the efficient resource allocation objective of CPA clause 3.

Investigation of alleged noncompliance

Under the CPA, governments are obliged to investigate allegations of noncompliance with competitive neutrality principles and report annually on those allegations. All governments implemented procedures for investigating allegations of noncompliance. Generally, these procedures place responsibility for handling allegations of noncompliance either with independent competition authorities or with Treasuries or other policy areas. Sometimes, a jurisdiction uses a combination of these approaches, whereby a policy unit

evaluates whether the relevant Minister(s) should refer the allegation to the competition authority. Allegations about noncompliance by local government businesses are usually initially considered by the local government business owner. Complainants have recourse to either the State complaints process or the relevant department of local government if the matter is not resolved.

The way in which a jurisdiction structures its complaints mechanism is not a matter for NCP assessment. Under the CPA, governments determine their procedures for dealing with complaints. The central NCP question is whether governments are ensuring the appropriate application of competitive neutrality principles through timely and effective handling of alleged noncompliance.

State and Territory NCP reports indicated that every government received new competitive neutrality complaints in 2000.[2] The Commonwealth Competitive Neutrality Complaints Office (CCNCO) is investigating a complaint against the Australian Road Research Board Transport Research, a company that is partially controlled by all jurisdictions. New South Wales and the Northern Territory are involved in this matter, but received no other new complaints in 2000. The Commonwealth received two further complaints. A complaint concerning security vetting by a business unit within the Attorney General's Department was resolved by negotiation and a complaint concerning the Bureau of Meteorology's services to aviators is under investigation by the CCNCO.

Victoria temporarily suspended its complaints investigations in 2000 pending the Government's review of its competitive neutrality policy. Victoria released its new policy in October 2000, at which time consideration of 18 complaints had been suspended. Following release of its new policy, the Victorian Government wrote to all parties to the complaints, asking them to endeavour to resolve remaining matters in the context of the new policy. If the matter could not be resolved by the parties, the complainant was then able to reinstate the complaint formally with the Victorian competitive neutrality complaints body. Victoria's complaints body had three matters on hand at 31 December 2000 — two complaints that had been reinstated and one new complaint. The Council accepts that the temporary suspension did not compromise Victoria's compliance with CPA clause 3.

The Queensland Competition Authority completed investigations of three competitive neutrality complaints that ENERGEX enjoyed a competitive advantage as its internal service providers were not subject to the same regulatory requirements as private service providers. In two cases the authority found that the allegations could not be substantiated. However, in the third case the authority found that ENERGEX is not subject to the same public and employee safety requirements as those applying to its private sector competitors and a breach of competitive neutrality policy had occurred.

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[2] Complaints lodged by Capricorn Capital against National Rail Corporation and FreightCorp in 1999 and 2000 are discussed in chapter 10.

Queensland's 2001 NCP report did not indicate that any competitive neutrality complaints had been made to the Queensland Treasury.

Western Australia received eight complaints, only one of which was the subject of further investigation. The complainant (an advocate of the use of alternative fuels) alleged that Western Power and AGL had received an interest free loan. However, Western Australia's investigation found that this was not the case and the complaint was dismissed. The other seven complaints did not fall within the scope of competitive neutrality because the businesses about which the complaints were made were either not government businesses or were not subject to competitive neutrality.

South Australia received five complaints, two of which were resolved when the agency ceased the activities that were the subject of complaint. South Australia suspended one investigation pending sale of the relevant government business. Investigation of two complaints was in progress at the time of this assessment.

Tasmania reported that five complaints were lodged with the Government Prices Oversight Commission (GPOC), the State's competitive neutrality complaints mechanism. GPOC upheld two of these. The first concerned the setting of noncommercial room rates at a student hostel. GPOC concluded that, while this involved a relatively insignificant amount in the relevant Government department's budget, it created the potential to affect the regional student hostel market. In the second case, involving a complaint by a private ambulance business, GPOC recommended that competitive neutrality principles apply to the patient transport services provided by the Tasmanian Ambulance Service (subject to a public benefit assessment). GPOC dismissed two complaints because it found the businesses concerned were not significant government businesses. GPOC is considering the other complaint.

Three complaints were lodged in the ACT. In the first case, a complaint that a Government-owned leisure facility did not pay some taxes was upheld. The complex is now run on commercial grounds and is being prepared for sale. Complaints concerning Government contracting of a leisure centre and alleging Government subsidisation of long-stay day childcare were not upheld by the ACT's complaints body.

4 Structural reform of public monopolies

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. However, these reforms will not always be sufficient to establish effective competition. Structural reform may be needed to dismantle a government business that has developed into an integrated monopoly. Such reform involves splitting the monopoly (or parts of it) into smaller entities, including splitting 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 reform will result in a private monopoly supplanting the public monopoly, with few real gains and potentially considerable risks.

Obligations relating to the structural reform of public monopolies are set out in clause 4 of the CPA. Under this clause, governments agreed to relocate regulatory functions away from the public monopoly before introducing competition into the market served by the monopoly. The aim is to prevent the former monopolist enjoying a regulatory advantage over its (existing or potential) competitors.

Clause 4 also sets out certain review obligations aimed at ensuring that reform paths lead to competitive outcomes. Before introducing competition into a sector traditionally supplied by a public monopoly or privatising 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;
- the merits of separating potentially competitive elements 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 (CSOs) provided by the public monopoly, and the best means of funding and delivering any mandated CSOs;

- the 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 this assessment the Council considered each jurisdiction's structural review and reform activity (including the location of industry regulation) where competition is to be introduced to public monopoly markets or where privatisation is proposed or underway. Particular structural reform matters are discussed in the relevant chapters of this report. In particular, the Council considered that clause 4 obligations are generated by decisions to introduce third party access regimes, for example in respect to the electricity industry.

5 Effective regulation: Competition Principles Agreement clause 5

Under clause 5 of the Competition Principles Agreement (CPA), governments undertook to conduct a program for the review, and where appropriate, reform of legislation that restricts competition. The CPA originally set 2000 as the deadline for governments to complete their programs. The Council of Australian Governments (CoAG) extended this timeframe on 3 November 2000 and the target date is now 30 June 2002 (CoAG 2000). CoAG also established ongoing annual assessments following this assessment.

Clause 5 focuses on effective regulation, not necessarily reduced regulation. The threshold requirement of clause 5 is that legislation should not restrict competition unless the restriction benefits the whole community and is necessary to achieve the objectives of the legislation. Clause 5 also obliges governments on an ongoing basis to have evidence to demonstrate that restrictions in proposed new legislation meet the threshold requirement. The test of whether reform is appropriate — the assessment of benefits and costs to the whole community — involves governments considering the public interest factors in CPA sub-clause 1(3). Governments are required to publish annual reports on their review and reform progress and the National Competition Council is required to publish an annual consolidation of these reports.

The NCP's communitywide perspective means that restrictions need to be shown to benefit the whole community, not just particular groups. Nonetheless, it is important for governments to take account of impacts on the individuals, regions and industries exposed to reform. CoAG agreed on 3 November 2000, that governments, when examining public interest issues associated with NCP reforms, should consider identifying the likely impact of reform measures on specific industry sectors and communities, including the expected costs in adjusting to change.

Two other CPA obligations relate to the objective of more effective regulation. The first — an ongoing commitment under the Conduct Code Agreement — is that governments notify the Australian Competition and Consumer Commission (ACCC) of legislation or provisions in legislation enacted or made in reliance upon s51(1) of the *Trade Practices Act 1974* (TPA). The second is that governments ensure national standards are set according to the principles and guidelines endorsed by CoAG (1997). Governments' compliance with these two obligations is discussed in chapter 26.

Assessing governments' compliance with CPA clause 5

CoAG sets the National Competition Council's framework for assessing governments' compliance with NCP legislation review and reform objectives. For this progress assessment, the 1995 NCP Implementation Agreement sets as the condition for NCP payments assessment of:

> … *the extent to which each State and Territory has actually complied with the competition policy principles in the Competition Principles Agreement, including the progress made in reviewing, and where appropriate, reforming legislation that restricts competition;* (NCP Implementation Agreement Attachment (c))

Considering governments' progress with their review and reform programs

All governments established programs in June 1996 for reviewing and reforming (where appropriate) all legislation they had then identified as restricting competition. Governments have continued to develop their programs after 1996; most have scheduled additional legislation for review where they later found restrictions on competition. Overall, governments' programs involve review of around 1700 pieces of legislation over six years.

For this assessment, the Council focused on legislation that it considered was likely to contain significant restrictions on competition. These areas, drawn from governments' legislation review programs, are listed in box 5.1. The Council considered review and reform activity over the period to June 2001, basing the assessment primarily on the progress reported by governments in their annual reports and on supplementary information provided by governments where annual reports did not address all relevant matters.

The Council concluded that governments have met their CPA clause 5 obligations in this assessment where they completed comprehensive and rigorous reviews and implemented pro-competitive reforms. Alternatively, where governments introduced or retained regulatory restriction(s) on competition, the Council considered that they complied with their CPA clause 5 obligations where they provided a robust net community benefit case to support the restriction(s). Where a government had not completed its review and/or substantially implemented its reform response at the time of this assessment, or where the Council identified matters that were still to be satisfactorily resolved, the Council will assess progress in 2002 in line with CoAG's extension in the time available for the legislation review and reform program.

The Council identified some areas of review and reform activity where a government had reviewed legislation and determined its approach to reform, but will not complete its reform program by 30 June 2002. Recognising that satisfactory reform implementation can encompass a government having a 'firm transitional arrangement' extending beyond June 2002 (see CoAG 2000), the Council considered in this assessment that governments have met their CPA obligations, even if they will not complete reforms by 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 of June 2002 (for example, by 'locking in' the reform through legislation).

The Council also found cases where legislation that restricts competition was not scheduled for review under the NCP. It has been common for governments, through the NCP assessment process and their own ongoing scrutiny of legislation, to discover competition restrictions in legislation that they did not originally identify as being anticompetitive. Recognising the resource demand placed by the legislation review program, the Council considered that governments have met their CPA obligations where they added such legislation to their review programs even though in most cases they will not complete the review by June 2002.

Box 5.1: Priority legislation areas

Agriculture, forestry and fishing
Barley/coarse grains
Dairy
Poultry meat
Rice
Sugar
Wheat
Fishing
Forestry
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

Education services

Fair trading legislation and consumer legislation
Fair trading legislation
Consumer credit legislation
Trade measurement legislation

(*continued*)

Box 5.1 continued

Finance, insurance and superannuation services
The finance sector: post Wallis Report regulation
Workers compensation insurance
Compulsory third party motor vehicle 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 sector
Legal profession regulation
Professional indemnity insurance for solicitors

Mining

Other professions and occupations
All other professions and occupations, particularly those that are 'partially' registered (that is, registered or licensed in some but not all jurisdictions)

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 with implications for competition
Gambling
Child care services

Transport services
Road freight transport: tow truck legislation, dangerous goods legislation
Rail services
Taxi and hire cars
Ports and sea freight
International liner cargo shipping (part X of the TPA)

Considering whether review processes are open, independent and rigorous

Achieving well-considered and effective reform depends on high quality review processes. Open, independent and rigorous 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. A rigorous analytical approach by reviews, whereby all relevant evidence is considered and conclusions and recommendations are drawn from that evidence, is also important.

The Council has consistently emphasised the benefits from independent processes, in correspondence to all governments in September 1997 and by commissioning the Centre for International Economics to develop guidelines for conducting reviews.[1] The Commonwealth Office of Regulation Review (ORR) also commented on the importance of independent review processes and on how interested parties might be best involved. It stated:

> *One issue, which has arisen, is the appropriateness of industry and other stakeholder groups being represented on review bodies. While this may offer some advantages, it can also alter perceptions about the impartiality of such reviews and the validity of their findings. In general, 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's amendment to CPA clause 5 reinforces the need for properly constituted and rigorous reviews. The CoAG amendment requires governments, for NCP compliance, to conduct 'properly constituted' reviews, with these reviews reaching conclusions that are 'within a range of outcomes that could reasonably be reached based on the information available'. The Council's assessments thus consider whether there have been flaws in review processes that may have compromised the review's recommendations. Flaws may occur for a number of reasons; for example, review terms of reference may not encompass relevant questions, the review analysis may be deficient and lead to recommendations that are inconsistent with the evidence, or the review may fail to consider relevant evidence.

The Council's general approach is to look for evidence that reviews:

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

[1] The guidelines (CIE 1999) were provided to all governments and are available on the Council's web site (http:www.ncc.gov.au).

- 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 where there are recommendations to introduce or retain restrictions on competition.

Considering whether policy responses to review recommendations meet the CPA tests

The threshold CPA obligation means that governments, in addition to reviewing restrictive legislation, need to change their legislation if restrictions cannot be justified. CoAG reinforced the importance of these considerations, amending CPA clause 5(1) to guide the Council's assessments. CoAG's amendment to clause 5(1) states that:

> *In assessing whether the threshold requirement of Clause 5 has been achieved, the [National Competition Council] should consider whether the conclusion reached in the report is within a range of outcomes that could reasonably be reached based on information available to a properly constituted review process. Within a range of outcomes that could reasonably be reached, it is a matter for government to determine what policy is in the public interest.* (CoAG 2000, Attachment B)

CoAG also determined that governments, in meeting the requirements of sub-clauses 1(3)(a)(b) and (c) (which relate to the application of the public interest test), should document the public interest reasons for a decision or assessment and make them available to interested parties and the public. For this assessment, the Council looked for governments to show, through transparent and logical reasoning, that restrictions on competition meet the tests in CPA clause 5 — that is, they provide a net benefit to the whole community and are necessary to achieve a government's legislative objectives.

The Council encourages governments, as part of their public interest reasoning, to make their review reports publicly available. Because NCP reviews are required to assess and balance the costs and benefits of restrictions, arguments supporting a restriction would usually arise through

the evidence and recommendations of the relevant review. Thus, the Council has looked for governments to ensure that reform outcomes that restrict competition had due regard to review recommendations (assuming reviews were properly constituted and conducted). The Council also considers that open public policy-making processes offer a public benefit, which is enhanced where members of the public can participate in the review of legislation and have access to the review report that results from their participation.

The Council does not consider that a public interest case that does not contain relevant supporting evidence and robust analysis is sufficient for NCP compliance. In particular:

- where a government introduces or retains competition restrictions on the basis of review recommendations, but the review does not provide clear reasoning and argument to support its recommendations, the government should make transparent the evidence and logic underlying its decision; and

- where a government introduces or retains competition restrictions, but this approach is not reasonably drawn from the recommendations of the review, the government needs to provide a rigorous case for its approach, including demonstrating flaws in the review's analysis and reasoning.

While the Council looks for governments to take reform action that has regard to review recommendations, the threshold CPA requirement does not mean that governments must always have conducted a full public review before removing a restriction. Jurisdictions commonly repeal redundant legislation after preliminary scrutiny shows that the legislation provides no public benefit. Such action meets the CPA objectives. Similarly, a government can choose to disregard a review recommendation supporting a restriction. Under CPA clause 5, the obligation on governments is to show, where their legislation restricts competition, that the restriction provides a net benefit to the whole community and that the restriction is needed to achieve the objective of the legislation.

The NCP provides for the possibility that different governments may evaluate the contribution of the various factors differently and thus reach a different conclusion on the appropriate regulatory approach. However, because Australia is essentially one national market, uniform or consistent regulation across jurisdictions is likely to benefit the community because it reduces regulatory imposts on businesses and service providers, and may lead ultimately to lower prices for consumers. The Council therefore looks for governments to be cognisant of the approaches adopted in other jurisdictions, particularly where these involve removing restrictions on competition.

Governments encourage greater legislative consistency in various ways. Apart from the national approach envisaged by the NCP, governments have implemented mutual recognition since 1993. They also reviewed various 'partially registered' occupations (those registered in at least one, but not all States and Territories) to determine the appropriate regulatory treatment of such occupations (box 5.2).

Box 5.2: Encouraging greater national consistency

Mutual recognition

State Premiers and Territory Chief Ministers signed the Intergovernmental Agreement on Mutual Recognition in May 1992, committing jurisdictions to implement mutual recognition from March 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 be registered to practise an equivalent occupation in a second State or Territory.

Review of mutual recognition agreement

Governments agreed to review the mutual recognition agreement in its fifth year. Governments also undertook to conduct NCP reviews of their mutual recognition legislation. A national review of the agreement and implementing legislation was completed in 1998 to address these two purposes.

The review found that the scheme is generally working well in minimising impediments to trade in goods and services, and in establishing a truly national market in goods and services in Australia. The review recommended that governments endorse the continued operation of the mutual recognition agreement and made 30 recommendations addressing the operation of the legislation. All governments generally support the review recommendations and are working together to implement recommended reforms.

The review noted concerns that separate NCP reviews might adversely affect the national consistency of registration requirements; for example, one jurisdiction may decide to remove registration as a result of an NCP review, whereas another may retain it and this inconsistency could reduce the mobility of occupations from the former jurisdiction to the latter. (This issue is discussed in chapter 18, which deals with professional and occupational licensing.)

The review recommended that governments consider greater use of national reviews and that they consider, in carrying out reviews, the impact of their recommendations on the mobility of persons in registered occupations. There have been two national reviews for occupations/professions (reviews of legislation covering architects and travel agents) and 11 other national reviews.

Encouraging greater national consistency

Governments recognised that problems for mutual recognition may arise where occupations are registered in some, but not all jurisdictions. Governments established a working party to determine, for such 'partially registered' occupations, whether each should be deregistered or fully registered in all jurisdictions. Specific recommendations from this review are discussed in chapter 16 (for health and pharmaceutical services), chapter 18 (for other professional and occupational licensing) and chapter 24 (for planning, construction and development services). The process on partially registered occupations was superseded by the NCP.

Sources: CoAG (1997 and 1998); VEETAC (1993).

Considering whether new legislation that restricts competition meets the CPA tests

CPA clause 5(5) obligates governments to also ensure that all new restrictions on competition provide a net community benefit and that the restriction is the only way in which to achieve the objective of the legislation. All governments advised in the earlier NCP assessments that they had implemented arrangements for 'gatekeeper' scrutiny of the impact of new legislation. As part of this assessment, the Council has looked to ensure that gatekeeping processes considered all relevant legislation. The Council also looked for whether governments demonstrated that new anticompetitive legislation in the priority areas meets the tests in CPA clause 5 — that is, whether there is evidence that the restriction provides a net community benefit and is necessary to achieve the objectives of the legislation.

6 Electricity

Background

In the early 1990s governments embarked on a program of reform of the electricity sector. Traditionally, the sector had been fragmented; each State and Territory operated vertically integrated utilities and there was little interconnection between electricity grids. This structure led to inefficient allocation and use of resources and to higher prices for some users. The Australian Bureau of Agricultural and Resource Economics recently estimated that Australia's gross domestic product by 2010 will be 0.26 per cent ($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 $15.8 billion in 2001 prices (Short et al. 2001, p. 84).

Reforms agreed to by the Council of Australian Governments (CoAG) revolved around creating a fully competitive national electricity market (NEM), featuring a national wholesale electricity market and an interconnected national electricity grid. In support of this objective, governments agreed to a range of structural reforms aimed at breaking down barriers to interstate and intrastate competition. These reforms included dismantling State-owned monopolies and implementing a system of third-party access to natural monopoly infrastructure (that is, transmission and distribution systems). In its 1995 Agreement to Implement the National Competition Policy and Related Reforms, CoAG agreed to tie NCP payments to the implementation of agreed reforms in the electricity sector.

NCP commitments

State and Territory governments' electricity NCP obligations 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 obligations relating to structural reform and legislation review under the CPA are relevant to all jurisdictions, while the electricity agreements specifically apply to jurisdictions that are, or are intending to become, part of the NEM.

Structural reform

All State and Territory governments have structural reform commitments arising from clause 4 of the CPA. Clause 4 requires governments to take certain steps before introducing competition into a market traditionally supplied by a public monopoly and before privatising a public monopoly. They are obliged to remove any responsibilities for industry regulation from the public monopoly and to conduct a review of structural and competitive arrangements in the industry (often referred to as a clause 4 review).

In addition to the general structural reform obligations under the CPA, NEM-participating jurisdictions have additional NCP commitments arising from the electricity agreements. The electricity agreements commit jurisdictions, before their participation in the NEM, to have structurally separated generation from transmission and to have ring-fenced the retail and distribution businesses.

Legislation review

All jurisdictions have legislation review commitments arising from clause 5 of the CPA. Clause 5 requires governments to review and, where appropriate, reform all laws that restrict competition, and to ensure any new restrictions provide a net community benefit. Jurisdictions have identified a range of electricity-related legislation for review, covering areas such as the operation and structure of the market, licensing and safety issues. Jurisdictions' progress in reviewing and reforming their electricity-related legislation is outlined in Table 6.2. Legislation dealing with electrical workers is discussed in chapter 24.

Electricity agreements

Under the Agreement to Implement the National Competition Policy and Related Reforms, NEM-participating jurisdictions were also required to have implemented reforms related to establishing the NEM by 1 July 1999. In 1994 CoAG identified the objectives for a fully competitive NEM as being:

- the ability for customers to choose the supplier (including generators, retailers and traders) with which they will trade;
- nondiscriminatory access to the interconnected transmission and distribution network;
- no discriminatory legislative or regulatory barriers to entry for new participants in generation or retail supply; and
- no discriminatory legislative or regulatory barriers to interstate and/or intrastate trade.

Subsequently, on 10 December 1996 the Prime Minister sought the endorsement of all jurisdictions for a revised implementation timetable for reform. That timetable required NEM-participating jurisdictions to:

- have the National Electricity Code, which sets out the rules for the operation of the NEM, authorised by the Australian Competition and Consumer Commission (ACCC) and accepted as an industry access code; and
- fully implement the market arrangements specified in the National Electricity Code by early 1998, requiring:
  - each jurisdiction to have promulgated and applied the National Electricity Law;
  - the National Electricity Market Management Company (NEMMCO) to have successfully installed and tested the information technology systems; and
  - NEMMCO and the National Electricity Code Administrator (NECA) to have assumed full operational responsibilities for the NEM.

Assessment issues

The Council's approach in the 2001 NCP assessment has been to assess jurisdictions' progress against the NCP commitments relevant to their status as NEM participants or nonparticipants. This progress is discussed later in the chapter. This section provides an overview of the main issues arising in the 2001 assessment in relation to both the NEM arrangements and more general electricity reform commitments. In brief, the Council considers that:

- progress against commitments related to the establishment of the NEM has generally been good;
- progress against commitments related to structural reform has been good for NEM participating jurisdictions, but is less advanced for non-participating jurisdictions; and
- some aspects of the current market arrangements may be acting to limit competition in the NEM and thus require consideration by NEM-participating jurisdictions.

Establishment of the NEM

The NEM commenced operation in December 1998. Participating jurisdictional NEM members are New South Wales, Victoria, Queensland,

South Australia and the ACT. Western Australia, Tasmania and the Northern Territory are not participants in the NEM, but Tasmania is to join on completion of the Basslink Interconnector with Victoria in 2003. The Commonwealth is also a party to the CoAG agreements setting up the NEM.

The Council noted in the second tranche NCP assessment that the commencement of the NEM satisfied the Agreement to Implement the National Competition Policy and Related Reforms requirement that each participating State and Territory implement the required reforms to enable the establishment of a competitive NEM by 1 July 1999. NEM-participating jurisdictions have met the conditions set out in the Prime Minister's letter of 10 December 1996. In particular:

- jurisdictions promulgated and applied the National Electricity Law;
- jurisdictions had the National Electricity Code authorised by the ACCC in December 1997, albeit with significant conditions attached to authorisation. The authorisation also allowed significant derogations by the jurisdictions as transitional measures;
- jurisdictions fully implemented the market arrangements; and
- NECA and NEMMCO assumed full operational responsibility.

These conditions were not met within the timetable set out in the letter; the market started in December 1998, rather than early 1998. The Council does not intend to qualify its assessment of progress as a consequence of these delays. The Council is satisfied that jurisdictions have adhered to the implementation of these arrangements.

Review of National Electricity Code provisions

The National Electricity Code required a large number of reviews of code provisions. The ACCC's authorisation of both the code and subsequent amendments to it required further reviews. Reviews have been completed in some areas, including transmission and distribution pricing, capacity mechanisms (including the reserve trader provisions), the value of lost load and ancillary services. Reviews are underway for generator technical standards, the scope for integrating the energy market and network services (including principles for determination of regions), the financial impact of distribution losses, dispute resolution procedures and market information provisions. NECA is to commence a review of the operation of the National Electricity Code in 2001-02. Regarding other code reviews required by the ACCC, the Council understands that reviews of power system directions (including generator compensation) and end-user advocacy have been completed.

The Council considers that generally good progress has been made in reviewing code provisions, despite some substantial delays against original

deadlines. In the 2002 assessment, the Council will consider jurisdictions' continued compliance with review commitments, including for those reviews that are yet to be progressed.

Structural reform

Jurisdictions are at different stages in the structural reform process. All NEM-participating jurisdictions introduced vertical separation of generation, transmission and distribution, and ring-fenced distribution and retail businesses. NEM-participating jurisdictions also introduced horizontal separation in generation, producing a number of competing generators. Nonparticipating jurisdictions are generally less advanced in implementing reform.

The Council considers that NEM-participating jurisdictions have met their NCP commitments regarding structural reform. The progress of each nonparticipating jurisdictions in implementing structural reform is discussed later in this chapter.

Market arrangements

The Council noted in the second tranche NCP assessment that improvements to the existing market arrangements are an ongoing requirement to facilitate a satisfactory set of arrangements for the NEM. Similarly, as part of the national energy policy framework adopted at its June 2001 meeting, CoAG agreed to improve continuously Australia's national energy markets.

In order for CoAG's original agreements to be implemented fully, the Council considers that the NEM must display the characteristics of a market. In the Council's view, the concept of a 'market' signifies the existence of competition. For a national electricity market, that competition would exist in the generation and retail sectors, and would occur both within and between regions. Sustained large inter-regional differences in electricity prices are inconsistent with the notion of a competitive national market, although some differences in price can always be expected due to differences in generation costs between regions and transportation costs (taking into account transmission losses and capital costs).

For the NEM fully to reflect these objectives, the Council considers that it must:

- provide for strong inter-regional competition, including by facilitating adequate interconnection, embracing national consistency and allowing for market entry and growth in the number of market participants;
- extend the benefits of competition to all electricity consumers;

- be governed by means of an independent and efficient institutional framework; and

- adopt transparent, market-based solutions to addressing market failure and other problems.

Recent developments in the NEM have focused attention on the efficacy of existing market arrangements. In particular, rising wholesale prices and apparent supply and demand imbalances within and between regions have raised questions about whether the arrangements underpinning the NEM adequately promote development of the market. While the Council recognises that some price variation may simply be the result of the market working efficiently, it considers that aspects of the current market arrangements could be impeding competition in the NEM. It is concerned that such impediments may exist, or emerge, in areas such as the transitional and institutional arrangements, the structure of the generation market, the framework underpinning interconnector developments and the implementation of full retail competition.

Review of NEM arrangements

At its June 2001 meeting, CoAG made new commitments concerning energy policy, and governments reaffirmed their existing commitments in relation to electricity reform. CoAG agreed to establish a Ministerial Council on Energy and to provide it with a series of priority tasks, including examining the potential for harmonising regulatory arrangements and opportunities for increasing interconnection and system security. CoAG also agreed to an independent review of energy market directions to identify strategic issues for Australian energy markets and the policies required from governments. Among other issues, the review is to: consider impediments to the full realisation of the benefits of energy market reform; identify strategic directions for further energy market reform; and examine regulatory approaches that effectively balance incentives for new supply investment, demand responses and benefits to consumers. The review is to be overseen by the Ministerial Council on Energy.

CoAG also noted the establishment of a NEM Ministers Forum, comprising Ministers from NEM-participating jurisdictions, the Commonwealth and Tasmania. The Forum is to consider issues including impediments to investment in interconnection, transmission pricing, regulatory overlap, market behaviour and the effectiveness of regulatory arrangements in promoting efficient market outcomes. At its first meeting in June 2001, the Forum agreed to a framework for resolving issues affecting the development of the NEM, focussing on addressing interconnection arrangements and early resolution of major reviews of the National Electricity Code.

The Council welcomes governments' recommitment to NEM principles and agreements, and CoAG's commitment to considering impediments to the full realisation of the benefits of energy market reform. The Council raises a

number of issues in this assessment that could usefully be considered in these processes. These include the institutional framework underpinning the NEM, the structure of the generation market and the arrangements relating to interconnectors (see later discussion).

In addition to the CoAG review, several separate review initiatives have been proposed or launched. South Australia has established an electricity taskforce to review the rules and design of the NEM and its impact on South Australia, and to recommend improvements to its operation. NECA is also to undertake a review of the performance and operation of the National Electricity Code since the NEM commenced. The NEM Ministers Forum, at its June 2001 meeting, requested NECA to bring forward to December 2001 the delivery of the major findings of this review.

The Council is strongly supportive of the review of NEM arrangements, but it would be concerned if any of the announced review processes led jurisdictions to adopt less transparent mechanisms or delayed ongoing electricity reform. In particular the Council considers that governments have a clear role in determining the overarching institutional arrangements for the NEM, but that the day-to-day operation of the market should be free of government involvement. Governments should continue to recognise that some electricity wholesale price volatility in the short to medium term is an inevitable, indeed desirable, aspect of the market's operation, to encourage appropriate electricity supply and demand responses. These responses, which include investment in new transmission and generation capacity, are essential to ensuring competitive prices in the long run. Any market refinements should reinforce these incentives, but overly intrusive government action risks defeating them.

Transitional arrangements

Jurisdictions have been permitted derogations from the National Electricity Code to allow the orderly phase-in of the competitive market and, in some cases, to preserve pre-existing contractual or other commitments for a longer period. The aim in allowing for derogations was that they would predominantly be one-off, transitional measures. The National Electricity Code allows a process for considering new derogations, but continual extension of transitional derogations was not expected. A five-year period was set to allow the phase-in of market arrangements, and most derogations were expected to cease by 31 December 2002.

In general, the Council believes there should be no need for transitional derogations beyond this date. A possible exception is the introduction of full retail competition, where there have been some delays to the timetable. While the Council fully accepts that derogations to date have been granted through agreed processes, it considers that any additional or extended derogations need to satisfy a robust public interest case.

Similarly, in the lead-up to full retail competition, jurisdictions have set up vesting contracts between generators and retailers to manage the risks to retailers from buying electricity at market prices while selling to consumers at regulated prices. Vesting contracts are subject to the authorisation provisions of the *Trade Practices Act 1974* (TPA). The main function of vesting contracts has been to reduce the risk to retailers by setting a firm price for their wholesale purchases. The contracts have also been used to influence generator behaviour in newly created spot markets.

All vesting contracts were meant to cease by 31 December 2000. The Council accepts that there may be a case for continued management of the risks to retailers if there are delays in making retail competition effective. However, the Council is concerned that vesting contracts place major constraints on the behaviour of generators and retailers, and thus limit the full application of market arrangements.

The Council considers that the objectives of vesting contracts could be met with less distortion to market arrangements. Therefore, unless there are significant delays in making retail competition effective, the Council considers that there should be no need for the extension of vesting contracts. The Council notes that governments can assist in reducing transition issues by providing certainty on the future retail competition program as soon as possible. This would aid efficient risk management and ultimately could help to lower consumer prices. Transition issues are also likely to be lessened because individual participants have been aware of impending retail competition for a number of years and will have been employing market solutions to manage risk. The Council discusses each jurisdiction's progress in phasing out derogations and vesting contracts later in this chapter.

Institutional framework

The Council notes that jurisdictions are ultimately responsible for NECA and NEMMCO. Experience suggests that there may be some weaknesses in the institutional framework to which these organisations belong. While jurisdictions have examined governance and liability arrangements, the Council considers that they also need to examine broadly the roles and responsibilities in market operations, market development, change to the National Electricity Code and regulation.

The Council notes that both the CoAG energy review and the NEM Ministers Forum are to consider regulatory arrangements in the NEM. In the Council's view, these processes could usefully consider objectives including (1) achieving clear accountabilities for regulation, market performance and market development, regulatory certainty and efficiency, and (2) ensuring appropriate levels of regulatory and compliance costs.

Structure of the generation market

Evidence of high (and increasing) pool prices in some regions of the NEM raises the question of whether the structure of the generation market is ensuring sufficient competition (see figure 6.1). The Council recognises that the efficient operation of the NEM will lead to rising prices as capacity constraints are approached. The movement of prices in response to the changing balance of supply and demand is an important signal for new investment in electricity supply capacity.

High regional pool prices could, however, indicate that the generation market is too thin and that individual generators have market power. A recent study by the Australian Bureau of Agricultural and Resource Economics lends weight to this possibility. It finds that 'in the recent past, in certain months up to half of the price paid for the wholesale supply of electricity in New South Wales, Victoria and South Australia may be attributable to strategic behaviour in the market.' (Short et al. 2001, p. 89.)

While NEM-participating jurisdictions introduced horizontal separation in generation, the Council considers that the unbundling of generation in many jurisdictions has been the minimum necessary for a competitive market. The Council would be highly concerned by any move to reduce the number of generating companies in any jurisdiction. In particular, it would regard any such reduction as undermining structural reform commitments, where generators are in public ownership. The Council would also be concerned by any increase in government intervention in market outcomes, including intervention in the type or level of capacity or in the operation of generating companies.

High regional prices could also signal a bias against additional transmission capacity in the National Electricity Code. While high prices have resulted in increased interest in generation in affected regions, this may reflect problems associated with the approval of additional transmission capacity. It is not yet clear how many of the proposed projects will proceed and when they will become operational. It is also not clear what the profile of investment is likely to be between generation and interconnection, and different types of generation.

The variation in regional prices generally reinforces the Council's desire to see progress in interconnection, where this is economic. The Council understands that the arrangements underpinning interconnectors are to be considered by the Ministerial Council on Energy and the NEM Ministers Forum. The Council welcomes this discussion, and considers that governments' consideration of the matter could usefully address the existence of any bias against additional transmission capacity in the National Electricity Code.

The Council also notes that NECA, in response to market concern with the behaviour of some generators, is reviewing bidding and rebidding strategies and their effect on prices. The review is to consider options for additional

safeguards against potential abuses of market power. At its June 2001 meeting, CoAG agreed to request that NECA give these issues early attention; the NEM Ministers Forum is also to consider the matter. CoAG also agreed to request that NECA review value of lost load.

Regarding the application of competitive neutrality, the Council notes that jurisdictions' commitments should ensure that government businesses in the electricity sector do not gain any net competitive advantage as a result of their public ownership. If any private businesses consider this commitment is not being met, then the Council urges them to raise this issue with the jurisdiction concerned. Each jurisdiction established a mechanism for investigating such allegations. The Council has a remit to ensure these mechanisms work effectively to meet the commitments on competitive neutrality.

Interconnectors

The Council attaches high importance to the development of interconnectors where they are economically justified. Interconnectors can enable a more competitive generation market and, because peaks are not coincident, they can help smooth the costs of meeting peak demand. The importance of interconnection to the development of the NEM is reflected in the objective of the 1994 CoAG electricity agreements and the National Electricity Code that there be no discriminatory legislative or regulatory barriers to interstate or intrastate trade. The Council considers that this objective has not been sufficiently met. In particular, the only application for a new regulated interconnector has been stalled for some years and the framework for unregulated interconnectors is not yet fully developed.

In recognition of the importance of interconnection and its ability to alleviate regional supply and demand imbalances such as those recently experienced in the NEM, the newly established Ministerial Council on Energy and the NEM Ministers Forum are to consider impediments to investment in interconnection. The NEM Ministers Forum, at its June 2001 meeting, agreed to several measures to address interconnection issues, including commissioning an assessment of the costs and benefits of a more integrated national grid, to guide proposals for its future development. In addition, the ACCC and NECA have announced that they will be working together to improve the current arrangements for network investment and pricing. The ACCC is considering a number of proposals for change to the National Electricity Code in this area.

Regulated interconnectors

Regulated interconnectors receive a fixed rate of return which the ACCC determines. The National Electricity Code sets out a process for approving new regulated interconnectors. Currently, NEMMCO and the Inter-Regional Planning Committee (IRPC) must review an application and NEMMCO must

determine under a regulatory test whether the net economic benefits justify the project as a regulated interconnector.

Since the commencement of the NEM, there has been one application for a new regulated interconnector (the South Australia–New South Wales Interconnector, or SNI) and, in May 2001, one application for a proposed upgrade to the existing interconnector between the Snowy and Victorian regions. TransGrid and the Electricity Trust of South Australia Transmission Corporation first proposed SNI in December 1997. NEMMCO evaluated the project against the customer benefit test. NEMMCO found that SNI did not satisfy the test, but stated that if the test had assessed broader public benefit it would have been likely to do so. It advised that the test was not robust. A re-evaluation of the project was suspended until the ACCC promulgated a new regulatory test in December 1999. NEMMCO and the IRPC are evaluating the application against the new regulatory test. The NEM Ministers Forum, at its June 2001 meeting, requested that NEMMCO finalise its consideration of the SNI application by September 2001, and of the Snowy-Victoria upgrade application by November 2001.

Recent events in the NEM have focused attention on the general lack of progress on interconnection and, in particular, on delays in the approval of the SNI. Regarding the SNI application, the Council accepts that there was a flaw in the customer benefit test, and that amendments have been made to address it. The Council also notes arguments by NEMMCO and New South Wales that delays have been required by resource constraints caused by: the commissioning of the Queensland–New South Wales Interconnector (QNI); uncertainty surrounding NECA's transmission and distribution pricing review; and the status of the Murraylink unregulated interconnector. In addition, the Council notes that in 2000 South Australia declared the SNI to be a major development and issued a licence exemption to enable TransGrid to prepare an environmental impact statement. The Council understands that New South Wales has also agreed to fast-track approvals for the project.

Notwithstanding these factors, the delays in resolving the SNI application have been considerable. While the Council recognises the importance of ensuring that interconnector approval processes reach appropriate outcomes, it is concerned by the potential opportunity costs imposed by such delays where a proposed regulated interconnector would be economically justified. The Council considers that the delays experienced by the SNI application indicate possible problems with the process for evaluating regulated interconnectors. Further, the delays suggest that the NEM objective of no discriminatory legislative or regulatory barriers to interstate and/or intrastate trade is not being met.

In addition to the examination of interconnection arrangements recently announced by CoAG, NEMMCO has established an Interconnector Working Group to report on potential improvements to the assessment of proposals to establish new interconnectors or augment existing ones. At its June 2001 meeting, the NEM Ministers Forum agreed to establish an inter-jurisdictional working group to respond to the issues identified in this process, and to provide policy options, by the end of 2001. Further, the ACCC

is to conduct a review of the regulatory test. The Council considers that these processes are appropriate and necessary, given that the current arrangements may be failing to ensure a NEM objective is being met.

In the 2002 assessment, the Council will consider jurisdictions' progress in addressing the arrangements that underpin the development of regulated interconnectors. The Council will also consider the progress of the SNI project. The Council expects that the current consideration of the SNI application will be completed by September 2001.

In the 2002 assessment, the Council will also be seeking to ensure that licensing or other requirements imposed by individual jurisdictions do not impose further unwarranted delays on, or hurdles for, the development of new interconnection projects. The Council considers that governments have a 'best endeavours' obligation to facilitate an infrastructure development once it has been approved under the NEM's regulatory processes. In particular, the Council considers that it would be inconsistent with the CoAG agreements for any jurisdiction's scrutiny of a proposed development under licensing or other regulatory arrangements to revisit issues of net benefit, particularly where the focus of that scrutiny is on participants in one region rather than the market as a whole. This issue is discussed further in the context of South Australia's licensing arrangements later in this chapter.

Unregulated interconnectors

Unregulated interconnectors rely on trading in the wholesale market to derive their revenue. The development of unregulated interconnectors involves owners taking risks on investments against expected price differentials between regions. It is possible that the requirements for regulated interconnectors will substantially lessen because investors are willing to accept the commercial risks on interconnector investments. The Council would welcome a reliance on commercial rather than regulatory drivers for new transmission investments. However, it considers that the current provisions for unregulated interconnectors do not yet provide reasonable certainty to investors or balanced regulatory treatment of competing investments. In particular, existing provisions:

- depend on unregulated direct current (DC) transmission links, which may be high cost compared with regulated alternating current (AC) links;

- leave considerable uncertainty about the costs to unregulated interconnectors of interconnection agreements with transmission network service providers in each region, and about the transmission charges to be borne by unregulated interconnectors; and

- do not adequately address how an existing system with open access regulated interconnectors would interlink with a future system where a substantial share of transmission investments is through closed access and controllable links. It is particularly unclear what instruments would

be used as a check on market power within regions if closed links replaced open access networks.

The Council notes that jurisdictions have made some progress in considering these issues. In particular, consideration of interconnection arrangements forms part of the commitments recently agreed by CoAG. NEMMCO's Interconnector Working Group is also considering the arrangements applying to unregulated interconnectors. Further, the ACCC is addressing relevant issues in relation to proposals to change the National Electricity Code. In the 2002 assessment, the Council will consider jurisdictions' progress in resolving problems with the arrangements applying to unregulated interconnectors.

Institutional arrangements

Under current arrangements, the IRPC analyses whether a proposed interconnector should be approved. The Council notes that some jurisdictions are represented on the IRPC by planning authorities and others are represented by providers of transmission services. The Council considers that two changes are desirable: first, that the representation be by planning authorities, which are separate from the transmission provider; and second, given that most large transmission investments have impacts outside one jurisdiction, that a single national body undertake the regulatory role for investments above a certain size.

The Council considers that jurisdictions should take these issues into account when considering the appropriate arrangements to underpin interconnectors. In particular, the Council considers that the institutional arrangements underpinning interconnection could usefully form part of the Ministerial Council on Energy's and NEM Ministers Forum's consideration of interconnection issues.

Full retail competition

The Council considers that the implementation of full retail competition (under which all customers are able to choose their electricity supplier) is an essential component of the electricity reforms. Both the timing of, and the approach to, implementing full retail competition will be essential for meeting the NEM objectives.

All jurisdictions have opened up significant segments of consumer markets to competition. However, CoAG's 1 July 1999 timeframe for introducing full retail competition has slipped as a result of delays in making the national market effective. The Council accepts that the timetable for the introduction of full retail competition proved infeasible. It notes, however, that the commitment to full market contestability still stands and that a revised timetable for its implementation has never been formally agreed.

The Council understands that jurisdictions' most recent position on the phase-in of full retail competition is as outlined in table 6.1. At the June 2001 CoAG meeting, jurisdictions (with the exception of Queensland and South Australia) reaffirmed their commitment to existing timetables, including contestability timetables. Queensland and South Australia, while committing to make their best endeavours, were not prepared to reaffirm their current contestability timetables.

Table 6.1: Customer contestability timetable

Customer size	*New South Wales*	*Victoria*	*Queensland*	*South Australia*	*ACT*
Above 5 MW or 40 GWh per year	October 1996 47 sites	December 1994 47 sites	March 1998 69 sites	Not applicable	December 1997 5 sites
Above 1 MW or 4 GWh per year	April 1997 660 sites	July 1995 330 sites	October 1998 470 sites	December 1998 150 sites	March 1998 40 sites
Above 750 MWh per year	July 1997 3 500 sites	July 1996 1 500 sites	Not classified	July 1999 630 sites	May 1998 250 sites
Above 160 MWh per year	July 1998 10 800 sites	July 1998 5 000 sites	July 1999 7 000 sites	January 2000 2 300 sites	July 1998 1 000 sites
All customers	January 2001 – January 2002 2.7 million sites	January 2001 – January 2002 1.96 million sites	To be determined 1.4 million sites	January 2003 730 000 sites	July 2001 – January 2002 125 000 sites

MW: megawatt; GWh: gigawatt hour; MWh: megawatt hour

The Council considers that most jurisdictions have been moving adequately towards the objective of full retail competition. The Council notes that New South Wales and Victoria anticipate having the necessary arrangements in place to introduce full retail competition at the beginning of 2002. The Council expects other jurisdictions to adopt best endeavours timeframes for implementing full retail competition. Those jurisdictions will have the benefit both of national systems having been put in place and of observing the approaches adopted by the more advanced jurisdictions.

Effectiveness of competition to date

The Council has considered the extent to which the opening up of the market to competition has proved effective. The Council's assessment of individual NEM-participating jurisdictions' progress against NCP commitments (see discussion later in this chapter) draws on available evidence of the ability of customers to realise benefits in market segments opened up to competition.

The Council has looked at two possible indicators of success: price trends and customers' ability to switch retailers. The Council's analysis has been limited by both the availability and quality of data and flaws in the actual measures. In particular, the number of customers who have switched retailer can be an imperfect indicator, as the threat of entry may be equally effective at delivering customer benefits and the test is only valid where the costs of switching are low relative to the benefits. Nevertheless, if only a small proportion of major customers have switched between suppliers then there may be barriers to entry that are making competition ineffective.

In general, the Council considers that customers have achieved significant benefits from the opening up of markets to competition. The information available to the Council suggests that customers in market segments opened to competition have been able to change supplier. NEMMCO estimates that around 18 000 of the 60 000 contestable customers consuming over 160 megawatt hours per year have elected to change retailer since the start of the NEM (NEMMCO 2001, p. 2). The Productivity Commission has estimated that households and industrial users achieved reductions in real electricity prices in the 1990s averaging around 16 per cent (Banks 2000, p. 5). The Commission has noted that the bulk of reductions have gone to business customers (around 24 per cent in real terms from 1991-92 to 1996-97), with residential customers receiving price reductions of 7 per cent over the same period (Banks 1999, p. 2). Research undertaken by Port Jackson Partners for the Business Council of Australia suggests that price reductions have been spread unevenly between jurisdictions, with customers in New South Wales and Victoria achieving the greatest benefits (Port Jackson Partners 2000, p. 7).

However, the ability of customers to achieve such benefits appears to have begun to diminish. In particular, there is evidence (if sometimes anecdotal) of increased price pressures in the wholesale, contract and regulated markets in some jurisdictions. Figure 6.1, which charts average pool prices since the start of the NEM, indicates that price levels and volatility have tended to rise in all regions except Queensland.

To some extent, increased price pressures can be attributed to the market's natural cycle — that is, as demand for electricity approaches supply, prices will tend to increase until investment is triggered and new capacity shifts the supply–demand balance. The Council considers, however, that structural problems in the NEM may also be contributing to price pressures. Such issues, which include the structure of the generation market (and the resulting ability of participants to exercise market power) and the lack of progress on interconnection, were discussed earlier in this chapter.

For customers to realise the full benefits of competition, jurisdictions must address any structural problems in the NEM that may be limiting the flow of benefits to electricity consumers. The Council considers that the processes established at the June 2001 CoAG meeting provide governments with an opportunity to consider these issues. In the 2002 assessment, the Council will consider jurisdictions' progress in this area.

Figure 6.1: Average spot price by NEM region (3-month moving average)

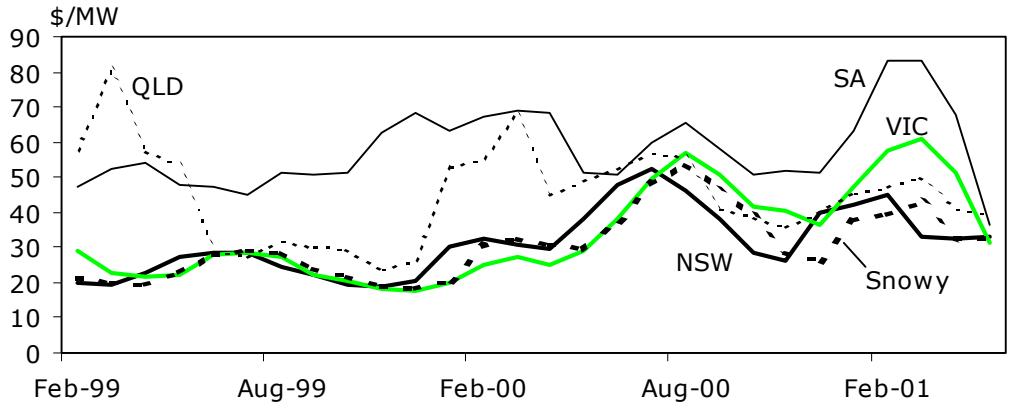
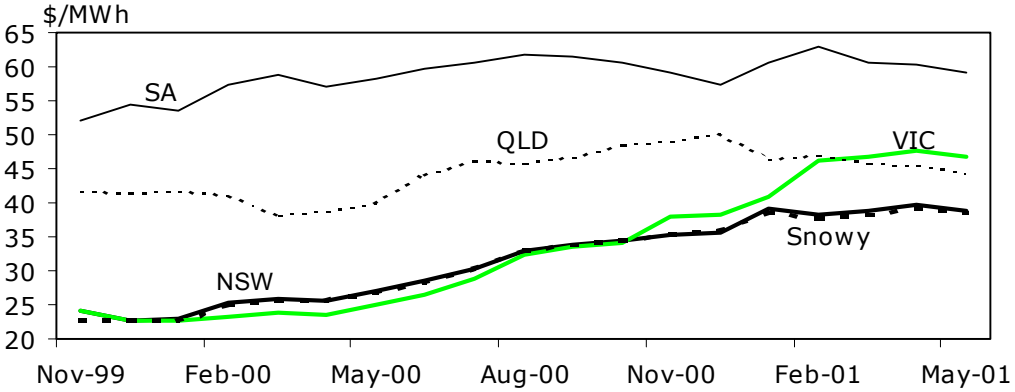


Figure 6.2: Average spot price by NEM region (12-month moving average)



Source: NEMMCO.

Progress in implementing full retail competition

Under its assessment of jurisdictions' progress in implementing NCP, the Council outlines each NEM-participating jurisdiction's project plan for implementing full retail competition. Jurisdictions are at different stages in this process. The Council's approach in this assessment has been to determine a timetable and major milestones against which future progress may be assessed.

The Council recognises that jurisdictions may take varying approaches to implementing full retail competition. However, it considers that any approach adopted should be based on a comparison of costs and benefits, leave room for innovation, promote national consistency and minimise barriers to entry. The Council considers jurisdictions' progress on these issues later in this chapter, and will consider jurisdictions' further progress in the 2002 assessment.

For all NEM-participating jurisdictions, two key areas require resolution before full retail competition may be introduced: metering arrangements and customer transfer procedures.

Metering arrangements

Wholesale spot prices are determined every half-hour in the NEM. Electricity consumption in markets opened up to competition must be able to be reconciled with half-hourly prices to allow for settlement of the wholesale market. The National Electricity Code requires customers who change retailers to install electricity meters capable of reading and electronically communicating data at half-hourly intervals. In April 2001 the ACCC released a draft determination on code changes that would allow for lower-cost metering alternatives. The changes are designed to enable smaller customers to choose their electricity retailer.

Under the proposed code changes, settlement in the wholesale market will be allowed on the basis of three additional metering installation types: type 5 (manually read interval meters), type 6 (household, or accumulation meters) and type 7 (unmetered supplies, including street lighting). It is proposed that a metrology coordinator in each participating jurisdiction must develop and approve metrology procedures for these three metering installation types. The metrology procedure must contain information on the procedures necessary to facilitate the conversion of metering data into a format suitable for wholesale market settlement. Settlement on the basis of these metering installation types cannot occur until a metrology procedure becomes effective under the National Electricity Code.

For type 6 (household) meters, a procedure known as load profiling is necessary to achieve wholesale market settlement. Load profiling involves allocating customers' usage over time to half-hours based on an average load shape for those (non-interval metered) customers. The ACCC's draft determination recognises that load profiling may facilitate customer choice in the short term by providing a low-cost metering alternative, but that it may also stifle competition in the longer term by inhibiting demand-side responsiveness and the development of innovative retail tariffs. The ACCC has required, therefore, that jurisdictional regulators jointly conduct a review of type 5 and type 6 metering installations and the metrology procedures that have been implemented in the participating jurisdictions by 31 December 2003.

In relation to metering arrangements, the Council is sympathetic to approaches which do not impose high costs for the time being, and so minimise barriers to customer switching, but which leave scope for innovation. In the longer term, however, the Council considers that it is important that metering solutions allow price signals to be passed through to consumers, and so promote both product innovation and the development of demand-side response to market developments.

Market transfer arrangements

For full retail competition to be effective, systems will need to be implemented that are capable of allowing the transfer of a large number of customers between retailers. The transfer of customers and the settlements process is currently achieved using the Metering Administration System operated by NEMMCO. To support full retail competition, NEMMCO is replacing this system with the Market Settlement and Transfer Solution, which will allow for the processing of increased volumes, involve a number of new and changed functions, and reduce the cost of processing transfers. The Council understands that the system is to be ready for implementation by January 2002.

Assessing progress: NEM-participating jurisdictions

New South Wales

Derogations

The ACCC's authorisation of the National Electricity Code included a number of derogations for New South Wales. That State sought further derogations in April 1999, amended in June 1999 and December 1999. The ACCC granted conditional authorisation of these derogations in June 2000. New South Wales has since sought no additional or extended derogations, but has indicated that changes may be required to the Power Trader Transmission Pricing Derogation to ensure that it operates as originally intended. It has also indicated that additional derogations may be necessary to support the introduction of full retail competition for the smallest customers.

Vesting contracts

The New South Wales vesting contracts were authorised in September 1999 and limited to 31 December 2000. New South Wales replaced its vesting contracts with the Electricity Tariff Equalisation Fund (see discussion under 'Full retail competition').

Full retail competition

New South Wales introduced contestability for medium-sized businesses using 100–160 megawatt hours (MWh) per year on 1 January 2001. Its annual report noted that small businesses using 40–100 MWh per year were to become contestable on 1 July 2001 and that other small businesses and households are to become contestable on 1 January 2002. The annual report noted that this timetable depends on customer transfer arrangements being operational.

Under the New South Wales arrangements, all customers consuming less than 160 MWh per year have the right to an offer of supply at a tariff determined by the Independent Pricing and Regulatory Tribunal (IPART) and, from 1 January 2002, will have the choice of remaining on, or returning to, a standard regulated contract. New South Wales noted in its annual report that these arrangements do not prevent a retailer from entering a commercially negotiated contract with these customers.

Effectiveness of competition

New South Wales' annual report argued that the State has the cheapest electricity prices, on average, across mainland Australia and that Sydney and Melbourne are the NEM cities with the lowest retail prices. It based these claims on data from the Electricity Supply Association of Australia. Further, the report cited estimates by the New South Wales Treasury that electricity customers in the State saved over $1.6 billion (in real terms) between the commencement of reform in May 1995 and December 2000. The annual report stated that these gains have been spread across all groups of customers. The Port Jackson report for the Business Council of Australia found that medium and large industrial and commercial customers in New South Wales had experienced very large reductions in their electricity prices (Port Jackson Partners 2000, p. 6). Figure 6.1 illustrates that, more recently, New South Wales spot prices have tended to rise and become more volatile.

The annual report also cited evidence from two surveys concerning customer transfer rates. The first, a September 1997 survey by the Electricity Supply Association of Australia, found that 47.6 per cent of customers consuming above 4 gigawatt hours (GWh) per year had changed supplier since October 1996. The second, a December 1999 survey by the Australian Industry Group, found that 30 per cent of survey respondents who had negotiated a contract in the previous 12 months had changed supplier.

Progress towards full retail competition

New South Wales enacted the *Electricity Supply Amendment Act 2000* to implement arrangements necessary for introducing full retail competition. The Act establishes a regulatory regime for smaller customers and provides for new market rules, among other provisions. Key arrangements that need to

be operational before the introduction of full retail competition are metering and customer transfer arrangements and the Electricity Tariff Equalisation Fund.

Metering arrangements

New South Wales commenced consultation on a draft metrology procedure for types 5, 6 and 7 metering installations. An interim type 5 metrology procedure has been approved and published. Under the New South Wales arrangements, customers consuming 100–160 MWh per year will require an interval (type 5) meter to change retailer. Prior to the type 5 metrology procedure becoming effective, these customers have been able to change retailer on the basis of a National Electricity Code-compliant meter (likely to be type 4). For smaller customers, New South Wales is implementing a load profiling system.

The annual report noted that the metering arrangements allow any customer (or the customer's retailer) to install an interval meter where the benefits of doing so outweigh the costs. New South Wales argued that as the profile shape better reflects consumption by smaller customers over time, the incentives for customers with more favourable consumption patterns to move to interval meters will increase.

The annual report stated that New South Wales, in developing these arrangements, has tried to achieve national consistency and to weigh costs and benefits. New South Wales pointed to its development of a Memorandum of Understanding to provide a framework for consultation and decision-making on national systems, and its work with Victoria to ensure consistency in full retail competition arrangements. It also noted that the costs and benefits of metering solutions have been analysed in various studies by New South Wales and Victoria. These studies found that roll-out of interval meters is economic at this stage for only a small group of customers using less than 160 MWh per year.

Market transfer arrangements

New South Wales' annual report stated that the Government is working closely with NEMMCO and industry to ensure business systems are in place within the Government's contestability timetable. The annual report also indicated that New South Wales is taking an active role in overseeing the contract for procuring centralised national systems and that implementation of these systems is on schedule.

Electricity Tariff Equalisation Fund

The New South Wales Government established the Electricity Tariff Equalisation Fund to manage the wholesale price risk faced by retailers obliged to supply customers at regulated tariffs. If a retailer's wholesale

electricity costs are lower than the energy cost component of the regulated tariff, then the retailer will be obliged to pay these surplus monies into the Electricity Tariff Equalisation Fund, which will be used to compensate retailers when wholesale prices exceed the energy cost component of the regulated tariff. If the fund has insufficient money, then the Government-owned generators will be required to top it up to the extent that they have benefited from the high wholesale prices that caused the lack of funds.

The fund guarantees standard retail suppliers a fixed margin for supplying small customers at prices determined by IPART, with the margin based on the costs and risks of supplying regulated customers. In addition to the fund's management of wholesale price risk, New South Wales argued that the fund will ensure retailers do not earn windfalls that can be used to subsidise sales to contestable customers.

The annual report stated that New South Wales, to attract new entrants into retailing, has calculated the regulated tariff on the basis of the long-run marginal cost of electricity generation. New South Wales argued that if a retailer can enter a hedging contract with a generator to supply electricity at less, then the retailer should be able to offer incentives for customers to switch away from regulated arrangements.

Assessment

The Council considers that New South Wales has met its 2001 NCP assessment obligations in relation to electricity.

The Council accepts that the introduction of full retail competition may necessitate transitional measures beyond December 2002, but considers that any additional or extended derogations would need to satisfy a robust public interest case. The ACCC's authorisation process, which will be applied to any additional or amended derogations, will account for public interest considerations.

The Council notes that New South Wales committed to introducing full retail competition and that it reaffirmed both that commitment and the current contestability timetable at the June 2001 CoAG meeting. The Council considers that New South Wales' approach to implementing metrology and customer transfer arrangements has been based on a comparison of the costs and benefits and has promoted national consistency.

The Council notes that some market participants have expressed concern that the Electricity Tariff Equalisation Fund may impact on the operation of the NEM, for instance by affecting pricing or hedging arrangements. The Council understands that New South Wales intends both the continuation of regulated tariffs and the fund to be transitional arrangements. The Council will review any impact on the NEM of these arrangements, along with New

South Wales' progress in adopting market-based solutions, in the 2002 assessment.

Victoria

Derogations

The ACCC's authorisation of the National Electricity Code included a number of derogations for Victoria. Some continue to apply, although a number expired on 31 December 2000. In its 2001 NCP annual report, Victoria stated that additional transitional derogations may be sought to implement retail contestability in a timely and effective manner. It noted that transitional derogations would generally be used only as a last resort, where other mechanisms to deliver effective full retail competition had failed.

In March 2001 Victoria applied to the ACCC to amend its derogations. The proposed derogations would delay the introduction of competition in meter provision and metering data services while full retail competition is introduced. Victoria argued that metering competition is not necessary to realise substantial benefits from full retail competition and that introducing metering competition for small customers at the same time as full retail competition would add an extra element of complexity that may inhibit the development of core retail competition. The ACCC granted conditional interim authorisation of the derogations in July 2001.

Vesting contracts

Victoria's vesting contracts expired on 31 December 2000 and the Victorian Government has not sought to extend its vesting contracts.

Full retail competition

In January 2001 Victoria introduced choice of retailer to electricity customers consuming 40–160 MWh per year. Victoria indicated that it plans for remaining noncontestable customers (that is, those using less than 40 MWh per year) to be able to choose their retailer from January 2002.

Effectiveness of competition

Victoria's annual report argued that the introduction of competition into the electricity market has resulted in significant price reductions for contestable customers, despite recent price rises. It cited: a 1998 report by the Australian Chamber of Manufactures, which found that industrial and commercial

businesses achieved an average reduction in electricity costs of 23 per cent between 1994 and 1998; and a 2000 report by NECA, which found that the average wholesale electricity price in Victoria was 16 per cent lower than the average price at market start. The Port Jackson report for the Business Council of Australia found that medium and large industrial and commercial customers in Victoria had experienced very large reductions in their electricity prices (Port Jackson Partners 2000, p. 6). More recently, increased spot prices appear to have fed through to increased price pressures for retail customers.

Victoria also argued that customers have been able to change retailers. The Australian Chamber of Manufactures report noted that around one third of the firms surveyed had changed retailers between 1994 and 1998.

Progress towards full retail competition

Victoria enacted the *Electricity Industry Act 2000*, which provides the framework for the introduction of full retail competition. The Act includes provisions on load measurement, licensing, cross-ownership restrictions and community service agreements. The Act also provides for transparency and independent oversight of price and service offers to smaller customers for a transitional period. Metering arrangements and customer transfer procedures are two key areas that require finalisation before full retail competition is introduced.

Metering arrangements

Victoria finalised a metrology procedure for types 5, 6 and 7 metering installations, and published the metrology procedure for types 5 and 7 metering installations. Victoria will not publish the metrology procedure for type 6 metering installations until changes to the National Electricity Code relating to full retail competition have been granted final authorisation by the ACCC. In its annual report, Victoria indicated that implementation of its metrology procedures by July 2001 was a key milestone for the introduction of full retail competition.

Under Victoria's metering arrangements, customers who use 40–160 MWh per year must install an interval (type 5) meter to change retailer. For customers who consume 0–40 MWh per year and use type 6 meters, net system load profiling will be used to measure market loads. Victoria argued in its annual report that net system load profiling is relatively low cost, which supports innovation and allows customers to switch retailers readily.

The Office of the Regulator Generator commenced a process to determine the viability of a regulated changeover to interval (type 5) meters for household and small business customers, including an analysis of the benefits and costs. It indicated that it would be prepared to facilitate the roll-out of interval meters pursuant to a 'new and replacement' rule by allowing a small smeared surcharge on network tariffs, provided that the benefits justified the

additional cost. The Council understands that the proposed implementation date is October 2001.

While developing Victoria's metering arrangements, Victoria and New South Wales jointly released an issues paper in October 2000 and sought submissions on the issues raised. The Victorian Full Retail Contestability Co-ordination Committee also commissioned Intelligent Energy Systems to evaluate metering strategies in 1999, including a cost–benefit analysis of the options.

Market transfer arrangements

Victoria indicated that a further key milestone for the implementation of full retail competition is the completion of the national transfer and wholesale settlement system, associated business systems and the market participant interfaces by December 2001. Victoria, along with other NEM-participating jurisdictions, entered into arrangements with NEMMCO for it to procure national systems for customer transfer and settlement processes. Victoria reported that it is participating in, and assisting, NEMMCO's procurement and trial of the Market Settlement and Transfer System.

Assessment

The Council considers that Victoria has met its 2001 NCP assessment obligations in relation to electricity.

The Council accepts that the introduction of full retail competition in Victoria may necessitate transitional measures beyond December 2002. However, it considers that any additional or extended derogations would need to satisfy a robust public interest case. The Council notes that the ACCC has granted interim authorisation to proposed amendments to Victoria's derogations, and that this process has accounted for public interest considerations. The Council welcomes the fact that Victoria has not sought to extend its vesting contracts.

The Council notes that Victoria has committed to introducing full retail competition and that it reaffirmed both that commitment and the current contestability timetable at the June 2001 CoAG meeting. The Council considers that Victoria's progress in implementing the necessary mechanisms to support the introduction of full retail competition meets its 2001 NCP assessment obligations. The Council is satisfied that Victoria's approach has been based on a comparison of the costs and benefits and has promoted national consistency. The Council expects that all Victorian customers will have become contestable by the time of the 2002 assessment. In that assessment, the Council will consider any outstanding issues for the implementation of full retail competition, as well as the extent to which consumers are capturing the benefits of competition.

Queensland

Derogations

The ACCC's authorisation of the National Electricity Code included a number of derogations for Queensland. Queensland sought to amend these derogations on 19 April 2000 and 24 October 2000. The ACCC granted authorisation of the first set of amendments (which primarily related to the operation of the DirectLink Interconnector) in June 2000. The ACCC granted conditional interim authorisation of the second set of amendments in December 2000. Those amendments will, if authorised in the final determination, extend the date of eight derogations from the date of the commissioning of the QNI until 31 December 2002. Queensland's 2001 NCP annual report did not indicate that Queensland intends to seek additional derogations or the extension of existing derogations.

Vesting contracts

Queensland's vesting contracts are due to expire on 31 December 2001. Queensland's annual report noted that the Government is considering appropriate arrangements post-December 2001. It stated that any decisions about future arrangements would be taken against the background of public interest.

Full retail competition

Queensland made contestable all customers consuming over 200 MWh per year. Queensland's annual report indicated that the number of contestable customers totals around 7500, with those on negotiated terms comprising 99 per cent of customers consuming over 40 GWh per year, 59 per cent of customers consuming over 4 GWh per year and 20 per cent of customers consuming over 200 MWh per year.

Queensland stated that it will introduce competition to customers who consume less than 200 MWh per year provided that there is a net public benefit. Queensland advised the Council that it will conduct a cost–benefit review before it commits to introducing competition to such customers. This review will assess the financial and non-financial impacts of full retail competition, including: the expected price benefits to customers; the impact on government, including on community service obligation payments; the impact on the financial position of electricity suppliers; and non-price benefits. The Government expects to announce its decision before the end of 2001, in conjunction with an implementation plan and a target implementation date.

Effectiveness of competition

The Port Jackson report for the Business Council of Australia found that electricity reforms had led to lower electricity prices for customers in Queensland, particularly in the industrial sector. These price reductions were smaller, and had occurred more recently, than in New South Wales and Victoria (Port Jackson Partners 2000, pp. 6–7). Figure 6.1 indicates that Queensland spot prices have tended to become less volatile over time, unlike those in other NEM regions.

Assessment

The Council considers that Queensland has met its 2001 NCP assessment obligations in relation to electricity.

The Council welcomes that Queensland has not indicated that it intends to seek additional derogations or extensions of existing derogations. However, it considers that the objectives of vesting contracts could be met with less distortion to market arrangements. The Council notes that the Queensland Government could help reduce transition issues, and thus the need for vesting contracts, by providing certainty on the future retail competition program. The Council will consider the issue of Queensland's vesting contracts in the 2002 assessment.

The Council notes that Queensland committed to introducing full retail competition in the electricity agreements. Queensland reaffirmed that commitment at the June 2001 CoAG meeting, but was not prepared to reaffirm its contestability timetable. Queensland is less progressed than some other NEM-participating jurisdictions in its approach to implementing full retail competition; the Council will consider Queensland's progress on this matter in the 2002 assessment.

South Australia

Derogations

The ACCC's authorisation of the National Electricity Code included a number of derogations for South Australia. South Australia sought further derogations on 28 October 1999 in relation to the obligations of a network service provider and generator to register as code participants. The ACCC granted authorisation of these derogations on 25 January 2000. South Australia's 2001 NCP annual report did not indicate that South Australia intends to seek additional derogations or extensions of existing derogations.

Vesting contracts

The ACCC made a final determination on the South Australian vesting contracts on 22 December 1999, and on an application for revocation and substitution of the vesting contracts on 20 December 2000. The vesting contracts extend to 31 December 2002, partly because they act as a regulatory mechanism in South Australia preventing significant concentration of market power.

Full retail competition

South Australia introduced competition into its electricity market in December 1998. In January 2000 competition was extended to customers consuming over 160 MWh per year, totalling around 3100 and accounting for around half of the energy consumer each year in the State. Remaining customers are scheduled to become contestable in January 2003, but South Australia was not prepared to reaffirm this timetable at the June 2001 CoAG meeting.

Effectiveness of competition

South Australia is in a transitional phase from a highly concentrated generation market, with insufficient interconnection and generation capacity, to a more competitive arrangement. While the Council would generally expect full retail competition to lead to benefits for consumers, where there is a tight balance between supply and demand the impact on consumers is more problematic. The Council considers it likely that the benefits of full retail competition will flow through to all South Australian customers when a better balance has been achieved between supply and demand of electricity.

The Port Jackson report for the Business Council of Australia found that South Australian customers had not received the price reductions achieved by customers in other jurisdictions, in part due to the fact that prices in the State's wholesale market had not decreased. The report noted that, in South Australia, many industrial customers had elected to stay on existing contracts (Port Jackson Partners 2000, p. 7). In recent months, there has been evidence of substantially increased price pressure in the contract market for customer segments open to competition. This pressure appears to have flowed, at least in part, from rising seasonal spot prices (see figure 6.1).

The Government has instructed the South Australian electricity taskforce to examine the availability of firm contractable capacity in South Australia. The taskforce will report on measures which could be taken to increase contractable capacity, such as developing new supply (generation and interconnection) and improving the reliability or availability of existing generation and interconnection assets. South Australia has indicated to the Council that it has also fast-tracked proposals for extra generating and

contract capacity, for instance by providing Crown Development Status to three proposals for extra generation capacity.

Progress towards full retail competition

South Australia's annual report stated that the Government is actively participating in the national decision-making structure for full retail competition and is progressing jurisdictional issues associated with implementing full retail competition.

South Australia has developed a draft full retail competition project plan, in consultation with industry, identifying the following milestones: finalising a draft full retail competition policy framework by August 2001; developing draft metrology procedures by October 2001; finalising metrology procedures by January 2002; and finalising supporting regulatory arrangements and a consumer awareness strategy by June 2002. The plan also identifies the need for industry to undertake detailed system design and implementation, and for the Government to introduce legislative changes to support a consumer protection framework, if necessary.

Licensing arrangements

South Australia has indicated to the Council that its licensing requirements for potential interconnectors go beyond prudential requirements to issues such as consideration of customer benefit. The Council understands that, for a regulated interconnector such as SNI, the State's licensing arrangements require the prior completion of NEMMCO and development approval processes.

As noted earlier in this chapter, the Council considers that governments have a best endeavours obligation to facilitate an infrastructure development once it has been approved under the NEM's regulatory processes. The Council considers that it would be inconsistent with South Australia's NCP obligations were its licensing arrangements to revisit issues of customer benefit, particularly where that assessment focussed on benefits to the State rather than the market as a whole. In the Council's view, South Australia does not have a role in the economic regulation of matters relating to the NEM as a whole.

Assessment

The Council considers that South Australia has met its 2001 NCP assessment obligations in relation to electricity.

The Council welcomes that South Australia has not indicated that it intends to seek additional derogations or extensions of existing derogations. It considers that generally there should be no need for transitional measures

beyond December 2002. The Council also considers that the objectives of vesting contracts could be met with less distortion to market arrangements. It notes that the South Australian Government could help to reduce transition issues, and thus the need for vesting contracts, by providing certainty on the future retail competition program.

The Council notes that South Australia has committed to introducing full retail competition. South Australia reaffirmed that commitment at the June 2001 CoAG meeting, although not its contestability timetable. South Australia has provided the Council with a project plan for implementing full retail competition on the basis of its existing contestability timetable, and the Council will consider South Australia's progress against that timetable in the 2002 assessment.

The Council will consider South Australia's licensing arrangements for new interconnectors, and their impact on the NEM, in the 2002 assessment.

ACT

Derogations

The ACCC's authorisation of the National Electricity Code included a number of derogations for the ACT. Derogations covering distribution ended in December 2000. The ACT has not sought to add to or extend these original derogations, although it was a party to the cross-jurisdictional extension of the ancillary services derogation in 2000.

Vesting contracts

The ACT did not implement vesting contracts to manage its transition to competition in retail supply.

Full retail competition

In December 2000 the ACT Minister for Urban Services announced that customers who consume 100–160 MWh per year would be able to choose their retailer from 1 July 2001. The Minister also indicated that the current plan was for all remaining customers to become contestable from January 2002, subject to a review by a Legislative Assembly committee into matters such as the readiness of computer systems and community understanding of the issues.

Effectiveness of competition

Until 1 July 2001 around 1000 large customers, or just under half of the ACT electricity market, were contestable. The opening up of the 100–160 MWh market segment from 1 July 2001 was to result in a further 450 customers becoming contestable.

The ACT's 2001 NCP annual report argued that a significant proportion of the non-franchise market appears to have changed retailer since the introduction of competition in 1997. Since that time:

- 17 retailers other than the incumbent have sought and maintained licensing;
- no retailer has lodged a complaint, formal or otherwise, with the Government on difficulties in changing retailers;
- the Government is unaware of any large Australia-wide customers encountering difficulties in implementing their national electricity contracts in the ACT; and
- there is evidence from submissions to Government inquiries that retail margins for larger contestable customers have fallen.

The ACT also noted that it has taken steps to minimise barriers to entry to new retailers, including: adopting a well-known model for declaration of non-franchise customers (based on that used in New South Wales); adopting a simple definition of 'premises' to minimise disputes over whether a customer is contestable; and adopting a simple licensing regime.

Progress towards full retail competition

The ACT sought and received advice from KPMG Consulting in 2000 on the implementation of full retail competition. The KPMG report discussed the potential costs and benefits of full retail competition, as well as options for its implementation. The report outlined the earliest time at which full retail competition would be practicable, given the time required to develop a metrology procedure and to implement national retail transfer and settlement systems. This timetable informed development of the ACT's announced contestability timetable.

The ACT identified the major milestones for successful implementation of full retail competition as (1) Government consideration of the outcome of a Legislative Assembly committee investigation of retail competition and (2) the readiness of the necessary computer systems.

Metering arrangements

The consultants' report on full retail competition addressed the potential costs of principal metering options. The ACT's annual report noted that the ACT sought to establish timeframes for the delivery of a metrology procedure. The ACT informed the Council that it engaged consultants to develop an initial metrology procedure and that a final procedure should be available for publication in September 2001.

Market transfer arrangements

The ACT formally committed in 2000 to the national settlement and transfer systems process. This process involves ACT participation in a formally constituted Jurisdictional Panel and providing part funding.

The ACT's annual report noted that a comparison of costs and benefits has been an important guide for the Territory's transition to full retail competition. The Council notes that the consultancy report commissioned by the ACT considered the costs and benefits of aspects of full retail competition. The ACT also indicated that it remains committed to pursuing national consistency where possible, because it would not be cost-effective to do otherwise.

Legislative Assembly committee investigation

The ACT's annual report noted that the Legislative Assembly committee investigation of retail competition is intended to take place in 2001. The Council understands that the referral and conduct of the proposed investigation is being considered by the Legislative Assembly's Standing Committee on Planning and Urban Services.

Assessment

The Council considers that the ACT has met its 2001 NCP assessment obligations in relation to electricity.

The Council welcomes that the ACT has not indicated that it seeks to add to or extend its derogations, or to adopt vesting contracts. The Council also notes that the ACT committed to introducing full retail competition and that it reaffirmed both that commitment and the current contestability timetable at the June 2001 CoAG meeting. On the basis of the milestones which the ACT has identified, the Council expects that full retail competition will have been introduced by the time of the 2002 assessment. The Council will consider the ACT's continued progress against its commitments at that time. The Council is satisfied that the ACT's approach so far has considered costs and benefits and promoted national consistency.

Assessing progress: proposed NEM participating jurisdictions

Tasmania

Progress towards NEM participation

Tasmania has competitively tendered the construction and operation of Basslink as a high-voltage unregulated interconnector with Victoria. The winning bid was by National Grid International. Basslink will have 480 MW nominal capacity and 600 MW dynamic capacity. It is expected to become operational in 2003. The Council expects that Tasmania will become a NEM-participating jurisdiction when the interconnector becomes operational. The *Electricity – National Scheme Act 1999*, which has been passed but not proclaimed, will make effective the National Electricity Law in Tasmania.

The ACCC is considering applications for authorisation of the Tasmanian vesting contract and derogations. These applications will establish the framework rules for Tasmania's participation in the NEM. Tasmania's 2001 NCP annual report noted that Tasmania is also working with existing NEM-participating jurisdictions to fulfil the NEM membership requirements, particularly accession to the National Electricity Market Legislation Agreement and membership of NEMMCO and NECA.

Structural reform

Tasmania has a generation business (the Hydro Electric Corporation, or HEC), a transmission business (Transend Networks) and a distribution and retail business (Aurora Energy). Given that Tasmania will become a NEM-participating jurisdiction when Basslink is completed, it has an obligation under NCP to conduct a CPA clause 4 review of the HEC. Tasmania has conducted two such reviews: a structural review of the HEC's distribution/retail business and a structural review of the HEC's generation business.

Structural review of the HEC's distribution/retail business

A CPA clause 4 review of the HEC's distribution and retail businesses was completed in December 1997. The review recommended against horizontal separation, given the small size of the market. However, it recommended vertical separation of distribution and retail once competition is introduced into the Tasmanian market. The Tasmanian Government did not accept that

separate companies should conduct distribution and retail functions once competition is introduced. It considered that ring-fencing of the two functions within Aurora should provide sufficient safeguards.

Structural review of the HEC's generation business

A clause 4 review of the HEC's generation and system control functions was completed in May 1999. The review report recommended, *inter alia*, the creation of an independent system operator and three subsidiaries of the HEC to act as generation traders, with the aim of creating a competitive wholesale spot market. The Tasmanian Government accepted the report's recommendation to separate the system control function from the HEC. From July 2000 Transend Networks has had responsibility for system control in Tasmania. The Tasmanian Government did not accept the report's recommendation to break up the HEC's generation assets, arguing that to do so could significantly complicate efforts to establish Basslink and compromise supply security and efficiency of operation.

Assessment

Where a government does not accept any or all of the recommendations of a clause 4 review, the Council requires that it must be able to demonstrate a clear public interest case for that decision. Tasmania provided the Council with a public interest justification for its decision not to accept all of the review recommendations regarding the HEC's retail/distribution and generation businesses.

Tasmania's 2001 NCP annual report noted that generation sector competition, in addition to the opportunities provided by Basslink, will be promoted by the separation of the Bell Bay Power Station from the HEC and its conversion to gas, and by encouragement of competing wind power projects. The Council notes that the ACCC's authorisation process for Tasmania's proposed arrangements will consider the costs and benefits of any anticompetitive aspects of the arrangements.

The Council is satisfied that Tasmania has met its 2001 NCP assessment commitments. In the 2002 assessment, the Council will consider Tasmania's continued progress towards NEM participation.

Assessing progress: non-NEM participating jurisdictions

While geographically excluded from participation in the NEM, both Western Australia and the Northern Territory have committed to introducing electricity reform.

Western Australia

Western Australia's 2001 NCP annual report noted that electricity reform in that State has not kept pace with developments in other jurisdictions and that its electricity prices are higher than necessary.

Structural reform

The State Energy Commission of Western Australia was restructured in 1995 into Western Power, Alinta Gas and the Office of Energy. Western Power was corporatised in 1995. It remains vertically integrated, but its activities have been partly ring-fenced and it has an annual obligation to report on the performance of separate components of the business.

The Western Australian Government has announced a program of further reform for the electricity sector. Proposed measures include: structurally separating Western Power's generation division from its other divisions; establishing a regulator with powers over the electricity industry; and developing an electricity code. To progress these reforms the Government announced that it will establish an Electricity Reform Steering Group to develop detailed recommendations on: the reform timetable; the structure of the electricity market to be established; the extent and phasing of the disaggregation of Western Power; measures to enhance competition in electricity retailing; and arrangements for implementing full retail contestability.

Retail competition

The *Electricity Corporation Act 1994* provides for third-party access to Western Power's transmission and distribution networks. In addition to access to Western Power's transmission network, access to its distribution network has been available since July 1997 to customers with an average load exceeding 10 MW per year; from July 1998 to customers with an average load exceeding 5 MW per year; and from January 2000 to customers with an average load exceeding 1 MW per year. There are lower contestability thresholds for regional and remote systems and for customers on the interconnected networks taking supply from renewable energy sources.

The Western Australian Government's recently announced reform program includes a goal of full retail contestability by 2005. Contestability thresholds are to be progressively lowered from their current level of 1 MW per year in the following steps:

- to customers using 0.23 MW per year or more at a single site from July 2001;
- to customers using 0.034 MW per year or more from January 2003; and
- to all customers by 2005.

The Western Australian annual report stated that the Electricity Reform Steering Group, once established, would develop recommendations on implementing full retail contestability.

Assessment

The Council is satisfied that Western Australia has met its 2001 NCP assessment electricity reform commitments. The Council notes, however, that the introduction of competition into the Western Australian electricity market means that the State has a NCP obligation to carry out a clause 4 review. Western Australia's annual report stated that the Electricity Reform Steering Group would ensure that the State's structural reform and other NCP obligations are met. In the 2002 assessment, the Council will consider the progress of this process against the requirements of clause 4.

As the Council noted in the second tranche NCP assessment, Western Australia's progress in electricity reforms is not as advanced as that in other jurisdictions. The Council intends to continue to monitor progress in, and the impact of, introducing competition in the Western Australian electricity supply industry. In particular, the Council will consider progress on the Government's proposed program of further reform for the Western Australian electricity industry in the 2002 assessment.

Northern Territory

The Northern Territory has a series of non-interconnected systems, primarily Darwin–Katherine, Alice Springs and Tennant Creek. The Power and Water Authority (PAWA), a vertically integrated public utility, provides most generation and network services in these areas. However, independent power producers undertake some generation, and a new private-sector supplier recently entered the market.

Structural reform

The Northern Territory Government undertook a review of PAWA in late 1998. In response to the review, the Government developed arrangements to permit competition in the Territory's electricity market, apply economic regulation to the electricity industry and transfer regulatory and policy functions from PAWA. The Government established an independent economic regulator, the Utilities Commission, in March 2000 to license suppliers, administer the Electricity Networks (Third Party Access) Code and regulate network prices and service standards.

Electricity industry regulatory and policy functions previously performed by PAWA were transferred to relevant Government agencies; for example, licensing functions were transferred to the Utilities Commission and electrical inspection and safety functions were transferred to the Department of Industries and Business. In addition, certain powers previously granted to only PAWA were extended to other electricity operators to enable them to operate effectively.

As a result of these reforms, separate licences now exist for each electricity entity within PAWA and compliance with these licences is regulated by the Utilities Commission. An obligation of each electricity licence is that an annual report on the performance of each business be submitted to the Utilities Commission. To achieve this, PAWA restructured its electricity business during the 1999–2000 and 2000–01 financial years. Measures included structurally separating its generation, networks, system control and retail divisions. Ring-fencing was also introduced within business units, for example contestable customers have been ring-fenced within the retail business.

Retail competition

The market for electricity supply in the Northern Territory was opened to competition in April 2000. Under the arrangements, new suppliers are able to use PAWA's networks to deliver electricity to customers. Choice of supplier commenced on 1 April 2000 for customers using at least 4 GWh per year and was extended to customers using at least 3 GWh per year in October 2000. Under current arrangements, contestability will be progressively extended to other customers (down to 750 MWh per year) by 1 April 2002, by which time around 45 per cent of the Northern Territory market (by electricity sales) is expected to be open to competition. All customers are to be contestable from April 2005.

Assessment

The Council noted in the second tranche NCP assessment that the 1998 review of PAWA and the Government's response to it were consistent with

the Northern Territory's NCP commitments. The Council is satisfied that the Northern Territory has met its 2001 NCP assessment electricity reform commitments. As noted in the second tranche assessment, however, the Northern Territory's progress in electricity reforms is not as advanced as that of other jurisdictions. The Council intends to continue to monitor progress in, and the impact of, introducing competition in the Northern Territory electricity supply industry.

Legislation review and reform activity

Table 6.2 summarises jurisdictions' progress in reviewing and reforming their electricity-related legislation under clause 5 of the CPA.

Table 6.2: Review and reform of electricity-related legislation

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Electricity (Pacific Power) Act 1950*	Constitution of Pacific Power	Not for review, as the Government has established a new state-owned corporation from Pacific Power's generation business.	Act expected to be repealed after a transitional period.	Council to assess progress in 2002.
	Electricity Safety Act 1945	Requirements relating to the authorisation and inspection of electrical products, regulation of the sale and hiring of electrical apparatus	Review underway.		Council to assess progress in 2002.
	Electricity Supply Act 1995	Regulation of electricity supply	Not for review, because major amendments are being made to the Act.		Council to assess progress in 2002.
	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	Constitution of the Energy Corporation of New South Wales	Review completed.	Licence and approval requirements repealed.	Meets CPA obligations (June 2001) in relation to electricity-related provisions.
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 6.2 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).
	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).

(*continued*)

Table 6.2 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Electricity Act 1994*	Licensing requirements, conduct requirements, restrictions on trading activities, Ministerial pricing powers	Review underway.		Council to assess progress in 2002.
Western Australia	*Electricity Act 1945*	Regulations concerning mandated supply, determination of interconnection prices, restrictions on the sale/hire of non-approved electrical appliances, uniform pricing	Review completed.	Government accepted review recommendations and is to make legislative amendments. Government has since proposed further pro-competitive reforms.	Council to assess progress in 2002.
	Electricity Corporation Act 1994	Exclusive retail franchise, entry restrictions for generation, competitive neutrality restrictions	Review completed.	Government accepted review recommendations and is to make necessary amendments. Government has since proposed further pro-competitive reforms.	Council to assess progress in 2002.
South Australia	*Electricity Act 1996*	Restrictions on market entry and market conduct	Review completed. No reforms recommended as Act facilitates regulation of electricity supply in conjunction with other national electricity market reforms	Restrictive provisions retained.	Council to assess progress in 2002.
	Electricity Corporation Act 1994	Restrictions on market entry and market conduct	Review completed. No reforms recommended as Act facilitates regulation of electricity supply in conjunction with other national electricity market reforms	Restrictive provisions retained.	Council to assess progress in 2002.

(*continued*)

Table 6.2 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia (continued)	*National Electricity (South Australia) Act 1996*	Restrictions on market entry and market conduct	Review completed. No reforms recommended as Act facilitates regulation of electricity supply in conjunction with other national electricity market reforms	Restrictive provisions retained.	Council to assess progress in 2002.
Tasmania	*Electricity Supply Industry Act 1995*	Licensing requirements, conduct requirements, exclusive retail provisions, tariff-setting procedures	Review underway. Issues paper and regulatory impact statement, containing draft recommendations, released.		Council to assess progress in 2002.
	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).
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).

(*continued*)

Table 6.2 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
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).
	Power and Water Authority Act		Review completed.	All electricity-related amendments made except for the removal of PAWA's local government rate exemption. This amendment to be made as part of the development of government-owned corporations legislation.	Council to assess progress in 2002.

7 Gas

NCP commitments

NCP commitments in relation to natural gas arise from specific Council of Australian Governments (CoAG) agreements on natural gas (particularly the 1994 CoAG gas agreement and the 1997 Natural Gas Pipelines Access Agreement) and from general NCP agreements such as the Competition Principles Agreement (CPA).

The 1994 CoAG gas agreement included the following elements:

1. removing all remaining legislative and regulatory barriers to the free trade of gas both within and across State and Territory boundaries;

2. implementing a uniform national access regime for transmission and distribution pipelines;[1]

3. adopting Australian Standard AS 2885 to achieve uniform national pipeline construction standards by the end of 1994 or earlier;

4. not issuing any further open-ended exclusive franchises, so as to implement more competitive franchise arrangements;

5. placing publicly owned gas utilities on a commercial footing, through corporatisation, by 1 July 1996; and

6. vertically separating publicly owned transmission and distribution activities, and ring-fencing transmission and distribution activities in the private sector.

The 1997 Natural Gas Pipelines Access Agreement (hereafter called the 1997 Gas Agreement) varied and clarified these obligations. It set out:

- a uniform national framework for access to natural gas transmission and distribution pipelines;

- timetables for the phase-in of competition (contestability timetables), along with other transitional arrangements and derogations agreed among jurisdictions; and

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[1] The original agreement only referred to *transmission* pipelines. Jurisdictions agreed in November 1997 to extend the access reforms to *distribution* pipelines.

- agreed franchising and licensing principles.

To the extent of any variance between the 1994 and 1997 agreements, the Council has adopted the 1997 Gas Agreement as the benchmark for assessing jurisdictions' 2001 NCP obligations and progress in reform. Beyond the 1994 CoAG gas agreement and the 1997 Gas Agreement, jurisdictions have obligations under the CPA (particularly clause 5 — the requirement to review legislation) and the Agreement to Implement the National Competition Policy and Related Reforms. Table 7.1 summarises jurisdictions' obligations.

Table 7.1: 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 CoAG gas agreement and CPA
Ring-fencing of privately owned transmission and distribution activities	1994 CoAG gas agreement
Implementation of AS 2885 to achieve uniform pipeline construction standards	1994 CoAG gas agreement
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 F
Franchising principles	1997 Gas Agreement, annex E
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

Access to natural gas pipelines

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. The States and Territories are then required to seek certification of their gas access regimes under part IIIA of the *Trade Practices Act 1974* (TPA).[2]

Where States and Territories have sought but not yet obtained certification of their regimes and have otherwise met their obligations under the 1997 Gas Agreement, the Council considers that they have met their 2001 NCP obligations. Progress by States and Territories in enacting the GPAL and National Gas Access Code and in seeking certification of regimes is reported in table 7.2.

Table 7.2: 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 Council with Commonwealth Minister
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	Recommendation of Council with Commonwealth Minister

Tasmania's obligations under the 1997 Gas Agreement were suspended until 'a time sufficiently before the first natural gas pipeline in that State is approved or any competitive tendering processes for a new natural gas pipeline in that State is commenced' (clause 4.3, 1997 Gas Agreement). In particular, Tasmania's obligation to seek certification of its access regime was suspended until 'as soon after enactment of its Access Legislation as is possible'.

[2] Tasmania's obligation to do so is suspended under clauses 4.3 and 10.1 of the 1997 Gas Agreement until it develops gas pipeline infrastructure. Western Australia's obligation under clause 5.3 of the 1997 Gas Agreement is to enact legislation having essentially identical effect to that passed in the other States and Territories.

Tasmania's obligations under the 1997 Gas Agreement have now arisen as it has commenced development of a natural gas industry. Duke Energy International has been investigating the feasibility of supplying natural gas to customers in the Bell Bay area, the North–West Coast and the south of Tasmania, and expects to seek planning and environmental approvals to lay pipelines around the end of 2001.

To meet its obligations, Tasmania enacted the *Gas Pipelines Access (Tasmania) Act 2000* in November 2000 and is developing regulations. Tasmania expects to seek certification of its gas access regime during 2001. The Council considers that Tasmania has met its obligations to date and will monitor progress in the 2002 NCP assessment.

Derogations

Derogations refer to any jurisdiction-specific variations from the GPAL and the National Gas Access Code. States and Territories are obliged to:

- not legislate derogations to their access regimes beyond those agreed in annexes H and I of the 1997 Gas Agreement; and
- phase out derogations by the dates specified in annex H or I, or where no date is specified, by 1 September 2001 (clause 12.1, 1997 Gas Agreement).

Clause 12.2 of the 1997 Gas Agreement emphasises that derogations are to be limited to those essential to the 'orderly introduction of competitive arrangements' with the aim of creating a 'competitive natural gas market characterised by access to all gas consumers and all producers in all States and Territories'. Except for changes in contestability timetables (discussed below), jurisdictions have not legislated derogations beyond those agreed in annexes H and I. Jurisdictions have complied with their 2001 NCP obligations.

Introduction of full retail contestability

Jurisdictions have provided in annex H for the progressive introduction of contestability for all gas consumers. Annex H has been modified by agreement of all jurisdictions since the 1997 Gas Agreement. The latest version of annex H is set out in table 7.3. Table 7.3 does not report on phasing-in of competition for customer classes arising before 1 July 1999.

The introduction of full retail contestability is important to realise the benefits of competition in the gas sector. The introduction of full retail contestability, to promote competition effectively, requires more than the removal of legal barriers. Effective introduction of full retail contestability requires jurisdictions to implement a package of business rules covering such matters as:

- 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.

Most of the legal removal of 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 promoting competition among suppliers to secure customers. This process of supplier selection has promoted effective competition in other network industries such as telecommunications.

Table 7.3: Contestability timetables for the national gas access regime[a]

Date	*New South Wales*	*Victoria*[b]	*Queensland*	*Western Australia*	*South Australia*	*ACT*	*Northern Territory*
1 July 1999					>10 TJ per year		
1 September 1999		100 TJ per year					
1 October 1999	>1 TJ per year					>1 TJ per year	No phase-in arrangements
1 January 2000				>100 TJ per year			
1 July 2000	All customers				Industrial and commercial customers below 10 TJ per year	All customers	
1 September 2000		>10 TJ per year					
1 July 2001			>100 TJ per year		All customers		
1 September 2001		All customers	All customers[c]				
1 January 2002				>1 TJ per year			
1 July 2002				All customers			

a Unit of measurement: terajoules (TJ), equal to 1012 joules.

b Contestability timetable for gas in Victoria does not reflect Orders in Council which are expected to be made by the Governor in Council on 31 July 2001.

c Queensland has proposed amendments to the *Gas Act 1965* which would have the effect of postponing full retail contestability until 1 January 2003.

Jurisdictions have experienced significant difficulties in introducing effective full retail contestability in accordance with their contestability timetables. Some have announced deferrals of up to 12 months for smaller customer sizes. Difficulties relate to such matters as:

- the introduction of information technology systems to handle customer billing and transfer; and
- the choice and costs of a method of metering (that is, how to measure use by smaller customers cost effectively).

In May 2000 the New South Wales Government announced that legislative barriers to retail contestability would be removed on 1 July 2000, but that the market structures necessary to achieve full retail contestability would not be in place. The Government imposed a deadline of 1 July 2001 on the industry to establish the systems needed to operate a competitive market. The responsible Minister has since announced a date for full retail contestability of 1 January 2002 to coincide with the commencement of competition in the electricity industry.[3] Queensland is proposing amendments to the *Gas Act 1965* to defer the introduction of full retail contestability to 1 January 2003. This will require the agreement of all jurisdictions. Queensland's proposed amendment is not an issue for this assessment as its original proposed date for full retail contestability falls after June 2001. Progress by States and Territories in implementing full retail contestability is reported in table 7.4.

