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**THE ACT GOVERNMENT'S 3<sup>RD</sup> TRANCHE PROGRESS  
REPORT  
TO  
THE NATIONAL COMPETITION COUNCIL  
ON  
IMPLEMENTING NATIONAL COMPETITION POLICY  
AND RELATED REFORMS**

**MARCH 2001**

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## 1. Background

The Competition Principles Agreement signed by the Commonwealth, States and Territories in April 1995 obliges the parties to report annually on the implementation of clauses 3 and 5 of the Agreement, addressing competitive neutrality and legislation review. In addition, there is an annual reporting requirement with respect to implementation of the related reforms in electricity, gas, water and road transport, according to the COAG reform framework or its agreed modifications.

This is the ACT's fifth annual report to the National Competition Council (NCC). The initial report in 1997 referred to the period ending 31 December 1996 and was the basis for the assessment of the first tranche of competition payments that commenced in July 1997. In 1999 the annual report covering the period 1 January 1998 to 31 December 1998 formed the basis of the assessment of the second tranche of competition payments, which commenced on 1 July 1999. This report is the basis for the third tranche assessment

This report covers the reforms implemented in the period 1 January 2000 to 31 December 2000 and is the basis for the third tranche assessment which will commence on 1 July 2001 and continue for five years conditional on the ACT continuing to implement reforms and maintaining reforms already implemented.

## 2. Summary of third tranche NCP reform obligations

The third tranche reform program is established by the three April 1995 NCP Agreements, generally termed the Competition Policy Agreements. These are:

- the *Competition Principles Agreement*;
- the *Conduct of Code Agreement*; and
- the *Agreement on Related Reforms*.

Payment under the third tranche will commence in 2001-02 and be made each year thereafter on the basis of progress on the implementation of the following reforms:

- 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;
- whether the State or Territory has remained a fully participating jurisdiction as defined in the Competition Policy Reform Bill;
- the setting of national standards in accordance with the Principles and Guidelines for National Standard Setting and Regulatory Action and advice from the Office of Regulation Review on compliance with these principles and guidelines; and
- continued effective observance of reforms in electricity, gas, water and road transport.

To meet agreed third tranche obligations, Governments will need:

- to be a participating jurisdiction, that is, to have implemented the competition code, a modified version of Part IV of the TPA, including;
    - to have notified to the Australian Competition and Consumer Commission (ACCC) all legislation or provisions in legislation enacted or made in reliance upon section 51 of the TPA, within 30 days of the legislation being enacted or made (relevant legislation for the third tranche is legislation made since that notified for the second tranche assessment)
  - to be a party to the CPA and to have implemented the major elements of the CPA program including;
    - application of competitive neutrality principles to all significant government-owned businesses, including local government businesses, where appropriate (clause 3)
    - structural reform of public monopolies where competition is to be introduced or before a monopoly is privatised (clause 4)
    - completion of the program of review of all legislation that restricts competition (including Acts, enactments, Ordinances or regulations) and removal of restrictions, where appropriate (clause 5)
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- gatekeeper regulatory impact analysis, including systematic and transparent assessment of alternatives to regulation, where new or amended legislation that restricts competition is proposed (clause 5)
- to achieve effective participation in the fully competitive national electricity market (NEM) including completion of all transitional arrangements;
- to fully implement free and fair trading in gas between and within jurisdictions;
- to achieve satisfactory progress towards implementation of the 1994 CoAG Strategic Framework for the reform of the water industry consistent with timeframes established through inter-governmental agreement;
- to fully implement reforms to road transport developed by the Australian Transport Council and endorsed by CoAG; and
- to ensure that national standards are set in accordance with principles and guidelines for good regulatory practice endorsed by CoAG.

### Extension of Legislation Review Schedule

The ACT notes that CoAG, at its meeting 3 November 2000, agreed to extend the deadline for completing all legislative reviews and implementing appropriate reforms from 31 December 2000 until 30 June 2002.

The ACT also notes that CoAG has agreed that satisfactory implementation of reforms may include, where justified by a public interest assessment, having in place a firm transitional arrangement that may extend beyond the revised deadline.

The ACT is concerned that any decision to recommend a reduction in tranche payment where a review has been undertaken but reform has not been implemented is outside the terms of the NCC's charter under the National Competition Policy agreements. The ACT accepts the council's objective to encourage timely reform but does not consider the Council well placed to preempt a jurisdiction's Government's right to determine the timing of implementation within the revised framework of 30 June 2002.

### 3. Competitive neutrality

#### Competitive neutrality obligations under NCP

The NCC has previously approved the ACT's framework complying with the competitive neutrality obligations of the Competition Principles Agreement. Further to this the ACT:

- is introducing the National Tax Equivalent Regime (NTER);
- is continuing transparency in funding Community Service Obligations; and
- has completed the transfer of competitive neutrality complaints from the Competitive Neutrality Complaints Unit to an independent body, the Independent Competition and Regulatory Commission (ICRC).

#### Full coverage of significant businesses

Under the Intergovernmental Agreement on the Reform of Financial Relations, Heads of Government agreed to introduce a NTER commencing 1 July 2001 to largely replace the present Tax Equivalent Regime (TER) operated by each State/Territory for their Government Business Enterprises.

The purpose of the NTER is to facilitate competitive neutrality between the Entities and their privately held counterparts. Each jurisdiction is responsible for determining which of their Entities will be included in the NTER arrangements.

ACT entities, which are subject to TER, not included in NTER will continue to pay ACT TER under existing arrangements. The following ACT Government entities, currently subject to ACT TER, are being included in the NTER scheme:

- ACTEW Corporation Limited
- ACT Forests
- ACTION Buses
- ACTTAB Limited
- Australian International Hotel School
- Canberra Cultural Facilities Corporation
- Canberra Tourism and Events Corporation
- CIT Solutions
- Exhibition Park in Canberra (EPIC)
- Gungahlin Development Authority
- INTACT
- TotalCare Industries Limited;

Costs for administering the NTER charged by the ATO to the ACT will be passed onto the relevant entity.

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Clearly Defined and Costed CSOs

ACT policy since 1997-98 is that CSOs be identified and budget funded. The GBEs which receive CSOs are:

- ACTEW and ActewAGL
- ACTION Busses
- ACT Forests
- Exhibition Park in Canberra
- Yarralumla Nursery
- Office of the Public Trustee

The CSO policy is extended to business units irrespective of organisational structure.

**CSO Payments in the ACT**

<b><u>Business Unit</u></b>	<b><u>Value \$'000</u></b>	<b><u>Description</u></b>
Exhibition Park in Canberra	292	Compensation for charging below market rates, as a result of Ministerial direction, or in agreements entered into by the ACT government.
Yarralumla Nursery	197	Free Plant Issue scheme
ACT Forests	540	Provision of public use areas in forests in the ACT.
ACTION	16,700	Compensation for fare levels set by Government at less than commercial level.
ACTION	11,832	Provision of school bus services
ACTION	10,513	Provision of off-peak services on the general route.
ACTEW	859	Half cost of water use for schools & churches
ACTEW	1,335	Half cost of sewerage services to churches & hospitals
ACTEW	30	Compensation for water & sewerage rates for lease granted under the (repealed) <i>Church Land Act 1924</i>
ACTEW	3,122	Rebates on electricity bills to pensioners
ACTEW	2,621	Rebates on water & sewerage charges to pensioners
ACTEW	115	Administration costs for rebates
Office of Public Trustee	467	Financial management under guardianship and management of property orders, under powers of Attorney, AFP call outs, welfare funerals and trusts and estate administration of \$100,000 value and under.

### Investigating allegations of non-compliance

The ACT adopted a policy in 1996 to apply the principles of competitive neutrality to all ACT Government businesses, irrespective of their 'significance' as provided for in Clause 3 of the Competition Policy Agreement.

During 2000 the responsibility for investigating new complaints under the competitive neutrality requirements passed to the ICRC. The Microeconomic Reform Section of the Department of Treasury completed complaints that were on hand prior to the establishment of the ICRC.

Three complaints were completed by the Section. These are detailed in the following table.

<b>Complainant</b>	<b>Basis of Complaint</b>	<b>Response</b>	<b>Reforms stemming from complaint</b>
Mr John Boland re Gold Creek Health Club	Concern that the Government owned facility did not pay land taxes and government charges and did not have full cost recovery.	Matter finalised with explanations provided to ongoing questions of clarification. The Health Club had to operate because of legal obligations created by commercial undertakings by a previous Government.	The review exposed some practices that were counter to competitive neutrality requirements, eg non-payment of sales tax because of government purchasing with the goods subsequently used by the centre's management. All taxes are now paid on goods and services, rates are hypothecated in charges and will be paid by the new owner upon sale. The whole complex (health club, golf clubhouse and course, and social centre) is subject to a government guarantee of debt but the guarantee has not been called upon.  The complex is now run on commercial grounds and is being prepared for sale.
Mr Boland re Civic and Tuggeranong swimming pools	Concern that the Government was in the health club and fitness business.	Legal advice has confirmed that no competitive neutrality issue existed.	The arrangements of contracting the operation of the centres by open tender for independent management resulted in the Government not being in business. The issue of the tender process was investigated by the ACT Auditor General and the process was cleared.
Mr Andrew Holt re long stay day care for children	Concern that the Government provided subsidised long-stay day childcare.	Investigation found the Government is not involved in the industry.	Government practice of leasing surplus buildings to community-based organisations for long-stay day childcare is under review.

## 4. Structural reform of public monopolies

### Structure of **ACT's monopoly utility services**

ACTEW and AGL have established a 50/50 joint venture.

The joint venture consists of two distinct 50/50 partnerships, an energy distribution partnership and an energy retail partnership. ACTEW and AGL have established separate subsidiary companies for the associated partnerships.

The Joint Venture has also entered into a service agreement with ACTEW whereby management of the water and sewerage assets will be undertaken by the Joint Venture according to agreed standards and performance indicators. Under this agreement all income is retained by ACTEW in exchange for payment to the Joint Venture for the provision of services by the Joint Venture.

The retail and distribution partners are separate subsidiaries and regulated prices will still be subject to scrutiny by the ICRC. Water and sewerage is a separate contract agreement between ACTEW and the partnership Board subject to separate open book accounting which is intended to fully disclose all transactions. As such ACTEW's water and sewerage prices will still be regulated by the ICRC.

The ACCC and the ICRC were consulted about the proposed partnership arrangements during negotiations between the two parties. Neither the ACCC nor ICRC have raised any objections about the structure of the Joint Venture partnership.

### Regulation of ACT utilities

The *Utilities Act 2000* was passed in the ACT Legislative Assembly in November 2000. As a result the ACT is the first jurisdiction to integrate the regulation of gas, electricity, water and sewerage services and is also the first jurisdiction to have codes of practice covering the water and sewerage industry. The *Utilities Act* replaces eight separate acts, amends 17 others and subsumes a range of regulations.

The regulatory regime is ownership neutral and applies to all utilities operating in the ACT. It is based on relevant utilities being required to have separate operating licences for each class of utility services that they provide namely electricity/gas distribution, electricity/gas retail, water supply and sewerage. The licences have a range of specific conditions with which the utility must comply. Some of these conditions are embodied in detailed industry codes such as the consumer protection code. The legislation provides a graduated range of penalties for non-compliance ranging from notification of breaches and including possible fines to revocation of licences in extreme conditions.

The new utilities regulatory framework consists of:

- *Utilities Act 2000*
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- *Utilities (Consequential Provisions) Act 2000*
- Utility Services Licence
- Standard Customer Contracts for Electricity, Natural Gas, Water and Sewerage Services
- Industry Codes including the Consumer Protection Code, the Drinking Water Quality Code of Practice, the Waste Water Code of Practice as well as Technical and Safety Codes such as network safety, metering, supplier of last resort and dam safety.

In summary the *Utilities Act*:

- provides the general basis of the regulatory structure including a licensing regime for each industry;
- sets out the broad objectives for the regulation of utilities;
- sets out specific legal rights that each utility needs including rights of access to and ownership of existing assets and rights to acquire third party easements;
- enables the responsible Minister to issue directions on licence conditions or industry and technical codes which will be disallowable;
- authorises industry and technical codes governing specific areas of operation such as disconnection procedures, consumer protection, safety and technical standards. These codes are enforceable as licence conditions, subject to amendment either by Ministerial direction or by the ICRC after consultation with industry;
- makes customer contracts enforceable and subject to minimum terms and conditions. These contracts may be varied as agreed by the customer and the utility subject to the normal statutory restrictions eg fair trading legislation; and
- requires utilities to provide consumer service obligations at an agreed price.

The legislation also contains provisions for ministerial directions, which would be disallowable by the Assembly, to enable new licence conditions or other Government requirements to be imposed via operating licences following commencement of the new regime.

Provisions contained in the legislation will be administered by three key bodies, namely:

- **Independent Competition and Regulatory Commission (ICRC):** which assumes the additional role of licence administrator for utilities including the ability to issue, vary, suspend or revoke licences.
- **Essential Services Consumer Council (ESCC):** which can prevent disconnection on hardship grounds and can determine appeals about consumer complaints involving amounts up to \$10,000.
- **Safety and technical regulator:** the legislation will require utilities to comply with relevant safety and technical standards. The technical and safety regulator will continue to be responsible for developing standards and

monitoring compliance with the capacity to issue default notices and impose fines. More serious breaches including instances of systemic non-compliance can be referred for the ICRC to determine more stringent action under the licence including licence revocation.

Environment ACT retains responsibility for environmental management whilst the Chief Health Officer continues to have responsibility for public health requirements including protecting drinking water quality.

## ACTION Bus Services

Work commenced in 1998 on the establishment of ACTION as a statutory authority. Draft legislation has been prepared and lodged with the Legislative Assembly for debate in the 2001 sittings. The proposed Corporation will report to a Board and operate under governance arrangements similar to other GBEs.

Public passenger bus services are currently regulated under the *Motor Omnibus Services Act 1956* and sections of the *Road Transport (General) Act 2000*.

The *Road Transport (Public Passenger Services) Bill* currently before the Assembly will repeal the current legislation. The new legislation will place all the regulation of public bus transport into one piece of legislation and will establish an accreditation regime for operators of public passenger bus services.

## ACT Forests

ACT Forests operates as a separate government business enterprise within the Department of Urban Services. It has a commercial charter relating to the management of 16,000 ha of pine plantations in the ACT. It also manages plantations on behalf of private clients in the surrounding areas of NSW.

A review of ACT Forests was undertaken in 1999-2000 with a view to obtaining advice on the most appropriate governance arrangements and financial structure to manage the commercial operations of ACT Forests and achieve the Government's objectives with respect to forestry in the ACT.

Following the review, the Government decided to restructure the organisation, improve the commercial focus, appoint a commercial board of advisers and fully fund the CSOs relating to the recreational and community use of the forests.

In terms of competitive neutrality issues, since 1997-98, there has been budget funding of CSOs. Full-cost attribution has been in place for a number of years. A full tax-equivalent regime has applied as of 1 July 1999.

In view of the small size of its operations and the fact that only 13% of its revenue comes from appropriations, the separation of the purchaser and provider functions has been addressed internally within ACT Forests. A significant portion of the operations work is undertaken by contracted labour and services and this will increase substantially after the restructure.

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ACT Forests has no regulatory responsibilities. Its primary regulator is Environment ACT, Department of Urban Services.

### Market-Testing

The Department of Urban Services has been undertaking a market-testing in respect of a range of services including horticultural maintenance and cleaning services for six regions across the ACT.

The contract for the first of these was awarded to a private sector provider in March 1999. The in-house provider CityScape bid for the tender on a competitively neutral basis, and the financial assessment of the tenders included the attribution of the Department's potential redundancy costs before the final decision was taken. The tender for the second region, Inner South, was awarded to the in-house provider. The third region, Inner North, was awarded to a local private sector provider and the fourth region, Belconnen/Gungahlin was awarded to the in-house provider.

Tenders for the remaining two regions are expected to be advertised by June 2001. Under the current timetable, the horticultural maintenance and cleaning services market-testing program is to be completed in 2001.

### Prices Oversight: Industry and Government Business Enterprises

The Independent Pricing and Regulatory Commission (IPARC) was the ACT's independent regulator of prices for industries with insufficient competition and also regulated third party access to infrastructure arrangements. In February 2000 the *Independent Pricing and Regulatory Commission Act 1997* was amended to broaden its general regulatory powers while retaining the powers of the *IPARC Act*. The amending legislation, the *Independent Competition and Regulatory Commission Amendment Act 2000* changed the name of the regulator<sup>1</sup> and expanded its powers from price regulation to a general competition policy and regulatory oversight role. The changes took effect from the date of the Act's gazettal on 23 March 2000.

### ICRC Referral: ACTION Bus Services

In December 1998, the Minister for Urban Services referred the matter of appropriate pricing and price methodology for the regulated bus services provided by ACTION to the Independent Pricing and Regulatory Commission (IPARC). This first price direction was released on 30 April 1999 and the second direction for 2000-01 was released in May 2000.

Under new terms of reference, the ICRC is conducting an investigation into the Price Direction of ACTION fares for a period of three years (2001-2004). The

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<sup>1</sup> The text in this report refers to the IPARC where the regulator acted under the *IPARC Act 1997* and refers to the ICRC where the regulator will be acting post the introduction of the *ICRC Amendment Act 2000*.

draft Direction was released for public examination and consultation on 19 February 2001. It is intended that the final Direction will be released on 18 April 2001.

#### ICRC Referral: Taxis

In June 1998, the Minister for Urban Services declared the ACT taxi industry to be a regulated industry, referred taxi fares to IPARC for investigation and, pursuant to subsection 16 (1) of the *Independent Pricing and Regulatory Commission Act 1997*, specified various requirements in relation to the investigation.

The first report from the ICRC for fares to apply from 1 July 2000 was released in June 2000. It raised a number of concerns regarding the future regulation of the taxi industry and the way this impacts upon the determination of taxi fares. Further, it determined the maximum taxi fares that could apply in the ACT for a period of only one-year and undertook to conduct a study into the most appropriate method for determining prices in the industry. The ICRC's consideration of an appropriate pricing methodology for the future will largely depend upon the Government's decision on its competition policy review of legislation relating to the regulation of taxis in the ACT. Should the Government decide to deregulate the taxi industry, there will be no further need for price regulation (although some form of price monitoring may be required).

The ICRC is currently conducting an inquiry to establish a Price Direction for taxi fares for a period of two years from 1 July 2001. The terms of reference for this inquiry relate to the determination of prices for taxi services and address the methodology which will be used to determine fares and recommend maximum fares to apply for two years from 1 July 2001.

#### ICRC Referral: Natural Gas

A review of ACT gas tariffs planned for 1999 and foreshadowed in the earlier progress report was not conducted. At this stage, the review should take place in 2001. Its conduct is subject to the ACT's ICRC determination on the AGL Gas Company (ACT) Limited Access Arrangement for the ACT, Queanbeyan and Yarralumla Distribution Network.

Following advice from the ICRC Commissioner the gas pricing inquiry was delayed until the Commission had determined the access arrangement. The ICRC has handed down a determination on the Canberra gas distribution network access arrangement in November 2000. The ICRC is considering options for the regulation of gas tariffs.

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## 5. Achieving Effective Regulation

### Compliance with the Competition Principles Agreement legislation review commitments

The NCC in its Assessment Framework has prioritised legislative reviews that potentially have significant restrictions on competition. The Framework has specified detailed reporting requirements for significant reviews and this reporting is contained in the following chapters.

The summary line item reporting of progress of reviews against the Legislative Review Program is contained in Appendix A, the *Legislative Review Progress table*.

### Compliance with the conduct code obligations

A Section 51 exception under the *Trade Practices Act 1974* was legislated in June 1998 through the *Milk Authority (Amendment) Act 1998*. The authorisation, which was ‘grandfathered’ to 31 December 1998, refers to provisions of the Act in relation to price fixing, licences and permits, and vendor zones. In February 1999, the *Milk Authority (Amendment) Act 1999* extended the exemption for licences and permits and for vendor zones to 30 June 2000 and for Authority contractual arrangements until 31 December 1999. Competitive restrictions were removed by passage of the *Milk Authority Repeal Bill 2000*.

## 6. Electricity

### Legislation Review

The *Utilities Act 2000* which provides for an enhanced regulatory framework for electricity, gas, water and sewerage utilities meets the ACT's commitment to review and reform of electricity-related legislation. As part of the overall legislative package, a number of other electricity-related Acts were either repealed or amended. These included the *Electricity Supply Act 1997*, the *Electricity Act 1971*, and the *Energy and Water Act 1988*.

The Council has also indicated that it will consider whether licensing arrangements are consistent with the principles of NCP.

In 2000, passage of the *Utilities Act* introduced a radically revised arrangement for the licensing of electricity utilities. A key change was the transfer of utility licensing to the ICRC. Existing licences under the *Electricity Supply Act* for distributors and retailers will not continue after July 2001. The Utility regulation regime is covered under Chapter 4, Structural Reform of Public Monopolies.

### NCC's overall assessment

The Council has stated that, while it considers that progress against commitments related to the establishment of the National Electricity Market (NEM) has generally been good, there are some aspects of the current market operations which may be acting to limit competition in the NEM.

The ACT notes that the NEM has now been in operation for just over two years. As such, it is to be expected that fine-tuning of the present arrangements and review of the fundamentals of the Market will be necessary from time to time. Such ongoing change is inherent in the NEM design, in particular the Code change process and the existence of Protected Provisions in the Code.

Jurisdictional attention in 2000 remained firmly focussed on NEM review. Identification of any anti-competitive elements is part of this review. At the higher level, the ACT has been supportive of the ongoing work of the Energy Markets Group in defining ongoing NEM principles. On a more detailed level, work of the Market and Systems Operation Review Committee continued throughout 2000, with a view to a report to jurisdictions in 2001. This industry-based committee, commissioned by jurisdictions to report in 2001, is an example of the detailed review work that is now underway.

### Establishment of the NEM

The ACT, since NEM start, has not sought any additional jurisdictional derogations and has not sought extension of any of the original ACT derogations. The ACT, along with other jurisdictions, gained approval from the ACCC in 2000 for the extension of the derogation covering all jurisdictions that relate to Schedule 9G of the Code (Ancillary Services Arrangements). The extended

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derogation is a step towards establishing implementation of the market-based ancillary services framework envisaged by the Code.

## Reviews of Code Provisions

The Council notes some significant Code reviews that have taken place since the start of the Market. Full details of the substantial body of work undertaken in 2000 will be available from the National Electricity Code Authority (NECA) and the ACCC. It is the ACT's view that, in general, the package of review activity undertaken in 2000 and at present underway demonstrates the ongoing viability of NEM arrangements.

The ACT also notes that a high proportion of Code review work will originate from parties other than jurisdictions. This is in accordance with NEM design. While recognising the importance of jurisdictions for strategic NEM policy and for review of Protected Provisions, other parties such as Market participants, NECA, the National Electricity Market Management Company (NEMMCO) and the ACCC also have a key role in advancing Code review.

## Structural Reform

As noted previously, the enhanced ACT regulatory regime set out in the *Utilities Act* has further strengthened the regime for separation of the ACT's only major electricity distribution business, now ActewAGL Distribution and its associated retail business.

## Derogations

At the end of 2000, the original ACT derogations covering distribution ended.

Extension in 2000 of the derogation covering all jurisdictions that relates to Schedule 9G of the Code (Ancillary Services Arrangements) is short term only and is a key step towards establishing implementation of the market-based ancillary services framework envisaged by the Code.

## Vesting Contracts

The ACT did not put into place vesting contracts to manage its transition to competition in retail supply.

## Institutional Framework

In 2000, the ACT continued its active participation in the Governance and Liability Review. Work in 2000 included the Market and System Operations Review Committee and the extension of the liability caps for NEMMCO and its Transmission Network Service Provider partners set out in the National Electricity Regulations. The ACT has been supportive of the work of the Energy Markets Group in defining ongoing NEM principles.

The Council states that it would be concerned if any review of the NEM institutional framework resulted in less transparent mechanisms being adopted or the frustration of the commitment to ongoing reforms in the electricity industry. The ACT would share such concerns. ACT comment in 2000 on the Governance and Liability Review has noted the importance of transparency, accountability to all NEM stakeholders, and the avoidance of any possible perception of conflict of interest between governments' policy and shareholder roles.

## Structure of the Generation Market

There is, at present, no generation in the ACT relevant to the NEM.

## Interconnects

While there are no interconnect proposals for the ACT, the ACT notes that commissioning of the regulated Queensland/New South Wales Interconnection took place in early 2001. This link, the second interconnection between Queensland and NSW, represents a major development in Australia's electricity reform process.

In its discussion on progress with the proposed South Australia/New South Wales interconnect (SANI), the Council expresses concern about its perception of delays. It states that, if further delays are experienced, "the Council will conclude that NEM participating jurisdictions have failed to ensure that regulated interconnects are dealt with expeditiously". The ACT shares this concern because of the risk of loss of competitive pressure in the market.

The ACT remains committed to the achievement of a fully competitive NEM, including the on-going enhancement of interconnection between the formerly state-based grids.

The ACT has been actively working with other jurisdictions, NEMMCO and NECA to address issues that have impeded interconnection proposals, for example, experience to date reveals that Code difficulties encountered with the SANI proposal have been resolved, that key interconnection projects are either now completed or proceeding at pace, and that technical engineering issues have been as much a contributing cause to delays as anything else. The ACT expects this work will facilitate any further proposed interconnections between jurisdictions.

The Council's intention to discuss certain institutional changes to the Inter Regional Planning Committee with NEMMCO and NECA is noted. It should also be noted that proposals for the enhancement of the role of the Inter-Regional Planning Committee have been brought forward in 2000 by both jurisdictions and the Market companies.

## Full Retail Competition

The Minister for Urban Services announced in December 2000 that from 1 July 2001, retail competition would be extended to customers who use between 100

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and 160 megawatt hours per annum. The Minister also said that while the current plan was for remaining customers, including residential customers, to be free to choose their retailer from January 2002. Before a final go-ahead could be given, however, the necessary computer systems would have to be operational. In addition, the community would need to understand the issues involved for the residential and small business sectors.

## Specific ACT issues

### ACT Derogations

As noted by the Council, the ACT, since NEM start, has not sought any additional jurisdictional derogations and has not sought extension of any of the original ACT derogations.

### Full Retail Competition

Competition in electricity retailing commenced in the ACT in December 1997. By July 1998, all customers using more than 160 megawatt hours per annum at a premise were contestable. The total number of customers involved was around 1000. Just under half of all ACT electricity was contestable following these reforms. The opening up of a further tranche of contestability in the ACT in July 2001 means that a further 450 or so customers will have retailer choice.

The ACT Government has not required any information from the incumbent retailer or from those retailers competing with the incumbent retailer as to the amount of customer transfer. The view has been that this is commercially sensitive information only tangentially relevant to the Government's task. Information to hand, however, indicates that a significant proportion of the "non franchise" market has changed retailer since 1997. The following points appear to back up this view and appear relevant to the Council's assessment:

- 17 retailers other than the incumbent have sought and maintained licensing in the ACT since the opening of the market to competition.
- Since the inception of retail competition, no retailer has lodged a complaint, formal or otherwise, with the Government on difficulties faced in changing retailers.
- The Government is not aware of difficulties encountered by any large Australia-wide customers in implementing their national electricity contracts in the ACT.
- There is evidence, in submissions made to the ICRC pricing inquiries, Government inquiries into structural options for ACTEW Corporation and the subsequent ActewAGL Partnerships, and others, that indicates that retail margins for larger customers opened to competition have been driven down.

The second issue raised by the Council is a timetable that sets out the project plan for full retail competition with major milestones.

The Minister for Urban Services clarified the ACT's timetable for retail competition in December 2000. From 1 July 2001, retail competition would be

extended to customers who use between 100 and 160 megawatt hours per annum. The Minister also indicated that the current plan was for remaining customers, including residential customers, to be free to choose their retailer from January 2002.

The major contingencies and milestones for successful implementation of full retail competition were also identified at that time. These are, in summary:

- The Government's consideration of the outcome of a Legislative Assembly Committee investigation of retail competition, with a special focus on residential customers. It is hoped that this will take place in 2001; and
- The necessary computer systems being operational;

In terms of the necessary computer systems, the ACT formally committed itself to the inter-jurisdictional process for the development of the necessary systems for full retail competition. This process involves ACT participation in a formally constituted Jurisdictional Panel and ACT part-funding for certain aspects of the process.

As detailed below, the ACT has also sought advice to establish timeframes for delivery of an ACT metrology procedure, a key feature of the changes made to the Code to support full retail competition.

The Council is also seeking evidence that the approach adopted by the ACT is based on a comparison of costs and benefits and leaves room for innovation.

While it is recognised that much detail is still unclear, comparison of costs and benefits has been an important consideration for the ACT in guiding its transition to full retail competition. One consideration has been that the ACT's existing domestic tariffs are considered, by Electricity Supply Association of Australia data and other parties, to be the cheapest in Australia.

