INTRODUCTION

Why does Australia need Competition Policy?

A competitive, flexible economy allows more rapid and less costly adjustment to changes in the domestic and international environment, such as the recent Asian slowdown. It also allows the freeing up of resources as productivity improves. Additional investment, resulting from a responsive, globally-focussed environment, will create employment opportunities.

Competition policy is a critical component of the broader structural reform agenda. It also offers a further means to reduce market transaction costs — principally through a comprehensive program of regulatory reform — and increase the information available to consumers to make informed choices. This improves market responsiveness to consumer preferences and re-enforces other government measures intended to enhance consumer sovereignty.

Effective competition in markets for goods and services provides the main impetus for firms to seek productivity improvements, and ensures that a greater proportion of these gains are distributed in the form of lower product prices rather than retained within firms. This reduces operating costs and prices to business and consumers.

The long term well being of Australians depends significantly on the productivity performance of the economy. Increasing national productivity can boost growth, employment opportunities, export competitiveness and real household incomes. This, in turn, will influence our capacity as a society to provide essential services to the community.

To enable the economy to increase the level of productivity growth, an ongoing commitment to reducing structural rigidities and developing and maintaining a competitive market environment is required. This involves continuing efforts to reduce barriers to market entry and exit, reform anti-competitive regulations and expose government owned businesses to competitive market forces in a competitively neutral manner.

In seeking productivity gains, competition provides a spur to innovation in product design, production processes and management practices. It also encourages a wider range and improved quality of goods and services.

In summary, competition policy encourages the efficient use of Australia's limited resources to the benefit of the community as a whole.

National Competition Policy Framework

To achieve the anticipated productivity gains, it was recognised that competition reform should be undertaken in a timely and comprehensive manner across all levels of government. As a result, in April 1995, the Commonwealth, States and Territories entered into three Inter-Governmental Agreements. These agreements are the *Conduct Code Agreement*; the *Competition Principles Agreement*; and the *Agreement to Implement the National Competition Policy and Related Reforms*.

The commitments embodied in these agreements effectively underpin the National Competition Policy (NCP) in Australia[1]. The NCP reforms perform a mutually reinforcing role with other competition policy initiatives, such as the limitations on anti-competitive conduct established by the *Trade Practices Act 1974* and *Prices Surveillance Act 1983*.

[1] The 1995 Agreements also resulted in the establishment of the National Competition Council (NCC), an inter-jurisdictional body funded by the Commonwealth. The NCC has statutory responsibilities under the Commonwealth *Trade Practices Act 1974* and *Prices Surveillance Act 1983*, as well as specified roles under the Agreements aimed at ensuring the effective introduction of the NCP.

Box 1: Is Competition Policy New?

While the 1995 Intergovernmental Agreements were the first comprehensive inter-jurisdictional attempt to implement competition policy, measures to control anti-competitive behaviour have existed in Australia for some time.

The *Trade Practices Act* (TPA), which was passed in 1974, replaced earlier legislation aimed at protecting the community from the costs of non-competitive conduct. The TPA remains a key element of competition policy. The *Prices Surveillance Act 1983* has similarly been in place for some time.

Many industry specific structural reforms and reforms to the governance arrangements and operating requirements of Commonwealth business enterprises, particularly corporatisation, also preceded these Agreements.

The NCP framework targets particular opportunities for governments to encourage competitive outcomes. These include:

- The review and, if necessary, reform of any legislation which is anti-competitive, with the requirement that anti-competitive legislation to be retained or introduced must be demonstrably in the community interest (**Chapter 1**).

- The implementation of competitive neutrality for all government business activities operating in a contestable market, which requires that such businesses not benefit commercially simply by virtue of their public ownership. For example, they should be liable for the same taxes and charges, rate of return and dividend requirements and regulations as their private sector competitors (**Chapter 2**).

- The structural reform of public monopolies, where their markets are to be opened to competition or they are to be privatised, to ensure they have no residual advantages over potential competitors. For example, as the result of residual regulatory powers (**Chapter 3**).

- The provision of access arrangements to services provided by significant infrastructure facilities (such as electricity grids, airports, and communications networks) that would be uneconomic to duplicate, to encourage competition in

upstream and downstream markets and reduced prices for related products (**Chapter 4**).

- Independent oversight by State and Territory governments of the pricing policies of government business enterprises, to ensure that price rises are not excessive. (The Commonwealth already has prices oversight provisions) (**Chapter 5**).

- The application of the Competition Laws across all jurisdictions, (including the scope for exceptions in certain circumstances), centrally administered by the Australian Competition and Consumer Commission (**Chapter 6**).

- Ensuring commitment to related reforms in the key infrastructure areas of electricity, gas, water and road transport with a view to improving efficiency, implementing nationwide markets and standards, and protecting the environment (**Chapter 7**).

Governments have made significant progress in implementing reform in the three years since NCP commencement. The benefits to the community from this process are now becoming evident, particularly in terms of lower prices to consumers. Some examples are detailed in **Box 2**.

However, it is important to recognise that this is a long term process. Ongoing commitment by all levels of government to effective reform will be necessary to realise significant returns.

Box 2: Some Benefits to Competition Reform

- Under a key competition policy reform commitment, the full National Electricity Market (NEM) commenced in December 1998. The NEM allows electricity to be freely traded between New South Wales, Victoria, South Australia and the Australian Capital Territory. Queensland is also soon to join, following the construction of an interconnector with New South Wales

- As a result of competition, Australian residential electricity prices have fallen by 7 per cent in real terms on average since 1993. This equates to a real reduction of around $45 per year on an average household electricity bill. For those jurisdictions participating in the National Electricity Market, the price savings have been greater, in the order of $60 a year per household.

- Since the advent of open competition on 1 July 1997, the Australian telecommunications market has grown to 28 carriers. This new competitive structure has led to real reductions in prices for consumers. For example, the price of a phone call to the United Kingdom on the Optus network has fallen from 84 cents per minute in June 1997 to 45 cents per minute in June 1999 (based on the least expensive time to call).

- According to a study by the Bureau of Industry Economics, Australia's domestic airfares and freight rates are amongst the cheapest in the world — and these lower airfares are the result of competition reforms and not lower service standards. Real domestic airfares have fallen by 18.4 per cent in the period from September 1990 to June 1998.

The Need for Safeguards

Competition policy is not about the pursuit of competition for its own sake, but creating the environment for effective competition in the interest of efficient resource use and maximum community benefit – with a major factor being lower prices and better choice and quality for consumers.