Table 7.4: Implementation of full retail contestability

Jurisdiction	*Progress*
New South Wales	On 1 July 2000 New South Wales removed all legal barriers to contestability for all customers. Recent progress to introduce rules for full retail contestability included: 1. forming the Gas Retail Market Company through the Gas Retail Steering Committee; 2. producing business rules to govern transactions between retailers and network operators (awaiting approval by Minister); 3. examining the customer protection regulatory framework; and 4. progressing a legislative and governance framework. Industry systems to support full retail contestability are not yet in place, but industry hopes to have systems in place by the end of 2001.

(*continued*)

[3] This date was announced in the Speech for the second reading of the Gas Supply (Retail Competition) Bill 2001 on 4 April 2001.

Table 7.4 continued

Jurisdiction	*Progress*
Victoria	Victoria: 1. established an industry-based steering committee to guide implementation of full retail contestability; and 2. introduced contestability for consumers taking over 10 TJ per year. Contestability for customers taking 5–10 TJ per year has been deferred, but is likely to be introduced from 1 September 2001. Delays are expected in introducing full retail contestability for consumers taking less than 5 TJ per year but these customers should become contestable by mid–2002. A number of key consultation papers have been written or are in progress, including: 1. a paper on metering/profiling and trading arrangements for full retail contestability, on which a policy decision is expected in early April; 2. a project brief, to be finalised by April; 3. a legal and regulatory framework, that is still in progress; 4. trading arrangement rules, to be finalised by mid-June; 5. Customer Administration and Transfer System business rules, to be finalised by mid-June; and 6. a retail code for administration by the Office of Regulator-General, to be finalised by 30 April.
Queensland	Queensland indicated that it hopes to meet the deadline of 1 July 2001 for introducing contestability for customers taking over 100 TJ per year. It is proposing to amend the *Gas Act 1965* to defer full retail contestability from 1 September 2001 to 1 January 2003, and is conducting a cost–benefit analysis of the value of contestability for smaller customers.
Western Australia	On 1 January 2000 parties taking 100 TJ per year through a single metered connection to the gas distribution system or from the Dampier–to–Bunbury natural gas pipeline became contestable. Western Australia indicated that it plans to meet its timetable to allow parties taking at least 1 TJ per year to become contestable on 1 January 2002 and to allow full retail contestability from 1 July 2002.
South Australia	Contestability commenced on 1 April 1998 for customers with loads of more than 100 TJ per year and on 1 July 1999 for customers with loads of more than 10 TJ per year. All business sites, irrespective of their load, became contestable on 1 July 2000. A safety net retail tariff is in place until effective retail competition is evident. A draft Network and Consumer Transfer Code was prepared in consultation with an industry steering group. The code covers issues such as connection, disconnection and information requirements, balancing, apportionment and capacity measurement, metering, consumer transfer and dispute resolution. South Australia indicated that full retail contestability is unlikely to be introduced before September 2002.
Tasmania	Tasmania has not put in place a contestability timetable because its commitments under the 1997 Gas Agreement have yet to arise. It is developing a framework for regulating a future gas supply industry and is considering all regulatory options.
ACT	The ACT and New South Wales gas markets are strongly interconnected. The ACT has worked with New South Wales to implement full retail contestability, taking an approach broadly consistent with the New South Wales approach. The ACT adopted New South Wales provisions for contestability for customers taking 1–10 TJ per year, with minor modifications and on a voluntary basis.

(*continued*)

Table 7.4 continued

Jurisdiction	*Progress*
Northern Territory	The Northern Territory has no contestability timetable. It stated that retail contestability arrangements are not considered relevant at this point, given it has only one significant gas retail customer (the Power and Water Authority).

One particular implementation issue is the need for full retail contestability business rules to accommodate convergence among jurisdictions and with the electricity industry. The parties selling gas to consumers, particularly small consumers, are generally utility retailers that are in the business of selling gas, electricity and sometimes other utility services. These suppliers generally wish to operate in a number of different States and Territories and offer a number of different utility services to achieve efficiencies of scale and scope. To promote effective competition, States and Territories need to introduce business rules that are similar across jurisdictions and similar across the gas and electricity industries. Without similar rules, retailers will face higher costs (which they will need to recoup from consumers) or will be discouraged from entering more than one State or Territory, limiting consumer choice and competition.

Jurisdictions should ensure that their introduction of new arrangements for full retail contestability does not create barriers to free and fair trade in gas among jurisdictions. They may need to coordinate the introduction of full retail contestability to ensure different contestability rules do not impede interstate trading in gas.

The Council considers that it is important for jurisdictions to introduce rules for full retail contestability as soon as possible in keeping with the 1997 Gas Agreement. The Council will consider jurisdictions' progress more fully in the NCP assessment in 2002. This will be after the date of 1 September 2001 nominated in the 1997 Gas Agreement as the date (where annex H or I specifies no later date) by which access for all customers and suppliers was contemplated. The Council also notes that all jurisdictions anticipated implementation of full retail contestability by 1 July 2002 under annex H.[4] The Council expects that jurisdictions will have had sufficient time by July 2002 to tackle most, and in some cases all, of the obstacles that have delayed the implementation of full retail contestability.

Structural reform of gas utilities

Jurisdictions have an obligation to:

[4] The Council notes that Queensland is proposing legislative amendments to defer full retail contestability until January 2003.

- corporatise and vertically separate publicly owned transmission and distribution pipeline entities; and
- require ring-fencing of privately owned transmission and distribution activities.

The Council's 1997 and 1999 NCP assessments found that jurisdictions had complied with their obligations. The National Gas Access Code requires privately owned pipelines to ring-fence the activities of pipelines covered by the code.

Reform of regulatory barriers to competition

For the 2001 NCP assessment, reform of regulatory barriers to competition in natural gas markets involves:

- reviewing legislation that restricts competition in natural gas, particularly in upstream areas such as acreage management. Jurisdictions must review and, where appropriate, reform legislation by 30 June 2002;[5]
- implementing the franchising and licensing principles in the 1997 Gas Agreement; and
- ensuring that consumer protection measures and industry standards in respect of licensing, safety matters and gas quality, are appropriate and do not create unnecessary barriers to entry.

Legislative restrictions on competition

Legislation directly relevant 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

[5] Satisfactory implementation may include, where justified by a public interest assessment, having in place transitional arrangements that extend beyond 30 June 2002 (CoAG 2000).

- State and Territory agreement Acts.[6]

Additionally, mining legislation (particularly to the extent that it deals with coal and oil shale, which can produce coal methane gas) and environmental planning legislation may be relevant. Review and reform progress of relevant legislation is reported in table 7.5. Jurisdictions are making good progress in reviewing and reforming legislative restrictions in the gas industry.

6 The Council has recognised there are sovereign risk implications in reforming State agreement Acts.

Table 7.5: Legislation relevant to natural gas

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Petroleum (Submerged Lands) Act 1967*	Regulates exploration for and development of undersea petroleum resources. This legislation forms part of a national scheme.	National review completed. Endorsed by ANZMEC Ministers.	Amendments to be developed by the Commonwealth and reflected in State and Territory legislation.	Council to assess progress in 2002.
New South Wales	*Energy Administration Act 1987*	Establishes the Ministry of Energy and the Energy Corporation of New South Wales, and defines its functions.	Review completed.	Licence and approval requirements repealed by *Electricity Supply Act 1995*. Sections 35A and 35B dealt with as part of structural reform of the gas industry.	Meets CPA obligations (June 1999).
	Gas Industry Restructuring Act 1986	Makes provisions with respect to the structure of AGL.	Review unnecessary due to repeal of Act.	Repealed by *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 completed.	Repealed by *Gas Supply Act 1996*.	Meets CPA obligations (June 1997).
	Petroleum (Onshore) Act 1991	Regulates the search for, and mining of, petroleum.	Review completed.	Dealt with under the licence reduction program. Authority for exploration retained. Business compliance costs minimised.	Meets CPA obligations (June 1999).

(*continued*)

Table 7.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales (continued)	*Petroleum (Submerged Lands) Act 1982*	Regulates exploration for and development of undersea petroleum resources. This legislation forms part of a national scheme.	National review completed. Endorsed by ANZMEC Ministers.	Amendments to be developed by the Commonwealth and reflected in State and Territory legislation.	Council to assess progress in 2002.
	Pipelines Act 1967	Regulates construction and operation of pipelines in New South Wales.	Review completed, finding that the legislation did not contain any significant anticompetitive provisions.	No reform planned.	Meets CPA obligations (June 2001).
	Trade Measurement Act 1989		Review underway. Report by consultant considered by Review Committee. Supplementary report being finalised by Review Committee		Council to assess progress in 2002.
Victoria	*Energy Consumption Levy Act 1982*			Repealed.	Meets CPA obligations (June 2001).

(*continued*)

Table 7.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria (continued)	*Gas Industry Act 1994* and Amendment Acts	Substantially amended in 1998 to facilitate privatisation and the NCP. Act currently provides 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.	Full retail contestability 2000 amendments to facilitate orderly introduction of full retail contestability via: (1) a safety net for domestic customers, including interim reserve price regulation power to be reviewed in August 2004; and (2) a requirement for retailers to enter community service agreements.	Act will be replaced by the *Gas Industry Act 2001* and the *Gas Industry (Residual Provisions) Act 1994*, effective 1 September 2001. New Acts are designed to further facilitate orderly introduction of full retail contestability. New Acts are to be as consistent as possible with reforms in electricity industry.	Council to assess progress in 2002.
	Gas Safety Act 1997 and Regulations	New restrictive regulations introduced in relation to Gas Appeals Board, gas installations, gas quality and safety case. Aim of new regulations is to ensure safety. Uniform gas quality specifications aim to ensure gas in distribution pipelines is safe for end use.	Efforts made to minimise compliance costs by restricting the scope of restrictions to minimum functional requirements and avoiding prescription of style or format.	No further reforms planned.	Meets CPA obligations (June 2001).

(*continued*)

Table 7.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria (continued)	*Petroleum (Submerged Lands) Act 1982*	Regulates exploration for and development of undersea petroleum resources. This legislation forms part of a national scheme.	National review completed. Endorsed by ANZMEC Ministers.	Amendments to be developed by Commonwealth and reflected in State and Territory legislation.	Council to assess progress in 2002.
	Petroleum Act 1958			Repealed and replaced by *Petroleum Act 1998*. New Act retains Crown ownership of petroleum resources and permits lease system, and removes obstacles to exploration, production and administrative efficiency.	Meets CPA obligations (June 1999).
	Pipelines Act 1967	Regulates construction and operation of pipelines in Victoria.	Review completed. Review recommendations included: (1) introduction of a nationally consistent regulatory regime; (2) formalised time limits for Government assessment of pipeline projects; (3) some relaxation of restrictions on the tradeability of pipelines, permits, and licences; (4) introduction of appeals to Victorian Civil and Administrative Tribunal against regulatory alteration of permits or licences; (5) removal of open access provisions; (6) that safety provisions be based on guidelines being prepared by Department of Treasury and Finance; and (7) changes to compensation provisions to extend possible liability.	Review recommendations awaiting Government consideration	Council to assess progress in 2002.

(*continued*)

Table 7.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria (continued)	*Trade Measurement Act 1995*		Review underway. Report by consultant considered by Review Committee. Supplementary report being finalised by Review Committee.		Council to assess progress in 2002.
Queensland	*Gas Act 1965* and Gas Regulations 1989	Aim is to replace *Gas Act 1965* and *Petroleum Act 1923* with a single Act covering both areas, dealing with exploration, development, production, transmission, distribution and, in the case of gas, use.	Review completed of those parts of Gas Act and Petroleum Act not the subject of the national review of the Petroleum (Submerged Lands) Acts.	Exposure draft of new Petroleum and Gas Bill released for public comment.	Council to assess progress in 2002.
	Gas Suppliers (Shareholdings) Act 1972			Act repealed October 2000.	Meets CPA obligations (June 2001).
	Petroleum Act 1923		Being reviewed in conjunction with the *Gas Act 1965*. See above.	Exposure draft of new Petroleum and Gas Bill released for public comment.	Council to assess progress in 2002.
	Petroleum (Submerged Lands) Act 1982 and Regulations	Regulates exploration for and development of undersea petroleum resources. This legislation forms part of a national scheme.	National review completed. Endorsed by ANZMEC Ministers.	Amendments to be developed by Commonwealth and reflected in State and Territory legislation.	Council to assess progress in 2002.
	Trade Measurement Act 1990		Review underway. Report by consultant considered by Review Committee. Supplementary report being finalised by Review Committee.		Council to assess progress in 2002.

(*continued*)

Table 7.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	Dampier to Bunbury Pipeline Regulations 1998			Repealed 1 January 2000.	Meets CPA obligations (June 2001).
	Energy Coordination Act 1994	Amended to introduce a gas licensing system that provides for 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 were the most cost–effective means of protecting small customers.	No reform planned.	Meets CPA obligations (June 2001).
	Energy Operators (Powers) Act 1979 (formerly known as *Energy Corporations (Powers) Act 1979*)	Provides monopoly rights over 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 recommended removal of monopoly over sale of LPG and retention of land use powers of energy corporations. Land use powers necessary to facilitate energy supply.	Restrictions on LPG trading lifted with enactment of *Energy Coordination Amendment Act 1999* and the *Gas Corporation (Business Disposal) Act 1999*.	Meets CPA obligations (June 2001).
	Gas Corporation Act 1994	Creates Gas Corporation to run certain publicly owned gas assets.		Repealed December 2000.	Meets CPA obligations (June 2001).
	Gas Transmission Regulations 1994			Repealed. Access and related matters now regulated under *Gas Pipelines Access (WA) Act 1998*.	Meets CPA obligations (June 2001).

(*continued*)

Table 7.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)	*North West Gas Development (Woodside) Agreement Act 1979*			Repealed and replaced by 1994 Act of same name (see next entry).	Meets CPA obligations (June 1999).
	North West Gas Development (Woodside) Agreement Amendment Act 1994		Retained without reform. Retention of restrictions justified in view of sovereign risk issues.		Meets CPA obligations (June 1999).
	Petroleum Act 1967	Regulates onshore exploration for and development of petroleum reserves.	Review to be conducted after outcome of Petroleum Submerged Lands legislation is finalised.		
	Petroleum (Submerged Lands) Act 1982 and Regulations	Regulates exploration for and development of undersea petroleum resources. This legislation forms part of a national scheme.	National review completed. Endorsed by ANZMEC Ministers.	Amendments to be developed by Commonwealth and reflected in State and Territory legislation.	Council to assess progress in 2002.
	Petroleum Pipelines Act 1969 and Regulations	Regulates construction and operation of petroleum pipelines in Western Australia.	Review completed. Common carrier provisions to be considered following the Petroleum Submerged Lands legislation review.	Minor amendments to follow.	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 completed, finding substantial public benefits in continuing previously granted concessions and exemptions on grounds of sovereign risk.	Some amendments being considered. Draft legislation awaiting comments.	Meets CPA obligations (June 1997).

(*continued*)

Table 7.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia (continued)	*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 planned.	Meets CPA obligations (June 1999).
	Natural Gas (Interim Supply) Act 1985	Ministerial power to restrict the production and sale of natural gas from outside the Cooper Basin, determine the use of ethane from the Basin, and restrict NAGASA from interstate trading in gas.	Reviewed 1996	Key restrictions repealed 1996	Meets CPA obligations (June 1997).
	Natural Gas Pipelines Access Act 1995	Establishes access regime for natural gas pipelines in South Australia.		Act repealed by s50 of the *Gas Pipelines Access (South Australia) Act 1997*. However, 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 development of undersea petroleum resources. This legislation forms part of a national scheme.	National review completed. Endorsed by ANZMEC Ministers.	Amendments to be developed by Commonwealth and reflected in State and Territory legislation.	Council to assess progress in 2002.

(*continued*)

Table 7.5 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.		Repealed and replaced by the *Petroleum Act 2000* and Regulations. New Act incorporates principles proposed by the ANZMEC Petroleum Sub–Committee in regard to acreage management. The South Australian 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		Review completed in July 2001.	No reform planned at this time.	Council to assess progress in 2002.
	Stony Point (Liquids Project) Ratification Act 1981		Review completed in October 2000. No reform recommended.	No reform planned.	Council to assess progress in 2002.
	Trade Measurement Administration Act 1993		Review underway. Report by consultant considered by Review Committee. Supplementary report being finalised by Review Committee.		Council to assess progress in 2002.
	Trade Standards Act 1979		Review underway.		Council to assess progress in 2002.

(*continued*)

Table 7.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania	*Gas Franchises Act 1973*			Repealed.	Meets CPA obligations (June 2001).
	Hobart Town Gas Company's Act 1854			Repealed	Meets CPA obligations (June 2001).
	Hobart Town Gas Company's Act 1857			Repealed.	Meets CPA obligations (June 2001).
	Launceston Gas Company Act 1982			Substantially amended by new legislation. Remaining sections to be repealed once an accurate map of the pipeline network has been completed.	Council to assess progress in 2002.
	Petroleum (Submerged Lands) Act 1982	Regulates exploration for and development of undersea petroleum resources. This legislation forms part of a national scheme.	National review completed. Endorsed by ANZMEC Ministers.	Amendments to be developed by Commonwealth and reflected in State and Territory legislation.	Council to assess progress in 2002.
ACT	*Essential Services (Continuity of Supply) Act 1992*			Repealed and replaced by the *Utilities Act 2000*.	Meets CPA obligations (June 2001).
	Gas Act 1992			Repealed.	Meets CPA obligations (June 1999).
	Gas Levy Act 1991			Repealed.	Meets CPA obligations (June 1999).

(*continued*)

Table 7.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT (continued)	*Gas Supply Act 1998*			Repealed and replaced by the *Utilities Act 2000* and *Gas Safety Act 2000*.	Meets CPA obligations (June 2001).
	Trade Measurement (Administration) Act 1991		Review underway. Report by consultant considered by Review Committee. Supplementary report being finalised by Review Committee.		Council to assess progress in 2002.
	Trade Measurement Act 1991	As above for *Trade Measurement (Administration) Act 1991*			
Northern Territory	*Energy Pipelines Act*	Establishes the regulatory framework for construction, operation, and maintenance of energy pipelines in the Northern Territory.	Review completed. Review found anticompetitive provisions in Act were justified in public interest. Impact of restrictions considered to be low. Potential public safety and environmental benefits derived from regulating construction and operation of energy pipelines likely to exceed direct enforcement, industry compliance and broader economic costs. Approaches such as negative licensing, co-regulation and self-regulation rejected as being unlikely to achieve the objective of the Act more efficiently than the existing legislative framework.	No reform planned.	Meets CPA obligations (June 2001).

(*continued*)

Table 7.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory (continued)	*Oil Refinery Agreement Ratification Act*	Imposes conditions on Mereenie Joint Venture in respect of the proposed oil refinery in Alice Springs. Refinery was not constructed because it is currently uneconomic, so legislation is of no practical effect.	Review completed. Act not considered to be anticompetitive.	In view of lack of relevance, to be considered for repeal at time of renewal of Mereenie petroleum leases in 2002-03.	Council to assess progress in 2002.
	Petroleum Act	Regulates onshore exploration for and development of petroleum reserves.	Review Steering Committee considering final review report. Government endorsement of review outcomes to be sought March 2001.		Council to assess progress in 2002.
	Petroleum (Submerged Lands) Act	Regulates exploration for and development of undersea petroleum resources. This legislation forms part of a national scheme.	National review completed. Endorsed by ANZMEC Ministers.	Amendments to be developed by Commonwealth and reflected in State and Territory legislation.	Council to assess progress in 2002.
	Petroleum (Prospecting and Mining) Act			Repealed by *Petroleum Act*.	Meets CPA obligations (June 1999).
	Trade Measurement Act		Review underway. Report by consultant considered by Review Committee. Supplementary report being finalised by Review Committee.		Council to assess progress in 2002.

Franchising principles

Jurisdictions must adhere to the franchising principles in annex E of the 1997 Gas Agreement: (1) to allow bypass and interconnection of pipelines; and (2) not grant new exclusive franchises for the sale of gas in a geographic area or through a specific facility, except in exceptional circumstances. Apart from as discussed below, the Council is not aware that any new exclusive franchises have been granted. Prior to 1997, Western Australia granted an exclusive 10-year franchise to AlintaGas for pipelines laid in the Kalgoorlie/Boulder area, following a competitive tender process. This franchise was approved as a derogation under annex I of the 1997 Gas Agreement and was granted before the obligation not to grant *new* exclusive franchises arose. The Council examined the franchise arrangement in the context of its assessment of the effectiveness of the Western Australian gas regime under the TPA. The Council found that the franchise had little effect on competition because it permitted bypass to contestable customers and did not limit retailers (or others) from seeking access to relevant pipelines. Moreover, this arrangement is listed as a derogation in the 1997 Gas Agreement and, as such, does not raise assessment issues. Accordingly, the Council considers that Western Australia has met its 2001 NCP obligations in this area.

Tasmania reported that it is in the process of developing a tender process for awarding distribution and retail franchises. These franchises will be granted in the context of developing extensive new gas transmission and distribution infrastructure. Tasmania stated that the award of new franchises will be in accordance with the requirements of the National Gas Access Code. The Code provides that jurisdictions may elect to determine new reference tariffs for pipelines that have not been built through a competitive tender process.

The Council will need to monitor Tasmania's processes to ensure that any new franchises granted by Tasmania do not go beyond the scope of annexes E and F and the reference tariff setting principles in the National Gas Access Code. In particular, the Council will need to examine the interaction between the reference tariff setting principles in the National Gas Access Code and the franchise awarding principles setting out in annex E. This is because the focus of the competitive tender processes under the National Gas Access Code is on setting reference tariffs rather than defining exclusive areas to be supplied by particular pipelines.

Licensing principles

Jurisdictions must adhere to the licensing principles for the construction and operation of new natural gas pipelines set out in annex F of the 1997 Gas Agreement. Under these principles:

- licences to operate natural gas pipelines must be unbundled from other types of licence;

- licences must not be used to restrict the construction or operation of pipelines that could deliver gas to the same markets as existing licensed pipelines;
- licences will not limit the services that an operator may provide;
- bypass and interconnection to contestable customers should be allowed;
- licence conditions may require an obligation to interconnect or undertake minor or in-fill extensions to a geographic range; and
- full transparency is required in decision-making on licensing.

Jurisdictions are required to adhere to these CoAG-agreed licensing principles in conducting legislation reviews. Pipeline construction and licensing conditions are commonly set out in each jurisdiction's respective Pipeline Act.

In New South Wales the *Pipeline Act 1967* and Regulations govern the granting of pipeline licences. New South Wales reviewed the Act and Regulations in 1999-2000, but did not find any provisions that unduly restricted competition. New Regulations were introduced in 2000.

The New South Wales Act and new Regulations meet the licensing principles in annex F. The Act allows anyone to apply for a permit to survey a pipeline route and allows permit-holders to apply for licences to build pipelines. The Act and Regulations do not provide for bundling of such licences with other types of licence. The Act's provisions governing the granting of permits and licences set out requirements for applicants to provide technical and financial information, to provide information about environmental and safety plans, and to require compensation and restorative work, but they do not specify that pipelines cannot be built to compete with existing pipelines. The Act contains some measures to promote transparency of decision-making. It provides that the Governor may refuse a pipeline licence on the advice of the relevant Minister; however, if the Minister is minded to recommend refusal of an application for a pipeline licence, then the Minister must give one month's notice to the applicant with reasons, and the Governor must take into account any information supplied in response by the applicant.

The Act and Regulations do not make specific provision for interconnection. However, the Governor can attach conditions to pipeline licences, which could include a requirement to interconnect. Further, if the pipeline becomes a covered pipeline under the *Gas Pipelines Access (NSW) Act 1998*, then it could expect to become subject to the interconnection requirements of that legislation.

Pipeline licences are granted in Western Australia under three Acts: the Petroleum (Submerged Lands) Act (the Western Australian or Commonwealth Act as appropriate), the *Petroleum Pipelines Act 1969* and the *Energy Coordination Act 1994*. The Council has examined the provisions of the Petroleum Pipelines Act and Regulations, and they comply with the

pipeline licensing principles in annex F. The Act and Regulations do not prevent parties from applying the licences to construct pipelines. Instead, they require applicants for pipeline licences to satisfy the Minister on technical, financial, and land use matters. Where the Minister wishes to refuse a pipeline licence, the Minister must provide 90 days notice to the applicant, provide reasons, give the applicant the opportunity to respond, and take into account any response. The Act and Regulations do not provide for bundling such licences with other types of licence. As in New South Wales, the Minister may require interconnection as a condition of a licence, and the *Gas Pipelines Access (WA) Act 1998* provides for a right of interconnection for covered pipelines.

South Australia reported that pipeline licences issued under its new Petroleum Regulations 2000 comply with the licensing requirements. The ACT stated that the new licensing regime contained in the *Utilities Act 2000* does not create exclusive licences and accords with the licensing principles in annex F.

The Council has indicated above that all the Acts and Regulations outlined comply with the licensing principles in annex F. However, the Council notes that the Acts and Regulations in some cases give the relevant Minister significant discretion to impose conditions in granting licences. These discretions give the Minister significant flexibility to attach conditions relating to matters such as the laying of pipelines in environmentally sensitive areas. The Council would be concerned if the exercise of these discretions resulted in the imposition of licence conditions which restricted competition (for example, conditions that restricted the services that pipeline operators could offer). The Council considers it would be desirable to set out guidelines (if jurisdictions have not already done so) for decision-makers about the exercise of regulatory discretions.

Industry standards

Industry standards are relevant to pipeline safety, gas appliance safety, gas quality and specifications, and consumer protection. Jurisdictions have enacted a range of legislation to deal with matters covered in industry standards. They have an obligation to review this legislation to ensure industry standards do not create barriers to competition, and they have a specific obligation to implement AS 2885 to achieve uniform national pipeline construction standards.

The ACT is the first jurisdiction to comprehensively rationalise legislation covering utilities industries. It recently enacted the Utilities Act to integrate the regulation of gas, electricity, water and sewerage services. The Act replaced eight separate gas and utility-related Acts, including the *Essential Services (Continuity of Supply) Act 1992* and the *Gas Supply Act 1998*, and deals with: (1) licensing of utilities; (2) licence compliance; (3) utilities' powers and duties; (4) codes of practice; (5) customer contracts; (6) complaints

handling and applications for relief from hardship; and (7) community service obligations.

The Utilities Act creates separate licenses for distribution and retail services, with specific conditions attached to each class of licence. Some licence conditions are embodied in industry codes such as the consumer protection code. The overall regulatory structure consists of:

- the Act and consequential legislation;
- service licences;
- standard customer contracts for services, including gas services; and
- industry codes, including technical and safety codes covering matters such as network safety, metering and supplier of last resort.

Safety issues

Jurisdictions' obligations in this area are to:

- review legislation that restricts competition to see examine the case for the present safety standards; and
- implement AS 2885 to achieve uniform pipeline construction standards. AS 2885 sets a standard for the safe construction and operation of pipelines carrying hydrocarbons.

Gas pipeline safety is regulated under the Pipeline Acts in each jurisdiction. Additionally, part V of the TPA provides for the development of safety standards for particular product classes such as gas appliances. State and Territory legislation also deals with the safety of gas appliances, and jurisdictions have empowered regulators to deal with safety issues.

New South Wales recently reviewed its Pipelines Act and found no anticompetitive provisions (see earlier discussion in the section on licensing principles). Similar reviews in Western Australia and the Northern Territory reached the same outcome.

Victoria recently reviewed its Pipelines Act. The review's recommendations included: (1) introducing a nationally consistent regulatory regime; (2) formalising time limits for government assessment of pipeline projects; (3) relaxing restrictions on the tradeability of pipelines, permits and licences; (4) introducing appeals to the Victorian Civil and Administrative Tribunal against regulatory alteration of permits or licences; (5) removing open access provisions; (6) that safety provisions be based on guidelines being developing by the Department of Treasury and Finance; and (7) changing compensation provisions to extend possible liability. The Government has not yet responded to the review findings. The Council will further consider progress in its NCP assessment in 2002.

Table 7.6 reports jurisdictions' progress in implementing AS 2885. The Council will monitor jurisdictions' progress in adopting AS 2885 to achieve uniform pipeline construction standards for its NCP assessment in 2002.

Table 7.6: Implementation of AS 2885

Jurisdiction	*Progress*
New South Wales	Section 17(2)(a) of the Pipeline Regulations 2000 applies AS 2885.
Victoria	A separate schedule in each pipeline licence requires construction in accordance with AS 2885.
Queensland	Regulation 237 of the Petroleum Regulations 1966 requires gas pipelines to be constructed in accordance with AS CB28, the SAA Gas Pipeline Code, and any revisions or amendments thereto for gas pipelines.
Western Australia	Regulations under the *Gas Standards Act 1972* apply AS 2885 for pipelines with operating pressures in the range of 200 KPa to 1.9 MPa. The *Petroleum Pipeline Act 1969* and Regulations 1970 do not appear to apply AS 2885 to pipelines with operating pressures over 1.9 MPa.
South Australia	Regulation 29(a) of the Petroleum Regulations 2000 applies AS 2885. Previously, the Petroleum Regulations 1940 applied AS 2885.
Tasmania	Not relevant to Tasmania at this time. Tasmania stated that it will apply AS 2885 in the regulations to be developed under the *Gas Pipelines Access (Tasmania) Act 2000*.
ACT	The *Dangerous Goods Act 1984* applies the New South Wales Dangerous Goods Regulations 1975 within the ACT. The New South Wales Dangerous Goods Regulations 1975 apply AS 2885 to certain pipelines. The Gas Manual specifies AS 2885 as the standard for gas reticulation systems. The ACT noted that there are no plans to construct transmission pipelines in the ACT.
Northern Territory	Energy Pipelines Regulations s3 applies AS 2885.

Consumer protection

The Council recognises the strong public benefit in ensuring appropriate standards of safety and consumer protection. However, it is important that regulatory reviews and the introduction of new codes and regulatory schemes to ensure consumer protection measures do not constitute unwarranted barriers to competition. This could occur, for example, if gas specifications are overly prescriptive and unduly limit sources of supply to particular markets.

The retail sale of gas is dealt with under each jurisdiction's fair trading legislation. The unconscionable conduct provisions of part IVA of the TPA are also relevant to retail sales to small businesses. Part V of the TPA, which deals with misleading and deceptive conduct, may be relevant to representations about the standard, quality or price of gas. The ACCC noted

that misrepresentation was common following deregulation of the telecommunications market, suggesting that similar issues could arise in the short to medium term when gas markets are opened to full contestability.

Service quality standards will need to be developed in the introduction of full retail contestability, to cover issues such as disconnection, billing/metering, connection, prompt repair of faulty equipment, disruption procedures, readability of bills, staff responsiveness, complaints lines, retailers of last resort (where retailers refuse to provide service to a particular customer) and the provision of consumer advice.

Jurisdictions preparing to introduce full retail contestability are examining the implementation of additional legislative (and other) safeguards for consumer protection. A number of these issues were addressed in the New South Wales review of the Gas Supply (Consumer Protection) Regulations 1997. Victoria also completed considerable work on rules governing these matters. The ACT Utilities Act provides for the creation of industry codes covering matters such as supplier of last resort. The legislation creates an Essential Services Consumer Council, which has the power to prevent disconnection on hardship grounds and can hear consumer complaints about amounts up to $10 000. The Council will examine new legislation as it is enacted.

Removing barriers to convergence

In reviewing legislation, jurisdictions need to be mindful not to place unjustified barriers in the way of utilities convergence. Convergence between gas and other industries (particularly electricity) may offer efficiencies in areas such as billing. Regulatory or other barriers to convergence may limit the feasibility of such cost savings. Further, barriers to convergence may advantage one industry over another.

Earlier discussions covered the need to ensure that the introduction of full retail contestability did not create barriers to convergence. While the removal of barriers to convergence is an important issue in boosting the efficiency of the energy and utility sector, the Council does not consider it as an issue apart from as a consideration in legislation reviews.

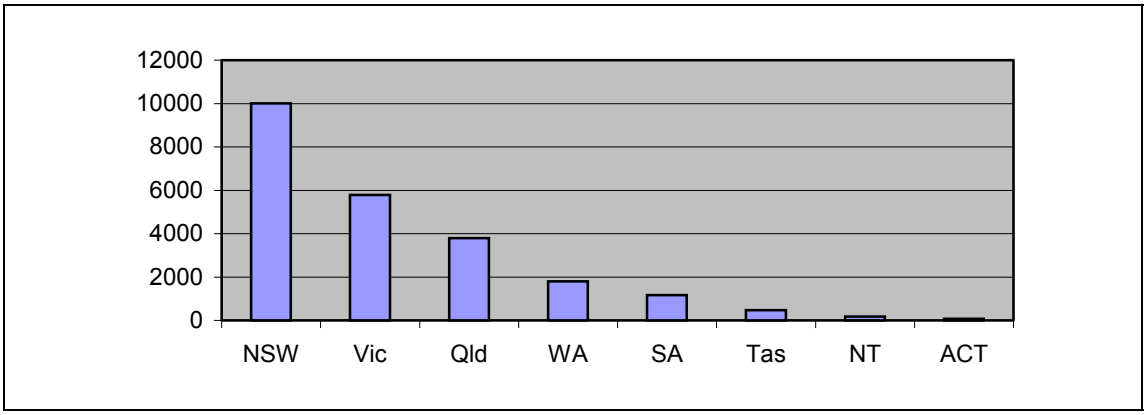
Summary

Jurisdictions have made good progress in implementing natural gas reform. The most significant remaining issue is the implementation of full retail contestability. The Council will monitor progress in this area for the NCP assessment in 2002.

8 Water

Australia's water use is growing rapidly mostly due to increases in irrigated agriculture. Between 1983-84 and 1996-97, national water use grew by 59 per cent. Figure 8.1 illustrates the level of water use for each State and Territory in 1996-97.

Figure 8.1: Mean annual water use 1996-97 (gigalitres)



Source: National Land and Water Resources Audit (2001).

The NCP water reform framework is an integrated approach that addresses the environmental, economic and social issues associated with water use. It covers both surface and groundwater and recognises that while water reform is primarily a State responsibility some issues need to be addressed by coordination and cooperation between the States. The establishment of the Murray–Darling Basin Commission is an example of a coordinated approach across the Murray–Darling Basin. Another is the recent historic agreement by three governments to restore the Snowy River as shown in Box 8.1.

Box 8.1: A National Initiative to restore the Snowy River

On 6 October 2000, the Victorian, New South Wales, and the Commonwealth Governments announced a $375 million agreement to breathe life back into the Snowy River and preserve a national icon for future generations. The Snowy initiative is an historic commitment to restore the Snowy River to a long-term target of 28 per cent of the river's natural flows, while protecting other river systems and water users. The Governments agreed to significant increases in environmental flows while, at the same time, securing the property rights of Murray–Darling irrigators by ensuring that there are no adverse impacts on existing water rights in South Australia or on the environment of the Murray, Murray-Goulburn or Murrumbidgee River systems. The agreement sets a target flow rate of 21 per cent to be returned to the Snowy River over 10 years. The remaining 7 per cent to reach the full 28 per cent is expected to be achieved through the development of new infrastructure projects involving the private sector.

The rescue plan marks a new awareness of the importance of Australia's dwindling water resources and a new political will to invest public money in a national icon. A joint government body will be created to invest in capital water saving projects such as pipelining, major engineering works, better water accounting, improved maintenance of irrigation distribution systems, and to purchase water for further environmental flows.

For the last seven years governments across Australia have been implementing the Council of Australian Governments (CoAG) strategic framework for the reform of the Australian water industry. As the reform program has progressed, there has been a growth in both the understanding of the complexity of these reforms and the level of national recognition of the importance of change.

There has been significant progress since governments first agreed to the water reform framework.

- Metropolitan water businesses have shifted from being part of large government bureaucracies to customer focused commercial operations. This has generated benefits such as a real reduction in customer bills of nearly five per cent over the last four years, and improvements in drinking water quality and effluent treatment.

- Most Australians living in urban areas now face water prices that reflect the amount of water they use and that reward water conservation.

- The need for water to be allocated to the environment is legally recognised across Australia.

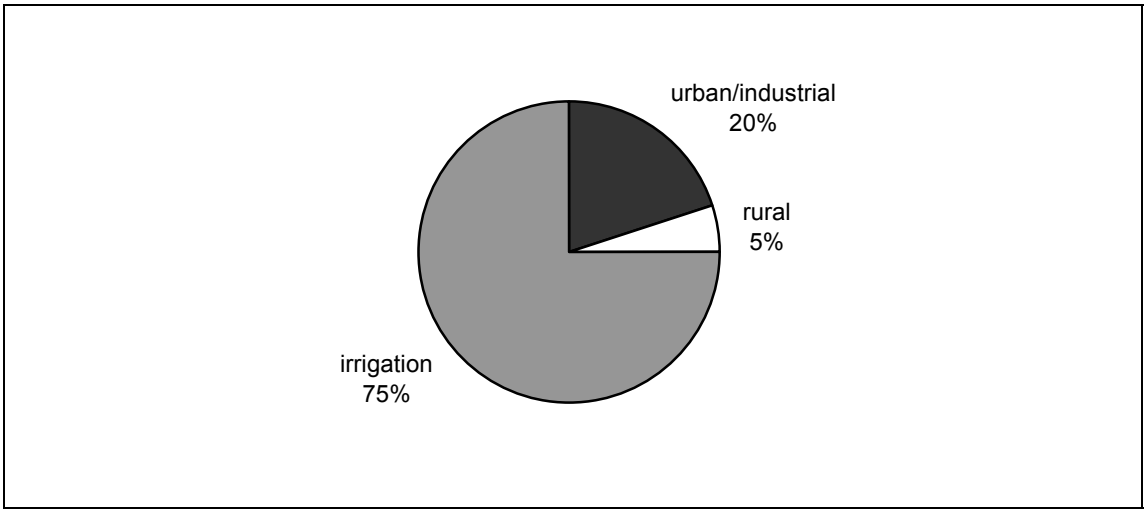
- Regional planning processes on natural resource management issues have started in all States and Territories and communities are heavily involved in consultation on these processes.

- All governments recognise the difficulties that are arising from incomplete scientific information on the ecology and hydrology of water systems, particularly groundwater systems. Governments are addressing this by adopting a precautionary approach to any further allocations of water and increasing the level of monitoring and research.

This is the National Competition Council's second major assessment of progress with the implementation of water reform. The first (the second tranche assessment in June 1999) focused on the passage of legislation and urban water reform. The June 1999 assessment identified a number of issues that needed to be progressed further before the Council could conclude that all of the States and Territories had met their water reform commitments. Consequently, following the June 1999 assessment there were four follow-up or supplementary assessments that addressed matters that were not resolved at the time of the 1999 NCP assessment.

The 1999 assessment process saw the passage of legislation that provides the overarching framework for many of the water reforms. The 2001 NCP assessment starts the process of reviewing how these frameworks are being implemented and whether, in practice, they are delivering appropriate reform outcomes. Previous assessments also focussed on the implementation of reforms in the urban sector because the timeframes in the CoAG water reform agreements envisaged urban reforms occurring first. However, as illustrated in figure 8.2, rural and irrigation water make up the majority of water use in Australia.

Figure 8.2: Mean annual water use by category 1996-97 (gigalitres)



Source: National Land and Water Resources Audit (2001).

The Council's 2001 assessment has a much broader focus. While it discusses outstanding urban water pricing issues, its primary emphasis is on the rural water sector covering pricing, property rights, water trading and environmental issues. This is the first assessment in which the agreements call for the Council to examine the detail of rural water reform.

The 2001 NCP assessment also recognises the importance of establishing clear property rights and allocating water to the environment through a transparent process of community based planning. The key elements of these processes are:

- governments setting timetables and supporting the developmental plans to manage water resources;
- community consultation and involvement in the planning process;
- the development of scientific information on which to base the plans; and
- finalised plans that provide:
  - sufficient information for stakeholders to understand the plans and their implications for irrigators, the environment and the community generally;
  - water for the environment in a way that reflects the current understanding of environmental needs; and
  - well defined water allocations that provide irrigators with predictability in their property rights.

The Council based the 2001 NCP assessment on information provided by State and Territory governments, its own research, and other reports including:

- the Australian Urban Water Industry (WSAA Facts);
- the National Land and Water Resource Audit Assessment of Water Resources 2000; and
- work by the High Level Steering Group on Water.

Stakeholders also had a substantial input into this assessment. The Council received 10 submissions from irrigators and environmental groups. None of these submissions questioned the need for reform, or the underlying objectives of the water agreements. Generally, the submissions discussed the process and speed of reform and which aspects of the reform package should be given priority. However, there was universal recognition that appropriate water reforms are fundamental to Australia's future.

This chapter summarises the outcomes of the Council's 2001 NCP water assessments. It is supported by separate water volumes for each State and Territory and the Murray–Darling Basin Commission. These water volumes provide the detailed assessment for each State and Territory against all of the water reform criteria. The appendices in these volumes provide a full version of the criteria used in this assessment as outlined in the Council's 2001 water assessment framework.

Summary of assessment

In this assessment the Council found that an important issue for New South Wales is the development of well defined property rights including an appropriate registry system, while for Victoria the assessment raised questions about the process for allocating water for the environment. Both States have provided substantial responses to the Council detailing how they intend to deal with these matters both over the next twelve months and into the future. These issues will be important for the Council's 2002 NCP water assessment. New South Wales is consulting with stakeholders and will review its policy on the water rights registry system before November 2001. The Council will conduct a supplementary assessment in December 2001 to assess the New South Wales response to consultation on the water rights registry.

Overall, in this assessment the Council found that all States and Territories made sufficient progress to receive their 2001-02 NCP payments. However, while the Council found that the Queensland Government has taken a positive and active approach to encouraging reform among local governments, one local government, Townsville City Council has failed to explain why introducing reform of water pricing within its jurisdiction is not in the public interest. In this assessment, the Council recommended a permanent

reduction of $270 000 in Queensland's NCP payments from 2001-02 (reflecting the remaining money available to Townsville Council for water reform through the Queensland Competition Authority's Financial Incentive Scheme). This reduction relates to the failure by Townsville City Council to take a rigorous approach to considering consumption-based price reforms. The Council will reconsider Townsville's approach to two-part tariffs in the 2002 NCP assessment. It will look at both the progress made by Townsville and the State Government's efforts to resolve the issue. At that time, the Council will reconsider whether a continued reduction in competition payments is warranted and the appropriate size of any such reduction.

Finally, Queensland has acknowledged that the Condamine-Balonne is now a stressed river system. Consequently, the establishment of water allocations for the environment and consumptive use is now overdue. The Council will address this issue in its 2002 assessment. The Council is not satisfied that any of the options for setting environmental allocations specified in the draft water resources plan would be adequate to meet the environmental needs of the lower Balonne basin and the internationally listed Narran Lakes wetlands. More generally, the Council is not satisfied with the transparency of current reporting arrangements of the Government's final decisions for setting allocations. Queensland has agreed to address these concerns over the next 12 months.

New South Wales

New South Wales is the largest water user in Australia. Around 90 per cent of the State's water use is sourced from surface water resources with the balance from ground water. New South Wales also has stressed river systems; the most of any State and Territory.

There are four major metropolitan service providers in New South Wales - Sydney Water Corporation, Hunter Water Corporation, Gosford City Council and Wyong Shire Council. The Sydney Catchment Authority provides bulk water to Sydney Water.

State Water, a ring-fenced commercial business entity within the Department of Land and Water Conservation provides bulk water to irrigators, riparian users, local governments and industrial customers. State Water is also responsible for managing infrastructure assets including 18 major dams and 300 weirs. Further, it provides river operations, and metering and billing services. Another division of the Department of Land and Water Conservation undertakes water resource management. All irrigation districts and areas are privatised companies in New South Wales.

There are a number of regulatory agencies. The New South Wales Environmental Protection Authority has regulatory functions as regards pollution and licensing of discharges. The Independent Pricing and Regulatory Tribunal (IPART) regulates pricing. The Department of Land and

Water Conservation provides water licensing, permits and regulation. The Healthy Rivers Commission provides independent advice on water quality and river flow objectives for critical coastal catchments.

Water and wastewater services to non-metropolitan urban areas, such as country towns and regional centres, are a local government responsibility. There are 124 non-metropolitan urban water utilities in New South Wales.

Progress on reforms

Pricing and cost recovery

Urban water services

All four major urban water providers achieve levels of cost recovery consistent with the agreed CoAG water pricing guidelines. However, neither Gosford nor Wyong have made provisions for recovering tax or tax equivalents as recommended by the guidelines. The Council is concerned that no progress has been made on this matter over the last two years, and will look for progress in the 2002 NCP assessment.

Consumption-based pricing is also being introduced by the major urban water service providers in New South Wales.

The rate of return earned by the Sydney Catchment Authority in 1999-2000 is significantly above that earned by the State's major retail and distribution services and is very high compared with all other large metropolitan service providers. The Council will continue to monitor this issue.

In regard to accounting for externalities such as environmental impacts, the Council notes that the potential for a catchment management levy was considered in the 2000 Sydney Catchment Authority price determination. IPART determined in the 2000 determination that a catchment management charge was not appropriate at this stage. The Council expects this matter to be reassessed in the future as the arrangements for pricing and costing water services are refined.

In the non-metropolitan urban sector, most of the service providers with greater than 1000 connections are earning a positive real rate of return. The Council will look for continued progress in the non-metropolitan urban sector in relation to the recovery of tax equivalents and improved approaches to accounting for asset consumption and the cost of externalities.

There has been continued progress on pricing, particularly in relation to the elimination of free water allowances by the urban providers. Cross-subsidies are being reduced by location specific pricing and developer charges. The

Council will look for further progress by these providers in the 2002 NCP assessment; in particular phasing out charges based on property values.

In progressing consumption-based water pricing among non-metropolitan urban service providers, New South Wales has adopted a targeted approach with priority given to the areas where the State expects reforms to result in the greatest gain. The Council has concerns that Tweed Shire, one of the State's largest non-metropolitan urban service providers, has not conducted a robust assessment of the cost effectiveness of two-part tariffs. However, given the information provided by New South Wales indicates that Tweed Shire has been improving its pricing arrangements, and a commitment by New South Wales that if local governments do not voluntarily commit to reviewing two-part tariffs the government will ensure the reform commitments are met, the Council will reconsider this issue in the 2002 assessment. In future assessments, the Council will look for progress to be extended to the smaller service providers. Thus, future assessments will look at remaining property value based charges and free water allowances and the potential for these to result in cross-subsidies. It will also review trade waste charging regimes among the non-metropolitan urban service providers.

Rural water services

As with rural water services in most States, past bulk water charges in New South Wales have been heavily subsidised and have not recovered the costs associated with service provision and water use. IPART has made price determinations since 1996. While State Water has gradually improved both its level of cost recovery and the structure of its charges, at the time of the 2000 price determination most systems were not forecast to be recovering full cost by July 2001. The Department of Land and Water Conservation's submission to IPART's next price determination proposes prices for the three years to 2003-04. The submission indicates that current prices recover 54 per cent of costs attributable to customers and that the proposed price paths will result in this figure increasing to 82 per cent by 2003-04.

Two-part tariffs have been, or are being, introduced for bulk water services provided by State Water. The Council does not have sufficient information to assess the transparency of reporting CSOs in the rural water sector. This is an issue that it will consider in the 2002 NCP assessment.

The Council is satisfied that, for the 2001 NCP assessment, New South Wales has complied with water pricing and cost recovery commitments in the urban and non-metropolitan urban water sectors. However in the rural water sector, New South Wales has not formally met its commitment to provide a timetable for when the water schemes will reach full cost recovery. Nonetheless, the price determinations by the IPART provide a rigorous assessment of the extent of cost recovery and a mechanism for moving to full cost recovery in the future. The Council will reassess New South Wales's progress towards cost recovery objectives in the 2002 NCP assessment.

Institutional reform

The *Water Management Act 2000* has played a key role in setting up the broader institutional framework for managing water resources in New South Wales.

Since the second tranche NCP assessment there has been some progress in reforming institutional structures for local government non-metropolitan urban water service providers. Currently, for example, there is an independent complaint mechanism through the State Ombudsman. Also there is reporting of standards in New South Wales's (publicly available) benchmarking report.

For non-metropolitan urban water service providers there are still outstanding issues relating to the standards for water service and water quality. To provide an appropriate level of transparency the Council considers that New South Wales needs some mechanism to inform water and wastewater customers of their rights and obligations. The Council will pursue this matter with New South Wales prior to the 2002 NCP assessment.

In regard to the rural bulk water sector, there is a question about whether there is sufficient separation between State Water and the Department of Land and Water Conservation. The Council has in the past suggested that a greater degree of separation may be necessary. More recently, IPART suggested several measures to ensure that State Water is adequately separated from the Department of Land and Water Conservation (IPART 2000).

New South Wales argued that State Water's operating licence, statement of corporate intent and access licence will improve transparency and the level of separation from the Department of Land and Water Conservation. These instruments are still being finalised. Thus, the Council was unable to consider them as part of this assessment. The Council will monitor this issue in the 2002 NCP assessment.

While there has been a small reduction in the number of State water service providers involved in benchmarking projects, New South Wales is still benchmarking water utilities against each other. In future assessments the Council will continue to monitor the involvement of New South Wales service providers in national benchmarking projects.

New South Wales has a high level of devolution of local irrigation management. The last of the New South Wales irrigation schemes was converted to local ownership in June 2000.

The Council is satisfied that New South Wales has complied with institutional reform commitments for this assessment

Allocation

The New South Wales water allocation process is implemented through the development of water management plans that deal with water sharing (known as water sharing plans) for catchments and basins. Water sharing plans are designed to establish environmental flows, water allocations and the conditions under which trading can take place.

The *Water Management Act 2000* clearly defines the types of rights by specifying several categories. It specifies that the rights will provide the holder with a share of the water declared available for consumption. Under the Act, the environment has first priority, followed by holders of basic landholder rights and then all other consumptive water uses. All water users (excluding basic landholder rights which include native title rights) must be licensed. The new licensing and approvals provisions are not expected to commence until mid to late 2002.

The Council has reviewed the efficacy of property rights under the New South Wales system and has identified questions concerning some aspects of water allocations, water property rights and trading. In particular, it is difficult to be certain of property rights and ownership, due to the staged nature of implementation of property rights. New South Wales argued that by focusing on the high priority water sources, 80 per cent of licensed water use could be given a more clear and secure water right by mid to late 2002.

Under the *Water Management Act 2000*, New South Wales expects to develop bulk access regimes on the priority water sources, including appropriate environmental flows by December 2001. These will be released as 51 water sharing plans.

Water sharing plans will determine how much water will be available for extraction by licensed water users. They will cover environmental water provisions, requirements for basic landholder water rights and various rules on operation and transfers. The plans will have effect for 10 years and are subject to compensation provisions with review and audit provisions. While it is important for bulk access regimes to be established without delay, they must also be done thoroughly. In particular, it is important to ensure that the basis for determining environmental flows for the regulated systems are set properly given they will be statutory plans in place for 10 years.

New South Wales argued that the security of ownership of property rights will be addressed in a registry system, which records the nature of the right and the share of the available water to which the licensee is entitled. New South Wales is developing a registry system database to be in place by December 2002, with an interim system established by June 2002.

The Water Management Act links the right into the water planning process. It is the combination of the water access licence including its share component and its reliability (to be determined in water sharing plans) that will provide for effective property rights.

The Council has found that the New South Wales system of water property rights does not meet the requirements for this assessment. New South Wales irrigators will not know the water sharing rules until December 2001, although they know what their likely volumetric licence entitlement will be, and administrative systems will not be in place until June 2002.

This, combined with a lack of detail on the registry and a number of transitional issues that are concerning stakeholders means that the Council considers there is insufficient information to determine that New South Wales's system of water property rights meets the requirements for this assessment. In accordance with the CoAG agreements and recommendations of the tripartite meeting, this should have been in place at least on stressed and overallocated rivers for this assessment. However, during the course of this assessment, New South Wales has provided a property rights action plan. The Council is of the view that this property rights action plan should provide a sufficient level of surety and that the issues identified are likely to be transitional concerns only.

Therefore, the Council intends to conduct a number of further assessments for New South Wales on this issue. First, the Council will conduct a supplementary assessment in December 2001 in accordance with the New South Wales property rights plan to consider the outcomes from public consultation on this issue including the ability of third party interests listed on the register to have priority over non-registered interests. New South Wales has advised that, at a minimum, the register will provide information on ownership of property rights and on third party interests. It is the Council's view that the introduction of a registry system that provides evidence of ownership and third party interests, and priority accorded to registered third party interests over non-registered interests should be able to be accommodated. In the supplementary assessment, the Council will look at how public consultation was managed and how New South Wales has responded to the issues raised in this consultation. Second, progress against the property rights timetable including development of the interim register will be a key area for the 2002 NCP assessment.

The Council considered suspending part of New South Wales's NCP payments for 2001-02 in this assessment, given the importance of property rights and the delays to date by New South Wales in finalising arrangements. However, the timetable provided by New South Wales and the detail on how property rights are expected to unfold, including consultation on the registry, have given the Council confidence that New South Wales intends to give these issues high priority and deal with them constructively. Hence, the Council will monitor developments closely in the December 2001 supplementary assessment and June 2002 NCP assessment. If, by the time of the 2002 assessment, New South Wales has achieved insufficient progress with implementing its action plan, the Council will recommend an ongoing reduction in New South Wales' NCP payments.

Further environmental allocations for stressed rivers in New South Wales have been delayed and will not be completed until December 2001. In the Council's second tranche report, New South Wales advised that it had 86

stressed or overallocated unregulated streams across seven regional catchments.

It is the Council's view that the determination of final water allocations for the environment is a question of timing rather than a lack of political commitment by New South Wales. Under the *Water Management Act 2000*, New South Wales has committed itself to water sharing plans for high stress or conservation areas by December 2001, including environmental flow requirements for the regulated rivers. The development of water sharing plans in New South Wales is a significant undertaking. New South Wales has been active in seeking ways to improve approaches to developing understanding of relationships between flows and ecological health.

The Council has taken into account the fact that New South Wales has interim environmental allocations already in place for all the regulated systems. These allocations are in year three of the original five year flow settings. As a result, the Council is of the view that New South Wales has implemented action on stressed rivers for the regulated systems which account for 80 per cent of all water use in New South Wales. In setting these existing allocations to the environment, New South Wales has demonstrated that it is taking into account the national principles developed by ARMCANZ and ANZECC.

Information provided to the Council indicates that the state water management outcomes plan is to set the overarching policy context, targets and strategic outcomes for the development, conservation, management and control of the State's water resources. The plan is to provide clear direction for water management action and is to ensure that interim water quality and river flow objectives are specifically addressed in water resource management action. It is currently anticipated that a draft of the plan will be available for consultation in July 2001.

The Council also understands New South Wales is proposing a range of environmental flow targets in the State Water Management Outcomes Plan. The targets, if adopted, will be referred to water management committees to ensure that draft water sharing plans comply with the targets. The New South Wales Government intends that water sharing plans will be implemented from 1 July 2002 at the beginning of the 2002-03 water year. Should the targets be adopted, the Council would need to be convinced in future assessments that there was a scientific basis for the levels chosen as the targets.

It has been the Council's concern for this assessment to ensure the process being employed to determine environmental flows for the December 2001 deadline is being developed in a rigorous and appropriate manner. On the issue of environmental flows, concerns have been expressed by environmental interests regarding the pace and potential outcomes for the water sharing plans to be set in December 2001. In particular, there is a real fear that there is inadequate knowledge to set these allocations that will be locked away for 10 years. There are concerns that the time between the commencement of the public consultation and finalisation of the plan is unlikely to be sufficient to

resolve any contentious issues. To ensure the integrity of the process, the Council has obtained from New South Wales Government a list of the information components to be provided to water management committees.

The prime concern the Council has with the New South Wales system, is to ensure that while it is important for bulk access regimes to be established quickly, they must also be done properly including the basis for determination of environmental flows to reflect the new 10 year timeframe under the Act. Otherwise, if the bulk access regimes and environmental flow requirements are poorly addressed, the issues for the environment will not be addressed for another 10 years. Given the system New South Wales has adopted, and the extent of the problems, the Council is of the view that where a review of the implementation of a plan identifies the environmental objectives are not being met, there should be a change within the 10 year life and compensation (as required under the Act) paid where the identified change is significant.

The Council has insufficient information to make an assessment of New South Wales progress on stressed rivers against the ARMCANZ/ANZECC national principles for the provision of water for ecosystems. The Council will examine the progress of New South Wales against these principles in the June 2002 assessment in terms of the timeliness and quality of the reforms achieved.

However, given New South Wales already has interim environmental flows in place on all regulated rivers, the Council is satisfied that New South Wales has met minimum commitments in relation to the provision of water for the environment for the 2001 NCP assessment.

Trading

In terms of water trading in New South Wales, the *Water Management Act 2000* Act is a clear improvement on the previous arrangements. However, the Act was proclaimed only in January 2001 and there has been little time for implementation. Provisions in the Act relating to licences and approvals are yet to commence. In the period until these provisions come into effect, the existing statutory framework for the transfer of water rights will continue.

Despite the improvements in the new Act, there are still several transitional issues. In particular, the water sharing plans are not finalised and the registry is not established. Consequently, trading rules are still to be further developed. Also, the uncertainty in property rights created by the transition could discourage trade. The limitation of trade out of regulated irrigation districts is also an impediment to both interstate and intrastate trade, especially as these irrigation districts are concentrated in the south of the State where the majority of water in New South Wales (and indeed the Murray–Darling Basin) is used. New South Wales is working with the irrigation districts to resolve this issue.

As the new arrangements are progressively implemented, the Council will examine through further NCP assessments that New South Wales' fully implements its commitments for water trading. The Council will review New South Wales' response to consultation on the registry system in a supplementary assessment in December 2001. The 2002 NCP assessment will focus on property rights and their effect on trade, and the roll out of water management plans and the embodied trading rules. The Council will also look for progress in resolving the limitation of trade out of regulated systems.

Environment and water quality

New South Wales devoted considerable resources to addressing the issue of integrated catchment management at the State, regional and local planning level. The State Government has statutory catchment management plans, vegetation management plans and water management plans. New South Wales is currently reviewing a series of proposals to ensure a more consistent framework among these different levels of plans.

The Council reviewed a number of these plans and considers that they indicate an ongoing commitment by New South Wales to implement integrated catchment management. Therefore, New South Wales has met the commitments related to integrated catchment management for this assessment. The Council will continue to monitor developments in the implementation of integrated catchment management arrangements in future assessments.

New South Wales continues to progress reforms to water quality management through the interim water quality and river flow objectives involving the Healthy Rivers Commission and a range of other programs at the State level. There have been significant achievements through projects developed under the Stormwater Trusts Grants scheme. New South Wales has also demonstrated a commitment to managing waste through developing market-based mechanisms and promoting effluent and biosolid reuse. The Council is satisfied that New South Wales continues to implement policies that support the objectives of the National Water Quality Management Strategy.

The Council is satisfied that New South Wales has complied with environment and water quality reform commitments for this assessment.

Consultation and education

New South Wales continues to actively consult the community through programs and communication strategies accompanying all major water reform initiatives to ensure the full benefits of the reforms are understood and achieved. For example, the Government consulted extensively regarding the *Water Management Act 2000*. This involved consultation across government, with peak stakeholder groups and through regional public meetings. Examples of consultation forums include the New South Wales

Water Advisory Council, State working groups with agency and key stakeholder representatives, catchment management boards and water management committees. New South Wales is also devoting considerable resources to public education on water reform.

The Council is satisfied that New South Wales has complied with public education and consultation reform commitments.

Victoria

Around 89 per cent of total water use in Victoria comes from surface water sources. There are two major drainage divisions in Victoria. Northern Victoria drains into the Murray–Darling Basin, which provides two-thirds of Victoria's surface water needs. Northern Victoria also contains most of the State's irrigation. The two major irrigation areas are the Goulburn-Murray and the Mallee irrigation areas around Mildura and Sunraysia. Southern and eastern Victoria are coastal drainage systems. Irrigation in this area includes the Wimmera and Gippsland. In the coastal division, domestic use followed by industry, services and power generation are the main urban uses. Rural water use across Victoria is dominated by pasture irrigation, followed by horticulture, and stock and domestic use.

Groundwater accounts for around 11 per cent of the total water use in Victoria. Of this, groundwater irrigated agriculture accounts for 70 per cent and urban/industrial uses for 20 per cent. Groundwater diversion in Victoria is controlled through volumetric licensing within 50 groundwater management areas.

Urban water and wastewater services in Melbourne are provided by four metropolitan service providers. 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 non-metropolitan urban service providers providing services to country towns.

Rural water services are delivered by 5 regional water authorities. These authorities manage irrigation systems and services, manage stock and domestic systems, manage headworks such as large dams, and licence private diversions and conduct environmental management initiatives. Goulburn-Murray Water is by far the largest authority accounting for 90 per cent of all entitlements used for irrigation, and supplying bulk water services to two other rural water authorities and several non-metropolitan urban areas.

Progress on reforms

Pricing and cost recovery

Urban water services

The Council is satisfied that for the most part Victoria's urban water and wastewater services are recovering costs consistent with CoAG commitments. However, the Council has noted its concern with the high level of returns being generated by some of the metropolitan service providers (City West Water in particular). The Council has also concluded that a number of non-metropolitan urban providers are not operating on a commercially viable basis as defined by the CoAG guidelines.

The Victorian Government is to release a 2001 Price Review which will establish a three year price path for full cost recovery from July 2001. Victoria has also announced that an Essential Services Commission will be created as an independent economic regulator to oversee the implementation of the price paths. Victoria will also apply a state based tax equivalent regime to the urban sector from July 2001. The Council therefore considers commitments have been met for this assessment.

Demonstration of further progress on full cost recovery particularly among the non-metropolitan urban providers will be a significant issue for the Council's 2002 NCP assessment. In future assessments, the Council will continue to look for Victoria to have made progress in the following areas:

- consideration of the treatment of externalities arising from urban water use;
- an independent audit of non-metropolitan urban providers' compliance on asset valuation;
- commercially based dividend arrangements consistent with CoAG commitments;
- a rigorous consideration of cross-subsidies; and
- more transparent reporting of CSOs.

The Council is satisfied that all Melbourne metropolitans and non-metropolitan urban providers throughout Victoria are applying two-part tariff arrangements consistent with consumption based pricing commitments.

The Council has found that Victoria's CSO framework meets 2001 commitments. The Council has however noted a concern with the level of transparency of CSO reporting for the metropolitan and non-metropolitan urban sectors. Victoria has advised that non-metropolitan urban providers

will be required to report on CSOs in their annual reports as a condition of the water service agreements with the State Government. The Council will look for progress on transparent reporting mechanisms in the 2002 NCP assessment.

The Council is satisfied that water reforms implemented by Victoria to date have decreased the potential for non-transparent cross-subsidies and met minimum commitments. Victoria will consider a broader examination of cross-subsidies between water and wastewater businesses including the development of guidelines for the non-metropolitan urban providers and rural water authorities sector over the next 12 to 18 months. The Essential Services Commission will then assume responsibility for regulating water and wastewater prices. The Council will review progress in this area as part of the 2002 NCP assessment.

Rural water services

Victoria provided indicative information only on the level of full cost recovery by the rural water authorities. For Goulburn-Murray Water, the largest rural authority, 25 of 34 schemes are recovering an amount consistent with the lower bound of the CoAG guidelines. However, there are some systems for Goulburn-Murray and First Mildura Irrigation Trust that are not operating on a commercially viable basis as defined by the CoAG guidelines. Goulburn-Murray Water has advised that the nine schemes in question (10 per cent of Goulburn-Murray's total rural services), will be shown to be commercially viable for 2000-01. Again the 2001 Pricing Review is considering issues of cost recovery for the rural sector, and Victoria has advised that the Essential Services Commission may have some responsibilities in this area.

Demonstration of further progress on full cost recovery for this sector will be a significant issue for the Council's 2002 NCP assessment. The Council will look for Victoria to have made progress in the following areas:

- finalised figures for full cost recovery by the authorities for 2000-01 and 2001-02 including state tax equivalent regime payments;
- resolved appropriate rates of return to be earned by rural authorities and non-metropolitan urbans on headwork services; completed arrangements to improve asset valuation;
- completed guidelines for renewals annuities and oversight by the Essential Services Commission;
- considered a process to improve the treatment of externalities; and
- set a process in place to ensure that where dividends are paid they reflect commercial realities and stimulate a competitive market outcome.

The Council is satisfied that all irrigation charges levied by the rural water authorities reflect consumption based pricing arrangements and that all NCP

commitments are met. Victoria has advised that the rural water authorities will be required to report on CSOs and cross-subsidies in their annual reports as a condition of the water service agreements with the State Government. The Council will look for progress on transparent reporting mechanisms in the 2002 NCP assessment.

The Council is satisfied that for the 2001 NCP assessment Victoria has complied with water pricing and cost recovery commitments.

Institutional reform

The Department of Natural Resources and the Environment is responsible for resource management and water allocations. Currently, the Minister for Environment and Conservation is also responsible for the non-metropolitan urban service providers and the rural water authorities, and is the joint shareholder of Melbourne Water with the Victorian Treasurer. The Treasurer is the Minister responsible for the three Melbourne water retailers. This can raise potential conflicts because the processes of water resource planning and ensuring compliance with water management requirements, can have an impact on the commercial viability of the non-metropolitan urban and rural water authority businesses. To address these issues the Council is looking for measures that ensure potential and actual conflicts of interest are minimised.

While the Council has concluded that Victoria has not yet completed the changes necessary to meet institutional reform commitments, it notes that Victoria is in the process of implementing a range of reforms over the next 12 months to improve transparency and accountability. These include:

- the proposed introduction of the Essential Services Commission as the economic regulator of the water industry and several other industries;
- the *2001 Price Review of Water, Drainage and Sewerage Services in Victoria*;
- Victoria transferred the responsibility for recommending prices in the metropolitan sector from the Department of Treasury and Finance to the Department of Natural Resources and Environment;
- establishing the Energy and Water Ombudsman to handle customer complaints in the water industry;
- the National Competition Policy Review of Victoria's Water Legislation;
- developing water services agreements that clearly specify the obligations on non-metropolitan urban and rural water authorities;
- developing a new regulatory framework for drinking water quality in Victoria;

- undertaking a review of the current regulatory arrangements for septic tank systems; and

- developing improved departmental guidelines for assessing the need for compulsory installation of small town sewage schemes.

The Council will reassess progress against these initiatives in the 2002 NCP assessment and for this assessment the Council will look for Victoria to have made progress in the following areas:

- defining the roles of the Essential Services Commission and establishing this organisation;

- demonstrated that the approach taken in the 2001 Pricing Review is consistent with the CoAG obligations;

- finalised the new drinking water standards framework so that there is independence (from the service provider) in the setting and enforcement of standards consistent with the 1996 Australian Drinking Water Guidelines;

- signed water services agreements with non-metropolitan urban providers and rural water authorities that provide the transparency and accountability necessary to remove any conflicts of interest between the ownership of these organisations and regulation;

- responded to any institutional reform issues that arise from the review of Victoria's water legislation; and

- responded to the Environmental Protection Authority's review of the regulatory arrangements for septic tank systems.

Victoria has met commitments in relation to benchmarking service providers, a commercial focus for metropolitan water authorities, and devolution of irrigation scheme management through water service committees that give customers a significant input into irrigation management.

The Council is satisfied that Victoria has complied with institutional reform commitments for this assessment.

Allocation

Bulk entitlements and take and use licences create water property rights under the *Water Act 1989* in Victoria. For the regulated systems, bulk entitlements legally define allocations of water and property rights to water authorities, including the environment. For unregulated rivers not covered by bulk entitlements, the management of diversions is undertaken through streamflow management plans which set conditions for take and use licences and environmental flow provisions. Licences are issued separately to the land title.

The Council is satisfied that Victoria's property rights system meets the requirements for the 2001 NCP assessment. For the 2002 NCP assessment, the Council will look for the Victorian Government to have made progress on the River Health Strategy, progress on the 2001 Farm Dams Review, and to revise the recent decision by Sunraysia rural water authority to reduce the duration of private diverter's licences from 15 years to five years.

Victoria's bulk entitlement and streamflow management plans do provide allocations for the environment. However, the Council has found for this assessment, that Victoria has made insufficient progress to meet commitments for allocations to the environment on overallocated or stressed river systems. In the second tranche assessment, Victoria identified 8 stressed surface water systems that required action for this assessment. Victoria has now added an additional 3 stressed river systems.

Victoria has advised that the policy on stressed rivers will be set by a River Health Strategy to be released for public comment in November 2001 and finalised by May 2002. The strategy is expected to:

- set a benchmark in defining what is an ecologically healthy river;
- propose the development of regional catchment strategies and waterway health plans;
- set regional targets in waterway health plans which draw from existing mechanisms such as streamflow management plans, bulk entitlements, and other integrated catchment management mechanisms;
- identify short to medium term targets at the State and regional level in the regional catchment strategies and water health plans; and
- aiming to put in place an integrated framework for waterway management which will maximise environmental improvements from investment.

Victoria has committed to finalise the Strategy by June 2002, and has provided a three-year timetable for actions on current priority stressed rivers based on the development of regional Waterway Health Plans.

While progress was made on consultation and the development of plans that were agreed in the second tranche assessment, the Council is concerned that change on-the-ground was not achieved on stressed rivers for the commitment to be met. The Council will reassess this issue in the 2002 NCP assessment. The Council considered imposing a suspension for this assessment until the reforms are in place. However, it is now satisfied that the Victorian Government has committed to a more comprehensive program to address this issue including a three-year action plan.

For the 2002 NCP assessment, the Council expects that Victoria will have a final publicly endorsed strategy in place, and will begin to implement plans in accordance with Victoria's new stressed rivers timetable. The Council will

also look for sufficient resources to be devoted to the environment to ensure improvements on stressed rivers are being made. Given the seriousness of this issue and the late delivery of this area of reform, the Council is of the view that insufficient progress in future assessments would be likely to result in a permanent penalty.

Trading

The majority of water entitlements in Victoria are contained within regulated irrigation districts. These irrigation districts are managed by rural water authorities who provide bulk water services to irrigators. Bulk entitlements are issued to these authorities as the basis for providing water to irrigators within the districts.

Water rights are transferable in regulated systems, although the right remains attached to land at all times. A transfer detaches the water right from one licence and reattaches it to the licence of the buyer. This has an impact upon the capital efficiency of the right. Water may be transferred into or out of an irrigation district, although only 2 per cent of water (net) can be transferred out of selected irrigation districts in a given year. This level has been reached twice in recent years.

In unregulated systems, streamflow management plans will set the balance between environmental and consumptive water allocations and, where appropriate, the rules for the transfer of water rights. Transfers may be made in unregulated systems on a similar basis to the regulated systems. Water remains attached to a land holding at all times. A prohibition on trade upstream and a 20 per cent levy on trade downstream (unless it is a winter-fill licence), limit trade in unregulated streams. These restrictions ensure that the environment is not further degraded until streamflow management plans are implemented.

Victoria has a well established trading market for high security water and trading has continued to play an increasingly important role in agricultural production in Victoria. Over the three years from 1997-98 to 1999-2000 many irrigators only coped with the low allocations of water, due to drought conditions by turning to the water market. This prompted record levels of water trading with permanent transfers up to 20 000 megalitres and temporary transfers of up to 250 000 megalitres. Water trading is now providing an alternative to high security allocations, as water users enter the market to buy additional water if needed to irrigate their crops.

The Council is satisfied that Victoria has met water trading commitments for the 2001 assessment. The Council will look for further progress in trading arrangements in future assessments.

Environment and water quality

Victoria is implementing regional catchment strategies. One of the primary objectives of these strategies is the protection of land and water resources. To implement the strategies, regional management plans are being developed by the nine catchment management authorities that cover non-metropolitan Victoria. These plans target Government investment in catchment areas in waterway management, floodplain management, salinity, drainage, groundwater management, water quality, soil conservation and land management.

Other catchment management initiatives developed by Victoria include Statewide benchmarking of the environmental health of all Victorian rivers. The data contained in the Index of Stream Condition is publicly available on a website. This Statewide benchmarking was undertaken by catchment management authorities. The release of Victoria's River Health Strategy is also likely to result in further developments for integrated catchment management.

Victoria continues to implement the National Water Quality Management Strategy through catchment management strategies and regional schedules to the state environmental protection policies. Nutrient management plans are being developed to minimise the outbreak of algal blooms. Victoria is also developing a new drinking water quality framework to be implemented in January 2002. Victoria has identified salinity targets to be addressed by catchment management authorities in developing regional management plans.

The Council is satisfied that Victoria has complied with environment and water quality reform commitments.

Consultation and education

Victoria has widespread public consultation and education mechanisms throughout its water industry. Customer consultative committees in the urban sector and water service committees in the rural sector ensure adequate consultation takes place. Substantial stakeholder involvement is also a key part of the process to develop bulk water entitlements and environmental flows.

The Council is satisfied there is a genuine commitment by Victoria to ongoing public consultation in the implementation of water reform. The implementation of reforms in such areas as the ongoing conversion of existing water rights to bulk entitlements, the setting of streamflow management plans on unregulated rivers, and the findings of the Farm Dams Review have been subject to considerable consultation.

With regard to public education, Victoria has established a Statewide Water Conservation Initiative which will set explicit obligations and targets for the water businesses themselves to undertake education campaigns. It is the Council's view that the features of the initiative should minimise the potential for any conflicts of interest in the roles of water service provision and public education. The initiative will ensure the Department of Natural Resources and Environment plays a greater role in coordinating water conservation and public education in Victoria. This will be achieved through setting clear obligations and targets in water service agreements with water businesses to meet Government expectations in this area.

The Council is satisfied that Victoria continues to comply with public education and consultation reform commitments.

Queensland

Queensland derives over 75 per cent of its total water needs from surface systems. Around 70 per cent of Queensland's surface water is derived from coastal systems. The Great Artesian Basin that also underlies parts of New South Wales, South Australia and the Northern Territory dominates the ground water resource in Queensland. Irrigation accounts for 65 per cent of total water use in the State, while urban water use accounts for 17 per cent. Stock and domestic, industry (including mining) and power generation represent 14 per cent, 3 per cent and 1 per cent of total water use respectively.

The major water service providers in Queensland include 125 local governments, four urban water boards, SunWater and several other providers. The *big 18* local government water service businesses account for 80 per cent of water connections in Queensland. The four urban water boards (South East Queensland Water Board, Townsville-Thuringowa Water Supply Board, Gladstone Area Water Board, and Mount Isa Water Board) provide water to a number of councils, industrial customers and power stations. SunWater (formerly State Water Projects) is a government owned corporatised entity that provides around 40 per cent of Queensland's irrigation water. SunWater is the State's largest water service provider accounting for nearly 50 per cent of all water consumed in Queensland.

The Department of Natural Resources and Mines is responsible for water allocation and management and water service provider regulation. Under the *Water Act 2000* all water service providers must be registered, with registration attaching a series of regulatory obligations, which must be met.

The Environmental Protection Agency is responsible for environmental protection and regulation of water quality (with the exception of drinking water). The Department of Health regulates drinking water quality. The Queensland Competition Authority is responsible for prices oversight of the largest providers in the water industry.

Progress on reforms

Pricing and cost recovery

Urban water services

Just over 70 per cent of the 125 local government water businesses in Queensland apply CoAG water pricing principles under a three-tier framework. Thirteen of the big 18 local government water businesses are commercialised and the remaining five have adopted full cost pricing. However, reform progress among the local government water businesses outside the big 18 has been slower.

The Local Government Association of Queensland and the Queensland Government developed a strategy to promote CoAG water reforms, including pricing reforms beyond the big 18. This strategy, the Business Management Assistance Program, includes assisting local government businesses to design two-part tariff regimes, enhancing their in-house capability to adopt pricing reforms and extending the deadline for receipt of incentive payments offered under the Local Government NCP Financial Incentive Package. The Council will monitor the outcomes from this Program. Furthermore, the Council will look for progress in including taxes or tax equivalent regimes within cost recovery arrangements outside the big 18 service providers.

Queensland does not explicitly incorporate environmental costs into urban prices. However, through Resource Operations Licences, it does improve environmental obligations to service providers who operate bulk infrastructure (such as dams).

While, the costs of complying with the licence (and thus the resource management costs) are to be met by the service providers, this is unlikely to fully reflect resource management costs associated with urban water use. The Council will review this matter in future assessments.

The Council notes that all but one of the big 18 service providers have implemented or in the process of implementing two-part tariffs. However, despite the Council raising its concerns in the June 1999 second tranche NCP assessment the Townsville City Council has failed to demonstrate that it objectively analysed the cost effectiveness of two-part tariffs and provided a public interest justification on why it will not implement price reforms. Consequently the Council has recommended a permanent reduction in Queensland's competition payments of $270 000 from 2001-02. This amount reflects an approximation of the remaining money Townsville is entitled to through the Queensland Competition Authority's financial incentives scheme. The Council has chosen this approach to reflect that the Queensland State government has proactively encouraged reform. However, Townsville has neither committed to introducing two-part tariffs nor provided a public

benefit justification of why the implementation of two-part tariffs is not in the public interest.

The Council will reconsider Townsville's approach to two-part tariffs in its 2002 NCP assessment. It will look at both the progress made by Townsville and the State Government's efforts to resolve the issue. At that time the Council will reconsider whether a continued reduction in competition payments is warranted and the appropriate size of any such reduction.

The Council welcomes the progress made by many of the 10 next largest local government providers, in moving towards the introduction of two-part tariffs. The Council will look for continued progress in this area in future assessments.

Many of the 42 local government providers (with 1000 to 5000 connections) are considering the implementation of two-part tariffs. However, several have decided not to assess the cost effectiveness of introducing two-part tariffs. Some of these providers have the State's largest free water allowances. This raises questions about whether these providers are appropriately implementing the water pricing reforms. The Council will review progress again in the 2002 NCP assessment.

All four urban water boards charge for water consistent with the principles of volumetric based charging.

Domestic and commercial/industrial wastewater charges across the local government providers in Queensland are based on either a fixed charge or a fixed charge with an additional charge for each additional pedestal. The Council understands that some local governments also levy trade waste charges. Local governments provided no details of these charges. The Council is satisfied that wastewater charges are consistent with CoAG requirements but will consider the issue of trade waste charges at the 2002 NCP assessment.

The Council notes that the CSOs and cross-subsidies provided by the *big 18* water and wastewater businesses are being transparently reported. Queensland has made a policy decision that only type 1 and 2 businesses are required to identify and reports CSOs and cross-subsidies. As a result, only a few of local government providers outside the big 18 have disclosed such information. The Council will look for further progress on the identification and transparent reporting of CSOs and cross-subsidies of the local government providers beyond the big 18 in future 2002 NCP assessments. No CSOs have been identified as being provided by the urban water boards.

Rural water services

A move towards cost recovery by SunWater is being managed via a two-pronged approach. First, SunWater is required to achieve efficiency improvements leading to a 15 per cent reduction in operating costs by 2004. Second, a five-year price path for each of SunWater's 31 irrigation schemes

has been developed in consultation with the participants of the schemes. As a part of this approach an independent benchmarking exercise was completed to obtain a reliable base for SunWater's costs. The benchmarking exercise enabled SunWater to identify specific areas where cost reductions can be targeted. Queensland has undertaken to re-benchmark SunWater's costs in 2004.

Significant concerns have been raised by several irrigator groups in relation to the estimates of efficient costs used in setting the price paths and in regard to the level of consultation. SunWater is required to establish Customer Councils for all of its irrigation schemes. These councils are intended to give irrigators the opportunity to provide input into SunWater's decision making process on an advisory basis. The Council will look for evidence that Customer Councils have had an adequate opportunity to provide feedback in relation to standard setting decisions and efficiency improvements in he future. The Council will review the progress associated with cost recovery in the 2002 NCP assessment.

Two-part tariffs have been in place for most of the irrigation schemes operated by SunWater since 1997-98. The Council is satisfied that rural water services provided by SunWater reflect the principle of consumption based pricing consistent with CoAG commitments.

In the 2002 NCP assessment the Council will look for evidence that Queensland is refining its other rural water charges (applied in unregulated areas, water harvesting in regulated areas and water extraction in ground water management areas) and in particular is eliminating the current ceiling on volumetric charges. Further the Council will look for progress in addressing the potentially non-transparent cross-subsidies associated with the charges for other rural water services.

The Council is satisfied that Queensland has met the CoAG commitments for this assessment in relation to ensuring economic viability and ecological sustainability of new investment in rural water schemes.

Institutional reform

The Council concluded in its supplementary second tranche NCP assessments that Queensland had met institutional reform requirements. Since the second tranche NCP assessment Queensland has made further progress in reforming the institutional role separation in the water sector. For example, the enactment in September 2000 of the *Water Act 2000* provides a framework for the allocation, management and regulation of the State's water resources. Other key reform initiatives include prices oversight by the Queensland Competition Authority, corporatisation of SunWater and restructuring the Department of Natural Resources and Mines.

In the area of economic regulation, most of the significant water businesses (including the *big 18* local government water service businesses) have, or will

be, declared for prices oversight. Under the *Water Act 2000* all service providers are required to prepare customer service standards and provide a copy of those standards to all customers not covered by a contract.

Under the current arrangements, the Department of Natural Resources and Mines has resource management and water allocation roles while all the service delivery functions are now the responsibility of SunWater. The Minister for Natural Resources and Mines is a joint shareholder in SunWater. Hence, certain ministerial decisions could potentially affect the commercial aspects of the SunWater's business. Given Queensland's existing arrangements for separating service delivery and regulation, and the commitment to improve transparency in reporting the final water resource plan, the Council has concluded that there is sufficient transparency in decision making.

Arrangements for regulation of drinking water quality are being reviewed in Queensland as part of the review of the *Health Act 1937*. In the 2002 NCP assessment the Council will look at what arrangements are in place to manage drinking water standards across the State.

Queensland is continuing to meet its commitments on the commercial focus of urban service providers and participate in benchmarking arrangements.

The Council considers that Queensland's approach to local management of irrigation is restrictive. Irrigators only had until mid-2001 to negotiate on local management. This is a very short time frame. After mid-2001 irrigators will not have another opportunity to negotiate the adoption of local management until 2003.

Customer Councils are intended to give irrigators the opportunity to provide input on an advisory basis into SunWater's decision making process. The Council will monitor the operations of the Customer Councils to ensure that SunWater is using them as an effective mechanism for seeking input from irrigators into decision making.

The Council is satisfied that Queensland has complied with institutional reform commitments for this NCP progress assessment.

Allocation

The framework for allocation, management and regulation of water in Queensland is set out in the *Water Act 2000*. Water resource plans are the principal water-planning tool under the Water Act. They specify the rules on how water will be allocated, environmental flow provisions and water allocation security objectives. Water resource plans are of a 10-year duration and are implemented through resource operation plans.

As at March 2001, water resource plans have been completed for Fitzroy River Basin, Cooper Creek Basin, Boyne River Basin and Burnett River

Basin. Further, draft plans have been released for the Condamine–Balonne, Moonie and Warrego/Paroo/Bulloo/Nebine. To date, no resource operation plans have been finalised. Draft resource operation plans for the Fitzroy River Basin and Boyne River Basin are currently being prepared with the former to be the first released for public comment in September 2001.

Since its supplementary second tranche NCP assessments the Council has considered further the provisions of the *Water Act 2000* including progress in implementing the water resource plans and resource operation plans and the efficacy of water property rights. The Council is of the view that Queensland's system of water property rights meets the requirements for this assessment.

Under the *Water Act 2000*, periodic reports are to be prepared for each water resource plans covering issues such as: an assessment of the effectiveness of the implementation of the water resource plans in meeting the water resource plans' objectives (including environmental objectives); any new information available about water covered by the plan; and information about any non-compliance with the water resource plan and the resource operation plan. The Council will continue to review further progress in implementing the water resource plans and related processes in future assessments.

Water resource plans identify and specify water for the environment. This is done on the basis of best scientific information available. The Council has examined the completed plans and has concluded that overall the allocations in the plans for the Fitzroy Basin, Cooper Creek, Boyne Basin and Burnett Basin adequately meet environmental requirements.

The Council has also examined the Condamine–Balonne Basin draft water resource plans. On the basis of the evidence available, including the findings of the Independent Audit Group of the Murray—Darling Basin Commission, the Council notes that the lower portion of the basin may now be considered a stressed river system. The Condamine–Balonne Basin is a region of intensive water use within Queensland's area of the Murray—Darling Basin and the region contains 20 per cent of all Murray—Darling Basin wetlands. The Council has serious concerns with the three options currently being proposed to establish environmental flow objectives in the Condamine–Balonne Basin draft water resource plan. On the basis of information currently before the Council, it considers that adoption of any of the three options proposed in the draft water resource plan is likely to lead to a substantial reduction in Queensland's NCP payments in the 2002 NCP assessment. For the 2002 NCP assessment, the Council would expect Queensland to have in place a robust and an appropriate final water resource plan for the Condamine–Balonne Basin and the associated resource operation plan.

The Council has noted general concerns in relation to the lack of transparency in developing the water resource plans. The Queensland Government has recognised this and has made a commitment to address it by increasing the scope of information released when the water resource plan is finalised.

Trading

The *Water Act 2000* provides the framework for water trading in Queensland. Primarily this would require the full implementation of the water resource plans and the associated resource operation plans in the prospective water trading areas. The Council considers that, in the main, the legislative framework in the Water Act should ensure clear specification of the water property rights. However, there are a number of aspects in the framework that could potentially hinder trading. In particular, provisions in the legislation could limit the volume of water that may be transferred between locations, whether inside or outside Queensland, or for different purposes. Another area of potential concern is the provision that limits water trade to primary production. This is not in the spirit of the CoAG guidelines as it may prevent water from moving to its highest value use.

Trade in Queensland is currently limited. There has been one pilot program of permanent water trading in the Mareeba—Dimbulah Irrigation Area since 1999. The demand for permanent trade in the Mareeba—Dimbulah Irrigation Area has been low with only four trades in 1999-2000, totalling 164 megalitres. Queensland has indicated that interim arrangements will be established in other regions to allow permanent trade until trading rules are developed with the resource operation plans.

Queensland has made significant progress towards developing a framework for efficient water trading. However, there is still a long way to go in implementing the required mechanisms. The Council will make a further NCP assessment in 2002 to evaluate the extent of progress with the implementation of first, the use of interim trading arrangements and second, the resource operation plans and the associated trading rules in the prospective trading areas.

The Council is satisfied that Queensland has complied with water allocation and trading reform commitments for this assessment.

Environment and water quality

In its second tranche NCP assessment the Council noted the progress made by Queensland towards meeting its commitments in relation to the environment and water quality aspects of the water reform framework. Since the second tranche NCP assessment the 13 regional strategy groups operating in Queensland are developing natural resource and biodiversity management strategies. The 38 Catchment Management Coordinating Committees are continuing with development of catchment strategies with 27 of them receiving endorsement. The Council considers there is adequate evidence of on-the-ground implementation of catchment management in Queensland.

The *Water Act 2000* requires water use plans to be prepared when there is a risk of land and water degradation in an area. In light of the potential for

growth in water allocations, due to the water resource plans process occurring across Queensland, the Council will monitor the use of water use plans to control any adverse impacts likely to arise from the new allocations.

In relation to water quality, Queensland is demonstrating a high level of commitment to ongoing implementation of the National Water Quality Management Strategy guidelines. With regard to water quality monitoring, the Council observes that there appears to be insufficient water quality data relating to some river basins in Queensland. Queensland needs to address this issue.

The Council is satisfied for this NCP assessment that Queensland has complied with environment and water quality reform commitments.

Consultation and education

The Queensland Government has engaged in a number of community consultation and public education programs regarding the implementation of water reforms. For example, Queensland released for consultation a number of policy papers and a draft Bill in developing the *Water Act 2000*.

The *Water Act 2000* provides a statutory basis to ensure all stakeholders are consulted during the development of water resource plans and resource operation plans for catchment areas. There is some concern regarding the adequacy of information available to the stakeholders from the draft water resource plan stage to the final plan. The Council has raised this issue with Queensland. In preparing water resource plans, Queensland has committed to provide adequate information relating to a move from a draft to final stage and to indicate any trade-offs made in the final water resource plan.

The Council is satisfied for this NCP assessment that Queensland has complied with public education and consultation reform commitments. The Council will monitor developments in the area of public consultation and the provision of information relating to the development of water resource plans in future assessments.

Western Australia

Around 60 per cent of total water use in Western Australia comes from groundwater sources. The most intensively used groundwater area is the Perth Division followed by the Yilgarn Division. On a State-wide basis groundwater is used for mining (35 per cent), irrigated agriculture (25 per cent) and households and private household bores (19 per cent). Parks and gardens, services, industry and stock watering account for the remaining 21 per cent of groundwater use.

Surface water accounts for around 40 per cent of the total water use in Western Australia. Irrigated agriculture and households account for 65 per cent and 5 per cent of surface water use respectively, while services, industry, mining and stock watering account for the remaining 20 per cent. Most of the surface water use in Western Australia is restricted to South–West drainage Division and the Timor Sea Division. The Ord River basin irrigation accounts for nearly all of the water use in the Timor Sea Division.

There are three major providers of urban water services in Western Australia: the Water Corporation, Aqwest (formerly the Bunbury Water Board) and Busselton Water Board. In addition there are 20 local government authorities operating sewerage schemes. Water Corporation, which is a corporatised entity, is by far the largest water service provider supplying bulk water storage and transfer, water treatment and reticulation, wastewater treatment and reticulation and storm water services. Western Australia has four irrigation scheme providers, the South–West, Preston Valley, Carnarvon and Ord irrigation schemes. Water Corporation supplies bulk water to these schemes.

The South–West and Preston Valley schemes are owned and operated by farmers co-operatives. Both the Carnarvon and Ord irrigation schemes are publicly owned. Plans are underway to transfer ownership of both schemes to privately owned growers' cooperatives.

The Water and Rivers Commission is responsible for water management and resource allocation. The Office of Water Regulation administers a water-licensing scheme and provides policy advice relating to water services (including charges levied for the provision of water services). The Minister for Water Resources has the overall responsibility for water service provision and standard setting, resource management and water regulation.[1]

Progress on reforms

Pricing and cost recovery

Urban water services

The Council is satisfied that for the most part, Western Australia's urban water and wastewater services are recovering costs consistent with CoAG commitments. Western Australia has advised that water and wastewater

[1] Changes since 30 June 2001 have established separate portfolios, with resource management and water service regulation the responsibility of the Minister for Environment and Heritage, and water service delivery the responsibility of the Minister for Government Enterprises.

providers will soon be subject to independent prices oversight. This will also provide a means for achieving improved asset valuation for price setting purposes.

In the 2002 assessment the Council will look for Western Australia to have made progress in the following areas: further consideration of the treatment of externalities associated with broader environmental effects of urban water use; improved asset valuation by Aqwest, Busselton Water Board and the Kalgoorlie-Boulder service provider; and consideration of avenues for recovering taxes or tax-equivalents in charges by the Kalgoorlie–Boulder service provider.

The Water Corporation, Aqwest and Busselton Water Board have all substantially implemented two-part tariffs. Two-part tariffs apply to all Water Corporation customers and all residential customers of Aqwest and the Busselton Water Board. Aqwest and the Busselton Water Board are currently in the process of moving the non-residential customers to a two-part tariff regime. The full implementation of two part-tariffs is expected to be completed by mid 2002. This process should eliminate from water charges the current arrangement of free water allowances as well as the fixed charge based on the gross rental value. The Council will monitor the progress in this area.

The Water Corporation is implementing a single fixed charge for residential sewerage services, which will replace existing charges based on gross rental value. The Council will look for consideration by other waste service providers to replace existing charges based on gross rental value.

Western Australia released the Community Service Obligations Policy in Western Australia in April 2000, which updates a 1996 document and provides a more coordinated and well-focussed framework for endorsing new community service obligations (CSOs). The Council welcomes this new framework. Western Australia is continuing to comply with CoAG commitments in regard to the CSOs as they relate to the urban water sector.

Western Australia has advised that ring–fenced arrangements have been established within the Water Corporation. This allows for the use of internal volumetric bulk water transfer prices that recover full operating costs and reduce the potential for cross-subsidies between business segments. The Water Corporation also uses volumetric charges for country water customers that reflect the cost of providing such services. This reduces the potential for cross subsidies between different groups of customers. A broader and a more systematic examination of cross-subsidies in the Western Australian water sector will be an issue for consideration for the Council's 2002 NCP assessment.

Rural water services

Among the regulated irrigation districts in Western Australia, the South–West and the Preston Valley irrigation schemes meet the lower bound of the

agreed pricing guidelines to meet cost recovery. As a result of the price paths that have been established for the Ord and Carnarvon irrigation schemes, their full cost recovery is expected, albeit in a decade or so. Hence the arrangements in the rural water services to recover full costs still have some way to go. The Council will examine the cost recovery of these schemes during the 2002 NCP assessment.

In terms of unregulated water resources, the Council can find little evidence that licence fees in any way reflect cost recovery. The Council will look at progress in this area in the 2002 NCP assessment.

Currently, the South–West and the Preston Valley irrigation co-operatives, and the Carnarvon scheme use volumetric charges to recover water costs. The Ord scheme recovers costs through an area-based charge. As indicated earlier the irrigation schemes receive bulk water from the Water Corporation. The corporation's bulk water charges to the South–West and the Preston Valley irrigation co-operatives are volumetric based. It charges the Ord and Carnarvon irrigation schemes on a fixed basis for their bulk water. The Council finds that Western Australia has met minimum commitments on consumption based pricing for rural water and it will monitor further progress in this area in the 2002 NCP assessment.

The Water Corporation's bulk water charges to the South–West and the Preston Valley irrigation co-operatives are set to recover only the lower bound of the CoAG pricing guidelines. The Council understands that the Water Corporation is compensated through a CSO payment for the fact that the Ord and Carnarvon irrigation schemes are charged for their bulk water at a price less than the lower bound. The lack of transparency in the reporting of these arrangements makes it difficult to clearly estimate the CSO payments in the rural water sector in Western Australia. The Council will look for consideration of further disclosure of CSOs for rural water supply in future assessments.

Western Australia has indicated its commitment to establishing a comprehensive framework for assessing the economic viability and environmental sustainability of future investment in new rural water schemes. The framework is expected to be completed in 2001. In looking at the economic viability criteria of the framework, the Council notes that it is an improvement on previous arrangements. The Council will continue to monitor this issue. In terms of new infrastructure, the Council notes the Stirling–Harvey redevelopment scheme will provide security of water supply to Perth. The development of Stage 2 of the Ord irrigation area has not been approved yet. The Council will look for appropriate economic and environmental assessments once this approval has been given.