The ACT commissioned consultancy advice in 2000 on options for the ACT's transition to full retail competition. The consultancy was awarded to KPMG Consulting and a report was delivered in November 2000. Advice was provided on the following matters:

- Potential for benefits and costs in the ACT retail electricity market;
- Possible costs involved with the principal metering options for full retail competition, the national transfers and settlement systems;
- A strategic approach to full retail competition implementation that seeks to maximise the benefits; and
- A time line based on the earliest times 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.

The Council also sought confirmation that barriers to entry have been minimised through national consistency.

Since the first implementation of retail competition in 1997, the ACT has sought to minimise barriers to entry to new retailers. Examples up to 2000 include:

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- A model for declaration of “non franchise” customers based on that already in operation in NSW and well known to the industry;
- A simple definition of “premises” in all declarations of “non franchise” customers that was designed to minimise the possibility of confusion and disputes. No disputes as to whether a customer is or is not contestable have been brought to Government;
- A no-fuss licensing regime that took account of the extensive checks made on retailers in other jurisdictions.

The ACT, while appreciating the reasons behind the jurisdiction flexibility embodied in the Code changes for full retail competition, remains committed to pursuing national consistency where at all possible. The reality is that it is simply not cost effective for the ACT, as a small jurisdiction, to do otherwise.

As noted above, the ACT formally committed itself in 2000 to the national settlement and transfer systems process.

## 7. Gas

### Implementation and Certification of Access Regimes

The Council certified the ACT's gas access regime as effective in September 2000.

### Derogations

The ACT has not legislated derogations that go beyond those agreed in the Gas Pipelines Access Agreement.

### Introduction of Retail Contestability

As is outlined below, the ACT has worked with NSW in developing its approach to retail competition. This reflects the fact that the distribution system serving the ACT also serves the city of Queanbeyan and Yarralumla Shire in NSW.

The approach taken in the ACT is for this reason broadly consistent with that in NSW. The ACT has participated at officer level in the development of the NSW market approach, as have market participants that serve or have served the ACT community.

In February 2000, the Minister for Urban Services agreed that the Network Code developed to facilitate retail competition in the 1 to 10 terajoule market in NSW was appropriate for adoption in the ACT with minor modifications to accommodate ACT circumstances. The gas distributor, at that time AGL Gas Networks, subsequently made application to the Minister for adoption of such a modified Code on a voluntary basis. In NSW, adoption was by way of an authorisation condition. The distributor request was agreed.

A decision can be expected in early 2001 on the formal means by which full retail competition can be delivered in the ACT and, in particular, the extent to which the structures and processes developed in NSW are appropriate for the Territory.

Apart from the issues discussed above, the ACT has identified two further constraints separate from development of market systems on the effective implementation of full retail competition. Substantive progress on both these matters was made in the ACT in 2000.

The first is availability of a gas access arrangement. The ICRC handed down its decision on ActewAGL's gas access arrangement, the first to cover the ACT distribution network, in late 2000.

The second is availability of gas. It would appear that there are real constraints on the ability of alternative retailers to source gas until Victorian gas becomes available in the ACT via the Eastern Gas Pipeline. While that part of the lateral connecting the ACT system with the Eastern Pipeline within the ACT was

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completed in 2000, completion of the NSW section of the lateral is scheduled for mid 2001.

## Reform of Regulatory barriers to competition

### Legislation Review

The following amendments are provided to the information contained in Table 7.3 of the Council's assessment framework.

The *Utilities Act 2000* which provides for an enhanced regulatory framework for electricity, gas, water and sewerage utilities represents a clear demonstration of the ACT's commitment to review and reform of gas-related legislation. As part of the overall legislative package, a number of other gas-related Acts were repealed. These included the *Essential Services (Continuity of Supply) Act 1992*, and the *Gas Supply Act 1998*. The Utility regulation regime is covered under Chapter 4, Structural Reform of Public Monopolies.

The *Gas Levy Act 1991*, reported as under review in the Council's assessment document, was in fact repealed along with the *Gas Act 1992* in 1998.

The *Gas Safety Act 2000* provided for a new regulatory regime to cover gas installations and appliances past the metering point. These matters were previously covered in the *Gas Supply Act 1998*.

### Upstream Barriers

As noted above, upstream issues are identified by the ACT as a barrier to the effective implementation of competition in gas retailing. In particular, it is expected that the availability of Victorian gas in the ACT via the Eastern Gas Pipeline may provide an impetus for effective competition. That part of the lateral connecting the ACT system with the Eastern Pipeline within the ACT was commissioned in 2000. Completion of the NSW section of the lateral is scheduled for mid 2001.

### Licensing Principles

The licensing regime for distribution and transmission pipelines in place in the ACT prior to commencement of the *Utilities Act 2000* and the regime established by that Act are not exclusive licences and do not go against the licensing principles set out in the Agreement.

### Industry Standards

The *Utilities Act 2000* and related legislation provides a new ACT framework for addressing these issues. The taskforce developing the utilities framework was conscious of the need to avoid unwarranted barriers to competition and relevant national codes relating to utilities take precedence. Of particular relevance is the *Gas Safety Act 2000*, which sets up a revised regime for the regulation of gas

installations past the metering point and gas appliances, matters previously covered by the *Gas Supply Act 1997*.

The principle set out above was taken into account in the development of both new Acts.

### Safety Issues

A central plank of the ACT's regime for ensuring the safety of gas pipelines has been Safety and Operating Plans, which were introduced under the *Gas Supply Act 1997* and the *Gas Supply Regulations 1999*. Under the revised regulatory environment set out in the *Utilities Act 2000*, the Safety and Operating Plan regime is continued, with requirements for such plans having been set out in a Technical Code made under the Act.

As noted above, the *Gas Safety Act 2000* sets out a revised regime for ensuring the safety of gas installations and appliances past the meter point.

### Consumer Protection

The ACT is cognisant of the risks of gas specification and the dangers of an overly prescriptive specification that would limit sources of supply to particular markets. At present, the access arrangement approved by the ICRC sets out a gas specification for the ACT gas network. This specification is the Moomba gas specification, reflecting current supply arrangements. In the access arrangement, the ICRC has made provision for the specification to be changed in the event of other gas supplies becoming available, such as Bass Strait gas. The precise means by which the new specification will be mandated is still to be determined.

## 8. Water

The Council, in its assessment framework, recognises that the ACT does not have rural water supply infrastructure and that reforms relevant to this sector are not required.

### Background papers on aspects of CoAG water reforms

The assessment framework included reference to a number of background papers which had not been released. The ACT is concerned about reporting against a framework that was not released. The release date of 17 February did not allow time to incorporate requirements within the 30 March 2001 lodgement deadline.

With particular reference to Implementing the *National Water Quality Management Strategy* the ACT had concerns on an earlier draft distributed by Environment Australia in that it advocated a standard set of expectations for complying with the strategy which may not always be suitable for the ACT. The ACT requires clarification on the use of this paper in particular.

### Pricing and Cost Recovery

In its second tranche assessment, the Council stated that it was satisfied that the ACT has largely implemented cost reform and pricing commitments. It noted in particular that:

- as regards full cost pricing, the ACT has referred pricing of water to the Independent Pricing and Regulatory Commission (now the ICRC);
- the ACT water service provider (at that stage, ACTEW Corporation) has implemented two part tariff regimes, the usage charge based on marginal costs;
- cross subsidies have on the whole been removed from pricing structures;
- the ACT has a clearly defined and well targeted Community Service Obligation regime;
- ACTEW returns a positive rate of return on assets employed in water and waste water services; and
- new investments are the subject of appraisals regarding economic viability and ecological sustainability.

The ACT has further refined cost recovery through the adoption of a water abstraction charge on all licensed use including water harvested by the urban water supply service provider. This charge reflects catchment management costs, environmental costs associated with water supply and use, and a scarcity value of water. It was adopted to encourage efficient resource use and to ensure full cost recovery.

### Community Service Obligations

Further to the second tranche assessment for the ACT, the *Utilities Act 2000* has introduced for all utilities a more clearly defined and rigorous framework for the handling of Community Service Obligations.

### New Rural Schemes

The ACT has no publicly funded rural water supply infrastructure. Any new developments or rural infrastructure are subject to the Water Use and Catchment Policies of the Territory Plan, which protect water and catchments by specifying environmental uses and environmental values that must be protected, and the allocation, licensing and environmental flow provisions of the *Water Resources Act*.

### Institutional Reform

In its second tranche assessment, the Council noted that the ACT had met institutional reform commitments. It also noted the reform to regulation proposed in the *Statement of Regulatory Intent for Utilities in the ACT*.

The *Utilities Act 2000* has given effect to the framework set out in the Statement of Regulatory Intent. As part of the overall legislative package, a number of other water-related Acts were either repealed or amended. These included the *Energy and Water Act 1988*. This is covered in Chapter 4, Structural Reform of Public Monopolies.

### Institutional role separation

The Council notes that, as far as possible, the roles of water resource management, standard setting and regulatory enforcement and service provision should be separated institutionally.

In its second tranche assessment, the Council noted progress that had been made in the ACT for separation of water service provision from functions of standard setting, regulatory enforcement and service provision.

The regime established under the *Utilities Act 2000* represents a further enhancement of reforms in this area with clearly defined responsibilities of Industry and Technical Codes that will be binding on all utilities, including water utilities.

The roles of the service provider and the Chief Health Officer in ensuring the provision of drinking water of adequate quality have been clearly specified through the making of the Drinking Water Quality Code of Practice in 2000 under the *Public Health Act 1997*.

### Performance Monitoring and Best Practice

The performance monitoring arrangements put in place by the *Utilities Act 2000* and in particular the draft operating licence requiring ACTEW to provide the

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Water Supply Association of Australia with the necessary information for comparisons against other utilities.

### Commercial Focus

The NCC has already considered the corporatisation of the ACT's utility ACT Electricity and Water (ACTEW). Under the ActewAGL partnership arrangements, ACTEW has contracted responsibility for the water and sewerage operations to the partnership.

## Allocation and Trading

### Water Allocation

The *Environmental Flow Guidelines* became a statutory document in December 1999 and the *Water Resources Management Plan* in February 2000. Licensing of water use commenced on 10 December 1999. Almost all water use in the ACT is now covered by a licensing and allocation system.

In addition to ensuring that all water use which should be licensed is actually licensed, the ACT is concentrating on more accurately determining allocations. Prior to the introduction of the *Water Resources Act* no accurate water use information was available except for the urban water supply network. While volumetric allocations have been issued, through metering of licensed water use sufficient information to more precisely and adequately determine allocations should be available by the end of 2002.

The Act also permits reductions in allocations where there are reductions in the flow of a waterway or to prevent a reduction in water quality or damage to an ecosystem dependent on the water from the waterway. No new allocations of water can be made unless provided for in the Water Resources Management Plan.

### Water Trading

While the *Water Resources Act* provides the legislative framework for trading to occur, to date no trade has taken place. Other than requiring approval from the relevant authority, no rules have been developed. Currently there is no demand for intra-territory trade.

Interstate rules are being discussed within the Murray-Darling Basin Commission context but cross border trade involving the ACT is impracticable until a water diversion cap is in place for the ACT and appropriate administrative arrangements are in place with the Murray Darling Basin states.

While the ACT supplies bulk water to Queanbeyan, any extension to this arrangement will only take place within the context of a regional water supply strategy agreed to by the Commonwealth, ACT, NSW and relevant local Councils and the Murray Darling Basin water cap and trading arrangements.

## Environment and Water Quality

The ACT continues to take account of the Strategy guidelines and documents as appropriate to ACT circumstances. Specifically, during 2000 the ACT implemented a polluter pays charging system for environmental authorisations and a Drinking Water Quality Code of Practice.

As regards drinking water quality, the Council in its second tranche assessment report noted that although there are no formalised standards, necessary arrangements were being developed. The making of the Drinking Water Quality Code of Practice in 2000 under the *Public Health Act 1997* addressed this matter. This is a performance based Code that references the National Water Quality Management Strategy *Australian Drinking Water Guidelines* and it includes event notification procedures.

### Integrated Resource Management

The ACT has long adhered to an integrated approach to planning and resource management. Since 1993 the Territory Plan has contained the following requirements:

- Planning for land and water resources will be integrated, based on total catchment management principles.
- Planning will seek to protect identified environmental values and proposed beneficial uses of water resources.
- Planning will be guided by principles of ecological sustainability and exclude catchment land and water uses which impact on the sustainability of designated environmental or water use values.

While existing planning arrangements specifically promote integrated resource management at a broad level, the provisions of the *Water Resources Act 1998*, the *Environment Protection Act 1997*, and the *Nature Conservation Act 1980* give the statutory backing for effective implementation. This legislation and the Territory Plan embodies community consultation requirements and community participation is also fostered through Waterwatch, Landcare and consultative committees.

### Integrated Catchment Management

In March 2000 the ACT released its Integrated Catchment Management Framework. The Framework acknowledges the developments in legislation and policies in natural resource management at the national level and takes into account the regional and local contexts in which it will operate. The Framework supports the development of sub-catchment management plans by community groups working with government. The Sullivans Creek Catchment Group and the Ginninderra Catchment Group released sub-catchment management plans during 2000.

The ACT also contributed to the Murrumbidgee Catchment Action Plan and Catchment Strategy and participates in the Murray Darling Basin Initiative and

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NSW catchment bodies such as the Murrumbidgee Catchment Management Board and the Murrumbidgee Unregulated Streams Management Committee

## Public Consultation and Education

### Consultation Prior to Change

It is ACT Government policy to undertake public consultation for any significant initiative. For matters relating to water resources management, this is the responsibility of the Department of Urban Services, not the service provider.

For utility matters, such as the development of the *Utilities Act 2000*, consultation has been the responsibility of the Department of Treasury.

Developing the *Utilities Act 2000* involved an extensive two-year consultation process. This included the release of the Statement of Regulatory Intent and the Draft Outline of Regulating Utilities operating in the ACT and exposure drafts legislation including associated regulatory instruments including draft licence agreements, codes of practice and customer contracts. There were a series of public workshops and community forums. The draft Legislative package was also the subject of an inquiry by the ACT Legislative Assembly Standing Committee on Planning and Urban Services.

Urban Services, through Environment ACT, undertook extensive community consultation in the preparation of the *Water Resources Act 1998*, the *Environmental Flow Guidelines* and the *Water Resources Management Plan*.

### Public Education Programs

The ACT Government, particularly through Urban Services, undertakes an on-going role in promoting community involvement and partnership in the management of natural resources, including water, through Waterwatch, Landcare, school groups and the catchment management initiatives that have been described above.

The Council has given its preliminary view that service providers are not appropriate public education suppliers on matters such as water conservation.

While the ACT agrees that responsibility for ensuring appropriate public education is delivered is the role of the appropriate government agency and not the service provider, the ACT has put in place arrangements where everyone who takes water from the environment is encouraged to use it wisely and this includes the urban water supply service provider. Through the regulatory system now in place in the ACT, it is very much in the service provider's interest to promote efficient use.

As an example, any additional allocation will attract an up front fee of \$450 per megalitre (in addition to 10c/kilolitre use charge) and there is a cap on pollutant loads emitted from sewage treatment plants. This is a major driver of re-use in the Territory as it is impracticable to reduce the concentration of discharges further, therefore input volume must not increase with increasing population.

In addition, regulated urban water supply prices are set on the basis of average costs. However, as on average one fifth of urban water supplies are sourced from the relatively high cost water of Googong Dam, the urban water service provider has strong incentives to promote conservation in order to reduce consumption from Googong Dam.

## Review and Reform of Water Legislation

The NCC has already considered reforms initiated under the *Water Resources Act 1998*. As noted above, a major achievement in 2000 has been the *Utilities Act 2000*, which puts in place an enhanced framework for the regulation of water and sewerage utilities in the ACT. As part of the overall legislative package, a number of other water-related Acts were either repealed or amended. These included the *Energy and Water Act 1988*.

## 9. Road Transport

### NCP Road Transport Reforms

#### ACT Status at 31 December 2001

Under National Competition Policy, jurisdictions must demonstrate the continued observance of the agreed package of road transport reforms for the second tranche assessment.

The ACT has continued its effective observance of the road transport reform process throughout 2000. Consistent with reporting at 31 December 2000, the ACT has achieved all reportable measures, except for one supplementary report item for which an extension of time has been granted under the supplementary assessment approach.

The outstanding item, one part of the national registration package, relates to backdating motor vehicle registration renewals to the date of expiry, if the request to renew is within 3 months of the expiry. The ACT was unable to implement this reform at the same time as the other registration reforms due to computer system limitations. Amendments to ACT regulations and business systems were put in place for this reform on 1 March 2001.

Details of the second tranche measures and progress in the ACT are set out in the following table.

<b><i>NATIONAL REFORM PROJECT</i></b>	<b><i>REQUIREMENT FOR SECOND TRANCHE</i></b>	<b><i>ACT STATUS</i></b>	<b><i>REQUIRED END DATE</i></b>
1. National Heavy Vehicle Registration Scheme.	Jurisdictions to have in place and be applying legislation consistent with the national model. The aim is to ensure uniform national procedures.	Implemented (see previous text)	March 2000
2. National Driver Licensing Scheme	Jurisdictions to have in place and be applying legislation consistent with the national principles. The scheme will establish uniform requirements for key driver licensing transactions (issue / renewal / suspension / cancellation).	Implemented	March 2000
3. Vehicle Operations	Jurisdictions to have in place and be applying legislation consistent with the national model for : <ul style="list-style-type: none"> <li>• <i>Mass and Loading Regulations;</i></li> <li>• <i>Oversize / Overmass;</i></li> <li>• <i>Restricted Access Vehicles (RAV) Regulations.</i></li> </ul>	Implemented	March 2000
4. Heavy Vehicle Standards	Jurisdictions to have in place and be applying legislation consistent with national model. The aim is to provide uniform in-service design and standards for heavy vehicles and trailers.	Implemented	Superseded by Combined Vehicles Reforms

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<i><b>NATIONAL REFORM PROJECT</b></i>	<i><b>REQUIREMENT FOR SECOND TRANCHE</b></i>	<i><b>ACT STATUS</b></i>	<i><b>REQUIRED END DATE</b></i>
5/6. Truck and Bus Driving Hours	Jurisdictions to have in place and be applying legislation consistent with the national model. The aim is to provide a legal and administrative framework for managing truck and bus driver fatigue.	Not applicable in the ACT, as agreed by ATC.	N/A
7. Common Mass and Loading Rules	Jurisdictions to have in place and be applying legislation consistent with the national model. The national standards will improve productivity for heavy vehicles while protecting roads and bridges.	Implemented	Not specified
8. One Driver/One Licence	Jurisdictions to have in place and be applying legislation consistent with the national model. The aim is to have common and simplified licence categories, and to eliminate multiple licences.	Implemented	March 2000
9. Improved Network Access	The aim is to expand “as of right” access through routes for B-Doubles and other approved large vehicles.	Implemented	March 1999
10/11. Common Pre-registration Standards for Heavy Vehicles and Common Roadworthiness Standards	Jurisdictions to have in place and be applying legislation consistent with the national model.	Implemented	Not specified

<b><i>NATIONAL REFORM PROJECT</i></b>	<b><i>REQUIREMENT FOR SECOND TRANCHE</i></b>	<b><i>ACT STATUS</i></b>	<b><i>REQUIRED END DATE</i></b>
12. Enhanced Safe carriage and Restraint of Loads	The aim is to improve safety through standardised regulations and a practical guide for securing loads.	Implemented	July 1999
13. Adoption of National Bus Driving Hours	Adoption of new regulations for buses including two-up driving hours.	Not applicable in the ACT, as agreed by ATC.	N/A
14. Interstate Conversion of Driver Licenses	Jurisdictions to have in place and be applying legislation consistent with national principles to afford simplified, no cost interstate conversions of driver licenses.	Implemented	July 1999
15. Alternative Compliance	Agreement to support development of alternative compliance regimes.	Implemented – to be developed as required	Not specified
16. Short-term Registration	To enable options for 3 and 6 month registration for heavy vehicles.	Implemented	Not specified
17. Driver Offences/Licence Status.	Jurisdictions to have in place and be applying legislation consistent with national model. The aim is to allow employers to obtain limited information about employees' licence status.	Implemented	With licensing module

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## 11. Taxi and hire-car services

### Comments on the Assessment Framework

The NCC's Third Tranche Assessment Framework has misconstrued the recommendations from the NCP review of ACT Taxi and Hire-car Legislation. In its report the review team recommended supply restrictions be removed or loosened through transitional arrangements and offered five alternatives for removal of the constraints.

***“The review team recommends that licence supply constraints be removed, or loosened through transitional adjustments, noting that the review team has a preference for removal of supply constraints as per Option A as detailed in the report. The review team recommends that should transitional adjustments to licence supply constraints be pursued by the ACT Government, a further review be conducted within 5 years”.***<sup>2</sup>

The option A referred to in the above recommendation is a preference of the review team and calls for a buy-back of licences not the “full compensation to licence holders” as stated to in the Assessment Framework.<sup>3</sup>

### Review of ACT Taxi and Hire-car Legislation

In accordance with the ACT Government's commitment under the National Competition Principles agreement, a comprehensive independent review of the ACT taxi and hire car legislation has been undertaken. The independent review was conducted by Freehill Hollingdale and Page. A copy of the review, and the Government response, is available at [www.act.gov.au/urbanservices/transport](http://www.act.gov.au/urbanservices/transport).

The legislation reviewed included the *Motor Traffic Act 1936*, the *Taxi and Hire Car Regulations* and associated administrative practices. Note that this legislation has now been incorporated into updated road transport legislation and is now covered by the *Road Transport (General) Act 1999* and the *Road Transport (Taxi Services) Regulations* and the *Road Transport (Hire Vehicle Services) Regulations 2000*.

The focus of the review was to assess the extent to which legislation restricts competition in the taxi and hire car industry and to recommend more efficient ways of achieving the legislative objectives in order to improve the outcome for the ACT community. The review was based on the guiding legislative principles that legislation should not restrict competition unless it can be demonstrated that:

- The benefits of the restriction to the community as a whole outweigh the costs; and
- The objectives of the legislation can only be achieved by restricting competition.

The review was public and submissions were invited. An issues paper was prepared to assist those wishing to make submissions. The final report was completed in March 2000.

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<sup>2</sup> *National Competition Policy Review of ACT Taxi and Hire Car Legislation*, Freehills Regulatory Group, March 2000, page 50.

<sup>3</sup> *Ibid*, page 44.

The report was released in November 2000 together with an announcement of the Government's major decisions arising from the review. A detailed Government response to the recommendations was issued in January 2001.

## Major issues arising from the Review

The review was comprehensive and it identified and examined the major issues involved in the taxi and hire car industries.

The review found that the legislation restricts competition in the taxi and hire car industries in a number of areas including:

- Constraints on the supply of licences;
- Fare regulation;
- The number of licence categories;
- Limits on the number of licences that may be owned by an individual;
- Driver operator and vehicle standards.

The review concluded that constraints on the supply of licences has the greatest impact as it imposes substantial costs on consumers and potentially on other participants in the industry such as drivers. The constraints inflate the value of licences, reduce potential total services and raise fare levels.

The review found that regulation of maximum fares achieves important consumer protection objectives in the context of supply restrictions. ACT taxi fares are set by the ICRC.

The existence of a number of hire car licence categories and the associated conditions restricts competition. Restrictions on the number of licences that can be owned by an individual (currently two) also restrict competition and do not address any legislative objective.

Regulations, which directly address driver, operator and vehicle standards were found to generally have significant benefits in the form of higher consumer, driver and public safety and in improved quality of service.

The review commented on the need for the legislation to address taxi network accreditation and the related performance standards and service requirements.

The review has also recommended that proposals to establish a second taxi network in Canberra should be encouraged to provide greater competition at the network level and to give greater choice to customers.

The review found that the legislation restricts competition between the Queanbeyan and Canberra taxi networks and that the establishment of a single regulatory regime should be pursued.

## Government Response to the Review

The government has provided a response to the recommendations of the review. The major decisions arising from the review are summarised as follows:



- A transitional approach to the loosening of licence quota restrictions is to be adopted with a further 10 wheelchair accessible taxis licenses to be released immediately;
- the limits on the number of licenses that may be held by one person are to be removed;
- the number of licence categories is to be reduced;
- the establishment of a second taxi network in the ACT is to be encouraged;
- cross border arrangements are to be established, subject to successful agreement with NSW, providing for ACT and Queanbeyan taxis to operate fully within the ACT/Queanbeyan region;
- annual hire car licenses are to be introduced; and
- a further review of arrangements within the taxi and hire car industries is to be completed by June 2002.

### Consideration by Standing Committee

On 30 November 2000 the Legislative Assembly referred the review report and the Government's response to the Standing Committee on Planning and Urban Services. In relation to the Hire car industry the ACT Legislative Assembly has directed the government not to implement any changes prior to the presentation of the Standing Committee Report which is expected to be available by April/May 2001.

### Implementation Arrangements

#### Licence Quota Restrictions

The government has indicated that there will be a transitional approach to licence supply constraints over a period of time with a further review to assess the effects of changes on the industry and on performance levels. This approach will also allow the ACT to monitor changes that are occurring in NSW and nationally. The NSW approach to licence quotas will be particularly relevant to cross border arrangements for the Canberra/Queanbeyan region.

As a first step, the Government has released ten Wheelchair Accessible Taxi licences.

The determination of further steps and the pace of reform in the transitional process will be considered following a further review to be conducted before June 2002. This review will address the public benefits of various transitional options. The review will take into account improvements in competition, industry efficiency and performance in the intervening period.

#### Licence term and transferability

No decision has been made at this time concerning the terms of any future standard taxi licences. The proposed review will examine in detail the ongoing appropriateness of the standard taxi licence arrangements.

The release of new Wheelchair Accessible Taxi licences will be on the same terms as those applying to existing WAT licences. That is, a non-transferable licence issued for a term of six years with the lease fee payable annually.

Subject to the outcome of the inquiry to be undertaken by the Standing Committee on Planning and Urban Services annual hire car licences will be introduced. These licences will not be transferable.

#### Fare Regulation

Maximum taxi fares will continue to be regulated with fare levels determined by the ICRC as this will reduce price exploitation.

#### Taxi Networks

Proposals for the establishment of a second taxi network have been publicly sought and those received are currently being assessed.

#### Cross Border Arrangements

Negotiations with the NSW Government have commenced concerning cross border arrangements for taxi services in the Canberra/Queanbeyan region.

## 13. Agriculture and related industries

### Dairy industry

In response to national deregulation of the milk industry, the ACT Government has deregulated the local milk industry and provided financial assistance to support the rationalisation of home vending arrangements.

An amount of \$350,000 was allocated to subsidise those vendors electing to leave the industry. About half of the vendors accepted this offer in early 2000 enabling remaining vendors to increase the size of their runs in order to improve their potential viability.

The *Milk Authority Repeal Bill* was introduced into the Legislative Assembly on 27 March 2000 and the Milk Authority of the ACT ceased operation on 30 June 2000, at which time the Authority's monopoly position in relation to the supply of raw milk for consumption in the ACT also ceased.

### Veterinary Surgeons

The ACT Veterinary surgeons legislation is being reviewed as part of the Health Professions legislation. (See Chapter 16, Health and Pharmaceutical Services.)

### Food legislation

The ACT's Food legislation comprises the *Food Act 1992*, the *Food Regulations 1994* and the *Meat Act 1931*. This legislation applies regulation to the production, storage, marketing and handling of food products. Initial review of the ACT food legislation commenced in March 1996 as part of a national process to develop an enhanced food regulatory system for Australia. One objective of this review was to "*develop an approach that aims to reduce the regulatory burden on the food sector through greater co-ordination and consistency and which improves the clarity, certainty and efficiency of food regulatory arrangements across all jurisdictions while protecting public health and safety*". An Outcome of the review has been the development of a Model Food Bill (MFB). The ACT is committed by intergovernmental agreement to introduce amendments to the current food legislation (consistent with the MFB) by November 2001.

The MFB is comprised of two parts – Core and Non-core Provisions. The Core Provisions are to be introduced into each jurisdiction's legislation, while the Non-core Provisions are discretionary. A National Regulatory assessment of the Core Provisions found that while they impact on both National Competition Policy principles and businesses, the impact was acceptable given the significant risks associated with food borne illness.

The ACT is responsible for assessing the regulatory impact of those non-core provisions that it may seek to introduce within its revised food legislation. To this end the ACT has commenced a process of external review of the regulatory impact of proposed non-core amendments to the ACT's food legislation. It is anticipated that this review will be completed in March and that legislative amendments will be introduced during August 2001.