However, situations may arise where competition does not achieve this outcome (due to market failures) or conflicts with other social objectives. In many instances, reforms will be complemented by a regulatory framework that provides a safety net

against market structures failing to deliver adequate competitive outcomes, where markets are in transition towards competitive structures or to enable the delivery of community service obligations.

Furthermore, there will often be short-term adjustment costs to the reforms — potentially concentrated on specific sectors or geographical regions. While greater than the costs, the benefits usually accrue over the longer term and are more widely spread across the community.

Taken as a whole, the program of reform will ensure a wide distribution of the costs and benefits across the community, with the benefits of one reform often helping to offset the costs of another.

Ultimately, productivity improvements are only realised once the resources have been reallocated to more efficient uses. Any targeted assistance, which may be designed to assist this process, should smooth the path for the adoption and integration of the reforms rather than hinder or distort the desired outcome.

Box : What is the National Competition Policy?

The National Competition Policy (NCP) is part of a broader structural reform program aimed at increasing living standards, productivity, and employment. It involves reducing business costs (including red tape), providing lower prices and greater choice for consumers and more efficient delivery of public services.

The NCP framework enables competition reforms to be undertaken in a structured, transparent and comprehensive manner – seeking to ensure **all the costs and benefits** to the community and the distributional impacts of a particular course of action are identified and made available to decision makers for consideration.

While seeking to encourage more efficient use of resources, particularly in the public sector, the NCP does not:

- mandate the privatisation of government business;
- force contracting out of government services;
- require the end of cooperative marketing by farmers;
- ignore social, regional or environmental considerations; or
- prohibit consideration of transitional adjustment assistance programs.

The Commonwealth's Reporting Requirement

Under the *Competition Principles Agreement*, the Commonwealth is required to publish an annual report outlining its progress toward:

- achieving the review and, where appropriate, reform of all existing legislation that restricts competition by the year 2000 (as outlined in the Commonwealth Legislation Review Schedule); and
- implementing competitive neutrality principles (including allegations of non-compliance).

However, to fully recognise the range of Commonwealth commitments established by the NCP Agreements, all areas of Commonwealth involvement have been reported.[2]

This report formally covers the period 1 July 1997 to 30 June 1998, although more recent information is provided where available.

Commonwealth Inquiries into Competition Matters – 1997-98

The Commonwealth has initiated or participated in a range of processes during 1997-98 intended to clarify the objectives and impacts of the competition policy reforms.

Review of the National Competition Council Annual Report 1996-97

The House of Representatives Standing Committee on Financial Institutions and Public Administration prepared a report entitled *Review of the National Competition Council Annual Report 1996-97*. This report was tabled in Parliament on 29 June 1998.

The sole recommendation arising from the Committee's report was the need to raise community awareness of competition policy issues. In particular, the Committee recommended that Commonwealth, State and Territory Governments and agencies involved in the implementation of the national competition policy devote resources to ensure community understanding and debate about the contents of the policy and its outcomes.

Senate Select Committee inquiry into the Socio-Economic Consequences of National Competition Policy

A Senate Select Committee was established to inquire into the socio-economic consequences of National Competition Policy. The Committee is to report by 30 June 1999.

---

[2] The commitments contained within the NCP Agreements apply to both Commonwealth and State and Territory Governments. This report discusses these commitments from the Commonwealth perspective.

The submissions by the Commonwealth Treasury and the National Competition Council to this inquiry are publicly available.

Productivity Commission inquiry into the Impact of Competition Policy Reforms on Rural and Regional Australia

The Productivity Commission has been provided with a reference by the Commonwealth Government to inquire into the impact of the competition policy reforms on rural and regional Australia.

This process will involve extensive public consultation, through written submissions and a public roundtable process. A draft report is to be released in April 1999, triggering a further round of submissions and public consultations.

The final report is to be provided by 30 August 1999.

National Competition Policy Payments

Under the *Agreement to Implement the National Competition Policy and Related Reforms*, the Commonwealth agreed to make NCP payments to those States and Territories assessed as making satisfactory progress toward implementation of specified competition and related reforms.

These payments represent the States and Territories share of the additional revenue raised by the Commonwealth as a result of effective competition reform, and are worth approximately $16b (up to the year 2005-6).

They comprise three tranches of Competition Payments and the real per capita component of the annual Financial Assistance Grants.

- The first tranche of the Competition Payments commenced in 1997-98, and involved a maximum annual payment of $200 million (in 1994-95 prices).

- The second tranche of the Competition Payments commences in 1999-00, and involves a maximum annual payment of $400 million (in 1994-95 prices).

- The third tranche of the Competition Payments commences in 2001-02, and involves a maximum annual payment of $600 million (in 1994-95 prices).

The *Implementation Agreement* specifies those commitments the States and Territories must meet in order to receive the maximum NCP payment.

The National Competition Council (NCC) is required to assess State and Territory performance in implementing the required reforms prior to the commencement of the three Competition Payments tranche periods — 1 July 1997, 1 July 1999 and 1 July 2001. This assessment forms the basis for determining State and Territory eligibility for payment.

In response to the NCC first tranche assessment, provided on 30 June 1997, the Commonwealth made NCP payments to the States and Territories for the period 1997-98 amounting to $396.2 million.

Payments for 1998-99, the final year of the first tranche period, are subject to a supplementary assessment to be provided to the Commonwealth Treasurer by 1 July 1998. This assessment determines whether the States and Territories have addressed first tranche NCP commitments identified as outstanding in the NCC's initial assessment.

Treasury Internet Site

Various Commonwealth publications relating to NCP matters are available from the Commonwealth Treasury website — http://www.treasury.gov.au

Other relevant sites include the NCC (www.ncc.gov.au), the Productivity Commission (www.pc.gov.au) and the Australian Competition and Consumer Commission (www.accc.gov.au).

1. LEGISLATION REVIEW

1.1 Why is Legislation Review Necessary?

Restrictions imposed on markets by government regulation, for example, through the creation of legislated monopolies or the imposition of particular pricing practices, can be a major impediment to competitive outcomes. Compliance with these regulations can also impose significant costs on business.

In recognition of this, the *Competition Principles Agreement* (CPA) states that legislation (including Acts, enactments, ordinances or regulations) 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 CPA further states that all existing anti-competitive legislation (enacted prior to 1996) should be reviewed against these criteria and modified or repealed where there is no net community benefit to its retention.