The Council is satisfied that for the 2001 NCP assessment, Western Australia has complied with water pricing and cost recovery commitments.

Institutional reform

The three major urban water service providers, the Water Corporation, Aqwest and Busselton Water Board are responsible to the Minister for Water Resources in Western Australia. Furthermore, the Minister is also responsible for the Office of Water Regulation and the Water and Rivers Commission. Such an arrangement could potentially lead to conflict of interest, and hence there needs to be a greater degree of transparency and accountability in this regard. This arrangement where one Minister is responsible for service provision, resource management and regulation is under review as a part of the Western Australian Government's current Machinery of Government Review.

The Office of Water Regulation does not currently have a role in price regulation in the water sector. Western Australia has indicated its commitment to establishing an independent economic regulator that will deal with the economic regulatory aspects in the water sector, in particular price regulation. The Council will monitor progress in this area in the 2002 NCP assessment.

Western Australia's approach to the regulation of resource allocation and water management is likely to provide sufficient transparency and separation in the roles of the responsible minister. A combination of mechanisms including the role of the Water and Rivers Commission Board, public consultation in water management through the water resource management committees and the provisions which allow Water and Rivers Commission decisions to be appealed appear to address any potential conflict of interest. These mechanisms are still being implemented and the Council will monitor their progress.

In relation to drinking water quality, the Water Corporation has agreed to move from the 1987 drinking water guidelines to the 1996 Australian drinking water guidelines over a period of five years. The Department of Health will monitor the phasing in of the changes.

Western Australia is continuing to participate in the Water Services Association of Australia performance monitoring and benchmarking process. In relation to the devolution of irrigation scheme management, Western Australia is continuing to make progress.

The Council is satisfied that the Western Australia has complied with institutional reform commitments.

Allocation

Licences issued under the *Rights in Water and Irrigation Act 1914* create water property rights in Western Australia. Licences are issued separately to the land title. The Act also formalises Western Australia's approach to providing water for the environment and consumptive uses. This is done

through a system of statutory water management plans. The Act provides for three levels of water management plans. The purpose of these plans is to manage both groundwater and surface water quantity and quality within a catchment. The three levels of plan are regional management plans, sub-regional management plans and local area management plans. These plans are of an indefinite duration, and are to be reviewed at least every seven years. Western Australia has a timetable for the preparation of water management plans including the current status of the plans.

Water resource management committees will aid the Water and Rivers Commission in the setting up of water management plans. These committees will include water users and other stakeholders. Currently there are no water resource management committees in place. Two committees are expected to be established in 2001 and another two in 2002. Eventually there will be 16 such committees in Western Australia.

In Western Australia, environmental water provisions are set in water management plans for all water systems in one of two ways: in the form of a 'notional or interim allocation limit' or in the form of formal assignment of environment water provisions in areas that are highly of fully developed.

There are no stressed or over allocated surface water systems in Western Australia that required action in June 2001. The Council will monitor both the progress in developing water management plans and any increased water use which may indicate a need to bring forward the schedule for completion of particular plans.

Trading

Around a third of Western Australia's water resource systems are at a highly or fully allocated level. It is in these areas, in particular, that water trading will allow new users to obtain water or existing users to raise their supply without impacting on the sustainability of the water system.

Provisions for water trading in Western Australia have been established through amendments to the *Rights in Water and Irrigation Act 1914*. The amendments came into effect in January (2001a). The Water and Rivers Commission has released a draft policy document on transferable (tradeable) water entitlements for Western Australia (2001) for public consultation. This document, once formalised, is expected to provide a broad template for water trading including the trading rules.

Water trading in Western Australia is still at an embryonic phase. At present water trading occurs only within the South–West Irrigation Area. The only prospect for interstate trading is with the Northern Territory where the proposed stage two of the Ord irrigation project crosses the state boundary.

The Council is satisfied that Western Australia has made satisfactory progress in water allocation reform commitments and has met minimum

water trading commitments for the 2001 NCP assessment. The Council will look for further progress in these areas in the 2002 NCP assessment.

Environment and water quality

In Western Australia integrated resource management occurs primarily through regional natural resource management groups and with the help from local and state government agencies. Activities undertaken in this regard include the provision of advice to community groups on river restoration and management, establishment of 145 Land Conservation District Committees and preparation of initiatives to protect the quality and quantity of ground water used in Perth.

Implementation of specific actions to address broader catchment management issues in Western Australia is progressing gradually. The Council will monitor further progress in this area in the 2002 NCP assessment.

In 2000, the Western Australian government developed the State water quality management strategy as the framework through which the National Water Quality Management Strategy will be implemented. The Western Australian Cabinet endorsed the State strategy in April 2001. As a part of this overall process a State water quality implementation plan is to be developed setting the priorities for implementing the National Water Quality Management Strategy guidelines. Western Australia has a provisional timetable spanning for the next two years to implement the State strategy. The Council will monitor the progress against this timetable during future assessments.

By the 2002 NCP assessment, the Council would expect to see the following: the State water quality implementation plan finalised and released as a public document; and completed drafts for public release showing the means of implementation of specific National Water Quality Management Strategy guidelines for fresh and marine water quality, drinking water, and water quality monitoring and reporting.

The Council is satisfied that Western Australia has complied with environment and water quality reform commitments.

Consultation and education

The Western Australian Government has undertaken widespread public consultation and education programmes in relation to its water industry reforms. For example in developing the environment water provisions policy, considerable public and stakeholder consultation has been undertaken. Local water management advisory committees are important means by which public consultation is achieved.

In the second tranche NCP assessment, the Council noted that it is inappropriate for service providers to decide on the level of public education on matters such as water conservation. Western Australia has indicated that it recognises that there may be a potential conflict of interest in suppliers providing public education on water conservation. However it indicates that there are incentives for suppliers to manage water conservation in a responsible manner.

The Council is satisfied that Western Australia has complied with public education and consultation reform commitments.

South Australia

The Murray River is South Australia's primary source of water. It also provides water to metropolitan Adelaide and South Australian country towns. Ground water is an important source of water for the Adelaide plains (supplying vegetable and wine grape growers) and the south-east corner of the state around Mt Gambier, Eyre Peninsula and the Murray Mallee. The Great Artesian Basin extends into the northern part of South Australia.

The South Australian Water Corporation (SA Water) is the state's major water service provider. It is a corporatised entity that is responsible for the provision of urban and rural water and wastewater services. The Minister for Government Enterprises is responsible for water services legislation, including SA Water. The Minister for Water Resources is responsible for most water matters including water resource management.

Rural water use in South Australia is dominated by irrigated agriculture. Irrigated agriculture accounts for around 80 per cent of total water use in the state.

Progress on reforms

Pricing and cost recovery

Urban water services

In South Australia, water charges for commercial and non-commercial customers are based on different pricing structures. Recent reforms have made customer payments more responsive to the volume of water used. The Council notes the sound financial performance of SA Water and commends efforts to improve service quality and the overall efficiency. The Council also

notes the measures taken by South Australia to take account of the cost of environmental externalities associated with water use.

The Council is concerned about the high and increasing proportion of profits being returned by SA Water to the government as dividends. The Water Services Association of Australia reported SA Water's dividend pay out ratios of 119 per cent and 124 per cent in 1998-99 and 1999-2000 respectively (WSAA 2000). The 1999-2000 figure was the highest among Australia's large metropolitan services. The Council notes that if continuation of this policy was to lead to insufficient funds being retained within the business to fund initiatives such as future investment in water supply, this potentially raises an issue for future NCP assessments. The Council will review this matter in future assessments to ensure that SA Water's dividend policy is consistent with CoAG guidelines.

South Australia has indicated its commitment to implement a package of reforms that will remove free water allowances from commercial water pricing via a phased introduction of user charges (through amending the *Waterworks Act 1932*) by December 2001. It has also indicated its commitment a broader-based trade waste charge regime from 2002-03. The Council will look for evidence of progress with introducing the new arrangements for commercial water prices and trade waste charges.

South Australia has initiated reform processes that will reduce the potential for non-transparent cross subsidies in the urban water sector. The Council will continue to monitor the progress of these in future assessments.

Rural water services

South Australia has advised that all irrigation schemes are recovering the lower bound of the CoAG pricing guidelines. The costs of externalities in prescribed areas are covered through levies charged by the Catchment Water Management Boards. South Australia has also advised that no community service obligation (CSO) payments have been made to privately managed irrigation schemes. The Council will look for further evidence of compliance with CoAG cost recovery requirements including provisions for taxes or tax-equivalents by irrigation schemes in the 2002 assessment.

There have been proposals for the supply of additional irrigation water to areas such as the Barossa Valley and Clare Valley. The Council is satisfied that, if these proposals proceed, they will be on an economically viable basis. There are also proposals to rehabilitate the Loxton and lower Murray irrigation areas. The Council will look for evidence demonstrating the ecological sustainability of the Barossa Valley, Clare Valley, and the Loxton and lower Murray irrigation areas in future assessments.

The Council is satisfied that for the 2001 NCP assessment South Australia has complied with water pricing and cost recovery commitments.

Institutional reform

The recently released State Water Plan 2000 outlines South Australia's approach to further enhancing the structural separation of water resource management, service provision, standard setting and regulation. The Plan clarifies and improves transparency in water management and environmental regulation, expands the number of catchment water management boards and identifies strategies to work with stakeholders such as the local governments and the Murray–Darling Basin Commission.

Following a 1999 confidential review of water and wastewater pricing options by the South Australian Government, some approaches to pricing have been announced. However, the Council has significant concerns about the transparency of water price setting in South Australia. This lack of transparency makes it impossible for the Council to be confident that pricing decisions will be based consistently on the principles set out in the water agreements. Moving to a more transparent approach to price setting and monitoring would remove the need for the Council to be closely involved in price related assessments in the future. The Council will continue to look for progress in resolving the issue of a commitment from the South Australian Government to implement a more transparent approach to price regulation for the water industry.

SA Water is continuing to participate in the Water Services Association of Australia performance monitoring process. In addition South Australia has undertaken a series of irrigation benchmarking projects across a number of regions in the state.

South Australia is continuing to devolve the responsibility of irrigation management to local bodies supported by the irrigators. The Loxton Irrigation District is one of the last major irrigation areas to be converted to self-management in July 2001. The transfer of irrigation districts in the lower Murray reclaimed irrigation area is also being discussed. The Council will review the progress of the devolution process in the 2002 assessment.

The Council is satisfied that South Australia has complied with institutional reform commitments for this assessment. It will continue to address the issue of independent prices oversight with South Australia for future assessments.

Allocation and trading

Water allocation

The *Water Resources Act 1997* provides the framework for an effective allocation system for prescribed water resources in South Australia. The framework consists of water allocation plans, local water management plans and regional catchment water management plans. Water allocation plans are the main tool for the allocation of water to the environment and other users.

Water allocation plans have now been prepared for all licensed water use in the 16 prescribed water resource areas in the state. Consequently, South Australia is ahead of a number of other jurisdictions in finalising a sizeable number of robust allocation plans. The Council notes that further research will be required before environmental needs will actually be implemented in the case of several water allocation plans.

The Council is concerned about the level of farm dam development in some areas of South Australia and the potential impact on environmental flows. South Australia has recognised this issue and is implementing measures to address the concern. The Council will monitor the farm dams issue in future assessments.

The current knowledge of environmental water needs and definitions of stressed resources are key areas that South Australia has identified the need to improve. South Australia proposed to commence the 'Stressed Resources Assessment Review' to examine these issues during 2001. The Council will look at the outcome of this review in the 2002 assessment.

Water trading

Water rights are issued to water users in prescribed areas through licences issued under the *Water Resources Act 1997*. Water trading is possible in any prescribed area where licences have been issued. There are rules for trade in each of the water allocation plans that have been completed.

South Australia has dominated interstate trade, with more than 90 per cent of water being traded to the state. Scarcity of additional allocations of water, combined with the growing demand from industries such as viticulture, has created a strong demand for water trading in South Australia.

The increased water use has the potential to contribute to an increase in salinity in South Australia. In order to address this issue, South Australia is currently implementing a specific water licensing condition for approval to use all traded water. This specific condition requires water users to complete Irrigation and Drainage Management Plan and a Salinity Prevention Obligation to manage the salinity impacts.

The Council is satisfied that South Australia has made satisfactory progress in water allocation and trading reform commitments for the 2001 assessment. The Council will continue to monitor the efficacy of the trading arrangements in future assessments.

Environment and water quality

The South Australian Government is currently reviewing the institutional arrangements to deliver integrated natural resource management. A draft

Bill has been released for public comment. The Council has reviewed the draft Bill and is satisfied with it.

South Australia is progressing the integrated catchment water management plans through the eight catchment water management boards, which cover 95 per cent of the State. South Australia is also proposing to review the operation of the catchment management planning process as a part of the review of the *Water Resources Act 1997* in 2002 to clarify and refine the existing frameworks.

There is an ongoing commitment in South Australia to a coordinated approach to water quality management including the implementation of the National Water Quality Management Strategy. However the Council is concerned about the slow pace of finalisation of the draft Environment Protection (Water Quality) Policy to implement the national strategy. The Council will continue to monitor this issue and would expect the draft Policy to be implemented before the 2002 assessment.

The Council is satisfied that South Australia has complied with environment and water quality reform commitments.

Consultation and education

South Australia continues to consult the community through significant programs and communication strategies accompanying all major water reform initiatives. For example, South Australia undertook extensive communication and education before the release of the State Water Plan 2000 in September 2000.

State Government agencies and community-based bodies, including catchment water management boards, are undertaking a range of important initiatives to raise community awareness on sustainable water resources management and use. The devolution of a range of water management responsibilities to catchment water management boards has significantly enhanced the level of community awareness of water and wastewater as a valuable resource. Each of the boards allocates a significant proportion of their budget to community education and awareness.

South Australia continues to participate in national initiatives such as Waterwatch and National Water Week. Waterwatch has been increased to 13 regional programs to reach more community groups and students in South Australia's key catchments.

As discussed earlier, the Council continues to have concerns with the level of transparency and consultation in water pricing and this will be examined further in future NCP assessments. The Council has reviewed the information provided by South Australia and believes the development of the water allocation plans and catchment water management plans have been subject to considerable consultation. The Council is satisfied that South

Australia has complied with public education and consultation reform commitments.

Tasmania

Around 97 per cent of total water use in Tasmania comes from surface water sources. Water management, use and supply in Tasmania is dominated by hydroelectricity generator 'Hydro Tasmania' with a network of 51 major dams and a storage capacity of 26 000 gigalitres. Other industry uses include instream fish farming (353 gigalitres per year), irrigated agriculture (276 gigalitres per year), industrial and commerce (60 gigalitres per year), and domestic supply (42 gigalitres per year).

Groundwater accounts for around 3 per cent of the total water use in Tasmania. For groundwater, irrigated agriculture accounts for 46 per cent of use and mining for 35 per cent. Characteristics of many of the aquifers mean that low volumes of groundwater are used for stock and domestic purposes.

Urban water and wastewater services in Tasmania are provided by 29 local governments. There are three metropolitan bulk water authorities that provide services to 18 local governments. These are Hobart Regional Water Authority, the North West Regional Water Authority and the Esk Water Authority. The remaining local governments take, treat and reticulate water themselves. The exceptions are the Tasman Council that does not provide urban water services and the Glamorgan—Spring Bay Council that operates the Prosser Water Supply Scheme under contract to the Rivers and Water Supply Commission.

Less than 10 per cent of irrigation water used in Tasmania comes from publicly-owned water infrastructure. The vast majority of irrigation water is sourced from unregulated streams or on-farm storages using privately owned infrastructure. Tasmania has three government irrigation scheme providers: the Cressy—Longford, South-East and the Winnaleah schemes. All schemes are managed by the Rivers and Water Supply Commission.

The Minister for Primary Industries, Water and the Environment is responsible for resource management and water allocations. The Minister is also one of the shareholders of the Rivers and Water Supply Commission.

Progress on reforms

Pricing and cost recovery

Urban water services

The Council is satisfied that for the most part Tasmania's urban water and wastewater services are recovering costs consistent with minimum CoAG commitments. Prices for urban services are set by local governments although the Government Prices Oversight Commission is currently completing an audit of progress by service providers against the CoAG commitments.

Tasmania has initially focused it efforts on the largest service providers and on the performance of water rather than wastewater services and is generally meeting commitments. However, there is evidence that a substantial number of the State's largest urban retail and distribution services are not operating on a commercially viable basis as defined by the CoAG guidelines. This includes Launceston water services, Hobart water and wastewater businesses, Glenorchy wastewater, and Clarence water services.

The Council understands that Launceston expects to reach the lower band of the CoAG guidelines next financial year. Tasmania has also advised that improvements in Hobart's water and wastewater businesses will be pursued before the 2002 NCP assessment.

Demonstration of further progress on full cost recovery particularly among the major service providers, will be a significant consideration for the 2002 NCP assessment. The Council will also look for Tasmania to have made progress for all service providers in the following areas: consideration of a more explicit and rigorous treatment of externalities associated with broader environmental effects of urban water use; improved asset valuation; and consideration of avenues for recovering taxes or tax-equivalent regimes in charges by service providers.

Hobart Water and North West Regional Water Authorities already have two-part tariffs, and Esk Water Authority will implement two-part tariff arrangements from July 2001. Tasmania provided a timetable for implementing two-part tariffs among urban water providers. The full implementation is expected to be largely completed by 2002. From July 2001, all free water allowances with the exception of the Derwent Valley will be removed. While bulk wastewater charges are consistent with CoAG commitments, the Council has encouraged Tasmania to consider introducing trade waste charges. The issue of trade waste charges and continued progress with implementation of two-part tariffs will be considered in the Council's 2002 NCP assessment.

Tasmania has released its 'Community Service Obligations Policy and Guidelines for Local Government in Tasmania' (Department of Premier and

Cabinet 2000) which provides a more coordinated and focused framework for endorsing new CSOs. Two of the three bulk water providers are transparently identifying CSOs, and all local governments are now required to identify and report against the CoAG guidelines. However to date very few CSOs have been identified. Tasmania expects to progress reform further as a result of the Government Prices Oversight Commission audit. Again the Council will look for significant progress in the 2002 NCP assessment.

The Council is satisfied that reforms undertaken by Tasmania to date have decreased the potential for non-transparent cross-subsidies and minimum commitments have been met. The Council will undertake a broader and a more systematic examination of cross-subsidies in the Tasmanian water sector particularly among retail and distribution services as part of future assessments.

Rural water services

Of the three government irrigation scheme providers, the Cressy—Longford Irrigation Scheme and the Winnaleah Irrigation Schemes meet the lower bound of the CoAG pricing guidelines. Consistent with CoAG commitments, a price path has been established for the South East Irrigation Scheme. However full cost recovery is expected albeit within the decade. Tasmania has advised that full cost recovery for the South East Irrigation Scheme could be expected much sooner as a result of efficiency gains. Hence the arrangements in rural water services to recover full costs still has some way to go. The Council will revisit this issue in future assessments to ensure progress toward full cost recovery for the South East Irrigation Scheme.

In terms of unregulated water resources, Tasmania has established a new raw water pricing system to reflect the costs of licences, and an administration fee for licence administration and variable management fees to cover bailiffing, compliance auditing, and water quality monitoring. This has resulted in charges that reflect the services provided.

The Council is satisfied that the consumption based pricing arrangements for both regulated and unregulated rural water resources meet the 2001 commitments. The Cressy—Longford and Winnaleah schemes use two-part pricing consisting of a fixed charge per megalitre of irrigation right, and a volumetric charge based on water used. The South East Irrigation Scheme water charges are based on the volume of water right held by the user.

The Council is satisfied that all subsidies to these schemes for the costs of repayments and interest on loans are transparently reported and do not undermine the objectives of the CoAG framework. The Council is also satisfied that commitments in regard to cross-subsidies have been met.

In the 2001 Tasmanian Budget Statement, Tasmania provided $10 million to finalise a Water Development Plan by the end of 2001. The Plan is expected to recommend the construction of new water storages across the State. As none of the projects identified in the Plan has been given the approval of the

Tasmanian Government to proceed, 2001 NCP commitments have been met. The Council will look for economic and environmental assessments consistent with CoAG's requirements for ecologically sustainable and economic viability once any approval for new dam developments has been given.

The Council is satisfied that for the 2001 NCP assessment Tasmania has complied with water pricing and cost recovery commitments.

Institutional reform

As noted earlier the Tasmanian Government has only a small role in service provision. The State Government owned Rivers and Water Supply Commission manages only three irrigation schemes and supplies some bulk water and other services. Urban and bulk water service provision is largely a local government responsibility. As noted in the second tranche assessment the urban bulk water service providers are subject to price regulation by the Government Prices Oversight Commission. Therefore, there is full separation in price regulation. For local government retail service providers the Council recognises that the size of many of these water businesses means that the best approach to meeting the institutional reform commitments is to provide for accountability and transparency in setting and reporting prices and service standards.

Tasmania is improving transparency and accountability through:

- the involvement of the Government Prices Oversight Commission, as an independent regulator, in monitoring and reporting;
- the local government key performance indicator project;
- a commitment by Tasmanian officials to take a proposal to the Premier within 12 months, on mechanisms to improve the transparency of reporting on local government performance; and
- the Government's intention to develop service charter and complaints handling mechanisms with local government water providers.

The Council will reassess progress against these initiatives in 2002.

Fur rural services, the Rivers and Water Supply Commission is currently negotiating moving its three irrigation districts to local management. This will significantly affect its business and the type of customer service standards and pricing arrangements that are applicable. While the Council has concerns about the level of separation and transparency in the current arrangements, it will reconsider this in the 2002 NCP assessment when the scope of the Rivers and Water Supply Commission will be clearer. In particular, the Council will look at the progress and outcomes of the water planning process and the scope and monitoring processes for the Rivers and Water Supply Commission's Operating Licence, to determine whether these

mechanisms are delivering sufficient transparency to minimise any potential conflicts of interest.

Tasmania has made sufficient progress for the 2001 NCP assessment in the areas of national benchmarking and commercial focus for metropolitan service providers.

With regard to devolution of irrigation scheme management, Tasmania has reviewed options for local management and considered a range of alternatives with local irrigators involved in defining and considering those alternatives. A decision has been made on local management for the Cressy—Longford Irrigation Scheme. However, the institutional arrangements for the other two schemes, Winnaleah and South East Irrigation, are still to be finalised. One of the key reasons why decisions have not been made for these schemes is that irrigators have chosen to wait until research and information is available from the Cressy—Longford process to assist them in their decision-making.

The Council has found that Tasmania is working through the processes to satisfy the commitment for a greater degree of responsibility in the management or irrigation areas including moves toward formal devolution of the Winnaleah and South East Irrigation schemes. The Council understands that all legal impediments to devolution have been removed and the decision now rests with the irrigators themselves. The Council is satisfied that Tasmania has complied with institutional reform commitments for this assessment, and will monitor developments in the 2002 NCP assessment.

Allocation

Licences, including special licences are issued under the *Water Management Act 1999* and are the main tools used to ensure water property rights in Tasmania. Licences are issued separately to the land title. The Act also formalises Tasmania's approach to providing water for the environment and consumptive uses. This is done through statutory water management plans. The Act provides for water management plans where there is significant competition for water resources (particularly between consumptive users and the needs of the environment). The purpose of these plans is to manage both ground and surface water quantity and quality within a catchment. These plans are of an indefinite duration, and are to be reviewed at least every five years. Tasmania has a timetable for the preparation of water management plans including the current status of the plans. A stakeholder steering committee will aid the Minister in the setting up of water management plans.

In Tasmania, water provisions for the environment are set as environmental water requirements for all water systems in one of two ways: in the form of a 'notional or interim allocation limit' in under-utilised catchments together with triggers at which robust environmental flow assessments will occur, or the formal assignment of environment water provisions in areas that are highly or fully developed or stressed to be set in water management plans.

Tasmania has identified 16 stressed surface water systems that required action in June 2001. Tasmania has determined the environmental water requirements for all stressed systems and is now well underway to meet the timetable for completion of water management plans.

Trading

Trading in Tasmania will occur where the water resource system is at a highly or fully allocated level. Water trading will allow new users to obtain water or existing users to raise their supply without impacting on the sustainability of the water system.

Water trading in Tasmania has been established through the *Water Management Act 1999* (for water resources outside formal irrigation districts) and the *Irrigation Clauses Act 1973* (within formal irrigation districts), which provides for widespread trading including in unregulated areas. Outside formal irrigation districts, the Minister for Primary Industries, Water and Environment regulates all transfers. Within formal irrigation districts, the water entity responsible for the administration of the district regulates all transfers.

Water trading in Tasmania is at an early stage of development. It has been occurring for the last two years within the three regulated irrigation districts and to a small extent in unregulated areas. The development of water management plans as competition for water resources emerges is expected to provide for the further expansion of trading arrangements, including trading rules for the temporary and permanent transfer of water allocations within areas.

The Council is satisfied that Tasmania has made satisfactory progress in water allocation reform commitments and has met water trading commitments for the 2001 assessment. The Council will look for further progress in trading arrangements in future assessments particularly with the introduction of water management plans.

Environment and water quality

Tasmania is implementing integrated resource management through a Resource Management Planning System. There are 28 catchment management and regional natural resource management committees operating throughout the State. These committees are developing catchment management plans and regional natural resource management strategies. The State Government is coordinating the program through partnership agreements with local government. The Government is to develop a State Natural Resource Management Strategy as an overarching framework to coordinate all natural resource management activities by end 2001.

Specific actions to address broader catchment management issues include the development of rivercare plans and weed management plans. The Council will monitor further progress in this area including developments concerning the State Natural Resource Management Strategy in the 2002 NCP assessment.

Tasmania has continued to implement a further four National Water Quality Management Strategy modules through a State policy on water quality management. As part of this policy, protected environmental values for surface water quality are almost complete. These will be used to set water quality objectives across catchments in accordance with the national strategy and a state strategy to be developed. Other initiatives in this area include the development of landcare guidelines and investment in effluent and wastewater re-use.

The Council is satisfied that Tasmania has complied with environment and water quality reform commitments.

Consultation and education

The Tasmanian Government has undertaken extensive public consultation on such matters as the Water Management Act, the new licence fee structure, the setting of environmental water requirements, and the development of water management plans. For urban water services, the Tasmanian Government uses the strategic and operational plan requirements of the Local Government Act to require local councils to undertake public consultation processes in relation to water delivery issues including pricing. For rural supply areas, the Rivers and Water Supply Commission undertakes consultation on water pricing through meetings with customers including irrigators and the water management committees.

In regard to developments in public education, the Department of Primary Industries, Water and the Environment is developing a community access water information website, and continues to publicly release state of rivers reports on water quality and environmental monitoring.

The Council is satisfied that Tasmania has complied with public education and consultation reform commitments.

ACT

The Cotter and Queanbeyan rivers, which are tributaries of the Murrumbidgee River, are the main sources of water supply in the ACT. Metropolitan and urban use dominates the ACT water sector. The major users are the household and the business sectors located in Canberra and Queanbeyan. Groundwater use in the ACT is relatively small, mainly for golf

courses and on farms for domestic, stock and irrigation purposes. The ACT does not have any overallocated or stressed water systems. There is no publicly funded rural water supply in the ACT.

ACTEW Corporation, a Territory-owned corporation, is the service provider that supplies metropolitan water and sewerage services. ACTEW and AGL recently formed a joint venture (ActewAGL) with the aim of improving the performance of the Territory's water, wastewater and energy services. Under the new partnership arrangements, ACTEW retains the ownership of water and wastewater assets. Service delivery is contracted to the partnership entity ActewAGL.

The water resource service manager in the ACT is Environment ACT within the ACT Department of Urban Services. The Independent Pricing and Regulatory Commission (ICRC) (formerly the IPARC) set standards for economic performance. The Environment Management Authority of Environment ACT and the Department of Urban Services set the environmental and other standards respectively. The ICRC and the Environment ACT undertake price and environmental regulation respectively. Under the *Utilities ACT 2000*, the Essential Services Consumer Council (ESCC) and the Safety and Technical Regulator can provide other required regulatory functions.

Progress on reforms

Pricing and cost recovery

In its second tranche NCP assessment the Council concluded that the ACT had substantially implemented urban water pricing and cost recovery reforms. These included: introducing two-part tariffs; removing cross-subsidies from pricing structures; implementing well defined and targeted community service obligation (CSO) regimes; achieving a positive rate of return on assets in urban water supply; and fulfilling the requirement to assess the economic viability and ecological sustainability of new investments.

The ACT has further improved cost recovery by adopting a water 'abstraction charge' on all licensed use, including water harvested by ACTEW. The Independent Competition and Regulatory Commission recommended in February 2000 recommended that the 10c per kL abstraction charge be fully passed through to the consumers. The abstraction charge reflects catchment management costs, environmental costs of water supply and use, and a scarcity value of water.

ACTEW's has a two-part tariff with a stepped volumetric charge. ACTEW has been reducing the level of consumption that triggers a higher per unit charge.

The Council supports this reform as long as it does not lead to monopoly returns.

ACTEW water and water services have continued to recover costs above the lower bound of the CoAG guidelines.

The Council is satisfied for the 2001 NCP assessment that the ACT has complied with urban water pricing and full cost recovery commitments.

Institutional reform

The Council concluded in its second tranche NCP assessment that the ACT had met the institutional reform requirements to a large extent, particularly given its intention to implement the reforms to regulation proposed in the Statement of Regulatory Intent for Utilities in the ACT. The ACT has passed the Utilities Act. This gives effect to the framework set out in that Statement of Intent. The new regulatory framework enhances the ACT's institutional reforms, for example, it clearly defines the responsibilities of industry and technical codes that will be binding on all utilities, including water utilities. The ICRC, ESCC and the Safety and Technical Regulator will administer the Act's provisions. Environment ACT will continue to retain the responsibility for environmental management and the Chief Health Officer will have responsibility for ensuring public health requirements, including protecting drinking water quality. The ACT is still in the process of implementing these reforms. While considerable progress has been made since the second tranche NCP assessment the Council has identified several issues that it will monitor in the 2002 assessment.

The ACT is still in the process of implementing these reforms. While considerable progress has been made since the second tranche NCP assessment, the Council has identified several issues that it will monitor in the 2002 NCP assessment.

The Utilities Act and in particular, the draft operating licence requires ACTEW to participate in the WSAA performance monitoring and benchmarking arrangements. Under the ACTEW and AGL partnership arrangements, ACTEW will manage the water and wastewater assets according to agreed standards and performance indicators. The new partnership arrangements are expected to strengthen ACTEW's commercial focus. The Council is satisfied for the 2001 NCP assessment that the ACT has complied with institutional reform commitments.

Allocation and trading

In its second tranche NCP assessment the Council concluded that the *Water Resources Act 1998* provided for a comprehensive system of water entitlements and that the ACT had procedures and policies that will allow allocations to be developed for the environment. The Council noted the need

to monitor the Territory's commitment to complete the water allocation process and its development of trading rules and interstate trade before the 2001 NCP assessment.

The Water Resources Act was supplemented by the environmental flow guidelines in December 1999 and the Water Resource Management Plan in February 2000. Water allocations are managed through the plan, which sets out estimates of total water resources, environmental flow requirements and water available for consumption. Under the plan, environmental flows are allocated for 10 years for all 32 subcatchments in the ACT. The ACT has advised that there will be a review of these allocations in 2003.

While groundwater use is relatively minor in the ACT, the Government continues to require groundwater bores to be metered so by 2002 it will have a better basis to allocate water for groundwater use. The Council has reviewed water allocation arrangements in the ACT and remains of the view that almost all water use in the Territory is covered by a comprehensive licensing and allocation system.

There is no demand for intra-territory trading in water, so no trading rules have been developed. However, as demand for water expands, it is important that trading rules are developed, clearly understood and implemented. Interstate trade, particularly between the ACT and New South Wales, is likely to occur in the future. It has been constrained by two factors: first, the lack of trading rules for the Murrumbidgee Valley; and second, the absence of the ACT component of the Murray Darling Basin Commission cap on water extraction. The Commission needs to develop rules for a wider water trading market that could enable the ACT to take part in interstate trade.

The ACT's conservative approach to environmental allocation implies that the absence of a cap is not putting the environmental water requirements at risk. However, an ACT cap is being negotiated. The Council notes that the current arrangement whereby the ACT cap remains unspecified is not in the long-term interest of the Territory or of the integrity of the general operation of the Murray Darling Basin Commission cap.

In the 2002 NCP assessment, the Council will review the ACT's progress in negotiating of the cap and resolving other impediments to interstate trade. The Council is satisfied for the 2001 NCP assessment that the ACT has complied with water allocation and trading reform commitments.

Environment and water quality

In its second tranche NCP assessment the Council noted the need to monitor the development of integrated resource management initiatives in the ACT. Developments since the second tranche NCP assessment include the release of the Territory's integrated catchment management framework in March 2000. The framework supports the development of subcatchment

management plans by community groups working with the government. Two such subcatchment management plans were released in 2000.

In relation to the implementation of the National Water Quality Management Strategy guidelines, the Council's second tranche NCP assessment noted the need to monitor the ACT's progress in developing necessary arrangements. With regard to drinking-water quality the ACT developed the Drinking Water Quality Code of Practice in 2000 under the *Public Health Act 1997*. It is a performance-based code that references the 1996 Australian Drinking Water guidelines. The code clearly specifies the roles of the water service provider, ACTEW, and the ACT Chief Health Officer in ensuring the quality of drinking-water.

In 2000 the ACT also implemented a polluter-pays charging system for environmental authorisation to maintain water quality. The Council is satisfied that for the 2001 NCP assessment, that the ACT has complied with environment and water quality reform commitments.

Consultation and education

The ACT Government has undertaken widespread public consultation and education programs in relation to its water industry reforms in developing the Utilities Act. For example the ACT Government (particularly through the Department of Treasury) has undertaken an extensive two-year consultation process. This has involved public workshops and community forums. The Department of Urban Services has an ongoing role in promoting community involvement and partnership in the management of natural resources, including water, through Waterwatch, Landcare, school groups and catchment management initiatives.

In its second tranche NCP assessment, the Council noted that service providers are inappropriate public education suppliers on matters such as water conservation. The ACT has indicated that it agrees that responsibility for appropriate public education lies with the relevant Government agency, not with the service provider. The Council is satisfied for the 2001 NCP assessment that the ACT has complied with public education and consultation reform commitments.

Northern Territory

The Power and Water Authority, a Government owned and vertically integrated public utility is the key service provider in the Territory. It supplies water and sewerage services to the Northern Territory's four major urban areas (Darwin, Katherine, Tennant Creek and Alice Springs). The

Power and Water Authority also supplies water and wastewater services to a number of rural and remote communities in the Territory.

Around 85 per cent of Darwin's water comes from the Darwin River Dam, with the remainder supplied from the McMinns borefield. The Manton Dam provides a back-up of supply. Katherine receives its water from a mix of river water and groundwater, while Alice Springs and Tennant Creek rely on groundwater. The Northern Territory does not have any overallocated or stressed water systems.

The water resource manager in the Territory is the Department of Lands, Planning and Environment. It is the lead agency for the delivery of regional natural resource management strategies and integrated catchment management throughout the Territory. An Inter Departmental Land Resource and Environment Subcommittee provides broader coordination of regional natural resource management planning. The subcommittee consists of the chief executive officers from the Department of Lands Planning and Environment, Parks and Wildlife Commission, the Department of Primary Industry and Fisheries, and the Department of Mines and Energy. Under the *Water Supply and Sewerage Services Act 2000,* the Utilities Commission licenses all service providers, monitors service standards and provides advice to the regulatory Minister (currently the Treasurer) on pricing matters, service standards and CSOs.

Progress on reforms

Pricing and cost recovery

Overall, the Power and Water Authority's water and wastewater businesses earned sufficient revenue to achieve a positive rate of return in 2000. The Council notes that the recent measures undertaken by the Power and Water Authority to improve cost recovery, include: improved asset valuation and management; better internal allocation of costs to relevant business units within the Power and Water Authority and the application of internal charges accordingly; and the development of a financial model for calculating future price paths. The Power and Water Authority also made arrangements to ring-fence its vertically integrated business activities.

The Power and Water Authority applies a two-part tariff for water services and a fixed charge to wastewater services. The Northern Territory Government approved a 5 per cent increase in water and sewerage charges for 2000-01. The 5 per cent price rise applied to all fixed charges and volumetric charges of non-government customers. The Northern Territory indicated that it intends to phase out the cross-subsidies from government water customers to domestic and commercial customers in future price pathways. From July 2001, internal water charges within the Power and Water Authority will incorporate operational costs, allocated overheads,

depreciation charges and a return on assets. The Power and Water Authority also indicated that it plans to introduce trade waste management and charging arrangements from 1 July 2001. There is no explicit provision for externalities (for example, to take account of any environmental spill-over effects arising from water supply and use) in the setting of water prices. The Council will look for progress on this issue in future NCP assessments.

The Council has reviewed the various pricing and cost-recovery reforms undertaken by the Territory Government, and expects these reforms to further improve full cost recovery and efficient pricing. The Council is satisfied for the 2001 NCP assessment that the Northern Territory has complied with urban water pricing and full cost-recovery commitments.

Institutional reform

Following earlier assessments, the Northern Territory made substantial progress in further reforming the institutional role separation in the water sector. For example, the enactment in January 2001 of the Water Supply and Sewerage Services Act gave effect to improved enforcement of economic regulation and standard setting. The Act introduced a licensing system for all water and wastewater providers, with the Utilities Commission to issue licences. The Act also transferred price-setting powers and the responsibility for determining service and supply conditions to the regulatory Minister.

No specific water quality is set for drinking water in the Territory. Further, the Power and Water Authority's compliance with Australian Drinking Water Guidelines has not been independently audited. The Northern Territory indicated that it envisages addressing these issues through its new licensing system for the Power and Water Authority and the associated monitoring and reporting arrangements. In the 2002 NCP assessment, the Council will review the Territory's approach to enforcing drinking water quality standards.

The Power and Water Authority is continuing to participate in the WSAA performance monitoring and benchmarking arrangements. Recent structural reforms — including management and accounting separation into product lines and the allocation of costs to relevant business units — are expected to improve the Power and Water Authority's commercial focus. The Council is satisfied for the 2001 NCP assessment that the Northern Territory has complied with institutional reform commitments.

Allocation and trading

Under the *Water Amendment Act 2000,* water allocation planning occurs via an integrated regional resource management process covering both ground water and surface water. Water allocation plans may be declared for water control districts in the Territory. These plans are set for 10 years and water advisory committees are expected to oversee their implementation and review

every five years. Plans include contingent allocations for the environment — the aim being to provide a conservative sustainable balance between environmental needs and other water uses. At the time of this assessment, water allocation plans were being developed for four of the six water control districts.

The Territory has a comprehensive system of water entitlements supported by a separation of water property rights from land title. Property rights are well defined and specified in surface water and groundwater extraction licences issued under the *Water Act 1992*. Licence-holders are required to report regularly on water use, to help minimise the scope for the allocation of dormant water rights. The Council notes, with the establishment of water control districts and the proposed formal declaration of water allocation plans for priority regions of water use, that the Northern Territory continued to demonstrate that no further water allocations will be made without considering the availability and quality of water and the environmental needs.

The Water Amendment Act allows for trading in water extraction licences. Given the geographically dispersed nature of developed water resources in the Northern Territory, the Act limits trade in water entitlements to individual water control districts. There has been no trade in licensed water entitlements to date. The Council is satisfied for the 2001 NCP assessment that the Northern Territory has complied with water allocation and trading reform commitments.

Environment and water quality

The Council in its second tranche NCP assessment indicated that in the 2001 NCP assessment it would look for information on how generic approaches to developing a water resource management strategy had been implemented and how best practice is being achieved.

Declaration of water resource beneficial uses (under the Water Act*)* provides a framework for integrated catchment management in the Territory. The range of beneficial uses which may be declared for water resources includes agricultural, aquaculture, environmental, cultural, public water supply, manufacturing industry and riparian activities. The water advisory committees are responsible for developing and implementing the relevant catchment management plans. While 16 catchments, 5 regional groundwater systems and 6 coastal areas are declared for beneficial use, only three catchment management plans have been prepared to date. The Northern Territory Government indicated that the development of integrated catchment management plans will be undertaken on a needs basis.

The Government used statutory declaration of beneficial uses for water quality management (under the Water Act) to implement the National Water Quality Management Strategy guidelines. To date, the Territory has completed such declarations for surface water quality management in 16

catchments, five regional groundwater systems, and six coastal areas. The declarations of beneficial uses for water quality management also led to the issue of waste discharge licences. Seventeen such licences are in place, predominantly covering mines and sewage treatment plants in the Territory.

The Northern Territory's 2001 NCP annual report stated that the Power and Water Authority is moving to introduce the Drinking Water Quality Management Framework into major and regional water supplies in the Territory. The Council is satisfied that the Northern Territory has complied with environment and water quality reform commitments for the 2001 NCP assessment.

Consultation and education

The Northern Territory Government has engaged in a number of community consultation and public education programs regarding the implementation of water reforms. Public consultation was undertaken, for example, to secure public and customer input into the development of the Water Supply and Sewerage Services Act.

Considerable public consultation was also undertaken on water allocation and trading. Recent examples include the intensive consultation efforts in the development of a water allocation plan for the Ti-Tree Regional Water Strategy.

In the second tranche NCP assessment the Council noted that care needs to be taken to avoid any conflict of interest where service providers such as the Power and Water Authority are also responsible for public education programs addressing water conservation. The Northern Territory indicated that the Natural Resources Division of the Department of Lands, Planning and Environment is developing public education programs for water conservation, including initiatives such as WaterWise to educate school children about water issues.

The Council is satisfied that the Northern Territory has complied with public education and consultation reform commitments for the 2001 NCP assessment.

Murray–Darling Basin Commission

The Murray–Darling Basin is Australia's largest and most developed river system. It covers more than one million square kilometres of land from southern Queensland through to the River Murray mouth in South Australia. It incorporates 75 per cent of Australia's irrigation and underpins more than 40 per cent of Australia's gross value of agricultural production.

The Murray–Darling Basin Commission manages the River Murray System and advises the Murray–Darling Basin Ministerial Council on matters related to the use of water, land and other environmental resources of the Basin. It provides bulk water services to New South Wales, Victoria and South Australia through its business-oriented internal unit, River Murray Water. The Ministerial Council consists of Ministers for land, water and the environment of each of the contracting governments: the Commonwealth, New South Wales, Victoria, Queensland, South Australia and the ACT.

Progress on reforms

Pricing and cost recovery

The Murray–Darling Basin Commission has completed an internal review of its revised cost-sharing arrangements across New South Wales, Victoria and South Australia. The revised cost-sharing arrangements were first adopted in 1998-99 and will continue through 2000-01. They are expected to reflect the level of services provided to these States and thus reduce the cross-subsidies in the pricing structure. The internal review of the revised cost sharing arrangements is due for an independent audit, which is expected to be completed before the end of 2001. In the 2002 NCP assessment, the Council will look at the recommendations of the audit and the response of the Murray–Darling Basin Commission and the Murray–Darling Basin Ministerial Council to these recommendations.

River Murray Water recovers the operational, maintenance and administration costs of providing water to New South Wales, Victoria and South Australia under the Murray–Darling Basin Agreement. The Council considers that the cost of asset refurbishment and replacement, to be consistent with agreed CoAG pricing guidelines, would need to be included within the costs of service provision of River Murray Water. River Murray Water also recovers 75 per cent of the costs of refurbishment and replacement from the three States. The Commonwealth pays the remaining 25 per cent as part of its contribution. The treatment of asset consumption is less than ideal and should be more explicit and transparent in River Murray Water costs.

The Council is satisfied that the Murray–Darling Basin Commission has complied with minimum water pricing and cost-recovery commitments for the 2001 NCP assessment. The Council will further assess cost recovery, particularly the treatment of asset consumption, in light of the proposed independent audit of the internal review of cost-sharing arrangements.

Institutional reform

The Council concluded in its second tranche NCP assessment that the Murray–Darling Basin Commission had met the institutional reform

commitments, with the creation of River Murray Water as a ring-fenced business unit within the Commission. However, the Council noted the strong need for independent prices oversight. Progress on this issue has been slow. Although, the independent pricing audit will assist in the Murray–Darling Basin Commission meeting these commitments.

In future assessments the Council will look at the outcomes of the independent pricing audit and for pricing audits to occur periodically to ensure the transparency and rigour necessary for efficient pricing-setting arrangements. The Council will also continue to monitor the appropriateness of the current ring-fenced arrangements in the light of ongoing changes in the structure and regulation of the water industry in general. The Council is satisfied that the Murray–Darling Basin Commission has complied with institutional reform commitments for the 2001 NCP assessment.

Allocation

The cap on diversions from the basin continued to make an important contribution to ensuring environmental flows. The Ministerial Council formally adopted the cap on diversions in August 2000 as part of the Murray–Darling Basin Agreement. The cap is now legally enforceable. Under the Agreement, States' water allocations are independently audited each year and any breaches of the cap are declared by the Commission and referred to the Ministerial Council.

New South Wales, Victoria and South Australia have continued their commitment to implementing the cap. Queensland is expected to adopt the cap by June 2001. The ACT cap is being negotiated.

The Murray–Darling Basin Commission recently completed the first five-yearly review of the operation of the cap. According to the review, the current cap on diversions does not reflect a sustainable level of diversions and may not guarantee the river ecosystem health. The Council notes a strong case for the cap to be tightened over time, based on the findings of the review. The continuing analysis and scientific studies on the cap, environmental flows and the river ecosystem health will shed more light on these issues.

According to the National Land and Water Audit 2000, all rivers in the basin (except the Ovens River in Victoria) are stressed. The Murray–Darling Basin Commission advised that it is committed to providing environmental flows as opportunities arise and on the basis of the best scientific advice on the potential impacts. It commenced a project — the environmental flows and water quality objectives for the river Murray — aimed at establishing water quality and environmental flow objectives and a flow regime to achieve them. The Council will continue to monitor the progress of this and similar projects in future assessments.

In its second tranche NCP assessment the Council noted the work of the Murray–Darling Basin Commission and the Murray–Darling Basin

Ministerial Council in progressing interstate trade through the pilot project. The Council was satisfied that the second tranche reform commitments had been met.

Trading

After two years of operation of the pilot water-trading project, the project recently underwent a review. The review focused on two major areas: the administration of the project and the economic, environmental and social impacts of trading. It also highlighted the need for improvements in the administrative arrangements of the pilot project. Improvements to licence registration arrangements and record-keeping procedures and the separation of volumetric trading from access or environmental consideration are examples of where efficiency gains could be found, according to the review. Further, the buyers and sellers in the market poorly understand exchange rates, so there is a need for improved communication.

From an economic perspective, the review confirms that interstate trading is increasing the value of water use in the basin. From a social perspective, interstate trading during the two-year trial period had no measurable adverse social implication for the districts that sold water interstate. From an environmental perspective the review findings are qualified: the environmental flow impact of trading was probably positive but very small. Progress is required in three key areas in relation to water allocation and trading — namely, ensuring the consistency of property rights, managing the environmental impact of trading, and improving the administrative aspects of the pilot project.

Different types of water property rights exist within the basin. In some instances, inconsistent property rights could impede interstate trade. A consistent approach to the key components of property rights, for example, security of tenure and security of water — is needed. Also needed is an exploration of opportunities to better define and specify the water property rights across the basin and to improve the exchange rate arrangements to reflect fully the extent of overallocation, security of tenure and the salinity impact. The Council notes the effort of the Murray–Darling Basin Commission in attempting to resolve some of these issues. In the 2002 NCP assessment, the Council will review the progress in addressing concerns about property rights and where relevant, check whether all jurisdictions have co-operated to resolve difficulties.

The broader environmental impacts of trading will depend on the degree to which individual States set and enforce irrigation and drainage plans. The Murray–Darling Basin Commission and the member States need to consider further consider the best means by which to address environmental impacts of interstate trade. The Council will reconsider the issue of the environmental impacts of water trade in future assessments.

Concerns have been raised regarding the administration of water trade, particularly the time taken to effect trade. This is another area where administrative improvements are required to facilitate efficient and timely functioning of the pilot trading project. Overall, the Council is satisfied that the Commission has complied with water allocation and trading reform commitments for the 2001 NCP assessment.

Environment and water quality

The Murray–Darling Basin Commission released an *Integrated Catchment Management Policy Statement* (June 2001), that sets a 10-year agenda and outlines a strategy to set targets for catchment health and build the capacity of the community and governments to achieve those targets. The targets will cover water quality (salinity and nutrients), water sharing (consumptive and environmental flows), riverine system health and terrestrial biodiversity. The Council applauds the vision encapsulated in the policy statement.

The Commission continues to implement the National Water Quality Management Strategy standards and procedures associated with nutrient pollution in the Basin. It is also moving from a facilitation role to setting salinity targets for every end-of-valley in the Basin. The Council is satisfied that the Murray–Darling Basin Commission has complied with environment and water quality reform commitments for the 2001 NCP assessment.

Consultation and education

The Murray–Darling Basin Commission undertook extensive consultation and education in relation to various aspects of natural resource management issues, including water reforms. More recent areas of wider consultation and communication relate to the development of the Integrated Catchment Management Strategy and the Basin Salinity Management Strategy. The ongoing consultation involves all relevant stakeholders.

In all major initiatives the Commission has adopted a generic communication strategy involving stakeholder/government partnerships and ongoing stakeholder participation. As part of the pilot program on interstate water trading, the Commission has promoted trading and its benefits through publications and media coverage. The Council is satisfied that the Murray–Darling Basin Commission has complied with public education and consultation reform commitments for the 2001 NCP assessment.

9 Road transport

Transport infrastructure and services are important factors in determining the efficiency and growth of the economy. Not only does transport meet the needs of industry, but it also helps fulfil the social needs of both urban and rural communities. A transport sector that delivers an economically efficient service can give Australia a competitive advantage over producers in other countries.

Road transport is increasingly providing these services. The annual road freight task grew from 90 billion tonne-kilometres (a tonne-kilometre equals one tonne moved one kilometre) in 1991 to approximately 130 billion tonne-kilometres in 1999. Road transport's share of the domestic freight task (as measured in tonne-kilometres) rose from 33 per cent in 1990-91 to 36 per cent in 1998-99. Further, on a tonne-kilometre per person basis, the road transport sector in Australia is much larger than that in most developed countries. The road freight task in Australia measured around 6800 tonne-kilometres per person in 1999, compared with 7200 for the United States, 4200 for Germany, 3000 for France and 2700 for the United Kingdom.

National road transport reform

Under the federal system of government in Australia, each State and Territory is responsible for road transport regulation in its jurisdiction. This has led to diverse regulations for driver and vehicle operations and standards, weights and dimensions. Lack of a consistent national approach to road transport regulation can cause confusion and compromise safety; it allows users to take advantage of any inconsistencies, differences or lack of communication between systems. It also increases compliance costs for interstate road transport operators.

Early attempts to overcome interstate disparities in road transport regulation were largely unsuccessful. However, in the early 1990s all governments agreed to measures to address the differences in regulation. Governments agreed on the Heavy Vehicles Agreement and the Light Vehicles Agreement in 1991 and 1992 respectively. The Heavy Vehicles Agreement provides for the development of uniform or consistent national regulatory arrangements for vehicles over 4.5 tonnes gross vehicle mass. The Light Vehicles Agreement extended the national regulatory approach to cover light vehicles.

The National Road Transport Commission (NRTC) was established in 1991 to develop the road transport reform programs. The Ministerial Council for Road

Transport (which was later absorbed into the Australian Transport Council) was established at the same time to oversee implementation of the reforms.

The NRTC's national reform package comprises six modules:

- registration charges for heavy vehicles;
- transport of dangerous goods;
- vehicle operations;
- heavy vehicle registration;
- driver licensing; and
- compliance and enforcement.

The various elements of these modules make up the 31 initiatives identified as the national road transport reforms.

Role of the NCP

The NRTC road transport reform program pre-dates the NCP. The 1995 Agreement to Implement the National Competition Policy and Related Reforms included road transport reform across all stages of the NCP. For the first and second NCP tranches, the Agreement stated that NCP payments will, among other things, depend on 'the effective observance of road transport reforms'. The third NCP tranche requires jurisdictions to have 'fully implemented and continue to fully observe, all [Council of Australian Government (CoAG)] agreements with respect to … road transport'. (CoAG 1995)

The NCP incorporates road transport reform without details of the specific reform obligations. The first NCP assessment of reform progress in 1997 was hampered by the lack of detail. Accordingly, the National Competition Council sought the agreement of the Commonwealth, the States and the Territories on a specific NCP program for the delivery of the road transport reforms. Thus, for the second NCP assessment, the Australian Transport Council considered and agreed on a detailed framework for the assessment of road reforms. CoAG subsequently endorsed this framework — comprising 19 reforms, criteria for assessing implementation and target dates — for the second tranche NCP assessment. Similarly, CoAG agreed on a framework of six specific reforms (including implementation criteria, the date each reform became available for implementation and target dates) for the 2001 NCP assessment.

Some reforms from the original road transport package have not yet been listed for NCP assessment. These include the speeding heavy vehicle policy and the higher mass limits reforms. This does not mean that some

jurisdictions have not implemented these reforms, in part or in whole, but rather that the Australian Transport Council did not determine that these matters should be assessed in 2001.

The Council's approach

The Council considered jurisdictions' progress in observing the national road transport reform agenda in the first and second tranche NCP assessments. The Council tested each jurisdiction's observance by confirming that the jurisdiction had enacted legislation (or achieved significant progress towards this end) by the set dates and that it had established supporting regulations and administrative arrangements (or made significant progress towards this end) by the set dates. The Council took into account the progress reports from governments and any submissions or evidence received from interested parties.

For the 2001 NCP assessment, the Council has assessed jurisdictions' full implementation and continued observance of all CoAG road transport reforms. The criteria for assessing full implementation needed to go beyond those used for the first two assessments, because it was necessary to check that the reforms are achieving the intended outcomes, such as removing impediments or cost differentials for road users across interstate boundaries. Consistent compliance and enforcement practices are also an important part of full implementation so:

- enforcement agencies' efforts are not thwarted by drivers being able to shelter behind differences between jurisdictions; and

- road users operating legally in some jurisdictions do not find themselves noncompliant when operating in other jurisdictions due to different interpretations by enforcement officers.

The Council therefore considered implementation of the first and second tranche reforms as well as the reforms endorsed by CoAG for the 2001 assessment.

In undertaking the assessment, the Council noted comments in the jurisdictions' NCP annual reports, circulated an information paper and consulted with governments, road users, peak bodies and vehicle manufacturers about the implementation of reforms and reform outcomes. The Council relied on the experience of these parties to identify any interstate inconsistencies or competitive disadvantages that may be arising from inappropriate implementation of the national road transport reform program.

The Council considered timeliness (as measured against the assessment date for full implementation) to be important. However, the Council did not necessarily assess jurisdictions as failing to comply if a confirmed implementation program extended beyond the target date. In particular, where reforms were not fully implemented by 30 June 2001, the Council did

not assess a jurisdiction as failing to meet its reform obligations if progress was well advanced and full implementation was likely by December 2001.

The Council's assessment of full implementation was made with regard to the following benchmarks:

- whether legislation (including Acts, regulations and gazetted codes) has accounted for all aspects of the reform (without undertaking a clause-by-clause comparison of actual legislation with every aspect of the model national reform legislation);

- whether development of administrative rules and systems has been completed;

- the collection of data and exchange of data among jurisdictions, as necessary for systems to operate effectively;

- the achievement of the stated benefits, objectives and intent of reforms, such as the achievement of productivity gains, costs savings and uniformity;

- the elimination of, or reduction in, complaints about inconsistencies and lack of uniformity between jurisdictions which may have indicated the need for reform;

- the consistency of enforcement interpretations and practices across jurisdictions, based on uniform criteria for testing a road user's compliance and issuing sanctions; and

- the effectiveness of the reform in removing impediments to trade and competition throughout all jurisdictions.

The Council faced difficulties in interpreting information submitted by road users and the jurisdictions. Road users frequently indicated that they believe different jurisdictions have implemented reforms differently and therefore that the reforms are not nationally consistent. Many of these alleged inconsistencies could be explained by one of the following.

- Certain variations fall within the flexibility sometimes allowed in the national reform model.

- A jurisdiction had implemented the reform ahead of the target date or implemented an extra level of reform, resulting in differences among jurisdictions.

- A jurisdiction had implemented the next stage of development of the particular reform or an update of the standard involved. It is inevitable that there will be timing differences among jurisdictions in implementing reforms.

Because the Australian Transport Council did not agree to the Council having access to the NRTC, the Council's analysis necessarily relied on the

information provided by the parties consulted. As a result, the Council does not rule out the possibility that a more exhaustive analysis may reveal some aspects of the reforms that jurisdictions have set aside.

For the Council, the overriding consideration in this NCP assessment is the importance of each jurisdiction achieving a common regulatory platform consistent with the Australian Transport Council assessment frameworks. Accordingly, the Council considers that for each jurisdiction to be assessed as fully complying, it needs to have made its agreed contribution to achieving the common platform. Except where there are formal exemptions or accepted alternatives, the Council considers that every reform element and success criterion identified in the assessment frameworks must have been implemented for the reform to be assessed as complete.

Remaining matters from first and second tranche assessments

In the first tranche NCP assessment, the Council considered that all jurisdictions had met their obligations. For the second tranche, the Ministerial Council for Road Transport identified 19 reforms for implementation. While overall progress was being made in meeting the assessment framework, some jurisdictions had not completed all reforms by June 1999. However, most were well advanced in their reforms, so the Council conducted supplementary assessments on the basis that the reforms were imminent. At the supplementary assessment for road transport reform in June 2000, the Council noted several outstanding matters. Each matter has since been progressed to a greater or lesser extent.

Commonwealth

The Commonwealth will not complete its second tranche road transport reform program until it passes amendments to the *Interstate Road Transport Act 1985* consistent with its undertakings on reform of the Federal Interstate Registration Scheme. The Commonwealth had expected the Parliament to consider these amendments during the spring sitting in August 2000. However, it advised that, because of the emergence of other issues in the road reform process that it has needed to address, the legislation has been delayed again. The Commonwealth noted that the legislation is administratively unwieldy and that its heads of power are limited. The Commonwealth is therefore reviewing the Act so it can undertake reforms more readily and improve interaction with State and Territory law. For the sake of administrative efficiency, the Commonwealth has decided to implement the Federal Interstate Registration Scheme reforms at the same time as any broader amendments to the Act identified in the review. The Commonwealth expects the drafting instructions to be prepared and legislation to be introduced early in 2002. Until this occurs, the Commonwealth legislation is inconsistent with some minor aspects of the Heavy Vehicle Registration

Scheme reform, which may cause minor administrative impediments to nationwide uniformity for some heavy vehicle operators.

Queensland

During the second tranche NCP assessment, the Queensland Treasurer advised the Council that Queensland would have its remaining second tranche obligation — fee-free interstate licence conversions — in place by 1 July 2000, once the State had made the necessary amendments and administrative changes to its Transport Registration and Integrated Licensing System. (Queensland had already removed the requirement that people converting interstate licences undergo a further driving test.) Queensland has since confirmed that fee-free interstate licence conversion is available.

Western Australia

Bills to amend the *Road Traffic Act 1974* were delayed at the time of the second tranche NCP assessment, although reforms were being implemented by administrative arrangements until passed by the Parliament. Western Australia has since reported passing some of these Bills, notably the amendments introducing the national drivers licence classifications and photographic licences. However, the February 2001 election in Western Australia meant that other Bills associated with the National Heavy Vehicle Registration Scheme, the remainder of the National Drivers Licence Scheme, reforms of the Vehicle Operations and Heavy Vehicle Standards, and the One Driver One Licence reform need to be re-introduced in 2001. In the meantime, reforms of Vehicle Operations and Heavy Vehicle Standards are being implemented administratively.

Northern Territory

At the time of the second tranche NCP assessment, the Northern Territory still had to complete one reform — namely, the introduction of a general demerits points system for licensed drivers. The Northern Territory had decided to implement a partial demerits points scheme for drivers of large commercial vehicles, but not until February 2002. The Council considered that this did not comply with the Territory's second tranche road transport reform obligations. As a result the Treasurer suspended 5 per cent of the Northern Territory's NCP payments pending the Territory gaining a CoAG/Transport Ministers forum exemption for this reform or implementing a full demerits points scheme.

On 25 May 2001 the Australian Transport Council granted the Northern Territory an exemption from applying a full demerits points scheme. The exemption means there is no breach of the Territory's second tranche

obligations. The Council has recommended to the Federal Treasurer that he reimburse the suspended NCP payments to the Northern Territory.

2001 assessment

Full implementation of first and second tranche commitments

Full implementation of first tranche commitments

All jurisdictions implemented uniform heavy vehicle registration charges (considered in the first tranche NCP assessment) and the updated charges in 2000 as intended.

Full implementation of second tranche commitments

All but one of the 19 second tranche reforms (see box 9.1) had been available[1] longer than one year (in some cases for several years) before the second tranche reporting date of 30 June 1999. Only reform 18 had a later target implementation date (August 1999). Accordingly, the Council considered it reasonable to expect governments to have fully implemented all 19 reforms by 30 June 2001, including fully operative administrative and enforcement systems.

[1] 'Available' refers to reform progression by the NRTC to the point where the jurisdictions agreed on: draft or model legislation; target dates for implementation; and the criteria for assessing implementation.

Box 9.1: Second tranche road transport assessment framework

Reform 1: A national package (legislation/regulations/code) for the carriage of dangerous goods by road

Reform 2: As far as practical, uniform or consistent national procedures and requirements for the registration of heavy vehicles

Reform 3: Uniform national requirements for key driver licensing transactions, including issue, renewal, suspension and cancellation (excluding learner and novice drivers)

Reform 4: Common Mass and Loading Regulations (which impose mass limits for vehicles and combinations) and Oversize and Overmass Regulations and Restricted Access Vehicles Regulations (which cover the operating requirements for larger vehicles)

Reform 5: Uniform in-service heavy vehicle standards

Reform 6: Nationally consistent legislative and administrative arrangements for managing truck driver fatigue (with subsequent regulations to combine truck and bus driving hours)

Reform 7: Nationally consistent regulation for managing fatigue among drivers of larger commercially operated buses (with subsequent regulations to combine truck and bus driving hours) (also reform 14)

Reform 8: National mass and dimension limits for heavy vehicles

Reform 9: Common and simplified licence categories and improved processes to eliminate the holding of multiple licences by a single driver

Reform 10: Expansion of 'as-of-right' access for B-doubles and other approved large vehicles

Reform 11: National in-service pre-registration standards (for heavy vehicles)

Reform 12: Common roadworthiness standards through the adoption of roadworthiness standards and guidelines, together with mutual recognition and consistent enforcement

Reform 13: Enhanced safe carriage and restraint of loads through standard regulations and a practical guide for the securing of loads to apply throughout Australia

Reform 14: Adoption of national bus driving hours (subsequently included in the Combined Driving Hours Regulations with reforms 6 and 7)

Reform 15: Simplified cost-free interstate conversions of driver licences

Reform 16: Support by jurisdictions for the development of alternative compliance systems

Reform 17: Options for three-month and six-month registration to provide operational flexibility

Reform 18: Provision for employers to obtain limited information about an employee's driver licence status, with employee consent

Reform 19: Agreement to link State/Territory databases to enable automatic exchange of vehicle and driver information through the National Exchange of Vehicle and Driver Information System — Stage 1

The Council assessed full implementation of all 19 reforms for all jurisdictions except the Commonwealth, Western Australia, the Northern Territory and the ACT. The Commonwealth has seven assessable reforms. It has no legal or implementation role in 12 of the 19 reforms. Despite participating in the development of all reforms, it has legislative obligations only for heavy vehicles that are registered under the Federal Interstate Registration Scheme. The Federal Interstate Registration Scheme is an

optional alternative to State or Territory registration for heavy vehicles engaged solely in the transport of goods or passengers interstate. The States and Territories administer the Federal Interstate Registration Scheme on behalf of the Commonwealth. In the second tranche assessment, the Council accepted that 16 reforms are relevant to Western Australia, the ACT and the Northern Territory (NCC 1999b).

The new Combined Driving Hours Regulations, incorporating reforms 6, 7 and 14, became assessable in June 2001. The fact that the three reforms are now incorporated into the new driving hours reform does not mean that they are superseded for the purpose of this assessment. They are still relevant although there are now additional obligations. Similarly, the inclusion of the new Combined Vehicle Standards reform in the framework does not mean that reform 5 need not be assessed. On the contrary, credit can be given for the extent to which the Heavy Vehicle Standards have already been achieved.

CoAG required each jurisdiction's 'in principle' support for reforms 16 and 19 for the second tranche assessment. The 2001 assessment does not require further progress in implementing these reforms. Where a jurisdiction supported these reforms but has not progressed to full implementation (which may have been expected to follow), the Council has confined the assessment to the requirement of 'in principle' support. In taking this approach, the Council has adhered to the assessment criteria specified by CoAG, whether or not jurisdictions progressed the implementation of these reforms in the ensuing two years.

Table 9.1 summarises the assessment of each jurisdiction's progress according to the benchmarks described in the earlier discussion of the Council's approach, as well as broader contextual considerations. The table highlights exceptions such as shortcomings or impediments to full implementation that have been identified through consultation and acknowledged by jurisdictions.

At June 2001 only four jurisdictions indicated that they had fully implemented all assessable reforms. While other jurisdictions had implemented most of their assessable reforms on the ground, this implementation has not always been in accordance with all legal details as set out in the national reform model. The jurisdictions told the Council that they expected to have reached the following stages of their implementation programs by 30 June 2001.

- New South Wales — implementation of all 19 reforms on the ground.
- Victoria — implementation of all 19 reforms on the ground.
- Queensland — implementation of 18 of the 19 reforms on the ground, with reform 3 well advanced and due for full implementation (including the graduated suspension scheme) by December 2001.
- Western Australia — implementation of 13 of its 16 reforms on the ground, including reforms 4, 5 and 13 (largely implemented in practice). The remaining three reforms (2, 3 and 9) are already partly in operation

and are expected to be fully implemented by December 2001 following the passing of the amendment Bills and regulations by the Western Australian Parliament.

- South Australia — implementation of 18 of the 19 reforms on the ground. Reform 2 (Heavy Vehicle Registration Scheme) is virtually in effect. South Australia expects to pass the remaining parts of legislation by July 2001.

- Tasmania — implementation of all 19 reforms on the ground, excluding the mandatory use of log books for truck drivers (the Australian Transport Council agreed that this should not apply in Tasmania).

- ACT — implementation of all its 16 reforms on the ground. But on 29 March 2001, the Legislative Assembly voted to disallow regulations to fully implement reform 2. The ACT has not told the Council how it intends to implement this element of the reform program.

- Northern Territory — implementation of all its 16 reforms on the ground (following the agreement of the Australian Transport Council that the Northern Territory is a special case and does not need to implement a comprehensive drivers licence demerit points scheme).

- Commonwealth — implementation of six of its seven reforms on the ground. The outstanding reform is due early 2002 and will not have significant competition or economic implications.

Table 9.1: Implementation of NCP second tranche road transport reforms, by jurisdiction

Reform	*Commonwealth*	*New South Wales*	*Victoria*	*Queensland*	*Western Australia*	*South Australia*	*Tasmania*	*ACT*	*Northern Territory*
1 Dangerous goods	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented
2 Registration scheme	Incomplete: due early 2002	Fully implemented	Fully implemented	Fully implemented	Implemented in practice but amendment to be re-introduced to Parliament: due December 2001	Implemented July 2001 following computer system changes	Fully implemented	Fully implemented except for regulations to implement continuous registration	Implemented except for demerit points
3 Driver licensing	No legal or implementation role	Fully implemented	Fully implemented	Implemented except for graduated suspension scheme: due December 2001	Implemented except for mutual recognition amendment: due December 2001	Full implement-ation July 2001	Fully implemented	Fully implemented	Fully implemented
4 Vehicle operations	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Largely implemented: residual due 30 June 2001	Fully implemented	Fully implemented	Fully implemented	Fully implemented
5 Heavy vehicle standards	No legal or implementation role	Fully implemented	Fully implemented	Fully implemented	Largely implemented: residual due 30 June 2001	Fully implemented	Fully implemented	Fully implemented	Fully implemented

(*continued*)

Table 9.1 continued

Reform	*Commonwealth*	*New South Wales*	*Victoria*	*Queensland*	*Western Australia*	*South Australia*	*Tasmania*	*ACT*	*Northern Territory*
6 Truck driving hours	No legal or implementation role	Fully implemented	Fully implemented	Implemented with variation for log book use over 200 kilometres not 100 kilometres	Exempt — uses comparable code	Fully implemented	Implemented with variation	'Not applicable' claim	Exempt — uses comparable code
7 Bus driving hours	No legal or implementation role	Fully implemented	Fully implemented	Implemented with variation for log book use over 200 kilometres not 100 kilometres	Exempt — uses comparable code	Fully implemented	Implemented with variation	'Not applicable' claim	Exempt — uses comparable code
8 Common mass and load rules	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented
9 One driver/ one licence	No legal or implementation role	Fully implemented	Fully implemented	Fully implemented	Implemented in practice but amendment to be passed by Parliament: due December 2001	Fully implemented	Fully implemented	Fully implemented	Fully implemented
10 Improved network access	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented
11 Common pre-registration standards	No legal or implementation role	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented

(*continued*)

Table 9.1 continued

Reform	*Commonwealth*	*New South Wales*	*Victoria*	*Queensland*	*Western Australia*	*South Australia*	*Tasmania*	*ACT*	*Northern Territory*
12 Common roadworthiness standards	No legal or implementation role	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented
13 Safe carriage and restraint of loads	No legal or implementation role	Fully implemented	Fully implemented	Fully implemented	Implemented in practice but amendment regulation to be passed by Parliament: due 30 June 2001	Fully implemented	Fully implemented	Fully implemented	Fully implemented
14 National bus driving hours	No legal or implementation role	Fully implemented	Fully implemented	Implemented with variation for log book use over 200 kilometres not 100 kilometres	Exempt Uses comparable code	Fully implemented	Implemented with variation	'Not applicable' claim	Exempt — uses comparable code
15 Interstate conversions of driver licences	No legal or implementation role	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented
16 Alternative compliance	Support role completed	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented
17 Short term registration	Fully implemented in Federal Interstate Registration Scheme	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented

(*continued*)

Table 9.1 continued

Reform	*Commonwealth*	*New South Wales*	*Victoria*	*Queensland*	*Western Australia*	*South Australia*	*Tasmania*	*ACT*	*Northern Territory*
18 Driver offences/ licence status	No legal or implementation role	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented
19 National exchange of vehicle and driver information system — stage 1	No legal or implementation role	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented

The evidence available to the Council indicates that nearly all of the reforms in the second tranche NCP framework are fully implemented on the ground. Of the 150 reforms across all jurisdictions, 144 (96 per cent) have been satisfactorily implemented by the due date, given that four measures are on schedule for completion by 30 June 2001 and taking into account the formalised and practical exemptions from the reform program. The entire program will be implemented by early in 2002, assuming that the ACT resolves its recent reversal of the implementation of reform 2. The second tranche reforms still to be fully implemented and the expected dates of implementation are listed in table 9.2.

Despite implementation of the second tranche NCP program being almost complete, road users perceive shortcomings. The Council investigated all matters raised by road users, finding that the perceived noncompliance generally related to elements of reforms that are not part of the assessment framework. For example, while not part of the heavy vehicle registration charges reform, charges for stamp duty and compulsory third party insurance, which nonetheless form part of the registration and registration renewal processes, are not standardised across jurisdictions. In addition, the Federal Interstate Registration Scheme involves no stamp duty. The Council received anecdotal evidence of prime mover and trailer owners switching registration between jurisdictions to take advantage of differentials in stamp duty and compulsory third-party insurance charges. This behaviour may undermine the principle of achieving uniform competitiveness nationwide through standard registration charges.

The large number of industry claims of inconsistencies and shortcomings is due in part to the fact that the 2001 assessment framework does not include all elements of all of the original 31 reforms. For each area of reform included in the assessment frameworks to date, the national model endorsed by CoAG for assessment under the NCP does not necessarily comprise all initiatives needed for comprehensive national consistency. Many of the CoAG-approved assessable reforms are only part of the full reform needed. In addition, CoAG has not approved some reforms for assessment, despite these reforms having been developed by the NRTC and having been available for several years. The most significant is the mass limits review reform, which accounts for some 75 per cent of the economic benefits of the original 31 road transport reforms.

Table 9.2: Incomplete or delayed second tranche reforms, by jurisdiction, at 30 June 2001

Jurisdiction	*Reform*	*Likely date*	*Action required to complete reform*
Queensland	3 Driver licensing	December 2001	System changes to be completed to incorporate the national graduated suspension scheme for demerit points.
Western Australia	2 Registration scheme	December 2001	Amendment to be re-introduced to Parliament. Amendment had not been passed when Parliament was prorogued before the 2001 Western Australia State election.
	3 Driver licensing	December 2001	Additional amendments to the Act and Regulations to be passed, for the element pertaining to mutual recognition of licences and offences.
	4 Vehicle operations	June 2001	Some amendments being drafted but others first require amended legislation to provide regulation-making powers. Amended Act and Regulations then need to be promulgated.
	5 In-service standards	June 2001	Some amendments being drafted but others first require amended legislation to provide regulation-making powers. Amended Act and Regulations then need to be promulgated.
	9 One driver/one licence	December 2001	Additional amendment to the Act and Regulations to be passed for this element.
	13 Safe carriage and restraint of load	June 2001	Needs to have additional amendments to the Act and Regulations passed, although occurring in practice through administrative process.
South Australia	2 Registration scheme	July 2001	Systems completed. Parliament passed the remaining regulations on 16 July 2001.
	3 Driver licensing	June 2001	Systems completed. Parliament passed the remaining regulations on 16 July 2001.
ACT	2 Registration scheme		Regulations implementing continuous registration rejected by Legislative Assembly.
Commonwealth	2 Registration scheme	early 2002	Legislation to be drafted and passed by Parliament.

Assessment of full implementation of second tranche commitments

The Council is satisfied that four jurisdictions — New South Wales, Victoria, Tasmania and the Northern Territory — have fully implemented all second tranche NCP commitments on the ground at 30 June 2001. Given the available information, the Council accepts that all other jurisdictions have implemented the bulk of the second tranche program and will have implemented remaining reforms by late 2001 or, in the case of the Commonwealth, by early 2002. The only exception is the full implementation of reform 2 by the ACT. The Council acknowledges that the reversal by the ACT of one element of this reform occurred only in late March 2001 and was contrary to the ACT Government's policy. The Council will seek advice from the ACT on action in train to address this matter.

Full implementation of 2001 assessment commitments

Table 9.3 summarises the 2001 NCP assessment framework. Target implementation dates vary by jurisdiction but were mostly in 2000. The latest target implementation date is July 2001 for reform 4 for South Australia.

Table 9.3: NCP 2001 road transport reform assessment framework

Reform	*Purpose/outcomes*	*Key elements/success criteria*
1 Combined vehicle standards	Provide uniform in-service design and construction standards for light and heavy vehicles. The aim is to promote the safe and efficient use of vehicles and ensure they harmonise with the environment. The standards will take into account issues raised by the National Environment Protection Council, amendments to the Heavy Vehicle Standards and changes in format and style to reflect the legislative drafting practices.	Adoption of national standards/rules into local regulations and administrative frameworks. Key elements include: • increased consistency in vehicle dimensions; • common basic vehicle standards to be maintained in use, including a requirement that relevant Australian Design Rules be retained in-service; • increased consistency in standards for vehicles under personal import provisions; • uniform smoke and noise emission standards; • a national speed rating of 180km/hr for tyres; • national standards for historical vehicles; and • automatic approval of left-hand drive vehicles over 30 years old (Note: Some rules allow for local law to override national rule.)
2 Australian road rules	Provide for national road rules to be obeyed by all road users including drivers and passengers, pedestrians, and riders of motorcycles and bicycles, and people in charge of animals. The aim is to ensure the safe and efficient use of the roads and cover standards of conduct, speed limits, signs, road markings, safety equipment and parking.	Adoption of Australian road rules into local regulations and administrative frameworks. Key elements include: • adoption of rules and amendment packages by agreed date (1 December 1999); and • amendment of Australian road rules (and local equivalent) through a process endorsed by the Australian Transport Council. (Note: Some rules allow for local law to override national rule.)

(*continued*)

Table 9.3 continued

Reform	*Purpose/outcomes*	*Key elements/success criteria*
3 Combined bus and truck driving hours	Provide a nationally consistent basis for managing fatigue among drivers of trucks above 12 tonnes gross and the larger commercially operated buses. Truck drivers operating under systems that manage fatigue may be exempted from some regulations. This package involves a conventional Regulated Hours Regime, a Transitional Fatigue Management Scheme and provision for an optional Fatigue Management Regime, subject to successful completion of a pilot program being conducted by Queensland Transport and the Australian Trucking Association.	Adoption of driving hours package into local regulations and administrative frameworks. Key elements include: • application to trucks over 12 tonnes gross; • application to buses with seating capacity greater than 12 including the driver; • introduction of Transitional Fatigue Management Scheme, but available only to truck drivers; • introduction of standard driving hours for regulated regime. This includes 14 hours work (including a maximum 12 hours driving in any 24 hours) maximum continuous driving periods and weekly limit of 72 hours with an option of a four-week cycle for bus drivers; • Provisions for the incorporation of a chain of responsibility (extended offences); • introduction of national driver logbook and requirement that it be used for trips outside 100 kilometres radius from base; • provision for employers to keep records for drivers working exclusively within the local area (100 kilometres from base); and • provision for two-up driving hours, allowing drivers to travel on the vehicle and share the driving.

(*continued*)

Table 9.3 continued

Reform	*Purpose/outcomes*	*Key elements/success criteria*
4 Consistent on-road enforcement for roadworthiness	Provide high-level guidelines made under the heavy vehicle registration reform for enforcement officers to assess vehicle defects (used in conjunction with the roadworthiness guidelines). Takes into account a vehicle's condition and its operating environment. Proposes three levels of sanctions: • formal written warning (not recorded and no defective vehicle label); • minor defect notice (a vehicle defect notice but no defective vehicle label); and • major defect notice (a vehicle defect notice and defective vehicle label)	Adoption of consistent on-road enforcement for roadworthiness, using approved guidelines into local regulations and administrative frameworks. Key elements include: • uniform classification of defects; and • uniform assessment of roadworthy defects, consistent with roadworthiness guidelines. Jurisdictions may also need to amend legislation to allow mutual recognition of defect clearance, which is an integral part of this reform.
5 Second charges determination	Update charges for heavy vehicles (over 4.5 tonnes gross mass) using Australia's roads.	Adoption of second charges determination into local regulations and administrative frameworks. Refer to fee schedule in Commonwealth regulations.
6 Axle mass increases for ultra-low floor buses	Increase the driving (rear) axle mass limit for two-axle ultra-low-floor route buses (that are designed to be accessible for wheel chairs) by 1 tonne while maintaining an overall 16 tonnes gross mass for such buses. The aim of the 1 tonne increase is to enable passenger numbers to be maintained when equipment is shifted to the rear of the vehicle to comply with accessibility requirements for passengers with disabilities.	Amendment to local legislation or introduction of permits or notices to allow a 1 tonne increase in the allowable mass for the driving axle of low-floor two-axle buses that are designed to be accessible by wheelchairs.

The Council considers that the target dates set by CoAG allow adequate implementation time between the reform becoming available and the legislation being passed to put regulations, rules, administrative systems and enforcement arrangements in place. The Council believes that, with one exception, it is therefore reasonable to expect all 2001 assessment framework commitments to be fully implemented with fully operative administrative and enforcement systems in place by 30 June 2001. The exception is reform 4 in South Australia, which is due on 31 July 2001.

Table 9.4 summarises the assessment of each jurisdiction's progress in implementing the reforms according to the Council's benchmarks. It highlights shortcomings or impediments to full implementation as reported by jurisdictions and confirmed by consultation. Only two jurisdictions reported full implementation of all six reforms at June 2001. All other jurisdictions have implemented most of their assessable reforms on the ground. All but one jurisdiction expected to have fully implemented their reforms by December 2001. The jurisdictions advised that they expected to have reached the following stages of their implementation programs by 30 June 2001.

- New South Wales — implementation of five of the six reforms on the ground. While New South Wales implemented the Australian road rules (reform 2) as far as possible, the physical removal of 'No Standing' signs was always expected to take several years and is progressing satisfactorily. The Council considers reform 3 fully implemented because before the reform became available, New South Wales had advised the Australian Transport Council and National Road Transport Commission that it had difficulties arising from the safety and industrial implications of one element (extending bus driving hours from 12 hours to 14 hours maximum), given the State's current driving environment. The other jurisdictions and CoAG acknowledged this limitation to full implementation even though New South Wales did not seek an exemption.

- Victoria — implementation of five of the six reforms on the ground. While Victoria implemented the Australian road rules as far as possible, the physical re-painting of continuous white lines on roads was always expected to take up to nine years and is progressing satisfactorily.

- Queensland — implementation of four of the six reforms on the ground, with the remaining minor element of reform 3 expected to be implemented by December 2001 and reform 6 to be implemented by November 2001.

- Western Australia — implementation of four of its five assessable reforms on the ground, with the remaining two minor elements of the Combined Vehicle Standards (reform 1) still to be considered by the Western Australian Government. These elements involve mudguard spray suppression and 90 kilometres per hour speed limiters.

- South Australia — implementation of five of the six reforms on the ground. South Australia expected to have implemented the remaining reform in full by July 2001, within the target date set by CoAG.

- Tasmania — implementation of four of the six reforms on the ground, with the remaining two (reforms 1 and 6) expected to be fully implemented by July 2001 and December 2001 respectively.

- ACT — implementation of all of its five assessable reforms on the ground.

- Northern Territory — implementation of four of its five assessable reforms. The Northern Territory expected to have implemented the remaining reform in full by July 2001.

- The Commonwealth — implementation of its single reform on the ground.

Table 9.4: Implementation of 2001 NCP assessment road transport reforms, by jurisdiction

Reform	*New South Wales*	*Victoria*	*Queensland*	*Western Australia*	*South Australia*	*Tasmania*	*ACT*	*Northern Territory*	*Commonwealth*
1 Combined vehicle standards	Fully implemented	Fully implemented	Fully implemented	Largely implemented but only for the majority of agreed standards	Fully implemented	Largely implemented with two minor elements due by mid-July 2001	Fully implemented	Implemented but regulations being finalised: due to go to Executive Council in July 2001	No legal or implementation role
2 Australian road rules	Implemented except for removal of 'No Standing' signs, which is being undertaken progressively	Implemented except for crossing of single continuous white lines	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	No legal or implementation role
3 Combined bus and truck driving hours	Implemented except for extended driving hours for bus drivers	Fully implemented	Implemented except for graduated suspension scheme: due December 2001	Exempt — uses comparable code.	Fully implemented	Fully implemented (exempt from logbook)	–	Exempt — uses comparable code. Has a Transitional Fatigue Management Scheme.	No legal or implementation role

(*continued*)

Table 9.4 continued

Reform	*New South Wales*	*Victoria*	*Queensland*	*Western Australia*	*South Australia*	*Tasmania*	*ACT*	*Northern Territory*	*Commonwealth*
4 Consistent on-road enforcement for roadworthiness	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Implemented but Parliament to pass legislation: due in July 2001	Fully implemented	Fully implemented	Fully implemented	No legal or implementation role
5 Second charges determination	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented	Fully implemented
6 Axle mass increases for ultra-low floor buses	Fully implemented	Fully implemented	Due November 2001	Fully implemented	Regulations to be promulgated: due June 2001	Fully implemented	Fully implemented	Fully implemented	No legal or implementation role

The evidence available to the Council indicates that most of the 2001 NCP assessment framework endorsed by CoAG is in place at 30 June 2001. The Council is satisfied that only a small number of key reform elements are not yet fully implemented on the ground for this assessment. (Table 9.5 provides a summary of the delayed or incomplete reforms.) It is satisfied, taking into account the formalised and practical exemptions from the reform program, that 37 of the 46 reforms (over 80 per cent) are implemented as required at 30 June 2001. Given the available information, the Council expects that full implementation will occur by the end of 2001.

Despite the reported progress with implementation of the six reforms, there is a perception in industry of some shortcomings. For example, road users identified some imperfections in the Australian road rules (such as maximum speed limit differences among the jurisdictions, including with the implementation and signage of new 50 km/hr limits) and some inconsistent on-road enforcement for roadworthiness due to changing enforcement resources and differences between police and road agency officers' approaches.

The Council investigated the matters raised by road users, finding that generally the perceived shortcomings were either not part of the reforms for this assessment or that some further implementation refinement of some reform elements (such as further enforcement training) is needed.

Assessment of compliance

The Council's assessment of road transport reform performance found that only the Commonwealth and the ACT completed the reforms specified in the 2001 assessment framework on time. All other jurisdictions implemented most of their programs and, according to the jurisdictions, expected to have the remaining reforms in place by 31 December 2001, except that Western Australia is still to make a commitment to all aspects of the combined vehicle standards (reform 1). While Western Australia has not said it will not implement this reform, neither has it agreed to act upon it. The Council is looking for confirmation of a way to progress the outstanding elements of this reform.

Thus, while some jurisdictions may be technically in breach of their road transport reform obligations, the Council considers that jurisdictions have established processes for ensuring the remaining reform elements will be in place soon after the target dates set by CoAG. Accordingly, the Council assesses all jurisdictions to have met the 2001 NCP assessment obligations.

Table 9.5: Incomplete or delayed 2001 NCP assessment reforms, by jurisdiction, at 30 June 2001

Jurisdiction	*Reform*	*Likely date*	*Action required to complete reform*
New South Wales	2 Australian road rules	Several years	Replacement of 'No Standing' signs to be completed.
	3 Combined bus and truck driving hours	–	New South Wales noted that it will not be increasing bus driving hours to match truck driving hours.
Victoria	2 Australian road rules	Several years	Completion of repainting continuous white lines on roads
Queensland	6 Axle mass increases for ultra-low floor buses	November 2001	
Western Australia	1 Combined vehicle standards	Not known	Mudguard spray suppression and 90 kilometres per hour speed limiters still to be considered by the Government. No certain commitment or implementation date for these elements.
South Australia	4 Consistent on-road enforcement for roadworthiness	July 2001	Parliament passed legislation on 16 July 2001.
	6 Axle mass increases for ultra-low floor buses	June 2001	Regulations to be promulgated.
Tasmania	1 Combined vehicle standards	July 2001	
	6 Axle mass increases for ultra-low floor buses	December 2001	The mass increase for ultra-low floor buses being allowed by permit until the Vehicle Operations Regulations are amended.
Northern Territory	1 Combined vehicle standards	July 2001	Executive Council to pass regulations.

Obligations under the Competition Principles Agreement (CPA)

Tow truck legislation

Legislative restrictions on competition

The tow truck industry is not specifically covered by the national road transport reform program, although some aspects of this program affect tow truck operators. Most jurisdictions have legislation governing the operations of tow truck owners. Accordingly, most States and Territories scheduled this legislation for NCP reviews.

Most frequently the restrictions under tow truck legislation relate to ensuring the safe and proper running of towing activities, procedures for towing, and licensing. Jurisdictions vary in the degree to which they regulate conduct and ration licences. Central allocation of towing jobs is also a feature of some legislation. In addition, some jurisdictions have varying regulation across localities. Some jurisdictions have price-setting powers over some towing activities.

Restrictions have also been identified that affect operators towing between jurisdictions. These can arise from prohibitions in the legislation, including the failure to recognise licences from another jurisdiction, or as a result of unintended effects of other registration or licensing provisions.

Regulating in the public interest

Consistency in legislation is an important question, particularly for tow truck operators whose businesses are located close to State borders. Lack of a consistent legislative framework, or failure to recognise licences issued in another State, inhibits the ability of operators to work across State borders.

More generally, tow truck legislation often restricts competition and therefore is subject to legislation review obligation under the NCP. Such restrictions relate to a range of matters. Often, both the vehicle and the operator need to be licensed. Some regimes also incorporate a central job allocation register and some regulate fees.

Many of these restrictions have arisen in response to concerns about probity, consumer protection and safety. In undertaking the examination of tow truck regulation, jurisdictions need to note the CPA principles and provide evidence

that the benefits of the regulation outweigh the costs. In addition, jurisdictions need to consider alternatives to regulation to achieve legislation objectives.

While regulations aimed at ensuring probity and offering consumer protection may be in the public interest, the costs of licensing and enforcement must also be considered. Tightly regulating the number of licences, restricting the structure of the industry and setting fees can impose considerable costs on both the regulator and the industry.

Review and reform activity

Table 9.6 provides a summary of governments' review and reform activity relating to the tow truck industry.

Table 9.6: Review and reform of legislation regulating tow trucks

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Tow Truck Industry Act 1998*	Licensing, market conduct, operations	Review completed.	New legislation, but subject to review when the new job allocation scheme is established.	Council to assess progress in 2002.
Victoria	*Transport Act (Tow Truck) 1983* and Transport (Tow Truck) Regulations 1994	Market conduct, licensing, fee setting	Review completed, recommending: the removal of entry restrictions for the heavy vehicle towing market; the development of an industry code of practice; a more proactive role by insurers in educating their customers; the retention of the allocation scheme; and the introduction of a franchise scheme for the Melbourne metropolitan area.	Awaiting Government response.	Council to assess progress in 2002.
Queensland	*Tow Truck Act 1973* and Tow Truck Regulation 1988		Review completed, finding a public benefit justification for the consumer protection and industry regulation provisions in the Act.	Act amended in 1999.	Council to assess progress in 2002.
South Australia	*Motor Vehicles Act 1959*	Market conduct	Review underway.		Council to assess progress in 2002.
Northern Territory	*Consumer Affairs and Fair Trading Act* (part 13)	Code of practice	Review completed in October 2000, recommending retention of the code of practice and formalisation in the regulations of the right for all consumers to be offered a tow of their choice.	The Government approved the recommendations in November 2000.	Meets CPA obligations (June 2001) for tow trucks.

Dangerous goods legislation

Dangerous goods legislation covers a wide range of activities and goods. The laws usually relate to explosives, fireworks, chemicals and other high-risk substances including flammable, carcinogenic and radioactive materials.

Dangerous goods regulation relating to the road transport of such goods was reformed as part of the National Road Transport Reform Program. Transport of dangerous goods was assessed as reform 1 in the second tranche NCP road transport assessment framework (see table 9.1).

Governments also have legislation relating to other aspects of dangerous goods, such as manufacture, storage and use, as well as transport and handling by modes other than road. This legislation often contains restrictions on competition and, for this reason, is included in the governments' legislation review programs.

Legislative restrictions on competition

Competition restrictions arising from dangerous goods legislation vary. The National Road Transport Reform Program led to some legislated restrictions being replaced by a code of conduct. Other restrictions are not covered by the road reform code of conduct — these include licensing of businesses and operators of equipment such as shotfirers and gas fitters. The licences can be prescriptive, stipulating requirements for the manufacture, transport and handling of the goods. Some legislation stipulates conditions for displaying items such as fireworks.

CoAG initiated moves to harmonise regulation of safe handling of dangerous goods more than ten years ago. As part of this process, a national standard on handling dangerous goods was finalised in 2000. Some jurisdictions have enacted harmonised legislation based on a code of conduct.

Regulating in the public interest

The principal objectives of legislation relating to the manufacture, handling, storage and use of dangerous goods are to maintain health and safety and to protect the environment. Reviews of the NCP implications of this legislation need to consider other ways of addressing the health and safety and environmental protection concerns. In particular, governments need to consider if there are alternatives that achieve the desired outcomes but are less costly or burdensome.

Review and reform activity

Table 9.7 provides a summary of governments' review and reform activity relating to the regulation of dangerous goods.

Table 9.7: Review and reform of legislation regulating dangerous goods

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Dangerous Goods Act 1975*	Licensing of premises, vehicles and vessels, and the sale of dangerous goods; special licences required for import, manufacture, sale, supply and receipt of explosives. Does not apply to the transport of dangerous goods by road or rail.	Draft national standard, relating to the storage and handling of dangerous goods, released for public comment. The proposed Dangerous Goods (General) Regulation released for public comment. NCP review to commence after the current process is complete.		Council to assess progress in 2002.
Victoria	*Dangerous Goods Act 1985* (s15).	Licensing, register of facilities, prior approval of facilities	Review completed.	New regulations relating to explosives, storage and handling, and occupational health and safety measures at major hazard facilities.	Council to assess progress in 2002.
Western Australia	*Explosives and Dangerous Goods Act 1961*	Licensing, permits, authorisations and approvals	Review completed, finding that there are frequently more efficient and effective ways of achieving the objectives of the legislation. It recommended: aligning licensing requirements for manufacture, transportation and use with existing controls for other chemicals; shifting responsibility for safety and accreditation to industry; and having less onerous restrictions on sale, display and use of fireworks.	*Dangerous Goods (Transport) Act 1998* revised the classification of such goods and took into account transport-related matters. A Bill to enact the remaining recommendations is being considered by the Government.	Council to assess progress in 2002.

(*continued*)

Table 9.7 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Dangerous Substances Act 1979*	General duty of care in keeping, handling, conveying, using or disposing of dangerous substances; licences to keep and convey dangerous substances	Review completed, finding that the benefits of restrictions outweigh the costs.		
Tasmania	*Dangerous Goods Act 1976*		Act repealed and replaced by new dangerous goods legislation.	The new legislation is based on the National Road Transport Commission's legislative model for transport of dangerous goods by road, which has been expanded to include the use, storage and handling of dangerous goods.	Meets CPA obligations (June 2001).
	Dangerous Goods Act 1998	Code of conduct	Replacement legislation, assessed under the gatekeeper requirements.	Restrictions such as licences replaced with code of conduct based on National Road Transport Reforms.	Meets CPA obligations (June 2001).
ACT	*Dangerous Goods Act 1984* — applies the New South Wales legislation to the ACT	Licensing of premises, vehicles and vessels, and the sale of dangerous goods; special licences for import, manufacture, sale, supply and receipt of explosives. Does not apply to the transport of dangerous goods by road or rail.	Reviewed in conjunction with the *Dangerous Goods Act 1984* which links application of the ACT legislation to the New South Wales Act.		Council to assess progress in 2002.

(*continued*)

Table 9.7 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory	*Dangerous Goods Act* and Regulations	Requirements for the transport, storage and handling of dangerous goods; business licences to manufacture, store, convey, sell, import or possess prescribed dangerous goods (ss 15–21); operators' licences for drivers of dangerous goods vehicles (Regulation 56), shotfirers (Regulation 132), gas fitters (Regulation 172) and autogas fitters (Regulation 202)	Review completed.	Act repealed and new *Dangerous Goods Act* assented to 30 March 1998. Draft regulations being prepared. Restrictions in regulations will be subject to NCP review and analysis.	Council to assess progress in 2002.