## 16. Health and pharmaceutical services

### Regulating the health professions

Similar to the practice in all other States and Territories the ACT regulates to effect control over the fitness and standard of practice of many of its health professional groupings. The ACT currently regulates the practice of 14 health professional groups through the operation of 10 separate health professional Acts. The professions regulated are: Medical practitioners; nurses; dentists, dental therapists and dental hygienists; chiropractors and osteopaths; dental technicians and dental prosthetists; optometrists; pharmacists; physiotherapists; podiatrists; and psychologists.

While there are 10 separate health professional acts they share a common objective and largely replicate common regulatory provisions.

The common objective of the health professional Acts is to protect the public from the risk of harm through providing for the provision of health care services by persons who are fit to practice. This objective is supported within the existing legislation by the application of major regulatory provisions that control entry to the professions, censure the inappropriate use of professional title, restrict areas of health practice and establish and enforce professional conduct and in some circumstances, business conduct standards.

#### The case for regulating health professionals

The ACT regulates health professionals on the basis of the potential for harm that may arise where a health professional fails to meet expected levels of qualification, fitness, or does not maintain safe standards of practice.

Consumers are protected by health professional legislation on the basis that an unrestricted health professional market would fail to appropriately identify, restrict or prohibit health professionals who were impaired or otherwise unable or unwilling to provide a sufficiently safe standard of care. The registration of health professionals and the mutual recognition of registration standards also provide an efficient approach to the movement of skilled health professionals between State and Territory jurisdictions.

While there are alternate regulatory and non-regulatory means to protect or compensate consumers from the above forms of loss it has been considered that these alternatives are not adequate in fully addressing the risks and the associated market failures.

#### Costs of regulating the health professions

While health professional regulation provides direct benefit to the community it also imposes costs. These costs include:

- administrative and compliance costs – Governments experience costs in administering, monitoring and enforcing the legislation, while providers experience costs in complying with the legislation eg the payment of registration fees;
- providers may also experience loss through restrictions that prevent their operation by the most cost effective means; and

- consumers experience the consequences of lack of competition through higher prices, reduced choice, potentially lower quality of services and less pressure for service innovation or cost reduction.

### ACT Health Professions review and reform activity

The ACT is undertaking assessment activity of its health professional legislation using a consolidated review approach. The restrictive provisions from each of the 11 health professional registration Acts have been identified and subject to review in the one process. Review of the legislation has not only incorporated the requirements of National Competition Policy but has also sought to explore reform opportunities relating to the general operation and effectiveness of the legislation. The Acts that are being reviewed within this process are as follows:

- *Medical Practitioners Act 1930*;
- *Nurses Act 1988*;
- *Dentists Act 1931*;
- *Chiropractors and Osteopaths Act 1983*;
- *Dental Technicians and Dental Prosthetists Act 1988*;
- *Optometrists Act 1956*;
- *Pharmacy Act 1931*;
- *Physiotherapists Act 1977*;
- *Podiatrist Act 1994*; and
- *Psychologist Registration Act 1994*;

### Terms of reference of review

Undertake a review in accordance with the following terms of reference:

1. identify and specify the objectives of the above Acts;
2. in terms of the objectives of the Acts;
  - identify and make recommendations in relation to improving the administrative structure of the legislation;
  - examine opportunities to improve the oversight of standards of health and veterinary practice; and
  - review the appropriateness of the current legislative restrictions.
3. in examining the appropriateness of the legislative restrictions, review the legislation in accordance with the requirements of National Competition Policy by;
  - identifying the nature of the restrictions on competition within the Acts;
  - analyse the likely effect of the restriction on competition within the Acts and on the economy generally;
  - assess and balance the costs and benefits of the restrictions within the Acts; and
  - consider any alternative means for achieving the same result including non-legislative approaches.

## Review Progress

The ACT released a discussion paper in May 1999 that identified both anti-competitive provisions within the legislation as well as opportunities for regulatory reform. Broad public comment was sought on the benefit and costs of the restrictive provisions within the legislation as well as comment on the desirability of reform proposals preferred by the Department.

Following public consultation on the discussion paper the Department developed a model legislative framework for the regulation of health professionals in the ACT. This model proposed that the existing individual Acts be consolidated into one "Omnibus Act". The model further developed reform proposals that included statutory independence and increased accountability for Boards, community representation and participation in Board activities, transfer of complaint assessment and major disciplinary interventions to independent bodies, and a re-focussing of Board activity on performance assessment and improving standards of practice. The model retained restrictions on entry to the professions and restrictions on the use of professional title. The model however has not argued for the reservation of areas of profession specific practice or for the retention of restrictive provisions on the business conduct of registered health professionals. In particular the model proposes the removal of restrictions on both business advertising and business ownership and does not introduce new restrictions in terms of requirements for health professionals to hold professional indemnity insurance.

The model legislative provisions formed the basis of a further public discussion paper that was issued in December 1999. Following consultation on this paper a proposal has been prepared for consideration by Government on reform initiatives for ACT health professional legislation. The package to be considered by Cabinet includes an assessment of the public benefits of the restrictions on competition that have been carried over within this regulatory reform proposal.

## National review of pharmacy legislation

The ACT was a participating jurisdiction in the National Review of Pharmacy Legislation chaired by Mr Warwick Wilkinson. The National Review considered the restrictions on competition in the ACT's *Pharmacy Act 1931*. The ACT's formal response to the National Review will be made once CoAG has considered the Wilkinson Review report.

The ACT's review of health professional legislation has been run in parallel with the National Review of Pharmacy Legislation. The broad terms of reference adopted for the ACT review has meant that it has been impractical to disassociate consideration of pharmacy restrictions from the review of generic restrictions that occur in all health professional Acts. Accordingly where common restrictions occur these have also been considered in the context of the ACT review. The ACT review of health professional legislation therefore includes recommendations that also apply to regulation of the pharmacy profession. While separate reviews occurred many of the findings of the National Review of Pharmacy are not dissimilar to those that were arrived at through the ACT health professional legislative review process. As a result of the common outcomes most of the findings of the National Review of Pharmacy may be addressed by the proposed ACT reforms. It is noted that the current ACT pharmacy legislation does not

contain restrictions on pharmacy ownership and the National Review has not required the ACT to introduce such restrictions.

### Summary of Health Professional Review Progress

The following Table identifies restrictions on competition within ACT health professional legislation and the progress of review activity.

#### **Summary Table of Review Progress**

<b><u>Act</u></b>	<b><u>Restrictions on competition</u></b>	<b><u>Review progress</u></b>
<i>Medical Practitioners Act 1930</i>	Restrictions on: entry, use of title, general reservation on practice, advertising. Disciplinary powers available to the Board	<ul style="list-style-type: none"> <li>• Discussion Paper issued – May 1999.</li> <li>• Model legislation consultation – paper issued December 1999.</li> <li>• Reform Proposals to be considered by Government February 2001.</li> </ul>
<i>Nurses Act 1988</i>	Restrictions as for Medical Practice	As above
<i>Dentist Act 1931</i>	Restrictions as for Medical Practice	As above
<i>Chiropractors and Osteopaths Act 1983</i>	Restrictions as for Medical Practice.	As above
<i>Dental Technicians and Dental Prosthetists Act 1988</i>	Restrictions as for Medical Practice.  Dental prosthetist required to hold indemnity insurance.  No restrictions on advertising.	As above
<i>Optometrist Act 1956</i>	Restrictions as for Medical Practice.  Restrictions on who may dispense against a prescription.	As above
<i>Physiotherapists Act 1977</i>	Restrictions as for Medical Practice.	As above

<u>Act</u>	<u>Restrictions on competition</u>	<u>Review progress</u>
	No restriction on advertising.	
<i>Podiatrist Act 1994</i>	Restrictions as for Medical Practice.  No restriction on advertising.	As above
<i>Psychologist Registration Act 1994</i>	Restrictions as for Medical Practice.  No restriction on advertising.	As above
<i>Pharmacy Act 1931</i>	Restrictions as for Medical Practice. Additional restrictions relating to the conduct of a pharmacy business.  No restriction on advertising.	As above

### Dental Auxiliary regulation

The *Dentist Act 1931* partially regulates the business conduct of dental hygienists and dental therapists. The Act requires that both professions perform only procedures that are specified in the legislation and that they undertake these activities while under the supervision of a registered dentist. In addition dental therapists are restricted to work only within the public health system and to perform dental procedures on children under the age of 16 years.

The restrictions on dental hygienists and dental therapists have been reviewed in the context of the consolidated health professional review.

### Population Health

The ACT has a suite of legislation designed to address population health risks and health service management concerns. Such laws range from those that address specific health risk activities (eg risks from poor sanitation or risks from the inappropriate handling of irradiating materials) to those that provide for health service organisational arrangement (eg the establishment of the Health and Community Care Board). Population health legislation identified for specific review within the Third Tranche assessment includes the following.



### Public Health Act 1997

The history of public health law in the ACT was centred on the *Public Health Act 1938*. This Act established prescriptive standards, both within the principal Act and within the associated regulations for how health risks would be addressed in the Territory. The legislation required universal compliance and imposes direct business licensing costs.

The ACT commenced a process of reviewing its public health legislation by the introduction of the *Public Health Act 1997*. This legislation established a template for the management of health risk activities or procedures through a Code of Practice approach. As codes of practice are developed existing health risk management provisions that are under the former *Public Health Act 1938* are repealed. The revised legislative approach while more focussed on outcomes, stakeholder collaboration and the currency of the health risk, retains potential restrictions on approval, activity and conduct. Accordingly the revised legislation has potential to impose costs and restrict competition. A Departmental review has been completed that identifies the anti-competitive provisions that arise through the application of the Act to health risk activities and procedures. This review is currently being developed as a Discussion Paper for consultation on the regulatory costs and benefits. It is expected that this paper will be released in the second half of 2001.

### Health Act 1993

The *Health Act 1993* addresses a number of separate problems related to public health administration in the Territory. The legislation establishes a statement of public health principles and commitments, provides for the appointment of quality assurance committees, facilitates the provision of certain information to the Health Insurance Commission and enables the determination of public hospital fees and charges. Independent audit of the legislation identified the restrictions placed on the disclosure and release of information as being potential restrictions on the conduct of both public health facilities and health professionals within those facilities. A desktop review of the restrictive provisions was completed in December 1999. The review found that the restrictions did not apply to an organised pattern of activity and no commercial activity relating to the release or disclosure of information could be identified. The review concluded that the legislation did not impose restrictions on competition.

### Health and Community Care Services Act 1996

The *Health and Community Care Services Act 1996* establishes the Health and Community Care Service as a statutory independent body charged with providing public health and community services to residents of the Territory. These services are to be provided in such a way that they promote, protect and maintain public health. The Act further establishes the Health and Community Care Services Board to control the affairs of the service. Audit of the Act identified that legislative provisions limiting the Services capacity to form companies, partnerships or joint ventures as being potential restrictions on competition. Desktop review of the legislation was completed in December 2000. This review identified that the restrictions primarily concerned the sound management of Territory resources and interests. The review further identified that there were difficulties in identifying the restrictions as anti-competitive. The conclusion was, however, reached that the legislative restrictions provided an overall community benefit and were on balance significantly higher than any cost of compliance with the legislation.

Review of the *Cemeteries Act 1933* and *Cremations Act 1966*

The Centre for International Economics (CIE) report, NCP Review of ACT Cemeteries and Crematoria, generally supported maintaining existing arrangements. The consultants identified major three areas to be addressed under the Government's commitment to National Competition Principles. They were:

- The provision of ACT cemeteries should not be restricted by legislation to a single operator.
- Restrictions on tenure after burial should be clarified so that cemetery operators have the scope to fully recover the costs of ongoing cemetery operations by introducing various limited tenure gravesite options reflecting maintenance costs.
- Outdated parts of the legislation and regulations should be removed to increase flexibility for operators to respond to market needs.

The Government agreed to the drafting of a Cemeteries and Crematoria Bill, which is due to be introduced into the Legislative Assembly early in the Autumn 2001 sittings.

It also agreed to:

- the consolidation of the existing Cemeteries and Cremations Acts into one and repeal of these Acts;
- the removal of the restriction limiting ownership of cemeteries to the Canberra Public Cemeteries Trust; and
- allow for privately operated cemeteries.

However, the Government did not agree to the recommendation to limit post-burial tenure at public cemeteries because it is not in the public interest to do so.

Private cemeteries will be free to offer a variety of services that reflect market demand.

## 17. Legal services

### *Legal Practitioners Act 1970*

The Department of Justice and Community Safety is undertaking a two-stage National Competition Policy review of this Act. Terms of reference for Stage 1 and draft terms of reference for Stage 2 follow.

As part of the first stage of the process, an Options Paper was published in November 1999 canvassing options for reforms concerning admission and licensing of legal practitioners, and complaints and discipline. The options in the proposal are based on the recommendations of a COAG working party which emphasised the need for greater independence, transparency and a level playing field between practitioners.

The options paper has been made generally available (see information at <http://www.dpa.act.gov.au/ag/AGT1.HTML>). Submissions have been sought from any person having an interest in the profession and its regulation, or the legal services market, including consumers, corporate clients, and members of the profession and other occupational groups.

Government is considering submissions made during the public phase of the Stage 1.

The Stage 2 Options Paper, canvassing reform issues relating to business structures including multi-disciplinary practices, fee setting, insurance and the statutory interest account is being finalised for release in 2001.

After community consultation has occurred in relation to that paper, a submission will be prepared proposing legislative options that comply with the Council of Australian Government recommendations and competition policy principles.

The ACT has previously advised of changes to the *Legal Practitioners Act 1970* that led to a choice of insurer in the ACT. Competition has led to broader cover, cheaper premiums and higher levels of service (see pp17.5, NCC, Third Tranche Assessment Framework, 2001)

### *Terms of Reference for Stage 1 of the NCP review of the Legal Practitioners Act 1970*

1. The Australian Capital Territory is a party to the Competition Principles Agreement entered into between the Commonwealth, the States, the Northern Territory and the ACT on 11 April 1995.
2. Subclause 5(1) of the Agreement obliges the ACT to review its legislation to ensure that it does not restrict competition unless it can be demonstrated that:
  - (a) the benefits of the restriction to the community as a whole outweigh the costs; and
  - (b) the objectives of the legislation can only be achieved by restricting competition.
3. Subclause 5(9) of the Agreement requires that a review should:

- (a) clarify the objectives of the legislation;
  - (b) identify the nature of the restriction on competition;
  - (c) analyse the likely effect of the restriction on competition and on the economy generally;
  - (d) assess and balance the costs and benefits of the restriction; and
  - (e) consider alternative means for achieving the same result including non-legislative approaches.
4. In recent years, the regulation of the legal profession has been the subject of extensive analysis and public debate culminating in a number of influential reports including:
  - (a) the Senate (Legal & Constitutional Affairs Committee) Inquiry into the Cost of Justice;
  - (b) the Trade Practices Commission's final report *Study of the Professions - Legal* - 1994;
  - (c) the Access to Justice Advisory Committee's report *Access to Justice - an Action Plan* (the Sackville report) - 1994;
  - (d) the *Justice Statement*, the response of the previous Commonwealth Government to the Sackville report - 1995;
  - (e) the Victorian Law Reform Commission review on Access to Law - Restrictions on Legal Practice Discussion Paper;
  - (f) the NSW Law Reform Commission Report on Legal Profession Complaints and Disciplinary Systems; and
  - (g) the Hilmer Report on National Competition Policy.
5. In 1994 the Council of Australian Governments (COAG), in the context of developing national competition policy reforms, established a working party to propose reform of the legal profession which would remove constraints on the development of a national market in legal services and otherwise enhance efficiency. The terms of reference expressly included the development of reform proposals based on the principles for a national competition policy agreed by COAG in 1992.
6. In developing its proposals, the working party took account of the work undertaken by and reports of the various inquiries referred to above. The Working Group presented its report to COAG in July 1996 and its recommendations were subsequently endorsed by members of COAG, including the ACT.
7. Having regard to the extensive nature and number of inquiries which culminated in the COAG Working Group recommendations, the review of the *ACT Legal Practitioners Act 1970* should examine practical options to implement the working party recommendations. The review should have regard to relevant regulatory schemes in other Australian jurisdictions, and any recent reforms or reform proposals, including those relating to competition policy in those jurisdictions. In addition, the review should examine anti-competitive aspects of the *Legal Practitioners Act 1970* not otherwise covered by implementation of the COAG working party recommendations. In considering the matters in paragraph 3, it should consider whether the effects of the legislation are inconsistent with the competition

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conduct rules in Part IV of the *Trade Practices Act 1974* and the Competition Code of the Australian Capital Territory.

8. The Review is to be conducted in stages. Stage one of the review is to consider the provisions of the Act which relate to the following aspects of the legal profession in the Territory:
  - (a) the structure of the legal profession and licensing arrangements for lawyers; and
  - (b) the investigation of complaints relating to and the discipline of lawyers.
9. The review should have particular regard to the size of the legal profession in the ACT and the need to ensure that the cost impact of any legislative amendments recommended are minimal.

*Draft Terms of Reference for Stage 2 of the NCP review of the Legal Practitioners Act 1970*

1. The Australian Capital Territory is a party to the Competition Principles Agreement entered into between the Commonwealth, the States, the Northern Territory and the ACT on 11 April 1995.
2. Subclause 5(1) of the Agreement obliges the ACT to review its legislation to ensure that it does not restrict competition unless it can be demonstrated that:
  - (a) the benefits of the restriction to the community as a whole outweigh the costs; and
  - (b) the objectives of the legislation can only be achieved by restricting competition.
3. Subclause 5(9) of the Agreement requires that a review should:
  - (a) clarify the objectives of the legislation;
  - (b) identify the nature of the restriction on competition;
  - (c) analyse the likely effect of the restriction on competition and on the economy generally;
  - (d) assess and balance the costs and benefits of the restriction; and
  - (e) consider alternative means for achieving the same result including non-legislative approaches.
4. In recent years, the regulation of the legal profession has been the subject of extensive analysis and public debate culminating in a number of influential reports including:
  - (a) the Senate (Legal & Constitutional Affairs Committee) Inquiry into the Cost of Justice;
  - (b) the Trade Practices Commission's final report *Study of the Professions - Legal* - 1994;
  - (c) the Access to Justice Advisory Committee's report *Access to Justice - an Action Plan* (the Sackville report) - 1994;

- (d) the *Justice Statement*, the response of the previous Commonwealth Government to the Sackville report - 1995;
  - (e) the Victorian Law Reform Commission review on Access to Law - Restrictions on Legal Practice Discussion Paper;
  - (f) the NSW Law Reform Commission Report on Legal Profession Complaints and Disciplinary Systems; and
  - (g) the Hilmer Report on National Competition Policy.
5. In 1994 the Council of Australian Governments (COAG), in the context of developing national competition policy reforms, established a working party to propose reform of the legal profession which would remove constraints on the development of a national market in legal services and otherwise enhance efficiency. The terms of reference expressly included the development of reform proposals based on the principles for a national competition policy agreed by COAG in 1992.
  6. In developing its proposals, the working party took account of the work undertaken by and reports of the various inquiries referred to above. The Working Group presented its report to COAG in July 1996 and its recommendations were subsequently endorsed by members of COAG, including the ACT.
  7. Having regard to the extensive nature and number of inquiries which culminated in the COAG Working Group recommendations, the review of the *ACT Legal Practitioners Act 1970* should examine practical options to implement the working party recommendations. The review should have regard to relevant regulatory schemes in other Australian jurisdictions, and any recent reforms or reform proposals, including those relating to competition policy in those jurisdictions. In addition, the review should examine anti-competitive aspects of the *Legal Practitioners Act 1970* not otherwise covered by implementation of the COAG working party recommendations. In considering the matters in paragraph 3, it should consider whether the effects of the legislation are inconsistent with the competition conduct rules in Part IV of the *Trade Practices Act 1974* and the Competition Code of the Australian Capital Territory.
  8. Some jurisdictions have completed their review of the legal profession – NSW, and Victoria. Others are currently underway – Tasmania, Queensland, Western Australia and Northern Territory.
  9. Stage 2 of the Review is to consider the provisions of the *Legal Profession Act 1970*, and other Acts which relate to the following aspects of the legal profession in the Australian Capital Territory:
    - that reserve any function to the members of the profession (Whether or not the function may also be performed by other persons); or
    - business structures for lawyers;
    - arrangements for the regulation and review of fees for legal services; and
    - arrangements for mandatory membership of a professional association.
  10. The review should have particular regard to the size of the legal profession in the ACT and the need to ensure that the cost impact of any legislative amendments recommended are minimal.

## 18. Other professional and occupational licensing

### Agents (including real estate agents)

A single stage National Competition Policy review of the *Agents Act 1968* and *Auctioneers Act 1959* is underway as part of a general review of these Acts. The review is being conducted by the Department of Justice and Community Safety. Terms of reference for the review follows.

An Issues Paper is being prepared for public release. It will examine the need for a new style of regulatory framework that better meets the needs of the industry and consumers. Submissions will be sought from any person having an interest in the profession and its regulation, or the agents services market, including consumers, corporate clients, and members of the profession and other occupational groups.

#### *Terms of reference for the National Competition Policy review of the Agents Act 1968 and the Auctioneers Act 1959*

The Australian Capital Territory is a party to the Competition Principles Agreement entered into between the Commonwealth, the States, the Northern Territory and the ACT on 11 April 1995.

Subclause 5(1) of the Agreement obliges the ACT to review its legislation to ensure that it does not restrict competition unless it can be demonstrated that:

- a) the benefits of the restriction to the community as a whole outweigh the costs; and
- b) the objectives of the legislation can only be achieved by restricting competition.

Subclause 5(9) of the Agreement requires that a review should:

- (a) clarify the objectives of the legislation;
- (b) identify the nature of the restriction on competition;
- (c) analyse the likely effect of the restriction on competition and on the economy generally;
- (d) assess and balance the costs and benefits of the restriction; and
- (e) consider alternative means for achieving the same result including non-legislative approaches.

Undertake a review of the *Agents Act 1968* and *Auctioneers Act 1959* in accordance with the above requirements and report the outcome of the review during 2001.

The review should have particular regard to the size of the agents' services market in the ACT and the need to ensure that the cost impact of any legislative amendments recommended are minimal.

## Motor Vehicle Traders

A National Competition Policy review of the *Sale of Motor Vehicles Act 1977* is underway. The review is being conducted by the Department of Justice and Community Safety. A draft terms of reference for the review follows.

A paper is being prepared for public release. Submissions will be sought from any person having an interest in the profession and its regulation, or the market, including consumers, corporate clients, and members of the profession and other occupational groups.

### Terms of reference for the National Competition Policy review of the Sale of Motor Vehicles Act 1977

The Australian Capital Territory is a party to the Competition Principles Agreement entered into between the Commonwealth, the States, the Northern Territory and the ACT on 11 April 1995.

Subclause 5(1) of the Agreement obliges the ACT to review its legislation to ensure that it does not restrict competition unless it can be demonstrated that:

- a) the benefits of the restriction to the community as a whole outweigh the costs; and
- b) the objectives of the legislation can only be achieved by restricting competition.

Subclause 5(9) of the Agreement requires that a review should:

- (a) clarify the objectives of the legislation;
- (b) identify the nature of the restriction on competition;
- (c) analyse the likely effect of the restriction on competition and on the economy generally;
- (d) assess and balance the costs and benefits of the restriction; and
- (e) consider alternative means for achieving the same result including non-legislative approaches.

Undertake a review of the *Sale of Motor Vehicles Act 1977* in accordance with the above requirements and report the outcome of the review during 2001.

The review should have particular regard to the size of the motor traders market in the ACT and the need to ensure that the cost impact of any legislative amendments recommended are minimal.

## Second hand dealers and pawnbrokers

A National Competition Policy review of the *Second-hand Dealers and Collector's Act 1906* was completed in 2000. The review was conducted by the Department of Justice and Community Safety. The terms of reference for the review follows.



The review found that two direct effects of the restriction are: *licensing* may limit the number of dealers in the market, thereby restricting competition; and *conduct of business* requirements, which increase the price of goods on-sold by dealers.

The review concluded that, because this market is at risk of being used by criminals to pass on stolen goods, there is a strong public policy reason to retain record keeping requirements and police powers of inspection. These include: requirements for people who regularly trade in second hand goods to maintain and provide records of transactions to the police; the retention of goods by notice where police believe it to be necessary to check whether the goods have been stolen before being on-sold; and vesting a power in the court to prohibit further participation in the industry where appropriate. However, the requirements should be altered to take into account new technology and the archaic business rules in the legislation should largely be repealed. Provisions dealing with the licensing and regulation of Collectors should be repealed.

### **Government Response**

The Government has adopted the recommendations in the review and amendments proposed in the review have been included in the *Justice and Community Safety Legislation Amendment Bill (No 1) 2000*.

#### *Terms of reference for the National Competition Policy review of the Second-Hand Dealers and Collector's Act 1906*

The Australian Capital Territory is a party to the Competition Principles Agreement entered into between the Commonwealth, the States, the Northern Territory and the ACT on 11 April 1995.

Subclause 5(1) of the Agreement obliges the ACT to review its legislation to ensure that it does not restrict competition unless it can be demonstrated that:

- a) the benefits of the restriction to the community as a whole outweigh the costs; and
- b) the objectives of the legislation can only be achieved by restricting competition.

Subclause 5(9) of the Agreement requires that a review should:

- (a) clarify the objectives of the legislation;
- (b) identify the nature of the restriction on competition;
- (c) analyse the likely effect of the restriction on competition and on the economy generally;
- (d) assess and balance the costs and benefits of the restriction; and
- (e) consider alternative means for achieving the same result including non-legislative approaches.

Undertake a review of the *Second-hand Dealers and Collector's Act 1906* in accordance with the above requirements and report the outcome of the review during 2000.

The review should have particular regard to the size of the market in the ACT and the need to ensure that the cost impact of any legislative amendments recommended are minimal.

### Pawnbrokers Act 1902

A National Competition Policy review of the *Pawnbrokers Act 1902* is underway. The review is being conducted by the Department of Justice and Community Safety.

### Terms of reference for the National Competition Policy review of the Pawnbrokers Act 1902

The Australian Capital Territory is a party to the Competition Principles Agreement entered into between the Commonwealth, the States, the Northern Territory and the ACT on 11 April 1995.

Subclause 5(1) of the Agreement obliges the ACT to review its legislation to ensure that it does not restrict competition unless it can be demonstrated that:

- a) the benefits of the restriction to the community as a whole outweigh the costs; and
- b) the objectives of the legislation can only be achieved by restricting competition.

Subclause 5(9) of the Agreement requires that a review should:

- (a) clarify the objectives of the legislation;
- (b) identify the nature of the restriction on competition;
- (c) analyse the likely effect of the restriction on competition and on the economy generally;
- (d) assess and balance the costs and benefits of the restriction; and
- (e) consider alternative means for achieving the same result including non-legislative approaches.

Undertake a review of the *Pawnbrokers Act 1902* in accordance with the above requirements and report the outcome of the review during 2001.

The review should have particular regard to the size of the market in the ACT and the need to ensure that the cost impact of any legislative amendments recommended are minimal.

## Travel Agents

A national review of travel agents, co-ordinated by Western Australia, is underway. An issues paper on Travel Agents was released in June 1999.

## Needle Exchange Worker

### Nature of Restriction

The ACT *Drugs of Dependence Act 1989* requires that “A medical practitioner, pharmacist, nurse or health worker may apply to the Medical Officer of Health for approval to supply syringes”. Under the legislation a “health worker” is a person who has completed a course of instruction about appropriate health counselling and hygienic distribution, use, collection and disposal of syringes”. The legislation requires that

application for an approval under the Act should be made to the Chief Health Officer with each approval lasting a term of 12 months. An approved person is conventionally known as a needle exchange worker. Persons who are not approved and who are not a medical practitioner, pharmacist, nurse or needle exchange worker are not permitted to supply syringes to the public.

#### Benefit of restriction

The restrictions provide for the licit supply of syringes to persons who may use the syringes in relation to the use of a drug of dependence or a prohibited substance. Without such provisions, and the resultant immunity from prosecution, the possession and supply of syringes may attract penalty under criminal legislation. The provisions also provide a level of confidence that those involved with needle exchange work have some knowledge of health counselling and the safe handling of new and used syringes. Knowledge and competence in these areas may:

- directly benefit the health worker by providing for their immediate safety;
- protect injecting drug users from the risk of cross infection; and
- reduce the risk of accidental injury to the community and reduce the health cost to the community from drug users with infectious diseases.

#### Cost of restrictions

The restriction limits those persons who may apply to work as a needle exchange worker and adds to the cost of providing a needle exchange service. Persons who may have adequately performed the same duties interstate may be prohibited from working as a needle exchange worker in the Territory due to the absence of reciprocal approval requirements.

#### Review and reform activities

The *Drugs of Dependence Act 1989* is part of a suite of ACT legislation relating to the supply, sale, manufacture, use, and storage of drugs, poisons and controlled substances. These Acts were reviewed nationally under the terms of reference of the Review of Drugs, Poisons and Controlled Substances Legislation. The review has been completed, however, the report of the review is still to be considered by CoAG.