This requirement to demonstrate net community benefit also applies to the introduction of new or amended legislation that restricts competition. This has resulted in the emergence of the Commonwealth's regulation impact assessment process (*see* **Section 1.4**).

Importantly, this process provides that legislation that restricts competition may be retained or introduced where it is demonstrably in the public interest. However, recognising the continually changing economic environment and social objectives, such legislation must be reviewed at least every ten years after its initial review or introduction. This requirement also applies to anti-competitive legislation excepted from the review process (*see* **Chapter 6**).

Box 4: When is legislation anti-competitive?

While almost no regulatory activity is completely neutral in its implications for competition, legislation may be regarded as affecting competition where it directly or indirectly[3]:

- governs the entry and exit of firms or individuals into or out of markets;
- controls price or production levels;
- restricts the quality, level or location of goods and services available;
- restricts advertising and promotional activities;
- restricts price or type of inputs used in the production process;
- confers significant costs on business; or
- provides advantages to some firms over others by, for example, sheltering some activities from the pressures of competition.

The objective of the CPA legislation reform program is to remove restrictions on competition that are demonstrated not to be in the interest of the community as a whole. However, following the Prime Minister's policy statement *More Time for Business* (1997), the Commonwealth legislation review requirement was expanded to include the assessment of legislation that imposes costs or confers benefits on business. The aim is to reduce compliance costs and paperwork burden for business.

A critical component of legislative reform is the validity of the review process. To ensure all relevant costs and benefits are recognised, the CPA sets out a range of issues that should be considered in determining the public benefit of any particular piece of legislation. These issues are set out in **Box 5**, and include social, regional and environmental factors.

In many cases, it may be difficult to quantify all the costs and/or benefits of a piece of legislation to the community as a whole. The requirement to identify non-quantifiable

---

[3] Hilmer, F., Rayner, M., and G. Taperell (The Independent Committee of Inquiry into a National Competition Policy) (1993), National Competition Policy, Australian Government Publishing Services, Canberra, p191.

effects to a particular course of action means that these can be explicitly considered in the decision making process, rather than excluded due to the lack of an agreed 'dollar value'.

A clear identification of the costs, benefits and distributional impacts resulting from the removal of a regulation on wider public interest grounds will also assist governments to introduce targeted adjustment mechanisms. Such assistance may be considered necessary to mitigate the impact of transitional costs reform may impose on particular sectors of the community.

Box 5: Assessing the Public Benefit

Without limiting the matters to be taken into account, in assessing the costs and benefits, the following matters should be taken into account:

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

Source: ***Competition Principles Agreement*** (1995), sub-clause 1(3)

Commonwealth compliance with its legislative review requirements in 1997-98 is independently assessed by the Productivity Commission[4] in *Regulation and its Review 1997-98* and the National Competition Council (NCC).

A detailed examination of Commonwealth progress during 1997-98 in the review and reform of anti-competitive legislation in effect when the competition policy

---

[4] This function is undertaken by the Office of Regulation Review, an independent office located within the Productivity Commission.

commitments were introduced is contained in **sections 1.2** and **1.3**, while **section 1.4** examines legislation introduced or amended after 1995 for compliance with regulation impact assessment requirements.

Where Commonwealth legislation is complemented or matched by State or Territory regulation, a co-ordinated 'national review' may be undertaken. Commonwealth participation in national reviews for the period 1997-98 is examined in **section 1.3**.

1.2 Commonwealth Legislation Review Schedule

The Commonwealth Legislation Review Schedule (CLRS) details the Commonwealth's timetable for the review and, where appropriate, reform of all existing legislation that restricts competition by the year 2000.[5]

The original Schedule, prepared in June 1996, listed a total of 98 separate legislative reviews. However, since then, changing circumstances have resulted in some reviews being added, rescheduled or deleted.[6]

A review may be deleted from the Schedule if it is not considered cost effective to undertake — that is, where the competition effects are small relative to the cost of implementing new arrangements. Legislation may also be repealed as a consequence of changes to Government policy.

Any change to the Schedule requires the approval of the Prime Minister, Treasurer and the responsible Portfolio Minister(s). With the reallocation of responsibility for National Competition Policy matters within the Treasury portfolio, the Treasurer's role is now performed by the Minister for Financial Services and Regulation.

The CLRS as at 30 June 1998 is at **Appendix A**.

---

5 A summary of the legislation review programs of all Commonwealth, State and Territory jurisdictions to the year 2000 can be found in the National Competition Council's latest Legislation Review Compendium, published in December 1998.

6 This includes extension of the CLRS to incorporate reviews scheduled on the basis of direct or singificant indirect impacts on business.

Reporting Requirements for Legislation Reviews

The following sections provide information on Commonwealth progress during 1997-98 in meeting its legislation review schedule commitments. Information has been provided largely by the Commonwealth portfolio or agency responsible for the administration of the legislation.

The reviews have been separated to reflect both the scheduled commencement date, and the degree of progress made to date. For each individual review, information is provided on the following:

Complexity of the review and details of the review panel

The priority and importance of the legislation being reviewed varies. Accordingly, the method of review for the legislation takes into account its significance and the extent of expected benefits to reform. More significant pieces of legislation are reviewed by an independent committee of inquiry, the Productivity Commission or the NCC. Where such review costs are not considered warranted, reviews are generally undertaken by a committee of officials.

The ministerial portfolio with current responsibility for the legislation[7], and the commencement date of the review, is also identified.

Terms of reference

The scope and structure of each review is outlined in its terms of reference. Without limiting the terms of reference for each review, the CPA establishes that scheduled reviews should:

- clarify the objectives of the legislation;
- identify the nature of the restriction on competition;
- analyse the likely effect of the restriction on competition and on the economy in general;
- assess and balance the costs and benefits of the restriction; and
- consider alternative means of achieving the same result including non-legislative approaches.

---

[7] In some cases, ministerial responsibility for particular legislation may have changed during the reporting period. Similarly, Department titles referred to in connection with various reviews may differ over time.

The Office of Regulation Review (ORR)[8] is required to approve the terms of reference developed for any scheduled Commonwealth review. To assist this process and to ensure a consistent approach and focus to reviews, the ORR has developed a template terms of reference to be tailored to suit each piece of legislation to be reviewed.[9]

In recognition of the importance of the terms of reference in defining the scope of each review, a copy of each review's terms of reference is included in the progress report on each piece of legislation reviewed.