Specialist and Enthusiasts Vehicle Scheme

The Commonwealth has responsibility for legislation relating to uniform vehicle standards. The *Motor Vehicle Standards Act 1989* provides for these standards, which apply to matters of safety, emission control and anti-theft capabilities. The objectives of the Act are to achieve uniform standards to apply to road vehicles when they begin to be used in transport in Australia, with particular emphasis on vehicle safety, emissions, anti-theft and promoting energy savings.

Legislative restrictions on competition

The Act required all vehicles entering the Australian market to meet certain safety, emission control and anti-theft standards. This requirement was not a restriction on competition because the standards applied to all vehicles entering the market. However, the administration of the scheme differentiated between 'full volume' imports and 'low volume' imports. The administration of the Full Volume Scheme did not impose any restrictions on competition. However, the Low Volume Scheme could be considered to be anticompetitive because: (1) it imposed restrictions on the number of vehicles any given manufacturer could supply to the market; (2) users of the scheme could gain concessions leading to lower levels of assurance that standards were met; and (3) Full Volume Scheme users could not avail themselves of the Low Volume Scheme.

Following a review of the Act the Commonwealth introduced the Enthusiast Vehicle Scheme (SEVS) to administer the importation arrangements for used vehicles. The SEVS restricts imports of used vehicles to those satisfying certain criteria. However, the concessional arrangements for low volume imports have been removed and the SEVS is available to full volume importers as well.

Regulating in the public interest

The benefits of requiring vehicles to meet safety, emissions and anti-theft standards extend beyond the owner of the vehicle to the wider community. The standards ensure the safety of other road users, protect the environment and act as a criminal deterrent.

Under the NCP public interest test, the Commonwealth needs to show that the benefits of setting and enforcing these standards for imported used vehicles exceed the costs (including the costs of enforcement and compliance and the costs of restricting competition) and that the restriction is necessary to achieve safety, environmental and security objectives. If competition is restricted, then the NCP public benefit test requires that alternative ways of achieving the objectives of the legislation be investigated. The task force that

conducted the NCP review of the Motor Vehicle Standards Act did not recommend the SEVS and there is therefore no public benefit justification for the SEVS in that report. Because it chose to establish a scheme other than that recommended in the NCP review report, the Commonwealth will need to provide a public benefit argument in support of its decision to implement the SEVS. The Council will assess progress by the Commonwealth on this matter in the 2002 assessment.

Competition Policy Reform (Queensland) Public Passenger Service Authorisation Regulation 2000

Queensland has made a regulation about public passenger transport which relies on s51(1) of the *Trade Practices Act 1974* (TPA). Under s51(1), conduct which is specifically authorised by a Commonwealth, State or Territory Act or regulation is excluded from the coverage of the Trade Practices Act.

Queensland identified the Competition Policy Reform (Queensland) Public Passenger Service Authorisation Regulation 2000 as relying on s51(1) of the Trade Practices Act. On 14 August 2000 Queensland notified the Australian Competition and Consumer Commission of this regulation, as required by the Conduct Code Agreement. Queensland noted that it intends to repeal this regulation and replace it with identical provisions in the *Transport Operations (Passenger Transport) Act 1994*.

The regulation authorises the operators of public passenger services to work together for the purpose of integrating transport services, fares and timetables. Queensland advised that the regulation covers only those agreements designed to facilitate the coordination of public transport services. One outcome of the regulation is to allow for an agreement between Queensland Rail and Airtrain (a private rail operator offering passenger rail services from Brisbane Airport to the city and Gold Coast). The agreement enables fares on Airtrain services to include a Queensland Rail component which is already subsidised by the Government. That is, it allows Queensland Rail to pay Airtrain part of the government subsidy it receives for providing the community service obligation.

Under clause 5(5) of the CPA governments must have evidence to show that new legislation that restricts competition provides a net public benefit to the community and that restricting competition is necessary to achieve the government's objectives. Queensland stated that a public benefit test showed the benefits of the regulation outweigh the costs. Queensland argued that integrated ticketing simplifies purchases and encourages increased use of public transport, and that this in turn reduces congestion, pollution and greenhouse gas emissions, and lessens the need for road construction.

With regard to the community service obligations, CoAG agreed that governments should be free to determine who should receive payments or

subsidies for these, and that they should be transparent, appropriately costed and directly funded by government. The subsidy provided by the Queensland Government to Queensland Rail to provide identified community service obligations meets the CoAG criteria (see chapters 3 and 10).

10 Rail

The NCP agreements specifically cover electricity, gas, road and water infrastructure services, but contain no specific obligations for rail. Rail services are, however, subject to general provisions in the Competition Principles Agreement (CPA).

Rail services are delivered in both competitive and uncompetitive markets. Rail line infrastructure has natural monopoly characteristics. These arise from the high fixed costs of establishing a network of rail lines from which economies of scale and scope can be maximised. Rail line services are usually delivered by only one provider in a market. Rail transport businesses operate in markets with varying levels of competitive pressure. Where there are substitute services, as in passenger transport markets, rail businesses are generally subject to strong competitive pressure. Where substitute services are few, as in bulk coal transport markets, rail businesses face fewer competitive pressures.

The Australian rail industry is changing. Historically, there was a high level of government ownership. This is still the case in several States, but private-sector involvement in the industry is increasing as governments move to fully or partly privatise their rail businesses. In both Western Australia and Victoria, rail line and rail transport businesses were privatised. New South Wales maintains government ownership over its rail line infrastructure but intends to privatise its rail freight business by the end of 2001.

Such changes trigger NCP obligations for governments to apply competitive neutrality principles and structural reform. Competitive neutrality obligations are relevant where there is competition, or the potential for competition, with government rail businesses. Structural reform obligations arise where governments privatise rail businesses and/or introduce competition through third-party access regimes.

Several States introduced access regimes to address a range of issues, including the establishment of frameworks within which access can be negotiated and disputes can be resolved. Where the rail line and transport businesses are conducted by separate organisations, access regimes focus on removing the monopoly elements from terms and conditions. Where a single organisation conducts rail line and rail transport businesses, access regimes commonly address competitive neutrality issues such as ensuring access seekers affiliated to the access provider are not advantaged over other access seekers.

Legislation review and reform commitments are relevant, because railway legislation has traditionally included restrictions on competition. Table 10.1

summarises governments' progress in reviewing and reforming legislation that regulates rail services.

Commonwealth

The Commonwealth (majority shareholder), New South Wales and Victoria established the National Rail Corporation Limited as a rail freight business. National Rail operates some 250 train services across Australia each week and carries over 600 000 containers each year.[1]

In September 1999 Capricorn Capital (Capricorn) lodged a competitive neutrality complaint against National Rail. Capricorn claimed that it was in breach of the Commonwealth's competitive neutrality policy because it had not earned a commercial rate of return on its assets for the financial years 1995-96, 1996-97 and 1997-98. Capricorn further claimed that National Rail would not earn a commercial rate of return in the foreseeable future.

The Commonwealth's competitive neutrality policy states that:

> *All Commonwealth organisations identified as engaging in significant business activities will be required to earn commercial returns at least sufficient to justify the long-term retention of assets in the business, and pay commercial dividends (ie, equivalent to the average for their industry) to the Budget from those returns …* (Commonwealth of Australia 1996, p. 16)

The Commonwealth Competitive Neutrality Complaints Office (CCNCO) reported on this matter on 18 January 2000, noting that:

> *The Shareholders Agreement establishing [National Rail] provided for a transfer of responsibilities and assets to the corporation over a 3-year Transition Period. The Agreement also specified a 5-year Establishment Period, after which the company was expected to be fully established and to operate profitably. Both periods commenced on 1 February 1993.* (CCNCO 2000b, p. 2)

The CCNCO also noted that the transfer of assets and agreed responsibilities was occurring more slowly than envisaged in National Rail's Shareholders Agreement. It reached the following conclusions.

- National Rail had not earned a commercial rate of return on assets for the years 1995-96 to 1998-99 inclusive.
- Its level of return projected for 2000-02 would not represent a commercial rate of return.

[1] Information supplied by National Rail.

- Given delays in the restructuring of National Rail, the inability of the corporation to achieve a commercial return was not sufficient to find it in breach of the competitive neutrality guideline that requires a government business to achieve a commercial rate of return over a reasonable period. Arguably, restructuring could improve National Rail's viability over a reasonable period.

- However, if a government business proves it cannot trade commercially over the longer term (and thereby comply with competitive neutrality), then the government can sell the business. The CCNCO noted that the Commonwealth, New South Wales and Victorian governments had announced their intention to sell National Rail.

The shareholding governments indicated that the restructure and privatisation of National Rail would address competitive neutrality issues. The most recent advice from the shareholding governments is that privatisation is to occur before the end of 2001. Capricorn made a further complaint to the CCNCO on 16 February 2000. The CCNCO has suspended any investigation of this complaint in view of the proposed privatisation.

New South Wales

Prior to 1996 New South Wales provided all rail track, passenger and freight transport services via the vertically integrated State Rail Authority. The *Transport Administration Amendment* (*Rail Corporatisation and Restructuring) Act 1996* separated the transport ('above rail') services from the ownership, access and maintenance components ('below rail'). The Act established four transport entities:

- the State Rail Authority, to provide passenger services;

- the Rail Services Authority, to maintain the track;

- the Rail Access Corporation, to manage the rail network and administer access by public and private operators; and

- FreightCorp, to provide non-passenger freight services.

The restructuring of the public monopoly State Rail Authority raised structural reform responsibilities under clause 4 of the CPA. The Council addressed these in the first tranche NCP assessment in 1997, noting the restructuring that had taken place in New South Wales. In September 2000 the New South Wales Government announced that it would sell FreightCorp, anticipating a sale during 2001.

Following the Glenbrook accident in 2000, New South Wales further reviewed the structure of its rail businesses. New South Wales advised in its 2001 NCP annual report that the Glenbrook Inquiry found that rail safety had not been

given sufficient weight following the 1996 reforms. In response to this finding, New South Wales passed legislation in late 2000 that:

- merged the Rail Access Corporation and the Rail Services Authority into a new Rail Infrastructure Corporation that owns and operates track infrastructure;

- established the Office of Rail Regulator to control and monitor service standards;

- allowed network control functions to be transferred to other operators, including the State Rail Authority (for CityRail network); and

- formalised the Office of Co-ordinator General, giving it sufficient powers to implement structural changes as necessary.

New South Wales reported that it would make decisions on the responsibility for safety regulatory functions following the release of the Glenbrook Inquiry's final report in 2001. For compliance with NCP principles, New South Wales will need to ensure that responsibility for safety regulation is not vested in the Rail Infrastructure Corporation, given that the corporation is an entity with commercial operating responsibilities.

While New South Wales has decided to privatise FreightCorp, the corporation is still a publicly owned business. It is therefore subject to competitive neutrality principles. Capricorn lodged a competitive neutrality complaint against FreightCorp in September 1999, stating concerns that:

- FreightCorp had preferential access to strategic assets including port and metropolitan rail terminals;

- only FreightCorp received payments for community service obligations (CSOs) and these were unconnected to costs incurred and services delivered;

- the Department of Transport tended to act as an agent of FreightCorp rather than as a neutral regulator; and

- the prices being charged by FreightCorp meant that the FreightCorp was not earning a commercial rate of return;

New South Wales initially deferred consideration of whether to request the Independent Pricing and Regulatory Tribunal (IPART) to investigate Capricorn's complaint until the Department of Transport had completed a review of FreightCorp's CSOs. Moreover, because the privatisation of FreightCorp would remove NCP competitive neutrality obligations, New South Wales indicated that it would consider a referral to IPART only if the timetable for privatisation was delayed.

To address the focus of the Capricorn complaint, the Department of Transport reviewed FreightCorp's CSOs. The department engaged Booz Allen and

Hamilton to assess FreightCorp's arrangements for delivering CSOs to assist its review. While the consultancy concluded that the exclusive contract between the Department of Transport and FreightCorp for the delivery of freight services did not itself contravene competitive neutrality principles, it recommended changes aimed at improving the focus and transparency of the arrangements.

New South Wales advised that it had responded to the Booz Allen and Hamilton review by:

- drafting separate contracts for each product grouping (grain, containerised traffic, fuel and the North Coast service);
- ensuring that each contract incorporates more specific service specifications so that the services New South Wales is purchasing are more transparent;
- providing discrete amounts of funding for each product grouping so that the Government can better consider where efficiency gains can be made; and
- incorporating a mechanism to allow examination of any complaint by a third party regarding use of CSO funding.

Victoria

Victoria privatised its intra-state rail freight network, V/Line Freight, in 1999 as part of a wide-ranging series of transport reforms. It sold V/Line Freight to a private-sector operator, together with a long-term lease over the intra-state rail lines. The Council considered Victoria's compliance with structural reform obligations as part of the second tranche NCP assessment in June 1999. Victoria had reviewed its reform options before privatising V/Line Freight and concluded that the costs of inefficiencies introduced by separating the infrastructure from the freight business would outweigh the gains from increased competition. Despite financial losses, Victoria considered that the freight business provided significant community benefits. As a condition of its sale, Victoria included a defined CSO payment for light general freight services of $6.5 million per annum in 1997-8, declining to $4.7 million in 1999-2000. This payment has been independently reviewed and the level of service negotiated to be $7.1m in 2000-2001, declining to $5.1m in 2003-04.

In the second tranche NCP assessment, the Council considered that Victoria would meet its CPA clause 4 obligations if it introduced an appropriate access regime. Victoria established an access regime to cover track services used to transport freight to operate from 1 July 2001 (through orders gazetted on 15 May 2001 under part 2A of the *Rail Corporations Act 1996*) over the intra-state freight network leased to Freight Australia. The regime also covers the Dynon terminals and the Bayside Network for the purpose of transporting

freight. As a result of these reforms, the Council considers that Victoria has met all CPA clause 4 requirements with regard to V/Line Freight.

Queensland

Queensland Rail (QR) is a vertically integrated corporatised entity that provides rail track and passenger and freight transport services across rural and urban Queensland. Queensland declared QR's rail transport infrastructure under the Queensland Competition Authority Regulation 1997 with regard to the provision of intra-state rail transport services. Following declaration, QR submitted an undertaking to cover access terms and conditions. The undertaking requires the Queensland Competition Authority to regulate prices and quality of service for QR's rail line service business. The Queensland Competition Authority released a draft recommendation for public comment in December 2000 but is yet to approve the final undertaking.

The undertaking introduced competition into Queensland's rail transport markets and triggered the CPA clause 4 obligation to conduct a review of QR. In its 1997 review, Queensland concluded that QR's corporatisation charter and the *Government Owned Corporation Act 1993* specified appropriate relationships between QR and Ministers. The review also noted that the Statement of Corporate Intent set out financial and non-financial performance targets, including a target rate of return and dividend.

The review recommended that QR's businesses remain vertically integrated, concluding that the benefits from separation were ambiguous but that the costs of establishing and operating separate legal entities were significant. The Council notes that the Queensland Competition Authority proposed that QR's undertaking contain ring-fencing arrangements to ensure access seekers are not disadvantaged by QR's operation of integrated businesses.

QR has no regulatory responsibilities in relation to the rail industry. The Rail Safety Accreditation Unit within Queensland Transport is responsible for safety regulation and accreditation of all rail operators and railway managers. This arrangement addresses the obligation under CPA clause 4(2) that the former monopolist obtains no regulatory advantage over competitors.

QR's CSOs are contained in the Statement of Corporate Intent and formalised in contracts with Queensland Transport. The Statement of Corporate Intent is not a public document. However, QR's annual report for 1999-2000 provided a listing of the service outputs for which QR receives payments from the Government. The annual report stated that revenue in 2000 from sales of Government community services was $670 million. This figure is broken down into metropolitan and regional services ($346 million), Traveltrain ($59 million), Network Access Group ($263 million) and other ($2 million). Queensland Transport's 1998-99 annual report stated that the contracts are performance based.

In the second tranche NCP assessment in June 1999 the Council questioned QR's application of competitive neutrality principles. This question arose from the finding by the Queensland Competition Authority in July 1998 that QR was not applying appropriate competitive neutrality principles to fares on the Brisbane – Gold Coast route, and from subsequent actions by the Queensland Government (NCC 1999c).

In August 1998 the Queensland Treasurer and Premier rejected the Queensland Competition Authority's decision that QR had breached competitive neutrality principles in relation to the fares. However, they requested that the Minister for Transport develop, as a matter of priority, a comprehensive CSO framework for passenger transport in south-east Queensland, taking account of competitive neutrality.

The Council did not consider this matter substantively as part of the second tranche NCP assessment. At the time of that assessment, an application for judicial review of Premier and Treasurer's decision was before the Supreme Court of Queensland.[2] Given this application, along with the Government's undertaking to develop the passenger transport CSO framework, the Council deferred assessment of Queensland's competitive neutrality compliance to a supplementary process.

In the supplementary second tranche assessment of June 2000 (NCC 1999d), the Council noted advice from the Queensland Treasurer that the Government was proceeding with the implementation of a CSO framework for passenger transport in south-east Queensland and was also improving the transparency of arrangements between itself and QR by entering into formal contracts for the delivery of rail services. Nevertheless, the Council considered that the failure to finalise the framework meant that Queensland had not satisfactorily addressed its second tranche competitive neutrality obligations. However, because there had been some progress, the Council recommended a suspension rather than a reduction in Queensland's NCP payments. The Council advised the Federal Treasurer to suspend an amount equivalent to 10 per cent of Queensland's NCP payments for 2000-01 (approximately $8.6 million). The Council also recommended a further supplementary second tranche assessment of Queensland's progress in this matter. On 2 November 2000 the Federal Treasurer suspended an amount equivalent to 10 per cent of Queensland's NCP payments for 2000-01, as advised, pending a further assessment of the State's progress in finalising a passenger transport framework for south-east Queensland, which would include defining and costing QR's CSO obligations.

Queensland subsequently set out its CSO objectives for passenger transport in south-east Queensland in a publicly available document (Queensland Transport 2001). As required by the Council of Australian Government's (CoAG) November 2000 amendments to the NCP, the framework transparently defines the Government's CSO objectives for the south-east

[2] The Supreme Court denied the application in September 1999.

corridor. QR's CSOs are established through contracts between QR and Queensland Transport and meet the CoAG obligations relating to costing and funding. The Council provided a supplementary second tranche assessment report to the Federal Treasurer, recommending lifting the suspension of NCP payments and reimbursing Queensland for the money withheld to date.

Western Australia

Western Australia's rail business, Westrail, was a vertically integrated entity providing rail line, freight and passenger services. In December 2000 Westrail's freight business, consisting of rolling stock and freight contracts, was sold to a private consortium, the Australian Railroad Group. Western Australia retained ownership of the rail track but leased it to the consortium for a 49-year term. The consortium manages and controls access to the track. Western Australia also legislated to introduce an access regime that applies to both interstate and intrastate rail services. Western Australia expects to finalise access arrangements so the regime commences operations by mid-2001.

These developments triggered obligations under CPA clause 4 to review the structure of Westrail. Western Australia's Rail Freight Sale Task Force completed a review in September 1999. The review was assisted by a scoping study (conducted by consultants, including Mercer Consulting Group, Deutsche Bank and Booz Allen and Hamilton) on ownership and structural options.

A key question for the review was whether the natural monopoly rail track infrastructure should be sold separately from the more competitive rolling stock and freight contracts. The review found no evidence of clear benefits from vertically separating the rail businesses and concluded that the rail track, the rolling stock and the freight contracts should be sold as an integrated business. Further, the review concluded that privatisation would limit the need for competitive neutrality measures. However, Western Australia noted that the proposed access regime contained ring-fencing arrangements to ensure access seekers would not be disadvantaged by Westrail's operation of integrated businesses.

The review found that Western Australia had satisfied regulatory separation obligations by transferring responsibility for safety regulation to the Department of Transport under the *Rail Safety Act 1998*.

Western Australia reviewed the *Government Railways Act 1904* and bylaws in 1998. This review found that restrictions in the Act related to mostly matters of competitive neutrality. The review recommended amendments to remove the competitive advantages available to Westrail, including:

- reducing its powers to determine who may seek access to rail;

- ensuring its assets are valued on a commercial basis;
- neutralising its advantages gained from Government guaranteed borrowings;
- imposing rates and taxes equivalent to those imposed on other transport operators;
- removing its powers to: set conditions for the carriage of goods by other railway operators; control persons employed by other parties; fix charges for all persons providing railway related services; and license taxis and other transport operators; and
- applying safety rules and standards on an equal basis.

Western Australia advised that the *Government Railways (Access) Act 1998,* the Rail Safety Act and the freight sale-enabling legislation addressed the majority of the review recommendations. Western Australia's rail access regime is likely to address residual issues.

Assessment

The Council is satisfied that relevant governments have addressed CPA clause 4 structural reform requirements relating to rail. While some legislation still stands pending repeal, the Council is also satisfied that governments are appropriately progressing legislation review questions relating to rail.

There have been complaints lodged concerning the implementation of the CPA clause 3 competitive neutrality obligation by National Rail and FreightCorp. In both cases, the Council acknowledges that privatisation will remove the NCP competitive neutrality obligations because the businesses will no longer be in public ownership. However, the Council considers there is an entitlement under CPA clause 3 for competitors of significant government businesses to have complaints addressed expeditiously. For NCP compliance, the Council considers that the government owners of National Rail and FreightCorp will need to address the competitive neutrality matters raised by Capricorn if the planned privatisations do not occur in 2001 (the current timetable).

Having said that, the Council accepts that New South Wales has addressed the substance of the Capricorn concerns relating to the delivery of CSOs by FreightCorp. Following the Booz Allen Hamilton review, New South Wales now separately contracts FreightCorp for each CSO service, with each contract detailing the relevant service requirements. The Government now allocates funding for each CSO service, and there is a mechanism to allow examination of any complaint by a third party regarding FreightCorp's use of CSO funding. These arrangements accord with the obligation set by CoAG for

the delivery of CSOs by publicly-owned businesses; that CSOs are transparent and appropriately costed, and that they are directly funded by government.

Table 10.1: Review and reform of legislation regulating rail services

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*National Rail Corporation (Agreement) Act 1991*	Approves and gives effect to an agreement between the Commonwealth, New South Wales and other States relating to the National Rail Corporation Limited.	During the pre-sale process, shareholders agreed to remove the restriction in Section 7 that prevented the corporation from carrying intra-state freight.	Section 7 repealed through the *Statute Law (Miscellaneous Provisions) Act 2000* in August 2000. Act will need to be repealed with the privatisation of National Rail.	Council to assess progress in 2002.
	Rail Safety Act 1993	Allows potential for restraint on competition in pursuit of the safe construction, operation and maintenance of railways.	Review deferred pending consideration of the final report of the Inquiry into the Glenbrook Rail Accident. Final report presented to the Governor in April 2001.		Council to assess progress in 2002.
Victoria	*Border Railways Act 1922*		Review concluded that legislation does not restrict competition.		Meets CPA obligations (June 2001).
	National Rail Corporation (Victoria) Act 1991		Review concluded that legislation does not restrict competition.	National Rail to be privatised by end 2001.	Meets CPA obligations (June 2001).
Western Australia	*Government Railways Act 1904* and By-law Nos. 1 – 53, 55, 59, 60, 62, 63, 64, 68, 74, 75 and 76.	Raises market power and competitive neutrality issues.		*Government Railways (Access) Act 1998* and the *Rail Safety Act 1998* have removed various advantages and disadvantages conferred on the Government business.	Meets CPA obligations (June 2001).

(*continued*)

Table 10.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania	*Burnie to Waratah Railway Act 1939*	Provides a particular company with a competitive advantage by conferring the authority to operate and maintain a railway.	Review deferred pending proclamation of the *Rail Safety Act 1997*, because the safety and access provisions will negate the need for this Act.	Scheduled for repeal.	Council to assess progress in 2002.
	Don River Tramway Act 1974	Provides a particular company with a competitive advantage by conferring authority to construct and operate a railway.	Review deferred pending proclamation of the *Rail Safety Act 1997,* because the safety and access provisions will negate the need for this Act.	Scheduled for repeal.	Council to assess progress in 2002.
	Ida Bay Railway Act 1977	Confers on Ida Bay Railway an exemption from the provisions of the *National Parks and Wildlife Act 1950* and the *Railway Management Act 1935.*		To be repealed following proclamation of the *Rail Management Act (Repeal) Act 1997*.	Council to assess progress in 2002.
	Railway Management Act 1935	Gives the Transport Commission the power to issue licences to re-open abandoned railways. Exempts railway buildings from planning laws.	Government no longer owns railways.	Scheduled for repeal.	Meets CPA obligations (June 2001).
	Railways Clauses Consolidation Act 1901	Authorises the construction of railways or tramways and sets fares, construction standards, rates and charges.		Repealed by the *Legislation Repeal Act 2000*.	Meets CPA obligations (June 2001).

(*continued*)

Table 10.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania (continued)	*Van Dieman's Land Company's Waratah and Zeehan Railway Act 1895* *Van Dieman's Land Company's Waratah and Zeehan Railway Act 1896* *Van Dieman's Land Company's Waratah and Zeehan Railway Act 1948*	Provides a particular company with a competitive advantage by conferring the authority to construct and operate a railway, and prescribes the construction standards that must be met.	Review deferred pending proclamation of the *Rail Safety Act 1997*, because the safety and access provisions will negate the need for these Acts.	Expected to be repealed following the proclamation of the *Rail Safety Act 1997.* Act now proclaimed.	Council to assess progress in 2002.
	Wee Georgie Wood Steam Railway Act 1977	Provides a particular company with a competitive advantage by conferring the authority to construct and operate a railway and prescribes the construction standards that must be met.	Review deferred pending proclamation of the *Rail Safety Act 1997*, because the safety and access provisions will negate the need for this Act.	Expected to be repealed following the proclamation of the *Rail Safety Act 1997.* Act now proclaimed.	Council to assess progress in 2002.

11 Taxi services

Taxi services have been heavily regulated for many years in Australia, as they have been in most other countries. The major regulatory question is the restriction on taxi licence numbers, which over the past two decades has reduced competition in the provision of taxi services and encouraged increases in the real value of licence plates. The regulation of licensing directly affects virtually the entire population, because almost everyone is at least an occasional user of taxi services.

Legislative restrictions on competition

Historically, all States and Territories have taken similar approaches to regulation, comprising two distinct elements. First, all States and Territories have limited the number of taxis in the market, via strict licensing requirements that create absolute barriers to entry. (Fares have also been regulated as a corollary to the restrictions on entry.) Legislation generally provides for new licences to be issued only at the discretion of the regulator or a Minister. The outcome of this has been a long term decline in the number of taxis, relative to population, because lobbying has meant that new licences are rarely issued. The decline in taxi numbers has resulted in a steady increase in the real values of taxi licences in all States and Territories.

Second, governments have regulated standards, covering matters such as the age and roadworthiness of vehicles and the entry requirements for drivers. These regulations relate to the quality of the service provided and emphasise passenger safety. Such regulation does not have substantial impacts on competition.

Restricting the number of participants in a consumer service industry as the licensing arrangements do is an extremely unusual legislative measure for governments to take. Previous reviews of the taxi industry (for example, Industry Commission 1994) have found that restricting licence numbers imposes substantial costs on the community and that removal of restrictions would be expected to yield significant net benefits. Consequently, in assessing NCP progress the National Competition Council looked carefully at governments' public interest justifications for restrictions on licence numbers.

Review and reform activity

All States and Territories are reviewing their regulation of taxis under the NCP. Notwithstanding the similar nature of regulation across jurisdictions, each State and Territory has conducted its own review. Governments' approaches to reviews have been different, with reviews having been conducted by consultants (Victoria, South Australia, the ACT and Western Australia), by representatives of government agencies (New South Wales, Queensland and the Northern Territory) and by a combination of the two in Tasmania. Reviews undertaken by government agencies have been either at arm's length from the agency responsible for taxi regulation or, where the regulator was included, other agencies were also involved. All reviews have provided for extensive stakeholder and public input.

All reviews found explicitly or implicitly that the current extent of restrictions imposes net costs on the community. Most (New South Wales, Victoria, Western Australia, the ACT and the Northern Territory) concluded that any absolute restrictions on entry to the taxi industry[1] impose net costs on the community. The remainder argued that the current extent of supply restrictions imposes net costs, without necessarily concluding that all restrictions should be removed. Most reviews acknowledged the high degree of substitutability between taxis and hire cars, with reform options taking account of the future of both sectors. Three (New South Wales, Tasmania and the ACT) recommended that further reviews be undertaken within specific time periods.

Table 11.1 summarises each State and Territory's review and reform activity. Where a review canvassed more than one approach to reform, that noted in the table is the one that the review identified as the preferred option. In sum, four reviews recommended the removal of supply restrictions with full compensation to licence-holders via a licence 'buy-back', two reviews recommended changes that would reduce the extent of supply restrictions and two reviews recommended, in effect, maintaining the status quo.[2]

At the time of this assessment, only the Northern Territory had implemented substantial regulatory reform. The Territory Government removed restrictions on licence numbers in January 1999. It implemented this through a buy-back of existing taxi licences at full market prices[3] funded via annual

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1 That is, limitations on total numbers, imposed for reasons other than ensuring that service providers meet quality standards.

2 The Tasmanian review sought to alter the means of regulating licence issue, but the implementation of this recommendation would appear to yield results little different from the status quo.

3 Buy-back prices were determined by taking the price of the last licence sale in a given taxi area and adjusting this amount by the Consumer Price Index.

taxi licence fees, ranging from $4500 to $16 000 depending on the taxi area.[4] The Territory removed its minimum network size requirement in July 1999 and is currently considering the future of maximum fare regulation. The other governments have either implemented limited changes to licensing arrangements (generally stated to be part of a transitional approach to increasing the number of taxi licences) or are still formulating their policy responses.

[4] Fees for Wheelchair Accessible Taxi licences are 50 per cent of those applicable to general taxi licences.

Table 11.1: Review and reform of legislation regulating taxis

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Passenger Transport Act 1990*	Limitation on numbers of taxi and hire car licences.	Review completed in November 1999. Recommended: • annual increase (5per cent) in licences (limited term, non-transferrable) during 2000–2005; • deregulation of hire cars to increase competition; • further review in 2003; • continuing fare regulation.	60 new restricted licences and 120 new wheelchair access taxi licences issued. Performance reviews established.	Council to assess progress in 2002.
Victoria	*Transport Act 1983*	Limitation on numbers of taxi and hire car licences.	Review completed July 1999. Recommended: • removal of entry restrictions for taxis and hire cars; • buy-back of existing licences, to be funded by annual fees on operators; • continuing fare regulation pending development of a competitive market; • improvement in the quality of fare regulation via transfer of responsibility to an independent economic regulator.	Awaiting Government response.	Council to assess progress in 2002.
Queensland	*Transport Operations (Passenger Transport) Act 1994*	Limitation on numbers of taxi and hire car licences.	Report released publicly in September 2000. Recommended: • revamping of regulatory structure around performance agreements with booking companies; • allowing booking companies a measure of control over licence numbers.	Awaiting Government response.	Council to assess progress in 2002.

(*continued*)

Table 11.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Taxi Act 1994*	Limitation on numbers of taxi licences.	Review completed August 1999. Recommended: • removal of licence supply restrictions; • use of substantial training requirements to regulate entry; • similar requirements for hire car industry; • full compensation to existing plate owners; • issue of new licences at a maximum rate of 20 per cent per year on a 'first come, first served' basis.	Tenders called for release of limited number of restricted licences (peak period and multi-purpose). Ministerial advisory committee to be established to determine a feasible model for licence buy-backs.	Council to assess progress in 2002.
South Australia	*Passenger Transport Act 1994*	Limitation on numbers of taxi licences.	Report completed November 1999. Recommended: • retention of existing restrictions (the Act limits the Passenger Transport Board to not issuing more than 50 general taxi licences in a particular year, although none has been issued); • reliance on competition from hire cars, with removal of some current restrictions.	Awaiting Government response.	Council to assess progress in 2002.
Tasmania	*Taxi Industry Act 1995*	Limitation on numbers of taxi and hire car licences.	Report completed April 2000. Recommended: • annual issue of new licences up to 5 per cent by tender, subject to reserve price, or 10 per cent if tender price exceeds valuations by 10 per cent; • retention of maximum fare for rank/hail market only; • free entry to hire car industry subject to $5000 licence fee.	Awaiting Government response.	Council to assess progress in 2002.

(*continued*)

Table 11.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT	*Motor Traffic Act 1936*	Limitation on numbers of taxi and hire car licences.	Review completed March 2000. On licence quotas, recommended: • immediate removal of restrictions on supply of taxi and hire car licences; • full compensation to licence holders via a licence 'buy-back', with compensation to be funded via consolidated revenue or a long-term licence fee regime.	Release of 10 additional wheelchair accessible taxi licences. Restriction on the number of licences that can be owned by an individual to be removed. Agreement with New South Wales to a cross-border trial, which will see 16 New South Wales taxis able to operate in the ACT. Preferred provider of a second dispatch service selected. Network and operator accreditation to be introduced. Further review of licence quota restrictions by June 2002.	Council to assess progress in 2002.
Northern Territory	*Commercial Passenger (Road) Transport Act*	Limitation on numbers of taxi and hire car licences.	Review completed in 1998. Recommended: • elimination of restrictions on licence numbers; • compensation for the full market value of licences via a licence 'buy-back'; • substantial licence fees to recoup compensation costs.	Main review recommendations fully implemented. Maximum fare restrictions under review.	Meets NCP obligations (June 2001).

12 Other transport services

Earlier chapters relating to transport have discussed specific NCP issues for road, rail and urban transport. The extensive involvement of governments, either through ownership or regulation, means there is a potential for all NCP obligations to be relevant to the transport sector. This chapter examines NCP issues relating to ports, shipping and marine transport, and airports.

The sea and air transport industries are generally characterised by a mix of government and private ownership, with governments regulating aspects of both industries. In the case of air transport, airports are both government and privately owned, with some only recently privatised. Private operators own the airlines. Similarly, ports are both government and privately owned, with most shipping carriers run by private operators. Internationally, competition in shipping is usually regulated. As a result governments need to review legislation in various areas of the shipping industry to ensure it does not restrict competition unless the benefits of the restriction outweigh the costs and the objectives of the legislation can be achieved only through such restrictions.

Because government ports and airports are significant business activities, governments need to apply the principles of competitive neutrality. Many of these organisations will need to adopt a corporatisation model, imposing taxes, debt guarantee fees and equivalent private-sector regulation to ensure that prices charged reflect full cost attribution.

Finally, given recent moves to privatise air and sea transport businesses, or to introduce competition where these businesses were public monopolies, owner governments need to review the structure of these organisations. Governments must also ensure that any responsibilities for industry regulation are removed and relocated, so as to prevent the former monopolist enjoying a regulatory advantage over existing and potential rivals.

Ports and sea freight

Australia, as an island nation, must have a competitive and well-organised shipping industry because it depends on shipping services to import goods from other nations and to export Australian-made products. The sea freight services include liner shipping services and bulk shipping services. Liner shipping mainly transports non-bulk cargo, usually in shipping containers. Bulk shipping usually involves the transport of a single product such as grain.

Legislative restrictions on competition

Ports, marine and shipping activity has been subjected to government regulation for many years. Many governments developed statutes in the early 1900s as shipping was (and still is) a major aspect of trade and legislation was produced to regulate, manage, set prices, and safety standards for trade through shipping channels and port infrastructure. Regulations that restrict competition include:

- access to shipping berths, channels and port infrastructure,
- pilotage requirements,
- marine safety and navigation;
- vessel operating requirements including crewing;
- organisations governing ports and shipping having the power to set prices and regulations as well as market products;
- organisations governing ports and shipping being exempt from paying taxes and government charges; and
- provisions to issue various licences for vessels and vessel operations.

Regulating in the public interest

The Council focussed on the tests in clause 5 of the Competition Principles Agreement (CPA) in determining the progress of jurisdictions for legislative reform. These tests included whether any retained restrictions provide a net community benefit and whether they are the only way of achieving the government's objectives. Jurisdictions provide progress on its review timetable of shipping and port legislation and in most cases included an assessment of the above tests.

Review and reform activity

Table 12.1 summarises government's review and reform activities relating to the regulation of ports, shipping and marine matters.

Table 12.1: Review and reform of legislation regulating port, marine and shipping activity

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	Part X of the *Trades Practices Act 1974*	Provision for shipping companies to be exempt from competition law and form conferences	Completed in 1999 by the Productivity Commission.	*Trades Practices Amendment (International Liner Cargo Shipping) Act 2000* enacted on 5 October 2000 picks up, with some minor changes, all the recommendations made by the Productivity Commission.	Meets CPA obligations (June 2001).
	Maritime Legislation Amendment Act 2001		Completed in 2000.	New legislation.	Council to assess progress in 2002.
	Navigation Amendment (Employer of Seafarers) Act 2001		Completed in 1998.	New legislation.	Council to assess progress in 2002.
	Protection of the Sea (Civil Liability) Act 2001		Completed in 2000.	New legislation.	Council to assess progress in 2002.
	Coastal Trade Part VI Provisions of the *Navigation Act 1912*		Completed in 2000. Final report provided to Minister.	Minister for Transport & Regional Services and the Minister for Financial Services have agreed to develop a whole of government response during 2000-01.	Council to assess progress in 2002.
	Australian Maritime Safety Authority Act 1990	Provisions for safety can only be undertaken by Government	Completed in 1997.	Reforms implemented.	Meets CPA obligations (June 2001).
	Navigation Act 1912	Provisions for ship safety and environmental protection	Completed in 2000.	Proposed Bill to be debated in the near future.	Council to assess progress in 2002.

(*continued*)

Table 12.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth (continued)	*Navigation Act 1912*	Provisions for the employment of seafarers	Completed in 1998.	Proposed Bill debated and returned for further action.	Council to assess progress in 2002.
	Shipping Registration Act 1912	Provision for registration of ships	Completed in 1997.	Government accepted all of the recommendations and is progressing implementing legislative amendments.	Council to assess progress in 2002.
New South Wales	*Marine Safety Act 1998*	Provision for vessel operations, licensing and navigation	NCP review to be undertaken following the gazette of the Regulations.		Council to assess progress in 2002.
	Ports Corporation and Waterways Management Act 1995	Provision for marine administration, safety, port charges and pilotage	Statutory review completed. NCP review is being progressed as a matter of urgency.		Council to assess progress in 2002.
	Commercial Vessels Act 1979	Provision for the use of certain vessels	Completed.	Repealed and replaced.	Meets CPA obligations (June 2001).
	Maritime Services Act 1935	Provision for harbour operations	Completed.	Repealed and replaced.	Meets CPA obligations (June 2001).
	Marine Pilotage Licensing Act 1971	Provisions for pilotage	Completed.	Repealed and replaced.	Meets CPA obligations (June 2001).
	Navigation Act 1901	Restrictions on market conduct and entry	Completed.	Repealed and replaced	Meets CPA obligations (June 2001).

(*continued*)

Table 12.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales (continued)	*Marine (Boating Safety-Alcohol and Drugs) Act 1991*	Provisions for using vessels under certain conditions	Completed.	Repealed and replaced.	Meets CPA obligations (June 2001).
Victoria	*Marine Act 1988*	Provision for pilotage, licensing of pilots and harbour masters, and vessel registration.	Completed in 1998. Review recommended the retention of vessel registration, amendments to licensing standards and discontinuation of monopoly pilotage agreement.	Recommendations accepted and implemented.	Meets CPA obligations (June 2001).
	Transport Act 1983 (Passenger Ferry Services)	Provisions for ferry operation	Review completed.	Repealed.	Meets CPA obligations (June 2001).
Queensland	Harbours (Reclamation of Land) Regulation 1979	Provisions for approval procedures for activities in tidal waters (for example, land reclamation and harbour works)	Completed.	To be repealed with certain approval provisions to be incorporated in other existing legislation.	Council to assess progress in 2002.
	Transport Infrastructure (Ports) Regulation 1994 under the *Transport Infrastructure Act 1994*	Provisions for harbour towage restrictions	Review underway and to be completed by mid 2001.		Council to assess progress in 2002.
	Transport Infrastructure (Ports) Regulation 1994 under the *Transport Infrastructure Act 1994*	Provisions for port activities outside of port limits	Review to be considered by Cabinet.		Council to assess progress in 2002.

(*continued*)

Table 12.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland (continued)	*Transport Operations (Marine Safety) Act 1994* Transport Operations (Marine Safety) Regulation 1994	Provisions for marine safety, pilotage services	Completed.	Proposed legislative amendments are currently being implemented.	Council to assess progress in 2002.
	State Transport (Peoples Movers) Act 1989	Provisions for licences and operational requirements for vehicles	Completed.	To be repealed and any restrictive provisions sought to be retained in legislation to undergo a public benefit test.	Council to assess progress in 2002.
	Transport Legislation Amendment Bill 2001	Provision for safety and operations	Reformed without review.	New legislation.	Council to assess progress in 2002.
	Sea Carriage of Goods (State) Act 1930	Provisions for operating requirements for the carriage of sea goods	Completed.	To be repealed.	Council to assess progress in 2002.
Western Australia	*Port Authorities Act 1998*	Provisions for pilotage, licensing, planning and borrowing.	Completed in 1997. Review recommended the retention of licensing, pilotage, exemption from planning and building requirements and borrowing limits in the public interest.	No reform planned.	Meets CPA obligations (June 2001).
	Jetties Act 1926 and Regulations	Provisions for access restrictions	Completed in 1999.	To be repealed by the Maritime Bill.	Council to assess progress in 2002.

(*continued*)

Table 12.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)	*Lights (Navigation Protection) Act 1938*	Restricts access and market conduct	Completed in 1999.	To be repealed by the Maritime Bill.	Council to assess progress in 2002.
	Marine and Harbours Act 1981 and Regulations	Provisions for harbour operations	Completed in 1999.	To be repealed by the Maritime Bill.	Council to assess progress in 2002.
	Ports (Model Pilotage) Regulations 1994		Completed.	Repealed.	Meets CPA obligations (June 2001).
	Ports Function Act 1993	Restrictions market conduct	Completed.	Repealed.	Meets CPA obligations (June 2001).
	Shipping and Pilotage Act 1967 and Regulations	Provisions for pilotage services	Completed in 1999.	To be repealed by the Maritime Bill.	Council to assess progress in 2002.
	Albany Port Authority Act 1926 and Regulations	Restrictions on market conduct and market entry	Completed.	Repealed.	Meets CPA obligations (June 2001).
	Bunbury Port Authority Act 1909 and Regulations	Restrictions market conduct and market entry	Completed.	Repealed.	Meets CPA obligations (June 2001).
	Dampier Port Authority Act 1985 and Regulations	Restrictions on market conduct and market entry	Completed.	Repealed.	Meets CPA obligations (June 2001).

(*continued*)

Table 12.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)	*Fremantle Port Authority Act 1902* and Regulations	Restrictions on market conduct and market entry.	Completed.	Repealed.	Meets CPA obligations (June 2001).
	Geraldton Port Authority Act 1968 and Regulations	Restrictions on market conduct and market entry	Completed.	Repealed.	Meets CPA obligations (June 2001).
	Marine Act 1982	Provisions for harbour operations	Completed in 2000.	To be repealed by the Maritime Bill.	Council to assess progress in 2002.
	Maritime Services Bill	Provisions for safety and harbour operations	Completed in 2001.	Bill awaiting Parliamentary approval.	Council to assess progress in 2002.
	Port Hedland Port Authority Act 1970 and Regulations	Restrictions on market conduct and market entry	Completed.	Repealed.	Meets CPA obligations (June 2001).
	Port Kennedy Development Agreement Act 1992	Restrictions on market conduct and market entry	Completed.		Council to assess progress in 2002.
	Marine Navigational Aids Act 1973	Provisions for marine navigation aids	Completed.	To be repealed by the Maritime Bill.	Council to assess progress in 2002.
	Pilots Limitation of Liability Act 1962	Provisions limiting liability	Completed.	To be repealed by the Maritime Bill.	Council to assess progress in 2002.

(*continued*)

Table 12.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)	*Esperance Port Authority Act 1968*	Restrictions on market conduct and market entry	Review completed.	Repealed.	Meets CPA obligations (June 2001).
South Australia	*Maritime Services (Access) Act 2000*	Port Access Regime, regulates prices	Reformed without review, third party access regime.		Council to assess progress in 2002.
	South Australia Ports Corporation Act 1994	Restrictions on market conduct and market entry	Review postponed pending outcome of the process to sell or lease the South Australia Ports Corporation.	Act to be repealed following the divestment of the ports assets is completed.	Council to assess progress in 2002.
	South Australia Ports (Disposal of Maritime Assets) Act 2001	Provisions for disposal of port assets	Reformed without review.	New legislation.	Council to assess progress in 2002.
	Harbors and Navigation (Control of Harbors) Amendment Act 2001	Provision for marine safety, licensing and pilotage	Reformed without review.	New legislation.	Council to assess progress in 2002.
	Harbours and Navigation Act 1993	Provisions for harbour operations	Completed in 1999.	Inter-governmental Agreement for national moves to develop consistent legislation.	Council to assess progress in 2002.
Tasmania	*Marine Act 1976*	Restrictions on market conduct and market entry	Completed.	Act amended in 1998 to remove restrictions.	Meets CPA obligations (June 2001).
	Marine and Safety Authority Act 1997	Provision for marine safety	Reformed without review.	New legislation.	Council to assess progress in 2002.

(*continued*)

Table 12.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania (continued)	*Port Companies Act 1997*	Established port authorities	Reformed without review.	New legislation.	Council to assess progress in 2002.
	Marine (Consequential Amendments) Act 1997	Provisions for amendments to marine operations	Reformed without review.	New legislation.	Council to assess progress in 2002.
	Roads and Jetties Act 1935	Provisions for access restrictions	Minor review conducted and recommended retention of access restrictions in the public interest.	Recommendations accepted.	Meets CPA obligations (June 2001).
	Marine Farming Planning Act 1995	Provisions for marine farming applies fees and charges and approves plans	Review found that retention of fees, approval of plans(s) to be in the public interest.		Council to assess progress in 2002.
	Hobart Bridge Act 1958		Completed.	Repealed.	Meets CPA obligations (June 2001).
	Port Huon Wharf Act 1955	Provisions for access restrictions	Completed.	Repealed.	Meets CPA obligations (June 2001).
Northern Territory	Port Bylaws 53A	Provisions for licensing of stevedores	Review found fees and licensing restrictions to be in the public interest	Recommendations accepted.	Meets CPA obligations (June 2001).
	Harbour Craft By-laws part 6	Provisions for vessel operating requirements	Review recommended the Act be repealed	Recommendations accepted.	Council to assess progress in 2002.

(*continued*)

Table 12.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory (continued)	*Darwin Port Corporation Act*	Provisions for pilotage, licensing and stevedoring	Reviewed in 2001. Fees and licensing restrictions found to be in the public interest.	Recommendations accepted. Partial exemption from Corporations Law reform to be implemented by June 2002.	Meets CPA obligations (June 2001).
	Darwin Port Authority Act and Bylaws			Title changed to Darwin Port Corporation Act in 1999 (see above).	Meets CPA obligations (June 2001).
	Marine Act and Regulations	Provisions for harbour operations and hire drive vessels	Completed in 2001. Review found that restrictions in the Act are in the public interest.		Meets CPA obligations (June 2001).

Competitive neutrality: sea freight, ports and storage

Most government-regulated functions relating to ports and shipping were developed and set by statutes in the early to mid-1990s. Then, governments often insulated their businesses from many of the pressures facing private sector firms; for example, many government-based institutions were given tax-free status even though they may have marketed and sold products and/or services.

Clause 3 of the CPA requires governments to apply competitive neutrality principles to significant government businesses. These principles require, at a minimum, significant businesses to set prices that at least cover costs. Where a government-owned port is classified as a 'public trading enterprise', clause 3 calls for the jurisdiction to adopt a corporatisation model to provide the port with a commercial focus and independence from government for day-to-day decisions.

Commonwealth

The main commercial businesses of the Australian National Line were sold in 1998-99, with the exception of vessel leases involving four ships chartered to, and operated by, other companies. This part of the former Australian National Line remains a wholly Commonwealth owned share-limited company (known as the Australian River Company Limited). The Commonwealth does not apply competitive neutrality requirements to this company. The Commonwealth advised that, because the responsibilities of the company are purely financial and it is a wholly owned Commonwealth share-limited company, it has developed a joint shareholder arrangement with responsibilities shared between the Minister for Transport and Regional Services and the Minister for Finance and Administration. As a result competitive neutrality principles were not applied during 1999-2000 and the remaining business was not seen as being significant.

New South Wales

In New South Wales, the *State Owned Corporations Act 1989* and the *State Owned Corporations Amendment Act 1995* provide a framework for corporatising government business enterprises as proxy public companies called state owned corporations. The following port or shipping authorities are subject to the above Acts:

- the Darling Harbour Authority;
- the Newcastle Port Authority;

- the Port Kembla Port Authority; and
- the Sydney Ports Corporation.[1]

The New South Wales Government corporatised the Newcastle Port Corporation, the Port Kembla Port Corporation and the Sydney Ports Corporation on 1 July 1995. These government business enterprises must report to, and are monitored by, the New South Wales Treasury on a quarterly basis. The Darling Harbour Authority is to be absorbed into the Sydney Harbour Foreshore Authority in 2001.

The Government subjects all significant New South Wales Government businesses to its commercial policy framework. Under the New South Wales Government framework, each authority is required to reflect the environment faced by a private sector firm in a competitive market by providing for the application of:

- commercially based targets, dividends and capital structures;
- regular performance monitoring;
- State taxes and Commonwealth tax equivalents;
- risk-related borrowing fees;
- explicit funded social programs or community service obligations; and
- regulation equivalent to that faced by private sector companies.

Victoria

The *Port Services Act 1995* provides for the establishment of the following port corporations:

- the Hastings Port (Holding) Corporation;
- the Melbourne Port Corporation; and
- the Victorian Channels Authority.

The Act provides for access regulation, the separation of regulatory and commercial functions, and the integration of commercial ports into the broader regulatory environment. The Victorian Government is currently undertaking an independent review of its port reforms, aimed at improving the effectiveness and efficiency of ports. A report detailing review recommendations will be presented to the Minister for Ports for

[1] The Marine Ministerial Holding Corporation was abolished on 1 July 2000.

consideration, in consultation with the Treasurer and Minister for Finance, by end of 2001.

The Melbourne Port Corporation and the Victorian Channels Authority are subject to all State and Commonwealth taxes and comply with the Victorian income tax equivalent system. They are also subject to all local government charges and to the State Government's Financial Accommodation Levy, which offsets the competitive advantage associated with government guarantees. Further, they are subject to all relevant State and Commonwealth regulations. The Melbourne Port Corporation does not provide community service obligations unless directed by the Victorian Treasurer (in accordance with the Port Services Act). The Victorian Channels Authority does not provide community service obligations.

The Hastings Port (Holding) Corporation is a statutory body that holds the freehold titles and head leases to the land and seabed that make up the commercial port of Hastings. It administers the port management agreement with a private operator and has no regulatory powers to provide community service obligations. Unlike the Melbourne Port Corporation and the Victorian Channels Authority, it is not liable for State or Commonwealth taxes or for local government fees or charges.

The Victorian Government advised the Council that it has not required the Hastings Port Corporation to apply tax equivalents because the primary business of the corporation is to manage the port, not to trade in goods and services directly with end users. The Government also advised that the corporation is not a significant operation (with annual revenue of less than $1 million) and the application of competitive neutrality arrangements would deliver no net benefit. Hastings Port has been contracted out to a private contractor since 1997. The private port operator derives its revenue from user charges and is subject to income tax.

Queensland

Queensland has 14 trading ports, two community ports and five non-trading ports, which are administered by eight port authorities. The port authorities are responsible for providing and maintaining channels and berths, while contracting others to provide services such as towage and stevedoring. Only Gladstone Port Authority undertakes stevedoring activities. Port navigation and pilotage functions are the responsibility of the Regional Harbour Master of Queensland Transport. The Queensland Government implemented competitive neutrality principles through the corporatisation of its port authorities in 1994.

Western Australia

The Western Australian Government controls essential marine transport infrastructure through its ownership of regional and metropolitan port

authorities. The Government stated that it is committed to ensuring a competitive and efficient ports system. Under the NCP review and reform process the Western Australian Government repealed the local port authority Acts and replaced them with the less restrictive *Port Authorities Act 1998*.

Also as part of the reform process, Western Australia commercialised its port authorities, making them subject to all State taxes and local government rates (or equivalents). However, it is not clear whether Western Australia's port authorities are subject to Commonwealth taxes or tax equivalents. It is also not clear whether Western Australia is applying competitive neutrality arrangements to the Port Kennedy Management Board (established under the *Port Kennedy Development Act 1992*) or proposes to do so. The Council will seek information from Western Australia on this in the context of the 2002 assessment.

South Australia

The SA Ports Corporation managed and owned 10 ports in South Australia. The South Australian Government recognised that the SA Port Corporation was a significant Government entity with business and regulatory interests and powers. It corporatised the port entity with a view to improving its performance. Subsequently the Government has taken an in-principle decision to sell its ports.

The *Maritime Services (Access) Act 2001* provides for the regulation of prices of certain essential maritime services provided by a private port operator. Under this Act, the Minister will issue an initial pricing determination that will establish a price cap for three years. Following this initial three-year period, the South Australian Independent Industry Regulator will conduct a general review of port services and prices, and will establish ongoing pricing regulation.

Tasmania

Tasmania corporatised its port authorities, with a view to improving their commercial performance, in July 1997. The mechanism for corporatisation was the *Port Companies Act 1997*, which established four wholly State-owned companies and two subsidiary companies under the Corporations Law. These new companies commenced on 30 July 1997.

Also, from the 30 July 1997 the Government Business Act's tax–equivalent and debt guarantee fee regimes replaced the partial competitive neutrality regimes that had previously applied to the port authorities. The port companies are also expected to make dividend payments to the Government as shareholder, in accordance with the Corporations Law.

Northern Territory

The Northern Territory Government implemented competitive neutrality principles mainly through commercialising all significant Government business operations (Government Business Divisions).

The Darwin Port Authority was established as a Government Business Division in 1995. The authority's title was changed to the Darwin Port Corporation in 1995 after the implementation of further competitive neutrality reforms, the adoption of a commercial charter and the appointment of a commercial board of directors.

Assessment

Governments have mostly completed the process of establishing their port authorities as government–owned corporations subject to competitive neutrality principles. No government competitive neutrality complaints mechanism received complaints about port authorities, suggesting that the operation of port authorities is generally consistent with CPA clause 3.

Victoria's Hastings Port (Holding) Corporation is not liable for State or Commonwealth taxes or for local government fees or charges. The Council accepts Victoria's explanation that the corporation's primary business is not trading goods and services directly and that the small size of the business means there is no net benefit in applying tax equivalents.

The Council is unable to determine, from the information so far available, whether the Western Australian port authorities are subject to all Commonwealth taxes. Further, the Council does not have information to determine whether there are grounds for applying competitive neutrality principles to Western Australia's Port Kennedy Management Board.

The Council will consider these matters further in the NCP assessment in 2002.

Structural reform of port authorities

Over recent years, several jurisdictions have privatised or considered privatising their port authorities. Some have also looked at introducing access regimes that cover various port services. Where port services previously operated as government monopolies, these reforms raise obligations under clause 4 of the CPA.

Where a State or Territory has decided to privatise a port authority or to increase competition in port services traditionally supplied by a public monopoly, the owner government must have removed and relocated any responsibilities for industry regulation. This is to prevent the former

monopolist from enjoying a regulatory advantage over its existing and potential rivals. In addition, the structure of the former monopoly should be reviewed, taking into account:

- appropriate commercial objectives;
- the merits of separating the natural monopoly elements from the competitive elements;
- the most effective means of separating regulatory functions from competitive functions;
- the most effective means of implementing competitive neutrality principles;
- the merits and best means of funding any community service obligations;
- price and service regulations; and
- the financial relationship between the owner and the monopoly, including the rate of return, dividends and capital structure.

In many cases, port authorities have been operating as public monopolies either because regulatory restrictions have prevented or controlled competition or because the facilities have natural monopoly characteristics.[2] Often, governments have recognised that these are monopoly services; for example, some States have developed access regimes to regulate various port services, and such regimes are designed to increase competition in markets supplied by natural monopoly infrastructure. In this assessment, the Council considered whether NCP structural reform commitments have been fully addressed by jurisdictions that have privatised port authorities or introduced competition through access arrangements for port services.

New South Wales

As discussed above in relation to competitive neutrality, there are four New South Wales ports bodies corporatised in accordance with the State Owned Corporations Act and the State Owned Corporations Amendment Act:

- the Darling Harbour Authority;
- the Newcastle Port Authority;
- the Port Kembla Port Authority; and

[2] A natural monopoly exists where it is more cost–effective for only one facility to provide the service, rather than two or more competing facilities.

- the Sydney Ports Corporation.

Victoria

The Port Services Act sets up various port corporations in Victoria. The Act also established the Victorian Channels Authority and a regime for third–party access to Victorian shipping channels. Victoria's access regime has been certified as effective. The Victorian Government has removed all regulatory functions from the port corporations.

Queensland

Queensland corporatised its port authorities in 1994, introducing port corporatisation charters for all of its ports. The charters addressed the following matters:

- strategic direction and related investment planning;
- core and non core activities;
- performance monitoring;
- asset valuation;
- capital structure;
- dividends and rate of return;
- community service obligations;
- pricing and taxation;
- the form of the legal entity; and
- regulatory powers.

Western Australia

Western Australia repealed the local port authority Acts and replaced them with the less restrictive *Port Authorities Act 1998*. As part of the reform process, Western Australia commercialised its port authorities, making them subject to State taxes and local government rates (or equivalents).

South Australia

South Australia reviewed the structure of its ports before taking an in-principle decision in March 1999 to lease/sell the SA Ports Corporation. South Australia advised that it enacted legislation for the lease/sale of the SA Ports Corporation in December 2000.

As part of the lease/sale, the South Australian Government is intending to introduce a legislated third–party access scheme covering maritime services. South Australia intends that maritime services be defined to include access to channels, defined common user berths, berths adjacent to grain handling facilities and grain handling facilities (belts). South Australia stated that its intention is to seek certification, in accordance with clause 6(3) of the CPA, of the State-based access regime contained in the legislation for the lease/sale of the SA Ports Corporation.

The Maritime Services (Access) Act provides for the regulation of prices of certain essential maritime services provided by the (future) private port operator. Under the terms of the pricing regulation, the Minister (currently the Minister for Government Enterprises) will issue an initial pricing determination that will establish a price cap for three years. After the initial period the South Australian Independent Industry Regulator will conduct a general review of port services and prices, and will establish the ongoing pricing regulation.

Tasmania

Tasmania's Port Companies Act establishes four wholly State–owned companies and two subsidiary companies under the Corporations Law.

The Government established the Marine and Safety Authority of Tasmania on 30 July 1997. In addition to performing the regulatory and non-commercial functions of the former Navigation and Survey Authority of Tasmania, the Marine and Safety Authority is responsible for the safe operation of vessels within Tasmanian waters.

Northern Territory

The former Darwin Port Authority was established as the Darwin Port Corporation in 1999.

Assessment

The Council considers that New South Wales, Victoria, Queensland, Tasmania and the Northern Territory have complied with structural reform commitments under CPA clause 4. While Western Australia has

commercialised its port authorities, the Council needs further detail of its reforms to determine whether the State has fully met its obligations under clause 4.

South Australia's decision to seek certification of a third–party access regime for ports and its decision to lease/sell the SA Ports Corporation raise structural review obligations under the NCP. South Australia has informed the Council that it has conducted a structural review consistent with CPA clause 4. The Council has sought further information from South Australia to assess whether clause 4 commitments have been addressed.

The Council will consider progress by Western Australia and South Australia in the 2002 NCP assessment.

Airports

Sydney Basin airports (Commonwealth)

In the first tranche NCP assessment (June 1997), the Council raised the matter of the Commonwealth's failure to conduct a clause 4 review before the sale of the long-term leases operated by the Federal Airports Corporation (FAC). At the time the Council recognised that arrangements already in place or being contemplated by the Commonwealth might encompass many questions of structure that would be addressed in a clause 4 review of the FAC.

In September 1998 the Commonwealth abolished the FAC and leased its remaining airport holdings to newly created Commonwealth-owned companies. The Sydney Airports Corporation Limited (SACL) is a Commonwealth owned Corporations Law company established to operate the Sydney Basin Airports (Sydney (Kingsford Smith) Airport, Bankstown Airport, Camden Airport and Hoxton Park Airport), under lease from the Commonwealth. Essendon Airport was formed as a subsidiary company of SACL.

The SACL applies full competitive neutrality principles, with the company subject to the same taxes as other airports and subject to a rate of return target. There is a single shareholder arrangement to separate the Government's role as shareholder and regulator. The Minister for Finance and Administration is responsible for shareholder issues, and the Minister for Transport and Regional Services for regulatory issues.

The Commonwealth regulates the SACL airports under the *Airports Act 1996*. This Act removes from the lessees responsibility for the regulation of land use and environmental planning and control, commercial and retail trading, and

liquor licensing. Lessees' on-airport activities, including commercial and retail trading and liquor licensing, are subject to State regulations.

The Commonwealth has implemented arrangements aimed at encouraging competition between airports. The Airports Act prohibits airlines from owning more than 5 per cent of an airport operator company and imposes cross–ownership restrictions of 15 per cent for the Sydney (Kingsford Smith) Airport and the Melbourne, Brisbane and Perth airports. There will also be cross-ownership restrictions to ensure that the same party cannot control the Sydney Airport and the Bankstown, Camden and Hoxton Park airports. The *Airports Act* also contains provisions (s192) to ensure that businesses are able to obtain access to airport infrastructure to provide civil aviation services in line with part IIIA of the *Trade Practices Act 1974* (TPA). While the SACL airports are not currently subject to s192, they are subject to part IIIA of the TPA.

In addition, the Commonwealth has established an economic regulatory regime, administered by the Australian Competition and Consumer Commission (ACCC), to protect users against potential abuse of monopoly power by airport lessees. The prices oversight regime provides for a CPI-X price cap on a defined set of aeronautical services at core regulated (major) airports for five years.[3] There is also price monitoring of aeronautical-related services outside the price cap where operators could exert significant market power at individual airports.

In December 2000 the Commonwealth Government announced that Sydney (Kingsford Smith) Airport will be able to handle the air passenger demand over the next ten years and therefore it would be premature to build a second major airport in the city. The Government announced that Bankstown Airport is to be made available as an overflow airport for Sydney. Further, the Commonwealth announced that it would break up the SACL and privatise it as two separate and competing companies, with one company operating Kingsford Smith Airport and the other operating Bankstown, Camden and Hoxton Park airports. The Government aims to complete the sale of the company that operates Kingsford Smith Airport in the second half of 2001.[4]

On 29 March 2001 the Commonwealth Government announced that Kingsford Smith Airport would be sold by way of a 100 per cent trade sale to be completed in the second half of 2001. Further, the new owner will be given the first right of refusal by the Commonwealth to build and operate any second major airport within 100 kilometres of the Sydney CBD. The other Sydney Basin airports (Bankstown, Camden and Hoxton Park) will also be

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3 The ACCC is responsible for determining the 'X' values, which range from 1.0 to 5.5.

4 The Commonwealth announced in October 2000 that it would sell Essendon Airport Limited, with the sale expected to be completed in August 2001.

sold through a 100 per cent trade sale, to be completed in the second half of 2002.

The matter to be considered through a review under CPA clause 4 is the appropriate structure of the Sydney Basin airports (including any second airport) before privatisation. The Commonwealth has given an undertaking that its future processes will consider structure and competition issues for Kingsford Smith and any second international airport. The Commonwealth Department of Finance and Administration is in the process of preparing a CPA clause 4 review of the SACL. It is expected that this review will be finalised by the end of August 2001.

Airservices Australia

Airservices Australia is a monopoly provider of air navigation, rescue and fire fighting services in the aviation industry. In 1997, the Commonwealth initiated a review of the scope for introducing contestability and reducing the residual regulatory functions of what is by-and-large a commercial entity, albeit with a function of ensuring the safe and efficient use of Australian airspace. The review reported in early 1998 and has been considered by Government, but has not been published.

Competitive neutrality in the provision of services to airport operators by air traffic control providers, both Airservices Australia and other parties, was addressed in the review. Competitive neutrality arrangements have not been implemented for Airservices Australia because it is currently a legislated monopoly. However, the Civil Aviation Safety Authority is in the process of developing a safety regulatory framework for the provision of air traffic control services and aerodrome rescue and fire fighting services. Once this framework is in place and the necessary legislative amendments have been made, there will be scope for competition from alternative service providers. En-route services are and will remain an Airservices Australia monopoly for technical reasons.

Assessment

Noting that the Commonwealth expects to finalise its CPA clause 4 structural review of the SACL in August 2001, the Council will assess whether the Commonwealth has met its clause 4 obligations in respect of the Sydney Basin airports in the 2002 NCP assessment. The Council considers that the Commonwealth has met its CPA clause 3 competitive neutrality obligations.

13 Agriculture and related activities

Agriculture is a significant sector of Australia's economy, contributing 2.4 per cent of Gross Domestic Product, and employing 4.4 per cent of the Australian workforce. The sector is very important to Australia's trade with the rest of the world. Most agricultural output is exported, generating around 28 per cent of Australia's total export income (ABS 2001).

International markets for agricultural produce are generally very competitive, albeit often distorted by trade barriers and subsidies. Over the last four decades, world prices for many agricultural commodities have declined significantly in real terms. Domestic prices for farm inputs have not matched this decline. Australian farmers have responded to this fall in their terms of trade by lifting output and making significant productivity improvements – recently estimated at almost 2 per cent a year (PC 1999a).

Continually improving productivity is likely to remain a necessity for farmers. At the same time, farmers are benefiting from productivity gains made elsewhere, for example:

- via improved returns for farm outputs from gains made in processing, distribution and marketing; and

- via lower prices for farm inputs from gains made in infrastructure services (transport, energy, water and communications), in professional services (veterinarians) and in the supply of goods such as chemicals.

Competition is a powerful spur for productivity and, therefore, of substantial interest to farmers and their representative bodies. This chapter addresses efforts by Australian governments to allow competition, except where this is not in the wider public interest, in agricultural marketing and in economic activities directly related to agriculture.

Agricultural marketing

Governments have had a long history of involvement in the marketing of agricultural products. A Productivity Commission staff research paper (PC 2000b) recently reviewed this history, noting that farmers began to voluntarily form State or regional cooperatives at the turn of the century. Following World War I, agricultural product prices boomed and then collapsed. This sparked State governments into introducing legislation that

made compulsory the membership of various formerly voluntary cooperatives. Following World War II, when a similar price collapse was feared, farmers embraced national statutory price stabilisation and marketing arrangements. These arrangements guaranteed average returns via Commonwealth Government underwriting of export receipts and domestic price setting. In the 1970s and 1980s, in response to growing evidence of production inefficiencies and costs to taxpayers and domestic consumers, the Commonwealth Government reformed and, in some cases, phased out these schemes. Nevertheless statutory marketing authorities (SMAs) remain for some key agricultural products. The principal areas of agricultural activity with SMAs at the time governments introduced the NCP are set out in table 13.1.

Table 13.1: Agricultural products with SMAs when the NCP was introduced

Product	*Jurisdiction(s)*
Coarse grains and oilseeds	New South Wales, Victoria, Queensland, Western Australia and South Australia
Dairy	Commonwealth, New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania and ACT
Horticulture	Commonwealth
Poultry meat	New South Wales, Victoria, Queensland, Western Australia and South Australia
Potatoes	Western Australia
Rice	New South Wales
Sugar	Queensland
Wheat	Commonwealth, New South Wales, Victoria, Queensland, Western Australia and South Australia

Legislative restrictions on competition

In terms of the NCP, the relevant feature of most SMAs is the monopoly they hold on selling an agricultural product grown within their jurisdiction. This may be a domestic sales monopoly (such as for potatoes in Western Australia) or an export sales monopoly (such as that held by AWB Limited, formerly the Australian Wheat Board) or both (such as those held by the Queensland Sugar Corporation and the NSW Rice Marketing Board). These selling monopolies are commonly known as 'single desks'.

A single desk generally pays farmers a price that reflects an average of the prices it receives, less its marketing and transport costs. It also usually determines such matters as crop varieties planted and quality grades. A single desk with a domestic sales monopoly usually has rights to acquire produce compulsorily from farmers to prevent farmers selling their produce interstate. Single desks thus require individual farmers to give up a considerable degree of choice in how they operate their business, what they produce and how they market their production. In return, farmers expect to

benefit from earning a higher net income over the long term than they would otherwise.

Regulating in the public interest

The Productivity Commission staff research paper referred to above assesses at some length the arguments for single desks. In summary, it argued that a prima facie case for restricting competition in export marketing exists where:

- a country's demand for imports from Australia is relatively insensitive to price, supply from competing sources is constrained and there are limited substitute products; or
- a country imposes a quota on imports of the product(s) from Australia.

In either of these circumstances, restricting competition between rival Australian exporters can be expected to raise national income received from the particular export market. This will be in the overall public interest so long as income foregone in other export markets and any productivity losses in Australia do not exceed this additional income.

Any net benefit from restricting competition in export marketing should be maximised by:

- restricting competition in only those export markets that clearly match the above circumstances, and allowing competition in other markets; and
- restricting competition in Australia's domestic markets as little as possible (that is, markets for the product, substitutes, intermediate goods, associated services and factor markets).

This is more likely to be achieved through export licensing (or, in theory, export taxes) than through maintaining a conventional statutory single desk.

Restricting competition in domestic marketing may be in the public interest where this would achieve benefits, such as:

- allowing consumers to make informed product choices;
- supporting consumer confidence in product safety;
- promoting equitable dealing with small businesses; or
- assisting small businesses to become more efficient;

and the value of these benefits is not exceeded by costs such as increased prices or reduced product quality.

Review and reform activity

Over the period of the NCP, governments have reviewed the legislative arrangements underpinning SMAs and have announced or implemented their responses to a number of these reviews. The tables below summarise review and reform activity relating to marketing arrangements for the following commodities:

- coarse grains and oilseeds — table 13.2;
- dairy — table 13.3;
- poultry meat — table 13.4;
- wheat — table 13.5; and
- horticulture, rice, sugar and potatoes — table 13.6.

Table 13.2: Coarse grain marketing regulation

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Grain Marketing Act 1991*	Monopoly granted to NSW Grains Board over domestic and export marketing all barley, sorghum, oats, canola, safflower, sunflower linseed and soybeans grown in the State.	Review completed in July 1999, recommending that restrictions on: • all domestic sales be removed – for malting barley, by no later than 31 August 2001 – and for all other grains, by no later than 31 August 2000; • export sales of feed and malting barley remain for only overseas markets where market power or access premiums can be demonstrated, and review again by 31 August 2004; and • export sales of all other grains be removed – for canola, by 31 August 2001 – and for sorghum, oats, safflowers, linseed and soybeans, by 31 August 2000.	In October 2000 the Government announced that it would retain restrictions on: • domestic sales of malting barley until 2005; • all export sales of feed and malting barley until 2005; and • all export sales of sorghum and canola until 2005. There will be no further review. It also appointed Grainco Australia Limited to act as agent for the now insolvent Grains Board.	Council to assess in 2002.
Victoria	*Barley Marketing Act 1993*	Monopoly granted to Australian Barley Board over domestic and export marketing of all barley grown in the State.	Review completed in 1998 jointly with South Australia, recommending that Victoria: • remove the domestic barley marketing monopoly; • retain the export barley marketing monopoly for only the 'shortest possible transition period'; and • restructure the Australian Barley Board as a private grower-owned company.	Act amended in 1999 to remove monopoly on: • domestic barley from 1 July 1999; and • export barley from 1 July 2001. The Board was transferred into grower ownership on 1 July 1999. It has no regulatory powers.	Meets CPA obligations.

(*continued*)

Table 13.2 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Grain Industry (Restructuring) Act 1993*	Monopoly granted to Grainco Limited over domestic and export marketing of all barley grown in the State.	Review completed in 1999, recommending that Queensland: • remove the domestic monopoly; and • extend the export monopoly until at least mid-2002.	The Government accepted the recommendations but also undertook to review the export monopoly before mid-2002 if either grain arrangements in other States, or the policy of the Japanese Food Agency, changed. A re-examination is underway but no formal decision has been made at this stage.	Council to assess in 2002.
Western Australia	*Grain Marketing Act 1975*	Monopoly granted to the Grain Pool of Western Australia over export marketing of all barley grown in the State.	Review completed in 1999, recommending that Western Australia retain the Grain Pool's export powers, subject to further review if those of AWB Limited are removed.	The Government accepted the recommendations. It has since indicated that further work on the review of this Act is underway.	Council to assess in 2002.
South Australia	*Barley Marketing Act 1993*	Monopoly granted to Australian Barley Board over domestic and export marketing of all barley and oats grown in the State.	As for Victoria, and remove the oats marketing monopoly.	As for Victoria. In 2000, the Government removed the export monopoly sunset (thus continuing the export monopoly), and agreed to a further review after two years.	Council to assess in 2002.
Northern Territory	*Grain Marketing Act 1983*	Monopoly granted to the Grain Marketing Board over domestic and export marketing of all barley and coarse grains grown in the Territory.	Review completed in 1997, recommending repeal of the Act.	Act repealed in 1997.	Meets CPA obligations.

Table 13.3: Dairy marketing regulation

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Dairy Produce Act 1986*	• Licensing of dairy exports. • Support for domestic manufacture of dairy products.	Review by Productivity Commission begun in December 1998. Later deferred pending reform of State and Territory regulation.		Council to assess in 2002.
New South Wales	*Dairy Industry Act 1979*	• Vesting of milk in the Dairy Corporation. • Farmgate price-setting for market milk. • Market milk quotas. • Licensing of farmers and processors.	Reviewed in November 1997 by a joint government-industry panel. Chair and industry members recommended retention of restrictions subject to review again in 2003. Other government members recommended removal of restrictions within 3 – 5 years if national reform did not occur.	Government initially accepted recommendation to retain restrictions until 2003. Act repealed by *Dairy Industry Act 2000* following national agreement to deregulate. Food safety regulation previously integrated under *Food Production (Safety) Act 1998*.	Milk marketing reform meets CPA obligations. Council to assess food safety review and reform in 2002.
Victoria	*Dairy Industry Act 1992*	• Vesting of milk in Victorian Dairy Industry Authority. • Farmgate price-setting for market milk. • Pooling of market milk returns. • Licensing of farmers, processors, distributors and carriers.	Reviewed in 1999 by independent consultant. The review recommended the removal of all restrictions except those that safeguard public health. It further recommended third party auditing of dairy food safety subject to acceptance of importing countries.	Act repealed by *Dairy Act 2000* following national agreement to deregulate. New Act establishes Dairy Food Safety Victoria to regulate dairy food safety.	Milk marketing reform meets CPA obligations. Council to assess food safety review and reform in 2002.

(*continued*)

Table 13.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Dairy Industry Act 1993*	• Vesting of milk in Queensland Dairy Industry Authority. • Farmgate price-setting for market milk. • Market milk quotas. • Licensing of farmers and processors.	Reviewed in 1998 by a joint government-industry panel. The review recommended: • retention of farmgate price regulation for five years to December 2003, but reviewed again before 1 January 2001; and • extension of quota arrangements from South into Central and North Queensland for five years.	Government initially accepted recommendations. Vesting, price-setting and quota provisions removed by the *Dairy Industry (Implementation of National Adjustment Arrangements) Amendment Act 2000* following national agreement to deregulate. Food Safety Queensland to assume responsibility for dairy food safety under the *Food Production (Safety) Act 2000.*	Milk marketing reform meets CPA obligations. Council to assess food safety review and reform in 2002.
Western Australia	*Dairy Industry Act 1973*	• Vesting of milk in the Dairy Industry Authority. • Farmgate price-setting for market milk. • Market milk quotas. • Licensing of farmers and processors.	Reviewed in 1998 by officials, assisted by an industry working party. The review recommended repeal of the Act upon deregulation by Victoria.	Act repealed by the *Dairy Industry and Herd Improvement Legislation Repeal Act 2000* following national agreement to deregulate.	Milk marketing reform meets CPA obligations. Council to assess food safety review and reform in 2002.

(*continued*)

Table 13.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Dairy Industry Act 1992*	• Vesting of milk in Dairy Authority of South Australia. • Farmgate price-setting for market milk. • Pooling of market milk returns. • Licensing of farmers, processors and vendors.	Price-setting restrictions reviewed in 1999 by officials. The review recommended removal of these. Food safety provisions remain under review by officials.	Vesting, price-setting and pooling provisions removed by the *Dairy Industry (Deregulation of Prices) Amendment Act 2000* following national agreement to deregulate.	Milk marketing reform meets CPA obligations. Council to assess food safety review and reform in 2002.
Tasmania	*Dairy Industry Act 1994*	• Vesting of milk in Tasmanian Dairy Industry Authority. • Farmgate price-setting for market milk. • Pooling of market milk returns. • Licensing of farmers, processors, manufacturers and vendors.	Reviewed in 1999 by a government/ industry panel. The review recommended deregulation after five years subject to outcome of Victoria's dairy legislation review and national reforms.	Vesting, price-fixing and pooling provisions removed by the *Dairy Amendment Act 2000* following national agreement to deregulate.	Milk marketing reform meets CPA obligations. Council to assess food safety review and reform in 2002.
ACT	*Milk Authority Act 1971*	• Retail price controls. • Licensing of home vending. • Canberra Milk Authority required to buy milk from sole ACT producer.	Reviewed in 1998 by officials. The review recommended: • separation of Authority's regulatory and commercial roles; • retention of retail price controls until mid-2000; • reform of home vending arrangements; and • retention of compulsory acquisition of ACT milk.	Government initially endorsed recommendations. Act repealed by the *Milk Authority Repeal Act 2000* following national agreement to deregulate.	Meets CPA obligations.

Table 13.4: Poultry meat marketing regulation

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Poultry Meat Industry Act 1986*	Prohibits supply of chickens unless under an agreement approved by the Industry Committee.	Review completed in mid-2000. Under consideration but not yet released.		Council to assess in 2002.
Victoria	*Broiler Chicken Industry Act 1978*	Prohibits supply of chickens unless under an agreement consistent with terms determined by the Industry Negotiation Committee.	Review completed in 1999, recommending that producers seek Australian Competition and Consumer Commission (ACCC) authorisation for collective bargaining, and that the Government repeal the Act.	The Government is assisting the industry to adopt the recommended approach.	Council to assess in 2002.
Queensland	*Chicken Meat Industry Committee Act 1976*	Prohibits supply of chickens unless under an agreement approved by the Industry Committee.	Review completed in 1997, recommending the industry committee convene groups of producers to negotiate with processors, but it be barred from intervening in negotiations on growing fees.	Recommended amendments made to the Act in 1999.	Meets CPA obligations.
Western Australia	*Chicken Meat Industry Act 1976*	Prohibits supply of chickens unless under an agreement approved by the Industry Committee. Processing plants and growing facilities must be approved.	Review completed in 1996, recommending that the Government retain the industry committee's power to set industry-wide supply fees, subject to review after five years, and that restrictions on producer entry and individual negotiations be removed.	Previous government endorsed recommendations but amendments not made yet.	Council to assess in 2002.
South Australia	*Poultry Meat Act 1969*	Prohibits processing of chickens unless from approved farms.	Review completed in 1994, recommending that producers seek ACCC authorisation for collective bargaining with each processor, and that the Government repeal the Act.	Authorisations were obtained. However the Act is yet to be repealed.	Council to assess in 2002.

Table 13.5: Wheat marketing regulation

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Wheat Marketing Act 1989*	Prohibits the export of wheat except with consent of Wheat Export Authority or by AWB International Limited.	Reviewed in 2000 by an independent review committee. It found that introducing competition was more likely to deliver net benefits than continuing the export controls. However, it also found it would be premature to repeal the Act before a relatively short evaluation period of new commercial arrangements. It recommended: • retaining the export single desk until the 2004 review; • incorporating NCP principles into the 2004 review; • developing performance indicators for the 2004 review • moving from export consents to export licensing; • removing for a three-year trial the requirement that the Authority consult AWB International Limited on consents for export of bagged and containerised wheat; and • removing for a three-year trial the requirement that the Authority obtain written approval from AWB International Limited for export of durum wheat.	In April 2001 Commonwealth announced its acceptance of recommendations, except that it: • declined to incorporate NCP principles in the 2004 review; • retained the requirement for consultation with AWB International Limited on consents for export of bagged and containerised wheat; and • retained the requirement for written approval of AWB International Limited for export of durum wheat. Performance indicators for the 2004 review are yet to be released.	Council to assess in 2002.
New South Wales	*Wheat Marketing Act 1989*	Imports Commonwealth Act into State jurisdiction.		To be repealed.	Council to assess in 2002.

(*continued*)

Table 13.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria	*Wheat Marketing Act 1989*	Imports Commonwealth Act into State jurisdiction.	Review delayed until completion of Commonwealth review.		Council to assess in 2002.
Queensland	*Wheat Marketing (Facilitation) Act 1989*	Imports Commonwealth Act into State jurisdiction.	Not scheduled for review.		Council to assess in 2002.
Western Australia	*Wheat Marketing Act 1989*	Imports Commonwealth Act into State jurisdiction.	Review underway.		Council to assess in 2002.
South Australia	*Wheat Marketing Act 1989*	Imports Commonwealth Act into State jurisdiction.	Review to start.		Council to assess in 2002.

Table 13.6: Regulation of other agricultural product markets

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Australian Horticulture Corporation Act 1987*	Prohibits export of apples, citrus, pears and stonefruit to certain foreign markets without a license and/or permission. Licences and permissions may restrict price, quality, import agent, packaging, labelling and form of consignment.	Reviewed in 1999 by a government/industry panel with assistance from an economic consultancy. It recommended retention of the power to restrict exports subject to: • a public interest case, prepared with wide consultation, to accompany proposals for new restrictions; • Secretary of Agriculture, Fisheries and Forestry to approve/decline proposals for new restrictions; • regular monitoring and review of restrictions in place.	The *Horticulture Marketing and Research and Development Services Act 2000* replaced this Act in late 2000. It provides for a Deed of Arrangement between Minister and Horticulture Australia Limited that will set out disciplines on export control powers. Once finalised the Deed is to be made publicly available.	Council to assess in 2002.

(*continued*)

Table 13.6 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Marketing of Primary Products Act 1983*	Monopoly granted to Rice Marketing Board over domestic and export marketing of all rice grown in the State.	Reviewed in 1995 by a government/industry panel. It recommended retaining the export monopoly, but under Commonwealth jurisdiction, and removing the domestic monopoly and State legislation.	In January 1999 a working party of Commonwealth, New South Wales, industry and Council representatives recommended a reform model: that the Commonwealth create a Rice Export Authority to control rice exports, with Ricegrowers Cooperative Limited (RCL) to hold an export right for 3-5 years, and licensing of non-competing exports. In March 2001, following further development, New South Wales agreed to the Commonwealth consulting other States and Territories on the model on the basis that the Commonwealth note that New South Wales considers the arrangement should be of five years duration and that Ricegrowers Cooperative Limited should have some right of veto over rice exports by other parties.	Council to assess in 2002.

(*continued*)

Table 13.6 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Sugar Industry Act 1991*	Monopoly granted to Queensland Sugar Corporation over domestic and export marketing of all sugar produced in the State. Local boards control cane production areas and allocation of cane to mills.	Reviewed in 1996 by a government/industry panel. It recommended: • retaining the domestic and export monopolies subject to export parity pricing of domestic sales; • permitting growers to negotiate individually with mills once collective agreements expire; and • removal of the Commonwealth's sugar tariff.	In July 1997 the tariff was removed and export parity pricing introduced. In November 1999 the *Sugar Industry Act 1999* was passed. This and subsequent amendments allow some scope for growers to negotiate individually with mills. New Act also brought several structural reforms of the Corporation and bulk sugar terminals.	Council to assess in 2002.
Western Australia	*Marketing of Potatoes Act 1946*	Monopoly granted to Potato Marketing Board over domestic marketing of all potatoes grown in the State.	Review commenced in 1998 and, notwithstanding preliminary recommendation in 1999 to retain the domestic marketing monopoly, is still underway.		Council to assess in 2002.

Related activities

This section considers jurisdictions' progress in fulfilling the CPA obligations of legislation review and structural reform in the agriculture-related activities of:

- bulk handling and storage;
- veterinary services;
- agricultural and veterinary chemicals;
- food; and
- quarantine and export controls.

Bulk handling and storage

The grains industry has experienced significant restructuring over the past 18 months. Strategic alliances and joint ventures both horizontally and vertically between industry participants are changing the landscape of the industry.

Legislative restrictions on competition

State regulation of bulk handling and storage of grains traditionally involved the granting of monopoly rights to a statutory or grower-owned body. With this power the handling and storage body is able to charge prices that:

- average costs across grain producers; and
- bundle all parts of the handling and storage chain irrespective of whether a grower actually uses all these parts.

This monopoly was generally justified by the need to provide growers with equitable access to the infrastructure and to avoid duplication.

Regulating in the public interest

The public interest in regulating grain bulk handling and storage is to prevent the misuse of market power arising from control of key grain facilities at ports (and, to a lesser extent, inland) that are not economic to duplicate. Regulation will generally:

- establish third-party rights to such facilities; and
- cap the prices of services provided with such facilities.

There has recently been a surge in competitive investment in grain handling and storage infrastructure. This suggests that economies of scale in the industry may be less important than once thought and, hence, market power is dissipating. Nevertheless considerable dominance remains in the industry.

Review and reform activity

Two governments — Western Australia and South Australia — have reviewed or are reviewing the regulation of bulk handling and storage (see table 13.7).

Table 13.7: Bulk handling and storage[1]

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Bulk Handling Act 1967*	Co-operative Bulk Handling Limited granted sole right to receive and deliver grain until 31 December 2000.	Review underway.		Council to assess in 2002.
South Australia	*Bulk Handling of Grain Act 1955*	South Australian Co-operative Bulk Handling Limited granted sole right to receive and deliver grain.	Review completed in 1998, recommending repeal.	Repealed in 1998.	Meets CPA obligations.

[1] New South Wales repealed its regulation of bulk handling and storage in 1992. Victoria's Grain Handling and Storage Act 1995 subjects Graincorp's Victorian facilities to price regulation but does not restrict competition. Queenland does not directly regulate bulk handling.

Veterinary services

Legislative restrictions on competition

All States and Territories regulate veterinary services through specific professional registration legislation. This legislation typically restricts competition among veterinary surgeons via:

- entry and registration requirements;
- the reservation of title and areas of practice exclusive to veterinary surgeons;
- commercial conduct restrictions, such as controls on advertising and ownership in many jurisdictions; and
- disciplinary processes.

In addition to professional licensing, drugs and poisons legislation and animal medicine acts in some cases also regulate veterinary surgery

These restrictions constrain entry into the profession and competition among veterinarians, thereby raising the cost of veterinarians' services and limiting choice for consumers (particularly for those in regional and remote areas).

Regulating in the public interest

The objectives of such legislation are generally:

- to control animal diseases;
- to protect the public against professional incompetence; and
- to ensure the livestock industry can meet the animal health and food safety requirements of domestic and international markets.

These objectives reflect problems of negative externalities (whereby individual veterinary surgeons may not bear all the costs imposed on society by the inadequate treatment and control of animal diseases) and of information asymmetry (a consumer of veterinary services may have difficulty assessing the capability of veterinary surgeons).

Review and reform activity

Table 13.8 summarises governments' review and reform activity relating to the regulation of veterinary surgeons.

Table 13.8: Veterinary surgery regulation

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Veterinary Surgeons Act 1986*	Licensing of veterinary surgeons and hospitals, reservation of practices, reservation of title, advertising restrictions, controls on business names	Review completed in 1998 by a panel of officials, veterinarians, consumers and animal welfare interests.		Council to assess in 2002.
Victoria	*Veterinary Practice Act 1997*	Licensing of veterinary surgeons, reservation of practices, reservation of title, advertising restrictions	The Act followed a pre-NCP review of earlier legislation. Victoria has since reviewed the Act and found it to comply with NCP.		Council to assess in 2002.
Queensland	*Veterinary Surgeons Act 1936*	Registration of veterinary surgeons, reservation of practices, advertising restrictions, ownership restrictions, controls on business names	Review completed in 1999. It recommended retention of registration and practice reservation, but removal of: • ownership restrictions • advertising restrictions • controls on business names.	Government has endorsed recommendations and intends to amend Act in 2001.	Council to assess in 2002.
Western Australia	*Veterinary Surgeons Act 1960*	Licensing of veterinary surgeons and hospitals, reservation of practices, reservation of title, advertising restrictions, controls on business names	Review underway.		Council to assess in 2002.

(*continued*)

Table 13.8 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Veterinary Surgeons Act 1985*	Licensing of veterinary surgeons and hospitals, reservation of practices, reservation of title, advertising restrictions, controls on business names	Review completed in 2000.		Council to assess in 2002.
Tasmania	*Veterinary Surgeons Act 1987*	Licensing of veterinary surgeons and hospitals, reservation of practices, reservation of title	Review completed.	Amendments under preparation.	Council to assess in 2002.
ACT	*Veterinary Surgeons Registration Act 1965*	Licensing of veterinary surgeons, reservation of practices, reservation of title, advertising restrictions	Reviewed alongside regulation of other health professionals. Discussion paper proposed retention of licensing and reservation of title, but removal of practice reservation and controls on advertising and ownership.		Council to assess in 2002.
Northern Territory	*Veterinarians Act 1994*	Licensing of veterinary surgeons, reservation of practices, reservation of title, advertising restrictions	Review completed in 2000. It recommended retention of licensing, reservation of title and practice, removal of some advertising restrictions, and additional consumer representation on the Veterinary Board.	Government has endorsed recommendations.	Council to assess in 2002.

Agricultural and veterinary chemicals

Legislative restrictions on competition

Agricultural and veterinary (agvet) chemicals are regulated under Commonwealth, State and Territory legislation. These laws establish the National Registration Scheme for Agricultural and Veterinary Chemicals (the National Registration Scheme), which covers the evaluation, registration, handling and control of agvet chemicals up to the point of retail sale. The National Registration Authority administers the scheme. The Commonwealth Acts establishing these arrangements are the *Agricultural and Veterinary Chemicals (Administration) Act 1992* and the *Agricultural and Veterinary Chemicals Code Act 1994*.

Beyond the point of sale agvet chemicals are regulated through control-of-use legislation. This legislation typically covers matters such as the licensing of agvet chemical spraying contractors, aerial spraying and permits allowing use for purposes other than those for which a product is registered (that is, off-label purposes). A national focus is brought to the regulatory regime via the ministerial Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ).

Regulating in the public interest

Agricultural and veterinary chemicals pose a variety of serious risks if not supplied or used with due care. That is, risks to public health, worker health, the environment, animal welfare and to international trade.

Suppliers of agricultural and veterinary chemicals generally have strong incentives to produce chemicals safely, to ensure they are fit-for-purpose, and to make consumers aware of how to use the products safely. Users too generally have strong incentives to choose chemicals that are fit-for-purpose and to use them safely. However, where some of the costs of chemical supply or use are borne by third parties, and practical difficulties arise in forcing their compensation by the chemical supplier or user at fault, less than optimal care may result. Governments therefore endeavour through regulation to deliver a level of chemical safety that is acceptable to the community.

Chemical safety regulation is not costless however. It imposes costs on businesses through requirements such as those on the design of premises and equipment, the training of staff, and maintaining knowledge of changes in chemical regulation. These and other costs are ultimately passed on to consumers through higher prices and reduced choices. Chemical regulation should therefore:

- intervene only on the basis of sound science and risk assessment;
- hold chemical suppliers and users responsible for safety, by setting simple and clear performance standards, and allowing them freedom to choose how to meet these standards; and
- unless necessary to protect health:
  - not impose significant barriers to entry by suppliers into chemical markets;
  - not impose on suppliers of competing chemical products different regulatory burdens; and
  - allow competition in the delivery of chemical safety services such as assessment and analysis.

Review and reform activity

Table 13.9 summarises governments' review and reform activity relating to the regulation of agricultural and veterinary chemicals.

Table 13.9: Agricultural and veterinary chemicals regulation

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Agricultural and Veterinary Chemicals Code Act 1994*	Chemicals not to be supplied or held unless approved or exempt. Approval of chemicals solely by National Registration Authority. Same approval costs imposed on low risk chemicals as on high risk chemicals. Assessment services purchased solely from certain authorities. Chemicals not approved unless National Registration Authority satisfied efficacy is appropriate. Licensing of chemical manufacturers. Data protected from rivals unless compensation paid.	Review completed in 1999 by review team of economic and legal consultants. The review recommended: • retaining the monopoly on approval of chemicals; • lowering of regulatory costs for low risk chemicals; • including principles in the Code to guide inclusion/exclusion of chemicals in scheme; • accepting alternative suppliers of assessment services; • limiting of efficacy review to truth of claimed efficacy; • recovering National Registration Authority costs via a simple flat rate sales levy and cost-reflective application fees; • retaining licensing of veterinary chemical manufacturers; • removing provision to licence of agricultural chemical manufacturers until case is made; and • applying Trade Practices Act third party access pricing to data protection provisions.	Intergovernmental response to review completed in 2000. It supported all recommendations except: • removing provision to licence agricultural chemical manufacturers; and • limiting efficacy review. Working groups have been established to consider: • implications for other chemical regulation of a low cost regulatory system for low risk agvet chemicals; • how to monitor quality of assessment services; and • if there is a case for licensing agricultural chemical manufacturers. Data protection is to be considered in a wider review.	Council to assess in 2002.

(*continued*)

Table 13.9 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth (continued)	*Agricultural and Veterinary Chemicals (Administration) Act 1992*	Chemicals not to be imported unless approved or exempt. Minimum qualifications and experience for analysts. Fees and levies impose entry barrier and discriminate between firms.	See *Agricultural and Veterinary Chemicals Code Act 1994* above.	See *Agricultural and Veterinary Chemicals Code Act 1994* above.	Council to assess in 2002.
New South Wales	*Agriculture and Veterinary Chemicals (New South Wales) Act 1994*	Imports the Agricultural and Veterinary Chemicals Code into State jurisdiction.	See *Agricultural and Veterinary Chemicals Code Act 1994* above.	See *Agricultural and Veterinary Chemicals Code Act 1994* above.	Council to assess in 2002.
	Pesticides Act 1978 (Pt 7)	Restricts sale and movement of certain foodstuffs.	Review completed in 1999 by government/industry panel. Recommendations awaiting Cabinet consideration.		Council to assess in 2002.
	Stock Medicines Act 1989	Unregistered chemicals not to be held or used on food-producing stock unless prescribed by a veterinary surgeon. Minimum qualifications and experience for analysts. Restricts advertising.	See *Pesticides Act 1978 (Pt 7)*.		Council to assess in 2002.
	Stock Foods Act 1940	Controls labelling. Limits foreign ingredients.	See *Pesticides Act 1978 (Pt 7)*.		Council to assess in 2002.