While the national review considered the overall regulatory framework of drugs, poisons and controlled substances legislation it did not address the interface of the regulations with harm minimisation strategies such as the needle exchange program. Accordingly, while the national review addresses the benefit of the broad restrictions within the Acts it makes no recommendation on the approval requirements for needle exchange workers. The ACT is to conduct a separate assessment of the public benefit of approving persons to work as needle exchange workers. Such an assessment will be conducted as part of the broader consideration of potential regulatory reforms arising from the national review. The ACT is awaiting CoAG's consideration of the recommendations prior to proceeding with any local reform process.

## Swimming Pool Manager

The ACT does not licence Swimming Pool Managers. The *Public Baths And Public Bathing Act 1956* gives managers of public bathing facilities the power to remove patrons on basis of behaviour.

The act defines a manager to be:

- (a) in relation to any public baths which are not leased public baths—the person for the time being occupying, or performing the duties of, the office of manager of the baths or, if there is no such office, the person who, for the time being, is the senior attendant at the baths; and
- (c) in relation to leased public baths—the lessee of the baths.

## Users of Chlorofluorocarbons

Action to reduce damage to the ozone layer has been agreed internationally under the Montreal Protocol on Substances that Deplete the Ozone Layer. This action has resulted in a ban on the manufacture and import into Australia of chlorofluorocarbons (CFCs), halon, methyl chloroform, hydrobromofluorocarbons (HBFCs) and carbon tetrachloride. Controls have been placed on the import and manufacture of methyl bromide and hydrochlorofluorocarbons (HCFCs) and their manufacture and import will eventually be banned.

National strategies have been developed at the direction of the Australian and New Zealand Environment and Conservation Council (ANZECC), to ensure that Australia meets its international commitments under the Montreal Protocol. Strategies for most ozone depleting substances have been developed and implemented.

The ACT Government has responsibility for implementing the national strategies as they relate to the sale, use and disposal of ozone depleting substances. The Environment Protection Act 1997 and the Environment Protection Regulations 1997 provide the legislative framework to implement the national strategies in the ACT.

Equipment which uses CFCs, HCFCs or halons must only be serviced by a qualified technician. Under the legislation, business managers seeking environmental authorisations must ensure that any technicians hired to service equipment containing ozone depleting substances are qualified according to the requirements in the authorisation. It is illegal to deliberately release CFCs, HCFCs or halons into the atmosphere except under prescribed circumstances, such as for extinguishing fires.

## Review of the *Hawkers Act 1936* and *Collections Act 1959*

The Department of Urban Services commissioned The Allen Consulting Group to undertake a review of the *Hawkers Act 1936* (Hawkers Act) and *Collections Act 1959*.

The Allen report, *National Competition Review of the Hawkerc Act and the Collections Act*, made 28 recommendations for legislative reform relating to the operation of the Hawkerc and Collections Acts.

The Government is currently considering its response to the report.

*Review recommendations relating to the Hawkers Act 1936*

***Recommendation B1***

The Hawkers Act should have as its objective the appropriate allocation of public space for hawking taking into account impacts on third parties.

**Government Response      Not Agreed.**

It is proposed that the Hawkers and Collections Administration Bill regulate the business aspects of hawking and collections. The appropriate allocation of public space would be one of the objectives of a revised Roads and Public Places Act.

***Recommendation B2***

There should be continued positive licensing for hawkers who wish to operate from a single location (ie, certain criteria must be met and a fee paid before a hawker is allowed to operate). Mobile hawkers should operate under a negative licensing scheme (ie, they will only be required to provide contact information and pay a fee before being allowed to operate — there are no ‘positive’ licensing requirements).

**Government Response      Agreed in-principle.**

It is proposed that the current arrangements be amended so that:

- a mobile hawker is required only to register his or her name and contact details; and
- a hawker who wishes to operate from a single location for an extended period would require, in addition to registering his or her name and contact details, a permit under the Roads and Public Places Act.

***Recommendation B3***

The Act should be amended to remove the 180-metre exclusion zone provided for traditional shop owners. In place of this restriction, hawkers should not be allowed to operate in locations at which movable signs are prohibited.

**Government Response      Not agreed.**

It is proposed that regulatory restriction preventing hawkers from operating within one hundred and eighty metres of a shop be retained unless the hawker has written approval from the Minister or an authorised officer. This maintains the existing regulatory regime and maintains the status quo in the ACT retail sector. Supporters of this restriction have also argued that shopkeepers are entitled to some protection because they have higher up-front costs, and pay ongoing rates. Moreover, it is claimed shopkeepers are at a disadvantage in comparison to hawkers because they cannot easily move to new location. In seeking hawkers would be required to obtain approval under the revised Roads and Public Places Act. In considering whether to approve an application the Registrar would have regard to issues of public safety, access and protection of the assets.

It is proposed that a hawker operating on public land permanently or semi-permanently would pay the appropriate commercial rate for that space. It is further proposed that valuations would be sought to determine the appropriate fees. In the interim, the current fees would remain in place.

***Recommendation B4***

The licence for stationary hawkers should include the right to stand at a single location (ie, the existing hawker's licence and the Permit to Stand should be merged).

**Government Response**      **Agreed in-principle.**

It is proposed that a hawker's licence application form would contain two parts and the applicant would fill in the relevant sections:

Part A - application for a Hawker's licence (under proposed Hawker and Collections Administration legislation).

Part B - an application for a Permit to Stand (under the Roads and Public Places Act).

***Recommendation B5***

There should be no character requirements that need to be met to obtain a hawker's licence.

**Government Response**      **Agreed.**

To be repealed.

***Recommendation B6***

There should be no minimum age requirement in order to obtain a hawker's licence.

**Government Response - Agreed.**

To be repealed. Advice from the Department of Education and Community Services is that the Children's Services Act covers the employment of children.

***Recommendation B7***

A business should be able to obtain a hawker's licence.

**Government Response**      **Agreed.**

This is a core NCP issue in that legislation should not restrict who can enter a market.

It is proposed that the proprietor of a business can obtain a hawker's permit. A proprietor could either be a company or an individual.

***Recommendation B8***

There should be no requirement for a hawker's van to state that it is operated by a licensed hawker.

**Government Response**      **Agreed.**

There would be no corresponding requirement in the proposed Hawkers and Collections Administration Bill.

***Recommendation B9***

There should be no restrictions as to the number of vehicles that a mobile hawker can operate, but a licence fee should be paid for each vehicle

**Government Response**      **Agreed.**

It is a person's choice how many vehicle he or she operates.

This follows the precedent of food business licensing where a person operating more than one food premises or van has to have a licence to cover all the outlets. However, the licence fee would vary depending on the number of outlets.

***Recommendation B10***

A separate licence is required for every vehicle operating from a single location from which goods are sold.

**Government Response**      **Agreed.**

A person would require a permit for each outlet under the Roads and Public Places Act. This would ensure that issues such as public access and public safety are properly considered for each location.

***Recommendation B11***

There is no need for the Hawkers Act to regulate the number of people employed by a hawker or their minimum age.

**Government Response**      **Agreed.**

These issues are covered by other legislation such as the Occupational Health and Safety and the Children's Services Acts.

***Recommendation B12***

The section 22 restriction on licence transfers should be retained.

**Government Response**      **Agreed in-principle.**

Given the likely low value of licence fees and the fact that they would be renewed annually, a provision providing for licence transfers is not warranted.

***Recommendation B13***

The Act should be amended to remove the requirement that two sureties be provided.

**Government Response**      **Agreed.**

This requirement is outdated and there would not be a corresponding provision in the proposed Hawkers and Collections Administration Bill.

***Recommendation B14***

Regulation of health, liquor and contraband goods should be undertaken in generally applicable legislation and should not be referred to in the Hawkers Act.

**Government Response      Agreed.**

The obligation is on a hawker to ensure that he or she has the necessary approvals and complies with the relevant legislation.

*Review recommendations relating to the Collections Act 1959*

***Recommendation C1***

To aid understanding of the legislation the Collections Act should be amended to state that the objectives of the Act are:

- to protect the public against fraud, misappropriation of funds and misleading conduct;
- to ensure that donors and the public have access to information; and
- to ensure that organisations use acceptable fundraising practices.

**Government Response      Agreed.**

These principles will form part of the objectives of the proposed Hawkers and Collections Administration Bill.

***Recommendation C2***

The Act should not place limits on the level of fundraising costs or remuneration per se.

**Government Response      Agreed in-principle.**

However, a potential donor must be provided with sufficient information in order for him or her to make an informed choice. The proposed Hawkers and Collections Administration Bill would contain these safeguards.

***Recommendation C3***

The regulatory emphasis should be on disclosure of fundraising details to potential donors.

**Government Response      Agreed.**

***Recommendation C4***

There should be no power to refuse a licence based upon where the funds are to be spent.

**Government Response      Agreed.**

It proposed in the Bill that under normal circumstances, the granting of a licence would not be contingent on where the funds would be spent.

***Recommendation C5***

The legislation should continue to provide the Minister with the ability to refuse to licence a fundraiser on broad public interest grounds. The Minister should be required to provide reasons for any such decision.

**Government Response      Agreed.**



These requirements will be incorporated in the proposed Bill.

***Recommendation C6***

The Collections Act should not limit the locations where collections can be undertaken or the number of organisations collecting at any particular time.

**Government Response      Agreed in-principle.**

It is recognised that the Government has a responsibility for public safety and movement on public areas.

It is proposed that a person would require an approval to undertake a collection in a public place. However, the legislation would not restrict the number of organisations from door-to-door collections on the same day. The Registrar would be able to provide information to an applicant on how many other collections there would be on a particular day.

***Recommendation C7***

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; and
- organisations which 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.

**Government Response - Agreed.**

It is proposed that under the Hawkers and Collections Administration Bill:

- all organisations undertaking collections would be required to produce audited accounts and lodge these with the Registrar on an annual basis; or
- organisations which 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.

Those accounts would also include information on the amount collected and the amount received by the charity.

***Recommendation C8***

Collectors should be required to wear a badge (or prominently display information) that states:

- the name of the fundraising organisation;
- the purpose for which funds are being raised, and how and where the funds will be spent;
- whether the particular collector is:
  - a volunteer;
  - a paid employee of the fundraising organisation; or

- a contracted professional fundraiser and the terms on which they (or their organisation) are contracted; and
- a contact name and phone number for the fundraiser.

**Government Response      Agreed.**

The proposed Hawkers and Collections Administration Bill would require collectors to wear a badge (or prominently display information) that contains the information as recommended in the Allen Report. The information would be in lettering that can be easily read.

***Recommendation C9***

When seeking a fundraising licence the applicant should be required to provide an example of the information to be provided to the community. The Registrar should ensure that the example adequately conveys the required information.

**Government Response      Agreed.**

***Recommendation C10***

Systematic failure to display the required information at the point of collection should result in the suspension or revocation of a fundraiser's licence.

**Government Response      Agreed.**

***Recommendation C11***

The Collections Act should explicitly provide the Minister with the power to delegate to the Registrar the issuance of licences.

**Government Response      Not agreed.**

This power is already available under the *Administration Act 1989*.

***Recommendation C12***

There should be a publicly accessible list of licensed fundraisers and their contact details.

**Government Response      Agreed.**

***Recommendation C13***

The Act should be drafted to apply to any direct or indirect appeal for support. A direct appeal would include a personal request for a donation in any form, and an indirect appeal would include those circumstances where the appeal involves the sale of a good or service where the price does not truly reflect the good or service's value.

**Government Response      Agreed.**

The Bill would also apply to pledges but not to begging or the sale of raffle tickets or cake stalls.

***Recommendation C14***

Under the principle of mutual recognition, the ACT should accept fundraising licences from jurisdictions with fundraising regimes that are similar to that in the ACT.

**Government Response**      **Not agreed.**

Legal advice is that this is not an issue for Mutual Recognition.

## 19. Fair trading legislation and consumer legislation

NCP Review of the *Fair Trading Act 1992* and related legislation

A National Competition Policy review of the *Fair Trading Act 1992* and related legislation is underway. The review is being conducted by the Department of Justice and Community Safety. The terms of reference for the review follows.

When made, the ACT *Fair Trading Act 1992* mirrored Part V of the *Trade Practices Act 1974*. While the NCC has now advised that a review of the Act is not necessary in these circumstances (Third Tranche Assessment Framework), the ACT is conducting a review to determine whether changes made in other jurisdictions since 1992 would be appropriately included in ACT legislation.

### *Terms of Reference for the National Competition Policy review of the Fair Trading Act 1992 and related legislation*

Undertake a review of the Acts listed at the foot of this instrument in accordance with the following terms of reference and report the outcome of the review during 2001:

- specify the objectives of the Act;
- identify the nature of the restriction on competition in the Act;
- analyse the likely effect of the restriction on competition within the Act and on the economy generally;
- assess and balance the costs and benefits of the restrictions in the Act; and
- consider any alternative means for achieving the same result including non-legislative approaches.

### Acts to be reviewed

*Door-to-Door Trading Act 1991*

*Fair Trading (Consumer Affairs) Act 1973*

*Fair Trading Act 1992*

*Lay-by Sales Agreements Act 1963*

*Sale of Goods Act 1954*

### *Fair Trading (Fuel Prices) Act 1993*

A National Competition Policy review of the *Act* is complete. The outcome of the review was reported on in 1999.

### Trade measurement legislation

The Government introduced a series of amendments to the *Trade Measurement Act 1991* through the *Justice and Community Safety Portfolio Bill 2000 (JACs Bill)* which will

bring trade measurement into conformity with nationally agreed provisions. The JACs Bill is yet to be debated in the Assembly.

The amendments give effect to the Territory's obligations under the 1990 *Uniform Trade Measurement Legislation and Administration Agreement*. They arise from a review of the Uniform Trade Measurement legislation agreed to by the Ministerial Council on Consumer Affairs in August 1995. The amendments received the unanimous endorsement of the Council, including the ACT, in August 1998. The amendments were implemented in Queensland, as lead State, by the *Trade Measurement Amendment Act 1999* and the *Trade Measurement (Amendment) Regulation (No. 1) 1999*.

The amendments simplify the law and:

- specify that a sale must be by net measurement (Consumers are disadvantaged where the weight of the product may include the packaging.)
- provide that Class 4 weighing instruments can only be used for trade purposes under the conditions specified in the National Standards Commission (NSC) Certificate of Approval (This will address the anomaly whereby some Class 4 weighing instruments may technically comply with section 13 of the *Uniform Trade Measurement Act* and be capable of verification or certification such that they could be used for applications that should require a (more accurate) Class 3 weighing instrument.)
- allow a correction period of up to 28 days for minor infractions of the Act: where compliance occurs within this period, there will be taken to have been no offence committed against the Act. (Presently, inspectors do not have the power to allow limited use of an instrument pending repair work and certification. In many cases, the non-conformance does not affect the instrument performance and removing the instrument from service does not seem logical. It may be the owner's only trade measuring instrument and sole method of income.)
- require that there be at least one trade approved measuring instrument on premises where articles are prepacked.
- require that each licensee under a service licence possess such denominations of reference standards of measurement as the administering authority provides and not merely the appropriate classes of such reference standards.
- correct a deficiency in the Act that effectively limits the offence of a price determined by reference to its measurement to a situation where a measuring instrument is used, thereby failing to deal with the situation where no measuring instrument is used (ie the measurement is estimated).
- require that the selling price of a pre-packed article be correctly computed by reference to its actual measurement and the stated price for each unit of measurement. (Presently, the relevant offence would not be committed if the price was correctly calculated from the stated price and the given weight (whether or not correct.)
- clarify that a batch tester of glass measures must hold a servicing licence.
- make it an offence for a person to breach any condition of a service licence. (Presently, it is only an offence to breach conditions relating to the certification, or purported certification of an instrument.)

- effectively allow a partnership to hold a service licence. (As a partnership is not a separate legal entity, it cannot be licensed as a person and it is unnecessarily costly for each partner to be licensed separately.)
- provide inspectors with the power to weigh vehicles for the purpose of investigating an offence against the Act. This will assist regulation of the firewood industry in the ACT.
- provide inspectors with the power to measure an article, which is for sale by reference to its measurement.
- specify, in the evidentiary provision relating to prepacked articles, that a batch number is to be evidence of the matters to which it relates.
- specify that the Regulations should contain a provision concerning the sealing of measuring instruments by servicing licensees.

### Other consumer protection legislation

A review was previously anticipated into *the Sale of Goods (Vienna Convention) Act 1987*. As there are no anti-competitive provisions in the Act, a review is not necessary.

A National Competition Policy review of the *Sale of Motor Vehicles Act 1977* is underway. The review is reported on in Chapter 18, Professional and Occupational Licensing.

## 20. Finance, insurance and superannuation Services

### Compulsory Insurance Schemes

#### Workers Compensation Legislation

Workers compensation is regulated in the ACT under the *Workers Compensation Act 1951*. The ACT private sector workers' compensation system is fully privately underwritten through 13 approved insurers. This means workers compensation premiums are set according to the market rate determined between an insurer and an employer. The ACT scheme is a transparent full cost-recovery scheme. All employers are required to have workers compensation insurance.

The Government has considered two reports on the ACT workers' compensation scheme since May 2000. The Assembly Select Committee report and the Workers Compensation Monitoring Committee report. The reports' recommendations formed the basis of proposals to reform the existing legislation. On 7 December 2000, the Government tabled for consultation an exposure Draft of a Bill and Regulation to amend the ACT *Workers' Compensation Act 1951*. At the conclusion of the public consultation, the Government will incorporate the outcomes of the consultation into a new Bill for presentation and debate by the Assembly toward the middle of 2001.

In terms of the restrictions identified in the Assessment Framework, two of these will remain under the new legislation – regulating benefit levels and restrictions on common law access. The Council notes that both these issues are for individual governments to determine rather than being matters for assessment under NCP.

#### Compulsory Third-Party Insurance

The *Motor Traffic Act 1936* (the Act) regulates a number of areas concerned with road transport and traffic. Part V of the Act (and associated subordinate legislation) provides the regulatory framework for operation of a compulsory third-party insurance (CTPI) scheme in the Territory. Like New South Wales and Queensland, CTPI is provided by authorised private insurance companies rather than government in the ACT.

The ACT scheme permits multiple insurers although in recent years, the NRMA has operated as the sole provider of CTPI. This 'monopoly' is not legislatively created and is subject to change should another provider seek authorisation. On this basis, the National Competition Council has been informed that the ACT legislation is not being reviewed under the regulation review program.

## 21. Retail Trading Arrangements

### Shop trading hours

The ACT does not have any restrictions on shop trading hours.

### *Door to Door Trading Act 1991*

The Act permits door-to-door trading at any time when requested by a consumer and allows unsolicited trading between 9 am to 8 pm during weekdays (Mondays through Fridays), on weekends (Saturdays and Sundays) and public holidays (other than Good Fridays, Easter Sundays, and Christmas Days) between 9 am and 5 pm.

In any sale transaction resulting from a door-to-door trading, the Act provides a purchaser with a cooling-off period of 10 days in which to withdraw from the transaction. The 10-day cooling-off period was contained in the model uniform legislation agreed upon by the Standing Committee of Consumer Affairs Ministers in the mid-1980s.

These provisions have marginal competition policy implications.

A National Competition Policy review of the Act is underway. The review is being conducted by the Department of Justice and Community Safety. The terms of reference for the review follows.

### Liquor Licensing

The Act, for reasons of public health and safety, makes provision for the licensing of liquor outlets. For similar reasons, it makes minimal provision for the times some liquor outlets may operate, occupancy loadings and business rules.

A National Competition Policy review of the Act is underway. The review is being conducted by the Department of Justice and Community Safety. The terms of reference for the review follows.

### *Terms of Reference for review of Liquor Act 1975 - except subsections 42E(2) and 42e(4) and the Door-to-Door Trading Act 1991*

Undertake a review of the Acts listed at the foot of this instrument in accordance with the following terms of reference and report the outcome of the review during 2001:

- specify the objectives of the Act
- identify the nature of the restriction on competition in the Act
- analyse the likely effect of the restriction on competition within the Act and on the economy generally
- assess and balance the costs and benefits of the restrictions in the Act
- consider any alternative means for achieving the same result including non-legislative approaches



## 22. Education services

### School Legislation Review

The legislation reviewed was:

- *Education Act 1937*
- *Schools Authority Act 1976*
- *Free Education Act 1906 (NSW)*
- *Public Instruction Act 1880 (NSW)*

### Terms of reference

A School Legislation Review Committee was established in September 1998 to review the above acts.

A report was obtained for the Committee about the Territory's obligations pursuant to the Competition Principles Agreement. The report was completed by Mr Roderick Best.

### National Competition Policy Review of ACT School Legislation

In reviewing the interaction of competition policy and education, the Competition Policy Review concluded that:

- there is no reason in principle why schools should be excluded as a threshold issue from any application of competition policy;
- in applying competition law, the provision of education by a government school, as it is presently delivered, will be a non-business activity rather than a business and as such this major activity of schooling will not be subject to competition law;
- the application of competition law to non-government schools is not so clearly decided and accordingly, while it is probable that a non profit non government school will also be characterised as a non business activity, rather than a business, this cannot always be assumed legislation should therefore be prepared on the basis that non government schools may be subject to the 'trade Practices Act';
- certain activities of schools could be classified as a business. These activities are not specified or prescribed in legislation and so are not exempted from the Trade Practices Act.
- the establishment or closure of a government school is not a matter which is in the course of trade and is not therefore subject to the Trade Practices Act. Such activity could be brought within the course of trade by the conduct of the various decision makers who might be involved, but this will not be governed by the legislation and so is not relevant for present purposes; and
- the registration of schools is likely to be exempt from the provisions of the Trade Practices Act, but consistent with the Competition Principles Agreement it is recommended that any proposed legislation should ensure competitive neutrality in dealing with this aspect.

Government's policy response (including the public interest reasons supporting the government's decision)

The Government is proceeding with new School Education Legislation taking into account the findings and recommendations of the Competition Policy Review.

## 23. Social regulation with implications for competition

### Gambling

#### Public Benefit Test for the Racing Bill 1998.

The *Racing Act 1999* was passed 26 Feb 1999. Only sections 1 and 2, the title and commencement provisions are effective at this time. The commencement provision enables remaining provisions to be enacted via Ministerial gazettal. Remaining provisions become effective on a day or days to be fixed by the Minister (for thoroughbred racing this is expected to be 1 July 2001).

Section 68 repeals the *Racecourses Act 1935*. The *Racing Bill 1998* was subjected to a National Competition Policy review conducted by the Allen Consulting Group in September 1998. The Bill was redrafted to reflect recommendations of the review. In essence, the provisions of the *Racecourses Act 1935* have been incorporated in the *Racing Act* with less restrictions on the control of racing including a provision for an organisation that has the wherewithal to conduct a race meeting (eg. camels, quarter horses, Arabian) to apply and be approved by the Minister as an Approved Racing Organisation.

#### Retention of monopolistic Control Bodies of racing codes

The ACT views that, given the relative size of its racing market, the maximum benefit will flow from existing ACT racing bodies attaining Principle Club status within the national racing codes. This is most likely to be achieved by retaining compatible competitive restrictions benefiting the existing racing codes. The Racing Act enables establishment of racing codes other than Thoroughbred, Harness and Greyhound codes. The ACT's position on retaining the competitive restrictions within existing codes is concomitant with the States removing similar restrictions or until existing ACT codes are considered to have reasonably exhausted avenues to attain Principle Club status.

#### Review of Betting and Gaming Legislation

In April 1998, the ACT Government commissioned the Allen Consulting Group to conduct a review of ACT gambling legislation. Their report, *Gambling and Related Legislation in the Australian Capital Territory: A National Competition Policy Review* was published in mid 1998.

The following legislation was reviewed:

- *Unlawful Games Act 1984*;
- *Games Wagers and Betting-Houses Act 1901 (NSW)* in its application in the ACT;
- *Gaming and Betting Act 1906 (NSW)* in its application in the ACT;
- *Lotteries Act 1964*;
- *Pool Betting Act 1964*;
- *Gaming Machine Act 1987*; and

- *Casino Control Act 1988.*

In summary the recommendations were:

*Gambling provides broad benefits to the ACT community. Social costs, principally associated with problem gambling, are limited but receive significant public attention because they are concentrated.*

*The exclusive casino licence provided to Casino Canberra is an unjustified competitive restriction. However, rescission of the 20-year exclusive licence would impose net costs on the ACT. Thus, the exclusive casino licence should be retained, and notice given that the exclusivity period will not be extended.*

*Casino Canberra is placed at a competitive disadvantage in comparison to the Sydney casino because it cannot operate gaming machines. This competitive distortion should be rectified.*

*The regulation of gaming machines is overly formalistic in prescribing certain gaming machine technologies for different venue types. Such prescriptive regulation has dated and, in the process, has placed hotels at a competitive disadvantage in comparison to clubs. This competitive distortion should be rectified by removing the technology-specific restrictions.*

*Rather than an open-slatheer approach to greater competition, particularly where such reforms result in increased availability of gaming machines, competitive reforms should be staged and their impacts tested.*

*Current regulatory oversight is concentrated on the casino, with only piecemeal attention given to gaming machine operations. This imbalance of regulatory attention is inappropriate given that the costs of gambling are largely associated with gaming machines.*

*More regulatory attention and funding needs to be directed to reducing the social costs associated with problem gambling. This can be done by increased funding for gambling-related counselling, more regulatory attention on discouraging problem gambling and on-going research about problem gambling in the ACT.*

On 20 May 1998, the Legislative Assembly resolved to establish a Select Committee to examine the social and economic impacts of gambling in the ACT, with a particular reference to poker machines.

On 8 July 1998, the Chief Minister referred the Allen report to the ACT Legislative Assembly Select Committee on Gambling for comment. The committee did not comment at that stage because it wanted to consider the report in the overall context of the socio-economic impacts of gambling in the ACT. The committee commented on the Allen report in its final report "*The Social and Economic Impacts of Gambling in the ACT*, (with particular reference to poker machines)" which was published in March 1999.

The Select Committee produced two interim reports, the first in June 1998 related to the establishment of a cap on the number of gaming machines in the ACT. The second interim report, October 1998, related to the Government's announcement of the establishment of the proposed Gaming and Racing Commission.

The terms of reference of the Select Committee were broadened to allow the Committee to consider the implications of the *Gaming and Racing Control Bill 1998* (the Control Bill) when it was introduced into the Assembly on 10 December 1998.

The final report of the Select Committee on Gambling, March 1999, has 28 recommendations. A number of recommendations relate to the identification of issues relating to establishing the social and economic impacts of gambling and measures to limit the negative impacts of gambling. Further recommendations relate to the Allen Report and Competition Policy, the structure of the proposed Gaming and Racing Commission and co-ordination of gambling policy development and advice.

There is a concern that the Committee appears to have overlooked significant differences in the gaming market in the ACT, which is more mature than the relatively new gaming machine markets of Victoria and South Australia. As such, the Committee seems to have drawn a number of conclusions based on evidence from, and claims of, gambling counsellors in these jurisdictions, which may or may not be appropriate or relevant to the ACT.

### **Recommendations of the Select Committee.**

#### ***Recommendation 1***

The Committee recommends that a program of research be instituted by the ACT Gambling and Racing Commission into:

- general gambling patterns including the prevalence of problem gambling in the ACT;
- the proportion of expenditure on gambling contributed by problem gamblers;
- the costs and benefits of the socio-economic impacts of gambling in the ACT; the economic impacts of gambling on ACT household outlays; and the relationship between the prevalence of gambling and accessibility and location of poker machines.

**Government Response      Supported.**

#### **Comments**

In developing the *Gaming and Racing Control Bill 1998*, the initial focus of the ACT Gambling and Racing Commission (the Commission) was proposed to be that of an integrated regulatory and policy development body. The establishment of the gambling project fund in the 1999-2000 Budget has provided a mechanism to fund gambling related research programs.

The implementation of research into broad social justice issues relating to gambling, can be co-ordinated by the Commission or other Government agency, with funding provided through the annual budget process.

Possible topics for research will be determined by the Commission in consultation with key stakeholders. The Government is anxious to prevent the wasting of funding on projects conducted over an extended period of time, without any evidence of the clear benefits of such research.

### ***Recommendation 2***

The Committee recommends that the ACT Gambling and Racing Commission initiate and monitor a program of data collection by Government agencies, welfare agencies and gambling venues for the purpose of tracking the links between gambling and social costs and facilitating the evaluation of gambling policies and programs.

**Government Response**      **Supported.**

#### **Comments**

The establishment and co-ordination of data collection by Government and welfare agencies and gambling venues can be managed by the Commission or other Government agency, with funding for such activities provided through the annual budget process to the gambling project fund.

As part of its regulatory oversight, the ACT Gambling and Racing Commission will gather data and statistics from all gambling and racing activities.