Extent of public consultation

Public consultation is a required part of all Commonwealth legislation reviews. This obligation was stipulated by the Commonwealth in the release of the CLRS. The NCC has recommended that, to meet this obligation, all reviews should be conducted in an independent, open and transparent way, against clear terms of reference, and in a manner that allows interested parties to participate.

The review terms of reference will set out the minimum public consultation to be undertaken. In the interest of transparent decision making and ensuring the broadest range of views on the matter under consideration are received, this generally involves advertising the review and seeking written submissions on a national basis. There may also be more targeted consultations with specific stakeholders.

In *Regulation and its Review 1997-98* the ORR indicated that, in relation to Commonwealth reviews undertaken to date, consultations had generally been of a high standard.

Review Progress or recommendations and Government response

Further information will be reported depending on the extent of progress in the review. Where the review has been completed, if possible, a summary of the main review recommendations is provided.

The final report of each review is to be made publicly available, although for particularly sensitive reviews this may not occur immediately.

As applicable, a summary of the Government's response to the review recommendations is included.

---

8 *See* footnote 6 and section 1.4 for further information on the responsibilities of the ORR.

9 Productivity Commission (1998), *Regulation and its Review 1997-98*, AusInfo, Canberra, p6.

Table 1 (below) details the progress of those reviews scheduled for commencement in the period to 30 June 1998, and which were not completed prior to 1 July 1997.

Table 1: Progress in Commonwealth Legislation Review and Reform

Reviews Scheduled for 1997-98

Review Complete and Outcomes Announced	Review Complete and Recommendations Being Considered	Review Commenced but Not Complete	Review Not Commenced or Timing Changed
Affirmative Action (Equal Employment Opportunity for Women) Act 1986 National Health Act 1953 (Part 6 & Schedule 1) and Health Insurance Act 1973 (Part 3) Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations Mutual Recognition Act 1992 (national review)	Higher Education Funding Act 1988, Vocational Education and Training Funding Act 1992 and related Acts International Air Services Agreements, International Air Services Commission Act 1992 Australia New Zealand Food Authority Act 1991 (brought forward from 1998-99)	Bankruptcy Act 1986 and Bankruptcy Rules – Trustee Registration Provisions Customs Act 1901, Sections 154-161L (Customs Valuation Legislation) Defense Housing Authority Act 1987 Imported Food Control Act 1992 and Regulations Motor Vehicle Standards Act 1989 National Residue Survey Administration Act 1992 and Related Acts Pig Industry Act 1986 and Related Acts Primary Industries Levies Acts and Related Collection Acts Proceeds of Crime Act 1987 and Regulations (brought forward from 1998-99) Torres Strait Fisheries Act 1984	Anti-dumping Authority Act 1988, Customs Act 1901 Part XVB and Customs Tariff (Anti-dumping) Act 1975 (rescheduled to 1998-99) Broadcasting Services Act 1992, Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992, Radio Licence Fees Act 1964 and Television Licence Fees Act 1964 (rescheduled to 1998-99) Insurance (Agents & Brokers) Act 1984 (rescheduled to 1998-99) Environmental Protection (Nuclear Codes) Act 1978 Export Control Act 1982 – Export Control (unprocessed Wood) Regulations (rescheduled to 1998-99) Occupational Superannuation Standards Regulations Applications Act 1992, Superannuation Entities (Taxation) Act 1987, Superannuation (Financial Assistance Funding) Levy Act 1993, Superannuation Industry (Supervision) Act 1993, Superannuation (Resolution of

Table 1: Progress in Commonwealth Legislation Review and Reform

Reviews Scheduled for 1997-98

		and Related Acts Trade Practices Act 1974 Sub-sections 51(2) and 51(3) (Exception Provisions) Agricultural and Veterinary Chemicals Act 1984 (brought forward from 1998-99) (national review)	Complaints) Act 1993 and the Superannuation Supervisory Levy Act 1991 (rescheduled to 1998-99) Petroleum Retail Marketing Franchise Act 1980 Petroleum Retail Marketing Sites Act 1980 Spectrum Management Agency (SMA) – review of SMA's market based reforms and activities

Reviews Scheduled for 1996, 1996-97

Review Complete and Outcomes Announced	Review Complete and Recommendations Being Considered	Review Commenced but Not Complete	Review Not Commenced or Timing Changed
Aboriginal and Torres Strait Islander Heritage Protection Act 1984 Australian Postal Corporation Act 1989 Customs Tariff Act 1995 – Textiles, Clothing and Footwear Arrangements Duty Drawback (Customs Regulations 129-136B) and TEXCO (Tariff Export Concession Scheme) – Customs Tariff Act 1995, Schedule 4, Item 21, Treatment Code 421 Migration Act 1958 – Sub-classes 120 and 121 (Business Visas) Migration Act 1958 – Sub-classes	International Arbitration Act 1974 Pooled Development Funds Act 1992 Tradesmen's Rights Regulation Act 1946	Aboriginal Land Rights (Northern Territory) act 1976 and Associated Regulation Bills of Exchange Act 1909 Commerce (Imports) Regulations and Customs (Prohibited Imports) Regulations Foreign Investment Policy, Including Associated Regulation Radiocommunications Act 1992 and Related Acts	Migration Act 1958 – Sub-Classes 676 and 686 (Tourist Visas)

560, 562 and 563 (Student Visas) Migration Act 1958 (Part 3 – Migration Agents and Immigration Assistance, and Related Regulations), Migration Agents Registration (Application) Levy Act 1992, Migration Agents Registration (Renewal) Levy Act 1992 Quarantine Act 1908 (in relation to Human Quarantine) Shipping Registration Act 1981 Trade practices (Consumer Product Information Standards) (Care for Clothing and Other Textile Products Labelling) Regulations			

1.2.1 Legislation Scheduled for Review in 1997-98

This section outlines progress in those legislative reviews scheduled to commence in 1997-98. The reviews are grouped according to the extent of progress made.[10]

1.2.1.1 Review Completed and Reform Outcomes Announced.

AFFIRMATIVE ACTION (EQUAL EMPLOYMENT OPPORTUNITY FOR WOMEN) ACT 1986 (Department of Employment, Workplace Relations and Small Business)

REVIEW PANEL

The review of the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* commenced in December 1997.