(*continued*)

Table 13.9 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales (continued)	*Stock (Chemical Residues) Act 1975*	Imposes restrictions on chemically affected stock (for example on sale, movement or destruction).	See *Pesticides Act 1978 (Pt 7)*.		Council to assess in 2002.
Victoria	*Agriculture and Veterinary Chemicals (Victoria) Act 1994*	Imports the Agricultural and Veterinary Chemicals Code into State jurisdiction.	See *Agricultural and Veterinary Chemicals Code Act 1994* above.	See *Agricultural and Veterinary Chemicals Code Act 1994* above.	Council to assess in 2002.
	Agriculture and Veterinary Chemicals (Control of Use) Act 1992	Allows off-label use of chemicals subject to conditions. Conditions vary markedly between jurisdictions. Veterinary surgeons exempt from various controls. Licensing of spray contractors.	National review with *Agricultural and Veterinary Chemicals Code Act 1994* above. Review recommended: • developing a nationally consistent approach to off-label use; • retaining the veterinary surgeon exemption, but not for agricultural chemicals; • licensing of spraying businesses subject to maintenance of records, employing licensed persons and provision of necessary infrastructure; • licensing of persons spraying for fee or reward subject to accreditation of competency and working only for a licensed business; • exempting persons spraying on own land from licensing.	Intergovernmental response completed in 2000. A task force was established to develop a nationally consistent approach to control-of-use regulation and to report to ARMCANZ.	Council to assess in 2002.

(*continued*)

Table 13.9 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Agricultural and Veterinary Chemicals (Queensland) Act 1994*	Imports the Agricultural and Veterinary Chemicals Code into State jurisdiction.	See *Agricultural and Veterinary Chemicals Code Act 1994* above.	See *Agricultural and Veterinary Chemicals Code Act 1994* above.	Council to assess in 2002.
	Agricultural Chemicals Distribution Control Act 1966	Licensing of spray contractors.	See Victoria's *Agriculture and Veterinary Chemicals (Control of Use) Act 1992* above.	See Victoria's *Agriculture and Veterinary Chemicals (Control of Use) Act 1992* above.	Council to assess in 2002.
	Chemical Usage (Agricultural and Veterinary) Control Act 1988	Allows off-label use of chemicals subject to conditions. Conditions vary markedly between jurisdictions. Veterinary surgeons exempt from various controls.	See Victoria's *Agriculture and Veterinary Chemicals (Control of Use) Act 1992* above.	See Victoria's *Agriculture and Veterinary Chemicals (Control of Use) Act 1992* above.	Council to assess in 2002.
Western Australia	*Agriculture and Veterinary Chemicals (Western Australia) Act 1995*	Imports the Agricultural and Veterinary Chemicals Code into State jurisdiction.	See *Agricultural and Veterinary Chemicals Code Act 1994* above.	See *Agricultural and Veterinary Chemicals Code Act 1994* above.	Council to assess in 2002.
	Veterinary Preparations and Animal Feeding Stuffs Act 1976	Premises and products to be registered. Restrictions on packaging and labelling. Minimum qualifications for analysts. Advertising restrictions.	See Victoria's *Agriculture and Veterinary Chemicals (Control of Use) Act 1992* above.	See Victoria's *Agriculture and Veterinary Chemicals (Control of Use) Act 1992* above.	Council to assess in 2002.

(*continued*)

Table 13.9 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)	*Agricultural Produce (Chemical Residues) Act 1983*	Imposes restrictions on chemically affected produce (e.g. on sale, movement or destruction). Minimum qualifications for analysts.	See Victoria's *Agriculture and Veterinary Chemicals (Control of Use) Act 1992* above.	See Victoria's *Agriculture and Veterinary Chemicals (Control of Use) Act 1992* above.	Council to assess in 2002.
	Aerial Spraying Control Act 1966	Licensing of aerial spray contractors.	See Victoria's *Agriculture and Veterinary Chemicals (Control of Use) Act 1992* above.	See Victoria's *Agriculture and Veterinary Chemicals (Control of Use) Act 1992* above.	Council to assess in 2002.
South Australia	*Agricultural and Veterinary Chemicals (South Australia) Act 1994*	Imports the Agricultural and Veterinary Chemicals Code into State jurisdiction.	See *Agricultural and Veterinary Chemicals Code Act 1994* above.	See *Agricultural and Veterinary Chemicals Code Act 1994* above.	Council to assess in 2002.
	Agricultural Chemicals Act 1955	Chemicals must be sold with registered label. Use of chemicals must be as per label or Ministerial directions.	Review completed.	Agricultural and veterinary chemicals Bill before Parliament.	Council to assess in 2002.
	Stock Foods Act 1941	Stock foods must be sold with label or certificate specifying chemical analysis. Seed grain must not be fed to stock.	See *Agricultural Chemicals Act 1955* above.	See *Agricultural Chemicals Act 1955* above.	Council to assess in 2002.
	Stock Medicines Act 1939	Stock medicines to be registered.	See *Agricultural Chemicals Act 1955* above.	See *Agricultural Chemicals Act 1955* above.	Council to assess in 2002.

(*continued*)

Table 13.9 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania	*Agricultural and Veterinary Chemicals (Tasmania) Act 1994*	Imports the Agricultural and Veterinary Chemicals Code into State jurisdiction.	See *Agricultural and Veterinary Chemicals Code Act 1994* above.	See *Agricultural and Veterinary Chemicals Code Act 1994* above.	Council to assess in 2002.
	Agricultural and Veterinary Chemicals (Control of Use) Act 1995	Chemicals not to be used unless registered under Code. Licensing of spray contractors. Approval of indemnity insurance.	See Victoria's *Agriculture and Veterinary Chemicals (Control of Use) Act 1992* above.	See Victoria's *Agriculture and Veterinary Chemicals (Control of Use) Act 1992* above.	Council to assess in 2002.
ACT	*Pesticides Act 1989*	Pesticides not to be used unless registered.		Repealed by the *Environmental Protection Act 1997*.	Council to assess in 2002.
	Fertilizers Act 1904 (NSW) in its application in the Territory	Fertilizers not to be sold unless with statement of composition.	Review completed in 1999 by officials.	Act to be retained.	Council to assess in 2002.
Northern Territory	*Agricultural and Veterinary Chemicals (Northern Territory) Act*	Imports the Agricultural and Veterinary Chemicals Code into State jurisdiction.	See *Agricultural and Veterinary Chemicals Code Act 1994* above.	See *Agricultural and Veterinary Chemicals Code Act 1994* above.	Council to assess in 2002.

Food regulation

As of 1996-97 there were around 131 500 food businesses in Australia with an annual retail turnover of $52 billion (ANZFA 1999). Australia imported $3.6 billion of food and beverages in 1997-98. Around three-quarters of imports are for final household consumption, with the balance for further processing in Australia (AFFA 1998).

Legislative restrictions on competition

Commonwealth, State and Territory governments regulate the processing and sale of food in Australia. The Commonwealth's *Australia New Zealand Food Authority Act 1991* establishes the Australia New Zealand Food Authority (ANZFA), which is responsible for developing, varying and reviewing food standards in Australia and New Zealand. In addition, it coordinates national food surveillance and recall systems, conducts research, assesses policies about imported food and develops codes of practice with industry.

States and Territories regulate food hygiene management via their Food Acts and also via sector specific legislation (for example, meat). This legislation varies widely but generally provides for approval of food premises, authorisation of officers to inspect food and premises and for various food safety offences. The variation of regulation between jurisdictions also hampers competition between suppliers in national food markets.

The Commonwealth controls the importation of foods under the *Imported Food Control Act 1992*. There are no restrictions on who may import foods into Australia but imported food:

- must comply with Australian public health and food standards;
- is subject to a risk assessment based program of inspecting and testing.

The Australian Quarantine Inspection Service administers the program with scientific support from ANZFA. Australian Government Analytical Laboratories is the sole provider of testing services.

Regulating in the public interest

Food containing microbial, physical or chemical contamination can pose a serious threat to human health and safety. Some consumers also have particular dietary needs, for example food allergies. Food suppliers generally have strong incentives to produce safe food of the type that consumers want and for which they will pay. However, incentives can be weak where:

- contamination is often not evident to the consumer until after consumption;
- suppliers of contaminated food often cannot be forced to compensate consumers due to practical difficulties that may occur in verifying food quality and linking illness with a specific supplier.

In addition, food safety incidents can shake consumer confidence in broad classes of food and thus harm other suppliers. Governments therefore endeavour through regulation to deliver a level of food safety that is acceptable to the community.

Food safety regulation is not costless however. It imposes costs on businesses through requirements such as those on the design of premises and equipment, the training of staff, and maintaining knowledge of changes in food regulation. These and other costs are ultimately passed on to consumers through higher prices and reduced choices. Food regulation should therefore:

- focus on protecting public health, by intervening only on the basis of sound science and risk assessment;
- hold food suppliers responsible for food safety, by setting simple and clear performance standards, and by allowing suppliers freedom to choose how to meet these standards; and
- unless necessary to protect public health:
  - not impose significant barriers to entry by suppliers into food markets;
  - not impose on suppliers of competing food products different regulatory burdens; and
  - allow competition in the delivery of food safety services such as auditing and testing.

Review and reform activity

Table 13.10 summarises governments' review and reform activity relating to the regulation of food.

Table 13.10: Food regulation

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Australia New Zealand Food Authority Act 1991*	ANZFA develops food standards, coordinates food surveillance and recall systems, and develops codes of practice with industry.	Blair Review of Food Regulation completed in 1998, recommending the Act be amended to: • clarify regulatory objectives; • require ANZFA, in carrying out its regulatory functions, to apply an NCP test. Technical review of food standards under the auspices of the Australia New Zealand Food Standards Council.	Act amended by *Australia New Zealand Food Authority Amendment Act 1999* to address the key recommendations. New joint (with New Zealand) Food Standards Code adopted, including mandatory percentage labelling of key ingredients and nutritional panels on all food, and food safety standards.	Amendments to the *Australia New Zealand Food Authority Amendment Act 1999* meet CPA obligations. See chapter 26 for discussion of compliance with NCP obligations re the Food Standards Code.
	Imported Food Control Act 1992	Imported food must meet Australian standards. Imported food subject to risk-based inspection and testing. Testing is performed only by Australian Government Analytical Laboratories.	Review completed in 1998, recommending: • quality assurance processes of importers be recognised; • inspection rates and strategies be tailored to importer performance and agreements on certification and compliance; and • qualified laboratories be permitted to test imported food.		Council to assess in 2002.

(*continued*)

Table 13.10 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Food Act 1989*	Various food safety offences. Wide powers to make orders prohibiting or requiring conduct.	National review completed in 2000. Outcome was the Model Food Bill, which provides a uniform regulatory framework and, in particular: • requires notification by all food businesses; • requires registration by high risk food business; and • allows contestability of audit and laboratory services subject to approval of providers.	All Australian Governments agreed in November 2000 to adopt core provisions of the Model Food Bill by November 2001.	Council to assess in 2002.
	Meat Industry Act 1987	Various classes of licences.	Review completed in 1998.	Responsibility for meat industry food safety transferred to Safe Food Production by the *Food Production (Safety) Act 1998*.	Council to assess in 2002.
Victoria	*Food Act 1984*	Various food safety offences. Food to meet prescribed food standards. Registration of food premises and vehicles. Food safety programs required for declared food premises/vehicles. Approval of food safety auditors.	National review completed in 2000 (see New South Wales *Food Act 1989*).	All Australian Governments agreed in November 2000 to adopt core provisions of the Model Food Bill by November 2001. Act amended by *Food (Amendment) Act 2001* to adopt provisions of Model Food Bill.	Council to assess in 2002.

(*continued*)

Table 13.10 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria (continued)	*Meat Industry Act 1993*	Licensing of processing facilities and vehicles. Quality assurance programs required for certain premises. Minimum qualifications for inspectors. Minimum experience and qualifications for auditors.	Review completed by consultant in March 2001. It recommended: • retaining licensing of processing facilities and vehicles; • retaining minimum qualifications for inspectors, and minimum experience and qualifications for auditors; • improved accountability of the Meat Industry Authority; and • prohibiting discriminatory exercise of Ministerial powers.		Council to assess in 2002.
Queensland	*Food Act 1981*	Various food safety offences. Food to meet prescribed food standards. Registration of food premises (under associated regulations).	National review completed in 2000 (see New South Wales *Food Act 1989*).	All Australian Governments agreed in November 2000 to adopt core provisions of the Model Food Bill by November 2001.	Council to assess in 2002.
	Meat Industry Act 1993	Various food safety offences. Minimum qualifications for meat safety officers. Accreditation of processing facilities. Wide powers to make standards.	Review completed in 1999, recommending development of new food safety standards, especially for high-risk foods.	Act repealed and provisions for meat safety standards included in *Food Production (Safety) Act 2000*.	Council to assess in 2002.
Western Australia	*Health (Adoption of Food Standards Code) Regulations 1992*	As per the Food Standards Code.	National review completed in 2000 (see New South Wales *Food Act 1989*).	All Australian Governments agreed in November 2000 to adopt core provisions of the Model Food Bill by November 2001.	Council to assess in 2002.

(*continued*)

Table 13.10 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)	*Health (Food Hygiene) Regulations 1993*	Licensing of food processors and registration of premises. Safe food practices specified.	Under review.		Council to assess in 2002.
	Health (Game Meat) Regulations 1992	Minimum qualifications for slaughterers. Registration of field depots and processing facilities.	Under review.		Council to assess in 2002.
South Australia	*Food Act 1985*	Offence to manufacture or sell food that does not meet prescribed standard.	National review completed in 2000 (see New South Wales *Food Act 1989*).	All Australian Governments agreed in November 2000 to adopt core provisions of the Model Food Bill by November 2001.	Council to assess in 2002.
	Meat Hygiene Act 1994	Accreditation of meat processors. Meat inspectors and auditors must enter agreement with Minister.	Review completed in 2000. Recommended extension to cover rabbit meat and retail within the scope of the Act.		Council to assess in 2002.
Tasmania	*Food Act 1998*	Various food safety offences. Food to meet prescribed food standards. Registration of premises and vehicles. Licensing of food manufacturers and sellers.	Replaced *Public Health Act 1962*. Reviewed prior to introduction via gatekeeping process.	All Australian Governments agreed in November 2000 to adopt core provisions of the Model Food Bill by November 2001.	Council to assess in 2002.

(*continued*)

Table 13.10 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania (continued)	*Meat Hygiene Act 1985*	Licensing of meat processing facilities.	Review has been completed.	Reform legislation has been drafted.	Council to assess in 2002.
ACT	*Food Act 1992*	Various food safety offences. Licensing of food businesses. Food to meet prescribed food standards.	National review completed in 2000 (see New South Wales *Food Act 1989*).	All Australian Governments agreed in November 2000 to adopt core provisions of the Model Food Bill by November 2001.	Council to assess in 2002.
	Meat Act 1931	Ministerial permission required to engage in certain meat processing activities.			Council to assess in 2002.
Northern Territory	*Food Act 1986*	Various food safety offences.	National review completed in 2000 (see New South Wales *Food Act 1989*).	All Australian Governments agreed in November 2000 to adopt core provisions of the Model Food Bill by November 2001.	Council to assess in 2002.
	Meat Industries Act 1997	Various food safety offences. Licensing of processing facilities.	Review completed and under consideration.		Council to assess in 2002.

Quarantine and export controls

Quarantine

In 1999-2000 Australian Quarantine Inspection Service supervised about 11 600 ship arrivals, processed 8.7 million passengers and aircrew, about one million cargo containers, 4.1 million airfreight consignments, more than 160 million mail articles, and managed the discharge of more than 150 million tonnes of ballast water (AQIS 2000).

Legislative restrictions on competition

The Commonwealth Government administers Australia's quarantine arrangements under the *Quarantine Act 1908*. The Act prohibits the import of certain goods, animals and plants unless with a permit. Other imports may require inspection or treatment before allowed into the country. The entry of goods and passengers to Australia is also subject to screening by quarantine (officers appointed under the Act) who are empowered to search, seize and treat goods suspected of being a quarantine risk.

Regulating in the public interest

Exotic pests and diseases pose a serious threat to the Australian population, fauna and flora, and agriculture. Controlling this threat is a public good – it generally being neither feasible nor optimal to exclude persons who benefit from quarantine controls – so governments must intervene to supply the level of quarantine control desired by the community.

Quarantine controls do, however, impose costs on international trade and travel – activities that are of considerable benefit to the public. To meet the public interest, Governments should use the least costly quarantine controls available, and then only to the extent that the cost is outweighed by the benefit of reduced pest and disease threat.

Review and reform activity

Table 13.11 summarises the Commonwealth's review and reform activity relating to the regulation of quarantine.

Export controls

Food exports make an important contribution to Australia's international trade position. In 1998-99 they totalled $16 billion and accounted for almost

20 per cent of all goods exports. Disruption of these exports would have a significant impact on the performance of the Australian economy, particularly on the rural and food sectors, and individual producers (AFFA 2000).

Legislative restrictions on competition

The Commonwealth's *Export Control Act 1982* regulates the export from Australia of certain prescribed goods, such as dairy, meat and fish. The Act is used primarily to ensure that exported food is wholesome and has been prepared under hygienic conditions. However, it is also used to ensure that conditions relating to trade are satisfied, such as trade and product descriptions, volume limitations and other requirements imposed by overseas governments for access to their markets.

The Act restricts competition by:

- requiring premises to be registered and to meet certain construction standards;
- imposing processing standards; and
- imposing compliance costs and regulatory charges.

Regulating in the public interest

Regulation of exports is in the public interest where:

- Australian exporters would otherwise not be permitted access to foreign markets, or would be likely to lose access if one exporter causes a food safety incident; and
- the particular export controls employed are the least-cost alternative for assuring continued market access.

Australia also has a moral obligation not to export dangerous or unhealthy food.

Review and reform activity

Table 13.11 summarises the Commonwealth's review and reform activity relating to controls on exports.

Table 13.11: Quarantine and export control regulation

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Quarantine Act 1908*	Prohibits import of certain goods, animals and plants unless with a permit. Goods and passengers entering Australia subject to screening.	Provisions relating human quarantine reviewed by Department of Health and Aged Care in 1998. Review found minimal impact on competition and public health benefits in excess of costs. Review of remaining provisions is yet to start.		Council to assess in 2002.
	Export Control Act 1982	Restricts export of prescribed goods (such as dairy, meat and fish products) by requiring registration of processing premises, imposing standards and regulatory charges.	Review of provisions related to fish, grain, dairy and processed food completed in February 2000. It recommended: • introducing a 3 tier model for export standards; • harmonising domestic and international standards; • retaining a monopoly on certification of exports; and • making monitoring and inspection contestable. Provisions relating to the licensing of unprocessed wood exporters currently under review by the Department of Agriculture Fisheries and Forestry.		Council to assess in 2002.

14 Forestry and fisheries

This NCP assessment is the first to consider progress by governments in fulfilling their Competition Principles Agreement (CPA) obligations relating to forestry and fisheries. The CPA clauses that are relevant to forestry are clause 3 (competitive neutrality) and clause 5 (the review and reform of legislation that restricts competition).[1] For fisheries the most significant obligation is CPA clause 5 (the review and reform of restrictive legislation).

Forestry

Native forest covers 155.8 million hectares or about 20 per cent of Australia's landmass (ABS 2001). Of this, 27 per cent is privately owned. Of the publicly owned remainder, 16 per cent is reserved, 12 per cent is managed by forest agencies for various uses including wood production, 14 per cent is on other Crown land and 59 per cent is leased. Industries based on harvesting of timber from native forests are located in New South Wales, Victoria, Queensland, Western Australia and Tasmania.

Plantations covered 1.3 million hectares as at September 1999, of which 71 per cent was softwood and 29 per cent was hardwood. The plantation estate is evenly split between public and private ownership.

The wood and paper products industries contribute about 1 per cent to GDP and employed just over 60 000 people as at June 1999 in the growing and harvesting of wood and the manufacture and processing of wood and paper products. Exports of forest products were valued at $1293 million in 1998-99 and imports at $3262 million.

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[1] The CPA obliges governments to ensure that regulatory and commercial responsibilities relating to forestry are not vested in the same public entity. This is relevant to public forest agencies, which have usually had both commercial and regulatory functions. The Council considered functional separation for forestry as part of the regulatory neutrality obligation in CPA clause 3. Clause 4 of the CPA (structural reform of public monopolies) also discusses functional separation. It obliges governments to relocate regulatory responsibilities when they are introducing competition to a public monopoly market or are privatising a public monopoly so as to prevent the former monopolist enjoying a regulatory advantage over its rivals. While public forest agencies generally dominate the supply of unprocessed timber in local markets, they have never been public monopolies in the conventional sense as there have always been competing privately-owned suppliers of timber. With the growth of the private plantation sector, this competition is increasing.

Competitive neutrality

Governments have agreed that, so as to eliminate resource allocation distortions arising out of public ownership of businesses, significant government businesses should not enjoy any net competitive advantage over their competitors simply as a result of their public sector ownership (CPA clause 3). State and Territory forest agencies are generally recognised as undertaking significant business activities, for example the sale of logs or logging rights in competition with private owners of native and plantation forests. State governments are therefore obliged under clause 3 to either:

- corporatise the business activities of these agencies, and impose taxes or tax equivalents, debt guarantee fees and regulations equivalent to those imposed on private sector competitors; or

- ensure that the goods and services they supply are priced to cover their full costs of production, including, where appropriate, taxes or tax equivalents, debt guarantee fees and costs arising from regulations to which private businesses are normally subject;

provided that the benefits of applying these measures outweigh the costs.

Whichever approach governments adopt, forest agencies must charge prices for timber that, over the longer term, generate revenues that at least cover the costs of managing its forests for timber supply and provide a commercial return on its assets, including land and trees.

There have been longstanding concerns that forest agencies are underpricing timber. Underpricing can:

- lead to an unsustainable rate of exploitation of native forests;

- result in slow productivity growth in the timber processing industry; and

- hamper the development of private plantations (and hence related benefits such as the contribution private plantations can make to controlling salinity in certain dryland farming areas and to sequestering carbon).

However, determining an appropriate target rate of return for native forests can be difficult. There are few sales of native forests upon which to base asset values, and using the net present value method can be unsatisfactory because of the circularity it introduces between timber prices and asset values.

The Commonwealth Competitive Neutrality Complaints Office recently released a research paper that considered timber pricing. A key message of the paper is that 'to help assess compliance with competitive neutrality, the market value of logs can be estimated by calculating their 'residual value' (CCNCO 2001, p. vii). This is the value of timber remaining after deducting the costs of harvesting, processing and transport from the price of processed timber products. The paper also advocated the use of log residual values to estimate forest asset values.

However, this conclusion does not mean that the 'residual value' method is most appropriate for setting actual timber prices. A report recently prepared for the Australian Conservation Foundation (Marsden Jacob Associates 2001) argued that forest agencies that set timber prices in this way effectively subsidise the processing industry by making 'ability to pay' the main pricing criterion. This resulted, according to the report, in the exploitation of native forest that is uneconomic to log and in inefficiency in the processing industry. The Marsden Jacob Associates report recommended that forest agencies sell timber via auctions or tenders subject to a cost-based reserve price.

The sale of timber via auction or tender was also discussed in a paper recently released by the Victorian Government's Timber Pricing Review (Jaakko Poyry Consulting 2001). However, the discussion paper also noted that, in areas where insufficient competition exists between processors, other approaches such as the residual value method may give a better indication of overall market values. Victoria is to complete its Timber Pricing Review by November 2001. Western Australia has also commenced an independent review of native forest timber pricing.

This is a complex area of competitive neutrality application, with potentially important implications for forest agencies and other interests in forestry alike. The conclusions of available reports and papers are (so far) largely consistent. However, governments have had limited opportunity to consider these conclusions in the context of their own institutional settings, and relevant work is still underway in two jurisdictions. The Council also needs to consider further the implications of the studies that have been undertaken to date, and to work with governments and other parties on appropriate pricing obligations for public forestry activities.

There is also an obligation on governments under competitive neutrality principles (CPA clause 3(4)(b)(iii)) to ensure that regulatory and commercial responsibilities relating to forestry are not vested in the same public entity. This obligation is relevant to public forest agencies, which have usually had both commercial and regulatory functions. All but one jurisdiction separately regulate public and private forestry to some extent. While most jurisdictions have taken some steps to separate regulatory from commercial forestry responsibilities, the adequacy of such separation is not always clear. Further development of regulatory arrangements is therefore necessary, particularly on the location of policy and regulatory responsibilities.

The Council will consider compliance by States and Territories with their competitive neutrality obligations in forestry in the 2002 NCP assessment. Table 14.1 summarises the current status of State and Territory application of competitive neutrality to forestry.

Table 14.1: Application of competitive neutrality to forestry

Jurisdiction	*Agency and status*	*Timber pricing*	*Financial performance*	*Tax and debt equivalence*	*Regulatory neutrality*	*Assessment*
New South Wales	State Forests of NSW is a Government Trading Enterprise.	Most hardwood and softwood timber is sold under long term agreements and priced using a residual value method.	Shareholder value added target negotiated annually. Hardwood forest and mature softwood asset values are based on market prices.	Pays all State taxes, goods and services tax and equivalents for Commonwealth taxes. Pays a debt guarantee fee.	State native forest operations regulated by *Forestry and National Park Estate Act 1998*. Private plantation operations regulated by *Plantations and Reafforestation Act 1999.*	Council to assess progress in 2002.
Victoria	Forestry Victoria is a service agency within the Department of Natural Resources and Environment.	Most sawlogs are sold under 'evergreen' licences and priced using a residual value method. Pulping timber is sold under long term agreement and by competitive tender. Timber pricing is currently under an independent review.	Forest asset values recently determined using net present value method, assuming an 8 per cent nominal discount rate, and an 80 year rotation.	Not applied.	State forest operations regulated by the *Forests Act 1958*. This was reviewed in 1998 and the Government is reconsidering its response. Both State and private forest operations are regulated by the Code of Forest Practices for Timber Production made under the *Conservation, Forests and Lands Act 1987*.	Council to assess progress in 2002.

(*continued*)

Table 14.1: continued

Jurisdiction	*Agency and status*	*Timber pricing*	*Financial performance*	*Tax and debt equivalence*	*Regulatory neutrality*	*Assessment*
Queensland	The Department of Primary Industries undertakes commercial forestry activity within a commercialised business unit.	Most forest products are sold via competitive processes.	Long run and annual rate of return targets. Native forests are not valued. Plantations valued using net realisable value method.	Pays all State taxes. Pays a loan guarantee fee.	State forest operations regulated by the *Forest Act 1959*. Private forests regulated under the *Integrated Planning Act 1997*.	Council to assess progress in 2002.
Western Australia	The Forest Products Commission is a commercial statutory authority (established November 2000).	Timber is priced to cover the cost of establishing and maintaining forest. Timber pricing is currently under an independent review.	Financial targets are set in the annual business plan approved by the Treasurer. Native forests and most plantations are valued using the net present value method.	Pays all State taxes. Pays local rate equivalents for premises but not forests. Pays a loan guarantee fee.	State forest operations regulated by *Conservation and Land Management Act 1984*. Private forests regulated under *Soil and Land Conservation Act 1945*.	Council to assess progress in 2002.
South Australia	Forestry SA is a Government Business Enterprise (established January 2001).	Log prices are market based.	Financial targets set in annual performance statement. Mature plantations valued using net realisable value method. Immature forests are valued using the cost of growing method.	Pays all State taxes. Pays local rates. Pays Commonwealth tax equivalents. Pays a debt guarantee fee.	Both State and private forest operations are regulated under the *Development Act 1993.*	Council to assess progress in 2002.

(*continued*)

Table 14.1: continued

Jurisdiction	*Agency and status*	*Timber pricing*	*Financial performance*	*Tax and debt equivalence*	*Regulatory neutrality*	*Assessment*
Tasmania	Forestry Tasmania is a Government Business Enterprise.	Prices for major products determined by negotiation with reference to market prices.	Broad objective of maximising sustainable return, set in Ministerial Charter. Standing timber valued using net present value method, assuming 6.3 per cent real discount rate and a 80 rotation for native forests and 28 years for plantations.	Pays all State taxes. Pays a debt guarantee fees.	State forest operations regulated by *Forestry Act 1920* and the *Forest Practices Act 1985*. The latter Act also regulates private forest operations.	Council to assess progress in 2002.
ACT	ACT Forests	Logs sold at market prices.	Applies full cost attribution. Mature plantations valued using net realisable value method.	Pays all Territory taxes and Commonwealth tax equivalents.	Territory and private forest operations regulated by *Land (Planning and Environment) Act 1991.*	Council to assess progress in 2002.

Legislation review

Legislative restrictions on competition

The main classes of restrictions on competition in relation to native forests are:

- restrictions on market entry, for example requirements that operators obtain a licence, permit, lease or other authority, that prohibit foreign ownership or ownership by certain legal persons, and that impede the trading of such authorities;
- quantitative restrictions on supply, for example maximum (and sometimes minimum) quantities of timber able to be removed, authorisation of export quantities; and
- restrictions on market conduct via licence conditions and codes of practice, such as required logging practices.

Plantation forestry is usually regulated by general environmental planning laws. These laws impose restrictions on how plantation forestry operations are conducted and, in the extreme, may prohibit conversion of land to plantation forestry from another land use.

Regulating in the public interest

Forests comprise two distinct resources that have largely different policy concerns for governments — native forests and plantation forests.

Society derives a range of benefits from native forests and managing these forests sustainably generally maximises these benefits. However, markets alone are unlikely to manage native forests sustainably because, while some benefits of native forests are tradeable (principally timber production, mining and grazing) others (such as water production, biological diversity, recreational experience and aesthetic amenity) often are not. Moreover, the availability of non-market benefits may be reduced by exploitation of native forests for market benefits.

Native forests are diverse and hence the relative value of their market and non-market benefits varies between forests. Those forests that are highly valued for their non-market benefits are generally reserved as parks to prevent any exploitation that might compromise these benefits. Other native forests less highly valued for their non-market benefits are made available for exploitation for market benefits subject to regulations that seek to make such exploitation sustainable. That is to restrict, say, logging to a rate not exceeding that at which the forest regenerates (with or without assistance),

and to restrict the manner in which logging is conducted to minimise the other benefits forgone.

Regulation imposes costs however and can fail. For instance, it can be costly to estimate a sustainable rate of exploitation, and the estimate may subsequently prove inaccurate. Costs also arise in creating and enforcing rights to access native forest and in maintaining and enforcing conduct restrictions.

To achieve sustainable management of native forests, while minimising regulatory costs, regulation should:

- provide stable secure rights of commercial access to native forests;
- allow competition in the allocation and trading of these rights; and
- impose the minimum necessary restrictions on the conduct of owners of these rights.

With plantation forestry the main concern is that establishment and harvesting of plantations may impose costs outside the boundary of the plantation, for example, harm to water quality and local roads. The aim of regulation here should be to require the plantation owner to take steps to minimise the harm (for example, to protect water quality through establishing settling ponds) or to compensate for harm done (for example, to contribute towards the maintenance of local roads). A sound regulatory regime will:

- impose minimum restrictions to effectively mitigate or remedy clearly identified harms; and
- be stable and predictable so that potential plantation investors can be certain what costs they face before investing.

Review and reform activity

Table 14.2 summarises governments' review and reform activity relating to the regulation of forestry.

Table 14.2: Review and reform activity of legislation regulating forestry

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Export Control (Unprocessed Wood) Regulations 1986*	Licensing of unprocessed wood exporters	Currently under review by the Department of Agriculture Fisheries and Forestry.		Council to assess progress in 2002.
	Export Control (Hardwood Chips) Regulations 1997	Licensing of hardwood chip exporters	Currently under review by the Department of Agriculture Fisheries and Forestry.		Council to assess progress in 2002.
	Export Control (Regional Forest Agreements) Regulations 1997	Maximum aggregate mass limits for woodchip exports	Currently under review by the Department of Agriculture Fisheries and Forestry.		Council to assess progress in 2002.
New South Wales	*Forestry Act 1916*	Licensing of timber harvesting Licensing of sawmills Permits for grazing, hunting or occupying State forest	Not scheduled for NCP review but included in program of forest regulatory reform.		Council to assess progress in 2002.
	Threatened Species Conservation Act 1995	Licensing of conduct that harms threatened species, populations or ecological communities	Not scheduled for NCP review but included in program of forest regulatory reform.		Council to assess progress in 2002.

(*continued*)

Table 14.2 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria	*Forests Act 1958*	Exclusive control and management of State forests by the Department of Natural Resources and Environment Licensing of timber harvesting Permits and leases for grazing and other uses of State forest Administrative discretion over how licences and produce are allocated and priced Logs harvested to equal sustainable yield	Reviewed by independent economic advisers in 1998. The review recommended: • allowing purchaser/provider structure for management of State forests; • removing requirement for minimum level of logging; • developing market-based processes for log allocation and pricing; and • separating policy, regulatory and commercial forestry functions of the department.	In August 2000 the commercial forestry function was established as a commercially-focused business unit within the Department, with separate financial reporting. The Government has commissioned an independent review of timber pricing. In June 2001 a discussion paper was released for public comment.	Council to assess progress in 2002.
Queensland	*Forestry Act 1959*	Management and control of forest products on State land vested in the Department of Primary Industries under agreement with the Queensland Parks and Wildlife Service and regulated by that service Licensing of timber collection and of taking of other resources Administrative discretion over how licences and produce are allocated and priced Logs harvested not to exceed sustainable yield Levy to fund timber research	Reviewed by officials in 1999. The review recommended: • retaining the native forest sawlog allocation system as, while pro-competitive reform would bring economic gains, it avoided imposing significant social costs on several rural communities; and. • retaining the timber research levy. A subsequent review of agricultural levies recommended removal of the timber research levy.	Act amended in November 1998 to extend exemption from the Trade Practices Act for the native forest sawlog allocation system until 2009. Timber research levy removed in 2000.	Council to assess progress in 2002.

(*continued*)

Table 14.2 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Sawmills Licencing Act 1936*	Licensing of sawmills at absolute discretion of corporation Licenses specify maximum productive capacity of mill	Reviewed in 2000 and report under preparation for Cabinet.		Council to assess progress in 2002.
Western Australia	*Conservation and Land Management Act 1984*	Exclusive control and management of State forests by the Conservation Commission Licensing of timber collection and of taking of other resources Administrative discretion over how licences and produce are allocated and priced Permits to occupy and use State forest Registration of timber workers	The Act was substantially amended by: • *Conservation and Land Management Amendment Act 2000*; and • *Forest Products Act 2000*. These Acts vested State forests and other lands in the Conservation Commission and established the Forest Products Commission to undertake commercial forestry functions on State forests and private land. An independent economic adviser reviewed the Act prior to its amendment. The amending legislation was also reviewed. However, the previous Government did not consider these reviews before the amending legislation was passed. The reviews are now awaiting consideration.		Council to assess progress in 2002.
	Sandalwood Act 1929	Caps the quantity of naturally-occurring sandalwood harvested from Crown and private land Licensing the harvesting of sandalwood Individual licences capped at 10 per cent of the total limit	Review completed. It recommended retaining the overall cap on the quantity sandalwood harvested while removing the restriction on the proportion of the annual sandalwood harvest that may be taken from private land.		Council to assess progress in 2002.

(*continued*)

Table 14.2 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Forestry Act 1950*	Exclusive control and management of State forests by Forestry SA Licensing of timber collection and taking of other resources Administrative discretion over how licences and produce are allocated and priced	The South Australian Government considers the Act does not contain restrictions on competition.		Council to assess progress in 2002.
	Sandalwood Act 1930	Caps the quantity of naturally-occurring sandalwood harvested from Crown and private land Licensing the harvesting of sandalwood	Reviewed in 1999. The review recommended repeal of the Act.	A Bill repealing the Act has been introduced into the South Australian Parliament.	Council to assess progress in 2002.
Tasmania	*Forestry Act 1920*	Exclusive control and management of State forests by the Forestry Corporation Licensing of timber collection and of taking of other resources Administrative discretion over how licences and produce are allocated and priced Minimum supply of logs for veneer and sawmilling industries Wood supply agreements to contain certain conditions Permits to occupy and use State forest Registration of timber workers	Reviewed by an external consultant in 1998. It noted that minimum supply restrictions are anti-competitive and recommended: • simplifying the Act; and • removing certain conditions of wood supply agreements. The minimum supply restrictions were found to be of public benefit during the process to establish a Regional Forest Agreement.		Council to assess progress in 2002.

(*continued*)

Table 14.2 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania (continued)	*Forest Practices Act 1985*	Requires preparation and certification of forest practices plan before timber harvesting can start Declaration of private timber forests Prescribes forest practices under Forest Practices Code Operators harvesting more than 100 000 tonnes per annum must submit a 3 year plan for approval by Forest Practices Board	Reviewed in 1998 by Forest Practices Advisory Council. The review recommended no changes to the Act.		Council to assess progress in 2002.

Fisheries

Australian production of fish and fish products was worth $2038 million in 1998-99, up from $1 092 million in 1989-90 (ABS 2001). Australia's major commercially accessed species are prawns, rock lobster, abalone, tuna, other fin fish, scallops, and edible and pearl oysters. Most production is sourced from fish stocks occurring naturally offshore, in coastal waters, in estuaries and in inland waterways. However, aquaculture production is growing rapidly, up from $188 million in 1989-90 to $602 million in 1998-99. Aquaculture is established in all States, with species farmed ranging from pearl oysters to trout.

The majority of Australian production — some $1500 million in 1998-99 — is exported. The value of fish and fish products consumed in Australia in 1998-99 was approximately $1400 million including imports valued at $878million.

Fishing is also an important recreational activity in Australia. Two main industries are involved. The Australian fishing tackle and bait industry has an annual turnover in excess of $170 million. The recreational boating industry, with around 60 per cent being related to fishing, accounts for a further $500 million in turnover. In addition to Australian fishers, international tourists spend over $200 million on fishing in Australia each year.

Legislative restrictions on competition

Commonwealth, State and Territory governments all regulate natural fisheries. The Commonwealth is responsible for fisheries from three to 200 nautical miles off the Australian coast. State and Territory governments regulate coastal fisheries out to three nautical miles as well as estuaries and fresh water fisheries.

Natural fisheries vary considerably. The main dimensions of variation are seasonality, mobility, recruitment, fish life span, unit value, bycatch and knowledge of stock. Governments have responded to these variations by imposing different types of restrictions, usually in combinations. The main types are:

- access controls (restrictions on entry/exit), including;
  - licensing of fishers and boats (licences can be tradeable or non-tradeable);
  - fishing seasons, closure of fisheries;

- output controls (restrictions on production levels), including;
  - total allowable catches;
  - output quotas (quotas can be tradeable or non-tradeable) and bag limits; and
- input controls (restrictions on market conduct), including;
  - boat and crew sizes; and
  - gear and fishing methods.

Another potential restriction arises not from regulation itself but from the costs of maintaining and administering regulation. These costs are in large part attributable to the activities of fishers (commercial and recreational) and, therefore, should be recovered from fishers. Otherwise there may be, for example, too much investment in fishing and insufficient investment in aquaculture, with consequences for consumer prices and for regional employment and development.

State and Territory governments also regulate aquaculture, usually through general planning laws. Restrictions on competition in planning are discussed in chapter 24. While the commercial fishing and aquaculture sectors are regulated separately, approaches to regulation in one sector may impact on producers in the other (to the extent they compete).

Regulating in the public interest

Governments have regulated natural fisheries because of concerns that, without legislation, fisheries resources may be utilised at an unsustainable rate. Due to the 'common property' nature of natural fishery resources there is a fear that unfettered competition can lead to overfishing, over-capitalisation and ultimately lower economic, environmental and social returns from the fishery than might otherwise be obtainable. Typically, the objectives of natural fisheries regulation are to:

- sustain fish stocks so as to maximise their economic benefits in perpetuity;
- protect marine environments and marine biodiversity; and
- reconcile the sometimes competing interests of commercial, recreation and indigenous fishers.

As noted above, as natural fisheries vary considerably, the suitability of different types of restrictions in particular settings also varies. Output controls such as quota are preferable in theory as they constrain fishing effort most directly and do not hamper incentives for innovation by fishers. However, the information and enforcement costs can be high, and quotas do not easily address problems of bycatch and small fish sizes. Quotas therefore

tend to be most suitable for single species fisheries where fish are of high value. Quotas should be readily tradeable and divisible to minimise the cost of fisher entry and so that ownership passes to the most efficient fishers. In other settings, input controls may be more suitable, that is for multi-species and low-value fisheries, and where it is important to avoid the taking of certain sizes of fish.

Turning to controls on access, fisheries seasons and closures are most suitable where a fishery will not tolerate any significant fishing effort, for example, when fish are particularly easy to catch such as during breeding seasons, or when stocks are close to collapse. Licences are suitable for facilitating the application of output and input controls and for passing on fishery management costs. Licences for fisheries subject to quota regimes can be issued on demand. Licences associated with input controls should be readily transferable.

Making the right choice of restriction or combination of restrictions is important. A poor choice may:

- imperil a fishery, degrade its environment, take the livelihood of dependent fishers and take a preferred choice fish product away from consumers;
- inhibit technological changes that may offer improved returns to fishers and better value fish products to consumers; or
- impede entry of new fishers into an industry and forgo new investment in regional areas.

Review and reform activity

Table 14.3 summarises governments' review and reform activity relating to the regulation of fisheries.

Table 14.3: Review and reform activity of legislation regulating fisheries

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Fisheries Management Act 1991*	Licensing of commercial fishers Permits for fish receivers Input controls on boats, gear and fishing methods Output controls such as total allowable catches, individual transferable quota (transfer of which is subject to various restrictions), size limits, prohibitions on taking certain species and restrictions on by-catch	Review by officials started in October 1998.		Council to assess progress in 2002.
	Torres Strait Fisheries Act 1984	Licensing of community and commercial fishers Wide Ministerial powers to: • prohibit taking of certain species; • prohibit taking fish under certain sizes; • impose a variety of input controls.	Reviewed completed in 1999 by Commonwealth and Queensland officials. The review recommended: • a new statement of objectives for the Act; • maintaining the distinction between community and commercial fishing; • retaining licensing of fishing; and • retaining wide Ministerial powers to regulate fishing.		Council to assess progress in 2002.

(*continued*)

Table 14.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Fisheries Management Act 1994*	Licensing of fishers Access to share managed fisheries by owning shares Input controls on boats, gear, crew levels and fishing methods Output controls such as total allowable catches, bag limits, size limits and prohibitions on taking certain species	Reviewed by independent economic advisers supervised by interagency committee. Final report under preparation for consideration by Cabinet.		Council to assess progress in 2002.
Victoria	*Fisheries Act 1995*	Licensing of commercial and recreational fishers Input controls on boat size, gear and fishing methods Output controls such as total allowable catches, individual transferable quota, bag and size limits	Reviewed by independent economic advisers in 1999. The review recommended: • retaining access licences but for longer periods and with automatic renewal; • introducing full cost recovery; • considering royalty or rent taxes to limit fishing; • removing restrictions on quota transfers and holdings for abalone; • replacing input controls with output controls for rock lobster.		Council to assess progress in 2002.

(*continued*)

Table 14.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Fisheries Act 1994*	Licensing of fishers and crew Input controls on boat and gear Output controls such as total allowable catches, individual transferable quotas, bag and size limits	Review complete and report under preparation for Cabinet.		Council to assess progress in 2002.
Western Australia	*Fish Resources Management Act 1994*	Licensing of fishers Prohibitions on market outlets Input controls on boat, gear and fishing methods Output controls such total allowable catches, quota, bag and size limits	Review completed in 1999. It recommended retaining existing restrictions except for the Western Rock Lobster Managed Fishery, where it recommended an assessment of the net benefit of moving to an output controls-based regime. It also recommended steps to embed NCP principles in the ongoing cycle of fisheries management review.		Council to assess progress in 2002.
	Pearling Act 1990	Licensing of pearling and hatcheries Minimum quota holding for pearling licences Hatchery licensees must also hold pearling licence Wildstock quota Hatchery quota Hatchery sales to other than Australian industry prohibited	Review completed in 1998. It recommended: • removing minimum quota holdings; • decoupling pearl farming licences from pearl fishing licences; • auctioning wildstock quotas; • removing hatchery quotas; • codifying in regulation criteria for fishery management decisions; and • establishing an independent review tribunal.		Council to assess progress in 2002.

(*continued*)

Table 14.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Fisheries Act 1982*	Licensing of fishers and fish farmers Registration of boats and fisher processors Input controls on gear and fishing methods Output controls such as catch limits, size limits and prohibitions on taking certain species	Review by officials underway.		Council to assess progress in 2002.
	Fisheries (Gulf St Vincent Prawn Fishery Rationalization) Act 1987	Imposes on remaining licence holders the cost of compensating those who surrendered their licenses	Reviewed by officials. Act has achieved objective of reducing licence numbers.	To be repealed once settlement with remaining licenceholders finalised.	Council to assess progress in 2002.
	Fisheries (Southern Zone Rock Lobster Fishery Rationalization) Act 1987	Licensees may not transfer their licenses Imposes on remaining licence holders the cost of compensating those who surrender their licenses	Reviewed by officials. Act has achieved objective of reducing licence numbers.	Act repealed.	Council to assess progress in 2002.
Tasmania	*Living Marine Resources Management Act 1995*	Licensing of fishers, handlers, processors and marine farmers Input controls on gear, vessel operations, handling and storage standards Output controls such as quotas, size limits and species	Review completed. It recommended retaining all restrictions.		Council to assess progress in 2002.

(*continued*)

Table 14.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania (continued)	*Marine Farming Planning Act 1995*	Marine farming not to occur outside marine farming zones Lease required to operate a marine farm	Review completed. It recommended retaining all restrictions.		Council to assess progress in 2002.
	Inland Fisheries Act 1995	Licensing of commercial fishers and fish farms Registration of private fisheries, fish processors and sellers	Review completed.	Recommendations to be implemented.	Council to assess progress in 2002.
ACT	*Fisheries Act 2000*	Licensing of commercial fishers Registration of fish dealers Output controls such as size and bag limits Input controls on gear	Replaced *Fishing Act 1967*, which was not reviewed.		Council to assess progress in 2002.
Northern Territory	Fisheries Act 1996	Licensing of fishers Input controls on vessels, gear, fishing methods and landings Output controls such as total allowable catches, size and bag limits, and prohibitions on taking certain species	Review completed.		Council to assess progress in 2002.

15 Mining

State, Territory and Commonwealth governments hold the rights to mineral deposits but generally elect to transfer these rights to private companies that undertake exploration and development. As a result the mining industry comprises mostly private companies with some government assistance in relation to matters such as research and information. The industry's largely private ownership means few issues arise in relation to the competitive neutrality and structural reform strands of the NCP. However, jurisdictions still have obligations to review mining legislation.

In the 2001 NCP assessment, the National Competition Council considered whether all governments reviewed relevant mining legislation and removed restrictions on competition that were not identified as providing a net community benefit. Two main types of legislation are relevant to the implementation of NCP in the mining sector: agreement Acts and general mining legislation.

Agreement Acts

Agreement Acts in the mining sector ratify contractual arrangements between government and private companies. They are most common in Western Australia (where there are some 64 resource development agreement Acts), but also exist in other jurisdictions. Some jurisdictions listed agreement Acts for review. Other jurisdictions have been reluctant to do so because they are concerned about the sovereign risk implications.

In view of the sovereign risk implications of amending agreement Acts, the Council was satisfied that Western Australia, rather than listing all agreement Acts for review, instead undertook during the 1999 NCP assessment to:

- repeal all nonoperative and nonresource development agreement Acts;
- consider, each time an agreement Act is reviewed or varied, removing restrictions that impose a net cost on the community; and
- through the legislative gatekeeping processes, increase the focus on the community impacts of new State agreement Acts to prevent provisions that do not confer a net community benefit.

The Council considers that this approach meets NCP commitments.

General mining legislation

General mining legislation covers issues such as:

- the issue and control of exploration and mining licences;
- resource royalty payments; and
- occupational health and safety.

Exploration and mining licences allocate exploration acreage, regulate who can undertake mining activities, restrict where exploration and mining can occur, and place conditions on how the licence-holder can conduct these activities. The New South Wales *Mining Act 1992*, for example, prohibits mining or prospecting without a permit; provides for tendering of exploration licences; inserts environmental conditions in permits; provides for authorisation of assessment leases and mining leases; clarifies company rights and duties under mining leases; and makes rules governing the renewal, transfer, suspension and cancellation of authorisations for mining and other leases.

Governments reviewing this legislation need to balance the restrictions on competition with the need to establish mining rights that encourage companies to extract minerals efficiently when extraction generates optimum benefits for Australia. Table 15.1 summarises governments' review and reform activity relating to general mining legislation. The Petroleum (Submerged Lands) Acts of the Commonwealth, States, and Northern Territory are discussed in chapter 7.

Table 15.1: Review and reform of legislation regulating mining

Jurisdiction	*Key restrictions*	*Description*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Aboriginal Land Rights (Northern Territory) Act 1976* and Regulations	Provides for the granting of land to traditional Aboriginal owners and gives certain rights over granted land, including a veto over mineral exploration.	Review completed.	Government considering recommendations.	Council to assess progress in 2002.
	Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993 and Regulations		Review completed 1997.	Government accepted all but one recommendation	Council to assess progress in 2002.
New South Wales	(1) *Coal Ownership (Restitution) Act 1990* and (2)*Coal Acquisition Act 1981*	(1) Provides for the restitution of certain coal acquired by the Crown as a result of the *Coal Acquisition Act 1981*. (2) Vests all coal in the Crown.	Review considered unnecessary because the Acts not considered to restrict competition.	Acts superseded by the *Coal Acquisition Amendment Act 1997* and to be repealed when the Coal Compensation Board is abolished.	Meets CPA obligations (June 1997).
	(1) *Mines Inspection Act 1901* and (2) *Coal Mines Regulation Act 1982*	(1) Makes provision for the regulation and inspection of mines and regulates the treatment of the products of such mines. (2) Regulates coal mines (and oil shale and kerosene shale mines) and certain related places.	Review underway.		Council to assess progress in 2002.
	Mining Act 1992	Makes provisions for prospecting for, and mining of, minerals.	Review completed.	Licensing requirements dealt with under the Licence Reduction Program. Other restrictions will be the subject of further review.	Council to assess progress in 2002.

(*continued*)

Table 15.1 continued

Jurisdiction	*Key restrictions*	*Description*	*Review activity*	*Reform activity*	*Assessment*
Victoria	*Extractive Industries Development Act 1995*	Regulates quarrying for stone. The main purposes of the Act are to: provide a coordinated assessment and approvals process for extractive industries; ensure that extractive industry operations are carried out with safe operating standards and in a manner that ensures the rehabilitation of quarried land to a safe and stable landform; provide a procedure for notification of proposed extractive industries to licence–holders under the *Mineral Resources Development Act 1990*; and provide for the payment of royalties for stone extracted from Crown land.	Review underway. Review period extended to allow for additional consultation. Review expected to be completed in 2001.		Council to assess progress in 2002.
	Mineral Resources Development Act 1990	Vests ownership of minerals in the Crown. Establishes a uniform system for access to land for mineral search and development, and for the management of environmental issues. Restrictions relate to exclusive rights to explore and mine, and the granting of licences and permits to explore and mine.	Review completed. Review concluded that the majority of restrictions are necessary to achieve the objectives of the legislation and are justified in the public interest.	Government rejected some review recommendations, but accepted and implemented most recommendations in spring 2000. Other recommendations have been or will be implemented through changes in policies and practices, including Ministerial guidelines on fit and proper person provisions.	Meets CPA obligations (June 2001).

(*continued*)

Table 15.1 continued

Jurisdiction	*Key restrictions*	*Description*	*Review activity*	*Reform activity*	*Assessment*
Victoria (continued)	*Mines Act 1958*	Act largely repealed. The few remaining provisions relate to occupational health and safety.	Act removed from the review timetable. Occupational health and safety provisions to be reviewed in consultation with the WorkCover Authority with a view to consolidating them with occupational health and safety legislation.		Council to assess progress in 2002.
	Petroleum Act 1958	Provides for Crown ownership of petroleum resources and a permit system for petroleum exploration and production.	Review completed. Review recommended changes to remove obstacles to the exploration and production of petroleum and to improve administrative efficiency	Repealed and replaced by the *Petroleum Act 1998*. New Act implements review recommendations.	Meets CPA obligations (June 1999).

(*continued*)

Table 15.1 continued

Jurisdiction	*Key restrictions*	*Description*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Coal Industry (Control) Act 1948* and *Orders*	Contains reserve powers in relation to regulation of the industry by the Queensland Coal Board, including powers to: compulsorily acquire coal; regulate prices for sale, purchase or resale of coal; and regulate the opening, closing and abandonment of coal mines (all currently dormant). Certain orders issued under the Act require certain users of coal to purchase coal from specific coal mines; however, the orders relate only to three small mines in the south-east of the State and therefore do not affect the major export coal mining operations.	Departmental examination of legislation resulted in its repeal, but without formal NCP review occurring.	Repealed.	Meets CPA obligations (June 1999).
	Coal Mining Act 1925	Regulates the operation of coal mines, particularly health and safety issues.	Not listed for review.	Repealed by the *Coal Mining Safety and Health Act 1999* and Regulations. Act and regulations deal with health and safety issues across coal, metalliferous and quarrying industries. Act and regulations reviewed under the gatekeeper provisions and considered to be in public interest and less restrictive than the previous legislation.	Meets CPA obligations (June 2001).

(*continued*)

Table 15.1 continued

Jurisdiction	*Key restrictions*	*Description*	*Review activity*	*Reform activity*	*Assessment*
Queensland (continued)	*Mineral Resources Act 1989*	Facilitates prospecting and exploring for and mining of minerals; seeks to minimise land use conflict with respect to prospecting, exploring and mining; regulates environmental and land care impacts of mining; provides for royalties from mining; and provides an administrative framework to expedite and regulate prospecting and exploring for and mining of minerals.	Not listed for review. Act not considered restrictive.	Some amendments made after industry consultation.	Meets CPA obligations (June 2001).
Western Australia	*Coal Industry Superannuation Act 1989* and Regulations	Deals with competitive neutrality issues	Review deferred pending expected changes to Commonwealth superannuation industry regulatory framework.		Council to assess progress in 2002.
	Gold Corporation Act 1987 and Regulations	Deals with competitive advantages and disadvantages arising from Government ownership.	Review recommended removal of the advantages enjoyed by the Gold Corporation and subsidiaries over other businesses operating in precious metals markets.	Previous Government endorsed recommendations. Legislation to implement recommendations introduced in May 2000.	Council to assess progress in 2002.

(*continued*)

Table 15.1 continued

Jurisdiction	*Key restrictions*	*Description*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)	*Mining Act 1978* and Regulations 1981	Establishes licensing regime for exploration and development of minerals.	Review found restrictions necessary for orderly exploitation of mineral resources, minimising land use conflict, protecting third–party rights, minimising environmental impacts and promoting efficiency.	Government accepted findings.	Meets CPA obligations (June 1999).
	Petroleum Act 1967		Review deferred pending completion of the national review of *Petroleum (Submerged Lands) Act 1982* and related legislation.		Council to assess progress in 2002.
South Australia	*Mining Act 1971*	Creates barrier to market entry and restricts market conduct.	Review underway.		Council to assess progress in 2002.
	Mines and Works Inspection Act 1920	Remainder of Act committed to responsibility of Minister for Mines. Creates barrier to market entry and restricts market conduct.	Review underway.		Council to assess progress in 2002.
	Opal Mining Act 1995	Creates barrier to market entry and restricts market conduct.	Review underway.		Council to assess progress in 2002.
	Radiation Protection and Control Act 1982	Provides for licence to mine.	Subject to national review.		Council to assess progress in 2002.
	Roxby Downs (Indenture Ratification) Act 1982	Authorises behaviour contrary to *Trade Practices Act 1974*.	Desktop review completed in May 2000. No reform recommended.		Council to assess progress in 2002.

(*continued*)

Table 15.1 continued

Jurisdiction	*Key restrictions*	*Description*	*Review activity*	*Reform activity*	*Assessment*
Tasmania	*Mineral Resources Development Act 1995*	Provides for a system of licences and leases governing the exploitation of mineral resources.	Review underway. Preliminary view is that maintaining the Act in its current form achieves the objectives of the Act and that all the restrictions are in the public interest.		Council to assess progress in 2002.
ACT	No legislation listed				Meets CPA obligations.
Northern Territory	*Energy Resource Consumption Levy Act*	Requires bulk consumers of oil (consuming more than 830 000 litres per month) to register with Commissioner of Taxation (s7).	Review found the registration arrangement was designed to facilitate collection of levy monies and does not restrict competition.	Government accepted findings.	Meets CPA obligations (June 1999).
	Merlin Project Agreement Ratification Act	Provides mechanism for levying royalties and imposing more stringent security conditions than apply elsewhere to mining sites.	Review not yet commenced. Newly listed for review.		Council to assess progress in 2002.

(*continued*)

Table 15.1 continued

Jurisdiction	*Key restrictions*	*Description*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory (continued)	*Mine Management Act*	Regulates occupational health and safety in mining.	Act not to be reviewed.	To be repealed and replaced by the new Mining Management Bill (combining the essential elements of the existing *Mine Management Act* and *Uranium Mining (Environmental Controls) Act*. New Bill introduced in February 2001 Legislative Assembly sittings and to be subject to an NCP review before enactment. New Bill described as essentially administrative in nature, adopting a less prescriptive approach to mine site management. Mine operators required to take greater responsibility for decisions by satisfying industry–agreed competencies and standards. New Bill does not deal with property rights. Amendments to be made to the *Mining Act* to eliminate duplication with new Bill.	Council to assess progress in 2002.

(*continued*)

Table 15.1 continued

Jurisdiction	*Key restrictions*	*Description*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory (continued)	*Mining Act*	Creates regime for the valid grant of mining tenure in the Northern Territory, as well as ongoing regulation.	Review underway, to be finalised in September 2001.	Amendments to be made to the *Mining Act* to eliminate duplication with new Mine Management Bill. (Refer above to *Mine Management Act.*)	Council to assess progress in 2002.
	Oil Refinery Agreement Ratification Act	Requires Mereenie joint venture partners to meet certain lease conditions in investigating the possibility of constructing an oil refinery in Alice Springs. The refinery is not currently viable and has not been constructed.	Review considered restrictions were justified in achieving regional development objectives, but considered Act was no longer relevant. Accordingly, review recommended Act be repealed after the due date for renewal of the leases in 2002-03.	To be repealed.	Council to assess progress in 2002.
	Petroleum Act	Regulates exploration and recovery of petroleum in Northern Territory; grants exclusive rights; and provides for technical and financial prescriptions.	Review underway.		Council to assess progress in 2002.
	Petroleum (Prospecting and Mining) Act			Repealed.	Meets CPA obligations June (1999).

(*continued*)

Table 15.1 continued

Jurisdiction	*Key restrictions*	*Description*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory (continued)	*Uranium Mining (Environmental Control) Act*	Controls uranium mining in the Alligator Rivers Region; imposes restrictions, conditions and requirements that could discourage innovation, add to costs, etc.	Act not to be reviewed.	To be repealed and replaced. Certain provisions of the Act to be incorporated in a newly drafted Mining Management Bill. (Refer above to *Mine Management Act*.)	Council to assess progress in 2002.

16 Health and pharmaceutical services

Australians spent more than $50.3 billion on health and pharmaceutical services in 1998-99 — around 8.5 per cent of gross national product (ABS 2000c). Governments contributed around 70 per cent of this amount, while private spending comprised the remainder. Medicare has been the lynchpin of Australia's health financing system since 1984. It provides rebates for medical services in the private sector, free point-of-service hospital care based on need, and subsidised access to pharmaceuticals.

In assessing governments' compliance with clause 5 of the Competition Principles Agreement (CPA), the Council considered key competition issues in health professional regulation, the pharmaceutical industry, private health insurance regulation, Medicare and population health. Each State and Territory registers around a dozen health professions, including many allied health vocations, nurses and doctors. The registration schemes determine who is able to practise, what services can be provided and how businesses must be operated. Both Commonwealth and State and Territory governments regulate pharmacy and pharmaceutical products. This regulation covers practice issues, the storage and handling of drugs, poisons and controlled substances, and the distribution of pharmacies and products. Commonwealth regulation of private health insurance, Medicare provider numbers and pathology licensing, and State and Territory population health regulation also raise competition questions.

Regulating the health professions

The general objective of health practitioner legislation is to protect public health and safety, by limiting who may practise as a health professional and how service providers may represent themselves. Restrictions considered in NCP reviews of the professions include licensing requirements, entry requirements (rules or standards governing who may provide services) and commercial restrictions. Review and reform of regulation in the health professions has revealed significant competition issues. These include restrictions on business association and ownership arising from a perceived conflict between professional and commercial obligations, professional indemnity insurance and reserved areas of practice (where only certified practitioners are allowed to perform certain areas of practice). The National Competition Council released a staff paper that sets out how these measures

restrict competition and that explores many of the issues raised by professional regulation (Deighton-Smith, Harris and Pearson 2001).[1] The staff paper highlights principles for the regulation of professions and occupations, including the importance of:

- regulatory objectives being clearly identified;
- links between specific restrictions and reduction of harms being identifiable;
- regulations and other rules of conduct being transparent and public;
- restrictions being consistently applied;
- enforcement actions being open, accountable and consistent;
- regulatory bodies having broad representation, with strong community involvement; and
- regulation being the minimum necessary to achieve the government's objectives.

Key issues in regulating the health professions

Commercial and professional obligations

Health services in Australia have traditionally been delivered through a network of small suburban practices and large government-owned tertiary hospitals. This model has evolved over time to encompass smaller hospitals and larger practices. More recently, there has been a substantial increase in the corporate ownership of practices. Many small suburban practices (traditionally run as sole practices or partnerships by health professionals) have been bought by publicly listed companies with professional management and staffed by salaried practitioners. This trend is particularly apparent in general practice medical care.

Many health practitioners have sold their practices to corporations to capitalise their investments in both physical capital and goodwill. Some of these selling practitioners then retire, while others sign on as salaried employees in the practice. The benefits to the practitioner of selling the practice to a corporate owner include minimising personal risk and responsibility and increasing the efficiencies gained through maximising comparative advantage by concentrating on clinical care rather than

[1] Available at the Council's web site www.ncc.gov.au.

management, which is left to professional business managers. Corporate involvement has also increased the market price for general practices.

Corporate investments in health practices include training support staff, improving information management and consolidating services. By combining services in a 'one-stop shop', large providers argue that they offer patients the convenience of several co-located services. However, the growth of corporate owned health practices has raised questions. Medical practitioner representative groups, such as the Australian Medical Association and the Royal Australian College of General Practitioners, other health professions and some political commentators have raised concerns that corporate owners will seek to increase profits at the expense of patient care, by seeking to unduly influence salaried practitioners to:

- refer patients to vertically integrated businesses;
- provide shorter consultations;
- encourage repeat visits or unnecessary procedures; and
- recommend inappropriate products.

The Australian Competition and Consumer Commission (ACCC) has also raised questions regarding the disclosure of financial interests to consumers — an issue that it believes will be increasingly important as businesses in the sector amalgamate and vertically integrate.

Governments have adopted three broad, nonexclusive, regulatory responses to concerns over undue corporate influence:

- requiring disclosure of financial interests;
- prohibiting interference in clinical decision-making; and
- limiting ownership of businesses to health professionals.

Disclosure of financial interests

The health sector comprises many small businesses that often operate in an interconnected manner. A single episode of care can involve literally dozens of businesses. Surgery, for example, may involve a number of medical practitioners, pathology and diagnostic services, hospital or surgery services, post-operative care (such as physiotherapy) and a range of pharmaceutical products and medical equipment. These diverse businesses work together in a number of ways, including with the help of agency services (such as billing agents), strategic alliances, the vertical integration of businesses and informal networks.

Some links present an opportunity for referring practitioners to direct patients to unsuitable providers or services, to the benefit of the referring practitioner. The ACCC noted that:

> *[An] area of concern … is the situation whereby doctors do not declare their 'interests' in other medical practices that they refer patients to, or inducements they receive from medical suppliers whose product they recommend and use.* (ACCC 2000a, p. 37)

Similarly, the Australian Medical Association Code of Ethics (AMA 1996) instructs 'Do not refer patients to institutions or services in which you have a financial interest, without full disclosure of such interest'. These principles are relevant to all health professions, and to all practitioners whether they are business owners or employees.

Regulatory measures requiring health practitioners to disclose financial interests to patients help patients access more information on which to base their health care choices. Existing fair trading legislation includes such a requirement. Where jurisdictions explicitly legislate for the disclosure of financial interests, the Council views the regulation as being consistent with NCP principles.

Restrictions on the influence of owners and other parties on clinical decisions

Several governments recently moved to reduce inappropriate influence by business owners and other parties on clinical decisions by making such interference an offence. Restricting interference in clinical decision-making addresses a potential cost of corporate ownership of health practices (as does reducing other potential sources of clinical interference) by ensuring the practitioner has the primary responsibility for patient care. Prohibiting undue influence does not restrict the business associations of health professionals, thus avoiding many of the costs of this type of restriction.

Restrictions on owners or other parties interfering in practitioners' clinical decision-making reinforce the responsibility of professionals. The Council considers that such legislation, if applied in a nondiscriminate manner to all owners of health care practitioners, does not contravene CPA principles.

Ownership restrictions

Concerns of inappropriate interference in clinical practice have led to calls to restrict ownership of health care businesses to health professionals — that is, to explicitly prevent corporate and other forms of ownership, and ownership by non-health professionals. Current ownership restrictions cover, for example, pharmacy in all States and dentistry in South Australia. In contrast, Victoria, Tasmania and Queensland recently removed ownership restrictions in a number of health professions, including dentistry in Victoria,

optometry in Queensland and podiatry in Tasmania. Few ownership controls in health practitioner legislation remained at the time of this assessment.

The Pharmacy Guild of Australia advocates professional ownership restrictions for its members, stating 'outside commercial interests would, ultimately, consume and compromise the pharmacist' (PGA 1999). The Guild argues that professionals have strict codes of conduct and training that are intended to ensure the client comes first. This training may make it easier for owners who are registered health professionals to place less emphasis on commercial pressures when providing a service. Professional ownership provides a clear level of accountability to clients. It can be argued that this provides the customer with greater confidence in the service.

However, ownership restrictions limit professionals' access to a greater capital base and expertise. Without the possibility of offering share options and profit-sharing opportunities, professionals are constrained to raising only whatever funds are available to the practitioner personally or what they are able to borrow from banks at commercial interest rates. In addition, the small size of many professional-owned health practices makes it difficult for practitioners to obtain strong management skills. Thus, ownership restrictions potentially constrain innovation and growth. Consequently, restrictions on ownership may limit the ability for businesses to offer their clients a full suite of services and also may limit the employment options for newly qualified practitioners.

Ownership restrictions seek to ensure health care businesses meet professional obligations and deliver high quality care. However, restricting business ownership to health care professionals for this purpose assumes that the character of a registrant owning a business is more conducive to better service than is the character of a nonregistrant owner. Implicit in this assumption is that the health care professional is somehow above the profit motive and that owners who are not health professionals are more willing to compromise care standards. This assumption has not been supported by most NCP reviews; for example, the South Australian review of the *Dentists Act 1984* stated that it could 'see no reason why unregistered persons would have lower professional and ethical standards than [those of] registered persons' (Department of Human Services 1999, p. 30).

It is the responsibility of governments to determine objectives of legislation, including ensuring that health services providers offer high quality patient care. The protection of clinical independence is one mechanism to achieve this objective. Generally, reviews have found that outcome measures (such as preventing clinical interference) are more likely than input measures (such as ownership restrictions) to protect clinical independence, and at a lower cost. Provision for an offence where a health practitioner is unduly influenced provides a clear alternative to ownership restrictions, directly dealing with the objective of reducing harm by preventing interference in clinical decisions.

Professional indemnity insurance

Professional indemnity insurance is designed to meet client or third-party claims of civil liability that may arise from practitioners' negligence or error. It is a common feature of many professions. A trend emerging in reviews of health professions is the proposal that health practitioners should be adequately covered by professional indemnity insurance to ensure their patients are financially protected in the event of professional negligence.

The key NCP issue relating to insurance provisions in health practitioner legislation is any requirement to insure. As with other forms of insurance the Council does not consider benefit levels, taxation treatment or scheme design to raise competition questions relevant to CPA clause 5.

Before the introduction of the NCP, few health professionals were required by law to hold insurance. However, most health practitioners were insured, either through their employer (such as a hospital) or individually in private practice. A number of employers require professionals to hold indemnity insurance as a condition of contract. Also, professional and industrial organisations and employers constantly reinforce the need to insure. Particularly in health care, professional organisations have sought to instil a culture of responsibility that includes insurance. Further, the uncertain nature of health care, the threat of personal financial difficulty and the need to ensure public confidence in the professions provide motivation for health professionals to insure.

Both the Commonwealth and Victoria commissioned reviews of professional indemnity insurance, although neither review explicitly addressed NCP requirements. The Tito Review (1995) and the Victorian Law Reform Committee (1997) argued that there are significant benefits to the community from requiring health professionals to hold indemnity insurance. They also argued that a high proportion of practitioners holding insurance lowers the costs of mandating insurance for health professionals.

The central public interest question is whether positive outcomes — such as improved public confidence in the profession and the effective operation of insurance schemes — outweigh any anticompetitive effects of excluding uninsured professionals from practice. While the professional indemnity insurance market for some health professions features dominant providers, new entrants should not be prevented by legislation from entering the market. The Council recognises there are arguments for ensuring health practitioners hold an adequate level of professional indemnity insurance. It considers that such restrictions are consistent with the objectives of NCP.

Reservation of practice

The two elements to the reservation of practice are:

- the scope of reservation; and
- the method of reservation.

The scope of reservation can include a restriction on the performance of a task (for example, spinal manipulation) or on the undertaking of a discipline (such as physiotherapy). The Council has highlighted the principle of ensuring clearly identifiable links between regulatory restrictions and the reduction of harms (Deighton-Smith, Harris and Pearson 2001). A restriction on practice, for example, can be more easily justified where there is a particular risk of harm, such as spinal manipulation. However, it is more difficult to justify a generic restriction on a discipline. Most professional disciplines involve a range of procedures, some of which may be more harmful than others. Restricting an entire discipline is likely to create anomalies where some modes of common practice are inappropriately restricted. Additional problems arise when a discipline is restricted but the scope of the discipline is not defined in legislation.

The method of reservation is also important. The method of reservation can include a prohibition on performing the task or a restriction on performing a task for financial reward. Restrictions on receiving financial reward for a task, in the absence of proscription, suggests that the restriction on reward is a commercial restriction rather than directly related to the prevention of harm.

Review and reform activity

There are more than 80 legislative instruments regulating around a dozen health professions across the States and Territories. The following tables outline review and reform activity.

Table 16.1: Review and reform activity of legislation regulating the chiropractic profession

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Chiropractors and Osteopaths Act 1991*	Entry, registration, title, practice, discipline, advertising	Review completed in January 2000, recommending removal of some advertising restrictions and limiting reserved practice to spinal manipulation.	New *Chiropractors Act 2001* enacted in line with recommendations.	Meets CPA obligations (June 2001).
Victoria	*Chiropractors and Osteopaths Act 1978*	Entry, registration, title, practice, discipline, advertising	Review completed in 1996, recommending removal of commercial and practice restrictions.	New *Chiropractors Registration Act 1996* enacted in line with recommendations.	Meets CPA obligations (June 2001).
Queensland	*Chiropractors and Osteopaths Act 1979*	Entry, registration, title, practice, discipline, advertising, business	Review into the health professions completed in 1999. Brief summary in 2001 NCP annual report. Review of core practice restrictions complete but recommendations yet to be implemented.	Framework legislation enacted in 1999. New chiropractic legislation enacted in May 2001, preserving practice restrictions subject to review.	Council to assess progress in 2002.
Western Australia	*Chiropractors Act 1964*	Entry, registration, title, practice, discipline	Issues paper released in October 1998.		Council to assess progress in 2002.
South Australia	*Chiropractors Act 1991*	Entry, registration, title, practice, discipline, advertising	Review completed in 1999, recommending removing ownership restrictions and amending practice reservation and advertising codes.		Council to assess progress in 2002.
Tasmania	*Chiropractors Registration Act 1982*	Entry, registration, title, practice, discipline, advertising	New legislation implemented after assessment under CPA clause 5 (5).	New *Chiropractors and Osteopaths Act 1997* enacted.	Meets CPA obligations (June 2001).
ACT	*Chiropractors and Osteopaths Act 1983*	Entry, registration, title, practice, discipline	Issues paper released in May 1999.		Council to assess progress in 2002.
Northern Territory	*Health Practitioners and Allied Professionals Registration Act*	Entry, registration, title, practice, discipline	Review completed May 2000. Recommendations include retaining title restriction and removing generic practice restrictions.	Omnibus Bill to be implemented in line with recommendations.	Council to assess progress in 2002.

Table 16.2: Review and reform of the legislation regulating the dental professions

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Dental Technicians Registration Act 1975* *Dentists Act 1989*	Entry, registration, title, practice, discipline, advertising	Issues paper released August 1999. Review complete.	Under consideration by Government.	Council to assess progress in 2002.
Victoria	*Dental Technicians Act 1972* *Dentists Act 1972*	Entry, registration, title, practice, discipline, advertising, ownership	Review completed in July 1998, recommending retention of restrictions on use of title, types of work, and fair and accurate advertising. Recommendations also included removing ownership restrictions, removing restrictions on 'disparaging remarks' in advertising, and allowing dental therapists in work in the private sector.	Legislation replaced with the *Dental Practice Act 1999*. New amendments in 2000 introduced a requirement for professional indemnity insurance and allowed the board to impose additional advertising restrictions.	Council to assess progress in 2002.
Queensland	*Dental Act 1971* *Dental Technicians and Dental Prosthetists Act 1991*	Entry, registration, title, practice, discipline, advertising, business	Review of health practitioner Acts completed in 1999. Brief summary in 2001 NCP annual report. Review of the restrictions on the practice of dentistry also completed and released for public comment in June 2001.	Framework legislation implemented in 1999. New dental legislation passed in May 2001, preserving practice restrictions subject to review.	Council to assess progress in 2002.
Western Australia	*Dental Act 1939* *Dental Prosthetists Act 1985*	Entry, registration, title, practice, discipline	Issues paper released in October 1998.		Council to assess progress in 2002.
South Australia	*Dentists Act 1984*	Entry, registration, title, practice, discipline, ownership, advertising, business	Review completed in February 1999. Recommendations included changing the disciplinary process, introducing paraprofessional registration and removing some areas of reserved practice. The review also recommended the removal of ownership restrictions.	New legislation introduced in late October 2000. Limits on ownership and related restrictions maintained, contrary to review recommendations.	Council to assess progress in 2002.

(*continued*)

Table 16.2 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania	*Dental Act 1982* *Dental Prosthetists Registration Act 1996* *School Dental Therapy Act 1965*	Entry, registration, title, practice, discipline, advertising	New legislation implemented after assessment under clause 5(5).	New *Dental Practitioner Act 2001* passed in April 2001, removing some restrictions on practice and all specific restrictions on advertising, and clarifying that there are no restrictions on ownership, among other things.	Meets CPA obligations (June 2001).
ACT	*Dental Technicians and Dental Prosthetists Registration Act 1988* *Dentists Act 1931*	Entry, registration, title, practice, discipline	Issues paper released in May 1999.		Council to assess progress in 2002.
Northern Territory	*Dental Act*	Entry, registration, title, practice, discipline, advertising, ownership	Review completed May 2000. Recommendations include registering all paraprofessionals, amending practice restrictions and removing ownership restrictions.	Omnibus health practitioner bill being drafted to replace this and other Acts.	Council to assess progress in 2002.

Table 16.3: Review and reform of legislation regulating the medical profession

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Medical Practice Act 1992*	Entry, registration, title, practice, discipline, advertising	Review report released December 1998. Recommendations include insertion of an objectives clause, greater clarity for entry requirements and the disciplinary system. Removal of business and practice restrictions recommended.	*Medical Practice Amendment Act 2000* passed in July 2000 in line with review recommendations.	Meets CPA obligations (June 2001).

(*continued*)

Table 16.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria	*Medical Practice Act 1994*	Entry, registration, title, practice, discipline, advertising	Discussion paper released in October 1998. Review report completed in March 2001.	*Health Practitioner Acts (Amendment) Act 2000* passed with amended advertising provisions, including the ability of the board to impose additional restrictions.	Council to assess progress in 2002.
Queensland	*Medical Act 1939*	Entry, registration, title, practice, discipline, advertising, business	Review of health practitioner registration Acts completed in 1999. Review report not publicly available, but brief summary in 2001 NCP annual report. Core practices review completed but recommendations yet to be implemented.	Framework legislation passed in 1999. New *Medical Practitioners Registration Act 2001* passed in May 2001, preserving practice restrictions subject to review.	Council to assess progress in 2002.
Western Australia	*Medical Act 1894*	Entry, registration, title, practice, discipline, advertising	Draft report released October 1999. Recommendations included removing reserved practice, limiting the reservation on title, changing the disciplinary system and introducing new advertising restrictions.		Council to assess progress in 2002.
South Australia	*Medical Practitioners Act 1983*	Entry, registration, title, practice, discipline, advertising, business	Review completed in 1999. Review recommended removing ownership restrictions, registering medical students, requiring declaration of commercial interests and requiring professional indemnity insurance.	New legislation introduced in May 2001, not passed at the time of the 2001 assessment.	Council to assess progress in 2002.
Tasmania	*Medical Practitioners Registration Act 1996*	Entry, registration, title, practice, discipline, advertising	Reported as being underway.		Council to assess progress in 2002.

(*continued*)

Table 16.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT	*Medical Practitioners Act 1930*	Entry, registration, title, practice, discipline, advertising	Issues paper released in May 1999.		Council to assess progress in 2002.
Northern Territory	*Medical Act*	Entry, registration, title, practice, discipline, advertising, ownership, business	Review completed May 2000. Recommendations included removing generic practice, ownership and advertising restrictions, and retaining title protection.	Omnibus Bill to be implemented in line with recommendations.	Council to assess progress in 2002.

Table 16.4: Review and reform of legislation regulating the nursing profession

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Nurses Act 1991*	Entry, registration, title, practice, discipline	Issues paper released July 1999. Review complete.	Review due to be considered by Government in 2001	Council to assess progress in 2002.
Victoria	*Nurses Act 1993*	Entry, registration, title, discipline	Discussion paper released in October 1998. Review report not publicly available.	Amending legislation passed in November 2000. Advertising provisions include the ability of the board to impose additional restrictions.	Council to assess progress in 2002.
Queensland	*Nursing Act 1992*	Entry, registration, title, practice, discipline	Review report completed and under consideration by Government.	Framework legislation in place.	Council to assess progress in 2002.

(*continued*)

Table 16.4 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Nurses Act 1992*	Entry, registration, title, practice, discipline	Issues paper released October 1998.		Council to assess progress in 2002.
South Australia	*Nurses Act 1984*	Entry, registration, title, practice, discipline	Review completed in 1998. Recommendations included improving accountability, removing restrictions on advertising and making minor changes to entry requirements.	New *Nurses Act 1999* enacted in line with recommendations.	Meets CPA obligations (June 2001).
Tasmania	*Nursing Act 1995*	Entry, registration, title, practice, discipline	Complete. Review report not publicly available. New legislation assessed under clause 5(5).	A new *Nurses Act 1999* enacted.	Meets CPA obligations (June 2001).
ACT	*Nurses Act 1988*	Entry, registration, title, discipline	Issues paper released in May 1999.		Council to assess progress in 2002.
Northern Territory	*Nursing Act*	Entry, registration, title, practice, discipline, advertising	Review completed May 2000. Recommendations included removing advertising and practice restrictions, and retaining title protection.	Omnibus Bill to be drafted for consultation.	Council to assess progress in 2002.

Table 16.5: Review and reform of legislation regulating the occupational therapist profession

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Occupational Therapists Act 1979*	Entry, registration, title, practice, discipline	Review of health practitioner registration Acts completed in 1999. Review report not publicly available, but brief summary in 2001 NCP annual report. Core practices review completed but yet to be implemented.	Framework legislation in place. New *Occupational Therapists Registration Act 2001* passed in May 2001, maintaining registration.	Council to assess progress in 2002.

(*continued*)

Table 16.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Occupational Therapists Registration Act 1980*	Entry, registration, title, practice, discipline	Issues paper released in October 1998.		Council to assess progress in 2002.
South Australia	*Occupational Therapists Act 1974*	Entry, registration, title, practice, discipline	Review completed in 1999. Review recommends maintaining registration requirements.	Cabinet has approved drafting of amendments to the Act.	Council to assess progress in 2002.
Northern Territory	*Health Practitioners and Allied Professionals Registration Act*	Entry, registration, title, practice, discipline, advertising	Review completed May 2000, recommending retaining title protection and removing generic practice restrictions.	Omnibus Bill to be implemented in line with recommendations.	Council to assess progress in 2002.

Table 16.6: Review and reform of legislation regulating the optometry professions

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Optical Dispensers Act 1963* *Optometrists Act 1930*	Entry, registration, title, practice, discipline	Review completed in December 1999 and released in April 2001. Recommendations included removing ownership restrictions, limiting reserved practice and extending prescribing rights.	Government considering the review. Draft legislation circulated for comment.	Council to assess progress in 2002.
Victoria	*Optometrists Registration Act 1958*	Entry, registration, title, practice, discipline, advertising	Review completed and new legislation assessed under CPA clause 5(5). The new Act removes most restrictions on commercial practice and reservation of practice. It retains the reserved title and investigation of advertising (to ensure fair and accurate advertising).	New *Optometrists Registration Act 1996* enacted in line with review recommendations.	Meets CPA obligations (June 2001).

(*continued*)

Table 16.6 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Optometrists Act 1974*	Entry, registration, title, practice, discipline, ownership, advertising	Review of general provisions completed. Specific review of practice restrictions also completed but recommendations yet to be implemented.	Framework legislation passed by the Queensland Parliament in 1999. A new *Optometrists Registration Act 2001* was passed in May 2001, preserving practice restrictions subject to review.	Council to assess progress in 2002.
Western Australia	*Optical Dispensers Act 1966* *Optometrists Act 1940*	Entry, registration, title, practice, discipline, advertising	Issues paper released in October 1998.		Council to assess progress in 2002.
South Australia	*Optometrists Act 1920*	Entry, registration, title, practice, discipline, advertising	Review completed in 1999. Review recommended extending registration to optical dispensers.	Under consideration by Government.	Council to assess progress in 2002.
Tasmania	*Optometrists Registration Act 1994*	Entry, registration, title, practice, discipline, advertising	Review underway.		Council to assess progress in 2002.
ACT	*Optometrists Act 1956*	Entry, registration, title, practice, discipline, advertising	Issues paper released in May 1999.		Council to assess progress in 2002.
Northern Territory	*Optometrists Act*	Entry, registration, title, practice, discipline, ownership	Review completed May 2000. Recommendations include removing ownership restrictions, modifying practice restrictions and retaining title protection.	Omnibus Bill being drafted in line with recommendations.	Council to assess progress in 2002.

Table 16.7: Review and reform activity of legislation regulating the osteopathy profession

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Chiropractors and Osteopaths Act 1991*	Entry, registration, title, practice, discipline, advertising	As with chiropractors	New *Osteopaths Act 2001* passed in line with review recommendations.	Meets CPA obligations (June 2001).
Victoria	*Chiropractors and Osteopaths Act 1978*	Entry, registration, title, practice, discipline, advertising	As with chiropractors	Legislation replaced with the *Osteopaths Registration Act 1996* in line with review recommendations.	Meets CPA obligations (June 2001).
Queensland	*Chiropractors and Osteopaths Act 1979*	Entry, registration, title, practice, discipline, advertising, business	Review of health practitioner registration Acts completed in 1999. Brief summary in 2001 NCP annual report. Framework legislation implemented and osteopath-specific legislation passed.	Framework legislation in place. New *Osteopaths Registration Act 2001* passed in May 2001. The Act does not contain practice restrictions.	Meets CPA obligations (June 2001).
Western Australia	*Osteopaths Act 1997*	Entry, registration, title, discipline	Issues paper released in October 1998.		Council to assess progress in 2002.
South Australia	*Chiropractors Act 1991*	Entry, registration, title, practice, discipline, advertising, business	As with chiropractors	As with chiropractors	Council to assess progress in 2002.
Tasmania	*Chiropractors Registration Act 1982*	Entry, registration, title, practice, discipline, advertising	As with chiropractors	New *Chiropractors and Osteopaths Act 1997* enacted in 1997.	Meets CPA obligations (June 2001).
ACT	*Chiropractors and Osteopaths Act 1983*	Entry, registration, title, practice, discipline, advertising	Issues paper released in May 1999.		Council to assess progress in 2002.

(*continued*)

Table 16.7 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory	*Health Practitioners and Allied Professionals Registration Act*	Entry, registration, title, practice, discipline	Review completed May 2000. Recommendations included retaining title protection and removing generic practice restrictions.	Draft omnibus Bill to be implemented in line with recommendations.	Council to assess progress in 2002.

Table 16.8: Review and reform activity of legislation regulating the pharmacy profession

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Pharmacy Act 1964*	Entry, registration, title, practice, discipline, advertising, business, ownership, licensing	National Review of Pharmacy Regulation (Wilkinson Review) completed in February 2000. The review recommended retaining registration, the protection of title, practice restrictions and disciplinary systems (although with minor changes to the registration systems recommended for individual jurisdictions). Further, the review recommended maintaining existing ownership restrictions, and removing business licensing restrictions. (The Review also made recommendations regarding Commonwealth controls on the location of pharmacies, see section on Commonwealth legislation.)	CoAG referred the Wilkinson Review to a senior officials' working party, which is yet to report back to CoAG. (Queensland passed a new *Pharmacists Registration Act 2001* in May 2001, but reserved ownership and practice restrictions pending the outcome of the CoAG working party process.) (The Commonwealth has signed a new Community Pharmacy Agreement with the Pharmacy Guild of Australia regarding location restrictions, see section on Commonwealth legislation.)	Council to assess progress in 2002.
Victoria	*Pharmacists Act 1974*	Entry, registration, title, practice, discipline, advertising, business, ownership, licensing			
Queensland	*Pharmacy Act 1976*	Entry, registration, title, practice, discipline, advertising, business, ownership			

(*continued*)

Table 16.8 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Pharmacy Act 1974*	Entry, registration, title, practice, discipline, advertising, business, ownership, licensing, residence	(see previous page)	(see previous page)	(see previous page)
South Australia	*Pharmacy Act 1991*	Entry, registration, title, practice, discipline, advertising, business, ownership, licensing			
Tasmania	*Pharmacy Act 1908*	Entry, registration, title, practice, discipline, advertising, business, ownership			
ACT	*Pharmacy Act 1931*	Entry, registration, title, practice, discipline			
Northern Territory	*Pharmacy Act 1996*	Entry, registration, title, practice, discipline			

Table 16.9: Review and reform activity of legislation regulating the physiotherapy profession

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Physiotherapists Registration Act 1945*	Entry, registration, title, practice, discipline	Review completed in March 2001. The review made 28 recommendations, including lessening restrictions on practice and advertising.	New legislation passed Legislative Assembly in June 2001 in line with review recommendations.	Council to assess progress in 2002.
Victoria	*Physiotherapists Act 1978*	Entry, registration, title, practice, discipline, advertising	Review completed in 1997, recommending removing most restrictions on commercial practice and the reservation of practice. Recommended retaining provisions for reserved title and investigation of advertising (to ensure fair and accurate advertising).	Legislation replaced with the *Physiotherapists Registration Act 1998* in line with review recommendations.	Meets CPA obligations (June 2001).
Queensland	*Physiotherapists Act 1964*	Entry, registration, title, practice, discipline	Review of health practitioner registration Acts completed in 1999. Brief summary in 2001 NCP annual report. Core practices review completed but recommendations yet to be implemented.	Framework legislation enacted in December 1999. New *Physiotherapists Registration Act 2001* passed in May 2001, preserving practice restrictions subject to review.	Council to assess progress in 2002.
Western Australia	*Physiotherapists Act 1950*	Entry, registration, title, practice, discipline	Issues paper released in October 1998.		Council to assess progress in 2002.
South Australia	*Physiotherapists Act 1991*	Entry, registration, title, practice, discipline, advertising, ownership	Review completed in 1999. Review recommended removing ownership and advertising restrictions.	Cabinet has approved drafting amendments.	Council to assess progress in 2002.
Tasmania	*Physiotherapists Registration Act 1951*	Entry, registration, title, practice, discipline, advertising	New legislation implemented after assessment under CPA clause 5(5).	New *Physiotherapists Registration Act 1999* enacted.	Meets CPA obligations (June 2001).
ACT	*Physiotherapists Act 1977*	Entry, registration, title, practice, discipline	Issues paper released in May 1999.		Council to assess progress in 2002.

(*continued*)

Table 16.9 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory	*Health Practitioners and Allied Professionals Registration Act*	Entry, registration, title, practice, discipline	Review completed May 2000. Recommendations included retaining title protection and removing generic practice restrictions.	Draft omnibus Bill to be implemented in line with recommendations.	Council to assess progress in 2002.

Table 16.10: Review and reform activity of legislation regulating the podiatry profession

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Podiatrists Act 1989*	Entry, registration, title, practice, discipline	Issues paper released in April 2000.		Council to assess progress in 2002.
Victoria	*Chiropodists Act 1968*	Entry, registration, title, practice, discipline, advertising	Review completed in 1997, recommending the removal of most restrictions on commercial practice and the reservation of practice restrictions.	Legislation replaced with the *Podiatrists Registration Act 1997* in line with recommendations.	Meets CPA obligations (June 2001).
Queensland	*Podiatrists Act 1969*	Entry, registration, title, practice, discipline	Review completed in 1999. Brief summary in 2001 NCP annual report. Podiatry-specific legislation passed in May 2001, but retained existing practice restrictions subject to further NCP review.	Framework legislation passed in December 1999. New *Podiatrists Registration Act 2001* enacted in May 2001, preserving practice restrictions subject to review.	Council to assess progress in 2002.
Western Australia	*Podiatrists Registration Act 1984*	Entry, registration, title, practice, discipline	Issues paper released in October 1998.		Council to assess progress in 2002.

(*continued*)

Table 16.10 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Chiropodists Act 1950*	Entry, registration, title, practice, discipline, advertising	Review completed in 1999. Review recommended removing ownership and advertising restrictions and limiting reserved practice.	Cabinet has approved drafting amendments.	Council to assess progress in 2002.
Tasmania	*Podiatrists Registration Act 1995*	Entry, registration, title, discipline, advertising	Completed in 2000.	Amending legislation passed in November 2000. Advertising and ownership restrictions removed from the Act.	Meets CPA obligations (June 2001).
ACT	*Podiatrists Act 1994*	Entry, registration, title, practice, discipline	Issues paper released in May 1999.		Council to assess progress in 2002.

Table 16.11: Review and reform activity of legislation regulating the psychology profession

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Psychologists Act 1989*	Entry, registration, title, practice, discipline	Review report completed December 1999, recommending the retention of registration, but the removal of restrictions on advertising and premises. A number of recommendations provide clarity and accountability.	New *Psychologists Bill* introduced in October 2000 in line with review recommendations.	Council to assess progress in 2002.

(*continued*)

Table 16.11 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria	*Psychologists Act 1978*	Entry, registration, title, practice, discipline, advertising, business	Review completed in 1998, recommending the removal of most restrictions on commercial practice and the reservation of practice. It recommended retaining reserved title and investigation of advertising (to ensure fair and accurate advertising).	Replacement legislation, the *Psychologists Registration Act 2000,* enacted. Advertising provisions include the ability of the board to impose additional restrictions.	Council to assess progress in 2002.
Queensland	*Psychologists Act 1977*	Entry, registration, title, practice, discipline, advertising	Review completed in 1999. New legislation retains restrictions on entry, registration, title and a disciplinary process. The new legislation contains limited advertising restrictions and a prohibition of undue influence by owners.	Framework legislation passed in December 1999. New *Psychologists Registration Act 2001* passed in May 2001. The Act does not contain practice restrictions.	Meets CPA obligations (June 2001).
Western Australia	*Psychologists Registration Act 1976*	Entry, registration, title, practice, discipline	Issues paper released in October 1998.		Council to assess progress in 2002.
South Australia	*Psychological Practices Act 1973*	Entry, registration, title, practice, discipline, advertising	Review completed in 1999. Review recommended removing advertising and practice restrictions.	Cabinet has approved drafting amendments to the Act.	Council to assess progress in 2002.
Tasmania	*Psychologists Registration Act 1976*	Entry, registration, title, discipline, advertising	Review completed. Review report not available to the Council. New legislation implemented after assessment under CPA clause 5(5).	New legislation passed in 2000.	Meets CPA obligations (June 2001).
ACT	*Psychologists Act 1994*	Entry, registration, title, practice, discipline	Issues paper released in May 1999.		Council to assess progress in 2002.
Northern Territory	*Health Practitioners and Allied Professionals Registration Act*	Entry, registration, title, practice, discipline, advertising	Review completed May 2000. Recommendations included retaining title protection and removing generic practice restrictions.	Draft omnibus Bill to be implemented in line with recommendations.	Council to assess progress in 2002.

Table 16.12: Review and reform activity of legislation regulating radiographers

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Medical Radiation Technologists Act 2001*	Entry, registration, title, discipline	Review of health practitioner registration legislation completed in 1999, recommending registering radiation therapists, medical imaging technologists/radiographers and nuclear imaging technologists.	Framework legislation passed in December 1999. New *Medical Radiation Technologists Act 2001* passed in May 2001. The Act does not restrict practice.	Meets CPA obligations (June 2001).
Tasmania	*Radiographers Registration Act 1976*	Entry, registration, title, discipline	Review completed. New legislation implemented after assessment under CPA clause 5(5).	*Medical Radiation Science Professionals Registration Act 2000* passed in November 2000. The Act does not contain practice or advertising restrictions, but does contain requirements for professional indemnity insurance.	Meets CPA obligations (June 2001).
Northern Territory	*Radiographers Act*	Entry, registration, title, practice, discipline, advertising	Review completed May 2000. Recommendations included repealing the Act and transferring powers to the Chief Health Inspector under the Radiation (Safety Control) Act.	The Government has approved the drafting of legislation in line with review recommendations.	Council to assess progress in 2002.