### ***Recommendation 3***

The Committee recommends that the current cap of 5,200 poker machines remain in place until the tabling and consideration by the ACT Legislative Assembly of the results of major research into the prevalence and socio-economic impacts of gambling in the ACT. The ACT Government should initiate the amendment of the relevant legislation before 24 June 1999 to ensure this.

**Government Response**      **Not Opposed.**

#### **Comments**

The Government does not oppose the call for it to move amendments to the *Gaming Machine Act 1987* to ensure the cap of 5,200 remains for a further set period, say 12 months.

The Government notes that the National Competition Policy implications of the current restriction of the number of gaming machines in the ACT needs further consideration.

### ***Recommendation 4***

The Committee recommends that the ACT Gambling and Racing Commission fund and develop a public education approach to gambling based on harm minimisation principles.

**Government Response**      **Supported.**

#### **Comments**

The development of a public education campaign, based on harm minimisation principles, can be overseen by the Commission or other Government agency, with funding provided through the annual budget process to the gambling project fund.

**Recommendation 5**

The Committee recommends that the current voluntary code, *Responsible Gaming: A Voluntary Code of Practice for the ACT*, be replaced with a mandatory enforceable Code of Practice for Responsible Gambling. The Code should provide for:

- 5 year licenses for gaming providers;
- licenses to be linked to how responsible gaming venues are in the provision of gaming services;
- sanctions for gaming machine licence holders for breaching the Code including non-renewal of licenses;
- strong guidelines on advertising and promotional practices including the offering of inducements;
- licence holders to be required to provide objective information about winnings and losings in publications such as newsletters; and
- monitoring and evaluation of the Code, to be undertaken by the ACT Gambling and Racing Commission.

**Government Response**      **Agreed in part, further consideration required.**

**Comments**

This recommendation closely reflects a recommendation of the Allen Report. In the Allen Report it was recommended that the industry's self regulatory regime, contained in the Voluntary Code of Practice, should be converted to an enforced self-regulatory regime; the independent regulator (the Commission) should have the power to enforce the Code, discipline parties contravening the Code and amend the Code.

The Allen Consulting Group recommended that the Legislative Assembly should only legislate when it is clear that the Code (or elements thereof) are ineffective and the industry is unwilling to modify the Code.

The Government supports the approach recommended by the Allen Consulting Group.

The existing or revised Code of Practice will be monitored and evaluated as part of the functions of the ACT Gambling and Racing Commission.

With regard to the 5-year licence component, this issue requires further consideration, in particular the implications on existing gaming licensees and costs and benefits of such measures.

**Recommendation 6**

The Committee recommends the following mandatory changes to electronic banking practices in gambling venues:

- all daily withdrawals allowed from EFTPOS machines located in clubs be limited to \$200 per day (instead of \$1,000 per day);
- all ACT clubs with EFTPOS and ATM machines ensure these machines produce account balances for all transactions; and
- EFTPOS and ATM machines in clubs be barred from releasing money from credit card and credit accounts.

**Government Response**      **Not supported - unable to be implemented.**

**Comments**

Financial institutions have advised that the gambling venues (or any other business) do not programme the EFTPOS/ATM machines in their premises. The programming of machines is done by the bank/financial institution installing or providing the machines.

The report correctly states at Paragraph 2.86 that “it is technically possible for individuals to request banks to reduce their daily maximum withdrawal limit to a specified amount”.

It is not feasible for banks to program certain machines at certain locations to limit the amount of money able to be withdrawn or bar cash advances from credit accounts. These restrictions are linked to the type of account held by the individual and the individual must request such restrictions from his or her bank.

Similarly, the recommendation does not recognise the many “generic” ATMs that provide cash withdrawal facilities from a range of banks. These machines remove the need to install a number of ATMs covering all banks. Generally, these machines do not give account balance information.

Finally, the recommendation does not recognise that many patrons utilise the ATM cash withdrawal facilities for food or beverage purchases or for the access to cash at a convenient location.

The Commission would be able to provide information regarding banking facilities and what steps an individual may take to limit access to funds at gaming venues.

***Recommendation 7***

The Committee recommends that the ACT Gambling and Racing Commission develop and publish consumer protection information on poker machines and monitor information distributed by poker machine operators.

**Government Response**      **Supported.**

**Comments**

The activities of the ACT Gambling and Racing Commission will be extended to include the oversight of the development and dissemination of consumer protection information regarding gaming machines.

***Recommendation 8***

The Committee recommends that ACT clubs:

- initiate problem gambling training/awareness programs for staff and management; and
- implement strategies for dealing with staff and clients who become problem gamblers.

**Government Response**      **Supported.**



## **Comments**

There is merit in the establishment of programs and implementation of strategies to address these issues. The ACT Gambling and Racing Commission would positively contribute to the training programs.

### ***Recommendation 9***

The Committee recommends that the ACT Gambling and Racing Commission institute a needs assessment to establish the ACT community's need for gambling counselling. The assessment should include consideration of the needs of family members and partners as well as people with gambling problems. The needs assessment should cover the type of treatment needed, the number of people needing treatment and the funding required to meet this need. In the interim, adequate funding should be provided to meet the current unmet needs.

**Government Response      Supported.**

## **Comments**

The implementation of a needs assessment of gambling counselling services can be co-ordinated by the Commission or other Government agency, with funding provided through the annual budget process to the gambling project fund.

Such an activity would form one of the first co-ordination tasks of the Commission.

The first stage would involve undertaking the needs assessment and determining costing requirements. The second stage would involve using the costing information to determine the funding regime as identified at Recommendation 12.

### ***Recommendation 10***

The Committee recommends that the ACT Department of Health:

- ensure that their counsellors are provided with the opportunity to receive training in gambling addiction and treatments; and
- change the name of the Drug and Alcohol Counselling Service, to incorporate and promote counselling for gambling addictions.

**Government Response      Agreed in part, further consideration required.**

## **Comments**

While the Government supports in principle the concept that all counsellors should be provided with access to adequate training to deal with the issues of problematic gambling, it is not considered that additional training for alcohol and drug counsellors would sufficiently meet this need.

Specifically, it has been argued that the motivational interview style of counselling used for people with alcohol and other drug dependency can differ significantly from the method of counselling suited to people with gambling addiction problems. While acknowledging that alcohol and other drug dependencies and gambling addictions can occur as dual disorders, the upskilling of other specialists or generalist counsellors may be more appropriate.

Further consideration is needed to determine whether specialist drug and alcohol counsellors are the most appropriate group to target in order to meet this need.

Funding for specialised training programs may be provided through the annual budget process to the gambling project fund.

### ***Recommendation 11***

The Committee recommends that the ACT Gambling and Racing Commission ensure that the counselling funding component is sufficient to provide for:

- the needs assessment of ACT counselling services;
- a range of innovative pilot projects and treatment services such as those recommended in the needs assessment; and
- training for counsellors from the Department of Health and non-government welfare agencies on gambling related treatment strategies.

**Government Response**      **Agreed in part, further consideration required.**

### **Comments**

Refer to Recommendation 9.

The results of the needs assessment of counselling services, flowing from the implementation of Recommendation 9, will determine the initial funding requirements.

Funding of pilot programs and training will be determined through the annual budget process to the gambling project fund.

### ***Recommendation 12***

The Committee recommends the ACT Government, after consulting widely with the Community, hypothecate an appropriate percentage of gambling revenue to a Community Benefit Fund established to fund:

- gambling-specific research, public education, counselling and rehabilitation programs; and
- general community projects.

**Government Response**      **Not supported - recommendation is against good financial management.**

### **Comments**

As a matter of general policy, the Government does not support hypothecation of revenue, as this would reduce flexibility in budget planning and may restrict the ability of the Government to respond effectively to higher priority expenditures in future years.

The 1999-2000 budget made provision for the establishment of the gambling project fund. The Government has set aside \$500,000 to allow the Commission or other Government agency, to carry out or oversee the establishment of a number of gambling research programs, data collection activities and programs aimed at addressing the social issues relating to gambling.

The Allen Consulting Group recommended in its report (Recommendation 14) that “*the equivalent of 0.5% of all gambling related tax revenue be earmarked for funding for baseline research into gambling, measures to prevent problem gambling and counselling for problem gamblers*”.

The funding in the 1999-2000 budget equated to approximately 1.0% of gambling related tax revenue. The gambling project fund will provide a funding mechanism for gambling-specific research, public education, and counselling and rehabilitation programs.

The Government has set in place arrangements to achieve the objective of a funding mechanism for gambling research and programs, without the disadvantages of a taxation hypothecation regime.

Funds in the gambling project fund will be directed toward specific gambling related activities only and will not be used to fund “general community projects”.

### ***Recommendation 13***

The Committee recommends a community reference group, comprising broad community representation, be established by the Commission to advise, inter alia, on funding priorities within broad categories and funding allocation for each project for consideration by Government.

**Government Response      Agreed in part, further consideration required.**

### **Comments**

Currently the Government can seek advice from relevant and established community groups as appropriate.

The concept of an informal advisory body is not opposed. Currently, there are a significant number of non-statutory advisory bodies that provide an effective consultative framework for the Government.

The allocation of funds from the gambling project fund will be determined by the Commission and Government in line with the objects of the fund as per recommendation 12.

Further comment in respect of the structure of the community reference group is provided at Recommendation 19.

### ***Recommendation 14***

The Committee recommends that access to poker machines not be extended beyond clubs until research has been conducted on:

- the current prevalence of problem gambling in the ACT;
- the relationship between problem gambling and the prevalence of poker machines;
- the demographics of hotel customers compared with club members; and
- the likely social impacts if Class C machines were allowed in ACT hotels and taverns.

**Government Response      Agreed in part, further consideration required.**

## **Comments**

The Committee, at Recommendation 3, resolved that the cap of 5,200 gaming machines be maintained until further research had been completed.

The Government does not oppose the maintenance of this cap for another 12 months.

The Government has accepted Recommendations 1 and 2 regarding the establishment of programs to determine the social and economic impacts of gambling in the ACT and implement data collection programs. It is expected that these programs will address the aspects identified in this Recommendation.

The Government supports reforms in respect of the distribution of electronic gaming machines and supports the findings of the National Competition Policy review relating to the distribution of gaming machines. The Government also supports the removal of the current classification system for poker machines. However, it is recognised that the majority of members of the Legislative Assembly are unlikely to support a relaxation of the current restrictions.

Further, the Government is concerned that a maintenance of the current restrictions may have adverse implications in respect of its obligations under the National Competition Policy agreements by restricting the distribution of gaming machines to licensed clubs only.

It is unclear if studies into the demographics of hotel customers compared to club patrons would produce meaningful data to make informed decisions into an extension of gaming machines to hotels.

### ***Recommendation 15***

The Committee recommends that the proposed Gaming and Racing Commission be renamed the ACT Gambling and Racing Commission.

**Government Response      Not Opposed.**

## **Comments**

The 1999-2000 budget made provision for the ACT Gambling and Racing Commission. This name has now been adopted in any references to the proposed Commission.

The Government will move an amendment to the *Gaming and Racing Control Bill* to reflect the new title.

### ***Recommendation 16***

The Committee recommends that the ACT Gambling and Racing Commission should comprise three commissioners who are independent of both the Government and the gambling industry and who represent broad community interests. The Chief Executive Officer should be a non-voting member of the board.

**Government Response      Agreed in part, further consideration required.**

## Comments

The model proposed by the Control Bill establishes an authority that will be responsive, pro-active and able to quickly make decisions in respect of gambling and racing matters.

The proposed structure of the ACT Gambling and Racing Commission was based, in part, on: the Tasmanian Gaming Commission (where the Chairman of the Commission is also the Secretary of the Department of Treasury and Finance); and the NT Gaming and Racing Authority (where the Chairperson is also the CEO of the Authority).

Claims that the structure of the proposed Commission are “inconsistent with best practice in management” are not supported by interstate practice.

Conversely, the model recommended by the Committee is similar to the former Gaming and Liquor Authority (GALA) - which was not an effective model for the regulation and control of gambling in the ACT.

The Government is establishing the Commission to be independent and the Bill will prevent industry representatives and interest groups from being appointed to the Commission. It is important to the operation of the Commission that Members represent broad community interests, but at least one of the members must have a sound understanding of the gambling/racing industries.

The Government has no strong objection to the Commission comprising three members plus the Chief Executive. This arrangement will add to the costs of the Commission, but it will provide for broader community representation on the Commission.

Similarly, there is no objection to the Chairperson being appointed by the Minister, from one of the ordinary members. However, it is essential that the Chief Executive be a voting member of the Commission. A non-voting role will seriously diminish the potential effectiveness of the Chief Executive and potentially undermine the decision-making processes of the Commission.

It is the firm view of the Government that the Chief Executive (who will have a strong knowledge and understanding of the gambling and racing industries) be an active participant in the decision making processes of the Commission.

A number of ACT entities have CEOs with voting rights - these include ACTTAB, ACTEW, Totalcare and CTEC. This model has been proven to work well, there is no compelling reason to change this structure for the ACT Gambling and Racing Commission.

The Select Committee identified that the members of the Commission should not be representatives of the gambling industry. This was always intended to be the case.

The *Gaming and Racing Control Bill 1998* provides that any person who has an interest (or if the persons spouse has an interest) in a business subject to a gaming law, that person is ineligible to be appointed to the Commission.

The Committee also called for the Bill to provide for the proposed appointees to the Commission to be notified to an Assembly Committee prior to appointment. The

provisions of the *Statutory Appointment Act 1994* apply to the appointments to the ACT Gambling and Racing Commission.

The Government will amend the *Gaming and Racing Control Bill 1998* to increase the number of Commission members to four, including the Chief Executive. The proposed amendment will provide that all members have voting rights.

### ***Recommendation 17***

The Committee recommends that the Commission's functions exclude "developing" or "promoting" gambling.

**Government Response**      **Agreed in part, further consideration required.**

#### **Comments**

The functions of the Commission, as set out by Section 6 of the *Gaming and Racing Control Bill 1998* do not include "promote".

The Commission is not established to undertake entrepreneurial gambling or racing activities.

The "development" component relates to the broad activities of the Commission in respect to racing and gambling in the ACT, including:

- developing and providing advice on gambling and racing policy;
- assisting gambling and racing industries to comply with the regulatory framework; and
- developing responsible approaches to the provisions of gambling and racing related services.

It is the Commission's role to ensure that gambling and racing providers are doing so in a responsible and effective manner and that community interests are protected - these functions represent the Commission's "development" of gambling and racing.

The Government will amend Clause 6 of the Control Bill to more clearly set out the range of functions and responsibilities of the ACT Gambling and Racing Commission.

### ***Recommendation 18***

The Committee recommends that section 6 of the *Gaming and Racing Control Bill 1998* be amended to include explicit acknowledgement of the Commission's role in monitoring, researching, and reporting to the ACT Legislative Assembly on the social and economic impacts of gambling in the ACT. Section 6 should also be amended to acknowledge the Commission's role in funding gambling research, counselling, education and community projects.

**Government Response**      **Agreed in part, further consideration required.**

#### **Comments**

The model proposed by the *Gaming and Racing Control Bill 1998* established the Commission to have a regulatory and policy development role.

The additional acknowledgement that the Commission's functions also encompass research, data collection, gambling programs etc is not opposed.

The Government's support of a number of the recommendations of the Select Committee will be formalised by an amendment to the Control Bill, to specifically acknowledge the research, data collection, social programs and funding responsibilities.

In accordance with the existing arrangements for the Casino Surveillance Authority, the Commission will report to the Legislative Assembly, through the responsible Minister. It is neither appropriate nor necessary for the Commission to report directly to the Legislative Assembly on particular matters.

### ***Recommendation 19***

The Committee recommends that the *Gaming and Racing Control Bill 1998* be amended to provide for a community reference group comprising broad community representation to advise on gambling issues including priorities and allocations of funding for research, counselling, education and community projects.

**Government Response**      **Agreed in part, further consideration required.**

### **Comments**

Currently the Government can seek advice from relevant and established community groups as appropriate.

The concept of an informal advisory body is not opposed.

The Government is firmly of the view that the proposed Community Reference Group should be established administratively and not legislatively. Such an arrangement would provide greater flexibility in the consultative mechanisms for both the Government and the Commission.

There are over 50 non-statutory advisory bodies that provide an effective consultative framework and a link between the Government and the community.

### ***Recommendation 20***

The Committee recommends that the *Gaming and Racing Control Bill 1998* be amended to include provision of a complaints mechanism for gambling consumers and provide for information on complaints to be published in the Commission's annual report.

**Government Response**      **Not Opposed.**

### **Comments**

The *Casino Control Act 1988* includes a complaints mechanism and it is appropriate to include similar provisions in the *Gaming and Racing Control Bill 1998*.

The Government will amend the *Gaming and Racing Control Bill 1998* to establish a complaints mechanism. The amendment will provide that complaints may be lodged with the Commission regarding compliance with a gaming law. In addition, the amendment will also provide for the Commission to include information in its Annual Report regarding complaints received.

### ***Recommendation 21***

The Committee recommends that Part IV of the *Gaming and Racing Control Bill 1998* be amended to include provision for the ACT Legislative Assembly to initiate inquiries to be undertaken by the Commission.

**Government Response**      **Not supported - objective can be achieved by existing provisions.**

#### **Comments**

The objective of this recommendation is already contained in the Control Bill. The Bill already provides that the Commission shall conduct an inquiry on any matter referred to it by Minister or referred to the Commission under a gaming law. The Bill further provides that the Commission is also able to inquire into any other matter it thinks fit.

Further, the Control Bill provides that the Commission shall give any body interested in the subject matter of an inquiry, an opportunity to make submissions. These provisions establish mechanisms for interested parties to have input into inquiries conducted by the Commission.

If it is the will of the Legislative Assembly that a particular matter be referred to the Commission, the Assembly is able to pass a motion, seeking the Minister to refer such a matter to the Commission for inquiry. Clause 40(3) of the Bill provides that any inquiry report of the Commission, in respect of any matter referred to the Commission by the Minister, shall be tabled in the Legislative Assembly.

Therefore, the objective of this recommendation can be achieved without amendment to the Control Bill. The inquiry provision is not the appropriate mechanism to provide another avenue for community input into gambling policy development.

### ***Recommendation 22***

The Committee recommends that the ACT Government provide for improved access to information to facilitate research by amending the *Gaming and Racing Control Bill 1998* and through other mechanisms.

**Government Response**      **Not supported - objective can be achieved by existing provisions.**

#### **Comments**

Amendment to the *Gaming and Racing Control Bill 1998* is not necessary to achieve the objective of this recommendation.

Information on gambling and racing statistics collected and held by the Commission can be made available to key stakeholders through consultative processes and regular discussions. Relevant information is published regularly and provided as appropriate.

It is not appropriate to make available confidential information on individual clubs or taxpayers. Information of this nature is subject to normal commercial confidentiality and privacy legislation. The publication of sensitive commercial information may adversely affect such organisations.



Clause 31(d) makes provision for the disclosure of information to a range of persons, or for any other person prescribed by Regulation. Therefore, provision already exists for access to information.

The Select Committee report indicates that the Licensed Clubs Association (LCA) wished to be included in the list of persons authorised to access information. It is not appropriate to include the peak body of one area of the gambling and racing industries in the list of authorised persons. The LCA or any other similar organisation should not be allowed to use the Commission as a conduit to obtain information about its members and more importantly, it should not be able to access information through the Commission about non-members.

### ***Recommendation 23***

The Committee recommends that section 8 of the *Gaming and Racing Control Bill 1998* be amended so that the Commission may delegate any of its powers and functions, except the power to further delegate those powers and functions, to the Chief Executive or to an authorised officer.

**Government Response**      **Not Opposed.**

### **Comments**

The model proposed by the *Gaming and Racing Control Bill 1998* is outlined in the response to Recommendation 16.

The delegation clauses were drafted to give effect to this model and were established to enhance the effectiveness and efficiency of the operation of the Commission. While the approach recommended by the Select Committee is likely to establish a less than optimal arrangement, this recommendation is not opposed.

As a result of the Government's acceptance of recommendation 16, it is necessary to redraft the delegation provisions. The redrafted clause will establish the traditional controls allowing the Commission to delegate all its powers, except the power of delegation.

The Government will amend Clause 8 of the Control Bill to give effect to this recommendation.

### ***Recommendation 24***

The Committee recommends that the ACT Government maintain a gambling policy function within Chief Minister's Department to ensure a whole-of-government strategic policy focus and establish effective mechanisms to ensure interagency co-operation.

**Government Response**      **Not Opposed.**

### **Comments**

The ACT Gambling and Racing Commission will be responsible for, amongst other functions, the development of gambling and racing policy. This function will be supported and complemented by a policy function within the Chief Minister's Department.

The Allen Consulting Group Report (Recommendation 24) recommended that the independent gambling authority accept responsibility for providing gambling related policy advice. The Government supports this recommendation.

In the development of any new policy, change in policy or in preparing legislative amendments in relation to gambling or racing, the Government consultation and Cabinet processes will be applied to policy proposals developed by the Commission. Chief Minister's Department will apply a whole of government focus to policy proposals of the Commission, without the shortcomings of a separate policy development process removed from the gambling and racing regulatory environment.

In summary, the Commission will be responsible for the development of integrated gambling and racing policy. Chief Minister's Department, through the Cabinet processes, will oversee and monitor policy development from a whole-of-government perspective.

### ***Recommendation 25***

The Committee recommends that the existing legislation be amended to provide the Assembly the ability to reject future technological change to machines. The Committee also recommends that the ACT Gambling and Racing Commission investigate with alternate poker machine providers the feasibility of providing machines to meet the ACT's special needs.

**Government Response**      **Not supported - unable to be implemented.**

### **Comments**

Improvements in technology are part of the national and international development of gaming machines.

Machine manufacturers provide the technology demanded by players. Any move to "turn back the clock" and restrict advances in machinery would be extremely detrimental to the ACT industry. Given the proximity to Queanbeyan, a return to outdated technology would also be expected to result in ACT players travelling across the border to play more sophisticated and advanced machines in NSW.

Existing authorised gaming machine manufacturers would also be unlikely to manufacture machines using outdated technology. If machines manufactured using superseded technology could be sourced and imported into the ACT, it is unlikely that these machines would meet the approved national testing standards.

Once established, the ACT Gambling and Racing Commission will be in a position to review poker machine suppliers to the ACT and investigate alternate machine providers.

### ***Recommendation 26***

The Committee recommends that a centralised poker machine monitoring system replace the current arrangements.

**Government Response**      **Agreed in part, further consideration required.**

## **Comments**

Central monitoring systems have been established in a number of jurisdictions.

The fixed cost of implementing a system of this nature in the ACT is estimated at approximately \$5m.

Without greater research into the proposal, it is unclear if the benefits of such a monitoring system can justify the expense, given the relatively small number of gaming machines in the ACT.

The thorough investigation into the costs and benefits of the implementation of a centralised monitoring system will be a further responsibility of the ACT Gambling and Racing Commission, once established.

### ***Recommendation 27***

The Committee recommends that the Government initiate a review of the legislation governing clubs. The review should include an assessment of whether current legislation provides for an appropriate level of accountability by clubs.

**Government Response      Supported.**

## **Comments**

The implementation of such a review is an appropriate activity of the ACT Gambling and Racing Commission.

### ***Recommendation 28***

The Committee recommends that the ACT Gambling and Racing Commission produce a comprehensive discussion paper on interactive gambling in the ACT.

**Government Response      Supported.**

## **Comments**

The development of such a discussion paper is an appropriate activity of the ACT Gambling and Racing Commission.

## Child Care

A review of the way access is provided to Government owned facilities used for provision of long stay child-care services by community based non-profit organisation was begun in late 2000.

This review was begun as a result of a competitive neutrality complaint against Government provision of long stay child-care services. The assessment of the complaint was that Government was not involved in providing childcare services but does provide access to facilities at below market rates to third party providers.

Evidence presented indicates that the private service providers are priced at or below the community based providers.

## 24. Planning, construction and development services

### Review of Building Regulations

#### Review of the Building Act 1972

In January 1999 the ACT introduced private certification of building approvals and inspections. The portions of the *Building Act 1972* that deal with these matters were rewritten as part of the change and the process included the production of a Regulatory Impact Statement.

The provisions of the Act that deal with the control of legionella were repealed in July 2000. Substitute controls now appear in public health legislation.

The review of the licensing and insurance parts of the Act is discussed below under Regulation of Building and Related Trades - Builders/building practitioners.

### Planning and Building Approvals

#### Review of the Land (Planning and Environment) Act 1991 – parts V and VI, grants of land and development approval processes

In February 2000 the ACT Minister for Urban Services released the ACT Government's response to the National Competition Policy review of parts V and VI of the *Land (Planning and Environment) Act 1991*.

The review tested a number of potentially anti-competitive aspects of the legislation, to determine whether retaining the restriction provided a cost or benefit to the ACT community. These included aspects of the grant of lease process, the development approval process, and compliance with lease covenants.

The Government agreed to the majority of the 15 recommendations, with two recommendations agreed in part and one not agreed. The Report recommended a number of measures to improve accountability and transparency in administering the leasehold system, and addressed perceived anti-competitive elements for the direct granting of concessional leases.

The ACT Government agreed to the recommended reforms that focus on the transparency of dealings in land outside the normal auction process. These changes include:

- providing more detail to the ACT Legislative Assembly about the process to determine the sale price and concessions granted under a new lease;
- no longer allowing the application fee for a direct grant of land to be used as a deposit towards payment for the land;
- providing a public document about the process used to assess direct grant applications;

- reviewing the fees charged for direct grants to reflect the costs and subsidies associated with the direct grant process; and
- reviewing disallowable instruments made under the *Land Act* to determine whether they are still required and are appropriate against NCP principles.

As a result, the Land Act Regulations were amended, 25 January 2001 to clarify which development activities on rural leases do, or do not, require approval. Other reforms are being handled by new administrative processes.

## Service providers

### Architects Act 1959

In November 2000 the Commonwealth released the Productivity Commission's National Competition Policy review of legislation regulating the architectural profession. The inquiry served as a national review of participating States and Territories' legislation, including the ACT *Architects Act 1959*.

The Commission released an issues paper in November 1999 and a draft report in May 2000 then completed its final report in August 2000. It conducted hearings after the issue of each of the earlier documents and received a number of written comments.

The review considered the anti-competitive aspects of the occupational licensing system involved, particularly the restriction of the title "architect" to registered persons. The Commission's preferred option was to repeal Architects Acts and the statutory certification of architects. The Commission found these added very little to other measures for addressing concerns about the quality of the built environment and the various health and safety issues related to buildings. The Commission recommended a two-year transition period before repeal. It expected that this option would lead to current architects establishing a voluntary system of registration and marketing the advantages of their qualifications.

The Commission accepted that jurisdictions that registered all building practitioners could continue to register architects and other designers of buildings as part of this system. It listed a number of principles that should then be adopted in relation to architects.

All States and Territories have agreed to participate in the development of a national response to the review and a Working Group has been set up for this purpose. The Working Group will present its proposed response to heads of Government for consideration.

### Surveyors Act 1967

Pursuant to the ACT's commitment under the Competition Principles Agreement to review all legislation that potentially restricts competition, a review of the *Surveyors Act 1967* was formally commenced in November 1998. Independent consultants, The Allen Consulting Group, undertook the review.

The report was widely circulated for comment in 1998 and a well attended public seminar held to discuss issues raised. Public and industry comments on the Allen Report together with feedback received at the seminar were critical to framing the Governments response.

The Surveyors Board will be abolished and the Board's disciplinary and regulatory powers transferred to the Chief Surveyor. The Chief Surveyor position will be changed to a contract 'Commissioner for Surveys' position reporting direct to the Minister. Provision will be made for consultation with industry and other stakeholders on regulatory and technical matters. Appeals against disciplinary actions and decisions of the Commissioner will be through the Administrative Appeals Tribunal.

Examination of proposed deposited plans and audits of surveys and the registration of surveyors will continue to ensure standards are maintained.

The *Surveyors Act 2001* was passed on 13 February 2001.

## Regulation of Building and Related Trades

### Builders/building practitioners

In October 2001 the ACT Government released its National Competition Policy review of potentially anti-competitive aspects of occupational licensing and requirements for compulsory insurance under the *Building Act 1972*.

The Allen Consulting Group undertook a targeted public review in combination with the review of the *Plumbers, Drainers and Gasfitters Board Act 1982*, which deals only with occupational licensing, and occupational licensing and requirements for compulsory insurance under the *Electricity Act 1971*.

The reviewer issued a Directions Paper in May 2000, held four public meetings and received written comments before they drew up their final report in August 2000. The review determined that market failures justified continued regulation in this form but that the system should be simplified as far as possible.

The Government accepted the majority of the twenty-two recommendations and legislation is now being drafted.