It was conducted by a five member independent committee of inquiry, chaired by Ms Deanne Bevan, Director of Employee Relations for McDonalds Australia. Other members were Ms Heather Carmody (World Competitive Practices), Mr Brendan McCarthy (Chamber of Commerce and Industry, Western Australia), Ms Norah Breekveldt (Toyota Australia) and Ms Barbara Holmes (Managing Work and Family, Australia).

TERMS OF REFERENCE

In accordance with the Government's decision to review all legislation to determine whether it restricts competition and what net costs it imposes on Australian business, the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*, and the associated regulations, are referred to the independent committee for evaluation and report to commence its activity in 1997-98.

The Committee is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

(a) legislation/regulation should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can not be achieved more efficiently through other means, including non-legislative approaches;

---

[10] Information on progress has been provided by the responsible portfolio department or agency.

(b) in assessing the matters in (a), regard should be had, where relevant, to effects on the welfare and equity, economic and regional development, consumer interests, the competitiveness of business and efficient resource allocation; and

(c) compliance costs and the paperwork burden should be minimised where feasible, particularly for small business.

In undertaking the review, the Committee is to:

- examine those parts of the legislation, and its administration, which have the potential to restrict competition or which impose costs or confer benefits on business;
- advertise nationally and consult with key interest groups and affected parties;
- report on appropriate arrangements for achieving the objectives of the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*; and
- have regard to the analytical requirements for regulation assessment set out in the Competition Principles Agreement and the Government's regulation impact guidelines.

The report of the Committee, which will be publicly available, should:

- identify the nature and magnitude of the problem that the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* seeks to address;
- clarify the objectives of the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*;
- identify whether, and to what extent, the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* restricts competition;
- identify relevant alternatives to the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* including non-legislative approaches such as promoting "best practice";
- analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*, including an examination of the efficacy of the administrative

policy of "contract compliance" in achieving the objectives of the Act, and the alternatives identified;

- identify the different groups likely to be affected by the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* and alternatives;

- examine mechanisms for increasing the efficiency and effectiveness of the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* and arrangements for its administration;

- list the individuals and groups consulted during the review and outline their views; and

- determine any preferred approach option for regulation, if any, in this area in the light of the objectives in (a), (b) and (c).

The Government intends to announce the action which is to be taken within six months of receiving the Committee's report.

PUBLIC CONSULTATION

In formulating the report's findings and recommendations, the Committee consulted widely. Nation-wide press advertisements called for written submissions, of which 180 were received. Public consultations were held in each capital city. Further, peak employer, business, community groups and trade unions were directly contacted, as were state government agencies concerned with labour, women's and/or anti-discrimination issues. Several federal government agencies, representing a broad spectrum of responsibilities, responded to a direct invitation to tender a submission.

REVIEW RECOMMENDATIONS

The review report *Unfinished Business: Equity for Women in Australian Workplaces* was presented to the Minister for Workplace Relations and Small Business on 2 July 1998.

Taking into account information received from submissions, public consultations, surveys, and commissioned and other available research, the Committee found there are still equity issues for women in the workforce that needed to be addressed. Further, it considered that the benefits of the legislation, at both a macro and a business level, outweighed the costs; and that a regulatory model similar to the present legislation was the preferred approach to addressing the issues identified. However,

the Committee also found that the net benefits could be significantly improved by changes to the Act and its administration. It made 19 recommendations to this end.

The more important recommendations in terms of competition policy (particularly with regard to costs to business) were:

- all Australian employers should strive to provide equal employment opportunity for women, and that large employers take actions to eliminate discrimination (employers of less than 100 employees would not be required to take any specific actions) (Recommendation 2);

- a Board be set up, comprising representatives of stakeholder groups, which among other things, would determine whether a company meets criteria for waiving, naming or being made subject to contract compliance sanctions (Recommendation 4);

- educative material, in particular voluntary guidelines, be developed that will provide information on the provisions of the Act. The *Sex Discrimination Act 1984* should be amended to state that compliance with guidelines developed under this Act should be admissible as evidence in cases brought before the Human Rights and Equal Opportunities Commission (Recommendation 5);

- organisations should report on their actions to achieve workplace equity for women, with a minimum mandatory reporting period of two years for compliant organisations, although reporting can be waived for a specified period if it is demonstrated that the employer is undertaking all reasonably practicable actions to eliminate discrimination and promote equity in employment matters (Recommendations 7, 9 and 11);

- organisations should be assessed as either complying or non-complying, rather than using the existing rating system (Recommendation 10); and

- self-identification by
(Recommendation14).

GOVERNMENT RESPONSE

The Government announced its response to the review on 16 December 1998, endorsing its main recommendations. Key changes to be implemented include the establishment of an Advisory Board and the introduction of a simpler reporting system

to reduce the paperwork burden on business. Of those recommendations that were rejected, none were considered to be pro-competitive.

NATIONAL HEALTH ACT 1953 (PART 6 & SCHEDULE 1) AND HEALTH INSURANCE ACT 1973 (PART 3) (Department of Health and Aged Care)

The scheduled review of the *National Health Act 1953* (Part 6 and Schedule 1) and the *Health Insurance Act 1973* (Part 3) was included as part of the (then) Industry Commission inquiry into private health insurance. The final report was published in February 1997.

This review was previously discussed in Commonwealth's *1996-97 Commonwealth Legislation Review Annual Report*.

GOVERNMENT RESPONSE

A number of the critical issues that arose from the Industry Commission inquiry were addressed in the *Health Legislation Amendment Act (No.2) 1998*, which received Royal Assent on 24 April 1998.

The reforms contained in the Act:

engender a positive and competitive environment in the private sector;

reduce some of the cost pressures on health insurance premiums;

make contracting more attractive between the various parties; and

assist consumers by reducing the problems of often large and unexpected out-of-pocket expenses and multiple medical bills.

TRADE PRACTICES (CONSUMER PRODUCTS INFORMATION STANDARDS) (COSMETICS) REGULATIONS (Department of the Treasury)

REVIEW PANEL

The review of the Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations commenced in November 1997.

It was undertaken by a committee of officials, comprising representatives of the Department of Industry, Science and Tourism, the Australian Competition and Consumer Commission and the Department of Health and Family Services.