Table 16.13: Review and reform activity of legislation regulating speech pathologists

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Speech Pathologists Act 1979*	Entry, registration, title, practice, discipline	Review completed in 1999, recommending retaining registration, including the restriction of title and disciplinary provisions, but removing practice restrictions.	Framework legislation passed in December 1999. New *Speech Pathologists Registration Act 2001* passed in May 2001.	Council to assess progress in 2002.

Table 16.14: Review and reform activity of legislation regulating traditional Chinese medicine practitioners

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria	*Chinese Medicine Registration Act 2000*	Entry, registration, title, practice, discipline, advertising, insurance, prescribing.	The Australian Council of Health Ministers agreed that Victoria should take the lead in developing model legislation. Extensive review completed in 1999.	Legislation passed in 2000. Advertising provisions include the ability of the board to impose additional restrictions.	Council to assess progress in 2002.

Drugs, poisons and controlled substances

Drugs, poisons and controlled substances include over-the-counter medicines, certain chemicals, pharmaceuticals that a doctor or other professional must prescribe and complementary medicines. Most Australians regularly use these products, for which the combined market value in Australia is several billion dollars each year. The use of certain poisonous substances, although of benefit to the community, can and does result in harm.

Legislative restrictions on competition

State and Territory governments have a range of medicines and poisons legislation that imposes restrictions on who can supply these substances, to whom they may be supplied, how they may be supplied and in what circumstances. Commonwealth legislation controls the supply of products through a registration process.

The Commonwealth Therapeutic Goods Administration assesses therapeutic goods for safety, under the terms prescribed in the *Therapeutic Goods Act 1989* and the *Agricultural and Veterinary Chemicals Code Act 1994*.[2] These Acts control what products may be supplied in the Australian market and how they are to be supplied. Products for human therapeutic use must be listed on the Australian Register of Therapeutic Goods and may also be scheduled.

The Standard for the Uniform Scheduling of Drugs and Poisons lists substances under various schedules according to the;

- intrinsic hazard (toxicity);
- purpose of use;
- potential for abuse;
- safety in use; and
- need for the substance.

The schedule includes provisions for labelling, packaging and advertising, and specifies to whom a product may be sold and under what conditions; for example, schedule 4 pharmaceuticals may be prescribed by only a medical

[2] Restrictions under the latter Act are discussed in chapter 13.

practitioner and dispensed by only a registered pharmacist (with limited exceptions). State and Territory legislation generally enforces these restrictions.

State and Territory legislation is also concerned with restrictions throughout the substance supply chain and on use in the community, and with all aspects of household poisons. Regulations include the licensing of wholesalers, restrictions on the handling and storage of goods, controls on the manufacture of medicines and treatment of addiction (in controlled substances legislation), and reporting requirements. There is considerable regulatory variation across jurisdictions, including differences in the scope and detail of particular controls. The relationship between differing regulatory instruments (such as drugs and poisons legislation and professional regulation) also needs to be examined to ensure duplication and inconsistencies are minimised.

Regulating in the public interest

There is potential for significant harm from the misuse of drugs, poisons and controlled substances. These harms can include death and hospitalisations through accidental or deliberate poisoning, medical misadventures and abuse. The objective of the legislative restrictions is freedom from harm to the individual and the community as a whole. The potential for harm from the misuse of drugs, poisons and controlled substances justifies restrictions on competition where a clear link between the restriction and the reduction of harm can be established. Best practice regulation seeks to provide a reasonable level of protection while ensuring reasonable access.

Restricting the supply of drugs, poisons and controlled substances can involve input or outcome restrictions. Input restrictions include the licensing of wholesalers and controls on who may prescribe and who may dispense. Outcome restrictions govern end use, for example proscribing the misuse of controlled substances. Generally, outcome legislation is preferred to input controls because costs are lower and restrictions on competition are fewer. However, with particularly dangerous goods such as addictive pharmaceuticals, the benefits of multiple controls to prevent harm are likely to justify high costs. Good regulation should differentiate the scope and nature of restrictions based on the potential for harm.

Review and reform activity

The scope of review and reform activity in drugs, poisons and controlled substances regulation is outlined in the following table.

Table 16.15: National review of drugs, poisons and controlled substances

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Therapeutic Goods Act 1989*	Scheduling restrictions on the labelling, packaging and advertising of listed substances, and to whom a product may be sold and under what conditions. Licensing restrictions on the handling, storage and reporting requirements of controlled substances for wholesalers and retailers.	The Galbally Review of Drugs, Poisons and Controlled Substances issued a draft final report in September 2000, which concluded that there are sound reasons for a comprehensive system of legislative controls that regulate drugs, poisons and controlled substances, notwithstanding that many of these controls restrict competition. The draft report also found that the level of regulation should be reduced in some areas, the efficiency of the regulatory system could be improved, and non-legislative measures would be a more appropriate policy response in some areas. The final report was completed and presented to the Australian Health Ministers Conference in early 2001. An Australian Health Ministers Advisory Committee working party is examining the report and provide recommendations to CoAG.		Council to assess progress in 2002.
New South Wales	*Poisons and Therapeutic Goods Act 1966* *Drugs Misuse and Trafficking Act 1985*				
Victoria	*Drugs, Poisons and Controlled Substances Act 1981*				
Queensland	*Health Act 1937*				
Western Australia	*Poisons Act 1964* *Health Act 1911 (Part VIIA)*				
South Australia	*Controlled Substances Act 1984*				
Tasmania	*Poisons Act 1971* *Alcohol and Drug Dependency Act 1968* *Pharmacy Act 1908* *Criminal Code Act 1924*				
ACT	*Drugs of Dependence Act 1989* *Poisons Act 1933* *Poisons and Drugs Act 1978*				
Northern Territory	*Poisons and Dangerous Drugs Act* *Therapeutic Goods and Cosmetics Act* *Pharmacy Act*				

Commonwealth health legislation

The Commonwealth administers the Medicare health insurance system, regulates private health insurance and provides for location restrictions on pharmacy through the *Health Insurance Act 1973* and the *National Health Act 1953*. The Council has identified NCP questions relating to the Commonwealth's administration of this legislation, as follows:

- the community rating for private health insurance;
- the prevention of private health funds from providing payments for certain services;
- limits on Medicare provider numbers;
- the pathology Licensed Collection Centre scheme; and
- location restrictions imposed by the Community Pharmacy Agreement.[3]

The Commonwealth noted that many of these matters are relevant to the assessment of NCP progress in 2002. The Council will further consider progress in the 2002 NCP assessment.

Review and reform activity

Review and reform activity in these areas is outlined in the table 16.16.

[3] Related restrictions imposed by pharmacist regulation is discussed earlier in the chapter.

Table 16.16: Review and reform of Commonwealth health legislation

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*National Health Act 1953 (part 6 and schedule 1)* *Health Insurance Act 1973 (part 3)*	Community rating of private health insurance prevents insurers from setting different terms and conditions for insurance on the basis of sex, age or health status.	Productivity Commission completed a review of private health insurance in February 1997. The review was specifically prevented from examining community rating.	Lifetime Health Cover implemented in 2000, changing community rating to allow insurers to impose a premium surcharge for new entrants based on age at entry.	Council to assess progress in 2002.
	National Health Act 1953 *Health Insurance Act 1973*	Limits health funds to paying rebates for services provided by on behalf of medical practitioners, midwives and dental practitioners.	The Council wrote to the Commonwealth on this issue in December 2000.		Council to assess progress in 2002.
	Human Services and Health Legislation Amendment Act (No. 2) 1995 *Health Insurance Amendment Act (No. 2) 1996*	Prevents new medical graduates from providing a service that attracts a Medicare rebate unless they hold postgraduate qualifications, are studying towards such qualifications or work in rural areas.	Mid term review of provider number legislation completed in December 1999. The review recommended removing the sunset clause on the legislation and addressing some training issues. Annual reports from the Medical Training Review Panel.	2000 Federal Budget announced changes to general practice training, including more training positions. Legislation to remove the sunset clause on the legislation introduced in June 2001.	Council to assess progress in 2002.
	Health Insurance Act 1973 (Part IIA)	Pathology collection centre licensing prevents entry to the market.	NCP Review commenced in 2000. Due for completion in late 2001.	Legislation to modify the licensed collection centre scheme introduced in June 2001.	Council to assess progress in 2002.

(*continued*)

Table 16.16 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
	National Health Act 1953 (s99L)	Restricts the location of pharmacies. Applicants for a new pharmacy must demonstrate a 'definite community need' — that is, a catchment area with a population over 3000, a full-time medical practitioner and general shopping facilities — and be at least 2km from an existing pharmacy. There are also restrictions on the relocation of existing pharmacies.	The Wilkinson Review of pharmacy legislation reported in February 2000. The review recommended that location controls for new pharmacies be removed or amended to reward more efficient pharmacies, promote larger pharmacies and provide targeted incentives for rural and remote pharmacies. The review also recommended removing restrictions on the relocation of existing pharmacies.	The Commonwealth did not accept some review recommendations. The third Community Pharmacy Agreement between the Commonwealth and the Pharmacy Guild of Australia maintains location restrictions for new pharmacies and relocation restrictions for existing pharmacies (although with some simplification and amendment)	Council to assess progress in 2002.

Population health and public safety

States and Territories have a wide variety of population health legislation aimed at reducing the risks of infection. These laws include the licensing of facilities that provide health services and other activities that could pose a potential public health risk, and procedures for the use of potentially dangerous material and procedures.

State and Territory legislation involves different mechanisms for achieving the objective of minimising the risk of harm to the community. To some extent, the different mechanisms reflect jurisdictions' different assessments of population health concerns; for example, Queensland has a number of laws relating to mosquitoes but Tasmania has none, reflecting the climatic differences between the two States.

Legislative restrictions on competition

Legislation in this area can include:

- licensing of occupational groups that undertake potentially dangerous activity, such as skin piercing;
- licensing of premises such as hospitals and restaurants;
- prescriptive procedural legislation, such as legislated infection control procedures; and
- outcome measures with penalties for breaches, such as fines for serving contaminated food.

There is occasional overlap between the general objectives of public health legislation (to protect community health and safety) and environmental protection legislation. This overlap can require persons to meet standards set out in two or more legislative instruments.

No significant concerns have been raised with the Council with respect to population health legislation at the time of this assessment. The Council will assess progress in 2002.

17 Legal services

Legal services have an important role in ensuring justice according to the law and in the daily operations of businesses. Many individual Australians also use services provided by legal practitioners — for example, in the areas of finance, housing, wills, compensation for injury and family law. The legal services sector has an annual turnover of more than $6 billion per year and employs more than 70 000 people (ABS 2000b).

Legislative restrictions on competition

A range of laws, regulations, professional rules and court responsibilities govern legal practitioners and how they operate. Despite reforms by the legal profession in recent years, restrictions on competition in legal practice remain. Key restrictions include regulation of entry to the profession, the reservation of legal practice, commercial restrictions on legal practice ownership and advertising, and the monopoly provision of professional indemnity insurance for solicitors.

Entry standards and reservation of title

Registration as a legal practitioner requires applicants to meet admission prerequisites regarding training, experience and character. Training is usually a law degree and practical experience is generally articles in a legal office or completion of a practical training course. Only registrants are allowed to use restricted titles such as solicitor and barrister.

Legislation reviews have found net community benefit from maintaining entry restrictions: significant public harm (both to clients and third parties) could result from incompetent and unqualified persons providing incorrect or poor advice.

Reservation of practice

State and Territory laws reserve certain work, defined as legal work, for registered legal practitioners by making it an offence for unqualified persons to supply such services. The definition of legal work varies across jurisdictions, but generally includes drawing or preparing wills or documents

that affect rights between parties, affect real or personal property or relate to legal proceedings, and probate work.

The definitions of legal work are generally broad and there is a cross-over between work that lawyers and others may perform. In particular, there is little if any distinction between complex technical matters requiring legal training and less complicated services (such as wills and probate) that appropriately trained non-lawyers may be able to perform.

In three jurisdictions (Queensland, Tasmania and the ACT) conveyancing — that is, the legal transfer of property — continues to be defined as legal work. In Queensland, a Green Paper on legal reform has recommended that non-lawyers be allowed to provide conveyancing in competition with legal practitioners (Queensland Government 1999, p. 28). Tasmania's regulatory impact statement on the review of the *Legal Profession Act 1993* makes a similar preliminary recommendation (Legal Profession Review Body 2001, p. 26).

Commercial restrictions

Despite reforms in recent years, restrictions on lawyers' commercial operations remain, including restrictions on advertising and the ownership and organisation of legal practices.

Historically, restrictions on advertising were imposed to uphold the dignity of the profession by preventing legal practitioners from touting for business. The traditional view of the legal profession was that the benefits from restricting advertising outweighed costs such as reducing information to consumers and limiting any gains from competition.

More recently, advertising rules have been relaxed. Nonetheless, some jurisdictions have rules about advertising as a specialist or offering specialist services. Generally, professional association rules also prohibit advertising that is vulgar, sensational or otherwise would or could bring the profession into disrepute. The Northern Territory has rules dealing with advertised prices and Western Australia has guidelines on advertising. Both Queensland and New South Wales have recently introduced laws that limit the ways in which lawyers may advertise workers compensation services. These laws relate only to workers compensation claims.

Except in New South Wales (where legislation was recently passed to allow the incorporation of legal practices), legal professionals in all jurisdictions are restricted in their ability to share profits with non-legal partners. This means that they are limited in their ability to share the profits of their legal practice with non-lawyers, so have difficulty in forming multidisciplinary practices with other professionals such as accountants or doctors in a number of jurisdictions.

Historically, the legal profession used the need to preserve the confidentiality and trust of the lawyer/client relationship to justify controls over the ownership and organisation of legal practices. The argument is that lawyers must be allowed to pursue their clients' interests to the exclusion of the interests of third parties involved in the practice.

The Law Council of Australia has identified practice ownership and profit-sharing restrictions in the legislation of every State and Territory. It considers 'there should not be any restrictions on the manner in which lawyers choose to practise unless that restriction is in the public interest' (Law Council of Australia 2000).

Limited evidence links ownership restrictions to the maintenance of professional ethics. New South Wales, for example, concluded from its NCP review that the most effective way in which to achieve professional legal objectives is to maintain a clear focus on the accountability of individuals rather than to restrict ownership. The New South Wales Parliament passed legislation in October 2000 to allow the incorporation of legal practices.

Introducing the Bill, the Attorney-General detailed some costs involved in maintaining restrictions on ownership. These include limits on the competitive position of solicitors, management difficulties, complex decision-making and an inability to raise capital for expansion or to enter other markets. The Attorney-General described modern legal practice as rendering the partnership structure obsolete for large practices (Shaw 2000, p. 7624).

Other governments are also reviewing practice ownership and profit-sharing arrangements. Regulatory practice in other jurisdictions is an issue for these reviews because consistent regulation may reduce barriers to competition across State and Territory boundaries.

Professional indemnity insurance

Professional indemnity insurance is designed to meet client or third party claims of civil liability that may arise from practitioners' negligence or error. It is a common feature of many professions.

There are two significant restrictions on competition in current professional indemnity insurance arrangements for lawyers. First, unlike legislation for other professions, legislation in all jurisdictions obliges lawyers practising as solicitors to obtain professional indemnity insurance. Second, in all States and Territories there are legislated restrictions on the purchase of professional indemnity insurance, generally by requiring practitioners to be covered by a master policy purchased through a regulatory body. In South Australia, the regulatory body tenders out the work and there have never been fewer than two providers. There are two licensed providers of insurance in the ACT.

Mandatory insurance

Legal professional bodies generally argue that mandatory professional indemnity insurance has two benefits. First, it minimises information problems regarding compensation for loss. Second, it creates a sustainable insurance market by creating a pool of mixed risk, where low-risk solicitors cross-subsidise the riskier performers. The argument is that compulsion is required to enable creation of a sufficiently large pool of insured practitioners to operate effectively.

The counter to this argument is that insurance schemes generally operate to remove their worst risks by increasing premiums significantly or by refusing to insure high-risk operators. The central public interest question is whether positive outcomes such as improved public confidence in the legal profession and the effective operation of insurance schemes outweigh any anticompetitive effects from excluding uninsured lawyers from practising. Reviews have generally found that compulsory professional indemnity insurance is in the public interest.

Monopoly versus competition in insurance provision

A key question is whether it is in the public interest to require solicitors to obtain professional indemnity insurance from a single professional body on the terms and conditions set by that body. This lack of competition prevents insurers from competing for clients and denies lawyers the chance to obtain insurance that better suits their individual needs. For example, competition may facilitate the development of policies that reflect the riskiness of the type of work practitioners undertake. Those who conduct lower risk work may be able to pay a lower premium than those who conduct higher risk work.

Available evidence gives some support to the case for allowing solicitors to choose their insurer.[1] The New South Wales NCP review of the *Legal Profession Act 1987* noted two examples. In its submission to that review, Willis Corroun Professional Services Limited indicated, based on its experience as the agent of insurers entering the ACT market, that competition led to broader cover, cheaper premiums and a higher level of service. The New South Wales Bar Association noted that the insurance market for barristers has already been deregulated: there are two providers of insurance to barristers and there is price competition (Attorney General's Department [NSW] 1998).

In defence of the monopoly arrangement, professional bodies argue that allowing choice of insurance provider will result in the better risks leaving to obtain more suitable arrangements elsewhere, ultimately leaving an unsustainable arrangement comprising only the poorer risks and a reduced

[1] Barristers are generally able to choose from at least two insurers.

premium pool for meeting claims. This may then lead to the original pool having to reduce its liabilities, screening out the worst risks by not insuring them. Such high-risk practitioners would probably then be unable to practise, because they would have difficulty finding alternative insurance.

Such an outcome is relatively common in other insurance markets. The ability to exclude very poor risks allows insurers to operate insurance arrangements by maintaining a commercially viable balance of risks. There may even be some benefit to the community from excluding lawyers with poor records from practising, given that such exclusion could reduce the likelihood of future negligence or error.

Regulating in the public interest

Legal services regulation should promote competition, better quality services and lower prices. It should also protect consumers and the wider community. A National Competition Council staff paper explores many of the issues raised by professional regulation (Deighton-Smith, Harris and Pearson 2001). It also highlights principles for regulating professions and occupations, including the desirability of:

- regulatory objectives being clearly identified;
- links between specific restrictions and the reduction of harms being identifiable;
- regulations and other rules of conduct being transparent and public;
- restrictions being consistently applied, with a presumption against 'grandfather clauses';
- enforcement actions being open, accountable and consistent;
- regulatory bodies having broad representation, with strong community involvement; and
- regulation being the minimum necessary to achieve the government's objectives.

The Council considers there is a public benefit case to support, in principle, the licensing and registration of legal practitioners. However, for all other restrictions, the Council looks for robust public interest justifications and for regulatory outcomes to meet the above principles in assessing NCP compliance.

Review and reform activity

In all jurisdictions, review and reform of legislation regulating legal services is still underway (table 17.1).

Table 17.1: Review and reform of legislation regulating legal services

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Legal Profession Act 1987*	Licensing, registration, the reservation of title and practice, disciplinary processes, business conduct (including monopoly professional indemnity insurance, advertising (must not be false, misleading or deceptive) and mandatory continuing legal education)	Review completed in 1998. Recommendations included allowing incorporation of legal practice and allowing competition in professional indemnity insurance.	Implementation underway. To date, the rule requiring solicitors to have majority control of multidisciplinary practices has been abolished, and legislation allowing solicitors to incorporate was passed in October 2000 (commenced on 1 July 2001). Government not yet responded to the professional indemnity insurance issue. New advertising restrictions for workers' compensation services introduced in May 2001.	Council to assess progress in 2002.
Victoria	*Legal Practice Act 1996*	Licensing, registration, entry requirements, the reservation of title and practice, disciplinary processes, business conduct (including monopoly professional indemnity insurance)	Review of legal practice legislation completed in 1996, leading to a range of reforms being implemented in the *Legal Practice Act 1996*. Victoria has also undertaken two reviews into professional indemnity insurance, by KPMG (recommending removing the monopoly provision of professional indemnity insurance) and the Legal Practice Board (recommending maintaining the monopoly). The latter report was released for public comment in November 2000.	A draft Government response to the Legal Practice Board review was released in November 2000, for public comment. Response proposed to maintain monopoly provision of professional indemnity insurance (through the Legal Practice Liability Committee).	Professional indemnity insurance — Council to assess progress in 2002. Other areas — Meets CPA obligations (June 1999).

(*continued*)

Table 17.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Legal Practitioners Act 1995* *Queensland Law Society Act 1952*	Licensing, registration, entry requirements, the reservation of practice (including conveyancing), disciplinary processes, business conduct (including the process for determining maximum prices, various educational programs and practise courses, indemnity insurance (with law society master policy or an insurer approved by the law society) and advertising)	Department review underway. Discussion paper released in December 1998 and Green Paper released in June 1999. NCP review expected to be completed in 2001.		Council to assess progress in 2002.
Western Australia	*Legal Practitioners Act 1893*	Licensing, registration, entry requirements, the reservation of title, the reservation of practice, disciplinary processes, business conduct (including monopoly professional indemnity insurance, trust accounts, fees, advertising), competitive neutrality	Department review underway. Consultation involved establishing consultative group, releasing an issues paper (June 2000) and seeking submissions (by August 2000).		Council to assess progress in 2002.
South Australia	*Legal Practitioners Act 1981*	Licensing, registration, entry requirements, disciplinary processes, the reservation of title and practice, business conduct (including monopoly professional indemnity insurance)	Review underway. Issues paper released in July 1999.		Council to assess progress in 2002.

(*continued*)

Table 17.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania	*Legal Profession Act 1993*	Licensing, registration, entry requirements, disciplinary processes, the reservation of title and practice, business conduct (including monopoly professional indemnity insurance, operation of mandatory trust accounts and advertising (power to Council of Law Society to make rules))	Review underway. Issues paper released July 2000 and regulatory impact statement released April 2001. Preliminary recommendations include removing reservation of conveyancing practice and advertising and ownership restrictions; retaining civil fee scales; introducing mandatory continuing legal education; improving the disciplinary system; and allowing legal practitioners to arrange their own insurance. The review group is seeking feedback on the regulatory impact statement by late May 2001. It is anticipated the final review report will be presented to the Government in mid-2001.		Council to assess progress in 2002.
ACT	*Legal Practitioners Act 1970*	Licensing, registration, entry requirements, disciplinary processes, the reservation of title and practice, business conduct (including professional indemnity insurance (two providers), ownership, locally registered foreign legal practitioner advertising (should not be false, misleading or deceptive or suggest legal practitioner is domestic))	Targeted public review underway. Review being undertaken in two stages by the Department of Justice and Community Safety. Stage 1 options paper, canvassing options for reform concerning admission and licensing of legal practitioners, complaints and discipline, released in November 1999, with submissions sought. Government is considering submissions. Stage 2 options paper, canvassing reform issues relating to business structures (including multidisciplinary practices), fee setting, insurance and the statutory interest account to be released in 2001.	As an interim measure pending the full NCP review, the Government amended the Act to introduce a second approved insurance provider.	Council to assess progress in 2002.

(*continued*)

Table 17.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory	*Legal Practitioners Act*	Licensing, registration, entry requirements, disciplinary processes, the reservation of title and practice, disciplinary processes, business conduct (including monopoly professional indemnity insurance and advertising)	Public review underway. Review will also deal with the *Legal Practitioners (Incorporation) Act*, which imposes restrictions on who can own and control companies that provide legal services. Issues paper released in September 2000. Review due to be completed in December 2001.		Council to assess progress in 2002.

18 Other professional and occupational licensing

States and Territories are reviewing a range of professional and occupational licensing instruments under the NCP. The regulation of veterinary surgeons is discussed in chapter 13 (which focuses on agricultural matters), of health professions in chapter 16, of the legal profession in chapter 17, of teachers in chapter 22, and of building-related professions and occupations in chapter 24. This chapter covers other significant professional and occupational regulation, including the regulation of motor vehicle dealers, real estate agents, second-hand dealers and travel agents.

Various tables throughout the chapter present information on jurisdictions' review and reform of legislation regulating these professional and occupational licensing groups. Given the wide scope of regulation, the National Competition Council's assessment covers only those areas of regulation for which review and reform activity is complete. This does not imply that jurisdictions are not addressing their NCP legislation review and reform responsibilities in other professional areas not discussed in this chapter.

Legislative restrictions on competition

Governments' regulation of professions and occupations restricts competition in several ways; for example, State and Territory legislation incorporates licensing requirements, the reservation of practice, constraints on ownership and other commercial restrictions. There are differences in the nature of licensing arrangements across the States and Territories. Some jurisdictions require complex tests of practitioners' qualifications and character, while others operate negative licensing schemes whereby practitioners are not required to register but must hold prescribed qualifications. Some professions and occupations are covered by general business licence arrangements rather than licensing of practitioners.

There are also differences in jurisdictions' approaches to particular professions and occupations. For some professions, including motor vehicle traders, real estate agents, pawnbrokers and travel agents, every jurisdiction requires that a person be licensed to practise. However, for several other professions, licensing is a requirement in some but not all jurisdictions. Example are wool, hide and skin dealers who must be licensed only in New

South Wales and employment agents who must be registered in order to practise in four of the eight jurisdictions.

For a number of professions and occupations, legislation specifies service standards and/or establishes mechanisms for consumer protection. For motor vehicle dealers, legislation typically sets standards for disclosure of information, minimum warranties and behaviour standards. For real estate agents, legislation sets requirements for fidelity funds, trust accounts and maximum permissible fees. Similarly, for travel agents, a licensing process aims to ensure service and quality standards and a compulsory consumer compensation scheme to protect consumers from financial loss if a travel agent defaults (the Travel Compensation Fund). In addition, general consumer protection mechanisms in fair trading laws in each State and Territory provide avenues for redress of complaints about service provision.

Regulating in the public interest

The restrictions that are relevant for NCP reviews of the professions and occupations discussed in this chapter include licensing requirements, entry requirements (rules or standards governing who may provide services), the reservation of practice (where only certified practitioners are allowed to perform certain areas of practice), ownership and other commercial restrictions. A National Competition Council staff paper sets out how these measures restrict competition and explores issues raised by professional regulation (Deighton-Smith, Harris and Pearson 2001). It also highlights principles for regulating professions and occupations, including the desirability of:

- regulatory objectives being clearly identified;
- links between specific restrictions and the reduction of harms being identifiable;
- regulations and other rules of conduct being transparent and public;
- restrictions being consistently applied, with a presumption against 'grandfather clauses';
- enforcement actions being open, accountable and consistent;
- regulatory bodies having broad representation, with strong community involvement; and
- regulation being the minimum necessary to achieve the government's objectives.

Governments need to identify legislation in all areas of occupational licensing or registration to determine whether there is a net community benefit in

restrictions on competition and whether the objectives of the legislation can be addressed without restricting competition.

Review and reform activity

Licensing in some jurisdictions

There is a particular issue arising where occupations are registered or licensed in some but not all jurisdictions ('partially registered'). Governments recognised in the early 1990s that this issue warranted attention, given the costs both to practitioners wishing to move or operate across jurisdictions and to governments in ensuring compliance. Governments established the Vocational Education, Employment and Training Committee (VEETAC) Working Party on Mutual Recognition to examine occupations registered in some but not all jurisdictions. The working party was asked to determine whether each occupation should be deregistered or fully registered in all jurisdictions.

It reported in May 1993 (VEETAC 1993), recommending that existing partially registration requirements be removed for a variety of occupations (table 18.1). Some governments have since removed registration requirements for some of these occupations, although for several occupations some governments continue to require registration (table 18.2).

Decisions by some governments not to require licensing/registration of particular occupations raise questions about the case supporting licensing elsewhere. The Council has closely examined the public interest case supporting licensing where a profession or occupation is licensed in some but not all jurisdictions. This section discusses review and reform of legislation regulating auctioneers, conveyancers, employment agents, hairdressers and hawkers.

Table 18.1: Occupations for which VEETAC working party recommended deregistration

No.	*Jurisd-iction*	*Occupation*	*No.*	*Jurisd-iction*	*Occupation*
1	Vic	Wildlife controller	218	Vic	Firearms instructor
2	Vic	Wildlife dealer	220	Vic	Director, friendly society
3	Vic	Wildlife demonstrator	225	Qld	Motor dealer manager
4	Vic	Wildlife displayer	226	WA	Motor vehicle yard manager (see 225)
5	Vic	Wildlife producer	227	Qld	Pastoral house director
8	Vic	Animal experimenter	230	NSW	On-site residential property manager

(*continued*)

Table 18.1 continued

No.	*Jurisd-iction*	*Occupation*	*No.*	*Jurisd-iction*	*Occupation*
9	All except ACT	Artificial breeding operator	231	NSW	Strata managing agent operator
10	SA, WA	Semen collector	232	NSW, ACT	Stock and station agent (see 227)
11	NSW	Instructor (insemination)	233	Qld	Pastoral house manager (see 227)
12	NSW	Instructor (artificial breeding)	234	Qld, SA, Tas	Real estate manager
15	Vic	Abattoir and meat inspector	237	WA	Employment agent
16	Vic	Sheep skin buyer	238	Qld	Private employment agent
18	Vic	Wildlife taxidermist	239	Vic	Nurses agent
19	NSW, Qld	Pasteuriser operator	244	WA	Marine stores dealer
20	NSW	Buttermaker/cheesemaker	249	SA	Security alarms agent
21	Qld	Check egg grader	250	NSW	Security installer/repairer
22	NSW, Vic	Dried fruit classer	257	ACT	Business agent
23	Qld	Bulk milk grader	259	SA	Hotel broker
24	NSW, Tas	Milk and cream grader	260	All except ACT	Real estate/business sales representative
25	Qld	Dairy grader (factory) (see 24)	261	NSW	Security sales representative/consultant
26	NSW, Tas	Milk and cream tester	262	NSW, Vic, Qld, Tas	Valuer
27	Qld	Dairy produce tester (see 26)	263	SA, WA	Land valuer (see 262)
28	Vic	Sheep carrier	264	NSW	Valuer licensed premises (see 262)
29	Vic	Sheep skin employee	265	Qld, WA	Motor vehicle salesman
30	Vic, Qld, SA, Tas	Teacher	266	All except SA, ACT	Auctioneer
42	ACT	Needle exchange worker	282	NSW, Vic, WA	Boxing judge
53	NSW	Baker	283	Vic	Martial arts judge
55	NSW, SA, WA, Tas	Hairdresser	284	NSW, Vic	Kickboxing judge
56	Vic, SA	Cinematograph operator	285	NSW	Kickboxing kick counter
57	SA	Theatre fireman	286	NSW, Vic, WA	Boxing manager
139	Qld, SA	Driller	287	Vic	Martial arts manager
146	All except ACT	Inquiry agent	288	NSW, Vic	Kickboxing manager
147	NSW, Vic, Qld, SA, WA	Tow truck driver/operator	289	WA, ACT	Swimming pool manager
148	Qld	Tow truck assistant operator	293	NSW	Ski Instructor — Kosciusko
157	All except ACT, NT	Driving instructor	294	NSW, Vic	Kickboxing promoter

(*continued*)

Table 18.1 continued

No.	*Jurisd-iction*	*Occupation*	*No.*	*Jurisd-iction*	*Occupation*
158	NSW	Motorcycle riding instructor	295	NSW, Vic, WA	Boxing Promoter
159	NSW	Motorcycle riding testing Officer	296	Vic	Martial arts promoter
167	NSW	Loss assessor (motor vehicle)	297	Vic	Boxing ring announcer
173	Qld	Driver (pilot vehicle)	298	Vic, WA	Boxing agent
184	NSW, WA	Porter	301	NSW, Vic, WA	Boxing second
194	Qld	Overseer of works	302	NSW	Kickboxing second
195	Vic, Qld	Municipal/local government engineer	309	Vic, WA	Boxing timekeeper
196	Vic	Municipal electrical engineer	310	NSW	Kickboxing timekeeper
197	Vic, Qld	Local government auditor	319	Qld	Professional engineer[a]
198	Qld	Town planner	320	Vic	Engineer (water supply/ hydraulic)[a]
199	Vic	Building inspector[a]	323	Qld	Registered trustee[b]
200	Vic	Building surveyor[a]	325	Qld	Registered issuer of marketable decurities[b]
201	Vic	Health surveyor	326	Qld	Registered finance mortgage broker[b]
202	Vic, Qld, WA, Tas	Municipal clerk	327	Qld	Registered packager of mortgages [b]
203	NSW, Vic, Qld, WA	Pawnbroker	328	NSW, Vic, SA, ACT	Users of chlorofluerocarbons
204	WA	Marine collector	329	NSW	Motor mechanic
206	NSW, Vic, Qld, SA, NT	Commercial agent	330	NSW	Motorcycle mechanic
207	NSW, Vic, Qld, NT	Commercial sub-agent	331	NSW	Brake mechanic
208	Qld	Commercial agent manager	332	NSW	Front end specialist
209	WA	Debt collector	333	NSW	Body maker
211	Qld	Armourer	334	NSW	Painter tradesman[a]
212	Qld	Theatrical ordnance supplier	335	NSW	Panel beater
213	Qld	Credit reporting agent	336	NSW	Transmission specialist
214	SA, Tas NT	Process server/private bailiff	337	NSW	Radiator repairer
217	WA	Firearms repairer	338	NSW	Exhaust repairer
			339	NSW	Automotive electrician

[a] Planning, building or developing service provider. See chapter 24. **[b]** Financial service provider. See chapter 20.

Source: VEETAC (1993).

Table 18.2: Occupational licensing in some but not all jurisdictions

Occupation	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*	*VEETAC recommended deregistration*
Auctioneers		✔	✔			✔	✔	✔	✔
Conveyancers	✔			✔	✔				
Employment agents	✔	✔	✔	✔	✔				✔
Hairdressers	✔		✔	✔	✔	✔			✔
Hawkers	✔		✔				✔	✔	
Other occupations:									
• Boxing, wrestling and martial arts	✔	✔		✔				✔	
• Entertainment industry	✔								
• Wool, hide and skin dealers	✔								
• Introduction agents		✔[a]							
• Firearm repairers				✔					✔

[a] New legislation.

Auctioneers

Victoria, Queensland, Western Australia, Tasmania, the ACT and the Northern Territory have separate legislation for licensing auctioneers (which also generally includes business conduct requirements) (table 18.3). Governments' objectives for licensing auctioneers include increasing consumer confidence in the auction system, protecting vendors and purchasers against specific unfair and anticompetitive conduct at auctions, and preventing and tracing the sale of stolen or diseased livestock at auctions (Ministry of Fair Trading 2000; Victoria University Public Sector Research Unit 1999).

Licensing of particular auctioneers and business conduct requirements is also contained in other legislation, discussed elsewhere in this chapter. In South Australia, for example, auctioneers are not licensed, but the *Land Agents Act 1994* requires land agents who sell by auction to be registered and the *Land and Business (Sale and Conveyancing) Act 1994* requires auctioneers selling land or a small business by auction to make the vendors statement available.

Conveyancers

New South Wales, Western Australia, South Australia and the Northern Territory have separate legislation for non-lawyer conveyancers (or

settlement agents) (table 18.4). Victoria permits non-lawyer conveyancing for reward under the *Legal Practice Act 1996*. These governments introduced licensing of non-lawyer conveyancers to improve competition in the provision of conveyancing services, which were previously the sole responsibility of lawyers (see chapter 17) (Department of Fair Trading 2000a). The objective of licensing is generally to protect clients of conveyancers by providing that conveyancers be accountable and meet certain standards of competence.

The scope of work that conveyancers are permitted to do varies across jurisdictions. In New South Wales, conveyancers are able to undertake a broad scope of work, covering commercial, rural and residential real estate as well as personal property. The definition is not restricted to transactions involving land but also permits the transfer of goodwill, stock-in-trade and other personal property without there being a related sale of land (Department of Fair Trading 2000a).

In Western Australia, real estate settlement agents are able to effect settlements of land transactions (except farming businesses or mining tenements) and business settlement agents are able to effect settlements of business transactions (except where the business comprises real estate of a mining tenement). Settlement agents are allowed to prepare some legal documents, such as some caveats (Ministry of Fair Trading 1999).

In South Australia, conveyancing work is limited to preparing conveyancing instruments for fee or reward. It does not cover legal advice on conveyancing transactions generally, such as the preparation of contracts, or on the legal effect of certain transactions.

In Victoria, non-lawyer conveyancing firms are unable to prepare any document that creates, varies, transfers or extinguishes an interest in land, or to give legal advice. These firms generally engage solicitors to do this legal work, while non-lawyers perform the non-legal work (such as obtaining title searches, making enquiries of statutory authorities and attending settlement).

In the Northern Territory, conveyancing agents facilitate the transaction of real property, via services such as land title searches, the preparation and execution of sale contracts, the arrangement of settlement, document lodging and completed power of attorney. However, conveyancers cannot prepare mortgage leases or business sales (which conveyancers are able to prepare in New South Wales and South Australia) (CIE 2000c).

The NCP review of the Commonwealth's *Mutual Recognition Act 1992* highlighted the disparities in the roles of conveyancers and the implications for mutual recognition. In particular the review quoted a South Australian Office of Consumer and Business Affairs submission:

> *OCBA [Office of Consumer and Business Affairs] also expresses concern over the mutual recognition by SA of WA settlement agents and NT conveyancing agents, as these two groups do not draft their own documents and their work does not include commercial property*

> *and its components. To date OCBA has not had to refuse any applications received from WA or NT agents, but it is anticipated that this situation could change.* (CoAG 1998)

Employment agents

Employment agents offer services such as finding employment for unemployed persons or those who want to change employment, recruiting staff for an employer and acting as a counsellor and careers adviser, providing assistance with résumé and interview preparation (Department of Fair Trading 2000b). New South Wales, Victoria, Queensland, Western Australia and South Australia have legislation for licensing employment agents (table 18.5).

Regulation of employment agents is designed to address problems that arise as a result of differences in the information held by service providers and consumers (known as information asymmetry). The potential risks to consumers include misleading advertising, inappropriate charging of fees, deceptive conduct, unskilled career counselling, inappropriate disclosure of confidential information and business failure (Department of Fair Trading 2000b). Employment agents are also subject to State and Territory Fair Trading Acts which mirror the consumer protection provisions of the Commonwealth *Trade Practices Act 1974* (TPA). These Acts prohibit practices that seek to exploit or misinform the community, such as deceptive conduct, false representation and misleading advertising.

Hairdressers

New South Wales, Queensland, Western Australia, South Australia and Tasmania regulate hairdressers (table 18.6). New South Wales and Western Australia require hairdressers to be licensed. Queensland licenses hairdressing premises and mobile hairdressers, and imposes various business conduct requirements. South Australia has a negative licensing scheme for hairdressers, whereby a person is not permitted to carry on the practice of hairdressing for fee or reward unless they hold appropriate qualifications.

Hawkers

In 1996 when governments developed their legislative review timetables, New South Wales, Queensland, the ACT and the Northern Territory had legislation requiring hawkers to be licensed (since repealed in New South Wales and the Northern Territory) (table 18.7). Hawkers are generally defined as persons who sell, or hold themselves out as being ready to sell goods carried on their person, on an animal or from a vehicle (Office of Fair Trading 2000; Allen Consulting Group 2000a). The activities of hawkers are also governed by State and Territory Fair Trading Acts (see chapter 19).

Other occupations

Various other occupations are licensed by some but not all jurisdictions (table 18.8).

Table 18.3: Review and reform of legislation regulating auctioneers

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria	*Auction Sales Act 1958*	Licensing, entry requirements (resident in State, character), the reservation of practice (auctioneers of goods, including livestock) , business conduct (suitable premises, no music, no disorderly conduct, maintenance of register for cattle and sheep skins, no collusion)	Review by Victoria University completed in November 1999. Review recommended that licensing be discontinued, but that a minimal registration scheme be introduced for livestock auctioneers, in the interests of livestock disease control.	Government accepted recommendation to discontinue licensing, but rejected the registration proposal as unnecessary. An Auction Sales (Repeal) Bill been introduced into Parliament and is scheduled for passage in the Spring 2001 session.	Council to assess progress in 2002.
Queensland	*Auctioneers and Agents Act 1971* *Property Agents and Motor Dealers Act 2000*	Auctioneers: licensing, registration, entry requirements (resident in State or within 65-kilometre border, aged at least 21 years, good fame and character, fit and proper person, two years experience (including four auctions) on provisional licence before general licence), the reservation of practice, business conduct (suitable business premises, maximum commission)	Review completed. Targeted public model, undertaken by PricewaterhouseCoopers. Public consultation involved circulation of issues paper, submissions and consultations. Review recommendations included reducing some requirements for licensing, expanding licensing requirements to some property developers, introducing a time limit for exclusive real estate agent arrangements, and removing maximum commissions and the maximum cap on buyers' premium commissions for auctioneers and removing maximum commissions on sales of vehicles on consignment for motor vehicle dealers. For real estate agents, the review recommended removing maximum commissions subject to monitoring and transitional arrangements, including a public education campaign.	Government repealed the *Auctioneers and Agents Act 1971* and replaced it with the *Property Agents and Motor Dealers Act 2000*. Legislation incorporates most of review recommendations, except recommendation for auctioneers to remove maximum commissions and the maximum cap on buyers' premium commissions.	Council to assess progress in 2002.

(*continued*)

Table 18.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Auction Sales Act 1973*	Licensing of auctioneers, entry requirements (fit and proper person, requires two years experience on restricted licence before general licence), the reservation of practice, business conduct (maintenance of records in relation to livestock and vendor accounts)	Review underway. Discussion paper released in September 2000 inviting submissions. Discussion paper recommended that: the licensing system be retained until a full legislative review of the Act within the next 12 months; unless justified by new reasons arising from that review, the licensing system be repealed; and if licensing, or some other form of occupational regulation, is justified after completion of a full legislative review, then the administration of such a system be the responsibility of a single Government organisation.		Council to assess progress in 2002.
South Australia	*Land and Business (Sale and Conveyancing) Act 1994*	Business conduct (requirement for sale of land or small business, that the auctioneer make the vendors statement available)	Review completed in 1999. Review involved public consultation. Review recommended no reform.	Government endorsed review recommendation.	Meets CPA obligations for auctioneers' business conduct (June 2001).
Tasmania	*Auctioneers and Real Estate Agents Act 1991*	Auctioneers: licensing, registration, entry requirements (sufficient knowledge, fit and proper person), business conduct (no misrepresentation, bids by owners or collusion at auctions)	Review underway. Act likely to be repealed and replaced by new legislation.		Council to assess progress in 2002.
ACT	*Auctioneers Act 1959*	Licensing, entry requirements (age, good character, no pawnbrokers), the reservation of practice, business conduct (maintenance of records for at least 12 months)	Review underway. Departmental targeted public review in conjunction with *Agents Act 1968*. Issues paper in preparation. Review scheduled to be completed in 2001.		Council to assess progress in 2002.

(*continued*)

Table 18.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory	*Auctioneer's Act*	Licensing, entry requirements (aged over 18 years, good character, fit and proper person), the reservation of practice, business conduct (maintenance of records for at least 12 months, auctions between 8am and 11pm)	Semi-public review underway.		Council to assess progress in 2002.

Table 18.4: Review and reform of legislation regulating conveyancers

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Conveyancers Licensing Act 1995*	Licensing, registration, entry requirements (age, qualifications, training, experience), the reservation of practice (lawyers also able to provide these services), disciplinary processes, business conduct (record keeping, trust monies, receipts, professional indemnity insurance)	Review underway. Issues paper released in March 2000. A final report is in preparation.		Council to assess progress in 2002.
Western Australia	*Settlements Agents Act 1981*	Licensing, entry requirements (qualifications, two years experience, age, good character, fit and proper person, material and financial resources, resident in Western Australia), the reservation of practice, business conduct (supervision, trust accounts, maximum fees, professional indemnity insurance, fidelity fund), business licensing	Department review underway. A discussion paper was sent to industry participants and the Consumer Association of Western Australia. Consultation was conducted through a reference group comprising industry, the Settlement Agents Board and consumer representatives.		Council to assess progress in 2002.

(*continued*)

Table 18.4 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Conveyancers Act 1994*	Licensing, registration, entry requirements (qualifications, no convictions for offences of dishonesty), the reservation of practice, disciplinary processes, business conduct (professional indemnity insurance, trust accounts, ownership), business licensing	Review completed in 1999. Review involved public consultation. Review recommendations included: changing entry requirements in relation to fitness and propriety; removing ownership restrictions (but introducing requirement that a director of an incorporated company must not unduly influence a registered conveyancer); and removing the requirement that the sole object of a conveyancing company is carrying on business as a conveyancer.	Amendments to implement recommendations introduced in Parliament in late 2000.	Meets CPA obligations (June 2001).
	Land and Business (Sale and Conveyancing) Act 1994	Business conduct of agents, conveyancers and vendors of property for sale of land or small business (information provision, cooling-off, subdivided land, relationship between agent and principal, preparation of conveyancing instruments, representations)	Review completed. Review involved public consultation. Review recommended no reform.	Government endorsed review recommendation.	Meets CPA obligations (June 2001).
Northern Territory	*Agent's Licensing Act*	Licensing (real estate agents, agent's representative, conveyancing agent), registration, entry requirements (fit and proper person, aged at least 18 years, education or experience, competency), the reservation of practice, business conduct (office in Northern Territory, professional indemnity insurance, fidelity fund, trust monies)	Review completed in November 2000. Recommended changes to entry requirements, the reservation of practice, and business conduct.	Government approved most recommendations. Does not support investigating tendering out sole rights to deliver realty education. Wider non-NCP specific review to occur.	Council to assess progress in 2002.

Table 18.5: Review and reform of legislation regulating employment agents

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Employment Agents Act 1996*	Licensing, entry requirements (fit and proper person, aged at least 18 years, suitable premises, no previous cancellation), the reservation of practice, business conduct (separate licence for each premises, registered person in charge, no charge to jobseekers, maintenance of records, no misleading advertising)	Review underway. Issues paper released in March 2000. A final report is in preparation.		Council to assess progress in 2002.
Victoria	*Employment Agents Act 1983*		Not for review.	Act never brought into operation. Act repealed by the *Training and Further Education Acts (Amendment) Act 2000*.	Meets CPA obligations (June 2001).
Queensland	*Private Employment Agencies Act 1983*	Licensing, entry requirements (resident in Queensland, fit and proper person, suitable premises), the reservation of practice, business conduct (no charge to jobseekers except performers and models, maintenance of records, no misleading advertising)	Department review completed. Review report finalised, canvassing the repeal of the Act and the incorporation of fee-charging restrictions into the *Industrial Relations Act 1999*.	Government expects to consider review report in the first half of 2001.	Council to assess progress in 2002.
Western Australia	*Employment Agents Act 1976*	Licensing, entry requirements (fit and proper person), the reservation of practice, business conduct (scale of fees, maintenance of records, no misleading advertising)	Department review underway. Consultation involves a questionnaire sent to 355 licensed employment agents, public submissions on issues, and stakeholder responses to draft report.		Council to assess progress in 2002.
South Australia	*Employment Agents Registration Act 1993*	Licensing, entry requirements (fit and proper, manager with sufficient knowledge and experience to manage business), the reservation of practice, business conduct (maintenance of records, no misleading advertising)	Review completed October 2000. Review involved public consultation.	Government considering review report.	Council to assess progress in 2002.

Table 18.6: Review and reform of legislation regulating hairdressers

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Factories, Shops and Industries Act 1962*	Licensing, entry requirements (training and exams or otherwise qualified), reservation of practice (hairdressing for fee, gain or reward), disciplinary processes	Review by Department of Industrial Relations underway. Issues paper released in June 2000. A final report is in preparation.		Council to assess progress in 2002.
Queensland	*Health Act 1937*	Licensing for hairdressing premises and mobile hairdressers, business conduct (premises constructed and maintained to specific standards, standards of practice)	Review completed in December 1999, recommending discontinuing licensing.	Implementation of new legislation to discontinue licensing expected to be finalised by mid-2002.	Council to assess progress in 2002.
Western Australia	*Hairdressers Registration Act 1946*	Licensing, registration, entry requirements (good character, training and exam), reservation of practice and title, disciplinary processes	Review by independent consultants underway. A consultative committee has been established (including industry, Government and consumer representatives). Review has called for public submissions.		Council to assess progress in 2002.
South Australia	*Hairdressers Act 1988*	Negative licensing, entry requirements (qualifications), reservation of practice (washing, cutting, colouring, setting, permanent waving or other treatment of a person's hair or the massaging or other treatment of a person's scalp for fee or reward)	Review completed. Review involved public consultation. Review recommended reducing the scope of work reserved for hairdressers and reviewing the Act in three years with view to its repeal.	Government endorsed review recommendations. Parliament passed legislative amendments in March 2001.	Meets CPA obligations (June 2001).
Tasmania	*Hairdressers' Registration Act 1975*	Licensing, registration of hairdressers (hairdresser, master, principal), entry requirements, business conduct (licensing of hairdressers' premises, premises compliance with prescribed requirements in relation to design, construction, furnishings and equipment)	Review underway.		Council to assess progress in 2002.

Table 18.7: Review and reform of legislation regulating hawkers

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Hawkers Act 1974*	Licensing, business conduct	Review completed.	Act repealed.	Meets CPA obligations (June 2001).
Queensland	*Hawkers Act 1984*	Licensing, entry requirements (age, no mental disease, fit and proper), business conduct (no business between 6 p.m. and 7 a.m.). Act does not apply to certain businesses (for example, charity or sale by maker of goods).	Reduced NCP review underway. Short form report has been developed to assess reform options available, including repeal of the restrictive provisions. Review undertaken by Office of Fair Trading, with a review committee of Office of Fair Trading, Queensland Police, Department of Communication and Information, Local Government, Planning and Sport and Treasury. Targeted consultation with licensed hawkers, local governments and consumers association. Draft report under consideration. Treasury expected to endorse final report in first quarter in 2001.		Council to assess progress in 2002.
ACT	*Hawkers Act 1936*	Licensing, entry requirements (age, good character, fit and proper person), business conduct (geographic and time restrictions, business structure)	Review by Allen Consulting Group completed. Joint review with *Collections Act 1959*. Review involved targeted public consultation with issues paper, meetings and submissions. Recommended: refocusing legislation on land use and continuing positive licensing for hawkers operating from a single location, but having negative licensing for mobile hawkers; removing restrictions on number of vehicles a hawker can operate, number of people hawkers can employ and their age; removing 180-metre exclusion zone from traditional shops, and regulating health, liquor and contraband goods via other legislation.	Government accepted most review recommendations. Legislation is being drafted for introduction into the Legislative Assembly in the 2001 Spring sitting.	Council to assess progress in 2002.
Northern Territory	*Hawkers Act*	Licensing, business conduct.	Stakeholder focused review completed in August 2000. The review found licensing requirements, exemption provisions and restrictions on hawking on Crown land were anticompetitive, although necessary to protect the public in terms of proper commercial dealings and annoyance. Regardless, it was also found that the objectives of the legislation could be pursued through other legislation. The review recommended repealing the legislation, pending consideration of other legislative means for regulating hawking offences.	Government accepted recommendations in September 2000. Bill to repeal passed in November 2000 (brought into effect in April 2001).	Meets CPA obligations (June 2001).

Table 18.8: Review and reform of legislation regulating other occupations licensed by some, but not all jurisdictions

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Migration Act 1958,* part 3 (migration agents)	Licensing, registration, entry requirements (qualifications, good character), disciplinary processes, business conduct (abide by code of conduct)	Review completed in 1997. Review combined with that for *Migration Agents Registration (Application) Levy Act 1992* and *Migration Agents Registration (Renewal) Levy Act 1992*. Review concluded that due to consumer protection concerns voluntary self-regulation was not immediately achievable, and a transitional arrangement needs to be in place to enable the industry to prepare for self regulation.	Government accepted review findings, and passed legislation to implement statutory self-regulation for two years then voluntary self-regulation. Also announced a further review of statutory self-regulation during the two-year period to assess the extent to which the migration advice industry had developed the capacity to be fully self-regulating.	Council to assess progress in 2002.
New South Wales	*Boxing and Wrestling Control Act 1986*	Conduct of professional boxing, provision for the Boxing Authority of NSW and definition of its functions, conduct of wrestling and amateur boxing contests	Review underway. Issues paper being prepared by consultants.		Council to assess progress in 2002.
	Entertainment Industry Act 1989	Licensing for entertainment industry agents, managers and venue consultants, maximum fees for entertainment industry agent	Review underway. Issues paper being drafted.		Council to assess progress in 2002.
	Wool, Hides and Skins Dealers Act 1935	Restrictions on the buying and selling of wool, hides and skins	Review completed. Review recommended that the Act should be repealed.	Government to consider review recommendations concurrently with the findings of the Pastoral and Agricultural Crime Working Party, completed in late 2000.	Council to assess progress in 2002.

(*continued*)

Table 18.8 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria	*Introduction Agents Act 1997*	Negative licensing, business conduct (disclosure requirements, cooling-off period, restriction on advance payments to 30 per cent of the total contract price)	New legislation examined under Victoria's legislation gatekeeping arrangements.	New legislation.	Meets CPA obligations (June 2001).
	Professional Boxing and Martial Arts Act 1985	Registration (professional contestants, promoters, trainers, match-makers, referees and judges), business conduct	Department review completed in August 1999. Consultation involved release of discussion paper, receipt of submissions and further targeted consultation. Review recommendations were to: streamline contestant registration system so the Act refers to competition in a professional contest (rather than a boxing or martial arts contest); examine scope for replacing detailed rules and conditions with less prescriptive national or international standards; amend the provision that exempts the Victorian Amateur Boxing Association from Act's requirements so other suitable qualified amateur boxing association can be exempted.	Government accepted all recommendations except to examine scope for replacing detailed rules and conditions. Government rejected this because the industry is fragmented into different bodies that follow various rules, so it is not possible for it to adopt one set of rules. Parliament considering amending legislation (Bill will change the name of legislation to Professional Boxing and Combat Sports Act).	Council to assess progress in 2002.
Western Australia	*Boxing Control Act 1987*	Registration (boxers, trainers, promoters and judges)	Department review completed in 1997. Consultation involved submissions. Review found that the restrictions were in the public interest.	Government endorsed review. Legislation retained without reform.	Meets CPA obligations (June 2001).
	Firearms Act 1973	Registration (firearm repairers)	Act removed from the legislation review timetable in view of a national approach to firearms policy.		Meets CPA obligations.

(*continued*)

Table 18.8 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT	*Boxing Control Act 1993*		National review completed in August 1999. Review concluded that a registration and licensing system enhances the safety of participants and minimises the incidence of malpractice in professional bouts. The working group proposed a national registration system to improve the management of professional boxing and combat sports. ACT internal review underway (which should reflect national directions).		Council to assess progress in 2002.
	Collections Act 1959		Review by Allen Consulting Group completed in 2000. Joint review with *Hawkers Act 1936*. Review involved targeted public consultation, with an issues paper, meetings and written submissions. Recommended that: Act should not place limits on the level of fundraising costs or remuneration; the regulatory emphasis should be on the disclosure of fundraising details to potential donors; the Collections Act should not limit the locations where collections can be undertaken or the number of organisations collecting at any particular time; rather than focusing on funds raised and costs incurred for particular collections, all organisations that produce audited accounts should be required to lodge those accounts with the registrar on an annual basis; organisations that do not have audited accounts should be required to keep appropriate records and have those records signed off by an 'appropriate person' as being in order; collectors should be required to wear a badge (or prominently display information) relating to the collection; and the Act should be drafted to apply to any direct or indirect appeal for support value.	Government accepted most review recommendations. Legislation is being drafted for introduction into the Legislative Assembly in the 2001 Spring sitting.	Council to assess progress in 2002.

Licensing in all jurisdictions

All jurisdictions license or register commercial agents, inquiry agents and security providers, driving instructors, motor vehicle dealers, pawnbrokers and second-hand dealers, real estate agents and travel agents.

Commercial agents, inquiry agents and security providers

Generally all jurisdictions require commercial agents (debt collectors), private inquiry agents (private investigators or detectives), various security services providers (such as security guards and other patrol services, crowd controllers, security firms, body guards, and the cash transit industry), process servers and private bailiffs to be licensed and/or registered. Governments' objectives in requiring this are to protect consumers and clients. In the course of their work, agents may collect confidential information about people and their businesses, may have large sums of other people's money entrusted to them, and their work may involve the potential and actual use of force against people (table 18.9).

Driving instructors

All jurisdictions require driving instructors to be licensed (table 18.10). Regulation of driving instructors aims for consumer protection and safety. Restrictions on competition include registration, entry requirements and business conduct. Entry requirements across jurisdictions are broadly similar, and include competency as a driving instructor (which may require attending a training course or passing a test), being of good character (or a fit and proper person), and in most cases, having held a drivers licence for the past three years.

Motor vehicle dealers

All governments except Tasmania license motor vehicle dealers (or traders) (table 18.11). Tasmania's Fair Trading (Code of Practice for Motor Vehicle Traders) Regulations 1996 imposes business conduct requirements on motor vehicle traders. Motor vehicle dealers are regulated to protect consumers. The risk to consumers is generally seen to arise because consumers may be unable to assess the quality of used cars, may not be familiar with prices and the process of vehicle transfers, and may incur costs to get information on price and quality. Motor dealer legislation in some States and Territories also aims to reduce the avenues for the disposal of stolen vehicles (Government of Victoria 2001; CIE 2000d).

The Queensland review of its legislation observed that the number of complaints about motor vehicle dealers has risen in recent years and is high relative to the number of complaints in the real estate industry. Complaints tend to relate to mechanical and structural defects in vehicles, false warranties, false representation of the age of vehicles, and misleading advertising and unfair sales techniques (PricewaterhouseCoopers 2000).

Pawnbrokers and second-hand dealers

Governments regulate the activity of pawnbrokers and second-hand dealers generally on the grounds that these businesses can potentially be avenues for the disposal of stolen property. The argument is that regulating pawnbrokers and second-hand dealers helps reduce the incidence of property-related crime and assists police to track stolen property. Regulation of pawnbrokers also aims to protect consumers by increasing transparency and clarifying consumers rights in dealing with pawnbrokers (CIE 2000d).

Legislation aims to achieve these objectives by:

- screening potential operators;
- requiring sellers of goods to produce identification, thus reducing the attractiveness of disposing of stolen property in this way; and
- providing the police with access to information on the trade of second-hand goods (CIE 2000d).

Jurisdictions have similar competition restrictions in their pawnbroker and second-hand dealer legislation (table 18.12). Most jurisdictions require pawnbrokers and second-hand dealers to obtain a formal licence. In South Australia and Tasmania, there are negative licensing systems in conjunction with notifying (or registering with) the police.

Real estate agents

In all States and Territories, a person cannot provide real estate services for payment on behalf of an owner or purchaser unless they are licensed (table 18.13). Real estate services generally include buying and selling (by auction or private treaty) residential property, commercial property or businesses and managing or renting residential or commercial property. Real estate agents conduct most sales and letting of residential property in Australia. The Real Estate Institute of Victoria estimates that around 96 per cent of owners use real estate agents to sell their homes (KPMG Consulting 2000).

Real estate services are regulated to protect consumers from problems due to information imbalances between agents and their clients, and from the risk of financial loss caused by agents' criminal or fraudulent conduct ('defalcation').

Consumers, particularly residential homeowners, often lack experience in purchasing real estate services, because they are generally infrequent participants in the real estate market. Residential home transactions are one of the largest investments for many people so there is the potential for significant loss if consumers receive poor marketing and advice. As well, the sale of a property has legal implications. Financial loss may arise from the misappropriation of funds (such as deposits on transactions and rent) held in trust.

Travel agents

Travel agents legislation aims to protect consumers from financial loss when a travel agent defaults and to ensure a minimum standard of service delivery. Regulation of travel agents involves a licensing process and a compulsory consumer compensation scheme (CIE 2000a). The requirements for holding a licence are similar across jurisdictions. An agent must be 18 years or older, be a fit and proper person, and have experience and/or qualifications to operate a travel agency or have a manager with the relevant experience and/or qualifications (CIE 2000a).

Governments are taking a national approach to reviewing their travel agent legislation. The Ministerial Council on Consumer Affairs has commissioned a national review (coordinated by Western Australia), which is underway. As part of the national review, the Ministerial council released a review report by the Centre for International Economics for public comment in August 2000. The report recommended removing entry qualifications for travel agents. The report also recommended maintaining compulsory insurance, but dropping the requirement for agents to hold membership of the Travel Compensation Fund (the compulsory insurance scheme). It considered instead that a competitive insurance system, where private insurers compete with the Travel Compensation Fund, would be a better approach (CIE 2000a). The Ministerial council is to consider responses to the review report and will prepare a response in consultation with CoAG's Committee on Regulatory Reform (Government of Victoria 2001).

Table 18.9: Review and reform of legislation regulating commercial agents, inquiry agents and security providers

Jurisdiction	*Legislation*	*Key restrictions*	*Occupations*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Commercial Agents and Private Inquiry Agents Act 1963*	Licensing, registration, entry requirements (qualifications, experience, good fame and character, fit and proper person, aged at least 18 years, not convicted of an offence punishable on indictment within past 10 years), the reservation of practice, disciplinary processes, business conduct (advertising must specify agent's name and place of business, maintain records, trust account, fidelity bonds)	Commercial agents, private inquiry agents and their subagents	Review completed. Review recommended the Act should be repealed and replaces by new legislation. Recommended new legislation should involve business licensing (rather than occupational licensing) and should remove licensing for repossession agents and process servers.	Reform deferred pending outcomes of Royal Commission and Industrial Relations Commission Inquiry, the Peterson Report on the security industry and revisions to the Security Industry Act.	Council to assess progress in 2002.
	Security (Protection) Industry Act 1985	Licensing and regulation	Providers of security or protection for persons or property	Review completed.	Act repealed and replaced by the *Security Industry Act 1997*.	Meets CPA obligations (June 2001).
	Security Industry Act 1997	Licensing, registration, entry requirements (qualifications, experience, competency, fit and proper person, aged at least 18 years, not convicted of relevant offence within past 10 years), the reservation of practice, disciplinary processes, business conduct, (advertising must contain licence number)	Providers of security or protection for persons or property	New legislation examined under legislation gatekeeping arrangements.	New legislation.	Council to assess in 2002.

(*continued*)

Table 18.9 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Occupations*	*Review activity*	*Reform activity*	*Assessment*
Victoria	*Private Agents Act*	Licensing, registration, entry requirements (all good character, others vary), the reservation of practice, disciplinary processes, business conduct (no misleading or deceptive conduct, financial sureties for commercial agents)	Security guards, crowd controllers, security firms, inquiry agents (private detectives), commercial agents (debt collectors), and commercial sub-agents	Review by Freehills Regulatory Group of currently regulated activities completed in October 1999. Recommended: retaining occupational licensing; reviewing exemptions of certain groups, and making efforts to develop a national regulatory model for the industry; for commercial agents, removing licensing requirements and replacing them with a 'light-handed' registration requirement (with greater use of general trade practices/fair trading legislation to deal with problem operators); reforming the surety scheme; and considering establishing an appropriate compensation fund or minimum insurance requirement. Review of unregulated activities underway. Discussion paper released in 2000.	When review completed, draft Bill expected to be released for public comment.	Council to assess progress in 2002.
Queensland	*Auctioneers and Agents Act 1971* *Property Agents and Motor Dealers Act 2000*	Licensing, registration, entry requirements (resident in State or within 65-kilometre border, age at least 21 years, good fame and character, fit and proper, written exam (not required for commercial sub-agents)), the reservation of practice, business conduct (suitable premises, trust account receipts, audits, no misleading or deceptive, no unlawful entry)	Commercial agents, managers, commercial sub-agents	See summary in table 18.3 on auctioneers.	See summary in table 18.3 on auctioneers.	Meets CPA obligations for commercial agents (June 2001).
	Security Providers Act 1992	Licensing, entry requirements, the reservation of practice	Security officers, private investigators, crowd controllers (not in-house security officers)	Review yet to begin.		Council to assess progress in 2002.

(*continued*)

Table 18.9 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Occupations*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Debt Collectors Licensing Act 1964*	Licensing, entry requirements (age, good fame and character, fit and proper person), the reservation of practice, business conduct (trust accounts, fidelity bonds)	Debt collectors (commercial agents)	Department review underway. Issues paper released.		Council to assess progress in 2002.
	Inquiry Agents Licensing Act 1954 *Securities Agents Act 1976*	Licensing			Acts repealed and replaced by *Security and Related Activities (Control) Act 1996*.	Meets CPA obligations (June 2001).
	Security and Related Activities (Control) Act 1996	Licensing, registration, entry requirements (training, character, possible medical exam for security officers), the reservation of practice, business conduct (operating restrictions, no advertise unless licensed), business licensing	Providers of security and inquiry activities	Review by WA Police Service completed. Review involved no consultation. The review concluded the security and related industries need statutory control to ensure high standards and to instil public confidence, especially in the area of crowd control. The review concluded that the legislation is effective and provides the necessary controls to maintain and improve the industry.	Government endorsed review recommendation in 2000.	Meets CPA obligations (June 2001).
South Australia	*Security and Investigation Agents Act 1995*	Barrier to market entry, market conduct	Private inquiry agents, security providers	Review underway.		Council to assess progress in 2002.

(*continued*)

Table 18.9 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Occupations*	*Review activity*	*Reform activity*	*Assessment*
Tasmania	*Commercial and Inquiry Agents Act 1974*	Licensing, entry requirements (suitable person, not convicted of an offence of dishonesty within past five years, financial reputation), the reservation of practice, disciplinary processes, business conduct (trust accounts, maintain records, audits)	Commercial agents, commercial sub-agents, inquiry agents, process servers, security agents, security guards	Review completed. Public consultation involved issues paper, draft report and submissions. Draft report recommended maintaining most restrictions, but removing licensing requirements for process servers, making minor changes to entry requirements, retaining option of imposing education requirements, and moving responsibility for the granting, renewal, variation or refusal of a licence to the Commissioner for Corporate Affairs.	Act to be repealed and replaced by new legislation.	Council to assess progress in 2002.
ACT	*Fair Trading Act 1992*	Registration and mandatory codes of practice, entry requirements (competency, character — criminal record check), the reservation of practice, disciplinary processes, business licensing	Bodyguards, security guards, cash transit industry, crowd marshals, and guard and patrol services (No licensing of debt collectors, but Act has undue harassment provisions.)	Review underway.		Council to assess progress in 2002.

(*continued*)

Table 18.9 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Occupations*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory	*Commercial and Private Agents Licensing Act*	Licensing, registration, entry requirements (age over 18 years, resident of the Territory, fit and proper, not found guilty of offence that warrants refusal of licence, any person may object to issuing of licence), the reservation of practice, disciplinary processes, business conduct (provide bond, trust account, prescribed records, local (but not interstate) licensed agent must have a nominee and branch manager resident in the Territory), business licensing	Commercial agents, process servers, inquiry agents, private bailiffs	Review completed in November 1999. Recommended: retaining exemption from positive licensing all persons of particular occupations who perform agent roles incidental to their occupation (but introducing negative licensing); continuing licensing of employees and sub-agents; issuing licenses for a fixed period (a suggested two years); transferring responsibility for licensing to the Industries and Business portfolio; making various changes to business conduct requirements (requirement to issue receipts, change to trust account arrangements; consideration of issue of bonds and indemnity insurance in late 2000); and undertaking a further review to implement best practice licensing processes.	Government approved recommendations, and enacted legislation in 2000 to transfer the licensing from the local court to the Commissioner for Consumer Affairs and to introduce fixed three-year licences in lieu of indefinite licences. Legislation awaits commencement.	Meets CPA obligations (June 2001).

Table 18.10: Review and reform of legislation regulating driving instructors

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Driving Instructors Act 1992*	Licensing, entry requirements (completed course, aged at least 21 years, may require test, medical exam, character), the reservation of practice (teach for monetary or other reward), business conduct (maintenance of records, regulations may make provisions for displaying identification and advertising)	Review underway. Final report being prepared.		Council to assess progress in 2002.
Victoria	*Road Safety (Driving Instructors) Act 1998*	Licensing, entry requirements (mandatory minimum standards including requirement to pass a training course, fit and proper person, held licence for at least three years, criminal and driving record checks), the reservation of practice (teaching someone without a licence on a highway for financial gain), business conduct (display photograph, instructor to have zero blood alcohol level)	New legislation examined under Victoria's legislation gatekeeping arrangements.	New legislation.	Meets CPA obligations (June 2001).
Queensland	*Transport Operations (Road Use Management) Act 1995*	Licensing, entry requirements (accreditation: qualifications and/or experience or competency assessment), the reservation of practice, business conduct (vehicle requirements, display identity card, maintenance of records, instructor to have zero blood alcohol level)			Council to assess progress in 2002.
Western Australia	*Motor Vehicle Drivers Instructors Act 1963*	Licensing, entry requirements (competency, aged at least 21 years, good character, fit and proper person, may require test or course), the reservation of practice (teach for reward), business conduct (dual control vehicle, regulations may make provisions for displaying identification)	Review to be scheduled before June 2002.		Council to assess progress in 2002.

(*continued*)

Table 18.10 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Motor Vehicles Act 1958 (*Part 3A)	Licensing, entry requirements (proficient as instructor, may require test, fit and proper person, held licence for at least three years), the reservation of practice (teach for reward), business conduct (display licence)	Review underway into tow truck operators and motor driving instructors.		Council to assess progress in 2002.
Tasmania	*Traffic Act 1925* *Vehicle and Traffic Act 1999*	Licensing, entry requirements (knowledge and experience, may require test and/or complete course, aged at least 21 years, good character, suitable person, held licence for at least three years), the reservation of practice (teach for reward), business conduct (dual control vehicle, unless vehicle provided by person under instruction)			Council to assess progress in 2002.
ACT	*Road Transport (Driver Licensing) Act 1999*	Licensing, entry requirements (accreditation: skills, completed training course, aged at least 21 years, suitable person, medically fit), the reservation of practice, business conduct (vehicle requirements unless vehicle provided by person under instruction, display certificate)			Council to assess progress in 2002.
Northern Territory	*Motor Vehicles Act*	Licensing, entry requirements (proficient as driving instructor, may require test, good character, held licence for at least three years), the reservation of practice (teach for reward)	Review completed in 1999. Review found that the restrictions are in the public interest. Review determined that the benefits of reduced incidence of road accidents and trauma, road damage and lower noise and environmental pollution are likely to outweigh the enforcement and compliance costs and potential reductions in economic efficiency.	Government endorsed review recommendation.	Meets CPA obligations for driving instructors (June 2001).

Table 18.11: Review and reform of legislation regulating motor vehicle dealers

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Motor Dealers Act 1974*	Licensing (motor dealer, wrecker, wholesaler, motor vehicle parts reconstruction, car market operator, motor vehicle consultant), entry requirements (fit and proper person, sufficient financial resources, dealer qualifications and expertise or experience), the reservation of practice, disciplinary processes, business conduct (record keeping, motor dealers compensation fund)	Review, in conjunction with review of *Motor Vehicles Repair Act 1980*, completed. Recommendations included: allowing licensees to operate from more than one place of business; and keeping registers of stock and parts only at one place of business where multiple locations are operated by one licensee.	Report awaiting Cabinet consideration.	Council to assess progress in 2002.
Victoria	*Motor Car Traders Act 1986*	Licensing, registration, entry requirements (age at least 18 years, financial resources, fit and proper person — that is, person who is not insolvent, person who is 'likely to carry on such a business honestly and fairly', and person (and spouse and business partner) who was not convicted of serious offence in past 10 years), the reservation of practice, disciplinary processes, business conduct (statutory warranties, requirement for authority to conduct public auction, maintenance of records, no tampering with odometers, cooling-off period, fees and penalties paid into Motor Car Traders' Guarantee Fund for losses from licensed traders not complying with Act, no consignment selling, suitable premises, advertising)	Internal departmental review completed. Review recommended: replacing the eligibility criterion of 'suitable premises' by a criterion that a trader have all relevant planning approvals for any premises at which the trader conducts business, or proposed to carry on business, as a motor car trader; removing the eligibility criterion for a trader conducting a business 'efficiently'; and reducing the potential for unwarranted claims on the Motor Car Traders' Guarantee Fund.	Government accepted review recommendations, with amendments made by *Tribunals and Licensing Authorities (Miscellaneous Amendment) Act 1998*.	Meets CPA obligations (June 2001).

(*continued*)

Table 18.11 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Auctioneers and Agents Act 1971* *Property Agents and Motor Dealers Act 2000*	For motor dealers, licensing, registration, entry requirements (dealer and manager: resident in State or within 65-kilometre border, age at least 21 years, good character and fit and proper, three of past five years as licensed manager or salesperson (or employ someone who has that experience), written test), the reservation of practice, business conduct (appropriate business premises, maintenance of register, no bogus advertising, no tampering with odometers, maximum commission for sales on consignment)	See summary in table 18.3 on auctioneers.	See summary in table 18.3 on auctioneers.	Meets CPA obligations for motor dealers (June 2001).
Western Australia	*Motor Vehicle Dealers Act 1973*	Licensing (motor vehicle dealers, yard managers, car market operators and sales persons), entry requirements (dealers must be solvent and understand their obligations under the Act, yard managers must complete a four-day course), business conduct (statutory warranties on used vehicles), power to the Motor Vehicle Licensing Board to set standards for premises	Review completed in 1997. Recommended: retaining restrictions on licensing for motor vehicle dealers and yard managers; retaining statutory warranties for used vehicles; repealing restrictions on licensing for car market operators and salespersons; and repealing the power of the Motor Vehicle Licensing Board to set standards for premises.	Government endorsed review recommendations. Amending legislation being drafted to implement review recommendations.	Council to assess progress in 2002.
South Australia	*Second-Hand Vehicle Dealers Act 1995*	Barrier to market entry, business conduct	Review underway.		Council to assess progress in 2002.

(*continued*)

Table 18.11 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania	*Fair Trading Act 1990* Fair Trading (Code of Practice for Motor Vehicle Traders) Regulations 1996	Mandatory code of practice covering business conduct (written contracts, warranty, complaints system, no deception, no false representation, no misleading advertising)	Minor review completed. Justified in the public interest the restrictive provisions requiring manufacturers to provide warranties for motor vehicles and establishing a system for dealing with customer complaints.	Government endorsed review conclusion.	Meets CPA obligations (June 2001).
ACT	*Sale of Motor Vehicles Act 1977*		Review underway. Full public review undertaken by department. Discussion paper being prepared. Review scheduled to be completed in 2001.		Council to assess progress in 2002.
Northern Territory	*Consumer Affairs and Fair Trading Act*	Licensing, entry requirements (fit and proper person, sufficient financial and material resources), business conduct (maintenance of records, prescribed forms of contract, submission of annual returns, prohibition on sale of certain vehicles (such as those registered interstate), warranties)	Review by Centre for International Economics completed in 2000. Recommended: removing requirements for licensee to submit annual financial returns; removing requirements for approval of dealer managers; removing power to require banker's guarantee; and formalising the financial test applied for new licences.	Government approved review recommendations except for removing requirements for the approval of motor vehicle dealer managers.	Council to assess progress in 2002.

Table 18.12: Review and reform of legislation regulating pawnbrokers and second-hand dealers

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Pawnbrokers and Second Hand Dealers Act 1996*	Licensing (pawnbrokers, second-hand dealers for prescribed goods), registration, entry requirements (aged over 18 years, not mentally incapacitated, not undischarged bankrupt, no conviction of dishonesty offence in past 10 years), the reservation of practice, disciplinary processes, business conduct (pawnbrokers: prescribed records, computer records, public auction of unredeemed goods over $50, minimum redemption period of three months, operation from fixed premises; second-hand dealers: prescribed records, computer records, holding of goods for prescribed period, requirement that seller provide identification, cooperation with police)	Review underway. Issues paper released in 2000. A final report is in preparation.		Council to assess progress in 2002.
Victoria	*Second-hand Dealers and Pawnbrokers Act 1989*	Licensing (pawnbrokers, second-hand dealers for non-exempt goods), registration, entry requirements (not convicted disqualifying offence in past five years, not insolvent), the reservation of practice, disciplinary processes, business conduct (pawnbrokers: prescribed records, auction of unredeemed goods over $40; second-hand dealers: prescribed records, hold goods for prescribed period, requirement that seller provide identification, interest rates, cooperation with police)	Departmental review completed in 1996. Recommended: replacing 'fit and proper' with 'no serious offences'; removing obligation to retain metals for seven days after acquisition (with some exceptions); removing requirement for dealers to conduct certain transactions at registered business premises or a market (instead requiring dealers to register any place habitually used); and removing interest rate restrictions.	Government accepted all review recommendations. Amendments made by the *Law and Justice Legislation Amendment Act 1997.*	Meets CPA obligations (June 2001).

(*continued*)

Table 18.12 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Pawnbrokers Act 1984*	Licensing, entry requirements (aged over 18 years, not mentally incapacitated, fit and proper person, not a collector, not convicted of fraud or dishonesty offence in past five years), the reservation of practice, disciplinary processes, business conduct (prescribed records, public auction of unredeemed goods over $40, cooperation with police)	Review yet to begin. Targeted public model. Combined with review of second-hand dealers legislation. Framework for scoping and conducting the review being finalised at March 2001. Completion due in fourth quarter 2001.		Council to assess progress in 2002.
	Second-hand Dealers and Collectors Act 1984	Licensing (second-hand dealers for not exempt goods), registration, entry requirements (aged over 18 years, not mentally incapacitated, fit and proper person, not convicted of fraud or dishonesty offence in past five years), the reservation of practice, disciplinary processes, business conduct (prescribed records, holding goods for prescribed period, requirement that seller provide identification, cooperation with police)	To be reviewed with pawnbrokers legislation.		Council to assess progress in 2002.
Western Australia	*Pawnbrokers and Second-hand Dealers Act 1994*	Licensing (pawnbrokers, second-hand dealers for not exempt goods), registration, entry requirements (good character, fit and proper person — that is, adequate management, supervision and control of business operations, and no conviction of dishonesty, fraud, or stealing offence in past five years), the reservation of practice, disciplinary processes, business conduct (pawnbrokers: prescribed records, computer records, notify pawner of surplus of proceeds of sale; second-hand dealers: prescribed records, holding of goods for prescribed period, requirement that seller provide identification, cooperation with police)	Review by Western Australian Police Service completed. Review recommended: retaining the current licensing provisions on the understanding that they may be modified following future review; conducting a further review after the current legislation had been in operation for an additional three years; and examining alternative approaches, including those likely to be introduced in other States.	Government endorsed the review recommendations.	Meets CPA obligations (June 2001).

(*continued*)

Table 18.12 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Second-Hand Dealers and Pawnbrokers Act 1996*	Negative licensing (pawnbrokers, second-hand dealers for all goods except cars), registration (that is, notify police), entry requirements (not convicted dishonesty offence in past five years, not undisclosed bankrupt/insolvent), the reservation of practice, disciplinary processes, business conduct (pawnbrokers: prescribed records, selling of unredeemed goods; second-hand dealers: prescribed records, holding of goods for prescribed period, requirement that seller provide identification (unless sale by phone), cooperation with police)	Review completed. No reform recommended.	Government endorsed review recommendation.	Meets CPA obligations (June 2001).
Tasmania	*Pawnbrokers Act 1857* *Second-hand Dealers Act 1905*	Licensing, business conduct	Not for review.	Repealed in 1996 by *Second-Hand Dealers and Pawnbrokers Act 1994*.	Meets CPA obligations (June 2001).
	Second-hand Dealers and Pawnbrokers Act 1994	Negative licensing (pawnbrokers, second-hand dealers, registration (notification at nearest police station), entry requirements (fit and proper person, not convicted of offence against the Act or offence involving dishonesty), the reservation of practice, disciplinary processes, business conduct (pawnbrokers: prescribed records, redemption period of six months, auction of forfeited goods; second-hand dealers: prescribed records, holding of goods for prescribed period, requirement that seller provide identification, cooperation with police)	Minor review completed. Review found restrictive provisions were justified in the public benefit.	Government endorsed review recommendation.	Meets CPA obligations (June 2001).

(*continued*)

Table 18.12 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT	*Pawnbrokers Act 1902* (NSW) in application to ACT	Licensing, registration, entry requirements (aged over 18 years, fit and proper person), the reservation of practice, business conduct (prescribed records, public auction unredeemed goods over $10, cooperation with police)	Review underway. Review being undertaken by department.		Council to assess progress in 2002.
	Second-hand Dealers and Collectors Act 1906 (NSW) in application to ACT	Licensing, registration, entry requirements (aged over 18 years, fit and proper person), the reservation of practice (persons who deal in certain second-hand goods), business conduct (prescribed records, holding of goods for prescribed period, cooperation with police)	Department review completed in 2000. Recommended: updating definition of second-hand goods; altering business conduct requirements to take into account new technology; and repealing a number of the business rules in the legislation and repealing provisions dealing with the licensing and regulation of collectors.	Government accepted review recommendations. Amendments were introduced to Legislative Assembly in late 2000 (Justice and Community Safety Legislation Amendment Bill (No. 1) 2000).	Council to assess progress in 2002.
Northern Territory	*Pawnbrokers Act*	Licensing		Act repealed in 1998 and provisions included in the *Consumer Affairs and Fair Trading Act*.	Meets CPA obligations (June 2001).
	Consumer Affairs and Fair Trading Act	Licensing (pawnbrokers, second-hand dealers for not exempt goods), registration, entry requirements (aged at least 18 years, not undischarged bankrupt or convicted in the past 10 years of an offence involving dishonesty, fraud or stealing), the reservation of practice, disciplinary processes, business conduct (pawnbrokers: prescribed records, selling unredeemed goods, minimum redemption period, notification of pawner of surplus of proceeds of sale; second-hand dealers: prescribed records, holding of goods for prescribed period, requirement that seller provide identification, cooperation with police)	Review by Centre for International Economics completed in 2000, recommending provisions be retained with no amendment.	Government approved in November 2000 the review recommendations in relation to pawnbrokers and second-hand dealers.	Meets CPA obligations for pawnbrokers and second-hand dealers (June 2001).

Table 18.13: Review and reform of legislation regulating real estate agents

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Property, Stock and Business Agents Act 1941*	Licensing (real estate, stock and station, business and managing agents), registration, entry requirements (qualifications, sufficient experience, fit and proper person), the reservation of practice, disciplinary processes, business conduct (auctions, trust accounts)	Review completed.	An Exposure draft is in preparation for public consultation.	Council to assess progress in 2002.
Victoria	*Estate Agents Act 1980*	Licensing (real estate agents — not their representatives who are negatively licensed), registration, entry requirements (agents: licensed in past five years or qualifications and experience, over 18, fit and proper person (not insolvent, not convicted of prescribed offence or disqualified under Act); agent's representative: similar but no experience and lower level training), the reservation of practice (includes auctions of real estate or property), disciplinary processes, business conduct (ownership, name of business and address in advertising, no commission sharing, professional conduct, trust accounts, Estate Agents Guarantee Fund (funded from interest on trust accounts) to pay for administration and defalcation), business licensing	Review completed in 2000. Recommended: retaining full licensing for residential property sales, but making experience and education requirements less restrictive; applying a less restrictive form of licensing to agents selling commercial property and business and managing property; and retaining regulation to protect against defalcation.	Government released the report for consultation in formulating its response.	Council to assess progress in 2002.
Queensland	*Auctioneers and Agents Act 1971 Property Agents and Motor Dealers Act 2000*	Licensing (real estate agent, manager, salesperson), registration, entry requirements (resident in State or within 65-kilometre border, aged at least 21 years, good fame and character, fit and proper person, training and/or experience; for agent, one year experience in past five years), the reservation of practice, disciplinary processes, business conduct (suitable business premises, maximum commission, license holder at business)	See summary in table 18.3 on auctioneers.	See summary in table 18.3 on auctioneers. In relation to removing maximum commissions for real estate agents, a working party is developing viable alternative options to commissions.	Council to assess progress in 2002.

(*continued*)

Table 18.13 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Real Estate and Business Agents Act 1978*	Licensing (agent's licence, sales representative's certificate), registration, entry requirements (aged over 18 years, good character, fit and proper person (including having done prescribed courses, understands duties and obligations under Act), for agent, sufficient material and financial resources), the reservation of practice, disciplinary processes, business conduct (branch office/s require separate manager/s, supervision and control, records, trust accounts, audit, code of conduct, advertising, fidelity fund), business licensing	Department review underway. Discussion paper released in April 1999.	Maximum fees removed in 1998.	Council to assess progress in 2002.
South Australia	*Land Agents Act 1994*	Licensing (agents, not sales representatives who are negatively licensed), registration, entry requirements (qualifications, no conviction for an offence of dishonesty, not an undischarged bankrupt or no suspension or disqualification from practising an occupation, trade or business), the reservation of practice, disciplinary processes, business conduct (provisions for maximum fees in regulations (but not used currently), indemnity fund, trust account), business licensing	Review completed. Review involved public consultation. Council seeking public interest case for retained restrictions.	Government endorsed review recommendation.	Council to assess progress in 2002.
Tasmania	*Auctioneers and Real Estate Agents Act 1991*	Licensing (real estate agents, managers and sales consultants), registration, entry requirements (education, experience, fit and proper person), the reservation of practice, disciplinary processes, business conduct	Review underway.		Council to assess progress in 2002.

(*continued*)

Table 18.13 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT	*Agents Act 1968*	Licensing (real estate agents, travel agents, business agents, stock and station agents), registration, entry requirements, the reservation of practice, disciplinary processes, business conduct	Review of real estate agents, business agents, stock and station agents provisions underway. Departmental targeted public review in conjunction with Auctioneers Act. Preparing issues paper. Review scheduled to be completed in 2001.		Council to assess progress in 2002.
Northern Territory	*Agent's Licensing Act*	Licensing (real estate agents, agent's representative, conveyancing agent), registration, entry requirements (fit and proper person, aged at least 18 years, education or experience, competency), the reservation of practice, disciplinary processes, business conduct (maintenance of office in Northern Territory, professional indemnity insurance, fidelity fund, trust monies)	See summary in table 18.4 on conveyancers.	See summary in table 18.4 on conveyancers.	Council to assess progress in 2002.

19 Fair trading legislation and consumer legislation

States and Territories have enacted a range of legislation dealing with fair trading and consumer protection issues. This legislation regulates aspects of business conduct, including advertising, dealings with customers and the provision of information. Jurisdictions' fair trading and consumer protection legislation falls into three broad categories: general fair trading legislation, which includes jurisdictions' Fair Trading Acts; legislation regulating the provision of consumer credit, including the Consumer Credit Code; and trade measurement legislation, which deals with the measurement of goods for sale. Attempts have been made to achieve national uniformity in each of these areas, but variation between jurisdictions remains.

A subset of legislation aimed at protecting consumers deals with the licensing of occupations. The review of such legislation is discussed in chapter 18.

Legislative restrictions on competition

Fair trading and consumer protection legislation imposes a wide range of restrictions on business conduct. Jurisdictions' Fair Trading Acts, for example, regulate business conduct by prohibiting: misleading or deceptive conduct; the employment of harassment or coercion to win sales; and certain types of sales technique (such as pyramid and referral selling). These Acts and other related legislation also impose miscellaneous restrictions, including: price controls, mandatory cooling-off periods, requirements to disclose products from which goods are made, requirements to provide warranties, the banning of unsafe goods and the imposition of quality standards.

Regulation relating to the provision of consumer credit generally involves licensing requirements and restrictions on the conduct of credit providers. Such restrictions may take the form of documentary and disclosure requirements, provisions allowing for the change of contractual arrangements, limits on commissions and the types of product that may be offered, and restrictions on advertising and methods of sale.

Legislation dealing with trade measurement imposes restrictions on the method of sale of certain goods. These restrictions include labelling and licensing requirements, restrictions on the units of measurement in which

certain goods may be sold, restrictions on the type of measuring instruments that businesses may use, and requirements relating to verification, certification and servicing of measuring instruments.

Regulating in the public interest

Fair trading and consumer protection legislation aims to protect consumers by addressing market failure, such as information asymmetries between businesses and consumers, which may lead to some businesses gaining an unfair advantage. The legislation may encourage competition, for instance by promoting consumer confidence. However, it may also impose some costs. In particular, restrictions on business activities contained in the legislation may, by restricting market entry and competitive conduct, result in increased compliance costs for businesses and have an impact on product innovation and consumer choice.

Regulating to protect consumers' interests requires governments to balance these considerations. In assessing jurisdictions' compliance with the NCP, the National Competition Council looks for appropriate regulatory outcomes. In the Council's view, such outcomes require restrictions on business activity to be as closely targeted to market failure as possible, to be proportionate to the market failure's potential detriment, and to be the least restrictive means available of achieving the regulatory objectives.

The Council has used these principles to assess jurisdictions' review and reform activity against NCP obligations. Where restrictions in legislation generally reflect this framework, the Council has assessed the jurisdiction as meeting its NCP obligations in this area. Where legislation contains restrictions on competition in addition to those consistent with the principles of effective regulation, the Council's assessment takes into account the relevant government's public benefit arguments.

With respect to jurisdictions' Fair Trading Acts, the Council considers that they do not require NCP review where they essentially mirror part V of the *Trade Practices Act 1974* (TPA). The Council has taken this view because the consumer protection provisions contained in the TPA are pro-competitive and do not act to restrict competition. The Council has considered all other restrictions in the Acts against the general principles for appropriate regulation.

Review and reform activity

Fair trading legislation

Commonwealth, State and Territory consumer affairs Ministers agreed in 1983 to adopt nationally uniform consumer protection legislation, with the objective of promoting efficiency and reducing compliance costs. The model chosen for the uniform scheme was the consumer protection provisions (part V) of the TPA, which contains general prohibitions against misleading or deceptive conduct in trade or commerce, as well as a list of more specific prohibited practices. These provisions were adopted through mirror legislation in each jurisdiction.

Table 19.1 outlines jurisdictions' progress with reviewing their Fair Trading Acts. Jurisdictions also identified for review a range of legislation dealing with miscellaneous fair trading issues. Table 19.2 outlines jurisdictions' progress with these reviews.

Consumer credit legislation

In 1993 State and Territory governments entered into the Australian Uniform Credit Laws Agreement, which provides for the adoption of a national Consumer Credit Code. The code, which came into effect in November 1996, replaced various State and Territory statutes governing credit, money lending and aspects of hire purchase.

The code was developed to be applied equally to all forms of consumer lending and to all credit providers in Australia, without restricting product flexibility and consumer choice. It applies rules that regulate credit providers' conduct throughout the life of a loan, generally relying on competitive forces to provide price restraint but providing redress mechanisms for borrowers if credit providers fail to comply with the legislation. Types of credit covered by the code include personal loans, credit cards, overdrafts, housing loans and the hire of goods.

The code is enacted by template legislation, with Queensland being the lead legislator. All jurisdictions except Western Australia and Tasmania have enacted legislation applying the Consumer Credit Code as in force in Queensland. Western Australia has enacted alternative consistent legislation, which will require amendment by the Western Australian Parliament to remain consistent when the code is amended. Tasmania has enacted a modified template system.

State and Territory governments are jointly undertaking an NCP review of the Consumer Credit Code legislation. In addition to this review, several jurisdictions have identified other consumer credit-related legislation for

review, possible review or amendment. Table 19.3 outlines jurisdictions' progress with reviewing this legislation. Some jurisdictions are also undertaking reviews of regulations of the business of finance brokers and credit providers. These reviews are noted in chapter 20, which deals with financial services regulation.

Trade measurement legislation

Each State and Territory has legislation that regulates weighing and measuring instruments used in trade and controls for pre-packaged goods. Instruments regulated include shop scales, public weighbridges and petrol pumps. Governments (except Western Australia) formally agreed to a nationally uniform legislative scheme for trade measurement in 1990 to facilitate interstate trade and reduce compliance costs. Participating jurisdictions have since progressively enacted the uniform legislation. The legislation places the onus on owners to ensure instruments are of an approved type and maintained in an accurate condition.

Governments have identified that the national scheme involves legislation that may have an impact on competition. As a result, a national NCP review of the scheme for uniform trade measurement legislation is being undertaken. Some jurisdictions have indicated that they will review the Acts administering the national scheme, in addition to those applying it. Table 19.4 outlines jurisdictions' progress with reviewing their trade measurement legislation.

Table 19.1: Review and reform of Fair Trading Acts

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Fair Trading Act 1987*	Regulation of the supply, advertising and distribution of goods and services and the disposal of interests in land	Combined review with *Door to Door Sales Act 1967* underway. Terms of reference approved in 1997, steering committee formed in 1998. Issues paper released in August 2000, followed by public consultation. Final report being prepared.		Council to assess progress in 2002.
Victoria	*Fair Trading Act 1999*	Mandatory five-day cooling-off period for contact sales, cooling-off period of less than 5 days for off-business premises sales deemed to be five days	Act assessed against NCP principles at its introduction. Assessment recommended retention of restrictions on the grounds that they are the least restrictive means of achieving the Act's objectives, and so are in the public interest.	Restrictive provisions retained.	Meets CPA obligations (June 2001).
Queensland	*Fair Trading Act 1989*	Quality/technical standards, business conduct restrictions, measures that confer a benefit	Review to be commenced at the end of the legislation review period, to audit any reliance of other reformed legislation on common law safeguards housed within the Act.		Council to assess progress in 2002.
Western Australia	*Fair Trading Act 1987*	Regulation of the supply, advertising and distribution of goods and services	Review of the Act and the *Consumer Affairs Act 1971* to be undertaken in the second half of 2001.		Council to assess progress in 2002.
South Australia	*Fair Trading Act 1987*		Not scheduled for review.		Council to assess progress in 2002.

(*continued*)

Table 19.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania	*Fair Trading Act 1990* Fair Trading (Code of Practice for Motor Vehicle Traders) Regulations 1996	Act assessed as not restricting competition. code of practice requires manufacturers to provide warranties for motor vehicles and to establish a system for dealing with customer complaints	Minor review of code of practice completed.	Restrictive provisions retained.	Meets CPA obligations (June 2001) in relation to non-motor vehicle dealer provisions. Motor vehicle dealer provisions discussed in chapter 18.
ACT	*Fair Trading Act 1992*	Regulation of the supply, advertising and distribution of goods and services	Intradepartmental review commenced, covering the Fair Trading Act, the *Door-to-Door Trading Act 1991*, the *Fair Trading (Consumer Affairs) Act 1973*, the *Lay-by Sales Agreements Act 1963* and the *Sale of Goods Act 1954*. Terms of reference developed.		Council to assess progress in 2002.
Northern Territory	*Consumer Affairs and Fair Trading Act*	Sundry provisions, including the regulation of advertising and the banning of potentially unsafe goods	Review completed, recommending a number of pro-competitive changes.	Government approved recommendations except in relation to the repeal of fair reporting provisions and motor vehicle dealers. The Government argued that the benefits of the fair reporting provisions outweigh the costs.	Council to assess progress in 2002.