### Plumbers, drainers and gas fitters

The potentially anti-competitive aspects of occupational licensing under the *Plumbers, Drainers and Gasfitters Board Act 1982* were jointly reviewed with the *Building Act 1972* and the *Electricity Act 1971*. The process and outcome of the review is discussed above under builders /building practitioners. The simplifications recommended by the review included the establishment of a single piece of legislation that deals with all the occupations concerned.

### Electricians

The potentially anti-competitive aspects of occupational licensing under the *Electricity Act 1971* were jointly reviewed with the *Building Act 1972* and the *Electricity Act 1971*.

The process and outcome of the review is discussed above under builders /building practitioners. The simplifications recommended by the review included the establishment of a single piece of legislation that deals with all the occupations concerned and the abolition of insurance requirements for electrical contractors.

## Terms of Reference for the Review of Building and Construction Occupations Regulation in the ACT

### Background

1. The *Building Act 1972*, the *Electricity Act 1971*, and the *Plumbers, Drainers and Gasfitters Board Act 1982* together with relevant subordinate legislation provide for the licensing and regulation of builders, electricians, plumbers, drainers and gasfitters in the ACT. Those parts of the legislation which establish the regulatory regimes for these occupations are to be reviewed in the context of:
  - the ACT Government's commitments under the Competition Principles Agreement 1995, and
  - a continuing program of regulatory reform in relation to the building and construction industry which aims to ensure the legislative regimes are appropriate to the current and future needs of the industry and the interests of consumers.
2. The regulation of the architects profession is the subject of a separate national review to be undertaken by the Productivity Commission.

### Scope

3. The Review will be undertaken by an independent consultant (the "Reviewer"). The Reviewer shall undertake a review of the principal Acts and all relevant subordinate legislation in accordance with the principle set out in Clause 5(1) of the National Competition Principles Agreement 1995 that:

*"...legislation (including Acts, enactments, ordinances or regulations) should not restrict competition unless it can be demonstrated that: (a) the benefits of the restriction to the community as a whole outweigh the costs; and (b) the objectives of the legislation can only be achieved by restricting competition".*

4. Without limiting the scope of the review, the Reviewer shall examine the following matters in relation to the occupational regulation of builders, electricians, plumbers, drainers and gasfitters:
  - current directions for reform of building and construction industry occupational regulation in other Australian jurisdictions;
  - the appropriate role of the ACT Government in building occupation licensing and registration;
  - entry regulation through the imposition of educational, competency and training requirements for accreditation, licensing and registration;
  - conduct regulation through prescribed standards for behaviour;
  - investigation of complaints, disciplinary powers and procedures, and appeal mechanisms;

- professional indemnity insurance requirements;
  - the appropriateness of the roles and responsibilities of the Building Controller in relation to the licensing of builders, the Plumbers, Drainers and Gasfitters Board, and the Electrical Licensing Board;
  - provisions for mobility and reciprocity with other jurisdictions including recognition of overseas qualifications and experience; and
  - the principles underpinning an integrated framework for the regulation of building and construction occupations.
5. The following provisions of the principal Acts and the Regulations are specifically to be considered in the conduct of the Review:
- 5.1 *Building Act 1972* and Regulations:
- 10-23B (relating to builders' licenses & procedures for disciplinary action);
  - Part VA (relating to warranties and insurance)
  - Regulation 3 (relating to kinds of licences); and
  - Regulation 5 (relating to applications for owner-builder licences).
- 5.2 *Electricity Act 1971*:
- Part II, s4-19 (relating to the establishment and procedures of the Board) and s20 (relating to technical qualifications acceptable for licensing)
  - Part III, s21-23 (relating to the Register of Electrical Contractors and Electricians, and the role of the Registrar)
  - Part IV, s24-32 (which specify that work is restricted to licensed persons)
  - Part V, s34-54 (relating to licences and permits);
  - Part VI, s55-59 (relating to procedures for disciplinary action); and
  - Part IX, s94(2)-95 (relating to appeals to the AAT in respect of decisions of the Board)
  - Part X, s97-100 (relating to licence documents).
- 5.3 *Plumbers, Drainers and Gasfitters Board Act 1982*:
- the whole of the Act.
6. In undertaking the review, the Reviewer shall take into consideration the results of earlier consultations on occupational licensing conducted with the ACT construction industry during 1998, including the potential for developing an integrated regulatory regime under the *Construction Practitioners Act 1998*.
7. The Reviewer shall prepare a report which:
- describes and clarifies the objectives of the legislation in relation to occupational regulation and the specific features of the existing legislative framework including the identification of any interacting legislation;
  - identifies any public interest rationale for the legislation in relation to occupational regulation;
  - describes the occupations and industries regulated by the legislation;



- identifies the nature of any restrictions on competition including any potential inconsistencies with the *Trade Practices Act 1974* in relation to specific provisions in the legislation;
- analyses the likely effect of the restrictions on competition;
- assesses and balances the costs and benefits of the restrictions taking into account, where relevant, the matters set out in Clause 1(3) of the Competition Principles Agreement;
- considers alternative means for achieving the same result including non-legislative approaches; and
- makes recommendations for reform options.

### Review Arrangements

8. The Consultant will be supported by a Secretariat located in the Planning and Land Management (PALM) Group of the ACT Department of Urban Services.
9. A Steering Committee will oversee the Review and provide appropriate advice in relation to its conduct. The Steering Committee will be comprised of officers of the ACT Department of Urban Services as follows:
  - Director, Building and Services, PALM (Chair)
  - Director, Industry Policy and Regulation
  - Manager, BEPCON, PALM
  - Manager, Competition Policy Reform, Industry Policy and Regulation

### Consultation

10. The review process will involve public consultation and the consideration of written and verbal submissions. The Reviewer will be responsible for all consultation processes. The Reviewer will prepare an Issues and Options Paper to support the consultative process.

### Recommendations of the final report on the National Competition Policy Review of Occupational Regulation in the A.C.T. Building and Construction Industry

#### ***Conclusion One***

While Government regulation of building and construction tradespeople may be perceived as a form of consumer protection, consumer protection is not an explicit rationale for Government regulation.

**Government Response: Noted**

#### ***Conclusion Two***

There is a public safety rationale — due to the twin market failures of negative externalities and information asymmetries — that justifies Government regulation of tradespeople in the building and construction industry.

**Government Response: Noted**

### ***Recommendation One***

The review legislation should be replaced by a single new Act that provides for the licensing of builders, electricians and electrical contractors, plumbers, drainers and gasfitters.

**Government Response:     Agreed**

Options for combining the provisions of this new Act with the provisions of the *Construction Practitioner's Registration Act 1998* will be investigated. This will provide one Act for the regulation of occupational groups in the construction industry in the ACT, allowing consumers and the industry to better access the relevant legislation.

### ***Recommendation Two***

The existing administrative structures should be streamlined by the abolition of the existing boards and their replacement by a single Registrar supported by three separate advisory panels, one each for:

- builders;
- electricians and electrical contractors; and
- plumbers, drainers and gasfitters.

**Government Response:     Agreed**

### ***Recommendation Three***

The aim, as far as practicable, should be for the harmonisation of licensing criteria and administration between the different occupational groups.

**Government Response:     Agreed**

### ***Recommendation Four***

Licensing criteria related to the age of potential licence holders should not be included in the new Act.

**Government Response:     Agreed**

### ***Recommendation Five***

'Business capacity' should not be assessed as a requirement to obtain a new licence. Business courses should continue to be offered on an optional basis, but they should not be mandatory components of training.

**Government Response:     Agreed**

### ***Recommendation Six***

Licensing criteria should not include capacity criteria in addition to the performance-based educational criteria.

**Government Response:     Agreed**

***Recommendation Seven***

A ‘fit and proper person’ test should be included in the new legislation. In addition to the requirements found in s.37 of the Electricity Act, this test should also exclude parties who are subject to disciplinary action regarding their trade in the ACT or elsewhere, and should exclude parties who are bankrupt or subject to winding-up procedures.

**Government Response:     **Agreed in principle****

The principle of this recommendation is agreed, however, the regulatory method to achieve this outcome will not be the same. “Fit and proper person” provisions are now generally replaced with ‘ineligibility to apply provisions’. A person will be ineligible to apply for a licence if they have been convicted of an offence involving fraud or dishonesty, or if they are subject to disciplinary action, bankruptcy or winding-up procedures.

***Recommendation Eight***

Disciplinary powers and actions should, as much as practicable, be standardised across the review occupations. Disciplinary powers and actions should include a range of remedial powers (eg, to suspend a party and require attendance at corrective courses) as well as powers and actions designed primarily as punishment.

**Government Response:     **Agreed****

Through the creation of one licensing Registrar across the three disciplines and through published licensing and disciplinary policies, the ACT Government will attempt to provide more consistent disciplinary outcomes. For example, on the advice of relevant advisory panels, policies on appropriate licence cancellation periods may be determined. During this period, the person will be considered to not be eligible to apply for a licence. Better documentation of the investigation and the reasons for a decision may lead to fewer appeals, or at least a clearer basis for a decision

***Recommendation Nine***

A system of demerit points should be adopted, with increasing penalties based on number of major/minor defect or failed inspections. The level of penalty should be set at such a level that the penalty acts as a deterrent. In order to further strengthen the disciplinary action available, automatic ‘show cause’ actions could occur after a pre-determined number of major defects or failed the same individual incurs inspections within a set period of time.

**Government Response:     **Agreed****

Consultation is required with advisory panels to determine what number of serious breaches within what time period will result in an automatic ‘show cause’ action/inquiry. This element of the Recommendation will not be implemented until such consultation has been undertaken.

***Recommendation Ten***

A system of on-the-spot fines should be established where such fines can be issued to unlicensed tradespeople found doing (or having done) an activity that requires a licence.

These fines should be of a dollar amount that is sufficient to act as an effective deterrent for unlicensed activity.

**Government Response:     Agreed in principle**

The introduction of 'on-the-spot' fines can lead to increased subjectivity in the regulatory system. Further consideration of appropriate mechanisms for 'on-the-spot' fines will be required prior to their introduction.

***Recommendation Eleven***

The new Act should empower the Department of Urban Services to issue an order to rectify work that is in breach of technical standards regardless of whether a certificate of occupancy has been granted. This would ensure that unacceptable work is rectified by the original tradesperson or, if he/she is unable and unwilling to comply, by another licensed party, with the cost being charged to the negligent tradesperson.

**Government Response:     Agreed**

The power to issue an order to rectify work will be located in the current operational Acts, as this is appropriate for operational powers such as that of the Building Controller. Failure to comply with an order to rectify work will constitute an offence under the licensing Act and the licensing Registrar may take action.

***Recommendation Twelve***

Licence qualifications should be removed from the review legislation and incorporated in regulations.

**Government Response:     Agreed**

Licence qualifications for a class of licence holder will be specified in regulations attached to the licensing Act. The types of work a class of licence holder is permitted to do will be moved from the Building Act and Electricity Act into the Building Regulations and into new Regulations to be created for the purposes of the Electricity Act. This will allow them to be easily updated to reflect current regulatory trends.

***Recommendation Thirteen***

Fees should be set taking into account the costs associated with maintaining the licensing regime. The fee levels for each occupation should be set on a consistent percentage basis with respect to any deviation from full cost recovery.

**Government Response:     Agreed in principle**

This recommendation will require further consideration of appropriate fee levels, the impact of this fees policy on industry and on maintaining competitiveness with NSW.

***Recommendation Fourteen***

There should be no requirement for ongoing professional development as a requirement of holding a licence.

**Government Response:     Agreed**

***Recommendation Fifteen***

Licences should be issued indefinitely, subject to periodic renewal.

**Government Response: Agreed**

It is proposed that licences be renewed every three years

***Recommendation Sixteen***

The Registrar should have the power to ‘call in’, as appropriate, all licence holders for new training when there is a significant change in the expectations placed upon tradespeople.

**Government Response: Agreed**

The power to ‘call in’ licence holders will be limited to circumstances such as, for example, when the new electrical Wiring Rules were introduced. Calling in may range from requirements to attend an information session to requirements to complete a short course. Whether licence holders should be ‘called in’ will usually be a matter for advice from advisory panels.

***Recommendation Seventeen***

Appeals on strictly technical matters should be directed, in the first instance, to a peer group. The peer group would have the power to overturn the Registrar’s initial decision. Appeals on anything other than strictly technical matters should continue to be to the AAT.

**Government Response: Not Agreed**

This proposal is similar to the mechanism for the Building Review Committee (1972-1992), which was abolished as being ineffective and was replaced with the Building Controller. Customer feedback has suggested that industry is more satisfied with this model as more disciplinary action is undertaken.

It is proposed that a panel of three people with qualifications of the same level or above will conduct an investigation of the alleged breach (prior to the decision of the Registrar). At least one person on this panel will be a (rotating) representative of the relevant advisory panel. Once the investigation panel is satisfied that a technical breach has occurred, they will present the evidence in a report to the Registrar. The Registrar will determine, on their advice, whether the breach is sufficiently serious to warrant disciplinary action and will make a decision as to what type of disciplinary action will be taken. All steps in this process will be appropriately documented in case of later appeal.

This system replicates that in other States, where the local level gathers information and the State level takes the disciplinary decision.

The decision of the Registrar will be then appealable to the AAT, which has proven capable of deciding technical matters in the past. It may request advice of the relevant advisory panel.

***Recommendation Eighteen***

*The new Act should not require that insurance be held as a condition of any licence.*

**Government Response:     Agreed**

***Recommendation Nineteen***

Housing Indemnity Insurance should be separated from the review legislation and incorporated into a new Act under the oversight of Justice and Community Safety. This approach will provide consumers with a one-stop consumer protection shop in the event that there is a problem with building and construction work.

**Government Response:     Agreed in principle**

This recommendation is agreed in principle, although further consideration of roles and responsibilities is required to bring this into effect. Effective consultation with insurance providers will also be required.

***Recommendation Twenty***

The Government should take steps to encourage the establishment of an insurance ombudsman who would have the power to mediate and arbitrate insurance-related disputes.

**Government Response:     Agreed**

This recommendation will require further consideration of the costs and benefits of various styles and scope of powers of the insurance ombudsman. Consultation with industry, particularly insurance groups, should be undertaken before any new model is set in place.

***Recommendation Twenty One***

Justice and Community Safety and Urban Services should issue a checklist to people who are about to commence building. The checklist should explain a consumer's rights under the law and provide a checklist of actions that will assist a consumer in protecting their interests.

**Government Response:     Agreed**

A plain English guide to constructing or renovating a house is currently being prepared by BEPCON. It will include information on hiring a builder and a certifier, potential additional costs involved, and complaint mechanisms. The guide will also provide information on consumer rights under general consumer protection laws.

***Recommendation Twenty Two***

The ACT should make greater use of the referral mechanism contained in the mutual recognition arrangements where concerns exist as to the competency of persons registered in other jurisdictions.

**Government Response:     Agreed**

***Comment***

The Mutual Recognition Act in its current form makes individual state licensing policy ineffective when dealing with inter-state licensing applications. There are currently

loopholes which curtail the effectiveness of disciplinary action and licensing criteria. The ACT should seek to remedy this situation at the earliest opportunity.

**Government Response:    Agreed**

New proposals, developed by the ACT, for standardising application systems may supplement the intention of disciplinary actions.

## Planning and Land Management

### Organisation Reviews

PALM has commenced a number of initiatives in the area of competitive neutrality and organisational reforms. These include:

- implementation of recommendations from a major review of PALM by Ernst & Young focussing on service delivery; and
- implementation of a subsequent review of PALM's corporate functions conducted by KLA Australia which resulted in organisational improvements in the executive support, finance, human resource management and business system units.

### Benchmarking

Benchmarking and the development of a comparative pricing model for PALM's major outputs (Output 5.1 Territory Planning; Output 5.2 Development Management; Output 5.3 Licensing and Regulation and Output 5.4 Workplace Management) have been developed.

During 2000, there was further refinement of benchmarking information; for example, pursuing identification of the costs associated with components of Development Applications, such as lease variation costs, which are not activities of benchmarking partners.

A benchmark price is being developed for services associated with hydraulics inspections and electrical audits. These will be benchmarked against appropriate partners (noting the difficulty of obtaining data due to the emerging commercial and competitive nature of these services).

New certification processes and associated audit and compliance functions in Building, Electrical and Plumbing Control (BEPCON) will be benchmarked during 1999-2000. This follows the implementation of changes in January and April 1999 to give effect to private certification. This will identify any inefficiencies and/ or above-average cost structures.

### Market-Testing

ACT Land Information Office (ACTLIC) has market-tested part of its mapping and drafting services by establishing a panel of external providers. ACTLIC also market-tested the support services it provides internally to Planning and Land Management and a decision was taken to retain those services in-house.

Market-testing was also applied to PALM's internal courier service and as a result the service was replaced by a mixture of departmental and private courier arrangements.



## Appendix – Legislation Review Progress

## Legislation review progress

### Legend

DHCC = Department of Health and Community Care, DECS = Department of Education and Community Services, DUS = Department of Urban Services, JACS = Department of Justice and Community Safety, DoT = Department of Treasury, CM = Chief Minister's Department, NFR = No Further Review, NCR = No Competitive Restriction

Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
<i>Administration and Probate Act 1929</i>	JACS	Review commenced. Intradepartmental review.		Review in draft form. Minor NCP issues (imposes restrictions on business structure and conduct). Subject to a national law reform exercise.
<i>Adoption Act 1993</i> - except subsections 104(2) and 109(2)	DECS	No review undertaken in 2000.	NCR	Act assessed as not restricting competition.
<i>Agents Act 1968</i>	JACS	Review commenced. Targeted public review.		Issues paper in preparation (also deals with Auctioneers Act). In relation to travel agents, a national review is underway; coordinated by Western Australia (issues paper on Travel Agents released in June 1999).
<i>Air Pollution Act 1984</i>	US	Review not required.	NFR	Repealed by <i>Environment Protection Act 1997</i> .
<i>Anglican Church of Australia Trust Property Act 1917</i> - NSW legislation in its application in the Territory	JACS	Review completed. Intradepartmental review. Minor issues.	1999	Act does not restrict competition. The Act does not give the church a commercial advantage and does not have an anti-competitive effect.
<i>Anglican Church of Australia Trust Property Act 1928</i> - NSW legislation in its application in the Territory	JACS	Review completed. Intradepartmental review. Minor issues.	1999	Act does not restrict competition. The Act does not give the church a commercial advantage and does not have an anticompetitive effect.
<i>Animal Diseases Act 1993</i>	US	Intra-departmental review completed (done jointly with <i>Pounds Act 1928</i> and <i>Stock Act 1991</i> .)	2000	The Act restricts competition in providing for declaration of quarantine areas, allowing the Minister to direct destruction of animals and removal of refuse, imposing a tagging requirement for stock, restricting participation in the tag manufacture business, and placing controls over use of vaccines and the sale of infected animals. Each of these restrictions was assessed as having benefits

Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
				<p>to animal health, public health and sustainable development that outweigh the costs imposed by the restrictions.</p> <p>The report has been presented to the Minister. Recommendations attached.</p>
<i>Animal Welfare Act 1992</i>	US	Review completed. Intra-departmental review.	2000	<p>The review found that the general restrictions on cruelty to animals were restrictive to competition, and but that with minor amendments, the cost of the restrictions imposed was outweighed by the benefit that flows from meeting public expectations that animals will be protected.</p> <p>Detailed analysis of the ban on rodeos and circuses was carried out and consideration given to less restrictive alternatives, such as the regulatory systems used in NSW and Victoria. The review concluded that the objectives of the Act would not be met if these bans were lifted, as issues of harm to the animals can not be adequately addressed by a licensing or permit system. There is a community expectation that animals will not be maimed or killed for the purposes of sport and entertainment.</p> <p>Restrictions on use of animals in experiments were found to be justified on the basis of prevention of cruelty, as were restrictions on who may carry out surgical procedures.</p> <p>Work to commence on the minor changes necessary as a result of the review.</p> <p>Recommendations attached.</p>
<i>Annual Holidays Act 1973</i>	US	Not for review.	NFR	Act renamed <i>Annual Leave Act 1973</i> .
<i>Annual Leave Act 1973</i>	US	Review not required.	NCR	No competition restrictions. Act bestows employee benefits.
<i>Apiaries Act 1928</i>	US	Act repealed.	NFR	Act repealed.
<i>Architects Act 1959</i>	US	Review completed. National review.	2000	<p>The restriction on competition was occupational licensing. The Productivity Commission undertook a national review on behalf of all the States and Territories except Victoria. The Commission began the review in November 1999. It released an issues paper in November 1999 and a draft report in May 2000, and completed its final report in August 2000. It conducted hearings after the issue of each of the earlier documents and received a number of written comments. The final report recommended the repeal of registration</p>

Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
				legislation at the end of two years. The Commonwealth released this report in November 2000 and the States and Territories are now preparing a joint response.
<i>Associations Incorporation Act 1991</i>	JACS	Review commenced. Intradepartmental review.		Review in draft form. Minor NCP issues (imposes restrictions on business structure).
<i>Auctioneers Act 1959</i>	JACS	Review commenced. Intradepartmental review.		Incorporated within Agents Act review. Imposes restrictions on business structure and conduct.
<i>Australian–American Educational Foundation Act 1966</i>	JACS	Review not required.	NCR	Act assessed as not restricting competition. Act to be repatriated back to the Commonwealth.
<i>Birth (Equality of Status) Act 1988</i>	JACS	Review completed. Intradepartmental review. Minor issues.	1999	The Act does not have any material effect on competition.
<i>Births, Deaths and Marriages Registration Act 1997</i>	JACS	Review commenced. Intradepartmental review.		Preliminary work for review underway. Minor NCP issues (imposes a conduct requirement).
<i>Blood Donation (Transmittable Diseases) Act 1985</i>	HHCC	Review not commenced. Awaiting outcome of the National Review of Australian Blood Banking and Plasma Product Sector. ACT Provisions may subsequently be repealed or substantially amended.		Restrictions relate to the conferring of benefit on a prescribed supplier of blood and blood products.
<i>Board of Senior Secondary Studies Act 1997</i>	DECS	Review completed. Intradepartmental review.	1999	Legislation is necessary to provide the Government approved function. Also being considered in school legislation review.
<i>Boxing Control Act 1993</i>	DECS	National review completed. Internal		National review endorsed a legislative framework. The ACT review, currently taking place, should reflect national directions.

Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
		review commenced.		
<i>Building Act 1972</i>	US	Review completed. Targeted public review.	2000	The restrictions on competition were occupational licensing and requirements for compulsory insurance. The Allen Consulting Group undertook a joint review with the <i>Plumbers, Drainers and Gasfitters Board Act 1982</i> and the <i>Electricity Act 1971</i> (licensing of electricians). The review focussed on regulation of building occupations and insurance requirements. The review began in April 2000. The reviewers issued a Directions Paper in May 2000, held four public meetings and received written comments and drew up their final report in August 2000. Government response released in October 2000. For recommendations and Government response, see Chapter 24 of report
<i>Building and Services Act 1924</i>	US	Part of utilities legislation review.		Part of the utilities legislation review under the lead of Treasury. To be replaced in part by the new Utilities Act and in part by a separate new act to deal with communications infrastructure.
<i>Building and Services Act 1924</i>	US	Part of utilities legislation review.		Part of the utilities legislation review under the lead of Treasury. To be replaced in part by the new Utilities Act and in part by a separate new act to deal with communications infrastructure.
<i>Buildings (Design and Siting) Act 1964</i>	US	Act repealed.	NFR	Repealed by <i>Land (Planning and Environment) (Amendment) Act 1996 (No.3)</i> as a result of implementation of the 1995 Stein report. Design and siting provisions incorporated into streamlined Development Application.
<i>Business Franchise ("X" Videos) Act 1990</i>	JACS	Review not required.	NFR	Act repealed in 1996 following a High Court decision.
<i>Business Franchise (Liquor) Act 1993</i>	CM	Review not required.	NFR	Federal Court s90 decision, no further action.
<i>Business Franchise (Tobacco and Petroleum Products) Act 1984</i>	CM	Review not required.	NFR	Federal Court s90 decision, no further action.
<i>Business Names Act 1963</i>	JACS	Review commenced. Intradepartmental review. Minor issues.		Review in draft form. Minor NCP issues (imposes restrictions on business structure).
<i>Canberra Institute of</i>	DECS	Review completed.	1999	The Act provides an exemption from Territory taxes and charges.

Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
<i>Technology Act 1987</i>				Act assessed as not restricting competition.
<i>Canberra Tourism and Events Corporation Act 1997</i>	CM	Review not required.	NCR	Act assessed as not restricting competition.
<i>Cemeteries Act 1933</i>	US	Review completed. Targeted public review.	1999	<p>The Report identified three areas to be addressed:</p> <ul style="list-style-type: none"> <li>▪ The provision of ACT cemeteries should not be restricted by legislation to a single operator.</li> <li>▪ Restrictions on tenure after burial should be clarified so that cemetery operators have the scope to fully recover the costs of ongoing cemetery operations by introducing various limited tenure gravesite options reflecting maintenance costs.</li> <li>▪ Outdated parts of the Act and Regulations should be removed to increase flexibility for operators to respond to market needs.</li> </ul> <p>Government response agreed to all the review recommendations with the exception of the recommendation on limited post-burial tenure for public cemeteries. Private cemeteries will be free to offer a variety of services that reflect market demand.</p> <p>New legislation, titled <i>Cemeteries and Crematoria Bill</i>, which will replace the <i>Cemeteries Act</i>, is being prepared.</p> <p>For recommendations, see Chapter 16 of report.</p>
<i>Cemeteries Act 1933</i> - section 16(b)	US/DHCC	Review completed. Targeted public review.	1999	Joint review with <i>Cremation Act 1966</i> .
<i>Children's Services Act 1986</i>	DECS	Review completed. Full public consultation.	1999	Act assessed as not restricting competition. Replacement Act, the <i>Children and Young People Act 1999</i> passed in Legislative Assembly on 21 October 1999.
<i>Chiropractors and Osteopaths Act 1983</i>	HHCC	Review commenced January 1999 Discussion Paper issued – May 1999, Model legislation consultation paper issued December 1999,		<p>Existing restrictions on: entry, use of title, general reservation on practice, advertising. Disciplinary powers available to the Board.</p> <p>Reform proposals with Government.</p> <p>Completion of reform anticipated July 2001.</p>

Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
		Reform proposal submitted to Government February 2001.		
<i>Classification (Publications, Films and Computer Games) (Enforcement) Act 1995</i>	JACS	Review commenced. Joint jurisdictional review.		Part of a national regulatory scheme.
<i>Clinical Waste Act 1990</i>	US	Review commenced. Inter-departmental review.		Review in progress.
<i>Collections Act 1959</i>	US	Review completed. Targeted public review.	2000	<p>Joint review with <i>Hawkers Act 1936</i>. Final Report recommended that:</p> <ul style="list-style-type: none"> <li>▪ The Act should not place limits on the level of fundraising costs or remuneration per se.</li> <li>▪ The regulatory emphasis should be on disclosure of fundraising details to potential donors.</li> <li>▪ There should be no power to refuse a licence based upon where the funds are to be spent.</li> <li>▪ The Collections Act should not limit the locations where collections can be undertaken or the number of organisations collecting at any particular time.</li> <li>▪ 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 which 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.</li> <li>▪ Collectors should be required to wear a badge (or prominently display information) relating to the collection.</li> <li>▪ The Act should be drafted to apply to any direct or indirect appeal for support value.</li> </ul>

Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
				Government response in development For recommendations , see Chapter 18 of report.
<i>Commercial Arbitration Act 1986</i>	JACS	Review commenced. Intradepartmental review. Minor issues.		Encompassed by stage 2 of the Legal Practitioner Act review.
<i>Common Carriers Act 1902</i> - NSW legislation in its application in the Territory	JACS	Review completed. Intradepartmental review.	1999	The Act limits the liability for common land carriers ameliorating a common law "strict liability" which otherwise would apply to common carriers. As "strict liability" is not to be removed, the limitation of liability should remain.
<i>Community and Health Services Complaints Act 1993</i> - section 27 and Parts V, VI (confidentiality and invest powers)	HHCC	Review completed December 1999 Intradepartmental review.	1999	Potential restrictions identified in terms of powers to both maintain the confidentiality of information and to access information. Review concluded that the restrictions did not function anti-competitively and no market was affected by the legislation. No reform action required.
<i>Companies (Commonwealth Brickworks (Canberra Limited) Act 1979</i>	CM	Review not required.	NCR	Act assessed as not restricting competition.
<i>Companies (Registered Societies) Ordinance 1990</i>	CM	Review not required.	NFR	Registered Societies model legislation adopted nationally.
<i>Companies Auditors and Liquidators Disciplinary Board Ordinance 1982</i>	CM	Review not required.	NFR	Registered Societies model legislation adopted nationally.
<i>Consumer Affairs Act 1973 (Note renamed Fair Trading (Consumer Affairs) Act 1973.)</i>	JACS	Review commenced. Intradepartmental review.		Review in draft form. Minor NCP issues (imposes conduct restrictions).
<i>Consumer Credit (Administration) Act 1996</i>	JACS	Review commenced. Intradepartmental review.		Review in draft form. Minor NCP issues (minimal registration and conduct requirements).
<i>Consumer Credit Act 1995</i>	JACS	Review commenced. Joint jurisdictional		National review underway. The Ministerial Council on Consumer Affairs is undertaking a post-implementation review of the Uniform



Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
		review.		Credit Code. COAG Committee on Regulatory Reform has endorsed terms of reference for review.
<i>Contractors' Debts Act 1897</i> - NSW legislation in its application in the Territory	JACS	Review completed.	1999	Amendments recommended by review included in <i>Justice and Community Safety Legislation Amendment Bill (No 2) 2000</i> . The Bill repeals section 5 (which capped the liability of contractors for their employees to 60 days' wages) and section 6 (which limited the period in which a worker can make a claim for wages to 3 months).
<i>Coroners Act 1997</i>	JACS	Review commenced. Intradepartmental review. Minor issues.		Encompassed by stage 2 of the Legal Practitioner Act review.
<i>Cotter River Act 1914</i>	US	Review completed. Intra-departmental review.	1999	Government response agreed. Act repealed on 23 March 2000.
<i>Credit Act 1985</i>	JACS	Review not required.	NFR	Act substantially repealed.
<i>Cremation Act 1966</i>	US	Review completed. Targeted public review.	1999	Joint review with <i>Cemeteries Act 1933</i> . The Report identified that outdated parts of the Act should be removed to increase flexibility for operators to respond to market needs. Government response agreed to all the review recommendations. New legislation, titled <i>Cemeteries and Crematoria Bill</i> , which will replace the <i>Cremations Act</i> , is being prepared. For recommendations and Government response see chapter 16 of the Report.
<i>Crown Proceedings Act 1992</i>	JACS	Review completed. Intradepartmental review.	1999	Amendments recommended by review included in <i>Justice and Community Safety Legislation Amendment Bill (No 2) 2000</i> . The Bill includes an amendment to the Act to remove a competitive advantage enjoyed by the Crown when it carries on business activities.
<i>Cultural Facilities Corporation Act 1997</i>	CM	Review not required.	NCR	Act assessed as not restricting competition.
<i>Dangerous Goods Act 1975 (NSW)</i> - NSW	US	Review commenced.		Review in conjunction with the review of the <i>Occupational Health and</i>

Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
legislation in its application in the ACT				<i>Safety Act 1989</i>
<i>Dangerous Goods Act 1984</i>	US	Review commenced.		Review in conjunction with the review of the <i>Dangerous Goods Act 1975</i> (NSW).
<i>Defamation Act 1901</i> - NSW legislation in its application in the Territory	JACS	Review not required as Act to be repealed.	NFR	Minor NCP issues (confers differential statutory defences to different parts of the media market). Repealing legislation introduced in 1999.
<i>Dental Technicians and Dental Prosthetists Registration Act 1988</i>	HHCC	Review commenced January 1999. Discussion Paper issued – May 1999, Model legislation consultation paper issued December 1999, Reform proposal submitted to Government Feb 2001.	1999	Existing restrictions on: entry, use of title, general reservation on practice, Prosthetists most hold professional Indemnity insurance, Disciplinary powers available to the Board.  Reform proposals with Government  Completion of reform anticipated July 2001.
<i>Dentists Act 1931</i>	HHCC	Review commenced January 1999 Discussion Paper issued – May 1999, Model legislation consultation paper issued December 1999, Reform proposal submitted to Government February 2001.		Existing restrictions on: entry, use of title, general reservation on practice, advertising. Disciplinary powers available to the Board.  Reform proposals with Government  Completion of reform anticipated July 2001.
<i>Disability Services Act 1991</i>	HHCC	Reviewed December 2000 Desk top review	NCR	Review did not sustain initial audit view that restrictions on competition may have been present in the legislation. No reform action required.
<i>Discrimination Act 1991</i>	JACS	Review commenced.		Review in draft form. Minor NCP issues (confers differential

Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
		Intradepartmental review.		exemptions on different parts of the market). Preliminary work for review underway.
<i>Domestic Relationships Act 1994</i>	JACS	Review commenced. Intradepartmental review.		Minor issues. Encompassed by stage 2 of the Legal Practitioner Act review.
<i>Door-to-Door Trading Act 1991</i>	JACS	Review commenced. Intradepartmental review.		Review in draft form. Minor NCP issues (imposes conduct restrictions).
<i>Drugs of Dependence Act 1989</i>	HHCC	Reviewed in the context of The Review of Drugs, Poisons and Controlled Substances Legislation. National Review completed September 2000	2000	Review to be considered by CoAG in 2001.  ACT response will follow CoAG's consideration of the reports recommendations.
<i>Earnings (Assignment and Attachment) Act 1966</i>	JACS	Review not required.	NCR	Act assessed as not restricting competition.
<i>Education Act 1937, Schools Authority Act 1976, Public Instruction Act 1880, and Free Education Act 1906</i>	DECS	Review completed. Full public consultation.	2000	Acts reviewed in Schools Legislation Review. For recommendations and executive summary see chapter 22, Educational Services.
<i>Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994</i>	DECS	Internal review commenced in late 2000.		Act mirrors Commonwealth legislation, which has recently been reviewed. Provisions have been extended until 2001. A Regulatory Impact Statement is currently being prepared in anticipation of the successful passage of Commonwealth Legislation. ACT Legislation will then be prepared to comply with the Commonwealth.
<i>Electoral Act 1992</i>	JACS	Review not required.	NCR	Act assessed as not restricting competition.
<i>Electricity Act 1971 (electricians licensing)</i>	US	Review completed. Targeted public review.		The restrictions on competition were occupational licensing and requirements for compulsory insurance. Provisions for the licensing of electricians were reviewed as part of a review of the regulation of building occupations in conjunction with the <i>Building Act 1972</i> and the <i>Plumbers, Drainers and Gasfitters Board Act 1982</i> . See under the Building Act.

Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
<i>Electricity Act 1971</i> (utilities regulation)	US	Not for review.		Some provisions of the Act provide powers for suppliers of electricity distribution services. Such matters are now dealt with by the Utilities Act 2000 and the provisions were repealed in January 2001. In connection with these changes the Act was renamed the <i>Electricity Safety Act 1971</i> .
<i>Enclosed Lands Protection Act 1943</i>	US	No review required.	NCR	Following preliminary review, removed from program. No competition restrictions.
<i>Energy and Water Act 1988</i> - Parts I and VII	US/DTI	Not for review.	NFR	Part of the Act to be repealed as it will now be part of the utilities legislation.
<i>Enforcement of Public Interests Act 1973</i>	JACS	Review not required.	NCR	Act assessed as not restricting competition.
<i>Essential Services (Continuity of Supply) Act 1992</i>	US	Not for review.	NFR	Part of the Act to be repealed as it will now be part of the utilities legislation.
<i>Fair Trading (Fuel Prices) Act 1993</i>	JACS	Review completed. Intradepartmental review. Full public review.	1999	Act to be retained on public benefit test.
<i>Fair Trading (Petroleum Retail Marketing) Act 1995</i>	JACS	Review completed. Full public review.	1999	Legislation repealed.
<i>Fair Trading Act 1992</i>	JACS	Review commenced. Intradepartmental review.		Preliminary work for review underway. Act being reviewed for concurrence with legislation in other jurisdictions.
Family Provision Act 1969	JACS	Review not required.	NCR	Act assessed as not restricting competition.
<i>Fertilisers Act 1904</i> - NSW legislation in its application in the Territory	JACS	Review completed. Intradepartmental review.	1999	Act to be retained on public benefit test. Minor issues.
<i>Financial Institutions (Application of Laws) Act 1992</i>	CM	Review not required.	NFR	To be repealed within 18 months of Wallis Inquiry. Centralised Commonwealth supervision of financial institutions.
<i>Financial Institutions (Removal of</i>	CM	Review not required.	NCR	Act assessed as not restricting competition.

<b>Name of legislation</b>	<b>Agency</b>	<b>Description/ comment on review process</b>	<b>Review complete</b>	<b>Review recommendations/ restrictions on competition /reform progress</b>
<i>Discrimination) Act 1997</i>				
<i>Financial Institutions (Supervisory Authority) Act 1992</i>	CM	Review not required.	NFR	To be repealed within 18 months of Wallis Inquiry. Centralised Commonwealth supervision of financial institutions.
<i>Firearms Act 1996</i>	JACS	Review not required.	NFR	Part of a national regulatory scheme with separate review mechanisms – legislation is subject to overriding public safety considerations.
<i>Fishing Act 1967</i>	US	Not for review.	NFR	Existing Act repealed and new legislation, the Fisheries Act 2000, commenced on 13 September 2000.
<i>Food Act 1992</i>	HHCC	Review part completed in 2000 through the national development of the Model Food Bill(MFB) and the related regulatory impact assessment.		The ACT has agreed to introduce amendments to the Act in line with the core provision recommendations of the MFB. The ACT has also commenced a regulatory review of the non-core provisions with a view to evaluate their cost and benefit. It is anticipated that the Government will consider the full package of amendments in August 2000.
<i>Free Education Act 1906</i>	DECS	Review completed. Full public consultation.	2000	Act reviewed in Schools Legislation Review. For recommendations and executive summary see chapter 22, Educational Services.
<i>Freedom of Information Act 1989</i>	JACS	Review commenced. Intradepartmental review.		Minor NCP issues (imposes a competitive disadvantage on Government business enterprises). Preliminary work for review underway.
<i>Fuels Control Act 1979</i>	JACS/US	Review completed. Intradepartmental review.	1999	Act to be retained on public benefit test.
<i>Fuels Control Act 1979</i>	US	Review not required.	NCR	Review not required. No competition restrictions. Act establishes emergency rationing powers.
<i>Gas Act 1992</i>	US	Act repealed.	NFR	Act repealed as part of the national gas reform agenda.
<i>Government Solicitor Act 1989</i>	JACS	Review not required.	NCR	Act assessed as not restricting competition.
<i>Guardianship and Management of Property Act 1991</i>	JACS	Review commenced. Intradepartmental review.		Minor NCP issues (conduct requirements). Preliminary work for review underway.

Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
<i>Hawkers Act 1936</i>	US	Review completed. Targeted public review.	2000	<p>Joint review with <i>Collections Act 1959</i>.</p> <p>Key issues of review:</p> <ul style="list-style-type: none"> <li>▪ There should be continued positive licensing for hawkers who wish to operate from a single location. Mobile hawkers should operate under a negative licensing scheme.</li> <li>▪ A business should be able to obtain a hawker's licence.</li> <li>▪ There should not be restrictions as to the number of vehicles that a mobile hawker can operate, but a licence fee should be paid for each vehicle.</li> <li>▪ There is no need for the Hawkets Act to regulate the number of people employed by a hawker or their minimum age.</li> <li>▪ The Act should be amended to remove the 180-metre exclusion zone provided for traditional shop owners.</li> <li>▪ Regulation of health, liquor and contraband goods should be undertaken in generally applicable legislation and should not be referred to in the Hawkets Act.</li> </ul> <p>Government response in development. For recommendations, see Chapter 18 of report.</p>
<i>Health Act 1993</i>	HHCC	Review completed December 1999. Intradepartmental review	1999	<p>Potential restrictions identified by audit in terms of powers governing the release of private information.</p> <p>Review concluded that the restrictions did not function anti-competitively and no market was affected by the legislation.</p> <p>No reform action required.</p>
<i>Health and Community Care Services Act 1996</i>	HHCC	Review completed December 2000. Intradepartmental review	2000	<p>Potential restrictions identified at audit in terms of limitations on the Services capacity to purchase shares, form partnerships or form companies.</p> <p>Review did not support that the restrictions applied anti-competitively. Rather the restrictions related to financial management requirements for government services.</p> <p>No reform action required.</p>
<i>Health Complaints Act 1993</i>	HHCC	Not for review. Legislation replaced by	NFR	N/A

Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
		the <i>Community and Health Services Complaints Act 1993</i>		
<i>Health Promotion Act 1995</i>	HHCC	Review completed December 2000. Intradepartmental review	2000	Review did not sustain initial audit view that restrictions on competition may have been present in the legislation. No reform action required.
<i>Health Records (Privacy and Access) Act 1997</i>	HHCC	Review completed December 1999. Intradepartmental review.	1999	Potential restrictions on competition identified at audit in terms of requirements that providers maintain and allow access to health records against certain regulatory standards. Review did not support an initial audit view that anti-competitive restrictions may apply within the legislation. Restrictions do not relate to a market/commercial transaction. No reform activity required.
<i>Heritage Objects Act 1991</i>	US	Not for review.	NFR	Following the decision to develop new legislation for the regulation of heritage matters, this Act has been withdrawn from the national competition policy program. The new legislation will be subject to normal scrutiny in relation to anti-competitive effects through preparation of the Regulatory Impact Statement.
Hotel School Act 1996	CM	No review required.	NCR	Legislation audit revealed no competitive restrictions.
<i>Housing Assistance Act 1987</i>	HHCC	Review commenced. Expected completion date March 2001		
<i>Housing Assistance Act 1987</i>	US			Now part of Department of Health, Housing and Community Care portfolio
<i>Inebriates Act 1900 - NSW legislation in its application in the Territory</i>	HHCC	Legislation to be repealed	NFR	N/A
<i>Inebriates Act 1938</i>	HHCC	Not for review.	NCR	Review not required. No restrictions on competition.
<i>Innkeepers' Liability Act 1902 - NSW legislation in</i>	JACS	Review completed. Intradepartmental	1999	The Act limits the liability for innkeepers ameliorating a common law "strict liability" which otherwise would apply to them. As "strict

Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
its application in the Territory		review.		liability" is not to be removed, the limitation of liability should remain.
<i>Institute for the Study of Man and Society Incorporation Act 1968</i>	JACS	Review not required.	NCR	Act assessed as not restricting competition. Act to be repatriated back to the Commonwealth.
<i>Intoxicated Persons (Care and Protection) Act 1994</i>	HHCC	Review completed December 2000. Intradepartmental review	2000	Restrictions on competition in terms of requirements that 'sobering up' shelters must be licensed. Review identified that the restrictions were a sustainable public benefit. No reform action required.
<i>Judgment Creditors Remedies Act 1933</i>	JACS	Review completed. Intradepartmental review.	1999	Act assessed as not restricting competition.
<i>Judiciary (Stay of Proceedings) Act 1933</i>	JACS	Review not required.	NCR	Act assessed as not restricting competition.
<i>Juries Act 1967</i>	JACS	Review not required.	NCR	Act assessed as not restricting competition.
<i>Lakes Act 1976</i>	US	Review completed.	2000	Joint review with the <i>Public Parks Act 1928</i> . The only significant restriction is the limitation on commercial activity in a lake area. This low cost of this restriction was considered justified by the protection afforded to lakes areas, and by the way it ensures that commercial operators in lakes areas gain no competitive advantage over those operating in normal commercial areas. The report is yet to be presented to government.
<i>Land (Planning and Environment) Act 1991</i> - Part III (heritage provisions)	US	Not for review.	NFR	Following the decision to develop new legislation for the regulation of heritage matters, this Act has been withdrawn from the NCP program. New legislation will be subject to normal scrutiny in relation to anti-competitive effects through preparation of the Regulatory Impact Statement.
<i>Land (Planning and Environment) Act 1991</i> - Parts V and VI (grants of land/development approval processes)	US	Review completed. Full public inquiry.	2000	Refer to Chapter 24 - Planning, construction and development services.



Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
<i>Land (Planning and Environment) Act 1991 - Division 4A</i>	JACS	Review not required.	NCR	Act assessed as not restricting competition.
<i>Land Acquisition (Northbourne Oval) Act 1996</i>	US	Review completed. Targeted public review.	2000	Joint review with the <i>Lands Acquisition Act 1994</i> . No competition restrictions.
<i>Land Titles (Unit Titles) Act 1970</i>	JACS	Review commenced. Intradepartmental review.		Minor NCP issues (imposes a conduct requirement). Preliminary work for review underway
<i>Land Titles Act 1925</i>	JACS	Review commenced. Intradepartmental review.		Minor NCP issues (imposes conduct requirements). Preliminary work for review underway.
<i>Landlord and Tenant Act 1899 - NSW legislation in its application in the Territory</i>	JACS	Act repealed.	NFR	Act repealed by <i>Residential Tenancies Act 1997</i> .
<i>Landlord and Tenant Act 1949</i>	JACS	Act repealed.	NFR	Act repealed by <i>Residential Tenancies Act 1997</i> .
<i>Lands Acquisition Act 1994</i>	US	Review completed. Targeted public review.	2000	Joint review with the <i>Land Acquisition (Northbourne Oval) 1996 Act</i> . No competition restrictions.
<i>Law Reform (Manufacturers Warranties) Act 1977</i>	JACS	Review completed. Intradepartmental review.	1998	Act assessed as not restricting competition. Minor issues.
<i>Law Reform (Misrepresentation) Act 1977</i>	JACS	Review completed. Intradepartmental review.	1998	Act assessed as not restricting competition. Minor issues.
<i>Lay-by Sales Agreements Act 1963</i>	JACS	Review commenced. Intradepartmental review.		Review in draft form. Minor NCP issues (imposes conduct restrictions).
<i>Legal Aid Act 1977</i>	JACS	Review commenced. Intradepartmental review.		Encompassed by stage 2 of the Legal Practitioner Act review. Minor issues.

Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
<i>Legal Practitioners Act 1970</i>	JACS	Review commenced. Targeted public review.		Public benefit tests and extensive public consultation have been conducted on this issue in other jurisdictions. First options paper released (second in preparation).
<i>Legislation (Republication) Act 1996</i>	JACS	Review completed. Intradepartmental review.	1999	Act to be retained on public benefit test. Minor issues.
<i>Liquor Act 1975 - except subsections 42E(2) and 42e(4)</i>	JACS	Review commenced. Intradepartmental review.		Preliminary work for review underway. Minor NCP issues in the ACT law.
<i>Liquor Act 1975 - subsections 42E(2) and 42E(4)</i>	CM	Review completed. Intradepartmental review.	1998	
<i>Listening Devices Act 1992</i>	JACS	Review completed. Intradepartmental review.	1999	Act to be retained on public benefit test. Minor issues.
<i>Litter Act 1977</i>	US	Review completed. Targeted public review.	2000	Joint review with the <i>Roads and Public Places Act 1937</i> . Final report received. Government response agreed. The Report concluded that in terms of the requirements under National Competition Policy Guidelines: <ul style="list-style-type: none"> <li>▪ the Act marginally restricts business for businesses dependent on flyer and bill advertising;</li> <li>▪ the public protection benefits of the Act outweigh any marginal impact on competition; and</li> <li>▪ no feasible non legislative options were found which can achieve the same level of public benefits.</li> </ul> Recommendations attached
<i>Long Service Leave (Building and Construction Industry) Act 1981</i>	US	Review completed. Targeted public review.	1999	Final Report received. Government response in development. Report at <a href="http://www.act.gov.au/urbanservices">www.act.gov.au/urbanservices</a>
<i>Long Service Leave Act 1976</i>	US	Review not required.	NCR	No competition restrictions. Act bestows employee benefits.
<i>Machinery Act 1949</i>	US	Act repealed.	NFR	Act repealed.

Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
<i>Magistrates Court Act 1930</i>	JACS	Review commenced. Intradepartmental review.		Minor issues. Encompassed by stage 2 of the Legal Practitioner Act review.
<i>Meat Act 1931</i>	HHCC	Review commenced in association with the National Review of Food Regulation.		Act to be repealed once revised Food Act is implemented.
<i>Mediation Act 1997</i>	JACS	Review commenced. Intradepartmental review. Targeted public review.		Minor NCP issues (provides for a minimalist registration scheme). Preliminary work for review underway.
<i>Medical Practitioners Act 1930</i>	HHCC	Review commenced January 1999. Discussion Paper issued – May 1999, Model legislation consultation paper issued December 1999, Reform proposal submitted to Government February 2001.		Existing restrictions on: entry, use of title, general reservation on practice, advertising. Disciplinary powers available to the Board.  Reform proposals with Government  Completion of reform anticipated July 2001.
<i>Medical Records (Access and Privacy) Act 1997</i>	HHCC	Entry relates to the <i>Health Records (Privacy and Access) Act 1997</i> .	NCR	
<i>Medical Services (Fees) Act 1984</i>	HHCC	Not for review.	NCR	Review not required - legislation relates to an intergovernmental financial arrangement.
<i>Mental Health (Treatment and Care) Act 1994 - except Part III, Part VII, Part IX and sections 141, 142 and 143</i>	HHCC	Review completed December 2000. Intradepartmental review	2000	Existing restrictions relate to the Mental Health Tribunals powers to direct where a person with a mental dysfunction will be detained, restrictions on the use of convulsive therapy and psychiatric surgery, and requirements that private psychiatric facilities be licensed.  Review of the legislation demonstrated an overall public benefit of

Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
				the restrictions.
<i>Mercantile Law Act 1962</i>	JACS	Review completed. Intradepartmental review..	1999	Minor issues. Archaic provisions to be repealed.
<i>Motor Omnibus Services Act 1955</i>	US	Review not required.	NFR	Act to be repealed and replaced by the Public Passenger Transport Bill.
<i>Motor Traffic Act 1936</i> - taxi and hire car provisions	US	Review completed. Full public inquiry.	2000	Legislative provisions are now contained in the <i>Road Transport (General) Act 1999</i> and the <i>Road Transport (Taxi Services) Regulations</i> and the <i>Road Transport (Hire Cars) Regulations</i> Final Report issued March 2000 following industry/community consultation. The Report and the Government Response can be accessed at: <a href="http://www.act.gov.au/urbanservices/transport/index.html">www.act.gov.au/urbanservices/transport/index.html</a>
<i>Motor Traffic Act 1936</i> - compulsory third party insurance provisions	US	Review not required.	NCR	No competition restrictions.
<i>Motor Vehicles (Dimensions and Mass) Act 1990</i>	US	Review not required.	NFR	Superseded by national road transport reforms.
<i>National Environment Protection Council Act 1994</i>	US	Review not required. Intradepartmental review.	NFR	Audit of legislation confirms no competition restrictions.
<i>National Exhibition Centre Trust Act 1976</i>	CM	Review not required.	NCR	Act assessed as not restricting competition.
<i>Nature Conservation Act 1980</i>	US	Review completed. Targeted public review.	1999	The principal restriction on competition identified arises out of controls on commerce in animals and plants. The review found that these restrictions would be justified provided that the lists of protected and exempt plants were review to ensure that entries were justifiable on conservation grounds.  The review was presented to government on 7 August 2000 and

Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
				work has been proceeding on revision of the relevant lists. Recommendations attached
<i>Noise Control Act 1988</i>	US	Act repealed.	NFR	Act repealed by <i>Environment Protection Act 1997</i> .
<i>Notaries Public Act 1984</i>	JACS	Review commenced. Intradepartmental review.		Minor issues. Encompassed by stage 2 of the Legal Practitioner Act review.
<i>Nurses Act 1988</i>	HHCC	Review commenced January 1999. Discussion Paper issued – May 1999, Model legislation consultation paper issued December 1999, Reform proposal submitted to Government February 2001.		Existing restrictions on: entry, use of title, general reservation on practice, advertising. Disciplinary powers available to the Board.  Reform proposals with Government.  Completion of reform anticipated July 2001.
<i>Oaths and Affirmations Act 1984</i>	JACS	Review commenced. Intradepartmental review.		Encompassed by stage 2 of the Legal Practitioner Act review. Minor issues.
<i>Occupational Health and Safety Act 1989</i>	US	Currently under review.		The Occupational Health and Safety Act is being reviewed in conjunction with a body of associated legislation ( <i>viz.</i> the <i>Dangerous Goods Act 1984</i> , the <i>Scaffolding and Lifts Act 1957</i> and the <i>Machinery Act 1949</i> ). The Scaffolding and Lifts and the Machinery Acts are old-fashioned pieces of legislation which were listed for repeal in 1997 subject to further development of a performance-based regulations under the Occupational Health and Safety Act. The Dangerous Goods Act is similarly outdated, prescriptive and ineffective. It is based on obligations to avoid negative consequences. In contrast, the Occupational Health and Safety Act is based on duty-of-care principles which characterise modern regimes and which provide a legally enforceable responsibility to achieve specified and positive safety-related outcomes.  The review with an accompanying Regulatory Impact Statement, is

Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
				<p>examining the development, under the umbrella of a new or amended Occupation Health and Safety Act, of an integrated performance-based regulatory regime for workplace safety, dangerous goods and those areas currently regulated under the Scaffolding and Lifts Act and the Machinery Act. This is in line with agreements reached in 1991 by Premiers and Chief Ministers that jurisdictions would pursue the development of nationally uniform, flexible and performance-based regulations under parent occupational health and safety legislation.</p> <p>Regulatory Impact Statement can be accessed at: <a href="http://www.act.gov.au/government/reports/index.html">www.act.gov.au/government/reports/index.html</a></p>
<i>Ombudsman Act 1989</i>	JACS	Review commenced. Intradepartmental review.		Minor NCP issues (imposes a competitive disadvantage on Government business enterprises). Preliminary work for review underway.
<i>Optometrists Act 1956</i>	HHCC	<p>Review commenced January 1999</p> <p>Discussion Paper issued – May 1999,</p> <p>Model legislation consultation paper issued December 1999,</p> <p>Reform proposal submitted to Government February 2001.</p>		<p>Existing restrictions on: entry, use of title, general reservation on practice, restriction on who may dispense. Disciplinary powers available to the Board.</p> <p>Reform proposals with Government.</p> <p>Completion of reform anticipated July 2001.</p>
<i>Ozone Protection Act 1991</i>	US	Act repealed.	NFR	Act repealed by <i>Environment Protection Act 1997</i> .
<i>Parental Leave (Private Sector Employees) Act 1992</i>	US	Review not required.	NCR	No competition restrictions. Act bestows employee benefits.
Partnership Act 1963	JACS	Review commenced. Intradepartmental review.	2000	<p>Amendments recommended by review included in <i>Justice and Community Safety Legislation Amendment Bill (No 2) 2000</i>. Amendments remove a disincentive to ACT partners accepting positions on public or private sector corporations.</p>
<i>Pawnbrokers Act 1902 -</i>	JACS	Review commenced.		Minor NCP issues (registration and conduct restrictions). Preliminary

Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
NSW legislation in its application in the Territory		Intradepartmental review.		work for review underway.
<i>Periodic Detention Act 1995</i>	JACS	Review not required.	NCR	Act assessed as not restricting competition.
<i>Perpetuities and Accumulations Act 1985</i>	JACS	Review not required.	NCR	Act assessed as not restricting competition.
<i>Pesticides Act 1989</i>	US	Act repealed.	NFR	Act repealed by <i>Environment Protection Act 1997</i> .
<i>Pharmacy Act 1931</i>	HHCC	Review completed as part of the National Review Of Pharmacy.	2000	ACT is to formally consider its response following CoAG's consideration of the report of the National Review
<i>Physiotherapists Act 1977</i>	HHCC	Review commenced January 1999 Discussion Paper issued – May 1999, Model legislation consultation paper issued December 1999, Reform proposal submitted to Government February 2001.		Existing restrictions on: entry, use of title, general reservation on practice. Disciplinary powers available to the Board.  Reform proposals with Government.  Completion of reform anticipated July 2001.
<i>Plant Diseases Act 1934</i>	US	Review completed. Intra-departmental. The report has yet to be presented to government for a response to be agreed.	2000	Joint review with <i>Land (Planning and Environment) Act 1991</i> (pest plant and animal provisions).  The review recommended retention of restrictions on introduction into the ACT of declared pests and diseases, provisions relating to the destruction of neglected trees and quarantine control provisions on the basis that they were justified in the interests of public health and sustainable development.  The review recommended repeal of provisions that had the effect of specifying particular products for use in controlling fruit fly and aphidae, provisions specifying particular kinds of packaging and provisions that impose inappropriate and unduly restrictive standards on fruit for retail sale.

Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
				The review recommended that the provisions relating to pest plant and animals be retained as the costs imposed are substantially less than the costs that arise from weed infestation on private and public land. Recommendations attached
<i>Plumbers, Drainers and Gasfitters Board Act 1982</i>	US	Review completed. Targeted public review.	2000	The restriction on competition was occupational licensing. Jointly reviewed as part of a review of the regulation of building occupations in conjunction with the <i>Building Act 1972</i> and the <i>Electricity Act 1971</i> . See under the Building Act.
<i>Podiatrists Act 1994</i>	HHCC	Review commenced January 1999 Discussion Paper issued– May 1999, Model legislation consultation paper issued December 1999, Reform proposal submitted to Government February 2001.		Existing restrictions on: entry, use of title, general reservation on practice. Disciplinary powers available to the Board.  Reform proposals with Government.  Completion of reform anticipated July 2001.
<i>Poisons Act 1933</i>	HHCC	Reviewed in the context of The Review of Drugs, Poisons and Controlled Substances Legislation. National Review completed September 2000	2000	Review to be considered by CoAG in 2001.  ACT response will follow CoAG's consideration of the reports recommendations.
<i>Poisons and Drugs Act 1978</i>	HHCC	Reviewed in the context of The Review of Drugs, Poisons and Controlled Substances Legislation. National Review completed September 2000	2000	Review to be considered by CoAG in 2001.  ACT response will follow CoAG's consideration of the reports recommendations.



Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
<i>Pool Betting Act 1964</i>	DoT	Review completed. Targeted public review.	1998	Act part of the gambling legislation review.
<i>Pounds Act 1928</i>	US	Intra-departmental review completed (undertaken jointly with <i>Animal Diseases Act 1993</i> and <i>Stock Act 1991</i> .)	2000	The Act restricts competition in establishing government operated pounds, and in conferring differential benefits on market participants as to impounding stock depending on what stock they keep and where their property is located.  These restrictions were assessed as having benefits to animal health, public health and sustainable development that outweigh the costs imposed by the restrictions. Recommendations attached
<i>Powers of Attorney Act 1956</i>	JACS	Review commenced. Intradepartmental review.		Minor NCP issues (imposes restrictions on business structure). Preliminary work for review underway.
<i>Presbyterian Church (Proposals for Union with other Churches) Act 1972</i>	JACS	Review not required.	NCR	Act assessed as not restricting competition.
<i>Presbyterian Church Trust Property Act 1971</i>	JACS	Review completed. Intradepartmental review.	1999	To the extent that the Act does not give the church a commercial advantage, the Act does not have an anticompetitive effect.
<i>Printing and Newspapers Act 1961</i>	JACS	Review completed. Intradepartmental review.	1999	Act to be repealed.
<i>Proceeds of Crime Act 1991</i>	JACS	Review not commenced. Intradepartmental review.		Review in draft form. Minor NCP issues (imposes conduct requirements).
<i>Prohibited Weapons Act 1996</i>	JACS	Review not required.	NFR	Part of a national regulatory scheme subject to separate review requirements – legislation is subject to overriding public safety considerations.
<i>Prostitution Act 1992</i>	JACS	Review underway. Full public review.		Preliminary work for review underway.
<i>Protection of Lands Act 1937</i>	US	Review commenced. Inter-departmental review.		Following preliminary review work, Trespass on Territory Land, Enclosed Lands and Recovery of Lands Acts removed from joint review as no competition restrictions identified.

Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
<i>Psychologists Act 1994</i>	HHCC	Review commenced January 1999 Discussion Paper issued – May 1999, Model legislation consultation paper issued December 1999, Reform proposal submitted to Government February 2001.		Existing restrictions on: entry, use of title, general reservation on practice. Disciplinary powers available to the Board.  Reform proposals with Government.  Completion of reform anticipated July 2001.
<i>Public Baths and Public Bathing Act 1956</i>	DECS	Act assessed as not restricting competition.	NCR	
<i>Public Health (Miscellaneous Provisions) Act 1997</i>	HHCC	Act to be repealed April 2001	NFR	
<i>Public Health (Prohibited Drugs) Act 1957</i>	HHCC	Reviewed in the context of The Review of Drugs, Poisons and Controlled Substances Legislation. National Review completed September 2000	2000	Review to be considered by CoAG in 2001.  ACT response will follow CoAG's consideration of the reports recommendations.
<i>Public Health Act 1928</i>	HHCC	Act to be repealed by the Public Health Act 1997.	NFR	
<i>Public Health Act 1997</i>	HHCC	Review commenced. Restrictions within legislation identified. Consultation paper being prepared.		

Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
<i>Public Instruction Act 1880</i>	DECS	Review completed. Full public consultation.	2000	Act reviewed in Schools Legislation Review. For recommendations and executive summary see chapter 22, Educational Services.
<i>Public Parks Act 1928</i>	US	Review completed. Targeted public review.	2000	Joint review with the Lakes Act 1976. Act repealed by Statute Law (Amendment) Act 2000. Recommendations attached
<i>Public Trustee Act 1985</i>	JACS	Review commenced. Intradepartmental review.		NCP issues (allows the Public Trustee to act as a trustee – other corporations other than Trustee Companies are not so permitted). Preliminary work for review underway.
<i>Rabbit Destruction Act 1919</i>	US	Act repealed.	NFR	Act repealed by the <i>Land (Planning and Environment) (Amendment) Act 1997 (No.7)</i> and relevant provisions transferred to the <i>Land (Planning and Environment) Act 1991</i> .
<i>Racecourses Act 1935</i>	DoT	Not for review.	NFR	Act to be repealed and provisions incorporated in new racing legislation.
<i>Radiation Act 1983</i>	HHCC	National review in progress. Final report being prepared. Report to be submitted to AHMAC for consideration during 20001.		
<i>Rates and Land Rent (Relief) Act 1970</i>	DoT	Review completed. Intradepartmental review.	1998	Review completed.
<i>Rates and Land Tax Act 1926</i>	DoT	Review completed. Intradepartmental review.	1998	Review completed.
<i>Rates and Land Tax Act 1986</i>	DoT	Review completed. Intradepartmental review.	1998	Review completed.
<i>Real Property (Unit Titles) Act 1970</i>	JACS	Review not required.	NFR	Act repealed.

Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
<i>Recovery of Lands Act 1929</i>	US	Not for review. Intra-departmental review.	NCR	No competition restrictions.
<i>Registration of Births, Deaths and Marriages Act 1963</i>	JACS	Review not required.	NFR	Act repealed.
<i>Registration of Deeds Act 1957</i>	JACS	Review completed. Intradepartmental review.	1999	Act assessed as not restricting competition.
<i>Registration of Interests in Goods Act 1990</i>	JACS	Review completed. Intradepartmental review.	2000	Act assessed as not restricting competition – Act proposed for repeal by the <i>Sale of Motor Vehicles Amendment Bill 2000</i> .
<i>Roads and Public Places Act 1937</i>	US	Review completed. Targeted public review.	2000	<p>Joint review with the <i>Litter Act 1977</i>.  Final report received. Government response agreed.  The Final Report concluded:</p> <ul style="list-style-type: none"> <li>• The Roads and Public Places Act does restrict business to some extent in terms of the areas available for commercial activity and through its advertising restrictions.</li> <li>• The analysis shows that the public protection benefits of the Act probably outweigh these impacts on competition.</li> </ul> <p>The Government has concluded that:</p> <ul style="list-style-type: none"> <li>• the restriction on areas available for commercial activity are clearly in the public interest, in that they protect the rights of the community to access and passage across public land, and protect the amenity of public land from visual and physical pollution from the operation of businesses; and</li> <li>• the restriction on advertising are clearly in the public interest in that they provide clear rules on the placement of signs on public property to protect access, safety.</li> </ul> <p>Recommendations attached</p>

Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
<i>Roman Catholic Church Property Trust Act 1937</i>	JACS	Review completed. Intradepartmental review.	1999	To the extent that the Act does not give the church a commercial advantage, the Act does not have an anticompetitive effect.
<i>Sale of Goods (Vienna Convention) Act 1987</i>	JACS	Review not required.	NCR	Act assessed as not restricting competition.
<i>Sale of Goods Act 1954</i>	JACS	Review commenced. Intradepartmental review.		Review in draft form. Minor NCP issues (imposes conduct requirements).
<i>Sale of Motor Vehicles Act 1977</i>	JACS	Review commenced. Full public review.		Discussion paper in draft form.
<i>Salvation Army Property Trust Act 1934</i>	JACS	Review completed. Intradepartmental review.	1999	Minor issues. To the extent that the Act does not give the church a commercial advantage, the Act does not have an anticompetitive effect.
<i>Scaffolding and Lifts Act 1957</i>	US	Act repealed.	NFR	Act repealed by <i>Occupational Health and Safety (Amendment) Act 1997</i> . Review in conjunction with the review of the <i>Occupational Health and Safety Act 1989</i> .
<i>Scaffolding and Lifts Act, 1912-1948 (NSW) - NSW legislation in its application in the ACT</i>	US	Act repealed.	NFR	Act repealed by <i>Occupational Health and Safety (Amendment) Act 1997</i> . Review in conjunction with the review of the <i>Occupational Health and Safety Act 1989</i> .
<i>Schools Authority Act 1976</i>	DECS	Review completed. Full public consultation.	2000	Act reviewed in Schools Legislation Review. For recommendations and executive summary see chapter 22, Educational Services.
<i>Second-hand Dealers and Collectors Act 1906 - NSW legislation in its application in the Territory</i>	JACS	Review completed. Intradepartmental review.	2000	Amendments recommended by review included in <i>Justice and Community Safety Legislation Amendment Bill (No 1) 2000</i> .
<i>Sewerage Rates Act 1968</i>	DoT	Review not commenced.	NFR	Act will be considered in the development of new utilities legislation.
<i>Sexually Transmitted Diseases Act 1956</i>	HHCC	Review commenced. Restrictions within legislation identified. Consultation paper being prepared.		

Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
<i>Skin Penetration Procedures Act 1994</i>	HHCC	Not for review. Act to be repealed April 2001. Health risks to be addressed through the Public Health Act 1997	NFR	
<i>Small Claims Act 1974</i>	JACS	Act to be repealed. Review not required.	NFR	Act repealed.
<i>Smoke-free Areas (Enclosed Public Places) Act 1994</i>	HHCC	Review not commenced. Awaiting AHMAC's consideration of a related review report on Passive Smoking		
<i>Stamp Duties and Taxes Act 1987</i>	DoT	Review completed. Intradepartmental review.	1998	Review complete.
<i>Standard Time and Summer Time Act 1972</i>	US	Review not required.	NCR	Act assessed as not restricting competition.
<i>Stock Act 1991</i>	US	Intra-departmental review completed (undertaken jointly with <i>Animal Diseases Act 1993</i> and <i>Pounds Act 1928</i> .)	2000	The Act restricts competition in providing for the government to determine the stock carrying capacity for rural leases (which affects the level of the stock levy imposed) and also provides for restrictions on the movement of stock.  The stock carrying capacity restriction was assessed as having benefits to sustainable development, animal health and public safety that outweighed the cost of the restriction. The restrictions on stock movement provisions provides benefits to sustainable development that outweighs the cost imposed. Recommendations attached
<i>Subordinate Laws Act 1989</i>	JACS	Review completed. Intradepartmental review.	1999	Act assessed as not restricting competition.
<i>Substitute Parent Agreements Act 1994</i>	JACS	Review completed. Intradepartmental review.	1999	Minor issues. Act to be retained on public benefit test.

<b>Name of legislation</b>	<b>Agency</b>	<b>Description/ comment on review process</b>	<b>Review complete</b>	<b>Review recommendations/ restrictions on competition /reform progress</b>
<i>Supervision of Offenders (Community Service Orders) Act 1985</i>	JACS	Review not required.	NCR	Act assessed as not restricting competition.
<i>Supreme Court Act 1933</i>	JACS	Review commenced. Intradepartmental review.		Minor issues. Encompassed by stage 2 of the Legal Practitioner Act review.
<i>Surveyors Act 1967</i>	US	Review completed. Targeted public review.	1998	Refer to chapter 24 - Planning, construction and development services.
<i>Tenancy Tribunal Act 1994</i>	JACS	Review not required.	NFR	Leases (Commercial and Retail) Bill 2000 introduced repeals the Act.
<i>Territory Owned Corporations Act 1990 - (section 18)</i>	DoT	Review completed. Targeted public review.	1998	Act not found to restrict competition.
<i>Theatres and Public Halls Act 1928</i>	CM	Review completed.	1998	Act to be repealed. Bill on notice paper waiting debate.
<i>Tobacco Act 1927</i>	HHCC	Review not commenced. ACT to propose to the National Tobacco Policy Group that a combined review be undertaken		
<i>Tobacco Products (Health Warnings) Act 1986</i>	HHCC	Act has been repealed.	NFR	Act repealed as it duplicates Trade Practices Act regulations.
<i>Trade Measurement (Administration) Act 1991</i>	JACS	Review commenced. Intradepartmental review.		National review.
<i>Trade Measurement Act 1991</i>	JACS	Review commenced. Intradepartmental review		National review.
<i>Trading Hours Act 1962</i>	US	Act repealed.	NFR	Legislation repealed.
<i>Trading Stamps Act 1972</i>	JACS	Review not required.	NCR	Act assessed as not restricting competition.

<b>Name of legislation</b>	<b>Agency</b>	<b>Description/ comment on review process</b>	<b>Review complete</b>	<b>Review recommendations/ restrictions on competition /reform progress</b>
<i>Transplantation and Anatomy Act 1978</i>	HHCC	Review commenced. Restrictions within legislation identified. Consultation paper being prepared.		
<i>Trans-Tasman Mutual Recognition Act 1997</i>	CM	Review completed. National review.	1999	Recommendations awaiting Government's consideration.
<i>Trespass on Territory Land Act 1932</i>	US	Not for review.	NCR	Following preliminary review, removed from program. No competition restrictions.
<i>Trustee Act 1957</i>	JACS	Review completed. Intradepartmental review.	1999	Minor issues. Anticompetitive provisions repealed
<i>Trustee Companies Act 1947</i>	JACS	Review not required.	NFR	Act will be repealed by proposed uniform trustee companies legislation drafted for consideration by Standing Committee of Attorneys-General.
<i>Tuberculosis Act 1950</i>	HHCC	Review commenced. Restrictions within legislation identified. Consultation paper being prepared.		
<i>Unclaimed Moneys Act 1950</i>	JACS	Review not required.	NCR	Act assessed as not restricting competition.
<i>Uncollected Goods Act 1996</i>	JACS	Review not required.	NCR	Act assessed as not restricting competition.
<i>Unit Titles Act 1970</i>	US	Review completed.	2000	This Act has been the subject of a major non-NCP review and new amending legislation is in preparation. There are no identified restrictions on competition.
<i>Uniting Church in Australia Act 1977</i>	JACS	Review completed. Intradepartmental review.	1999	To the extent that the Act does not give the church a commercial advantage, the Act does not have an anti-competitive effect.
<i>University of Canberra Act</i>	DECS	Act assessed as not	NCR	



Name of legislation	Agency	Description/ comment on review process	Review complete	Review recommendations/ restrictions on competition /reform progress
		restricting competition.		
<i>Unlawful Games Act 1984</i>	CM	Review completed. Targeted public review.	1998	Act part of the gambling legislation review.
<i>Veterinary Surgeons Registration Act 1994</i>	HHCC	Review commenced January 1999. Discussion Paper issued – May 1999, Model legislation consultation paper issued December 1999, Reform proposal submitted to Government February 2001.		Existing restrictions on: entry, use of title, general reservation on practice, advertising. Disciplinary powers available to the Board.  Reform proposals with Government.  Completion of reform anticipated July 2001.
<i>Vocational Education and Training Act 1995</i>	DECS	Internal review commenced in late 2000.		A Regulatory Impact Statement is currently being prepared in anticipation of the successful passage of Commonwealth Legislation. ACT Legislation will then be prepared to comply with the Commonwealth.
<i>Water Pollution Act 1984</i>	US	Act repealed.	NFR	Act repealed by the <i>Environment Protection Act 1997</i> .
<i>Water Rates Act 1959</i>	DoT	Review not commenced.	NFR	Act will be considered in the development of new utilities legislation.
<i>Witness Protection Act 1996</i>	JACS	Review not required.	NCR	Act assessed as not restricting competition.
<i>Workers' Compensation Act 1951</i>	US	Review not required.	NFR	Following the decision to develop new legislation for workers compensation, this Act was withdrawn from the NCP program. New legislation will be subject to normal scrutiny in relation to anti-competitive effects through preparation of the Regulatory Impact Statement.
<i>Workers' Compensation Supplementation Fund Act 1980</i>	US	Not for review.	NFR	Following the decision to develop new legislation for workers compensation, this Act has been withdrawn from the NCP program. New legislation will be subject to normal scrutiny in relation to anti-competitive effects through preparation of the Regulatory Impact Statement.

## National Competition Policy Review of the *Long Service Leave (Building and Construction Industry) Act 1981*

### Key Findings

1. While portability of long service leave in the building and construction industry imposes a number of costs upon the industry and the community more generally, its retention can be justified as a mechanism to provide some degree of horizontal equity between building and construction employers and other industries. While almost all industries provide the *capacity* for employees to attain long service leave (ie, because firms expect to continue to exist) the trend for building employees to follow projects and the impermanent nature of building firms provides no such capacity for building employees.
2. The existing legislative monopoly provided to the Construction Industry Long Service Leave Board (CILSLB) should be maintained. This is justified by the small scale of the industry and the consequent lack of potential competition from alternative providers.
3. The CILSLB should be converted to a private company limited by guarantee. This will enable the CILSLB to operate in a flexible manner free from a number of unnecessary public sector constraints.
4. Consideration should be given to widening the representation on the CILSLB to include a more diverse representation of the building and construction industry.
5. The CILSLB should continue to provide annual reports to the ACT Government.
6. The CILSLB should aim to be self-funding (ie, not charging an industry levy) in the medium term (say, within three to four years).
7. Over time, wider developments in the provision of portable long service leave and the protection of workers' entitlements in the event of redundancy may facilitate winding back the CILSLB's legislative monopoly and/or funding portability through tax rather than an industry levy.

Review of the Roads and Public *Places Act 1937* and *Litter Act 1977*

Key Recommendations

SKM Economics was engaged to undertake a review of the *Roads and Public Places Act 1937* and *Litter Act 1977*.

The Final Report concludes that in terms of the requirements under National Competition Policy Guidelines:

The Roads and Public Places Act does restrict business to some extent in terms of the areas available for commercial activity and through its advertising restrictions. The public protection and safety benefits of the Act outweigh these impacts on competition.

The Litter Act marginally restricts competition for businesses dependent on flyer and bill advertising. The public protection and litter reduction benefits of the Act outweigh any marginal impact on competition and no feasible non-legislative options were found which could achieve the same level of public benefits.

Review of the *Public Parks Act 1928* and *Lakes Act 1966*

The Government engaged Peter Day Consulting to undertake a review of the Parks Act and Regulations, and the Lakes Act.

Due to changes in administrative arrangements Environment ACT has assumed responsibility for the administration of the Lakes Act, and would prepare a separate report in relation to the Lakes Act.

The review concluded that there are no restrictions on competition contained in the Parks Act, and that the minor restrictions contained in the Public Parks Regulations are in the public interest.

The Parks Act and associated Regulations have been repealed by the *Statute Amendment Act 2000*.

Review of the *Hawkers Act 1936* and *Collections Act 1959*

The Department of Urban Services commissioned The Allen Consulting Group to undertake a review of the *Hawkers Act 1936* (Hawkers Act) and *Collections Act 1959*.

The Allen report, *National Competition Review of the Hawkets Act and the Collections Act*, made 28 recommendations for legislative reform relating to the operation of the Hawkets and Collections Acts.

The Government is currently considering its response to the report.



Animal Diseases Act

**Restriction 1:**

Declaration of disease quarantine areas and restriction on animal movements and sales.

**Recommendation 1:**

Retain in the interest of animal health, public health and sustainable development.

**Restriction 2:**

Declaration that an area of land outside the Territory has restrictions on the import of animals or animal products.

**Recommendation 2:**

Retain in the interest of animal health, public health and sustainable development.

**Restriction 3:**

Declarations by the Minister to control the spread of the disease.

**Recommendation 3:**

Retain in the interest of animal health, public health and sustainable development.

**Restriction 4:**

Directions for destruction of animals and other property.

**Recommendation 4:**

Retain in the interest of animal health, public health and sustainable development.

**Restriction 5:**

Directions for removal of refuse.

**Recommendation 5:**

Retain in the interest of animal health, public health and sustainable development. Amend s.19 to empower the Minister to provide for the proper disposal of the refuse.

**Restriction 6:**

Requirement for certain stock to be tagged.

**Recommendation 6:**

Retain in the interest of animal health, public health and sustainable development.

**Restriction 7:**

Approval of tag manufacturers.

**Recommendation 7:**

Retain in the interest of animal health, public health and sustainable development.

**Restriction 8:**

Control over use of vaccines.

**Recommendation 8:**

Retain in the interest of animal health, public health and sustainable

development, and expand to cover use of vaccines and other biological products on animals other than stock.

**Restriction 9:**

Control over sale of infected animals.

**Recommendation 9:**

Retain in the interest of animal health, public health and sustainable development.

Pounds Act

**Restriction 10:**

Establishment of pounds by the Government.

**Recommendation 10:**

Retain the provision in the interest of animal safety, public safety and sustainable development. However, needs to be in an up-to-date form incorporating a full user-pays system and with the definition of stock consistent with the Stock Act.

**Restriction 11:**

Authorisation of people to impound animals.

**Recommendation 11:**

Retain the provision in the interest of animal safety, public safety and sustainable development. However, needs to be in an up-to-date form incorporating a full user-pays system and with the definition of stock consistent with the Stock Act.

Stock Act

**Restriction 12:**

Determination of the stock carrying capacity of a lease.

**Recommendation 12:**

Retain in the interest of sustainable development, animal health and public safety. Add provisions to include a levy for stock grazing on unleased land. A more efficient means of collecting the levy (such as through rates and agistment charges) should be implemented.

**Restriction 13:**

Restrictions on the movement of stock.

**Recommendation 13:**

Retain in the interest of sustainable development.

Animal Welfare

**Restriction 1**

Welfare and treatment of animals, and the promotion of animal welfare (Sections 7-9, 11-16).

**Recommendation**

Amend s14 so that it is not an offence to possess spurs for the purpose of display; or as a curio or as part of a collection.

## **Restriction 2**

Ban on matches, competition, baiting, and game parks (Section 17).

### **Recommendation**

Amend s17 to allow animals to be used in the training or exercise of other animals if the activity does not threaten or endanger the welfare of either animal.

## **Restriction 3**

Total ban on rodeos (Section 18).

### **Recommendation**

No change.

## **Restriction 4**

Total ban on game parks (Section 18).

### **Recommendation**

No change.

## **Restriction 5**

Requirement for medical or surgical procedures to be performed by a veterinarian, with some exemptions (Section 19).

### **Recommendation**

No change.

## **Restriction 6**

Restrictions on the use of animals for research and teaching purposes.

### **Recommendation**

No change.

## **Restriction 7**

Restrictions on circuses.

### **Recommendation**

No change.

## **Restriction 8**

Restrictions on trapping.

### **Recommendation**

Technical amendment - current permit system be repealed and replaced by a restriction or regulation system on the type and method of trapping.

## **Restriction 9**

Use of electrical devices.



**Recommendation**

No change. Note Item 5 – *A fence known as an invisible fence for use with dogs* – is to be repealed.

**Restriction 10**

Codes of Practice.

**Recommendation**

No change.

**Restriction 11**

Minimum cage floor areas.

**Recommendation**

No change to size of established cages. Technical amendment - The SCARM Hen Layer Housing report recommends increasing cage size to 550 sq cm (including baffle) for all cages commissioned from 1 January 2001.

Nature Conservation Act 1980

1. Disallowable Instruments.

**Recommendation:**

That a previous Disallowable Instrument on a matter be fully revoked and replaced by the updated instrument in order to assist interpretation. Also, the Service should keep an up-to-date register of all Disallowable Instruments.

2. Objectives of the Nature Conservation Act (NCA).

**Recommendation:**

That Government investigate amending the NCA to add a section on objectives and to refer to the 'Nature Conservation Strategy for the ACT' as gazetted under the Subordinate Laws Act 1989 to explain the goal and objectives of the NCA.

3. Division 2 - Flora and Fauna Committee: composition

**Recommendation:**

That the Government review the composition of the Flora and Fauna Committee to assess the need to provide for a more appropriate representation. This may require an amendment to Section 15E of the NCA.

4. Division 2 - Flora and Fauna Committee: liaison with NSW

**Recommendation:**

That the ACT Flora and Fauna Committee continue to closely liaise with the NSW Scientific Committee established under the Threatened Species Conservation Act 1995 to share information and listing of species and communities and appropriate actions to conserve them.

5. Section 21, Declaration of vulnerable and endangered species.

**Recommendation:**

That the NCA be revised to enable the keeping, cultivation and sale without restriction of certain protected plants that are now freely cultivated and sold. It is further recommended that the taking from the wild of Protected and Special Protection Status plants continue to be strictly regulated.

6. Sections 27, 28 and 29 - import and keeping of non-indigenous birds.

**Recommendation:**

That the ACT delete all reference to non-indigenous birds from the NCA and either manage the NEBRS scheme under an appropriate arrangement with Environment Australia or authorise Environment Australia to manage NEBRS in the ACT.

7. Sections 27, 28 and 29 - import and keeping of non-indigenous animals other than birds.

**Recommendation:**

That following the current review of the import and keeping of non-indigenous animals by the national Vertebrate Pests Committee, the ACT, in consultation with relevant stakeholders, determine whether it would be preferable to modify the NCA to mirror the classification of non-indigenous animals as under the NSW Non-Indigenous Animals Act, prepare new ACT legislation or to adopt NSW legislation to manage non-indigenous animals (other than birds) in the ACT.

8. Sections 27, 28 and 29 - import and keeping of native fauna other than reptiles.

**Recommendation:**

That the ACT review its licensing system for native fauna, including lists of exempt species in light of the provisions in the NSW National Parks and Wildlife Act 1974 and the Threatened Species Conservation Act 1995.

9. Sections 27, 28 and 29 - import and keeping of reptiles.

**Recommendation:**

That the ACT, in reviewing its policy on keeping reptiles, adopt where practicable, policies that are complementary to that in other jurisdictions, particularly NSW.

10. Section 30 - control over the import and sale of live native fish.

Recommendation:

**That the NCA be amended to remove control over the import and sale of live native fish used in the restaurant trade.**

11. Section 30 - control over the import and sale of non-indigenous fish.

Recommendation:

**That the provisions concerning the control of live non-indigenous fish be reviewed to determine whether they are appropriate and justified in light of the lack of control in other parts of Australia, especially NSW.**

12. Section 42 - protected native plants

**Recommendation:**

That the list of protected plants be reviewed to delete those species that were included when the Act applied to Jervis Bay and that the nomenclature be brought up to date.

13. Sections 44 and 45 - dealing in protected native plants.

**Recommendation:**

That sections 44 and 45 of the NCA be reviewed with the aim of removing restrictions on the trade of most protected and special protection status plants.

14. Sub-section 45AA-AC, prohibited and controlled organisms

**Recommendation:**

That the type of organisms to be prohibited or controlled under sub-sections 45AA – AC be defined to ensure that it covers all the material that is of concern. For example, parts of genetic material that could be used to modify plants and animals.

[Plant Diseases Act and Pest Plant and Animal Provisions of the Land Act](#)

## **Plant Diseases Act & Subordinate Legislation**

**Restriction 1:**

Restrictions on the introduction into or transport within the ACT of declared plants, insects, pests or diseases.

***Recommendation 1:***

Retain in the interest of public and animal health, and sustainable development.

**Restriction 2:**

Quarantine controls on plants, insects, soil or goods.

***Recommendation 2:***

Retain in the interest of public and animal health, and sustainable development.

**Restriction 3:**

Exemption of any place from the requirements of this Act.

**Recommendation 3:**

Retain in the interest of sustainable development.

**Restriction 4:**

Approval of insecticides.

**Recommendation 4:**

That the provisions as to approval of insecticides (in section 6A and regulations 36 and 37) be repealed.

**Restriction 5:**

Controls on the sale of fruit and vegetables.

**Recommendation 5(a):**

That the fraud prevention provisions (section 8, regulations 5, 18, 23 and 24) be retained in the public interest. Consideration should be given to whether they have been made redundant by fair trading laws.

**Recommendation 5(b):** That regulations 6 be repealed as it imposes unnecessary costs on business.

**Recommendation 5(c):** That regulation 10 be retained as it assists in disease prevention.

**Recommendation 5(d):**

That regulations 8, 9, 12, 13, 15 and 17 be repealed. Consideration should be given to incorporating the grading of various fruit into a code of practice if it is necessary to regulate this area.

**Recommendation 5(e):**

That so much of regulations 7, 11, 12, 13, 14, 16 and 19 that specify labelling requirements be repealed.

**Restriction 6:**

Determination of fruit case dimensions.

**Recommendation 6:**

That Regulations 20 and 25 be repealed as they are not required for the prevention of diseases and/or pests, and are superseded by other laws.

**Restriction 7:**

Neglected trees.

**Recommendation 7:**

Retain in the interest of pest and disease control and sustainable development, but amend to harmonise with the Significant Tree Register proposal.

**Restriction 8:**

Requirements for control of codling moth, fruit fly, aphidae and fungi.

**Restriction 9:**

Restrictions on the management and development of land.