TERMS OF REFERENCE

1. The Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations are referred to the Consumer Affairs Division of the Department of Industry, Science and Tourism for evaluation and report by 30 June 1998. In line with the Competition Principles Agreement, a Committee of Officials (consisting of the Consumer Affairs (Chair) and Industry Policy Divisions of the Department of Industry, Science and Tourism, the Australian Competition and Consumer Commission and the Department of Health and Family Services), hereafter called the Committee, will undertake the review and focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The Committee is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

a) the Regulation should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation cannot be achieved more efficiently through other means, including non legislative approaches;

b) in assessing matters in (a), regard should be had where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation;

c) the need, if any, to promote efficient regulatory administration and consistency between regulatory regimes in Australia, New Zealand and internationally, for example, through improved co-ordination to eliminate unnecessary duplication; and

d) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to matters in (2), the Committee is to have regard to the analytical requirements for regulation assessment by the

Commonwealth, including those set out in the Competition Principles Agreement. The report of the Committee should:

a) identify the nature and magnitude of the social, environmental or other economic problem(s) that the Cosmetics Regulations seek to address;

b) clarify the objectives of the Cosmetics Regulations;

c) identify whether, and to what extent, the Cosmetics Regulations restrict competition;

d) identify relevant alternatives to the Cosmetics Regulations, including non-legislative approaches;

e) analyse, and, as far as reasonably practical, quantify the benefits, costs and overall effects of the Cosmetics Regulations and alternatives identified in (d);

f) identify the different groups likely to be affected by the Cosmetics Regulations and alternatives;

g) list the individuals and groups consulted during the review and outline their views;

h) determine a preferred option for regulation, if any, in light of the objectives set out in (2); and

i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the Cosmetics Regulations and, where it differs, the preferred option.

4. In undertaking the review, the Committee is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

5. The Committee will submit its recommendations to the Minister for Customs and Consumer Affairs.

6. Within 6 months of receiving the Committee's report, the Government intends to announce what action needs to be taken, after taking advice from the Minister for Customs and Consumer Affairs.

PUBLIC CONSULTATION

The review involved wide consultation with industry, consumer and key stakeholders. The review process included preparation of a discussion paper addressing the terms of reference for public consultation and advertisements in the national press calling for public submissions.

REVIEW RECOMMENDATIONS

The review was completed in June 1998.

Following consideration of public comments, a report was made to the relevant Ministers. The report concluded that the regulation should remain, albeit in less prescriptive terms to reduce the regulatory burden on business. The report was publicly released on 23 July 1998.

GOVERNMENT RESPONSE

The Minister for Customs and Consumer Affairs approved the Committee's recommendation to retain the current regulations with only minor amendment to facilitate international harmonisation of mandatory requirements.

The *Trade Practices (Consumer Product Information Standards) Amendment Regulations* came into effect on 17 December 1998. These require a list of ingredients to be provided on all cosmetic products. The amendments also update the mandatory standard by adopting an international system of nomenclature for cosmetic ingredients developed in the United States and European Union.

This is expected to enhance trade opportunities, boost competition and lower compliance costs as products will not have to be relabelled for the Australian market.

Review Completed, Recommendations under Consideration

HIGHER EDUCATION FUNDING ACT 1988, VOCATIONAL EDUCATION & TRAINING FUNDING ACT 1992 AND ANY OTHER REGULATION WITH SIMILAR EFFECT TO THE HIGHER EDUCATION FUNDING ACT 1988 (Department of Education, Training and Youth Affairs)

REVIEW PANEL

The scheduled review of higher and vocational education funding legislation was subsumed into the Review of Higher Education Financing and Policy (West Review) announced in January 1996.

The review committee comprised Mr Roderick West (Chair), Mr Gary Banks, Prof. Peter Baume AO, Prof. Lachlan Chipman, Dr Doreen Clark, Mr Clem Doherty and Prof. Kwong Lee Dow AM.

TERMS OF REFERENCE

1. The committee will undertake a broad ranging review of the state of Australia's higher education sector, the effectiveness of the sector in meeting Australia's social, economic, scientific and cultural needs, and the developments which are likely to shape the provision of higher education in the next two years.

2. The review committee will develop a comprehensive policy framework for higher education that will allow universities to respond creatively and flexibly to change, and will ensure that the sector meets the needs of students, industry and society in general as these are likely to develop over the next two decades.

3. Within this framework, the review committee will identify options for the financing of higher education teaching and research, and for providing Commonwealth funding to higher education institutions for these purposes.

4. The Government does not wish to limit the scope of the review committee's work in any way, though it expects that the review committee will examine long term developments in the following areas, and the implications of these developments for higher education teaching and research:

- the internationalisation of higher education;
- sources of finance for higher education;
- historical trends and likely future directions in the level and nature of demand for higher education;
- the equality of opportunity to participate in higher education;
- the level and nature of industry demand for higher education graduates and higher education research, and the contribution that graduates and research conducted within higher education institutions makes to the competitiveness of Australian industry;

- the role of research conducted in higher education institutions in the national research and innovation system, and the increasing importance of international links for research conducted in higher education institutions in Australia;

- teaching practice and course content in the context of changing undergraduate and postgraduate students' needs and developments in the knowledge base of disciplines;

- the use of advanced communications technologies in teaching, and in libraries and other teaching and research infrastructure;

- pressures on higher education quality assurance and accreditation processes arising from the development of more diverse higher education sector;

- policy and practice in public sector financing and management, including the increased emphasis on competition, contestability and competitive neutrality principles; and

- the review committee will take account of the requirements of the Commonwealth's legislation review program.

In developing its recommendations, the Government expects that the review committee will pay particular attention to the need to ensure that:

- public funds for higher education teaching and research are used efficiently and effectively, and appropriate accountability arrangements are in place;

- government funding mechanisms and processes encourage diversity between higher education institutions and excellence in teaching and research;

- program and advisory structures for research and development in the higher education sector:

    - maximise the development of higher level skills;

    - maximise the contribution of higher education research to the broader research and innovation system;

    - strengthen Australia's research base and its contribution to Australia's long term sustainable industry competitiveness; and

- facilitate the communication of research results to end users in industry and the community;

- Government funding mechanisms support a national system of higher education, in which it is recognised that universities play a vital role in regional economies;

- there is an appropriate balance between private and public funding for higher education;

- financial, social and geographic factors do not act as a barrier to higher education for appropriately qualified students within Australia;

- higher education institutions are committed to achieving high quality outcomes and to continuous quality improvement;

- the structure and range of higher education courses meets the needs of students and industry;

- the interfaces between the higher education sector and the vocational education and schools sectors operate efficiently and effectively; and

- commercial activities comply with the principles of competitive neutrality.

The review committee will provide a final report to the Minister by December 1997.