Table 19.2: Review and reform of other fair trading legislation

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Business Licences Act 1990*	Licensing requirements	Review completed.	Act to be repealed. Repealing legislation passed and assented to, but not commenced.	Meets CPA obligations (June 2001).
	Funeral Funds Act 1979	Controls and regulations on contributory and pre-arranged funeral funds	Review underway. Issues paper released in early 2000. Final report being prepared.		Council to assess progress in 2002.
	Prices Regulation Act 1948	Regulation of prices and rates for certain goods and services	Review completed.	Prices Commission abolished and prices regulation powers transferred to the Independent Pricing and Regulatory Tribunal.	Council to assess progress in 2002.
	Retirement Villages Act 1989	Regulates the termination of occupation rights of residents, confers jurisdiction over certain matters to the Residential Tenancies Tribunal	Review completed.	Act repealed. Retirement Villages Act 1999 introduced, retaining certain requirements for terminating the occupation rights of residents.	Council to assess progress in 2002.
Victoria	*Funerals (Pre-Paid Money) Act 1993*		Scoping study showed that the Act does not restrict competition.		Meets CPA obligations (June 2001).
	Retirement Villages Act 1986		Scoping study showed that the Act does not restrict competition.		Meets CPA obligations (June 2001).

(*continued*)

Table 19.2 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Funeral Benefit Business Act 1982*	Limitations on the registration of corporations, business conduct requirements	Review completed.	Review report under consideration by relevant Minister.	Council to assess progress in 2002.
	Profiteering Prevention Act 1948	Price controls, restrictions on business conduct	Reduced NCP review completed. Repeal of the legislation recommended because the legislation lacks contemporary relevance.	Legislation expected to be repealed.	Council to assess progress in 2002.
	Retirement Villages Act 1988	Entry requirements, statutory charges, reduced requirements for charitable organisations	Reduced NCP review completed. New Bill assessed against NCP obligations.	New Bill passed in 1999, retaining some restrictions on competition.	Council to assess progress in 2002.
	Sales of Goods Act 1896, Sale of Goods (Vienna Convention) Act 1986.	Stipulations relating to the sale or purchase of goods affecting rights and remedies of buyers and sellers	Review to be commenced at the end of the legislation review process, to audit any reliance of other reformed legislation on common law safeguards housed within the Acts.		Council to assess progress in 2002.
Western Australia	*Retirement Villages Act 1992*	Restrictions on business conduct	Departmental review underway. Discussion paper issued and public consultation undertaken.		Council to assess progress in 2002.
South Australia	*Prices Act 1948*	Price controls, restrictions on business conduct	Review completed, recommending the removal of a number of restrictive provisions but the retention of price controls for infant foods, returns of unsold bread, towing, recovery, storage and quoting for repair of motor vehicles and the carriage of freight to Kangaroo Island.	Government enacted amendments in line with recommendations in 2000.	Meets CPA obligations (June 2001).

(*continued*)

Table 19.2 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania	*Door to Door Trading Act 1986*	Definition of a prescribed contract, prohibition of contractual terms, requirement for certain information to be incorporated under prescribed contracts, limitation on the hours in which a dealer may call on a person	Minor review of the Act completed. Restrictive provisions justified as being in the public interest.	Restrictive provisions retained.	Council to assess progress in 2002.
	Flammable Clothing Act 1973	Requirement to mark or label prescribed clothing (children's nightwear) with the flammability of the garment	Minor review of the Act completed. Restrictive provision justified as being in the public interest.	Restrictive provision retained.	Meets CPA obligations (June 2001).
	Goods (Trade Descriptions) Act 1971	Requirement for manufacturers to disclose the materials from which textile products are made, provisions relating to safety footwear	Minor review of the Act completed. Requirement relating to textile products justified as being in the public interest.	Restrictive provision relating to textile products retained. New regulations made to replace safety footwear provisions.	Meets CPA obligations (June 2001).
	Mock Auctions Act 1973	Prohibition on auctions where items are sold at a price lower than the highest bid		Act repealed.	Meets CPA obligations (June 2001).

(*continued*)

Table 19.2 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT	*Law Reform (Manufacturers Warranties) Act 1977*		Act assessed as not restricting competition and removed from NCP review timetable.	Act to be repealed by the proposed Fair Trading (Amendment) Bill 2001 because it duplicates more extensive provisions in the TPA.	Meets CPA obligations (June 2001).
	Law Reform (Misrepresentation) Act 1977		Act assessed as not restricting competition and removed from NCP review timetable.		Meets CPA obligations (June 2001).
Northern Territory	*Prices Regulation Act*	Price controls, restrictions on business conduct	Review completed, recommending the exercise of restrictions only at times of natural disaster, the specification of objectives and the regulation of monopoly behaviour under separate legislation.	Government agreed to review recommendations.	Council to assess progress in 2002.
	Retirement Villages Act	Regulation of the operation of retirement villages, court's powers in respect of certain matters relating to retirement villages	Review underway.		Council to assess progress in 2002.

Table 19.3: Review and reform of consumer credit legislation

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
National	*Review of Consumer Credit Code*	Licensing requirements, restrictions on the conduct of credit providers	Review underway. Consultant's final report under consideration by relevant official bodies. Report to be forwarded to the Ministerial Council on Consumer Affairs for consideration and response.		Council to assess progress in 2002.
Victoria	*Credit (Administration) Act 1984*		Scoping study showed that the legislation does not restrict competition.		Meets CPA obligations (June 2001).
	Hire Purchase (Amendment) Act 1997	Retention of the court's ability to reopen hire purchase agreements and order the return of goods repossessed from a farmer under certain circumstances	Victoria argued that there is benefit in using the restrictions to address rural sector difficulties in relation to hire purchase, while a more comprehensive policy is developed.	Restrictive provisions retained.	Council to assess progress in 2002.
	Hire Purchase (Amendment) Act 2000	Retention of the court's ability to reopen hire purchase agreements and order the return of goods repossessed from a farmer under certain circumstances	Victoria argued that there is continued benefit in the restrictions because further policy work is required to develop a comprehensive policy.	Restrictive provisions retained.	Council to assess progress in 2002.
Queensland	*Credit Act 1987*	Restrictions on business conduct	Review of this Act and regulation will be carried out at the same time as the national review of the Consumer Credit Code but under a separate process. Review due for completion in the third quarter of 2001.		Council to assess progress in 2002.

(*continued*)

Table 19.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland (continued)	*Hire Purchase Act 1959*	Restrictions on business conduct	Reduced NCP review underway. Issues paper proposing repeal of the Act released and public consultation undertaken. Review expected to be completed by third quarter 2001.	Legislation expected to be repealed, effective October 2001.	Council to assess progress in 2002.
Western Australia	*Credit (Administration) Act 1984*	Licensing requirements, restrictions on conduct of credit providers	Departmental review completed, recommending licensing requirements and related provisions be repealed but disciplinary provisions be retained on public interest grounds.	Government agreed to review recommendations and is drafting legislative amendments.	Council to assess progress in 2002.
	Hire Purchase Act 1959	Restrictions relating to surplus from sale of repossessed goods, equitable relief and farm goods purchases	Departmental review completed, recommending the removal of a number of restrictions but the retention on public interest grounds of three provisions aimed at providing protection to farmers and small businesses.	Government agreed to review recommendations and has introduced amending legislation to Parliament.	Council to assess progress in 2002.
Tasmania	*Hire-Purchase Act 1959*	Requirements relating to the form and contents of hire purchase contracts		Act repealed.	Meets CPA obligations (June 2001).
	Lending of Money Act 1915	Requirement that money lenders be registered		Act repealed.	Meets CPA obligations (June 2001).
ACT	*Consumer Credit (Administration) Act 1996*	Registration and conduct requirements	Departmental review underway.		Council to assess progress in 2002.
	Credit Act 1985		Act substantially repealed, remaining provisions assessed as not restricting competition.		Meets CPA obligations (June 2001).

(*continued*)

Table 19.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory	*Consumer Affairs and Fair Trading Act*	Negative licensing requirements, requirement for credit providers to abide by the Consumer Credit Code and to act properly, competently and fairly	Review completed, recommending retention of the requirement for credit providers to act properly, competently and fairly. Restrictions imposed by the requirement to abide by the Consumer Credit Code are being considered in the national review.	Government agreed to review recommendations.	Meets CPA obligations (June 2001).

Table 19.4: Review and reform of trade measurement legislation

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
National (except Western Australia)	*Review of trade measurement legislation*	Restrictions on the method of sale of certain goods	Review underway. Review report prepared and under consideration by steering committee. Report to be considered by relevant official bodies before being forwarded to the Ministerial Council on Consumer Affairs for consideration and response.		Council to assess progress in 2002.
Queensland	*Trade Measurement (Administration) Act 1990*		Review and reform contingent on outcome of national review.		Council to assess progress in 2002.
South Australia	*Trade Measurement Administration Act 1993*		Review and reform contingent on outcome of national review.		Council to assess progress in 2002.
Western Australia	*Weights and Measures Act 1915*	Restrictions on the method of sale of certain goods	Government to introduce new trade measurement legislation in 2001 applying the uniform national legislation. NCP assessment to be undertaken, and drafting to take into consideration outcome of national review.		Council to assess progress in 2002.
ACT	*Trade Measurement (Administration) Act 1991*		Review and reform contingent on outcome of national review.		Council to assess progress in 2002.
Northern Territory	*Trade Measurement (Administration) Act*		Review and reform contingent on outcome of national review.		Council to assess progress in 2002.

20 Finance, insurance and superannuation services

Financial services, superannuation and insurance are important parts of the economy, with a combined value of almost $2000 billion. The scale of the industry emphasises the importance to Australia of effective financial, insurance and superannuation regulation.

The financial sector

The Commonwealth Government is responsible for much of Australia's financial regulation, particularly in the areas of trade, banking, insurance, bills of exchange, insolvency and foreign corporations. States and Territories also regulate financial markets, including via trustee legislation and credit controls. Regulation of the financial sector is designed to facilitate the creation and movement of capital while ensuring that market participants act with integrity and that consumers are protected. Proponents of financial sector regulation argue that government intervention is warranted, given the complexity of financial products and the inherent information imbalance between financial service providers and consumers. Regulation takes many forms, for example:

- licensing of individuals and of businesses (entry restrictions);
- conduct and disclosure requirements (reducing information costs); and
- financial reserve requirements (prudential regulation).

The Commonwealth Government commissioned a major public review, chaired by Mr Stan Wallis, of Australia's financial system in 1996-97. The Wallis Report, released in 1997, found that Australia's regulatory system was unnecessarily costly and complex. It made 115 recommendations, suggesting changes to both the Commonwealth legislation and State and Territory legislation. The recommendations included regulatory changes, standardisation of regulatory regimes to ensure consistency, and increased competition in many areas of the financial sector. In responding to the report, the Federal Treasurer categorised the proposed reforms as:

- rationalising the regulatory framework;
- balancing prudential and competition goals;
- maintaining the protection of depositors;

- promoting efficiency, competition and confidence in the payments system; and

- promoting more effective disclosure and consumer protection (Costello 1997).

All levels of government have undertaken legislative reform in response to the Wallis Report. Each State and Territory enacted financial sector reform legislation in 1999 to transfer powers of regulation and supervision of certain financial institutions to the new Commonwealth regulators, the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission. This shift has involved amending legislation in all jurisdictions and repealing several legislative instruments due for review under the NCP.

The most recent Commonwealth reforms are contained in the Financial Services Reform Bill introduced in April 2001. This legislation arose from the Wallis recommendations and the related Corporate Law Economic Reform Program. The Commonwealth circulated a position paper in December 1997, followed by a consultation paper in March 1999. An exposure draft of the Bill was circulated in February 2000. The Bill includes:

- a harmonised licensing, disclosure and conduct framework for all financial service providers;

- a consistent and comparable financial product disclosure regime; and

- a streamlined regulatory regime for financial markets and clearing and settlement procedures.

Assessment

Governments' review and reform activity is consistent with NCP principles. Further review and reform in financial services legislation — for example the regulation of trust funds — is underway in all jurisdictions. The National Competition Council will further consider governments' progress in the 2002 assessment.

Compulsory third party and workers compensation insurance

Compulsory third party (CTP) motor vehicle insurance, often known as motor accident (personal injury) insurance, is designed to ensure that compensation is available to those injured or killed in motor vehicle accidents. CTP insurance is compulsory in all States and Territories.

Workers compensation insurance is designed to ensure that workers receive just compensation for injuries sustained at work, including the cost of medical care, rehabilitation services and lost earnings, and that they have access to adequate rehabilitation services. Workers compensation insurance also provides benefits to dependants of those killed in the course of their work. Such insurance is compulsory in all States and Territories.[1]

Governments have made these products compulsory because of the high cost of accidents (to both individuals and the community) and the difficulty that individuals have in assessing risk. In addition, many of the risks in these insurance markets are borne by people other than the person paying the premium (that is, other than the employer or the motorist). For example, making workers compensation insurance compulsory ensures workers rights to compensation do not depend on their employer's decision to take out insurance.

Characteristics of CTP and workers compensation insurance

Benefits

Benefits under CTP and workers compensation schemes are payable for medical and hospital expense, legal costs, loss of earnings and, in many cases, compensation for pain and suffering. They may be based on statutory formulae or derived from common law, and they may be periodic payments or lump sums.

Unlike most insurance markets, a number of the CTP and workers compensation systems in place in Australia do not require that premiums are collected for benefits to be paid. Instead, all injured workers or road accident victims are eligible for compensation regardless of whether insurance premiums have been paid. Universal access introduces a welfare element to what is, at first sight, an insurance market. Scheme objectives, such as universal access, are matters for governments to determine.

A second key dimension of benefits is whether they are based on common law rights or statutory entitlements. Historically, benefit payments in all schemes were based on common law rights only. However, some jurisdictions have codified entitlements in statute to provide greater certainty of outcomes for the injured and to reduce legal costs.

[1] Commonwealth and ACT Government employees are covered by the Comcare workers compensation insurance scheme.

All CTP systems except the Northern Territory include access to common law. This access is restricted in three jurisdictions (Victoria, Western Australia and South Australia), while it is unlimited in the remaining four (see table 20.1).

Two workers compensation systems rely on statutory benefits entirely (South Australia and the Northern Territory), while five (New South Wales, Victoria, Queensland, Western Australia and Tasmania) have limited access to common law claims and the ACT has unlimited access to common law. Comcare, which covers Commonwealth and ACT Government employees, provides statutory benefits with limited access to common law (see table 20.1).

Table 20.1: Benefits payable in mandatory insurance schemes

Types of benefit	*CTP*	*Workers compensation*
Statutory benefits only	Northern Territory	South Australia Northern Territory
Limited access to common law	Victoria Western Australia South Australia	New South Wales Victoria Queensland Western Australia Tasmania Comcare
Unlimited access to common law	New South Wales Queensland Tasmania ACT	ACT

In general, systems with restricted access to common law limit eligibility to take common law actions to people who are seriously injured; for example, the Victorian Workcover scheme provides access to common law for workers who have suffered a 'whole person impairment' of at least 30 per cent (Department of Treasury and Finance, PricewaterhouseCoopers and MinterEllison Lawyers 2000, appendix C1). Some systems (for example, those in New South Wales and Western Australia) provide for injured workers in some circumstances to choose between statutory and common law rights.

Links with non-insurance objectives

Governments link CTP and workers compensation schemes to non-insurance objectives, notably reducing injury and death. In general insurance markets risk is fully priced in premium rates, providing clear incentives to modify behaviour to reduce premiums. However, in CTP and workers compensation

insurance the manipulation of premium rates reduces the incentives that promote risk-reducing behaviour.

In the case of CTP, community rating means that there is no direct link between claims history and premium paid. Therefore, there is no financial sanction for risky behaviour, other than the element of accident costs that is inadequately compensated by the insurance scheme. In relation to workers compensation, most schemes provide for limited 'experience rating' and thus some link between behaviour and premiums. However, the incentives are blunted (especially for smaller employers) to the extent that industry ratings influence premiums. Further, employers pay premiums, while safety performance is determined by the actions of both employers and employees. Thus, behaviour changes by one party may not of itself reduce risk.

Some governments argue that only monopoly insurers have sufficient incentives to invest in education and other risk-reducing programs, and to collect the data necessary to underpin such activities. These arguments are more cogent in community-rated insurance schemes, given the muted premium-based incentives to change behaviour. However, there are alternative ways of achieving the desired outcomes in education and risk reduction. Governments may, for example, levy insurers or the insured to fund educational activities. Access to insurers' databases could inform such programs.

Legislative restrictions on competition

Mandatory insurance

CTP insurance is mandatory in all jurisdictions. It follows the vehicle in Australia, whereas cover normally applies to the driver in most European countries and most of North America. Purchase of a workers compensation insurance policy is also mandatory in all jurisdictions, with two minor exceptions. First, most schemes include limited provision for employers to become 'self-insurers'. These employers do not seek commercial insurance and assume the insurance risk themselves, but they must conform to regulatory requirements for the payment of claims. Second, employers with very small payrolls can be exempted from the insurance requirement, although provisions exist in some cases for claims costs to be recovered from them.

Mandatory insurance requirements recognise the frequency and severity of injury and death in both workplaces and on the roads. In both cases, a high proportion of injuries and deaths occur as the result of the behaviour of a third party; that is, the injured person is often not a contributor, or at least not the sole contributor, to their injury. The financial consequences of workplace or roads accidents can be significant. In the absence of insurance, the injured party may not receive the care they need.

NCP reviews have supported compulsory CTP motor vehicle and workers compensation insurance as providing a net community benefit. They have noted that mandatory insurance reduces transaction costs and ensures the appropriate parties bear the costs of injuries and death. The Council is satisfied that the arguments demonstrate a net community benefit in mandatory insurance in these areas.

Monopoly provision

Many CTP and workers compensation schemes are based on a government-sector monopoly provider of insurance services. There have been moves from competitive provision to monopoly and from monopoly to competitive provision in recent decades. In this assessment, the Council focused on governments' public interest arguments (including those raised by NCP reviews) supporting monopoly provision of CTP or workers compensation insurance.

Arrangements for workers compensation and CTP insurance are complex, given they are characterised by long term benefit payments and complex rehabilitation needs. One argument put for public monopoly provision is that this is necessary to deal with these complexities. Other benefits of monopoly provision of mandatory insurance products outlined by reviews include:

- consistent treatment of claims and benefits;
- better data collection; and
- incentives to invest in system wide improvements.

The key cost of monopoly provision is the lack of choice for consumers, who are forced to purchase a mandatory product from a single insurer. Other costs identified by reviews include:

- risk exposure for taxpayers, as governments are responsible for scheme deficits;
- lesser incentives to invest in targeted safety initiatives; and
- failure to take advantage of economies of scope.

Even where there is a strong public benefit case for monopoly provision, there may be opportunities for schemes to use agents to perform various functions ('hybrid' schemes). Some reviews identified the use of agents in areas such as claims management as being able to capture the benefits of competition, particularly by creating incentives for greater efficiency.

Licensing of insurers

All competitive CTP and workers compensation schemes include provisions for the licensing of insurers. 'Hybrid' schemes, where the monopoly insurer uses private agents to carry out certain functions are also characterised by what are effectively licensing provisions.

Licensing can constitute a significant restriction on competition, with the scale of the restriction being a function of the criteria employed to determine applications for licensing. In general, CTP and workers compensation licensing arrangements are based on two key principles. The first principle is financial viability. Given the 'long tail' characteristics of many claims in both markets, it is essential that insurers are able to meet claims liabilities in the longer term. A key question in considering regulation in this area is the extent to which licensing duplicates the functions performed by the Australian Prudential Regulation Authority, as opposed to adding value. The second principle is the proper delivery of services to claimants. The licensing requirement can function as a discipline on providers, enabling the regulator to enforce quality requirements.

The Council accepts that public interest arguments may justify licensing arrangements. However, the CPA requires that governments demonstrate that licensing criteria are the minimum necessary to meet the objectives of the legislation and that licensing is not used in an anticompetitive fashion.

Premium controls

Premiums are determined in different ways, including:

- directly by insurers who are free to set premiums without regulatory constraints, based on their assessment of risk and the extent of competition in the market;
- file and write, whereby insurers give a regulator advance notice of intended premiums and the regulator exercises some form of approval or control over the premium;
- premium-setting principles, whereby a 'file and write' approach is combined with the use of explicit premium-setting principles, to which all proposed premium structures must conform. The additional control implied by such a system is a function of the complexity and prescriptiveness of the principles adopted; and
- centralised premium setting, which can be used in either a monopoly insurer context or in a more competitive market. A number of variations are possible, ranging from determination by a monopoly insurer — with or without approval requirements by a Minister or independent regulator (equivalent to a 'file and write' system) — through to premium setting by a regulator in a partly competitive context, in which approved insurers

compete on service standards and, possibly, on the administrative cost element of the premium (as opposed to the underwriting cost).

CTP markets are characterised by community rating in premium setting. Workers compensation markets generally have premiums that are based on a combination of multiple industry ratings with experience-based loadings and discounts. Community rating is essentially a welfare-based scheme, predicated on ensuring universal access to the market at an affordable price. Thus, government requirements that community rating be used in determining premiums (usually combined with a requirement to accept all requests for coverage) are generally based on ensuring all members of society have reasonably affordable access to (compulsory) insurance. Governments also seek to restrict premium setting to achieve stability of premiums, notwithstanding that this works against the objective of having 'fully funded' schemes.

All forms of premium control may have costs in terms of reducing innovation and less satisfactorily meeting client needs, as well as reducing incentives for better performance by the insured. Overall, the cost of premium controls is that someone, at some time, pays too much for insurance. The benefits of premium controls must be balanced against these costs.

Consideration of the virtues of market-based premium setting is also relevant. Market-based premiums ensure that the incentives for improving safety performance are maximised (because they more directly related to risk) and that the costs of production are properly distributed, both across and within industries. These benefits are potentially important and must be weighed carefully against any costs attributed to market premium setting in terms of affordability and equity.

Public sector superannuation

All Australian workers and their employers are required by legislation to contribute to superannuation. Most employees are provided with a choice of superannuation fund, but in some jurisdictions public sector employees' choice of fund is constrained by legislation. Limiting employees to a particular superannuation fund limits options (for example, by preventing consolidation of funds) and prevents access by alternative providers to a significant component of the superannuation market.

Review and reform activity

Review and reform activity in mandatory insurance and public sector superannuation is outlined in the following tables.

Table 20.2: Review and reform activity regulating compulsory third party motor vehicle insurance

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Motor Accidents Compensation Act 1999*	Mandatory insurance, licensing of insurers, file and write premium setting	Review completed in 1997-98, recommending scheme design changes and insurers filing premiums with the Motor Accidents Authority.	Legislation passed in line with review recommendations.	Meets CPA obligations (June 1999).
Victoria	*Transport Accidents Act 1986*	Mandatory insurance, monopoly insurer, centralised premium setting	Internal review completed in 1997-98, recommending removing the statutory monopoly in favour of competitive provision. Second review completed in December 2000, recommending maintaining the monopoly and centralised premium setting, although the review recommended a third party review of premiums.	Government rejected the findings of the first review, and accepted the findings of the second review.	Council to assess progress in 2002.
Queensland	*Motor Accidents Insurance Act 1994*	Mandatory insurance, licensing of insurers, file and write premium setting	Review completed in 1999, recommending retaining licensing of insurers, but removing restrictions on market re-entry and on motorists changing insurers. Further, the review recommended introducing greater competition in premium setting through a 'file and write' system.	*Motor Accident Insurance Amendment Act 2000*, which commenced in October 2000, passed in line with review recommendations.	Meets CPA obligations (June 2001).
Western Australia	*Motor Vehicle (Third Party Insurance) Act 1943*	Mandatory insurance, monopoly insurer, centralised premium setting	Review completed in 1999-2000, recommending removing the monopoly provision of insurance and retaining Ministerial approval of premiums.	Drafting of legislation underway.	Council to assess progress in 2002.
South Australia	*Motor Accident Commission Act 1992*	Mandatory insurance, monopoly insurer, centralised premium setting	Review completed in 1998, recommending removing the monopoly and controls on premiums. Second review completed in 1999, rebutting previous review's recommendations. Government issued both reviews for public consultation in early 2001.	Government announced retention of mandatory insurance, the sole provision of insurance by the Motor Accident Commission and community rating. Drafting of legislation underway.	Council to assess progress in 2002.

(*continued*)

Table 20.2 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania	*Motor Accidents (Liabilities and Compensation) Act 1973*	Mandatory insurance, monopoly insurer, centralised premium setting	Review completed in 1997, recommending retaining the monopoly provision of insurance. Following second tranche NCP assessment, Tasmania agreed to re-examine the issue.		Council to assess progress in 2002.
ACT	*Road Transport (General) Act 1999*	Mandatory insurance, licensing of insurers	Not for review. Legislation allows the Government to approve multiple insurers.		Meets CPA obligations (June 1997).
Northern Territory	*Territory Insurance Office Act* *Motor Accidents (Compensation) Act*	Mandatory insurance, monopoly insurer, centralised premium setting	Review of Territory Insurance Office Act completed in 1999. Review of the Motor Accidents (Compensation) Act completed in December 2000 and under consideration by the Government.	Territory Insurance Office Act amended in December 2000, removing the requirement that the Territory Insurance Office be the sole administrator of the Motor Accident Compensation scheme. (The Motor Accidents (Compensation) Act continues to enforce the monopoly).	Council to assess progress in 2002.

Table 20.3: Review and reform activity regulating workers compensation insurance

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Safety, Rehabilitation and Compensation Act 1988*	Mandatory insurance, monopoly insurer, centralised premium setting	Review completed in 1997, recommending introducing competition to Comcare.		Council to assess progress in 2002.

(*continued*)

Table 20.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Workers Compensation Act 1987*	Mandatory insurance, monopoly insurer, centralised premium setting	Review completed in 1997-98, recommending removing the monopoly insurer in favour of competitive underwriting. Further examination of the scheme in 2000-01 resulted in proposals for changes to scheme design elements.	Legislation passed to introduce private underwriting in October 1999. Subsequent legislation has delayed implementation to a date to be determined by the Minister. Scheme design changes introduced in 2001.	Council to assess progress in 2002.
Victoria	*Accident Compensation Act 1985* *Accident Compensation (Workcover Insurance) Act 1993*	Mandatory insurance, monopoly insurer, centralised premium setting	Internal review completed in 1997-98, recommending competitive provision. Second review completed in December 2000, recommending maintaining the monopoly and centralised premium setting, although the review recommended a third party review of premiums.	Government rejected the findings of the first review, and accepted the findings of the second review.	Council to assess progress in 2002.
Queensland	*Workcover Queensland Act 1996*	Mandatory insurance, monopoly insurer, centralised premium setting	Review completed in December 2000. Cabinet is due to consider the report in mid-2001.		Council to assess progress in 2002.
Western Australia	*Workers Compensation and Rehabilitation Act 1981*	Mandatory insurance, licensed insurers, centralised premium setting	Review underway.		Council to assess progress in 2002.
South Australia	*Workers Rehabilitation and Compensation Act 1986*	Mandatory insurance, monopoly insurer, centralised premium setting	Review underway.		Council to assess progress in 2002.

(*continued*)

Table 20.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania	*Workers Rehabilitation and Compensation Act 1988*	Mandatory insurance, licensed insurers	Review by the Parliamentary Joint Select Committee of Inquiry completed in 1997.	Act amended in March 2001 in line with recommendations.	Meets CPA obligations (June 2001).
ACT	*Workers Compensation Act 1988*	Mandatory insurance, licensing of insurers	Review completed in July 2000, recommending changes to scheme design elements and a greater capacity to self-insure.	Draft exposure Bill released in December 2000.	Council to assess progress in 2002.
Northern Territory	*Work Health Act*	Mandatory insurance, insurers must meet prescribed standards	Review completed in September 2000, and released for public comment in June 2001. Review recommends that premiums remain unregulated and insurers remain unlicensed.		Council to assess progress in 2002.

Table 20.4: Review and reform of legislation regulating public sector superannuation

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Superannuation Act 1976* *Superannuation Act 1990* *Defence Force Retirement and Death Benefits Act 1948* *Military Superannuation and Benefits Act 1991* *Parliamentary Contributions Superannuation Act 1948*	Limits on choice of funds	Reform proposed to give choice of fund to contributors for employees covered by federal awards. Review of the Parliamentary Contributions Act completed, concluding that administration costs are trivial and that there are efficiencies.	Legislation introduced. Still to be considered by the Senate.	Council to assess progress in 2002.

(*continued*)

Table 20.4 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Superannuation Administration Act 1987*	Limits on choice of funds		Legislation passed to corporatise the scheme regulator and to market test the administration. Choice introduced.	Meets CPA obligations (June 2001).
Victoria	*State Superannuation Act 1985* *Superannuation (Public Sector) Act 1992*	Limits on choice of funds	Review completed in 1997.	Choice expanded and management restructured. Market testing of administration due in 2001.	Meets CPA obligations (June 2001).
Queensland	*Superannuation (Government and Other Employees) Act 1988*	Limits on choice of funds	Review completed in late 2000, concluding that the Act does not restrict competition.		Council to assess progress in 2002.
Western Australia	*Government Superannuation Act 1987*	Limits on choice of funds	New *Superannuation (Public Sector Employees) Act 1999* under review.		Council to assess progress in 2002.
South Australia	*Southern State Superannuation Act 1987*	Limits on choice of funds	No full NCP review following preliminary investigation. South Australia considers restrictions trivial.	No reform.	Council to assess progress in 2002.
Tasmania	*Retirement Benefits Act 1993*	Limits on choice of funds		Choice of funds for new and existing contributors introduced. Move to fund existing public scheme.	Meets CPA obligations (June 2001).
ACT	As for Commonwealth	As for Commonwealth		Reliant on Commonwealth reforms. New entrants have choice of funds.	Council to assess progress in 2002.
Northern Territory	*Superannuation Act*	Limits on choice of funds	Review completed in 1998, recommending the Government close the unfunded scheme and introduce choice.	Reforms implemented in line with recommendations.	Meets CPA obligations (June 2001).

21 Retail trading arrangements

Shop trading hours

Historically, governments have restricted shop trading hours for a number of reasons including observance of the Sabbath, protection of small businesses and to reduce the need for shop employees to work outside traditional working hours. Pressure to change laws restricting trading hours has arisen from a range of sources from retail business owners to consumer groups. A significant driver of reform is changing social and work patterns such as increasing numbers of dual income households and more flexible and longer working hours.

Legislative restrictions on competition

Shop trading hours vary significantly across Australia. Some States and Territories have minimal restrictions, while others have various arrangements, including designated days for late night shopping and restrictions on Sunday trading. Often, central city and tourist precincts have fewer restrictions than do suburban and rural areas; for example, Queensland prohibits most types of Sunday trading outside major cities and tourist areas and Western Australia prohibits Sunday trading outside tourism precincts.

Shopping hours legislation contains the following major restrictions on competition.

- Queensland restricts Monday-to-Saturday trading hours for some stores and prohibits these stores from trading on Sunday if they are outside major cities and tourist precincts. Sunday trading hours are restricted in those areas. Hardware stores are allowed to trade on Sundays between prescribed hours.

- Western Australia restricts Monday-to-Saturday trading hours and Sunday trading is allowed only within tourism precincts between prescribed hours. Restrictions do not apply above the 26th parallel.

- South Australia's main legislation restricts Monday-to-Saturday trading hours and prohibits Sunday trading in Adelaide outside the central business district. Sunday trading hours in the central business district are

limited. The situation is further complicated by discrimination between different shops on the basis of location, size and product sold.

- Tasmania restricts Monday-to-Sunday trading hours and prohibits Sunday trading for major retailers (defined as those employing more than 250 people in total).

Regulating in the public interest

Reviews of trading hours have found both widespread benefits from removing restrictions and the absence of a compelling public benefit argument for retaining restrictions. Victoria's review found that removal of restrictions would result in increased consumer convenience, benefits to traders (who would be free to open at times they thought appropriate) and additional retail activity (Government of Victoria 1996, p. 4). Tasmania's review found that restrictions impose a major constraint on consumer choice and anticipated that their removal would result in additional employment, increased real wages or a combination of these outcomes as the retail sector expands (Workplace Standards Tasmania 2000, p. 8).

Review and reform activity

Current restrictions on trading hours in each jurisdiction and review and reform activity to date are summarised in Table 21.1. In addition to restrictions on trading hours, some governments also legislate to restrict trading hours for particular activities. The Council has identified several examples, which are summarised in table 21.2.

Table 21.1: Review and reform of legislation regulating shop trading hours

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Factories, Shops and Industries Act 1962* (part 4 covers trading hours)	No restrictions on Monday-to-Saturday trading hours. Restrictions exist on Sunday trading and public holiday trading but exemptions are readily granted. .	Review of part 4 completed. New South Wales has advised that a comprehensive public benefit test is in place for assessment of any remaining assessments.	Widespread granting of exemptions has reduced the impact of restrictions.	Council to assess progress in 2002.
Victoria	*Shop Trading Act 1987* and the *Capital City (Shop Trading) Act 1992*	Restrictions on Saturday and Sunday trading hours depending on shop type and location.	Review completed 1996.	*Shop Trading Reform Act 1996 removed* restrictions except for Christmas Day, Good Friday and ANZAC day.	Meets CPA obligations (June 1999).
Queensland	*Trading (Allowable Hours) Act 1990* and Regulations	Restrictions on Monday-to-Saturday trading hours for 'nonexempt' stores (that is, shops employing more than prescribed numbers of employees and shops not predominantly selling nominated products). Sunday trading by nonexempt stores prohibited outside major cities and some tourist areas. Hardware stores excepted (but have restricted Sunday trading hours). Other stores allowed to open on Sundays.	Review not undertaken. The Queensland Industrial Relations Commission determines applications for extended trading hours.	Recent decisions of the Queensland Industrial Relations Commission to liberalise trading hours have resulted in the removal of some restrictions. In 2000 and 2001, the Queensland Government provided details of its policy approach to the Queensland Industrial Relations Commission, drawing its attention to the need to take account of NCP public interest criteria in making its decisions.	Council to assess progress in 2002.

(*continued*)

Table 21.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Retail Trading Hours Act 1987* and Regulations	Restrictions on Monday-to-Saturday trading. Sunday trading prohibited outside tourism precincts, where it is restricted. No restrictions above the 26th parallel.	Review completed in 1999. Review report not publicly available.		Council to assess progress in 2002.
South Australia	*Shop Trading Hours Act 1977*	Significant restrictions, including: controls on the hours during which shops may open; variation in allowed opening hours based on the day of the week; and variation in permitted opening hours vary depending on shop location, size and products sold. Monday-to-Saturday trading hours are restricted. Sunday trading is prohibited in Adelaide outside the central business district, where hours are restricted.	Review completed in 1998. Review report not publicly available.	Limited changes took effect from June 1999. Key restrictions were retained.	Council to assess progress in 2002.
Tasmania	*Shop Trading Hours Act 1984*	Major retailers (shops employing more than 250 people) are prohibited from trading during prescribed periods (these being Sundays, public holidays and weekdays after 6:00 p.m., other than Thursday and Friday).	Review completed, recommending substantial removal of restrictions.		Council to assess progress in 2002.
ACT	No specific shop trading hours legislation	No restrictions on Monday-to-Sunday trading hours.		*Trading Hours Act 1962* repealed in 1997 due to lack of community support for trading hours restrictions.	Meets CPA obligations (June 1999).
Northern Territory	No specific shop trading hours legislation	No restrictions on Monday-to-Sunday trading hours.	Not required.	Not required.	Meets CPA obligations.

Table 21.2: Review and reform of trading-related legislation

Jurisdiction	*Legislation*	*Restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Funeral Services Industry (Days of Operation) Act 1990*	Regulates the days of operation of businesses providing funeral, burial or cremation services.		Repealed.	Meets CPA obligations (June 2001).
Queensland	*Hawkers Act 1994* and Hawkers Regulation 1994	Prevents hawkers operating between 6 pm and 7 am.	Reduced NCP review completed. Draft report under consideration.		Council to assess progress in 2002.
Tasmania	*Sunday Observance Act 1968*	Restricts a number of business activities on Sunday.		Repealed.	Meets CPA obligations (June 2001).
	Bank Holidays Act 1919	Restricts bank trading days.		Reformed consistent with NCP principles.	Meets CPA obligations (June 2001).
	Door to Door Trading Act 1986	Restricts the hours in which door to door sellers can operate.	Not scheduled for review.		Council to assess progress in 2002.
ACT	*Door to Door Trading Act 1991.*	Restricts the hours in which door-to-door sellers can operate.	Intradepartmental review in draft form.		Council to assess progress in 2002.
Northern Territory	*Hawkers Act*	Restricts selling by hawkers on land that is reserved or dedicated as a public road.		Bill to repeal passed November 2000. Act to be brought into effect 2001.	Meets CPA obligations (June 2001).

Liquor licensing

Governments have historically sought to limit excessive consumption of alcohol by limiting its availability. In particular, restrictions have applied to the number and type of licensed premises and the hours during which people could buy alcohol.

Many of these restrictions have been relaxed over the past few decades because community attitudes to where alcohol can be bought and consumed have changed considerably. Further, experience has shown that misuse of alcohol is often better addressed via more relaxed drinking environments and targeting of problem areas — for example through campaigns against drink-driving and under-age drinking. However, vestiges of earlier approaches remain embodied in legislation in some jurisdictions, significantly restricting competition in liquor retailing.

Legislative restrictions on competition

Legislation governing the sale of liquor involves three broad categories of restrictions. First, some restrictions limit entry by potential sellers; for example, several jurisdictions apply a public needs or proof-of-needs test. Such a test restricts competition because it requires applicants for new licences to demonstrate that a particular area is not already adequately served by existing outlets. In effect, the test operates to protect existing outlets from new entrants.

A second category of restrictions discriminates between different types of sellers of packaged (take-away) liquor. In Queensland, only the holders of a general (hotel) licence can sell packaged liquor to the public. In Tasmania, the '9 litre rule' prevents non-hotel sellers of packaged liquor selling less than 9 litres of liquor in any one sale (except for Tasmanian wine, which may be sold in any quantity). Tasmania also prohibits supermarkets from holding a liquor licence. Victoria has the '8 per cent rule' which prevents a licensee from holding more than 8 per cent of the total number of packaged liquor licences. This may restrict the activities of the major supermarket chains.

A third category of restriction regulates the market conduct of licence holders. In Queensland, hotels are limited to a maximum of three bottle shops, which must be detached from the hotel premises. Each bottle shop must not have more than 100 square metres of display space, and drive-in facilities are prohibited. In South Australia, liquor must be sold from premises that are exclusively used for that purpose.

Regulating in the public interest

The public interest objective of regulation should be to minimise the harm from alcohol consumption, implying that some limitations will always be necessary on the sale of alcohol. The provisions in licensing laws that support the objective of harm minimisation must be carefully differentiated from those that serve to restrict competition without minimising harm.

On one hand, licensing laws prescribe the legal minimum age for drinking and require liquor retailers to be suitable persons with an adequate knowledge of the relevant Act. They also place limits on trading hours, forbid practices that encourage excessive consumption and prevent the sale of alcohol to intoxicated persons. These regulations have a clear public benefit rationale and have been supported in NCP reviews. Ideally, regulations of this type should apply to all sectors of the liquor industry similarly, with licences granted to those who meet the prescribed standards.

On the other hand, regulations that prevent responsible sellers from entering the industry, discriminate between sellers of similar products/services and impose arbitrary restrictions on seller behaviour are irrelevant to harm minimisation. This requires careful analysis of the evidence. As an example, one argument frequently raised to support limitations on entry is that increased availability of alcohol equals increased consumption which leads to increased alcohol-related problems. However, evidence shows no clear relationship between the availability of liquor (number of outlets) and the level of consumption. Australia, Canada and New Zealand are among many developed countries to have experienced a general downward trend in average consumption levels since the late 1970s. This trend occurred at a time of considerable deregulation of the alcohol industry, generally greater availability of alcoholic beverages, and increased numbers of liquor outlets (Roche 1999, p. 39).

Victoria's recent experience has been static or declining per capita consumption despite the increases in availability in the State following licensing reforms in the 1980s and 1990s (Government of Victoria 1998, p. 19). Similarly, the number of liquor licences in Queensland increased during the 1990s while per capita consumption remained unchanged (Department of Tourism, Sport and Racing 1999, p. 20). Research also suggests that the pattern of alcohol use, particularly the environment in which drinking occurs, rather than the number of outlets and level of consumption, is the most important determinant of the level of harm (Government of Victoria 1998, pp. 100–2).

Review and reform activity

Table 21.3 summarises jurisdictions' progress in reviewing and reforming liquor licensing legislation.

Table 21.3: Review and reform of legislation regulating liquor licensing

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Registered Clubs Act 1976* *Liquor Act 1982*	Contains a public needs test whereby licensing authorities can consider the capacity of existing facilities in determining the public need for a new licence.	Review underway. Draft report in preparation		Council to assess progress in 2002.
Victoria	*Liquor Control Act 1987* *Liquor Control Reform Act 1998*	Despite implementing significant pro-competitive reforms, Victoria retains the '8 per cent rule', under which no liquor licensee can own more than 8 per cent of general or packaged liquor licences.	Initial review completed in 1998. A further review of the '8 per cent rule' reported to the Government in June 2000.	Pro-competition changes were implemented through the Liquor Control Reform Act. In January 2001 the Government announced that it would introduce a gradual phase-out of the 8 per cent cap from the end of 2003.	Meets CPA obligations (June 2001).
Queensland	*Liquor Act 1992*	Restrictions include: • a public needs test (whereby licensing authorities can consider the capacity of existing facilities in determining the public need for a new licence); • a restriction that only hotel licensees may sell packaged liquor to the public; • limits on the number of bottle shops that any one hotel can establish; and • restrictions on the size and configuration of bottle shops.	Review completed in 1999 and endorsed by Cabinet in February 2000. Review recommended retention of key restrictions and removal of some other restrictions.	*Liquor Amendment Act 2001* replaces the public needs test with a public interest test which will examine social, health, community and regional development impacts of licensing proposals. However, the licensing authority must still collect data on liquor outlets in the relevant locality although the Government stated that it did not intend to use the new public interest test to restrict competition. The Act also proposes to retain the hotel monopoly on the sale of packaged liquor to the public and restrictions on the ownership, location and configuration of bottle shops.	Council to assess progress in 2002.

(*continued*)

Table 21.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Liquor Licensing Act 1988* and Regulations	Contains a public needs test whereby licensing authorities can consider the capacity of existing facilities in determining the public need for a new licence.	Review hearings completed and submissions considered.		Council to assess progress in 2002.
South Australia	*Liquor Licensing Act 1997* (which retained certain restrictions from the earlier *Liquor Licensing Act 1985*)	Review recommendations accepted by Government include: • the proof-of-need test requiring licence applicants to demonstrate that a consumer need exists for the grant of a licence; and • the requirement that only hotels and retail liquor stores devoted to sale of liquor exclusively may sell liquor.	Review completed 1996 and changes implemented 1997. Government has undertaken to review the proof-of-need test in 2001.		Council to assess progress in 2002.
Tasmania	*Liquor and Accommodation Act 1990*	The '9 litre rule' prevents non-hotel sellers of packaged liquor selling liquor (except for Tasmanian wine) in quantities less than 9 litres in any one sale. Supermarkets cannot hold a liquor licence.	Review commenced in March 2001.		Council to assess progress in 2002.
ACT	*Liquor Act 1975* except sub-sections 41E(2) and 42E(4)	Does not appear to contain significant restrictions on competition.	Review underway.		Council to assess progress in 2002.
Northern Territory	*Liquor Act*	Legislation contains a public needs test whereby licensing authorities can consider the capacity of existing facilities in determining the public need for a new licence.	Review hearings completed and submissions considered.		Council to assess progress in 2002.

Petrol retailing

Western Australia, South Australia and the ACT have legislation that restricts competition in petrol retailing. Western Australia imposes a series of measures that restrict price competition among petrol retailers and South Australia restricts the entry of new sellers into petrol retailing if their entry would provide unfair and unreasonable competition for existing sellers. The ACT's *Fair Trading (Fuel Prices) Act 1993* allows the relevant Minister to regulate the prices of certain fuels if the market were acting in a collusive or anticompetitive manner. The Act has not been used.

The Commonwealth has established a national level inquiry into the feasibility of placing limitations on petrol and diesel retail petrol price fluctuations. The inquiry is being conducted by the Australian Competition and Consumer Commission, which will consult with industry members, consumer groups and State governments. The inquiry is expected to report late in 2001.

Review and reform activity

Table 21.4 summarises jurisdictions' progress in reviewing and reforming petrol retailing legislation.

Table 21.4: Review and reform of legislation regulating petrol retailing

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Petroleum Products Pricing Amendment Act 2000*	Allows Government regulation of fuel prices.	Review by Ministry of Fair Trading underway.		Council to assess progress in 2002.
	Petroleum Legislation Amendment Bill 2001	As above.	As above.		Council to assess progress in 2002
South Australia	*Petrol Products Regulation Act 1995*	The Minister may withhold new retail petroleum licences if they provide 'unfair and unreasonable competition' to sellers in the area immediately surrounding the proposed new outlet.	Review underway.		Council to assess progress in 2002.
ACT	*Fair Trading (Fuel Prices) Act 1993*	Allows the Government to impose price controls on fuels in certain cicumstances.	Intradepartmental review recommended retention of restrictions on public interest grounds. Review argued that provisions would be exercised only at times of widespread anticompetitive behaviour.	Restrictive provisions retained.	Meets CPA obligations (June 2001).
	Fair Trading (Petroleum Retail Marketing) Act 1995		Review completed.	Act repealed.	Meets CPA obligations (June 2001).

22 Education services

All jurisdictions have extensive legislation governing education. Competitive neutrality is also relevant to the education sector. Competitive neutrality principles are applicable to the business activities of government-owned education providers where they compete to earn revenue and profits with private sector providers. As public educational institutions increasingly seek to supplement government funding through commercial activity, issues of competitive neutrality are assuming increased significance.

Legislation review

Education legislation may be categorised as:

- 'general education' Acts that relate to the provision of public and private schooling at primary and secondary levels;
- Acts that establish a system of vocational education and training; and
- Acts that establish the universities of each jurisdiction.

Several jurisdictions have also legislated to regulate the provision of education to overseas students and to regulate specific issues such as the establishment of particular schools. Queensland, South Australia and Tasmania require the registration of teachers in both government and private schools and Victoria requires the licensing and registration of teachers in private schools.

Restrictions on competition

Education legislation predominantly restricts competition via requirements for the registration of private education/training providers and the accreditation of courses.[1] Non-government providers must meet requirements about the nature and content of the instruction offered, ensure students receive education of a satisfactory standard and provide protection for the

[1] In relation to higher education, accreditation has been defined as a process of assessment and review that enables a higher education course or institution to be recognised or certified as meeting appropriate standards (Department of Education, Training and Youth Affairs 2000, p. 4).

safety, health and welfare of students. Non-government providers may also be required to demonstrate their financial viability.

Regulating in the public interest

The principal argument supporting restrictions is that they ensure that education providers meet minimum standards. The achievement of prescribed education standards enables the community in general, and employers in particular, to attach more easily a consistent meaning to various education awards. Consumers of education are also provided with some degree of certainty about the nature of courses. The increasing importance of international student enrolments in Australian educational institutions provides a further argument for maintaining high quality standards.

The requirement that education providers demonstrate a measure of financial viability may be justified as a way of avoiding the significant disruption and potential monetary losses to students that would follow from the forced closure of an educational provider. The need for adequate health, safety, and welfare safeguards for students is self-evident. However, restrictions relating to registration, accreditation and financial viability create a barrier to entry. This barrier may reduce the range of available courses and subjects and allow existing service providers to operate inefficiently. In particular, a reduction in potential competition may reduce the incentive to existing providers to develop innovative courses and modes of delivery.

Review reports have stressed the need to maintain educational standards. Ideally, regulation that is in the public interest should not restrict the market entry of those sellers who clearly meet required educational, student welfare and financial standards. Tables 22.1—22.3 summarise State and Territory governments' progress in reviewing and reforming legislation regulating general education, vocational education and training and universities.

The Council will consider governments' progress with the review and reform of legislation governing the recognition of non-university higher education providers and the accreditation of university courses in 2002. The Council considers that the best outcomes will be achieved by working with the Ministerial Council on Education, Employment, Training and Youth Affairs and jurisdictions to ensure that legislation relevant to these aspects of higher education meets the CPA public benefit tests and complies with the protocols developed by the Ministerial council.

Teachers

When the NCP legislation review program commenced (1996), both Queensland and South Australia required all teachers in government and non-government schools to be registered. Victorian legislation required nongovernment teachers to be registered. It also required teachers with

interstate qualifications taking up a job in government schools to have their qualifications assessed and to undergo a 'good character' check. In 2000 Tasmania passed legislation requiring all government and non-government teachers to be registered (to commence during 2001).

Governments argue that regulation of teachers is generally beneficial in that it ensures teachers have minimum qualifications and a minimum level of competence, and that it prevents persons who are not of good character being employed by schools. Tasmania also argues that registration is important in raising the status of the teaching profession. Table 22.4 summarises jurisdictions' progress in reviewing and reforming legislation regulating teachers.

Table 22.1: Review and reform of legislation regulating general education

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Education Act 1990*	Sets conditions for the registration of non-government schools. Prescribes accreditation procedures for registered non-government schools wishing to present candidates for education certificates.	Not included on legislation review schedule.		Council to assess progress in 2002.
Victoria	*Education Act 1958*	Provides for the registration of non-government schools and endorsement of schools as suitable for overseas students.	Review completed in May 2000.	The Government rejected review recommendations that proposed (1) less restrictive criteria for the registration of non-government schools than those in the original legislation and (2) a differential fee structure for overseas students attending government schools.	Meets CPA obligations (June 2001).
Queensland	*Education Capital Assistance Act 1993*	Limits the provision of certain funding assistance to schools affiliated with two nominated Capital Assistance Authorities (CAA). Also includes limitations on the type of financial institutions that can receive deposits/investment of capital assistance funds.	A formal review was not undertaken.	The restriction related to affiliation was resolved through an amendment to legislation that requires schools to be listed (but not affiliated) with a group. The issue related to financial institutions subjected to further analysis and determined not to be restrictive.	Meets CPA obligations (June 2001).

(*continued*)

Table 22.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland (continued)	*Education (General Provisions) Act 1989* and Regulations		This review is focusing on the issues of the registration of overseas curriculum and the ability to prohibit the sale of certain items from State school tuckshops. Review of proposed new legislation relating to the establishment, registration and accountability of non-State schools will be completed as a separate exercise. The final public benefit test report is being developed.		Council to assess progress in 2002.
	Education (Overseas Students) Act 1996	Requires registration of providers of education to overseas students.	Review completed in January 2000. NCP justification provided for 1999 amendments.	Existing regulatory regime retained in the public interest, as decided at June 2000.	Meets CPA obligations (June 2001).
	Grammar Schools Act 1975	Regulates the establishment of new public grammar schools	Review has been re-opened (the original report was completed in September 1997) and is being done in accordance with revised public benefit test guidelines. The review is close to completion.		Council to assess progress in 2002.
Western Australia	*Education Service Providers (Full Fee Overseas Students) Registration Act 1992*	Requires registration of providers of education to overseas students.	Review underway.		Council to assess progress in 2002.

(*continued*)

Table 22.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Education Act 1972* and Regulations	Identifies barriers to market entry and restricts market conduct in areas of teachers and nongovernment schools.	Review completed in July 2000. The review found that restrictions on competition were justified in the public benefit.	Act retained without reform.	Meets CPA obligations (June 2001).
Tasmania	*Christ College Act 1926*	Provides a possible advantage not given to other schools.		Act is expected to be repealed.	Council to assess progress in 2002.
	Education Act 1994	Requires non-government schools to be registered.	Review completed in December 2000. The review found that restrictions on competition were justified in the public benefit.	Act retained without reform.	Meets CPA obligations (June 2001).
	Education Providers Registration (Overseas Students) Act 1991	Requires registration of providers of education to overseas students.	As above.	As above	As above.
	Hutchins School Act 1911	Provides a possible advantage not given to other schools.		Act is expected to be repealed.	Council to assess progress in 2002.
ACT	*Board of Senior Secondary Studies Act 1997*	Establishes accreditation procedures for courses.	Review completed 1999.	See below.	Council to assess progress in 2002.

(*continued*)

Table 22.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT (continued)	*Education Act 1937* *Schools Authority Act 1976* *Public Instruction Act 1880* *Free Education Act 1906*	Requires registration of schools.	Review completed.	The Government is proceeding with new school education legislation taking into account the findings and recommendations of the review.	Council to assess progress in 2002.
	Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994	Requires registration of providers of education to overseas students.	Review has commenced. Act mirrors and complies with Commonwealth legislation which has been reviewed recently.	A regulatory impact statement has been prepared in anticipation of the successful passage of Commonwealth legislation. ACT legislation will then be prepared to comply with the Commonwealth.	Council to assess progress in 2002.
Northern Territory	*Education Act*	Requires registration of non-government schools.	Not included on legislation review schedule.		Council to assess progress in 2002.

Table 22.2: Review and reform of legislation regulating vocational education and training

Jurisdiction	*Legislation*	*Major restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Vocational Education and Training Accreditation Act 1990*	Requires registration of training providers and accreditation of training courses.	Not included in legislation review schedule.		Council to assess progress in 2002.
Victoria	*Vocational Education and Training Act 1990*	As above.	Review completed in 1998.	Act retains restrictions relating to accreditation, registration of private providers and Ministerial setting of fees as being in the public interest.	Meets CPA obligations (June 2001).
Queensland	*Vocational Education, Training and Employment Act 1991*	As above.	Minor review was carried out in 1997 on the then proposed new Bills (a Vocational Education and Training Bill and an Institute Bill) to replace this Act. Further minor review undertaken of proposed new legislation, the Training and Employment Bill that replaced the above two Bills. This Bill was considered to impose less restrictions on providers than the 1991 Act that it replaces. It also delivers greater flexibility for employers, registered training bodies and trainees.	The Training and Employment Bill (which implemented a national scheme of training and is less restrictive than the previous Act) was assented to in June 2000.	Meets CPA obligations (June 2001).

(*continued*)

Table 22.2 continued

Jurisdiction	*Legislation*	*Major restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Vocational Education and Training Act 1996*	As above.	Review completed in 1999, concluding that the restrictions on competition are minimal and that public benefits arising from the restrictions outweigh the costs.	Act retained without reform.	Meets CPA obligations (June 2001).
South Australia	*Vocational Education, Employment and Training Act 1994*	As above.	Review completed in April 2000, concluding that public benefits of restrictions outweigh costs.	Act retained without reform	Meets CPA obligations (June 2001).
Tasmania	*Vocational Education and Training Act 1994*	As above.	Review completed. Review issued a draft regulatory impact study in July 2000. Supported restrictions except for provisions governing vocational placement agreements which it recommended replacing with an administrative arrangement. The Government is considering the review's recommendations.		Council to assess progress in 2002.
ACT	*Vocational Education and Training Act 1995*	As above.	Intra-departmental review concluded that public benefit of restrictions outweighs costs.	A regulatory impact statement has been prepared in anticipation of the successful passage of Commonwealth legislation. ACT legislation will then be prepared to comply with the Commonwealth.	Council to assess progress in 2002.

(*continued*)

Table 22.2 continued

Jurisdiction	*Legislation*	*Major restrictions*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory	*Northern Territory Employment and Training Authority Act*	As above.	Not included in legislation review schedule.		Council to assess progress in 2002.

Table 22.3: Review and reform of legislation regulating universities

Jurisdiction	*Legislation*	*Major restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Higher Education Act 1988*	Provides for the approval of courses of study as advanced education courses.	Not included in legislation review program.		Council to assess progress in 2002.
Victoria	*Tertiary Education Act 1993*	Requires courses to be accredited.	Review completed in 1998. Restrictions relating to accreditation retained in the public interest.		Council to assess progress in 2002.
Queensland	Various Acts establishing Universities in Queensland.		Separate and similar Acts modelled on the *James Cook University of North Queensland Act 1997* were passed under gatekeeping arrangements in 1997-98 for each Queensland university. The review is close to completion.		Council to assess progress in 2002.
	Higher Education (General Provisions) Act 1989	Establishes accreditation procedures for universities that wish to establish in Queensland.	Public benefit test plan has been expanded into a draft report in recognition of the accreditation provisions being nationally uniform. The review is close to completion.		Council to assess progress in 2002.

(*continued*)

Table 22.3 continued

Jurisdiction	*Legislation*	*Major restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*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*	Provisions governing the investment of funds varied between universities.	Review completed in 1998, concluding that most restrictions were minor and in the public interest and that investment provisions for Edith Cowan should be aligned with other universities.	Review recommendations endorsed by Government.	Council to assess progress in 2002.
	University Colleges Act 1926	Contains restrictions on access to university lands, controls on the use of land and provisions to transfer vested land to freehold land.	Review completed in 1998. Restrictions assessed as being in the public interest.	Act retained without reform.	Meets CPA obligations (June 2001).
Tasmania	*Universities Registration Act 1995*	Requires institutions wanting to operate as universities to be registered and enables conditions to be imposed on their conduct.	Minor review completed. Restrictions relating to the registration and accreditation of private universities to be retained in the public interest.		Council to assess progress in 2002.
ACT	*Canberra Institute of Technology Act 1987*	Provides an exemption from ACT taxes and charges. Cabinet decided that the ACT Revenue Office would review the institute's taxation liability in the second half of 1998.	Review completed in 1999. Act assessed as not restricting competition.		Meets CPA obligations (June 2001).
	University of Canberra Act 1989	Act assessed as not restricting competition.	Review not required.		Meets CPA obligations (June 2001).

Table 22.4: Review and reform of legislation regulating teachers

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria	*Education Act 1958* (parts 3 Registration of teachers in non-government schools, and 3A Standards Council of the Teaching Profession)	Licensing, registration, entry requirements (qualifications/teacher training, good character including not having been guilty of a sexual offence), the reservation of practice (all subjects except instrumental music, choral music, voice production and religion), disciplinary processes	Review completed May 2000. Review involved consultation with the Association of Independent Schools in Victoria and the Catholic Education Office. Review recommended retaining the existing system of teacher registration for teachers in non-government schools.	Government accepted the review recommendation.	Meets CPA obligations (June 2001).
Queensland	*Education (Teacher Registration) Act 1988* *Board of Teacher Registration By-laws 1989*	Licensing, registration (primary and secondary school teaching staff, including private schools), entry requirements (qualifications, experience, good character), reservation of practice, disciplinary processes	Department completed review in May 2000. Review recommended retaining existing legislation (including qualification requirements, registration fees and processes in the election of registered teachers to positions on the Board of Teacher Registration).	Government endorsed review recommendations in October 2000.	Meets CPA obligations (June 2001).
South Australia	*Education Act 1972*	Registration, entry requirements (qualification, experience, fit and proper person), reservation of practice, disciplinary processes	Review completed in 2000. Review involved public consultation. No reform recommended.	Government endorsed review recommendation of no reform to legislation.	Meets CPA obligations (June 2001).
Tasmania	*Teachers Registration Act 2000*	Licensing, registration, entry requirements (teacher training and one year's experience or sufficient education and experience in the opinion of the Board, and good character – Board to take into account any conviction and behaviour of the applicant or any other matter), reservation of practice (teaching in government and non-government schools), disciplinary processes	Not for review.	New legislation assessed under gatekeeper provisions. Regulatory impact statement has been prepared. The Act is expected to commence during 2001.	Meets CPA obligations (June 2001).

Competitive neutrality

All jurisdictions except Queensland apply competitive neutrality principles to the business activities of their TAFE institutions. Queensland has completed the public benefit test of a review to determine whether the full fee-for-service activities and competitive tendering processes within its TAFE system should be declared significant business activities for the purpose of applying competitive neutrality principles. It is expected that the review committee report will be considered by the Queensland Government shortly.

In 1999, the Council of Australian Governments (CoAG) Committee on Regulatory Reform examined whether a cross-jurisdictional approach would be appropriate for the application of competitive neutrality to the higher education sector. The Committee on Regulatory Reform considered that, given the majority of university business activities are local and regional in operation and impact on private sector businesses, there would be few occasions when issues would have a cross jurisdictional impact and that these could be dealt with on a case-by-case basis.

In 2000, the Committee on Regulatory Reform referred the matter of the application of competitive neutrality principles to universities' business activities to the Australian Vice Chancellors' Committee (AVCC). The AVCC advised the Committee on Regulatory Reform that universities have continued to work individually to ensure they comply with competitive neutrality principles. The AVCC further advised that this has been done by drawing on available material such as State-based guidelines.

For businesses not subject to Executive control (which include university businesses), CoAG has stated that assessment of a government's compliance with competitive neutrality requirements should have regard to a 'best endeavours' approach. Under this approach, the relevant government must, at a minimum, provide a transparent statement of competitive neutrality obligations to the entity concerned. Jurisdictions' annual reporting indicates that they are working with universities to assist their compliance with competitive neutrality principles in accordance with the CoAG suggested approach.

Competitive neutrality complaints concerning the business activities of education institutions have been made in two jurisdictions. In the period 1996-99, Victoria investigated seven complaints concerning the commercial activities of TAFE institutions and universities, upholding two. In 1999, South Australia upheld one of two complaints concerning the nonapplication of competitive neutrality to courses conducted by the Department of Education, Training and Employment. The complaints mechanisms' investigations of the complaints that were not upheld found either that the business that was the subject of the complaint was not required to apply competitive neutrality principles, or that competitive neutrality principles had been correctly applied.

23 Social regulation with implications for competition

There are frequently economic aspects to governments' management of social policies and the provision of related services. Legislation seeking to achieve particular social objectives sometimes restricts who can offer particular services, imposes pricing obligations or sets other conditions that affect the competitive environment. Competitive neutrality issues may also arise, given the involvement of government business activities in service delivery.

Decisions about appropriate policy objectives are matters for elected governments, in consultation with their constituents. However, the mechanisms for achieving policy objectives, along with their economic consequences, fall within the scope of the NCP. Thus, in assessing jurisdictions' progress in implementing the NCP, the National Competition Council looks at government regulation of social issues. For this NCP assessment, the Council identified potential restrictions on competition in legislation governing gambling services and child care services. The Council also identified potential competitive neutrality questions relating to child care. These are relevant mainly for local government, which is a significant provider of child care services.

Gambling

Gambling has been part of Australian life since European settlement. However, the recent growth in the industry is unprecedented. This growth has occurred at different rates across jurisdictions, with the greatest expansion occurring in the jurisdictions that allow most liberal access to modern gaming machines and casinos. Government revenues have grown significantly as a result of this expansion in gambling.

Gambling encompasses a wide range of activities, including:

- gaming machines and keno;
- casino games;
- TABs and other wagering and betting on horse racing, other racing and sporting events;

- lotteries;
- interactive gambling; and
- other forms of betting such as raffles and bingo.

Legislative restrictions on competition

Gambling activity has long been subject to government regulation. Many of these regulations are aimed at achieving governments' social objectives through, for example, seeking to ensure the probity and integrity of gambling products, minimising harm or protecting consumer rights. Achieving these objectives can sometimes involve restricting competition. Regulations that restrict competition include those governing:

- the operation of different types of venue, including the distribution of gaming machine licences;
- access to gaming machine licences (for example, quantity restrictions);
- ownership structures;
- the monitoring of gaming machines;
- the operation of casinos and lotteries, particularly exclusive licences;
- the conditions attached to the privatisation of TABs, particularly exclusive licences;
- betting and wagering, including restrictions on the types of event on which betting can be conducted, the treatment of on-course and off-course betting services, advertising and accessibility to interstate gambling services; and
- internet gambling.

Regulating in the public interest

In assessing legislation review and reform activity, the Council focused on the Competition Principles Agreement (CPA) clause 5 tests of whether restrictions provide a net community benefit and whether they are the only way of achieving a government's regulatory objectives.

Productivity Commission inquiry

In August 1998 the Federal Treasurer directed the Productivity Commission to undertake a review of the economic and social impacts of gambling. While

this was not an NCP review, the Productivity Commission used an NCP framework to examine the effects of the different regulatory structures that surround Australia's gambling industries. The inquiry report was released in November 1999 (PC 1999b).

The inquiry established a public interest case in support of certain restrictions aimed specifically at minimising harm, ensuring probity and protecting consumers. These restrictions include probity measures with appropriate risk management, requirements for operators to provide consumer information on the nature of the games and the likelihood of receiving large payouts, and codes of conduct. The inquiry found these measures provide a net community benefit and also meet the second CPA guiding principle — that is, that the restriction on competition is the only way in which to achieve the policy objective. The Council considers that such measures comply with the tests in the CPA clause 5.

The Productivity Commission also examined other measures aimed at harm minimisation, probity and consumer protection, including exclusive licences, requirements based on venue type and restrictions on supply or access. The Productivity Commission questioned whether these restrictions are justifiable and argued a general case for using other, more direct approaches. The Council considers that the NCP task for governments is to show that there is no less restrictive way than using these measures to achieve the objective of the legislation.

In addition, governments sometimes impose restrictions for reasons other than harm minimisation, probity or consumer protection. For these measures, NCP compliance requires governments to both demonstrate a net community benefit and establish that the measure is the least restrictive way in which to achieve the objective of the legislation. That is, reviews of gambling regulation need to consider pro-competitive alternatives. The Council has published a detailed analysis of its approach to considering review and reform of gambling legislation, taking account of the Productivity Commission findings (NCC 2000).

Council of Australian Governments' agreement on gambling

On 3 November 2000 the Council of Australian Governments (CoAG) discussed gambling as a matter of national interest, focusing on problem gambling. CoAG agreed that the Ministerial Council on Gambling would develop a national strategic framework — to be implemented by the State and Territory governments — aimed at prevention, early intervention and continuing support, building effective partnerships, and national research and evaluation.

CoAG identified a range of measures to begin the process, including specific measures to apply to gaming machine venues. These measures included displaying warnings about the risks of problem gambling, enabling patrons to

be aware of the time spent gambling and displaying information on the chances of winning a major prize. Because the Productivity Commission inquiry established the net public benefit case for these measures, the Council considers that government action to implement them is consistent with NCP obligations.

In its Select Committee Report on Gambling (ACT Select Committee 1999) the ACT noted the need for more research to determine profiles of problem gambling. The Council considers that such work would be useful in developing practical policy tools for addressing the negative social impacts of gambling. While the Productivity Commission inquiry provided policy-makers with broad direction on the relative harm from different types of gambling (for example, that lotto and lotteries are least harmful while wagering, gaming and casino table games are more harmful), the inquiry report provided little guidance about the relative effectiveness of particular measures. As part of the CoAG agreed approach, the Ministerial Council on Gambling will develop a national research and evaluation strategy on the social consequences of gambling. This information is likely to enable policy-makers to more accurately target harm-reducing measures.

Review and reform activity

Table 23.1 summarises governments' review and reform activity relating to the regulation of gambling.

Table 23.1: Review and reform of legislation regulating gambling

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Australian Jockey Club Act 1873* *Sydney Turf Club Act 1943*		Review completed.	Restrictions in the Jockey Club Act found to be in the public interest and retained. Review found the Turf Club Act does not restrict competition.	Council to assess progress in 2002.
	Liquor Act 1982 *Registered Clubs Act 1976*	Market conduct, operations	Joint review underway. Preliminary work completed.		Council to assess progress in 2002.
	Gaming and Betting Act 1912	Licensing, market conduct	Not for review.	Act repealed and made into three parts for separate review (*Unlawful Gambling Act 1998*, *Gambling (Two Up) Act 1998* and *Racing Administration Act 1998*).	Meets CPA obligations (June 2001).
	Unlawful Gambling Act 1998		Review completed. Act exempt from review.		Meets CPA obligations (June 2001).
	Gambling (Two Up) Act 1998	Market conduct, rules	Review completed.	No change.	Council to assess progress in 2002.
	Racing Administration Act 1998 *Greyhound Racing Authority Act 1985* *Harness Racing Act 1977* *Bookmakers Taxation Act 1917* *Thoroughbred Racing Board Act 1996*	Market conduct, operations, licensing	Review underway. Final report due in 2001.		Council to assess progress in 2002.

(*continued*)

Table 23.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales (continued)	*Lotteries and Art Unions Act 1901* *Charitable Fundraising Act 1991*	Conduct, operations	Review underway.		Council to assess progress in 2002.
	Lotto Act 1979 *NSW Lotteries Act 1990* *Soccer Football Pools Act 1975*		Review not required.	Acts repealed and replaced by the *NSW Lotteries Corporatisation Act 1996* and the *Public Lotteries Act 1996*.	Meets CPA obligations (June 2001).
	Totalizator Act 1916 *Totalizator (Off-Course Betting) Act 1964*	Market conduct, rules, establishment of TAB	Review not required.	Acts repealed and replaced by the *Totalizator Act 1997*.	Meets CPA obligations (June 2001).
	Totalizator Act 1997 (and amendments)	Licensing, exclusive licences	New legislation CPA clause 5(5) applies.		Council to assess progress in 2002.
	NSW Lotteries Corporatisation Act 1996 *Public Lotteries Act 1996*	Licensing, exclusive licences	New legislation CPA clause 5(5) applies.		Council to assess progress in 2002.
	Casino Control Act 1992	Exclusive licence, market conduct	Review completed.		Council to assess progress in 2002.
Victoria	*Tattersall Consultations Act 1958*	Legislated monopoly	Review completed.	Government introduced the *Public Lotteries Act 2000* which has repealed this Act. New Act allows for multiple suppliers.	Council to assess progress in 2002.

(*continued*)

Table 23.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria (continued)	*Gambling Legislation (Responsible Gambling) Act 2000* *Gambling Legislation (Miscellaneous Amendments) Act 2000*	Caps, regional caps, advertising restrictions, conduct.	Review completed. Gatekeeper provisions apply.	New legislation accepted. These Acts are amending Acts which introduced responsible gambling initiatives and key restrictions such as regional caps and advertising controls in all gambling-related legislation in Victoria.	Council to assess progress in 2002.
	Gaming No. 2 (Community Benefit) Act 2000	Operations, conduct	Revised *Gaming No 2 Act 1997*. Review completed. Gatekeeper provisions apply.	New legislation. Protects minors and reduces market power of bingo venues to enhance charitable and community organisations' fundraising abilities.	Meets CPA obligations (June 2001).
	Club Keno Act 1993	Rules, conduct	Review completed in 1997, but report not released. Review under consideration by Government.		Council to assess progress in 2002.

(*continued*)

Table 23.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria (continued)	*Gaming and Betting Act 1994* as it relates to betting *Racing Act 1958* *Lotteries Gaming and Betting Act 1966* *Casino Control Act 1991,* part 5A	Licensing, legislated monopoly, market conduct, operations, funding for the racing industry	Review completed. Recommended expansion of sports betting. Found public benefit argument for retaining monopoly and funding arrangements.	Government response released in August 2000. Government supported recommendations on other codes of racing and proprietary racing, minimum phone bets, incorporation and partnerships, 24-hour internet race betting and tipping services. It rejected proposals on expanded sports betting other than issuing an additional football tipping competition licence. It noted review of interstate advertising restrictions were best promoted at the national level and undertook to promote deregulation at national level. *Racing and Betting Acts (Amendment) Act 2001* enacted in May 2001. The Act deregulates mixed sports gatherings including removing the prohibition on personnel licensed by the Victorian Racing Club and Harness Racing Victoria from competing at these meetings and deregulates betting information services I accordance with the NCP review.	Council to assess progress in 2002.
	Interactive Gaming (Player Protection) Act 1999	Conduct, operations, licensing	Review completed. Gatekeeper provisions apply.	New legislation accepted. Provides for the protection of consumers by regulating the provision of interactive gaming services.	Meets CPA obligations (June 2001)
	Gaming Machine Control Act 1991	Licensing, ownership, numbers of machines	Review completed and under consideration by government.	Review and Government response released 18 July 2001.	Council to assess progress in 2002.

(*continued*)

Table 23.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria (continued)	*Casino (Management Agreement) Act 1993* *Casino Control Act 1991*	Exclusive licence, conduct, operations	NCP review did not proceed as preliminary investigations indicated compensation required to remove exclusive licence outweighs any benefits to be gained from removal.		Council to assess progress in 2002.
Queensland	*Jupiters Casino Agreement Act 1983* *Breakwater Island Casino Agreement Act 1984* *Brisbane Casino Agreement Act 1992* *Cairns Casino Agreement Act 1993*	Exclusive licences, conduct, operations	Review completed.	Provisions retained.	Council to assess progress in 2002.
	Lotteries Act 1994	Exclusive licence	Review completed.	Statutory monopoly of Golden Casket Corporation replaced with limited-duration exclusive licence. Act repealed and replaced with *Lotteries Act 1997*, which is to be reviewed as part of the omnibus review of gambling in Queensland.	Meets CPA obligations (June 2001).
	Art Unions and Public Amusements Act 1992			Repealed and replaced with the *Charitable and Non-profit Gaming Act 1999*.	Meets CPA obligations (June 2001).

(*continued*)

Table 23.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland (continued)	*Racing and Betting Act 1980* and associated rules and regulations (as they relate to the Queensland TAB)	Exclusive licence, market conduct, operations		Repealed and replaced by the new *Wagering Act 1998*, which is to be reviewed as part of the omnibus review of gambling in Queensland.	Meets CPA obligations (June 2001),
	Racing and Betting Act 1980 and associated rules and regulations (as they relate to bookmakers and the Queensland racing industry)	Licensing, market conduct, operations	Review completed. Government endorsed review recommendations in November 2000.	Racing Bill 2001 developed to enact recommendations, including removing the majority of non-probity based restrictions on bookmakers, particularly those relating to minimum phone betting, betting type and recording of betting.	Council to assess progress in 2002.
	Keno Act 1996 *Casino Control Act 1982* *Gaming Machine Act 1991* *Wagering Act 1998* *Interactive Gambling (Player Protection) Act 1998* *Charitable and Non-profit Gambling Act 1999* *Gaming Legislation Amendment Bill* *Lotteries Act 1997*	Exclusive licences, other licences, market conduct, operations, rules	Omnibus public benefit test review underway.		Council to assess progress in 2002.

(*continued*)

Table 23.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	Instant lottery and lotto rules *Lotteries Commission Act 1990*	Market conduct, operations, licensing	Review completed.	Restrictions retained.	Council to assess progress in 2002.
	Betting Control Act 1954 *Totalisator Agency Board Betting Act 1960*	Market conduct, operations, licensing	Review completed.	Action announced. Previous Government endorsed the review recommendations.	Council to assess progress in 2002.
	Racing Restrictions Act 1917	Licensing	Review completed.	Action announced. Previous Government endorsed the review recommendations.	Council to assess progress in 2002.
	Racing Restrictions Act 1927	Conduct	Review completed.	Action announced. Previous Government endorsed the review recommendation to repeal the Act.	Council to assess progress in 2002.
	Casino (Burswood Island) Agreement Act 1985 Casino Control (Burswood Island)(Licensing of Employees) Regulations 1985 *Casino Control Act 1984*	Licensing, market conduct, exclusivity, operations	Review completed.	Action announced. Previous Government endorsed the review recommendations.	Council to assess progress in 2002.
	Gaming Commission Act 1987	Licensing, market conduct, operations	Review completed.	Action announced. Previous Government endorsed the review recommendations.	Council to assess progress in 2002.

(*continued*)

Table 23.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)	*Western Australian Greyhound Racing Association Act 1981*	Registration, conduct	Review completed.	Action announced. Previous Government endorsed the review recommendations.	Council to assess progress in 2002.
South Australia	*Casino Act 1997* *Lottery and Gaming Act 1936* *State Lotteries Act 1966* *Gaming Machines Act 1992* *Gaming Supervisory Authority Act 1995* *Authorised Betting Operations Act 2000* *TAB Disposal Act 2000*	Exclusive licences, operations, barrier to entry, licensing, market conduct	Omnibus review underway. All gambling legislation(except the *Racing Act 1976)*, including Bills before the Parliament, to be reviewed.		Council to assess progress in 2002.
	Racing Act 1976	Barrier to entry, market conduct	Review completed.	Act to be repealed.	Council to assess progress in 2002.
Tasmania	*Tasmanian Harness Racing Board Act 1976*	Registration, conduct	Review completed.	Act repealed and replaced by the *Racing Amendment Act 1997*.	Meets CPA obligations (June 2001).
	Casino Company Control Act 1973	Ownership	Minor review completed.	Act repealed.	Meets CPA obligations (June 2001).
	Racing and Gaming Act 1952 (as it relates to minor gaming)	Licensing, conduct, operations	Minor review completed.	Gaming components of this Act to be transferred to the *Gaming Control Act 1993* and assessed under gatekeeper requirement.	Council to assess progress in 2002.

(*continued*)

Table 23.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania (continued)	*Racing Act 1983* *Racing and Gaming Act 1952* (except as it relates to minor gaming)	Licensing, conduct, operations	Review completed.	New racing legislation being drafted following the restructure of the racing industry in 2000. The new legislation will assessed under the gatekeeper provisions.	Council to assess progress in 2002.
	Gaming Control Act 1993	Exclusive rights, conduct and operations	Review completed.	Government considering the recommendations. Recent amendments to the Act removed Tattersalls exclusive lottery licence in Tasmania from 2002.	Council to assess progress in 2002.
	TT-Line Gaming Act 1993	Licensing, market conduct, operations	Review completed.	Government considering the recommendations.	Council to assess progress in 2002.
	Racing Amendment Act 1997		Legislation assessed under gatekeeper provisions (clause 5(5)) and found to not restrict competition.		Council to assess progress in 2002.

(*continued*)

Table 23.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT	*Betting (ACTTAB Limited) Act 1964* *Betting (Corporatisation) (Consequential Provisions) Act 1996* *Bookmakers Act 1985*		Review completed.	Government is in the process of implementing a number of reforms: removing the requirement for racing club approval prior to granting bookmakers' licences; removing racing club-specific restrictions on bookmakers' licences; allowing an independent authority (the ACT Gambling and Racing Commission) to assess licence applications; removing limitations on phone betting limits; removing the requirement for sports bookmakers licence-holders (or agents licence-holders) to first obtain a standing bookmaker's licence; removing the limit on the number of sports betting licences granted; allowing flexibility in the locations where betting offices can operate; and relating the size of the betting security guarantee to the amount of risk.	Council to assess progress in 2002.

(*continued*)

Table 23.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT (continued)	*Casino Control Act 1988* *Games Wagers and Betting-houses Act 1901 (NSW)* *Gaming and Betting Act 1906 (NSW)* *Gaming Machine Act 1987* *Lotteries Act 1964* *Pool Betting Act 1964* *Unlawful Games Act 1984*		Review completed. Further examination of social and economic impacts of gambling undertaken by a Select Committee of the Legislative Assembly. Select Committee did not consider all the recommendations of the original review.	The Government not to extend the life of the casino licence beyond the current period. Gaming machines not allowed in Casino. In principle support for removal of restrictions on types of gaming machines permitted in hotels.	Council to assess progress in 2002.
	Racecourses Act 1935 *Racing Act 1999*	Approvals, conduct, licensing	Review completed.	*Racecourses Act 1935* was repealed and in part replaced by the *Racing Act 1999*. Legislation assessed under gatekeeper provisions (Clause 5(5)).	Council to assess progress in 2002.
Northern Territory	*Gaming Control Act* and regulations	Licensing, operations, conduct	Review underway.		Council to assess progress in 2002.
	Gaming Machine Act and regulations	Licensing, operations, conduct	Review underway.		Council to assess progress in 2002.
	Racing and Betting Act and regulations	Licensing and registration	Review underway.		Council to assess progress in 2002.
	Totalisator Administration and Betting Act	Exclusive licence	Review not required.	Act repealed and replaced with the *Totalisator Licensing and Regulation Ac* and the *Sale of NT TAB Act*.	Meets CPA obligations (June 2001).

(*continued*)

Table 23.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory (continued)	*Totalisator Licensing and Regulation Act* *Sale of NT TAB Act*		Review completed and under consideration by the Government.		Council to assess progress in 2002.

Child care

Child care generally refers to arrangements made for the care of children (usually under 12 years of age) by people other than their parents. It can be formal child care — such as pre-school, a child care centre, family day care and before and after school care — or informal care, which is care that is non-regulated and includes care by family members, friends and paid baby-sitters. According to the Australian Bureau of Statistics, 51 per cent of children under 12 years of age used some kind of child care in 1999 (ABS 2000a).

Competition policy issues arise in the regulation of formal child care, usually by way of licensing requirements that are linked to funding arrangements. In addition, as local governments often provide formal child care services competitive neutrality issues may arise.

Regulating in the public interest

Legislation to regulate child care services exists in all jurisdictions. Regulation usually involves a requirement to be a licence-holder to operate a child care business. Other requirements relate to matters such as health and safety considerations and the meeting of staff/child ratios. Restrictions aimed at ensuring the health and development of the children in care are likely to provide a net public benefit. However, NCP also requires jurisdictions to review whether the restrictions are the only way of achieving the legislation's objectives and whether they are overly prescriptive.

Competitive neutrality

When there are significant government-owned providers of child care services (usually local government), these business activities should be exposed to the application of competitive neutrality principles where appropriate. In all jurisdictions except Queensland, the application of competitive neutrality principles requires government-owned child care businesses to set prices that reflect the full cost of production. This means ensuring that pricing is based on costs incurred in providing the service, as well as appropriate adjustments to remove any advantage of public ownership.

Queensland's competitive neutrality policy means that government businesses that provide child care services are not generally of a size that will ensure the automatic application of competitive neutrality principles (that is, income in excess of $5 million per year). Queensland encourages smaller government businesses to apply a voluntary code of conduct, based on competitive neutrality principles. The code includes a complaints mechanism and guidance on matters such as accountability and pricing.

Some Queensland local governments choose to apply the voluntary code. However, other local government providers of child care services have chosen not to apply the code so child care provision in these local government areas is not subject to competitive neutrality principles.

Under the new competitive neutrality policy in Victoria, government businesses can apply a public interest test if the activities of the business have broader social, environmental and public policy objectives which may be compromised by the implementation of competitive neutrality measures. Victoria stated that one of the characteristics of child care is that there are inherent social policy issues at stake. It may therefore be the case that public interest test is necessary before competitive neutrality pricing is applied. The public interest test requires child care providers to explore a range of options, including competitive neutrality pricing. To ascertain which option provides the greatest community benefit, the process requires clarifying the public policy objectives, scoping the market, consulting with relevant stakeholders (including competitors) and identifying the costs and benefits of different approaches.

A competitive neutrality matter has been raised in the ACT. The complaint was against the government provision of long stay child care services. The assessment of the complaint was that the Government does not provide child care services, but that it does provide access to facilities to third party operators at below market rates. Evidence indicated that the private service providers price at or below community based providers.

Review and reform activity

Table 23.2 summarises governments' review and reform activity relating to the regulation of child care.

Table 23.2: Review and reform of legislation regulating child care

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*A New Tax System (Child Care Services)Act 1999* *A New Tax System (Family Assistance Administration) Act 1999*				Council to assess progress in 2002.
New South Wales	*Child Care and Protection Act 1987* *Children and Young Persons (Care and Protection) Act 1998*	Licensing	Provisions arising from the Child Care and Protection Act to be transferred to the Children and Young Persons (Care and Protections) Act. New provisions to be subject to gatekeeper provisions (CPA clause 5(5)).		Council to assess progress in 2002.
Victoria	*Children's Services Act 1996*	Licensing, operating requirements, standards setting	Reviewed as part of the gatekeeper process (CPA clause 5(5)) when introduced.	Amendments to include family day care and outside school hours care, to be introduced in spring 2001, will also be subject to NCP review.	Council to assess progress in 2002.
Queensland	*Child Care Act 1991* Child Care (Child Care Centres) Regulation 1991 Child Care (Family Day Care) Regulation 1991	Licensing, operating requirements, standards setting	Draft NCP review report under consideration by Government in February 1999. Department advised at that time that the incoming Minister responsible for the legislation had established a forum to examine all aspects of child care legislation in consultation with a wide cross section of stakeholders. NCP requirements are to be addressed as part of the forum's deliberations. Major themes considered include the level of prescription of the current legislation and possible tiering of regulatory requirements. The Treasurer approved review framework and terms of reference in November 2000. The review will be finalised during 2001.	Cabinet and parliamentary processes for new legislation expected to be completed by mid-2002.	Council to assess progress in 2002.

(*continued*)

Table 23.2 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Community Services Act 1972* and the Community Services (Child Care) Regulations 1988	Licensing, standards, operating procedures	A Bill to replace this and other acts is being developed and will be reviewed once finalised.		Council to assess progress in 2002.
South Australia	*Children's Services Act 1985* *Children's Protection Act 1993*	Licensing, standards. Operating procedures	Review completed.	No change.	Council to assess progress in 2002.
Tasmania	*Child Welfare Act 1960*		The Children, Young Persons and Their Families Bill passed by Parliament in 1997 but not yet proclaimed. The Bill deals with assistance and intervention in relation to children at risk of abuse or neglect which were previously contained in the Child Welfare Act. The Department of Education now administers the existing child care provisions of the Child Welfare Act.	A number of anti-competitive elements identified in the gatekeeper process. RIS available for comment.	Council to assess progress in 2002.
ACT	*Children's Services Act 1986*	Licensing, standards setting	Review completed. Full public consultation.	Act assessed as not restricting competition. The Legislative Assembly passed the replacement Act, the *Children and Young People Act 1999* on 21 October 1999.	Meets CPA obligations (June 2001).
Northern Territory	*Community Welfare Act*	Licensing, standards setting	Targeted review completed awaiting Government's response. Review recommended: standards for child care be expressed in terms of outcomes to be achieved rather than as prescribed practices; conditions for granting a child care centre licence be clarified; and consideration be given to including all purchased child care within the scope of the legislation.		Council to assess progress in 2002.

24 Planning, construction and development services

Planning, planning approvals, and building and construction regulations and approvals can have a significant impact on building costs. Occupational licensing of building service providers has a number of benefits, but can also have an impact on building costs. Legislation in all of these areas can have anticompetitive effects. This chapter discusses planning and approval, building regulations and approval and building service providers (architects, engineers, surveyors, valuers and building and related trades).

Planning and approval

Planning legislation establishes planning schemes for regulating land use. The schemes typically divide land into zones and set out the uses and developments that do not require a planning permit, those that are allowed subject to permit approval with or without conditions, and those that are prohibited. The legislation generally requires planning approval before development or building commences, which is given at either local or State/Territory level. Approval involves considering various aspects of the specific proposal (including specific site characteristics, the proposed use, the impact on surrounding occupiers, traffic and design issues) in the context of the general zoning of the land and the applicable planning instruments, with a view to protecting community amenity.

Legislative restrictions on competition

Jurisdictions differ in the competition restrictions in their planning legislation. Planning legislation has the potential to restrict the entry of new competitors into a market. This may result from the content of the planning schemes — for example, where schemes contain restrictions that limit or prevent commercial development in an area. All jurisdictions' planning schemes contain this type of restriction.

Competition may also be inhibited by (avoidable) delays in obtaining planning approvals. Such delays may be a result of the regulatory system. The University of Tasmania estimated that delays in development approval may add 5–10 per cent to the cost of development projects and that around one third of these delays may be attributable to regulatory delays. The study estimated that eliminating regulatory delays would save $350–450 million

annually (Department of Immigration, Local Government and Ethnic Affairs 1989, p. 22, quoted in Industry Commission 1995). Also, the planning process can restrict competition by allowing existing businesses to stop or at least delay the entry of new competitors to the market by objecting to the proposal because they are concerned about commercial competition.

Most jurisdictions' legislation has traditionally restricted competition by reserving planning approval to government. More recently, New South Wales and Queensland opened up parts of planning approval to private certifiers. In New South Wales, accredited private certifiers are able to issue development certificates for development that requires consent but can be certified as meeting predetermined development standards (referred to as 'complying development'). An accreditation body accredits private certifiers, who must have relevant qualifications or experience and compulsory insurance. In Queensland, assessable development may require code and/or impact assessment. Private certifiers are able to conduct code assessments and to inspect and certify certain works. They require relevant qualifications, necessary experience or accreditation and compulsory insurance.

Regulating in the public interest

Planning legislation regulates the use and development of land to achieve broad social, economic and environmental objectives. Regulating development can maximise positive externalities (such as conserving historical buildings and applying urban design principles) and minimise negative externalities (such as avoiding effects on public health and safety by preventing housing that is too close to hazardous industry). Planning legislation can also increase the provision of desirable public goods, such as open spaces and protected floodways.

Developing planning schemes involves governments balancing a number of objectives. Under NCP, governments are broadly responsible for balancing these objectives in developing appropriate planning schemes that are in the public interest. In its role of assessing compliance with NCP legislation review and reform obligations, the National Competition Council looks for appropriate regulatory outcomes. In particular, the Council looked at whether planning processes provided opportunities for existing businesses to inappropriately stop or at least delay participation by new competitors. Governments can prevent this, including by limiting the time available for appealing decisions and ensuring that appeal opportunities are open to only those with a legitimate and substantive interest in the potential development in question. Good regulation principles suggest planning schemes should also be developed with community involvement and be transparent and accessible.

Planning schemes may unnecessarily add to business costs by involving unwarranted delays. The Council considers that planning approval processes should aim to minimise these delays. The Council's assessment also looked for jurisdictions to have considered and, where appropriate, provided for competition between government and private providers in planning approval

processes. It may be inappropriate for private certifiers to be involved in all planning assessments, but a general model would involve differentiating development proposals by the level of assessment required and who undertakes that assessment. In this context, a general planning model may differentiate between:

- development that does not require approval;
- development that can be certified as meeting predetermined development standards (and can be undertaken by private certifiers); and
- development that requires full assessment (and should be undertaken by government).

Private certification generally involves a registration scheme, entry requirements and compulsory insurance. The Council accepts that these requirements are generally in the public interest but, as with other occupations with entry restrictions, looked for jurisdictions to have implemented the minimum entry restrictions necessary to achieve the objectives of the legislation. Other strategies for achieving effective planning approval legislation include simplifying the approval process and reducing duplication with other approval processes. Statutory time limits are one way to reduce unnecessary delays.

The Council used these broad principles to assess jurisdictions' review and reform activity against Competition Principles Agreement (CPA) obligations. Where restrictions in legislation generally reflect these broad principles, the Council assessed the jurisdiction as having met its CPA obligations. Where legislation contains restrictions on competition in addition to those consistent with the above principles of effective regulation, the Council assessed the NCP compliance on the basis of the relevant government's public benefit arguments for the additional restrictions.

Review and reform activity

Table 24.1 lists each jurisdiction's review and reform of planning and approval legislation, as reported in the most recent NCP annual reports.

Table 24.1: Review and reform activity of legislation regulating planning and approval

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Environmental Planning and Assessment Act 1979*	Controls land use. Sets procedures for the issue of planning permits and approval.	Legislation is being reviewed in stages. Review of part IV of the Act (integrated development assessment) completed. Review of plan making underway, with White Paper released in February 2001.	Amended in 1997 and 1999 to streamline its approval system and allow accredited certifiers to compete with councils for part of planning approval.	Council to assess progress in 2002.
Victoria	*Planning and Environment Act 1987*	Controls land use. Sets procedures for the issue of planning permits and approval.	Review completed. Recommendations aimed at improving the manner in which the Act is administered to enhance planning effectiveness and efficiency.	The Government is considering the review recommendations.	Council to assess progress in 2002.
Queensland	*Integrated Planning Act 1997* (replaces *Local Government (Planning and Environment) Act 1990*)	Controls land use. Sets procedures for the issue of planning permits and approval.	Review completed in October 1997. Review found the Integrated Planning Act to be far less prescriptive than the Act it replaced and merely sets up a planning framework. Review reported that the Act does not restrict competition.		Council to assess progress in 2002.
Western Australia	*Town Planning and Development Act 1928* *Western Australian Planning Commission Act 1985* *Metropolitan Region Town Planning Scheme Act 1959*	Controls land use via town planning schemes and for regional areas.	Legislation consolidated into the Urban and Regional Planning Bill 2000. A review of the Bill has been drafted for consideration by the Minister for Planning.		Council to assess progress in 2002.

(*continued*)

Table 24.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Development Act 1993* and Development Regulations 1993	Controls land use. Sets procedures for the issue of planning permits and approval.	Review completed in July 1999. Recommendations included: requiring Crown developments to be subject to building rules and fire safety requirements consistent with those for private buildings; allowing private certification of private development; and removing the obligation for planning authorities to obtain independent advice for noncomplying developments.	Implementation of reform is scheduled for 2001.	Council to assess progress in 2002.
Tasmania	*Land Use Planning and Approvals Act 1993*	Controls land use. Sets procedures for the issue of planning permits and approval.	Review completed.	Government is preparing legislation to implement the recommendations of the review.	Council to assess progress in 2002.
ACT	*Land (Planning and Environment) Act 1991* — parts V and VI (grants of land and development approval processes)	Controls concessional grants of land and development approval processes	Review issued its final report in May 2000. Recommendations include improving transparency in the provision of direct grants and considering to introducing a notification scheme for developments that are relatively minor and unlikely to be opposed by the government agency or to require conditions.	Government issued a formal response to the review, agreeing in principle to most recommendations.	Council to assess progress in 2002.
Northern Territory	*Planning Act* (1999 Act replaced 1993 Act)	Controls land use. Sets procedures for the issue of planning permits and approval.	Review of 1999 Act completed in September 2000. Review concluded that the anticompetitive provisions deliver a net benefit to the community and recommended no amendments to the Act.	Government endorsed outcome of review.	Council to assess progress in 2002.

Building regulations and approval

State and Territory building regulations cover a wide range of technical provisions governing the way in which builders and developers operate. The regulations are aimed at ensuring that buildings meet certain health, safety and amenity objectives. Each State and Territory has enacted building legislation, with associated regulations containing the administrative provisions to give effect to the legislation.

Building approvals involve inspection and approval at specific stages of the construction process in accordance with the relevant State or Territory building legislation. Building certifiers generally undertake the inspection and approval. They may be building surveyors employed by government authorities, privately employed building surveyors, engineers or architects (ABCB 1999).