PUBLIC CONSULTATION

Submissions from the public were a key input to the review committee's deliberations. In February 1997, an open invitation was extended to interested individuals and organisations to make written submissions to the review. A total of 391 submissions were received by mid October 1997, provided by private individuals as well as a range of organisations representing interest groups and peak bodies. The review committee also undertook to visit and consult with key stakeholders.

A public discussion paper was released, with interested persons given until 5 December 1997 to make further written comments.

REVIEW RECOMMENDATIONS

The deadline for the provision of the final report was extended to March 1998, with the review committee actually reporting to the Minister for Employment, Education, Training and Youth Affairs on 17 April 1998.

The West Review report recommendations did not explicitly address competition principles. However, the following issues of relevance were identified:

- the Government, working with State and Territory Governments, should ensure that consistent criteria and processes exist for recognising university level qualifications offered by providers of higher education, such as 'bachelor degree', and for using the titles 'university' and 'higher education institution' (Recommendation 6);

- the Government, working with State and Territory Governments, should ensure that accreditation arrangements enable private providers of higher education to become self-accrediting bodies with the same powers in this respect as universities which operate under their own acts of parliament (Recommendation 7);

- the capital assets of universities should be liable to the same taxes and charges that apply to private higher education providers, once ownership and control issues are rationalised; and

- as detailed in *stage 4: A lifelong entitlement to post secondary education and training*, students should be allowed use of an 'entitlement to funding' to meet the costs of approved studies or services leading to a post secondary award at an approved private or public post secondary education provider in either the vocational education and training or higher education sectors.

INTERNATIONAL AIR SERVICES AGREEMENTS, INTERNATIONAL AIR SERVICES COMMISSION ACT 1992 (Department of Transport and Regional Services)

REVIEW PANEL

Australia's International Air Services Agreements (ASAs) and the *International Air Services Commission Act 1992* were separately scheduled for review, with the ASAs review to be conducted in 1996-97. The two reviews were subsequently combined and referred to the (then) Industry Commission for inquiry in December 1997.

Australia's international air services are currently conducted within a framework of bilateral air services agreements and arrangements between pairs of countries. There are currently over 3000 such arrangements worldwide, 51 involving Australia. An ASA specifies the terms and conditions under which airlines of the two countries involved can fly to, from, between and beyond each country.

The International Air Services Commission is a statutory body responsible for allocating capacity negotiated under Australia's ASAs, to existing and potential Australian international carriers.

TERMS OF REFERENCE

In undertaking the review the Industry Commission should:

a) identify the current regulatory/legislative framework in which international air services operate, including multilateral as well as bilateral structures and the objectives of the framework:

i) in this context, identify the nature and characteristics of the commercial rights being traded, including reference to airport access as an essential prerequisite to trade in aviation services;

ii) identify the effect on competition in the global market of the bilateral international air services agreement framework;

iii) identify the effect on competition in Australia's existing and potential international aviation markets of Australian policy in relation to bilateral air services agreements;

iv) assess whether the International Air Services Commission (IASC) allocation process provides net benefits to Australia, including reference to the value of provisions designed to favour new entrants;

v) analyse and assess the benefits, costs and overall effects of the international aviation regulatory framework and Australia's approach to negotiating bilateral air services agreements for tourism, consumers, air freight and the aviation industry; and

vi) in doing so, determine whether the approach currently adopted maximises the benefits to Australia possible within the bilateral framework;

b) assess the options for greater liberalisation;

   i) within the context of the bilateral system (including the role that bilateral partners may play in restricting entry); and

   ii) alternatives to the bilateral system; and

c) identify the scope and consequences (costs and benefits and overall effects) for Australia of these options.

The Government will consider the Commission's recommendations and its decisions will be announced as soon as possible after the receipt of the Commission's report.

PUBLIC CONSULTATION

The Industry Commission commenced the consultation process with informal discussions and a request for input from concerned stakeholders. This was followed up with an initial set of hearings in March 1998. In June, the Productivity Commission (formerly the Industry Commission) released a draft report embodying a series of draft recommendations for comment. A round of public hearings into this draft report was held in July 1998.

REVIEW RECOMMENDATIONS

The Productivity Commission submitted its final report to the Treasurer in September 1998. The report recommendations were under embargo at the time of reporting.

Review Commenced but not Completed

BANKRUPTCY ACT 1966 AND BANKRUPTCY RULES – TRUSTEE REGISTRATION PROVISIONS (Attorney-General's Department)

REVIEW PANEL

The review of the provisions of the *Bankruptcy Act 1966*, the Bankruptcy Regulations and the *Bankruptcy (Registration Charges) Act 1997* relating to the registration of private sector bankruptcy trustees commenced in June 1998.

It is being conducted by John Hawkless Consultants Pty Ltd, a consultant appointed by the Insolvency and Trustee Service Australia (a Division of the Commonwealth Attorney-General's Department).

TERMS OF REFERENCE

Division 1 of Part VIII of the *Bankruptcy Act 1966*, which Division provides a scheme for the registration of private sector bankruptcy trustees, Divisions 1, 1A and 2 of Part 8 and Division 15 of the Bankruptcy Regulations, and the *Bankruptcy (Registration Charges) Act 1997* are referred for a report on the following:

- the objectives of the specified legislation and related regulation;
- identify any restrictions on competition, and any costs to and benefits for business;
- analyse the likely effect of the restrictions on competition and the economy generally;
- assess whether the objectives of the legislation/regulation can only be achieved by restricting competition;
- consider the impacts, costs and benefits of alternative means for achieving the same result, including non-legislative approaches;
- determine a preferred option for regulation, if any, in light of the analysis undertaken for this review; and
- examine mechanisms to increase the efficiency of any referred regulation, including minimising the cost of compliance and paper burden on small business.

This review should note that the restriction on competition should be retained only if the benefits to the community as a whole outweigh the costs, and if the objectives of the legislation can only be achieved by restricting competition.

In undertaking the review, the reviewer is to consult widely with key interest groups and interested or affected parties, and publish a report.

The review and report is to have regard to the requirements for regulation assessment as outlined in the Government endorsed publication “A Guide to Regulation”.

The consultant is to complete the review and report within 5 months of being appointed.

PUBLIC CONSULTATION

The review process principally involves consultation with key stakeholders such as registered trustees and credit providers and, through peak bodies, other insolvency practitioners and financial counsellors. This process is well advanced. Submissions from the public have been invited.