Across governments there has been a high level of coordination in this area. The Australian Building Codes Board and its predecessor, the Australian Uniform Building Regulations Co-ordinating Council, developed a model Building Act and the Building Code of Australia (BCA). Consequently, there is a high degree of commonality in the legislation to be assessed.

The Australian Building Codes Board sets national standards (such as the BCA), so it has national standards-setting obligations under the CPA (see chapter 26). These obligations require standards-setting bodies to show that an appropriate regulatory impact statement has been conducted for the national standards it sets.

Legislative restrictions on competition

Building regulations may restrict competition by specifying a standard of product that suits a particular raw material, production method, or production plant (ABCB 1997). Imposing a particular standard can increase costs and reduce the scope for innovation. More broadly, building regulations affect business costs. The former Industry Commission estimated in 1995 that reform of government building regulations could lead to an annual saving of around $350 million, equivalent to some 1.5 per cent of total building activity (then valued at around $25 billion) each year (Industry Commission 1995, p. 134). This estimate was based on lowering stringent standards without reducing safety or amenity.

A significant change since the Industry Commission's 1995 report is that all jurisdictions' legislation now provides for (but does not necessarily mandate) the incorporation of the BCA. The BCA contains technical provisions for the design and construction of buildings and other structures, covering matters

such as structure, fire resistance, access, fire-fighting equipment, mechanical ventilation, lift installations and certain aspects of health and safety.

A new performance-based BCA was released in 1996. The code was designed to achieve cost savings in building and construction by allowing flexibility and innovation in the use of materials, forms of construction and design.

Building regulations continue to vary across jurisdictions for a number of reasons.

- Although the BCA is the main incorporated document in the State and Territory building regulations, there may be other documents such as planning codes.
- Jurisdictions have the opportunity to introduce some regional variations to take account of climate and the building environment.
- Local governments may also make laws that have the same power as a building regulation but apply only within the local government area.

Building approvals also affect business costs. The University of Tasmania estimated that reducing delays in building approvals could save $300–400 million annually (Department of Immigration, Local Government and Ethnic Affairs 1989, p. 21–2, quoted in Industry Commission 1995). Introducing competition in building approvals pre-dates the NCP. One of the recommendations of the Building Regulation Review Taskforce (1991, quoted in Department of Infrastructure, Energy and Resources 1999) was that State and Territory governments make legislative and administrative provisions for private certification. As well, the model building Act developed by the Australian Uniform Building Regulations Co-ordinating Council, includes provisions for removing the local government monopoly in the technical assessment and administration of building regulations (AUBRCC 1991).

Private certification was introduced first by Victoria in 1994 and more recently by other States and Territories. Suitably qualified and appropriately insured private certifiers are now able to provide building approvals in all jurisdictions except Tasmania and Western Australia. Tasmania passed new building legislation in 2000, which includes provisions for private certification. This legislation has not yet commenced. Private certification has led to the establishment of competitive markets for these services, with the private sector now accounting for a large proportion of total inspection/approval activity.

Regulating in the public interest

Building regulations have benefits in terms of public health, safety and amenity. The Industry Commission found that most aspects of building regulations meet the public interest test, although some regulations and the way in which they are applied are unnecessarily stringent, reduce the

competitiveness of the industry and serve no safety or other public interest objective (Industry Commission 1995, p. 134).

The new performance-based building code, introduced in 1996, appears to have reduced building sector costs compared with those under the previous code. One recent review, while noting that it is difficult to quantify the benefits from the new code, estimated savings of 0.5–3 per cent of capital costs through adoption of the performance-based code (ABCB 2000). This review supported simplifying State-based exceptions in the performance-based BCA and ultimately replacing State-based Acts and regulations with a truly national system.

The Council believes that many aspects of building regulations and approvals are, in principle, justified in the public interest. In assessing NCP compliance, the Council looks for jurisdictions to adopt the performance-based BCA and minimise variations from that code. While the code has been developed to permit State-based variations, excessive regulation can increase costs. Where significant State-based variations exist, the Council looks for jurisdictions to have provided a public benefit case for these variations.

Building approval processes should aim to minimise unwarranted delays. The Council's assessment looks for jurisdictions to have considered introducing competition in the building approval and certification processes, given the likely public benefits of reducing approvals times.

Private building certification typically involves a registration scheme, entry requirements and compulsory insurance. The Council accepts that these requirements are generally in the public interest but, as with other occupations with entry restrictions, looks for jurisdictions to have implemented the minimum necessary entry restrictions to achieve the objectives of the legislation.

The Council used these broad principles to assess jurisdictions' review and reform activity against CPA obligations (table 24.2). Where restrictions in legislation reflect this broad framework, the Council assessed the jurisdiction as meeting its CPA obligations in relation to building. Where legislation contains restrictions on competition in addition to those consistent with the above principles of effective regulation, the Council assessed the NCP compliance on the basis of the relevant government's public benefit arguments.

Review and reform activity

Table 24.1 lists each jurisdiction's review and reform of its building regulations and approval legislation.

Table 24.2: Review and reform activity of legislation regulating building regulations and approval

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Environmental Planning and Assessment Act 1979* *Local Government Act 1993*	Sets building regulations and specifies building approval procedures and accreditation of building certifiers.	Review of assessment procedures in both Acts completed.	Amended in 1997 and 1999 to simplify development procedures and allow for certification of development by accredited certifiers. Adopts 1996 BCA.	Meets CPA obligations (June 2001).
Victoria	*Building Act 1993*	Sets building regulations and specifies building approval procedures and accreditation of building surveyors.	Review completed in 1998. Review focused on occupational regulation aspects of building practitioners, including building surveyors.	Government considering review report.	Building regulations — meets CPA obligations (June 2001). Building approvals — Council to assess progress in 2002.
Queensland	*Building Act 1975* and Standard Building Law and Building Regulation 1991	Sets building regulations and specifies building approval procedures and accreditation of building certifiers.	Department review underway. Department is preparing draft framework for scoping and conducting the review. Review to be finalised during 2001.		Council to assess progress in 2002.
Western Australia	*Local Government (Miscellaneous Provisions) Act 1960* and Building Regulations 1989	Sets building regulations and specifies building approval procedures.	Not for review. The Government is currently developing a Bill to replace the Act. Bill to be examined under gatekeeper provisions.		Council to assess progress in 2002.

(*continued*)

Table 24.2 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Development Act 1993* and Development Regulations 1993	Sets building regulations and specifies building approval procedures and accreditation of building certifiers.	Review completed in July 1999. Recommendations included: requiring Crown developments to be subject to building rules and fire safety requirements consistent with those for private buildings; allowing private certification of private development; and removing the obligation for planning authorities to obtain independent advice for noncomplying developments.	Implementation of reform is scheduled for 2001.	Council to assess progress in 2002.
Tasmania	*Local Government (Building and Miscellaneous Provisions) Act 1993* (Part III subdivisions)			Legislation replaced by the *Building Act 2000* assessed under the gatekeeper requirements.	Meets CPA obligations (June 2001).
	Local Government (Building and Miscellaneous Provisions) Act 1993 (health issues)			Relevant provisions transferred to the *Public Heath Act 1997,* assessed under regulatory gatekeeping arrangements.	Meets CPA obligations (June 2001).
	Local Government (Building and Miscellaneous Provisions) Act 1993 (except health issues & pt III)	Sets building regulations and specifies building approval procedures.		The building provisions have been replaced by the *Building Act 2000* assessed under the gatekeeper requirements.	Meets CPA obligations (June 2001).
	Building Act 2000	Sets building regulations and specifies building approval procedures and accreditation of building certifiers.	New legislation. Regulatory impact statement on Building Bill 1999 released in August 1999. Act received Royal Assent on 20 December 2000. The Act is expected to commence in 2001.		Meets CPA obligations for building regulations and approval (June 2001).

(*continued*)

Table 24.2 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT	*Building Act 1972*	Sets building regulations and specifies building approval procedures. Also sets building practitioners licensing.	Targeted public review completed in August 2000. Review focused on regulation of building occupations and did not review building regulations. Public benefits for building regulations are amenity, safety and health of people who use buildings and community expectations.		Building regulations — meets CPA obligations (June 2001).
	Construction Practitioners Registration Act 1998	Registration, entry requirements, disciplinary processes, business conduct (professional indemnity insurance with approved insurer, no conflict of interest)	New legislation to introduce private certification of building work. Review completed in November 2000.		Building approvals — Council to assess progress in 2002.
Northern Territory	*Building Act*	Sets building regulations and specifies building approval procedures. Also building practitioners licensing.	A review was undertaken in 1999, the results of which will be incorporated into a general review of the Act, which is underway.		Council to assess progress in 2002.

Service providers

The construction and planning industry is serviced by a number of professions, occupations and trades. Architects, engineers, surveyors, builders and valuers are just some of the elements of the building industry workforce. Key restrictions to be considered in NCP reviews of these vocations include licensing requirements, entry requirements (rules or standards governing who may provide services), the reservation of practice (where only certified practitioners are allowed to perform certain areas of practice), ownership and other commercial restrictions. A National Competition Council staff paper sets out how these measures restrict competition and explores many of the issues raised by professional regulation (Deighton-Smith, Harris and Pearson 2001). It also highlights principles for regulating professions and occupations, including the desirability of:

- regulatory objectives being clearly identified;
- links between specific restrictions and the reduction of harms being identifiable;
- regulations and other rules of conduct being transparent and public;
- restrictions being consistently applied, with a presumption against 'grandfather clauses';
- enforcement actions being open, accountable and consistent;
- regulatory bodies having broad representation, with strong community involvement; and
- regulation being the minimum necessary to achieve the government's objectives.

Architects

Individual States and Territories are responsible for the various legislative instruments regulating architects. The Productivity Commission recently completed a national review of architecture legislation on behalf of all States and Territories, except Victoria (PC 2000a). It identified a number of restrictive aspects of architects' regulation, including entry standards, registration requirements, the reservation of title and disciplinary processes. It also found significant commercial restrictions in many jurisdictions, including advertising and ownership restrictions. Table 24.3 lists each jurisdiction's review and reform of legislation regulating architecture.

Engineers

Queensland is the only State that legislates for the registration of all professional engineers. Queensland's *Professional Engineers Act 1988* includes restrictions on entry, a requirement to register, the reservation of title and practice, a disciplinary process, commercial restrictions and business licensing.

Several jurisdictions require professional engineers to be registered for specific areas of work, such as building work (Victoria and South Australia) and certification (New South Wales and the Northern Territory). Generally, jurisdictions use the National Professional Engineers Register (managed by the Institution of Engineers, Australia) as the benchmark criteria for qualifications and experience required to practice as a professional engineer. Jurisdictions also rely on quality standards (such as building codes) to achieve the objective of protecting the public from harm.

Queensland's review of the Professional Engineers Act is underway. A review report was completed in February 2000 and publicly released in October 2000, seeking submissions by late January 2001. An independent consultant conducted the review, under the auspices of a steering committee of department officers, a consumer representative and a professional engineer. The review recommended a co-regulatory approach, whereby the 'regulatory environment and market outcomes would be largely unchanged' (Department of Public Works 2000, p. 19). Under the proposed approach, the profession would take responsibility for assessing applicants for registration and the Government would be responsible for administration of the legislation, including accreditation of professional bodies and disciplinary action where misconduct is identified. The current business licensing of units and associated professional indemnity insurance requirements would remain. The Government is considering the review report and submissions. The review is anticipated to be finalised in 2001 (Queensland Government 2001).

Surveyors

Cadastral (land and property) surveyors have an important role in affirming property rights. Each State and Territory requires surveyors to be licensed and registered with the jurisdiction's surveyors' board.

Legislation regulating surveyors includes entry standards, the reservation of title and a requirement to register. There are also disciplinary processes, reserved areas of practice and business conduct restrictions in all jurisdictions. In New South Wales, surveyors cannot advertise in a way that is false, misleading or deceptive, claims or suggests superiority to other surveyors, or is likely to bring the surveying profession into disrepute. In addition to restrictions imposed on surveyors, some legislation grants the right to surveyors to access property in any manner necessary to conduct a survey.

Regulation of surveyors aims to maintain the integrity of the land tenure system supporting the land and property markets. Accordingly, the Council considers there are public benefit arguments to support, in principle, licensing and registration of cadastral surveyors. Table 24.4 lists each jurisdiction's review and reform of legislation regulating surveying.

Valuers

Valuers assess the value of properties, especially in the case of real property transactions where a purchase is being made with a loan from a financial institution (Department of Fair Trading 2000c). Five jurisdictions license land valuers — New South Wales, Queensland, Western Australia, South Australia and Tasmania.

Occupational licensing for valuers includes entry requirements, registration requirements, the reservation of title, reserved areas of practice, disciplinary processes and business conduct regulations. Queensland also has restrictions on advertising (which must not be false or misleading or, directly or indirectly, injure the professional reputation of another valuer or damages the profession).

All governments have recognised the questions that arise where professions and occupations are licensed in some but not all jurisdictions, along with the implications for mutual recognition. Governments established a working party — the Vocational Education, Employment and Training Committee (VEETAC) Working Party on Mutual Recognition — in the early 1990s to determine whether occupations that were registered in some but not all jurisdictions should be deregistered or fully registered in all jurisdictions.

This working party examined valuers' legislation. It noted that the objective of the legislation is consumer protection, but that the majority of valuers' clients are banks, legal practitioners, finance companies and other financial intermediaries (who seek a valuation as part of the loan assessment process). These consumers employ their own staff for valuations or have a panel of valuers on whom to call. In addition, members of the public who use valuation services tend to carry out these transactions through other professionals, institutions or the courts, who are well-informed consumers.

The public interest evidence supporting the registration of valuers did not persuade the working party, which recommended abolishing registration (VEETAC 1993). At the time, valuers were registered in all jurisdictions except the ACT and the Northern Territory. Table 24.4 lists each jurisdiction's review and reform of legislation regulating land valuation.

Building and related trades

Service providers of building and related trades' include builders, plumbers, electricians and tradespeople such as painters. Occupational licensing in the

building trades can involve entry standards, registration requirements, the reservation of title, reserved areas of practice and disciplinary processes.

All jurisdictions legislate to ensure those who undertake electrical, plumbing, draining and gasfitting work have a minimum level of training and experience to undertake that work. All jurisdictions also license or register builders (or building practitioners). Some jurisdictions provide specific licences for other trades too. Table 24.6 summarises each jurisdiction's review and reform of legislation regulating building and related trades. Given the wide scope of regulation, the Council's assessment covers only those regulations where review and reform activity was complete at June 2001.

Electrical workers

All jurisdictions require electrical workers to be licensed. All jurisdictions also distinguish between the types of electrical work and levels of competency. Generally, jurisdictions aim to maintain a degree of commonality in basic requirements and qualifications to improve mobility across jurisdiction boundaries. Differences across States and Territories include licence renewal periods, the length of additional experience required for contractors, and the definition of electrical work (CIE 2000b).

The regulation of electrical workers (such as electricians) is aimed at protecting public safety. It is designed to address information asymmetry (where consumers tend to lack the information to be able to assess independently whether a tradesperson has the skills to perform the task safely) and negative externalities (where the electrical work may cause harm to third parties).

Plumbers, drainers and gasfitters

Regulation of workers in the plumbing and gasfitting trades is designed to protect public health and safety and the integrity of the water, sewerage and drainage infrastructure (Plumbers and Gasfitters Registration Review Group 1998).

In 1994 the Labour Ministers' Council agreed to reforms to plumbing and gasfitting occupational licensing arrangements. These reforms were consistent with decisions of heads of government on mutual recognition and partially licensed occupations, and with the public and occupational health and safety rationale for licensing (Plumbers and Gasfitters Registration Review Group 1998, pp. 49–51). Ministers agreed that licensing of plumbers and gasfitters should be nationally consistent, based on the core areas of sanitary plumbing, water plumbing, draining (drainage from a building, essentially below-ground drains beyond the building line) and gasfitting. To meet these core areas, Ministers agreed to change licensing including:

- in New South Wales, to discontinue licensing workers for metal roofing, mechanical services, duct fitting and sprinkler fitting;

- in Victoria, to discontinue licensing workers for metal roofing, mechanical services, duct fitting and sprinkler fitting;
- in Tasmania, to discontinue licensing workers for metal roofing and mechanical services;
- in the ACT, to discontinue licensing workers for sprinkler fitting;
- in South Australia and the Northern Territory, to amend licensing arrangements to allow separate licensing of water plumbers; and
- in Victoria and Tasmania, to change the licensing of mechanical services plumbers to cover unrestricted water plumbing.

Ministers also agreed that all licensing should be based on national core curriculums and any future competency standards, that licensing authorities should discontinue assessment or examination that duplicates training authorities' assessment or examination, that formal demonstration of competence be the only criterion for licensing, and that all reference to time serving (except completion of contracts of training) should be removed from legislation. Reforms were also agreed for levels of licensing and contractor licensing.

Builders or building practitioners

The regulation of builders (or building practitioners), as with other related trades, is designed to protect public safety by overcoming information asymmetries and negative externalities. Builders' mistakes can have significant effects, including loss of life where a building collapses (Allen Consulting Group 2000b).

Table 24.3: Review and reform activity of legislation regulating architecture

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Architects Act 1921*	Registration, entry requirements, the reservation of title, disciplinary processes, business restrictions	Productivity Commission review completed in August 2000. Review recommended repeal of Act. Previous State review commenced but not completed.	A States and Territories working group is developing a national response to the review.	Council to assess progress in 2002.
Victoria	*Architects Act 1991*	Registration, entry requirements, the reservation of title, disciplinary processes, business restrictions (ownership provisions that at least two thirds of directors of the company must be registered architects)	Review completed February 1999. Review recommended retention of title restriction and registration requirements, and reduced business restrictions (including reducing ownership provisions to at least one director or partner is a registered architect).	Government is developing its response to the review and is also considering the Productivity Commission review report.	Council to assess progress in 2002.
Queensland	*Architects Act 1985*	Registration, entry requirements reservation of title, disciplinary processes, business restrictions, business licensing	Productivity Commission review completed in August 2000. Review recommended repeal of Act.	A States and Territories working group is developing a national response to the review.	Council to assess progress in 2002.
Western Australia	*Architects Act 1921*	Registration, entry requirements, the reservation of title, disciplinary processes, business conduct (including require Architects Board approval for advertising), business licensing	Productivity Commission review completed in August 2000. Review recommended repeal of Act. State review being completed to address recommendations.	A States and Territories working group is developing a national response to the review.	Council to assess progress in 2002.

(*continued*)

Table 24.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Architects Act 1939*	Registration, entry requirements, the reservation of title, disciplinary processes, business conduct (including advertising - accuracy, ownership), business licensing, advertising restrictions	Productivity Commission review completed in August 2000. Review recommended repeal of Act. Previous State review completed.	Outcomes of State review to be reconsidered following outcomes of Productivity Commission review.	Council to assess progress in 2002.
Tasmania	*Architects Act 1929*	Registration, entry requirements, the reservation of title, disciplinary processes, business restrictions, business licensing	Productivity Commission review completed in August 2000. Review recommended repeal of Act.	A States and Territories working group is developing a national response to the review.	Council to assess progress in 2002.
ACT	*Architects Act 1959*	Registration, entry requirements, the reservation of title, disciplinary processes	Productivity Commission review completed in August 2000. Review recommended repeal of Act.	A States and Territories working group is developing a national response to the review.	Council to assess progress in 2002.
Northern Territory	*Architects Act*	Registration, entry requirements, the reservation of title, disciplinary processes	Productivity Commission review completed in August 2000. Review recommended repeal of Act. Previously completed NT review put on hold.	A States and Territories working group is developing a national response to the review.	Council to assess progress in 2002.

Table 24.4: Review and reform activity of legislation regulating surveying

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Surveyors Act 1929*	Licensing, registration, entry requirements (qualification, exam, two years experience, aged at least 21 years, good fame and character), the reservation of title and practice, disciplinary processes, business conduct (regulating the making of surveys and advertising)	Review underway. Issues paper released in December 2000.		Council to assess progress in 2002.
Victoria	*Surveyors Act 1978*	Licensing, registration, entry requirements (education, experience, integrity criteria), the reservation of title and practice, disciplinary processes, business conduct (ownership restrictions, fees)	Review completed. Recommendations included: retaining restrictions on entry; making integrity criteria specific; reducing some commercial restrictions, such as the requirement for surveyors or related professions to form a majority of members/directors of a firm engaging in cadastral survey work and removing the power of the regulatory body to set fees for surveying services; and reducing barriers to the interstate mobility of surveyors.	Government accepted most of the review recommendations and is introduced amending legislation during the autumn 2001 sitting of Parliament. The Government has put in place a transitional surveyors board with a greater proportion of nonsurveyors as members in response to the recommendation that nonsurveyors should form a greater proportion of members of the regulatory body.	Council to assess progress in 2002.

(*continued*)

Table 24.4 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Surveyors Act 1977*	Licensing, registration, entry requirements (education, experience, good fame and character), the reservation of title and practice, disciplinary processes, business conduct (including business name approval, fee setting, professional indemnity insurance, ownership restrictions)	Review completed in November 1997, but report not yet released (brief summary included in 2001 NCP annual report). Recommendations included retaining registration, removing business name approval and fee setting by the Surveyors Board of Queensland, and removing requirement that directors of bodies corporate have qualifications.	Government endorsed review recommendations to retain registration for non-exempt surveyors (including mining and engineering surveyors) and remove anticompetitive provisions of business name approval and fee setting by the Surveyors Board of Queensland, and qualifications of directors of bodies corporate. Also endorsed scope to move to a co-regulatory model in the future.	Council to assess progress in 2002.
Western Australia	*Licensed Surveyors Act 1909*	Licensing, entry requirements (competency — education and experience, age, good fame and character, continuing professional development), the reservation of title and practice, disciplinary processes, business conduct (including professional indemnity insurance)	Review, in conjunction with review of *Strata Titles Act 1985,* completed in 1998. Recommendations included re-composing the board, clarifying entry standards, and retaining restrictions on professional indemnity insurance.	Government endorsed review recommendations. Government is drafting amendments to legislation.	Council to assess progress in 2002.
	Strata Titles Act 1985	Only licensed surveyors can 'certify' a strata plan, survey-strata plan, or notice of resolution where a strata company is requesting a conversion from a strata scheme to a survey-strata scheme	Review, in conjunction with review of *Licensed Surveyors Act 1909,* completed in 1998. Review concluded restrictions are in the public interest and should be retained.	Government endorsed review recommendation.	Meets CPA obligations (June 2001).

(*continued*)

Table 24.4 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Survey Act 1992*	Licensing, registration, entry requirements (education, experience, fit and proper), the reservation of title (and derivatives), the reservation of practice, disciplinary processes, business conduct (including ownership restrictions), business licensing	Review completed in 1999, but report not yet released. Review involved public consultation.	Report with Government for consideration.	Council to assess progress in 2002.
Tasmania	*Land Surveyors Act 1909*	Licensing, registration, entry requirements (age, good fame and character, competency (education, experience and exam)), the reservation of practice, disciplinary processes, business conduct (number of supervised graduates, discretionary power for Surveyors Board to publish and enforce a scale of fees, survey practice standards)	Review completed in July 1999 and report released in December 2000. Review recommended retaining the following restrictions: registration, annual licensing, disciplinary processes, experience (but replacing two years of supervised training with appropriate course of postgraduate training) and minimum standards (but less prescriptive and more output focused). Review recommended removing the following restrictions: the number of graduates under supervision and power for the board to set fees.	Government released a draft response for comment, proposing an alternative, less-restrictive, competency-based co-regulation model. The model would establish a single public register of all surveyors, with mandatory registration of land surveyors, voluntary registration of surveyors in non-cadastral disciplines and voluntary registration of multidisciplinary competency certification for all registered surveyors. The Government would not be directly involved in the assessment of competency. Rather, an accredited professional organisation would assess professional competency. Government sought comments on model by April 2001.	Council to assess progress in 2002.

(*continued*)

Table 24.4 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT	*Surveyors Act 1967* *Surveyors Act 2001*	Licensing, entry restrictions (educational prerequisites), the reservation of title and practice, ability of board (made up of mostly surveyors) to make regulations and undertake disciplinary processes	Review report released in December 1998. Recommendations included retaining registration, having less rigorous entry standards and abolishing the board in favour of powers of a Chief Surveyor.	The Government accepted all recommendations but deferred considering removing compulsory postgraduate entry requirements until all jurisdictions have completed their reviews of surveyors legislation. The new Act gives powers to a Commissioner for Surveys, (not a Chief Surveyor). A new *Surveyors Act 2001* was passed in February 2001. The Act is expected to commence on 26 July 2001.	Meets CPA obligations (June 2001).
Northern Territory	*Licensed Surveyors Act*	Licensing, registration, entry requirements (education, experience, possibly exams, fit and proper), the reservation of title and practice, disciplinary processes, business conduct (including practice standards), business licensing	Review completed in October 1999 but report not yet released. Review concluded that potentially anticompetitive provisions could be justified under the CPA.	Government endorsed review outcomes in February 2000.	Council to assess progress in 2002.

Table 24.5: Review and reform activity of legislation regulating land valuation

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Valuers Registration Act 1975*	For real estate valuers: licensing, registration, entry requirements (education, supervised training, good character), disciplinary processes, the reservation of practice. It also confers functions on the Property Services Council.	Department review completed in 2000, recommending a 'negative licensing' scheme to replace the current system. The scheme would involve core legislation with entry requirements (qualifications, practice requirements and good character). Continuing professional development and professional indemnity insurance would not be a compulsory pre-condition to carry on business as a valuer.	Government accepted all review recommendations. Legislation is being prepared to repeal the Act and modify the system for the regulation of valuers.	Council to assess progress in 2002.
Queensland	*Valuers Registration Act 1992* and Regulations	Licensing, registration, entry requirements (education, five years practical experience and exam or certificate of competence, good fame and character, fit and proper), the reservation of title and practice, disciplinary processes, business conduct (including advertising)	Department review completed in October 1999. Review found deregulation in medium to long term is likely to deliver net public benefit, but in short term is a risk to infrequent users of valuers. Review recommended retaining registration (with further review in three years) and removing other geographic and price control restrictions.	Government endorsed review recommendations in February 2000. Amending legislation was introduced to Parliament in March 2001. Amendments included re-composition of the board, reduction in practical experience requirements from five to three years, and a new requirement for continuing professional development for renewal of registration.	Council to assess progress in 2002.

(*continued*)

Table 24.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Land Valuers Licensing Act 1978* and Regulations	Licensing, entry requirements (member of Institute of Valuers or education and four years experience, and possibly exams), the reservation of title and practice, business conduct (including board setting maximum fees, code of conduct)	Review completed.	Government is examining review recommendations in light of the Gunning Inquiry. (Gunning Inquiry recommended replacing seven licensing boards including the Land Valuers Licensing Board, with a single authority to license finance brokers, builders, car dealers, land valuers, and real estate and settlement agents.)	Council to assess progress in 2002.
	Valuation of Land Act 1987	Valuer-General powers and activities	Review completed. Review undertaken by intra-agency committee. Public consultation involved submissions following release of an information paper. Recommended less narrowly define the eligibility for the position of Valuer General (dropping requirement to be a member of the Australian Property Institute), remove restriction that any person making valuation for rating and taxing purposes must be licensed under Land Valuers Licensing Act, and encourage greater flow of information for the purposes of making valuations.	Government endorsed review recommendations.	Council to assess progress in 2002.
South Australia	*Land Valuers Act 1994*	Negative licensing, entry requirements (qualifications or membership of various professional associations), the reservation of practice, disciplinary processes	Review completed. Review concluded that the current qualification requirements are too onerous in relation to the postgraduate qualifications and that the Government should consider re-examining the current requirements and broadening the number and type of acceptable qualifications.		Council to assess progress in 2002.

(*continued*)

Table 24.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania	*Land Valuation Act 1971*	Gives the Valuer-General a monopoly on the provision of valuation services to local government for the setting of valuations for the purpose of determining local rates.	Major review completed in conjunction with review of Valuers Registration Act. Review recommended tendering for all statutory mass valuation work and retaining the role of the Valuer-General. The Valuer-General would be responsible for developing and monitoring valuation standards and information requirements, determining the length of the revaluation cycle, administering valuation lists and coordinating the collection of information, and being the avenue of appeal. Also recommended greater administrative separation of the Valuer-General and Government Valuation Services, and the abolition of the Valuers Registration Board.	Government plans to introduce legislative changes to Parliament during the Spring 2001 session.	Council to assess progress in 2002.
	Valuers Registration Act 1974	Licensing, registration, entry requirements (education and experience or 10 years experience, good fame and character), the reservation of title and practice, disciplinary processes, business conduct (Conduct that may result in deregistration includes professional misconduct, taking excessive amounts of alcohol and drugs, suffering from a mental disorder or committing an offence.)	Major review completed. in conjunction with review of Land Valuation Act.	Government plans to introduce new legislation to Parliament during the Spring 2001 session, to abolish the Valuers Registration Board, introduce negative licensing, and repeal and replace the current legislation.	Council to assess progress in 2002.

Table 24.6: Review and reform activity of legislation regulating building trades

Jurisdiction	*Legislation*	*Key restrictions*	*Occupations*	*Review activity*	*Reform activity*	*Assessment*
Common-wealth	*Tradesmen's Rights Regulation Act 1946*	National recognition of metal and electrical trade skills developed informally	Metal and electrical trade work	Review completed. Recommendations included repealing the Act. Also recommended that the Commonwealth Government vacate the domestic skills recognition field (and that Registered Training Organisations established under the Australian Recognition Framework undertake skill recognition on a free competition basis) and that detailed consideration be given to the implementation arrangements.	Government accepted the review recommendations. Bill to repeal legislation introduced into Parliament. Government is continuing consultations with industry about the new arrangements for domestic skills recognition and migration skills assessment.	Meets CPA obligations (June 2001).
New South Wales	*Building Services Corporation Act 1989* *Home Building Act 1989*	Licensing, registration, entry requirements (qualifications or pass exams, experience, age, character), the reservation of practice (building work, electrical wiring work, plumbing and drainage work, roof plumbing work, refrigeration work, air-conditioning work), business conduct (including insurance for building work over $5000 from approved private insurer), business licensing	Residential building work, 'specialist work' (plumbing, gasfitting, electrical, refrigeration and air-conditioning work) and supply of kit homes	Review completed in March 1998, recommending reforms to remove unnecessary components of the licensing system, subject to an assessment of the expected impact on the home warranty insurance scheme. Consultations concluded that some licensing requirements were needed to underpin the insurance system.	Changed name to *Home Building Act 1989*, privatised compulsory insurance and abolished business licensing. Government released a White Paper in February 2001 proposing: a tighter licensing system; faster disciplinary process; increased penalties for noncompliance; changes to insurance scheme; an early intervention dispute resolution system; and strategies to raise consumer awareness of available remedies when things go wrong. Government is considering comments.	Council to assess progress in 2002.

(*continued*)

Table 24.6 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Occupations*	*Review activity*	*Reform activity*	*Assessment*
Victoria	*Building Act 1993*	Licensing, the reservation of title and practice (plumbing: mechanical services, residential and domestic fire sprinklers, roofing (stormwater), sanitary, water supply, draining, gasfitting), registration requirements, permit requirements, business conduct (insurance)	Engineers, quantity surveyors, building surveyors, building practitioners, plumbers, drainers, gasfitters	Review completed in 1998. Recommendations included: integrating Act with Architects Act; making companies and partnerships subject to registration requirements; retaining Minister's power to issue compulsory insurance orders; increasing the use of audits of building surveyors to ensure standards are maintained; repealing exemptions to public sector employees, public authorities and the Crown retain those that exempt certain high security Crown buildings from requirement to lodge permit documents with relevant council; and basing the building permit levy should on a formula that is cost-reflective and includes incentives for cost-effective administration of legislation.	Government is considering review report.	Council to assess progress in 2002.
	Electricity Safety (Installations) Regulations 1999	Licensing (workers and inspectors), registration (electrical contractors), entry requirements (qualifications, also training course for person responsible for business management and administration), business conduct (insurance), prescribed methods for carrying out installation work, standards for the quality of materials, fittings and apparatus	Electrical trade work	New legislation assessed under Victoria's legislation gatekeeping arrangements.	Act is designed to address information asymmetries. Government notes regulations are justified because unskilled workers or inspectors or the use of inappropriate methods or substandard materials can result in loss of life, injury, industry downtime and property damage.	Meets CPA obligations (June 2001).
	Building (Plumbing) Act 1998	Licensing, registration	Refrigeration mechanics	New legislation assessed under Victoria's legislation gatekeeping arrangements.	Act removes exemption from licensing for registration applying to refrigeration mechanics.	Meets CPA obligations (June 2001).

(*continued*)

Table 24.6 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Occupations*	*Review activity*	*Reform activity*	*Assessment*
Victoria (continued)	*Building Control (Plumbers Gasfitters & Drainers) Act 1981*		Plumbers, gasfitters and drainers		Act repealed and replaced by *Building Act 1993*.	Meets CPA obligations (June 2001).
	Electric Light and Power Act 1958		Electrical trade work		Act repealed and replaced by *Electricity Safety Act 1998.*	Meets CPA obligations (June 2001).
Queensland	*Queensland Building Services Authority Act 1991*	Licensing, registration, entry requirements (qualifications and experience, fit and proper, financial requirements), the reservation of practice, disciplinary processes, business conduct (ownership; advertising and sign at building site — whereby workers must state whether licensed, name licensed under and identifying numbers; written contract; compulsory insurance administered by the QBSA; warranty)	Building work: 90 licence categories in the areas of plumbing, draining, gasfitting, pest control, demolition and residential building and design (such as painting, insulating, swimming pool construction)	Department review yet to begin. Draft framework for scoping and conducting the review completed in March 2001.		Council to assess progress in 2002.

(*continued*)

Table 24.6 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Occupations*	*Review activity*	*Reform activity*	*Assessment*
Queensland (continued)	*Electricity Act 1994* and Electricity Regulation 1994	Licensing, registration, entry requirements (qualifications and experience, also suitable person financial requirements for electrical contractor), disciplinary processes, business conduct (advertising whereby workers must state whether licensed, name licensed under and identifying number; public liability insurance for electrical contractor)	Electrical workers, electrical contractors	Review underway, to be completed by late 2001.		Council to assess progress in 2002.
	Sewerage and Water Supply Act 1949 and Regulations	Licensing, registration, entry requirements (qualifications and prescribed practical experience), the reservation of practice, disciplinary processes., provision for head of power for the making of plumbing and drainage standards	Plumbers and drainers	NCP matters related to that part of the Act administered by the Department of Local Government and Planning are being reviewed as part of proposal to integrate plumbing approvals and appeal processes in the Integrated Planning Act. Expected to be completed by the end of 2001.		Council to assess progress in 2002.
Western Australia	*Country Towns Sewerage Act 1948* and bylaws Metropolitan Water Supply, Sewerage and Drainage Bylaws 1981	Licensing, registration, entry requirements (certificate of knowledge and competence, five years experience, fit and proper, aged over 21), the reservation of practice (either licensed or under licensed supervision), disciplinary processes, business conduct	Plumbers	Review completed.	Plumbers licensing provisions transferred to the Water Services Coordination (Plumbers Licensing) Regulations 2000 in 2000. Transfer also shifted responsibility for plumbers licensing from Water Corporation to new Plumbers Licensing Board.	Meets CPA obligations (June 2001).

(*continued*)

Table 24.6 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Occupations*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)	*Water Services Coordination Act 1995* and Water Services Coordination (Plumbers Licensing) Regulations 2000	Licensing, registration, entry requirements (competency or six years experience and qualification, fit and proper), the reservation of practice (either licensed or under licensed supervision), disciplinary processes	Plumbers, tradepersons (under general direction of plumber)	Review of *Water Services Coordination Amendment Act 1999* completed, recommending retaining restrictions to prevent unlicensed persons from performing plumbing work and maintaining the power of the Board to set licence conditions.	Government endorsed review recommendation.	Meets CPA obligations (June 2001).
	Painters Registration Act 1961	Licensing and registration (for persons carrying on a painting business in their own right and not as employees and for painting valued greater than $200), entry requirements (degree/apprenticeship/ experience and exams, age, good character), the reservation of title and practice, disciplinary processes, business licensing	Painters	Review completed in 1998, concluding that the current system of mandatory licensing is too restrictive and should be removed. The review recommended a certification scheme be developed to allow consumers to readily identify painters who possess particular skills. It also recommended negative licensing to support a certification system, allowing for the removal from the industry of persons who do not adhere to basic standards of commercial conduct. These changes will reduce business costs but will still enable some control of the industry and certainty for consumers.	Government endorsed the review recommendations.	Council to assess progress in 2002.
	Gas Standards Act 1972 and Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999	Licensing, registration, entry requirements (knowledge and skills, fit and proper), the reservation of practice	Gasfitters	Review underway.		Council to assess progress in 2002.

(*continued*)

Table 24.6 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Occupations*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)	*Electricity Act 1945* and Electricity (Licensing) Regulations 1991	Licensing, entry requirements (apprenticeship/training and experience/exam, fit and proper), the reservation of practice, disciplinary processes	Electricians	Review underway.		Council to assess progress in 2002.
	Builders Registration Act 1939 and Regulations	Licensing, registration, entry requirements (training and seven years practical experience, age, good character, 'sufficient material and financial resources'), the reservation of practice, business licensing	Builders	Review, in conjunction with review of the *Home Building Contracts Act 1991,* underway. Discussion paper completed in June 2000. Proposed recommendations included reducing restrictions on owner builders, expanding the scope of conditional licences, and expanding the coverage of the Act to the whole State. Government sought comments by November 2000.		Council to assess progress in 2002.
	Home Building Contracts 1996	Requirement of written contracts, conditions (including mandatory insurance)	–	Review, in conjunction with review of the *Builders Registration Act 1939,* underway. Discussion paper completed in June 2000. Proposed recommendations included retaining requirements for written contracts and maximum amount for deposit, the 'warranty' period and home indemnity insurance (but with further examination of the differences in requirements in Western Australia and the rest of Australia). Also recommendation that insurance authorisation be modified so Minister approves policies, rather than insurers. Government sought comments by November 2000.		Council to assess progress in 2002.

(*continued*)

Table 24.6 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Occupations*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Building Work Contractors Act 1995*	Licensing (building work contractors), registration (building work supervisors), entry requirements (for contractors: qualifications, experience, sufficient business knowledge and experience and financial resources, fit and proper, not bankrupt within last ten years; for supervisor: qualifications and experience), the reservation of practice, disciplinary processes, business conduct (written contracts, product or service standards, statutory warranty)	Builders and building industry tradespeople	Review underway.		Council to assess progress in 2002.
	Plumbers, Gas Fitters and Electricians Act 1995	Licensing (contractors), registration (workers), entry requirements (for contractor: qualifications, experience, not undischarged bankrupt, fit and proper, sufficient business knowledge and experience and financial resources; for worker: qualifications and experience), the reservation of practice (for plumbing: water, sanitary or draining work or the installing or testing of backflow prevention devices), disciplinary processes	Plumbers, gasfitters and electricians	Review underway.		Council to assess progress in 2002.

(*continued*)

Table 24.6 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Occupations*	*Review activity*	*Reform activity*	*Assessment*
Tasmania	*Electricity Industry Safety and Administration Act 1997*	Licensing, registration, entry requirements (qualification, experience, suitable person, fit and proper person, nominated manager of electrical contracting business: electrical technician licence and either experience or completed course), reservation of practice, disciplinary processes, business conduct (electrical contractor to have insurance)	Electrical contractors and technicians	No review undertaken. Government assessed the restrictive provisions of this Act as being in the public benefit.		Council to assess progress in 2002.
	Plumbers and Gas-fitters Registration Act 1951	Licensing, registration, entry requirements (qualification or experience, apprenticeship and exam), the reservation of practice (sanitary, mechanical services, water and backflow prevention plumbing, draining and roof plumbing, any other plumbing work, gasfitting), disciplinary processes	Plumbers and gasfitters	Review completed. Recommendations included reducing areas of reservation of practice; limiting qualifications and experience required for registration to demonstrate competence; and implementing an appropriately constituted self-certification system; and amalgamating registration and plumbing inspection systems to reduce overlap and reduce the current regulatory burden on plumbers.	Government is considering the review recommendations.	Council to assess progress in 2002.
	Building Act 2000	Mandatory accreditation, entry requirements (including continuing professional development), the reservation of practice, disciplinary processes, business conduct (insurance)	Building practitioners for building and plumbing work over $5000	New legislation. Regulation impact statement on the draft Building Bill 1999 released in August 1999. Act received Royal Assent on 20 December 2000. The Act is expected to commence in 2001.		Council to assess progress in 2002.

(*continued*)

Table 24.6 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Occupations*	*Review activity*	*Reform activity*	*Assessment*
ACT	*Building Act 1972*	Licensing, registration, entry requirements (training, course work, practical experience or qualifications and supervised building work, business capacity), the reservation of practice, disciplinary processes, business conduct (insurance)	Building practitioners	Targeted public review, in conjunction with review of the *Electricity Act 1971* (electricians licensing) and the *Plumbers, Drainers and Gasfitters Board Act 1982* completed in August 2000. Review recommended replacement of legislation by a single new Act for licensing of builders, electricians, plumbers, drainers and gasfitters; abolition of existing boards and replacement by a single registrar supported by separate advisory panels; various changes to remove duplication and streamline licensing arrangements; and changes to disciplinary system.	Government announced response to review. Agrees with most recommendations. Does not agree with recommendation for a peer group to have the power to overturn Registrar's decisions in relation to strictly technical matters.	Council to assess progress in 2002.
	Electricity Act 1971 (electricians licensing) *Electricity Safety Act 1971*	Licensing, registration, entry requirements (skills, qualifications, experience, business capacity), the reservation of practice (installing, altering or repairing an electrical installation, other than an electrical installation that operates at extra low voltage), disciplinary processes, business conduct (insurance)	Electricians and electrical workers	See discussion under *Building Act 1972*.	See discussion under *Building Act 1972*.	Council to assess progress in 2002.

(*continued*)

Table 24.6 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Occupations*	*Review activity*	*Reform activity*	*Assessment*
ACT (continued)	*Plumbers, Drainers and Gasfitters Board Act 1982*	Licensing, registration, entry requirements (skills, experience, qualifications, age 18 years or over, fit and proper), the reservation of practice (installing/ fitting a fire-fighting sprinkler, sanitary plumbing, water supply plumbing, laying or repairing drains, installing/repairing/ inspecting/testing consumer natural gas piping and gas appliances), disciplinary processes	Plumbers, drainers and gasfitters	See discussion under *Building Act 1972*.	See discussion under *Building Act 1972*.	Council to assess progress in 2002.
Northern Territory	*Building Act*	Licensing and provision for establishment of building technical standards, registration of building practitioners and certifiers, regulation of building matters (including the registration of building products), the granting of permits, the establishment of appeals processes	Building practitioners	A review was undertaken in 1999, the results of which will be incorporated into a general review of the Act, which is underway.		Council to assess progress in 2002.

(*continued*)

Table 24.6 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Occupations*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory (continued)	*Electrical Workers and Contractors Act*	Licensing, registration, entry requirements (qualifications, experience, fit and proper), the reservation of practice (electrical work unless extra low voltage)	Electrical workers	Review by Centre for International Economics completed in October 2000. Consultation involved public release of issues paper, consultation with stakeholders and submissions. Recommendations included that licensing should be maintained, but also that other means of signalling competence should be afforded comparable status, the board should consider removing additional experience requirements for contractors, the fit and proper person test should be amended to signal the criteria against which it is assessed, and exemptions to licensing requirements to the Power and Water Authority should be removed. Recommended more general review of Act.	Government approved review recommendations in November 2000. The necessary amendments are to be made following a review of the administrative structures supporting the Act.	Council to assess progress in 2002.
	Plumbers and Drainers Licensing Act	Licensing, registration, entry requirements (qualifications or experience, fitness of character), the reservation of practice (for plumbing: installing, altering, removing or repairing fixtures, fittings and pipes designed to receive and carry sewage or water, and the ventilation of those fixtures, fittings and pipes), business conduct (supervision)	Plumbers and drainers	Review by Centre for International Economics completed in September 2000, recommending that: the Act should give explicit recognition of national competencies-based approach, the board's range of options in dealing with complaints should be made widely known, 'fit and proper person' test power of the board should be maintained so long as appeal mechanisms are clear and accessible, and membership of the Board should be reviewed to establish whether the continued Power and Water Authority membership is desirable. Also recommended a more general review of the Act to in part examine the case for compliance certificates and the case for restricted plumbing licences to meet the needs of other trades.	Government approved review recommendations.	Council to assess progress in 2002.

25 Communications

Ongoing innovation, technological change and globalisation mean that the communications sector is rapidly changing. A fundamental issue for governments is whether the existing regulatory framework is able to meet these changes and anticipated future developments. The Commonwealth has significant legislative responsibilities for communications, including responsibilities for broadcasting and related services. The Commonwealth-owned Australia Post and the part-owned Telstra are significant operators in communications markets, calling up competitive neutrality responsibilities. There is also a question, arising from the part privatisation of Telstra, of whether the current structure of Telstra is the best way in which to facilitate competition in telecommunications.

Legislation restricting competition: matters for the Commonwealth

Broadcasting Services Act 1992

The regulation of broadcasting in Australia is the responsibility of the Commonwealth Government. The *Broadcasting Services Act 1992* is the regulatory legislation. The Act specifically mentions radio and television services in defining its objectives (s.3a). However, technological change is likely to expand greatly the range of broadcasting services being regulated in the future.

The *Television Broadcasting Services (Digital Conversion) Act 1998* added major new provisions to the Broadcasting Services Act. These provisions set the framework for the conversion of television services from analogue to digital format, and for the regulation of these services and other potential services provided via the digital spectrum.

Radiocommunications Act 1992

The *Radiocommunications Act 1992* is the key legislation governing the use of the radiofrequency spectrum. Its primary objective is to maximise the public benefit derived from the use of the spectrum by ensuring its efficient and equitable allocation. Other objectives include making adequate provision for

using the spectrum for public and community services and encouraging the use of efficient technologies to provide a wide range of services.

The Act implements these objectives by providing for:

- the preparation of spectrum plans by the Australian Communications Authority, setting out which parts of the spectrum are to be available for which purposes;
- the issuing and trading of spectrum licences (authorising the use of transmitters/receivers on a given part of the spectrum) and their resumption by the Australian Communications Authority;
- the issuing of apparatus licences to operate transmitters and/or receivers on parts of the spectrum not allocated for the issue of spectrum licences;
- the issuing of class licences for specific purposes; and
- the reallocation of parts of the spectrum.

Australian Postal Corporation Act 1989

The *Australian Postal Corporation Act 1989* establishes Australia Post as a legislated corporation. The Act guarantees an Australia-wide postal service, known as the universal service. It also requires Australia Post to provide this universal service at a uniform price, whether a letter is sent from interstate or around the corner in a capital city.

To ensure Australia Post can fulfil the universal service, the Act gives Australia Post an exclusive right to provide some postal services (reserved services). Thus, without the risk of losing market share from competitors, Australia Post can use the protected profitable services to subsidise the services that it provides only because the Commonwealth requires it to.

The postal services sector, however, is considerably broader than Australia Post alone. Outside the reserved services, a range of other operators offer related services, such as express delivery, parcel services, unaddressed mail delivery and so on.

Legislative restrictions on competition

The Act restricts competition by reserving certain postal services to Australia Post. With a few exceptions, only Australia Post can carry a letter for less than $1.80 if it weighs less than 250 grams. In addition, only Australia Post can deliver international mail in Australia.

Regulating in the public interest

Providing a universal postal service at a reasonable cost are the main objectives of the Government's legislation. Further, postal services fulfil an important and growing business role, where innovation and flexibility may be more important than for households.

Any reforms need to maintain and, if possible, enhance the social obligation of Australia Post to provide a mail service that is reasonably accessible to all Australians. They should aim to maximise the contribution of Australia Post to the Australian community while facilitating the emergence and growth of competing firms in the postal services industry in the interests of the Australian community.

The Commonwealth has reviewed this legislation. Amending legislation was withdrawn in March 2001. The Council will assess progress at the 2002 assessment.

Competitive neutrality matters

Competitive neutrality measures seek to ensure that significant government-owned businesses do not have an advantage over their private competitors simply as a result of their public ownership. They do so by making sure that significant government businesses face the same taxes, incentives and regulations and that prices for their goods and services reflect the full cost of supply (see chapter 3). Businesses that believe their publicly owned competitors are not applying appropriate competitive neutrality principles can raise a complaint with the competitive neutrality complaints body in their jurisdiction.

On 18 February 2000 the Conference of Asia Pacific Express Carriers (CAPEC) lodged a competitive neutrality complaint against Australia Post with the Commonwealth Competitive Neutrality Complaints Office (CCNCO). The CAPEC claimed that Australia Post enjoys a competitive advantage in competing for business because it receives preferential treatment from Customs with respect to screening charges. In particular, the CAPEC argued that Australia Post is advantaged by:

- higher thresholds for incoming and outgoing postal items before formal Customs screening requirements take effect; and
- exemption for postal items from recently introduced reporting and cost recovery charges for high-volume, low-value consignments.

The CCNCO investigated the complaint and reported on the matter (CCNCO 2000a). It recommended that:

- the value thresholds for formal Customs screening of incoming and outgoing mail be aligned for postal and nonpostal articles;

- the Government further consider the feasibility of imposing cost recovery charges for informal Customs screening of incoming postal items; and

- the concerns about charges for nonpostal items in high-volume, low-value consignments be addressed as part of the broader issue of whether Australia Post should pay cost recovery charges for informal screening of incoming postal consignments.

The Council's 1998 report on Australia Post raised the issue of differential Customs treatment. The Council recommended that the *Customs Act 1901* be amended so that all postal operators are subject to a threshold of the same value.

The Government has introduced the Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2000 which includes changes necessary to control lower value consignments within the export permit and licence system. The Minister for Justice and Customs has undertaken to harmonise the value thresholds for both incoming and outgoing postal and non-postal items when the legislation is implemented. The Minister noted that there are practical difficulties in imposing cost recovery charges on Australia Post for informal Customs screening of incoming postal items. However, he has asked Customs to consult with the Department of Communications, Information Technology and the Arts before taking the matter up with Australia Post.

Structure of Telstra

Telstra supplied Australia's telecommunications services as a public monopoly until 1991. Gradual deregulation occurred over subsequent years, culminating in the introduction of open competition in July 1997. Telstra is the still dominant player in the Australian telecommunications industry. The Australian Competition and Consumer Commission's (ACCC) submission to the Productivity Commission's inquiry into telecommunications competition regulation commented on the characteristics of the Australian market and Telstra, noting:

> *… the overwhelming dominance in the national market, and almost every segment of that market, of a single, vertically integrated incumbent. This dominance creates the potential and the fact of extensive market power in the most basic carriage services as well as a range of enhanced services. Telstra's ubiquitous network and integrated nature ensure that even when other firms operate with it in the delivery of retail services, they rely on interconnection to its network in almost every circumstance. These circumstances are not*

> *matched to anywhere near the same extent in any other network industry.* (ACCC 2000b, p. 6)

Obligations under NCP

Legislation in 1997 and 1999 provided for the part privatisation of Telstra, and the company is now 49 per cent privately owned. The part privatisation raised a commitment under clause 4 of the Competition Principles Agreement (CPA) for the Commonwealth to review, *inter alia*, 'the merits of separating any natural monopoly elements from potentially competitive elements of the public monopoly'.

The Council noted in the first tranche assessment that:

> *This examination should have been undertaken prior to the partial privatisation and should have involved considering the merits of structurally separating the local fixed network from the non-monopoly elements of Telstra's business, or alternatively, arrangements for ring-fencing the local fixed network and Telstra's business units.* (NCC 1999a, p. 338)

Assessing compliance

As part of the first tranche assessment, the Council assessed the Commonwealth's progress in meeting its NCP commitment to review and reform Telstra. The Council reported that it:

> *…questions the extent to which the Commonwealth has ensured that the structure of Telstra … facilitate[s] competitive outcomes. … clause 4 of the CPA places a responsibility on the Commonwealth to have ensured prior to the partial privatisation of Telstra in 1997 that the regulatory framework and Telstra's structure and commercial objectives facilitate competitive outcomes consistent with the public interest.* (NCC 1999a, p. 338)

The Council noted advice from the Commonwealth that it believed related reviews before the part privatisation satisfied its clause 4 obligations. The Commonwealth indicated that it preferred to prohibit anticompetitive conduct and to facilitate third party access to services via the use of telecommunications-specific parts of the *Trade Practices Act 1974* (TPA) (parts XIB and XIC respectively), rather than to pursue the structural separation of Telstra's fixed local network.

The Council also noted that further changes to the regulatory regime governing Telstra had been proposed in the Telstra (Transition to Full Private Ownership) Bill 1998. Moreover, the ACCC had established a telecommunications working group to review Telstra's accounting and cost

allocation arrangements, to assist the development of an accounting separation model for Telstra.

The Telstra (Transition to Full Private Ownership) Bill has not proceeded. Thus, the further limitations on anticompetitive behaviour by Telstra which it would impose, and which the Council had indicated would considerably address the Commonwealth's responsibilities under CPA clause 4, have not come into effect. However, the ACCC telecommunications working group released draft record keeping rules in June 2000, with final record keeping rules coming into effect in May 2001.

The telecommunications-specific parts of the TPA (parts XIB and XIC), on which the Commonwealth has largely relied to constrain Telstra's conduct in relation to market competitors, are under review by the Productivity Commission. The review is scheduled for completion by September 2001. The terms of reference for the review require the Productivity Commission to report on whether the relevant parts of the TPA:

> … *are sufficient to prevent integrated firms taking advantage of their market power with the purpose or effect of substantially lessening competition in a telecommunications market, or whether alternative arrangements are required or appropriate.* (Costello 2000, 4c)

While this term of reference appears broadly consistent with the underlying requirements of CPA clause 4, the term of reference at 5(c) specifically prevents the Productivity Commission from considering the structural separation of Telstra. This limitation on the scope of the review appears to limit severely the range of 'alternative arrangements' for consideration if the existing provisions are found to be inadequate. It has prevented the inquiry from specifically considering the merits of the option in CPA clause 4(3)(b) of facilitating competition in telecommunications by separating the natural monopoly and competitive elements of Telstra's business.

The Productivity Commission's draft report found that Telstra held 85 per cent of retail local telephony services at end June 2000. Although Telstra's share had fallen by nine percentage points over the preceding 12 months, and is likely to be further eroded, the Productivity Commission stated that 'Telstra will continue to maintain market power through its ownership, by way of vertical integration, of the only ubiquitous fixed local access network' (PC 2001b, p. 4.20).

The Council considers the Productivity Commission's draft report finding concerning the link between Telstra's ability to maintain market power and its ownership of the fixed network emphasises the importance to telecommunications of appropriately addressing the structure of Telstra. The Council acknowledges that the part privatisation means that shareholders have invested in Telstra on the basis of its ownership of the integrated local network, However, the Council believes it is important to achieving a competitive telecommunications industry capable of delivering substantial benefits to consumers that further consideration of the structure of Telstra,

including the potential structural separation of the fixed network, be encouraged.

Table 25.1: Review and reform of legislation regulating communications

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Broadcasting Services Act 1992* (including *Television Broadcasting Services (Digital Conversion) Act 1998*) *Broadcasting Services (Transitional Provisions and Consequential Amendment Act 1992* *Radio Licence Fees Act 1964* *Television Licence Fee Act 1964*	Licensing, entry, ownership, conduct	Review by Productivity Commission completed in March 2000. Public consultation involved public release of an issues paper, draft report, consultation, public hearings and receipt of submissions. Review raised significant questions and made extensive recommendations for reform.	Government is yet to respond.	Council to assess progress in 2002.
	Radiocommunications Act 1992 and related Acts	Licensing, spectrum allocation	A review commenced in 1997. However, the national competition principles aspects of the review were not completed. The Productivity Commission commenced a review of the Act in July 2001, to be completed in July 2002.		Council to assess progress in 2002.
	Australian Postal Corporation Act 1989	Legislated monopoly for Australia Post for activities including letter delivery and inwards international mail	Review completed in 1998. Review recommended reserving only household mail to Australia Post.	Amendment Bill reducing Australia Post monopoly protection from four times the standard letter rate to one times the standard letter rate and the weight restriction from 250g to 50g, removing incoming international mail from the monopoly and establishing an access regime, withdrawn. No further response.	Council to assess progress in 2002.

26 Effective regulation: Conduct Code and Implementation Agreements

In addition to the legislation review and reform obligations in the Competition Principles Agreement (CPA), there are NCP commitments designed to improve the effectiveness of regulation in the Conduct Code Agreement and the Agreement to Implement the National Competition Policy and Related Reforms (the Implementation Agreement).

Conduct Code obligations

Under the Conduct Code Agreement, the Commonwealth, States and Territories have an ongoing obligation to notify the Australian Competition and Consumer Commission (ACCC) of legislation or provisions in legislation that rely on s51(1) of the Trade Practices Act 1974 (TPA). Clause 2(1) of the Conduct Code Agreement obliges governments to send written notice of such legislation to the ACCC within 30 days of the legislation being enacted or made.

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

The Conduct Code Agreement also required (under clause 2(3)) governments to have notified the ACCC by 20 July 1998 of all continuing legislation reliant on s51(1) of the TPA.[1] All governments stated, as part of the second tranche NCP assessment, that they had notified the ACCC of relevant legislation. This legislation is listed in the National Competition Council's second tranche report (NCC 1999b, pp. 172–7).

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[1] Three years after the date on which the *Competition Policy Reform Act 1995* received Royal Assent.

Legislation notified to the ACCC (Conduct Code clause 2(1))

Five governments — New South Wales, Queensland, South Australia, the Australian Capital Territory and the Northern Territory — stated as part of this assessment that they notified the ACCC of all new legislation and new provisions in legislation that rely on s51(1). The following notifications have been made since the second tranche NCP assessment.[2]

- **New South Wales**
  - *Olympic Roads and Transport Authority Act 1998*, notified on 8 February 2000
  - *Liquor and Registered Clubs Legislation Further Amendment Act 1999*, notified on 8 February 2000
  - Competition Policy Reform (NSW) Amendment Regulation 2000, notified on 8 February 2000
- **Queensland**
  - *Primary Industries Legislation Amendment Act 1999*, notified on 15 October 1999
  - *Sugar Industry Act 1999*, notified on 11 January 2000
  - Competition Policy Reform (Queensland) Public Passenger Service Authorisations Regulation 2000, notified on 14 August 2000
- **South Australia**
  - *Authorised Betting Operations Act 2000*, notified on 28 March 2001
  - *Barley Marketing Act 1999*, notified in June 2001
- **Australian Capital Territory**
  - *Milk Authority (Amendment) Act 1999*, notified on 26 July 1999
- **Northern Territory**
  - *Year 2000 Information Disclosure Act 1999*, notified on 10 April 2001

[2] Legislation notified in accordance with clause 2(1) of the Conduct Code Agreement prior to June 1999 is listed in the National Competition Council's second tranche NCP assessment report (NCC 1999b, pp. 172–7).

National standards setting obligations

Arising from the NCP Implementation Agreement, all governments have a responsibility to ensure that national standards are set in accordance with the Council of Australian Governments' (CoAG) principles and guidelines and advice from the Commonwealth Office of Regulation Review (ORR) on compliance with these principles and guidelines. The principles and guidelines, endorsed by CoAG in 1995 and updated in 1997, aim to guide good regulatory practice in decisions by Ministerial councils and intergovernmental standards-setting bodies. Bodies that develop voluntary codes and other advisory instruments need to take account of the principles and guidelines where promotion and dissemination of the code or instrument is reasonably expected to be widely interpreted as requiring compliance (CoAG 1997).

CoAG developed the principles and guidelines out of concern that Australia's regulatory system was overly complex, generated undue delay, was inconsistent, imposed unnecessary costs on business and inhibited innovation. The Mutual Recognition Agreement, by highlighting discrepancies in standards among jurisdictions, was also an impetus. Under the agreement, Ministerial councils can be called on to create a standard for any product or to develop nationally uniform criteria for the registration of any occupation.

CoAG's aim for national standards-setting is to 'achieve minimum necessary standards, taking into account economic, environmental, health and safety concerns.' In accordance with this aim, the principles and guidelines:

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

- describe, given that regulation is shown to be warranted, the features of good regulation and recommend principles for standards setting and regulatory action.

Where a Ministerial council or intergovernmental standards-setting body proposes to agree to a regulatory action or adopt a standard, it must first certify that a regulatory impact statement (RIS) has been adequately completed and that the results justify 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 date for review or sunsetting of 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 give notice of 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 standards-setting body is required to consider views expressed during the consultation process.

The Commonwealth Office of Regulation Review

The Commonwealth ORR has a significant role in the RIS process. Ministerial councils and standards-setting bodies must notify the ORR that a RIS is to be drafted on a relevant topic. The RIS must be sent to the ORR as soon as possible and before it is released for public comment. The ORR assesses the RIS within two weeks and advises the Ministerial council or standards-setting body of its assessment. While not obliged to adopt the advice of the ORR, Ministerial councils and standards-setting bodies must respond to any matters that have not been addressed as recommended by the ORR. The ORR assesses in particular:

- whether the RIS meets requirements;
- whether the type and level of analysis are adequate and commensurate with the potential economic and social impacts of the proposal; and
- whether the RIS has adequately considered alternatives to regulation.

Bodies that set national standards that require a complying RIS are Ministerial councils, and three national entities — the National Occupational Health and Safety Commission, the Australian Building Codes Board and the Electrical Regulatory Authorities Council. The ORR reports to Heads of Government, through the CoAG Committee on Regulatory Reform, on decisions of these bodies that it considers are inconsistent with the CoAG guidelines. The ORR also monitors and reports annually on compliance.

Governments' compliance

The broad NCP obligation on governments is to demonstrate that bodies setting national standards show that a RIS has been conducted in relation to a standard, consistent with the CoAG principles and guidelines. The specification of the standards-setting obligation in the Implementation Agreement infers that the obligation is a collective responsibility on all governments. All are usually involved on Ministerial councils, and all need to ensure that standards set by national bodies involve an appropriate RIS. In considering compliance in this area, the Council took account of the compliance advice provided by the ORR (see Appendix C) as well as representations from governments. The Council based this assessment on compliance evidence over the period July 2000 to May 2001. The Council nominated the July 2000 to May 2001 period recognising that previous NCP assessments did not address the standards-setting obligation and that governments needed sufficient opportunity to ensure their processes accord with the CoAG principles.

The ORR identified 21 matters that should have been subject to the CoAG requirements which reached the decision stage between 1 July 2000 and 31 May 2001. The ORR considered that the CoAG requirements had not been met in six of these matters which, in order of significance, were:

- the new joint food standards code for Australia and New Zealand;
- the labelling of genetically modified foods;
- a national response to passive smoking;
- the national road safety action plan;
- extension of the Consumer Credit Code to include pay day (very short-term) loans; and
- changes to vocational and educational training arrangements (PC 2001a).

Food standards code

The Australia New Zealand Food Standards Council (ANZFSC) decided on 24 November 2000 to adopt a new joint food standards code, including new mandatory percentage labelling of key ingredients for food and mandatory nutritional panels on all food (rather than only food that makes nutritional claims). The ORR stated that it worked with officials of the Australia New Zealand Food Authority (ANZFA) for more than a year in developing RISs on these two matters. The ORR considered, however, that the cost benefit analysis (required as part of the RIS) was inadequate to support the joint code and particularly the proposals for percentage labelling and enhanced nutritional labelling. In particular, the ORR found there was no analysis of the nature and degree of importance of the likely benefits of the proposals, to

demonstrate that they are likely to be greater than the estimated (substantial) costs.

The ANZFSC has agreed to a two-year period commencing from December 2000 for implementing the code to enable industry to minimise their costs. Further, Ministers have set up an intergovernmental taskforce to report on issues such as whether very small businesses should be exempted and on strategies for the practical and lowest cost implementation of the code. The Council understands that the taskforce is to report to the ANZFSC meeting of 31 July 2001.

Labelling of genetically modified foods

On 28 July 2000, the ANZFSC decided to regulate the labelling of genetically modified food and food ingredients, specifically where novel DNA or protein is present and/or where the food has altered characteristics. The ORR reported that this decision did not comply with CoAG's principles and guidelines; in particular because the document that formed the basis for the decision — *Report on the costs of labelling genetically modified foods* prepared in March 2000 for an ANZFSC taskforce — looked only at costs (and did not cost the exemptions granted by the ANZFSC decision). Further, the ORR found no evidence that the ANZFSC taskforce had undertaken any (even qualitative) analysis of the benefits of the decision.

On the day of the ANZFSC decision, the Parliamentary Secretary to the Commonwealth Minister of Health and Aged Care issued a media statement noting, among other things, that the new regulations will impose a financial cost on industry that will be reflected in the cost of food to consumers. The Parliamentary Secretary to the Minister indicated that the Commonwealth intended to talk with stakeholders to assess the impact on costs and export competitiveness as a result of the new labelling regulations (Tambling 2000).

The national response to passive smoking

In November 2000, the Australian Health Ministers' Advisory Council endorsed a set of documents designed to assist the development of new legislation or the review of existing legislation concerning passive smoking. These are not regulatory instruments, rather they are guidelines endorsed by an advisory council of senior Commonwealth and State officials. The ORR argued that the passive smoking guidelines appear to be covered by the CoAG principles and guidelines because they are akin to 'agreements or decisions to be given effect through … administrative directions or other measures which … encourage or force businesses or individuals to pursue their interests in ways they would not otherwise have done.' Further, the ORR considered that the guidelines fitted the CoAG description of 'voluntary codes and other advisory instruments' for which the 'promotion and dissemination by

standard-setting bodies or by government could be interpreted as requiring compliance' (CoAG 1997, p. 4).

The ORR reported that, despite it providing early advice to the Commonwealth Department of Health and Aged Care, it had been unable to ensure that CoAG's requirements for the preparation of an adequate RIS were met. The ORR also advised that it understood that no RIS was provided to the advisory council prior to it endorsing the guiding principles and core provisions for regulation of passive smoking.

The ORR judged that the nature and magnitude of the costs and benefits of the regulation of passive smoking could be substantial. It considered that passive smoking regulation is likely to impose costs or losses on a wide range of hotel, club, restaurant and entertainment industries. The ORR also noted that regulation also has ramifications for the structure of venues and the effectiveness of air conditioning systems, and could reduce patronage. It noted also that there would be some benefits because both staff and patrons of hospital and entertainment venues would benefit from a smoke-free environment and there would be reduced long-term health care costs.

The Commonwealth Department of Health and Aged Care disputed that the national response fits the description under the CoAG principles and guidelines of a voluntary code or advisory instrument which could be interpreted as requiring compliance. The department stated that the Ministerial council's endorsement of the national response does not legally bind governments to observe the model. The department noted that each State and Territory is free to develop its own legislative approach and to develop a RIS consistent with its own legislation.

The Northern Territory advised that it is yet to implement any regulations arising from the national approach and that, consistent with the approach outlined by the Commonwealth Department of Health and Aged Care, any regulations the Territory introduces will be subject to its legislation gatekeeping process. The ACT also noted that the intention under the national plan is that governments subject proposed passive smoking legislation to regulatory impact analysis. Tasmania, which introduced legislation in 2001, released a RIS on smoke free public places and workplaces in July 2000. South Australia noted that there had been some analytical regulatory impact work prepared, and that this is available to jurisdictions considering passive smoking regulation. The national response on passive smoking is not relevant to the Commonwealth Government because it does not relate to matters over which the Commonwealth has power to legislate.

The national road safety action plan

On 17 November 2000, the Australian Transport Council released the National Road Safety Action Plan for 2001 and 2002. The plan supports a national strategy aimed at reducing the fatality rate on Australian roads by

40 per cent over the next decade. The plan has been presented as a menu of options from which the States and Territories may select in order to help achieve this target. The ORR noted that, while many of the options are not regulatory, the plan contains some that are regulatory and, if implemented, would not be optional for the States and Territories. Regulatory examples identified by the ORR include:

- amending Australian Design Rules to prohibit speedometers from indicating a speed slower than the true speed;
- amending Australian Design Rules to require sensors and audible signals to encourage the use of seat belts;
- developing a code of conduct for the trucking industry; and
- developing and achieving significant adoption by business and government of a safe fleet policy.

The ORR argued that there is a case to be made that the Australian Transport Council should have complied with the CoAG principles and guidelines before endorsing the program. The ORR found no evidence that any analysis of identified costs and benefits had been undertaken, or conclusions drawn on whether regulation is necessary and, if so, the most efficient regulatory approach. The ORR noted that this matter illustrated a common practice in policy development, whereby a broad strategy is set and then, in a staged process, plans developed and specific measures — some of which are regulatory — introduced. The ORR pointed out that leaving the analysis required by CoAG too late may risk particular options becoming preferred despite (later) evidence favouring more cost-effective alternatives.

While there would be substantial community-wide benefits from a 40 per cent reduction in road fatalities, the range of options for the States and Territories to choose from have vastly different costs. A proper RIS analysis would have helped rank the options as to their cost effectiveness, thereby facilitating the most effective take-up of the options by the States and Territories. The ORR reported that it had not been consulted on the National Road Safety Action Plan. The ORR considered however that there is an opportunity to undertake regulatory impact analysis before governments take tangible action on individual options. Most governments confirmed that they would do this in implementing the national road safety action plan.

Extension of the Consumer Credit Code to include pay day (very short-term) loans

On 8 November 2000, the Ministerial Council on Consumer Affairs agreed to amend the Consumer Credit Code (which had previously not applied to loans of less than 62 days duration) to include pay day lenders. Typical pay day advances have a duration of seven to 21 days and are for relatively small amounts. The Ministerial council's decision was based on a Queensland

Government document *Pay Day Lending — A Report to the Minister for Fair Trading* (Pay Day Lending Review 2000).

Queensland had the responsibility for drafting the proposed changes, with the other States and Territories to replicate the Queensland changes. The Queensland Department of State Development assessed that the changes did not trigger Queensland's RIS requirements. This is because the changes entailed introducing primary legislation. Under Queensland's Statutory Instruments Act, a RIS applies only to the introduction and/or amendment of subordinate legislation. The ORR interprets the CoAG principles and guidelines as requiring justification of any substantial extension to the scope of existing regulation. Consequently, the ORR examined the Queensland document to determine if it contained the essential elements of a RIS. The ORR found that the level of analysis in the document was not adequate. It found that the document failed to identify clearly the costs and benefits to the stakeholders of each of the options, and did not assess the adequacy of the existing body of law (contract law) on the behaviour of pay day lenders.

Changes to vocational and educational training arrangements

On 17 November 2000, the Australian National Training Authority Ministerial Council made several decisions, two of which should have been subjected to the CoAG requirements but for which no RIS was prepared. First, the council agreed that changes were necessary to the existing legislative framework for vocational and educational training, and that they should be implemented by adopting 'model clauses'. Second, it decided to strengthen the Australian Recognition Framework for skills by, for example, introducing auditable standards and by implementing a nationally consistent set of sanctions.

The ORR viewed these changes as part of a continuous improvement process designed to simplify the vocational and educational training system. It did not consider the breach of CoAG's requirements in this case to be substantial. Moreover, it advised that relevant officials, now that they are aware of CoAG's requirements, are to prepare a RIS for the Australian National Training Authority Ministerial Council prior to implementation of the 'model clauses'.

Assessment

The report by the ORR indicated that, in the period July 2000 to May 2001, there was significant noncompliance with the regulation development processes required by the CoAG national standards-setting principles and guidelines (six of 21 decisions did not comply). Nonetheless, the ORR report, and governments' responses to it, indicate that for most of the noncompliant decisions, including the two most significant ones (the food standards code

and the labelling of genetically modified food), there are processes either established or foreshadowed that may improve the cost-effectiveness of relevant regulatory arrangements. The Council considers that addressing the outcomes of the noncompliance in this way will provide greater benefits to Australia than reducing NCP payments in this assessment.

The Council notes comments by the ORR relevant to the identified noncompliance, including that some Ministerial councils may not fully appreciate the wide interpretation given to regulatory matters, and that the turnover of officials in the secretariats of some Ministerial councils could detract from institutional experience. This suggests that future compliance would be encouraged if the Commonwealth State Relations Secretariat reissued the CoAG principles and guidelines to all governments, Ministerial councils and standards-setting bodies, with a reminder of the obligation to apply them.

The Council also considers that compliance would be enhanced if future NCP assessments incorporated consideration of governments' application of the CoAG principles and guidelines. This would involve the ORR reporting annually on compliance by national standards-setting bodies for matters that reach decision stage. Should governments support this approach, given the timing of the future NCP assessments, the ORR's annual compliance report should cover each 12 month period to the end of the March quarter. This would give governments sufficient time to consider the ORR's findings prior to the Council assessing compliance with the principles and guidelines.

Appendix A National Competition Policy contacts

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

National

National Competition Council
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2 Lonsdale Street
MELBOURNE VIC 3000
Telephone: (03) 9285 7474
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Commonwealth

Structural Reform Division
Markets Group
The Treasury
Langton Crescent
PARKES ACT 2600
Telephone: (02) 6263 3758
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www.treasury.gov.au

New South Wales

Inter-governmental &
Regulatory Reform Branch
The Cabinet Office
Level 37
Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000
Telephone: (02) 9228 5414
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Victoria

Economic, Regulatory and Social
Policy Unit
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MELBOURNE VIC 3002
Telephone: (03) 9651 0158
Facsimile: (03) 9651 5575
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Queensland

National Competition Policy Unit
Queensland Treasury
100 George Street
BRISBANE QLD 4000
Telephone: (07) 3224 4285
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Western Australia

Competition Policy Unit
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PERTH WA 6000
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South Australia

Strategic Policy Division
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State Administration Centre
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ADELAIDE SA 5000
Telephone: (08) 8226 2220
Facsimile: (08) 8226 2707
www.premcab.sa.gov.au

Tasmania

Economic Policy Branch
Department of Treasury and Finance
Franklin Square Offices
21 Murray Street
HOBART TAS 7000
Telephone: (03) 6233 3100
Facsimile: (03) 6233 5690
www.tres.tas.gov.au

Australian Capital Territory

Micro Economic Reform Section
Dept. of Treasury and Infrastructure
Level 1, Canberra-Nara Centre
1 Constitution Avenue
CANBERRA CITY ACT 2600
Telephone: (02) 6207 5904
Facsimile: (02) 6207 0267
www.act.gov.au

Northern Territory

Policy & Coordination Division
Dept. of Chief Minister
4th Floor, NT House
22 Mitchell Street
DARWIN NT 0800
Telephone: (08) 8999 7097
Facsimile: (08) 8999 7402
www.nt.gov.au/ntt/

Appendix B National Competition Policy 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 1995 NCP reform package developed by the Council of Australian Governments. The payments recognise that the financial dividend from economic growth accrues primarily to the Commonwealth through the taxation system. The payments are therefore a means of distributing across the community the gains from economic growth that arise from investment in NCP reform.

The prerequisite for States and Territories receiving NCP payments is satisfactory progress against the NCP obligations (see chapter 2). If governments do not implement reforms as agreed there can be no reform dividends to share. In assessing State and Territory progress against the NCP obligations, the National Competition Council makes recommendations to the Federal Treasurer on the distribution of NCP payments. The Council may recommend reduction or suspension of NCP payments where it assesses that governments have not implemented the agreed reform program.

Table B.1: Estimated annual NCP payments ($m) for the period 2001-02 to 2004-05 by jurisdiction[a]

Jurisdiction	*2001-02*	*2002-03*	*2003-04*	*2004-05*
New South Wales	241.0	246.0	252.3	258.0
Victoria	178.5	182.0	186.6	190.7
Queensland	134.6	138.0	142.5	146.9
Western Australia	70.7	72.5	74.7	76.8
South Australia	55.4	56.1	57.1	58.1
Tasmania	17.3	17.4	17.7	17.9
ACT	11.5	11.7	12.0	12.3
Northern Territory	7.4	7.5	7.8	8.0
Total	716.3	731.2	750.7	768.7

[a] Estimated NCP payments based on current inflation rate and population growth. Actual figures are published in each Federal Budget.

Source: Australia House of Representatives (2001).

Appendix C Commonwealth Office of Regulation Review: report on compliance with national standards setting

This appendix contains the Commonwealth Office of Regulation Review's *Report to the National Competition Council on the setting of national standards during the period 1 July 2000 – 31 May 2001.* The Office of Regulation Review provided this report to the Council on 1 June 2001. This report is discussed in chapter 26.

1 Background

In April 1995, Australian governments entered into several agreements allied to competition policy and reform. The amounts and conditions of related competition payments from the Commonwealth to the States and Territories were set down in the 'Agreement to Implement the National Competition Policy and Related Reforms'. For the Third Tranche of competition payments, to commence in 2001-02, factors to be taken into consideration by the NCC are to include advice from the Office of Regulation Review on compliance with CoAG's *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-setting Bodies.*

This report to the NCC provides such advice.

2 The CoAG *Principles and Guidelines* and the advisory and monitoring role of the Office of Regulation Review

Commonwealth–State/Territory coordination takes place through some 40 Ministerial Councils and a few national standard setting bodies. Agreements made by them are commonly implemented by laws and regulations. In April 1995, prompted by concerns that standards should be the minimum necessary and not impose excessive requirements on businesses, CoAG agreed that

proposals put to Ministerial Councils and standard-setting bodies should be subject to a nationally consistent assessment process, as set out in *Principles and Guidelines*. The major element of the process is the completion of Regulation Impact Statements (RISs). For purposes of applying these requirements, CoAG took a very wide view of regulation as 'the broad range of legally enforceable instruments which impose mandatory requirements upon business and the community as well as those voluntary codes and advisory instruments…for which there is a reasonable expectation of widespread compliance.' (p. 4)

The principal responsibility of the Office of Regulation Review (ORR), which is part of the Productivity Commission, is to provide advice and assistance to officials in the preparation of RISs for Commonwealth regulatory proposals that affect businesses. Around 200 Commonwealth RISs were prepared and made public in 1999-2000. The ORR also monitors and reports on compliance with the Commonwealth requirements. It plays a similar role in relation to RISs that must be prepared for Ministerial Councils and standard setting bodies, including monitoring compliance with CoAG's *Principles and Guidelines*. The ORR assesses these RISs at two stages: before they are distributed for consultation with parties affected by the proposed regulation and again at the time a decision is to be made by the responsible body. The ORR must assess:

- whether the Regulatory Impact Statement Guidelines have been followed;
- whether the type and level of analysis is adequate and commensurate with the potential economic and social impact of the proposal; and
- whether alternatives to regulation have been adequately considered;

and must advise the relevant Ministerial Council or standard setting body of its assessment.

It is not the ORR's role to advise on policy aspects of options under consideration, but rather to advise on the assessment of the benefits and costs of these options, and to determine if the analysis is adequate. The assessment remains the responsibility of the relevant Ministerial Council. There is a requirement that the 'Council or body should provide a statement certifying that the assessment process has been adequately undertaken and that the results justify the adoption of the regulatory measure' (*Principles and Guidelines* p. 12).

Allied to the ORR's role, the NCC has asked it to report what matters failed to meet CoAG's *Principles and Guidelines* during the period 1 July 2000 – 31 May 2001, and what matters did comply. Because it is not appropriate to assess the question of compliance until a decision by the responsible body has been made, this report covers only those matters that reached the decision stage during that period. Matters that are of a minor nature or that are essentially about the application and administration of regulation have been excluded from this report. The information in this report will assist the NCC in assessing the possible ramifications of the failures to comply.

As will be evident in this report, the ORR occasionally learns only after the event of decisions made by Ministerial Councils that should have been subject to CoAG's *Principles and Guidelines*. From the ORR's perspective, there appear to be two principal reasons for this. Firstly, some Ministerial Councils may not appreciate the wide interpretation (see above) given to regulatory matters, indicating that CoAG's *Principles and Guidelines* should be applied to decisions on broad plans and strategies having regulatory implications, as well to decisions on guidelines and codes of practice. There is a related misperception that RISs need only be prepared later when specific regulatory instruments are developed. Secondly, the rapid turnover of officials working in secretariats for some Ministerial Councils could detract from having sufficient 'institutional memory' to know about and apply CoAG's *Principles and Guidelines*.

3 Matters for which CoAG requirements were not met

The ORR has identified twenty one matters that should have been subject to the CoAG requirements (and reached the decision stage) between 1 July 2000 and 31 May 2001. Of these, the requirements appear not to have been met for six. Ranked in an indicative order of their importance, these six are:

- the new joint food standards code for Australia and New Zealand;
- the labelling of genetically modified foods;
- a national response to passive smoking;
- the national road safety action plan;
- extension of the Consumer Credit Code to include pay day (very short-term) loans; and
- changes to vocational and educational training arrangements.

3.1 Food Standards Code

On 24 November 2000 a Ministerial Council, the Australia New Zealand Food Standards Council (ANZFSC), decided to adopt a new joint food standards code, including new mandatory percentage labelling of key ingredients for food. Ministers also agreed to extend existing mandatory nutritional panels to all foods, rather than just those that make nutritional claims.

The ORR had worked with officials at the Australia New Zealand Food Authority (ANZFA) for more than a year to develop RISs on these two issues

— percentage labelling and enhanced nutrition labelling. ANZFA also drew on work undertaken very late in the policy development process by Allen Consulting on the costs of the two proposals; there was no complementary analysis of the nature and degree of importance of the likely benefits.

While there was a fairly wide range of estimates as to the potential costs, they clearly are substantial. At the low end, ANZFA contended that the implementation costs of percentage labelling and more extensive nutritional labelling would be of the order of $118 million, with annual ongoing compliance costs of some $33 million. At the high end, the Australian Food and Grocery Council claimed that a KPMG report indicated implementation costs of up to $400 million and ongoing annual costs of $55 million. The benefits are likely to be mainly in the form of better information for consumers and in improved public health. While it should be acknowledged that measuring such benefits may be difficult, CoAG's *Principles and Guidelines* clearly require that there must be sufficient analysis (which may be qualitative) of the benefits to demonstrate that they are likely to be greater than the estimated costs. No such analysis was undertaken. Indeed, as to the effectiveness of nutrition labelling in improving public health, there appears to be no reduction in diet related illness in the Australian community despite existing voluntary labelling on 50-70 per cent of food products.

In the ORR's assessment, the overall cost/benefit analysis was inadequate to support the joint code, and these two proposals in particular. On 15 November 2000, just before the Ministerial Council's decision, the ORR formally advised the relevant CoAG officials' group — the Committee on Regulatory Reform — that the RIS did not contain adequate analysis. ANZFA officials were advised of this action.

The NCC's attention is drawn to the fact that on the day that the Council adopted, by a majority, the new food standards code, the responsible Commonwealth Minister (the Parliamentary Secretary for the Minister for Health and Aged Care) issued a media release stating that 'New percentage labelling requirements … would impose an unjustified cost on industry, especially small manufacturers, and not provide useful information for consumers …' and 'the adoption of nutrition information panels on all packaged food and the listing of allergens, gives useful information which has an impact on public health and safety.'

The NCC should also be aware that ANZFSC agreed to a two-year implementation period to enable industry to minimise their costs. Further, Ministers set up an inter-governmental task force to report on issues such as whether very small businesses should be exempted and on strategies for practical and lowest cost implementation of the code. The report of that taskforce was to have been completed by March 2001.

3.2 Labelling of genetically modified foods

On 28 July 2000, ANZFSC decided to regulate the labelling of genetically modified food and food ingredients, specifically where novel DNA or protein is present and/or where the food has altered characteristics. ANZFA has advised the ORR that the basis of this decision was a document *Report on the costs of labelling genetically modified foods*, prepared in March 2000 by the consultant KPMG for an intergovernmental taskforce established by the Ministerial Council (ANZFSC). However, the ORR had examined that document and advised Commonwealth decision makers on 17 May 2000 that the KPMG document did not meet the Commonwealth's requirements for making regulation; accordingly, it did not meet the (similar) CoAG requirements either.

It is difficult to gauge the magnitude of the impacts of this measure. On the cost side, the specific exemptions granted by the Council's decision had not been costed by KPMG. A further complication is that the existence of exemptions typically adds to the administrative and compliance costs of any regulatory arrangement. Costs will depend also on the type of compliance regime that is implemented. However, available estimates in excess of $100 million for implementation and $30 million annually in ongoing costs suggest substantial impacts.

There will be benefits in the provision of additional information to consumers, which may be difficult to quantify. Nevertheless, there was an onus on the Ministerial Council to demonstrate that the potential benefits of its decision are likely to be at least commensurate with the costs. As the KPMG report looked only at costs, and there is no evidence of any (even qualitative) analysis of the benefits having been prepared by the taskforce for ANZFSC, the ORR concludes that CoAG's *Principles and Guidelines* were not satisfied.

On the day of the ANZFSC decision, the relevant Commonwealth Minister (the Parliamentary Secretary for the Minister of Health and Aged Care) issued a press release with the following comments.

- *I am disappointed that the decision today will require industry to test and determine whether DNA is present in the areas of highly refined ingredients, processing aides, food additives and flavourings.*
- *The Commonwealth's position would have allowed blanket exemptions whilst still delivering world's best practice information to consumers.*
- *The new regulations will impose a financial cost on industry and this will be reflected in the cost of food to consumers.*
- *…The Commonwealth will now be talking with stakeholders to assess the impact on costs and export competitiveness as a result of the new labelling regulations.*

3.3 National response to passive smoking

In November 2000, the Australian Health Ministers' Advisory Council endorsed a set of documents designed to assist the development of new legislation or the review of existing legislation concerning passive smoking. These are not regulatory instruments. But they are guidelines endorsed by an advisory council of senior Commonwealth and State officials, and they do appear to be covered by the CoAG *Principles and Guidelines*. This is because the passive smoking guidelines are akin to 'agreements or decisions to be given effect through … administrative directions or other measures which … encourage or force businesses or individuals to pursue their interests in ways they would not otherwise have done.' Further, they seem to fit the CoAG description of 'voluntary codes and other advisory instruments' for which the 'promotion and dissemination by standard-setting bodies or by government could be interpreted as requiring compliance' (*Principles and Guidelines*, p. 4).

The ORR advised the Commonwealth Department of Health and Aged Care during the early stages of the preparation of a RIS. However, the ORR failed in its subsequent attempts between April and August 2000 to ensure that CoAG's requirements for the preparation of an adequate RIS were met. Furthermore, the ORR understands that no RIS was provided to the Advisory Council when it endorsed the guiding principles and core provisions for regulation of passive smoking. The ORR formally reported on these developments to the CoAG Committee of Regulatory Reform on 13 February 2001.

As to the nature and magnitude of the costs and the benefits of the regulation of passive smoking, the ORR judges that both could be substantial. Such regulation is likely to impose costs or losses on a wide range of hotel, club, restaurant and entertainment industries. It has ramifications for the structure of venues and the effectiveness of air conditioning systems, and it could reduce patronage. On the other hand, both staff and patrons would benefit from a smoke-free environment and there would be reduced long-term health care costs. It is proposals with such substantial costs and benefits that the RIS process is intended to guide.

3.4 National road safety action plan

On 17 November 2000, the Australian Transport Council released the National Road Safety Action Plan for 2001 and 2002. The Plan is in support of a national strategy to reduce the fatality rate on Australian roads by 40 per cent over the next decade. It has been presented as a menu of options from which the States and Territories may select in order to help achieve this target. While many of the options are not regulatory, the Plan contains some that clearly are regulatory and, if implemented, would not be optional for the States and Territories. Regulatory examples include:

- amending Australian Design Rules to prohibit speedometers from indicating a speed slower than the true speed;
- amending Australian Design Rules to require sensors and audible signals to encourage the use of seat belts;
- developing a Code of Conduct for the trucking industry; and
- developing and achieving significant adoption by business and government of a safe fleet policy.

It might be argued that the Plan is very broad in scope and therefore not amenable to the RIS process of assessment, but a case can be made that ATC should have abided by CoAG's *Principles and Guidelines* before endorsing such a program.[1] In particular, there is no evidence that analysis was 'applied to the identified costs and benefits and a conclusion drawn on whether regulation is necessary and what is the most efficient regulatory approach' (*Principles and Guidelines* p. 5).

There can be little doubt about the substantial community-wide benefits of a 40 per cent reduction in road fatalities. Yet the wide range of options for the States and Territories to choose from have vastly different costs. A proper RIS analysis would have helped rank the options as to their cost effectiveness, thereby facilitating a more effective take-up of the options among the States and Territories.

The ORR was not consulted on this plan, and learned of it well after the ATC meeting.[2] Nevertheless, there remains the opportunity to undertake impact analysis before tangible action is taken on individual options.

3.5 Pay day lending and the Consumer Credit Code

On 8 November 2000, the Ministerial Council on Consumer Affairs agreed to amend the Consumer Credit Code to include Pay Day Lenders. The Consumer

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1 This example illustrates a common practice in policy development of first setting a broad strategy and then, in a staged process, developing plans and introducing specific measures, some of which are regulatory. If the analysis required by COAG is left too late, there is a risk of particular options having become preferred, despite evidence favouring more cost-effective alternatives.

2 A view that strategic plans should be excluded from COAG's requirements (see section 2) appears to have resulted in another, more recent, example where the ORR was not consulted. When the ATC met on 25 May 2001, it endorsed an emissions abatement package for urban transport. The ORR did not obtain any information on this matter until 31 May 2001, allowing insufficient time before completion of this report to assess whether there are regulatory implications that would have required preparation of a RIS for the ATC.

Credit Code had previously not applied to loans of less than 62 days duration. Typical pay day advances have a duration of 7 to 21 days and are for relatively small amounts. The Council's decision was based on a Queensland Government document *Pay Day Lending — A Report to the Minister for Fair Trading*.

Queensland had the responsibility for drafting the proposed changes before the other States and Territories replicated the changes. The Queensland Department of State Development assessed that the proposed changes did not trigger Queensland's RIS requirements, apparently because they were regarded as closing a loophole in the Code. In contrast, the ORR interprets the CoAG *Principles and Guidelines* as requiring justification of any substantial extension to the scope of existing regulation.

When the ORR became aware that the decision had been made without a RIS having been prepared, it examined the report to determine if it contained the essential elements of a RIS. The level of analysis in the document was found not to be adequate — it fails to clearly identify the costs and benefits to the stakeholders of each of the options considered. The report also fails to assess the adequacy of the existing body of law (contract law) on the behaviour of pay day lenders.

3.6 Vocational and educational training

On 17 November 2000, the Australian National Training Authority Ministerial Council made several decisions, two of which should have been subjected to the CoAG requirements but for which no RIS was prepared. Firstly, the Council agreed that changes were necessary to the existing legislative framework for vocational and educational training, and that they should be implemented by adopting 'model clauses'. Secondly, it was decided to strengthen the Australian Recognition Framework for skills by, for example, introducing auditable standards and by implementing a nationally consistent set of sanctions.

Following examination of these issues, the ORR reports that they should be viewed as part of a continuous improvement process designed to simplify the VET system, thus reducing compliance costs, and are not substantial in terms of failing to meet CoAG's requirements.

Now that the relevant officials are aware of CoAG's requirements, a RIS is to be prepared for the Council prior to implementation of the 'model clauses'.

4 Cases of qualified compliance with CoAG requirements

Determining whether or not the CoAG requirements have been met is not always clear cut. In order to give the NCC a clear picture of factors the ORR takes into account, two such cases are described in this section: a national standard for the storage and handling of dangerous goods, and a voluntary industry code of conduct for inbound tourism operators.

4.1 Dangerous goods

On 1 December 2000, the Workplace Relations Ministers' Council agreed on a national standard for storage and handling of dangerous goods. A quite detailed RIS had been developed, in consultation with the ORR, prior to that time. The RIS suggested that costs of the standard are likely to be of the order of $200 million, and benefits expected also to be around $200 million.

The ORR advised that the CoAG requirements had been met, but pointed out that whether a net benefit results from the standard depends heavily on achieving a 50 per cent reduction over 10 years in the number of adverse events with dangerous goods, in stark contrast with the failure of current regulations to reduce such events.

These qualifications were provided in the secretariat's briefing for the Ministerial Council and thus presumably would have been taken into account in the decision. This is a good example of what the CoAG *Principles and Guidelines* are intended to achieve — that those setting national standards have before them a soundly based assessment of the likely impacts of the proposal.

4.2 Inbound tourism operators

On 26 July 2000, the Tourism Ministers' Council decided to write to the Inbound Tourism Operators' Association, giving strong support for the development and introduction of a voluntary industry code of conduct. This was in response to concerns that some packages for foreign tourists to Australia may involve excessive or secret commissions, misleading representations of travel components or quality of accommodation, and low service quality. As explained earlier, such endorsement of a voluntary industry code of practice is intended to be covered by the CoAG *Principles and Guidelines*.

In this case, no RIS was prepared. However, the Council's decision was informed by a report that was commissioned by a consultant — the Centre for International Economics. When the ORR became aware of the Council's

decision, it examined the consultant's report and assessed that it included the essential elements required in a RIS. While CoAG's requirements would have been more properly met had the ORR been given the opportunity to make such an assessment prior to decision, it is apparent that the Council was provided with a sound basis for its decision.

5 Compliant regulatory matters

The following matters that were subject to COAG *Principles and Guidelines* and reached the decision stage during 1 July 2000 – 31 May 2001, satisfied the requirements.

Measure	*Body responsible*	*Date of decision*
1. New administrative arrangements for food regulation	CoAG	3 November 2000
2. Uniform food legislation	CoAG	3 November 2000
3. Australian Design Standard to mandate the fitting of engine immobilisers	Australian Transport Council (ATC)	29 December 2000
4. National Code of Practice for the Defined Interstate Rail Network Vol 1-3	ATC	25 May 2001
5. National Standard for Commercial Vessels — Part D, Crew Competencies	ATC	25 May 2001
6. National compliance and enforcement regulatory scheme for heavy vehicle mass, dimension and load restraint.	ATC	1 November 2000
7. Annual adjustment procedure for heavy vehicle charges	ATC	25 May 2001
8. Policy framework for performance based standards for heavy vehicle regulations	ATC	25 May 2001
9. Response to the national review of petroleum (submerged lands) legislation	Australia New Zealand Minerals and Energy Council (ANZMEC)	25 August 2000
Minimum energy performance standards for 10. air conditioners; and 11. electric motors.	ANZMEC	Out-of-session decision process almost complete by end-May 2001
12. Model code of practice for the welfare of animals — livestock (including poultry) at slaughtering establishments	Agriculture and Resources Management Council of Australia and New Zealand	Out-of-session decision endorsed 18 August 2000
13. Food safety standards - food safety practices and general requirements - food premises and equipment	ANZFSC	28 July 2000

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