CUSTOMS ACT 1901, SECTIONS 154-161L (CUSTOMS VALUATION LEGISLATION) (Attorney-General's Department)

REVIEW PANEL

The review of sections 154 to 161L of the *Customs Act 1901* formally commenced in June 1998. It is being conducted by a taskforce of officials.

These sections were enacted to satisfy two principal objectives:

- to establish legally binding rules providing the basis for determining the customs value of all goods imported into Australia; and

- to provide the mechanism for Australian implementation of the provisions of the Agreement on *Implementation of Article VII of the General Agreement on Tariffs and Trade* (the Customs Valuation Agreement).

All importers are required to comply with the valuation legislation and, therefore, incur some cost in doing so. These costs may affect the competitiveness of importers relative to domestic producers, and the competitiveness of firms using imported inputs relative to those using domestic inputs. The compliance cost burden may also differ between large and small importers. To the extent that the costs of compliance are greater than they need to be, the competitiveness of these firms may be affected unduly with flow on efficiency costs for the economy as a whole.

TERMS OF REFERENCE

1. The Customs Valuation legislation (section 154 to section 161L of the Customs Act 1901 – "the legislation") is referred to a Taskforce of Officials for evaluation and report by 20 February 1999. The Taskforce is to focus on those parts of the legislation which affect competition, or which impose costs or confer benefits on business.

2. The Taskforce of Officials is to take into account the following objectives:

a) the legislation should be retained in its present form only if the benefits to the community as a whole outweigh the costs and if the objectives of the legislation cannot be achieved more efficiently through other means, including non-legislative approaches;

b) in assessing the legislation, regard should be had, where relevant, to the effects of the legislation on welfare and equity, consumer interests, the competitiveness of business including small business, and efficient resource allocation;

c) the need to promote consistency between regulatory regimes and efficient regulatory administration, through improved coordination to eliminate unnecessary duplication;

d) compliance costs and paper work burden on business, and in particular on small business, should be reduced where feasible; and

e) Australian compliance with the World Trade Organisation Agreement on Customs Valuation.

3. In making assessments in relation to matters in (2), the Taskforce of Officials should have regard to the requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The report of the Taskforce should:

a) identify the nature and extent of the matters that the legislation seeks to address, and clarify the objectives of the legislation;

b) identify whether, and to what extent, the legislation impacts on competition;

c) examine the effects of the legislation on business, taking into account the needs and legitimate expectations of businesses in regard to government regulation;

d) examine the relationship between the elements of Australia's customs regulatory regime and the relationship between the customs valuation regime and other regulation affecting importers;

e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the legislation and any identified alternative means

of compliance with the WTO Agreement on Customs Valuation, taking into account relevant developments in world trade;

f) identify groups likely to be affected by the legislation and any proposed alternative means of regulation;

g) list the individuals and groups consulted during the review and outline their views; and

h) recommend a preferred course of action.

4. In undertaking the review, the Taskforce of Officials is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

Within four months of receiving the Taskforce of Officials' report, the Government intends to announce what action is to be taken, after obtaining advice from the Ministers for Industry, Science and Tourism and Customs and Consumer Affairs and, where appropriate, after consideration by Cabinet.

DEFENCE HOUSING AUTHORITY ACT 1987 (Department of Defence)

REVIEW PANEL

The review of the *Defence Housing Authority Act 1987* formally commenced in June 1998. It is being conducted by officials from within the Department of Defence.

TERMS OF REFERENCE

2. The *Defence Housing Authority Act* is referred to the Department of Defence for evaluation and report by 30 September 1998. The Department of Defence is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

3. The Department of Defence is to report on the appropriate future arrangements for this legislation taking into account the following objectives:

a) Legislation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation can only be achieved by restricting competition.

b) In assessing the matters in (a), regard should be had, where relevant to effects on welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation.

c) Compliance costs, paperwork and the work burden on small business should be reduced where feasible.

4. In making assessments in relation to matters in (2), the Department of Defence is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The Department's report should:

a) identify the nature of the social, environmental or other economic problem the Defence Housing Authority seeks to address;

b) clarify the objectives of the *Defence Housing Authority Act* and identify whether, and to what extent, the *Defence Housing Authority Act* restricts competition;

c) identify relevant alternatives to the *Defence Housing Authority Act*, including non-legislative approaches;

d) analyse, and as far as reasonably practical, quantify the benefits, costs and overall effects of the *Defence Housing Authority Act* and the alternatives identified in (c);

e) identify the different groups likely to be affected by the *Defence Housing Authority Act* and other alternatives;

f) list the individuals and groups consulted during the review and outline their views, or the reasons why consultation was inappropriate;

g) determine a preferred option for regulation, if any, in light of the objectives set out in (2); and

h) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the *Defence Housing Authority Act* and, where it differs, the preferred option.

5. In undertaking the review, the Department of Defence is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

6. Within six months of receiving the Department of Defence report, the Commonwealth intends to announce what action is to be taken, after obtaining advice from the Minister, and where appropriate, after consideration by Cabinet.

IMPORTED FOOD CONTROL ACT 1992 AND REGULATIONS (Department of Agriculture, Fisheries and Forestry)

REVIEW PANEL

The review of the *Imported Food Control Act 1992* and associated regulations commenced in March 1998.

It is being conducted by an review committee, chaired by Dr C Tanner, Associate Dean, Department of Agriculture, University of Sydney. Other committee members are Ms E Flynn (Acting General Manager, Australian and New Zealand Food Authority), Mr A Beaver (Secretary, Food and Beverage Importers Association) and Dr A Carroll (Acting National Manager, Animal and Plant Programs, Australian Quarantine and Inspection Service).

This Act sets up the Imported Food Inspection Program, which aims to ensure that imported food is safe for consumption.

TERMS OF REFERENCE

1. The *Imported Food Control Act* 1992 (the Act), and associated regulations, are referred to the Review Committee (the Committee) for evaluation and report by 31 August 1998. The Committee is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The Committee is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

a) Legislation/regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can only be achieved by restricting competition. Alternative approaches which may not restrict competition include co-regulation, quasi-regulation and self regulation.

b) In assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation.

c) The need to promote consistency between regulatory regimes and efficient regulatory administration, through improved coordination to eliminate unnecessary duplication.

d) Compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the Committee is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The report of the Committee of Officials should:

a) identify the nature and magnitude of the social, environmental or other economic problem(s) that the Act seeks to address;

b) clarify the objectives of the Act;

c) identify whether, and to what extent, the Act restricts competition;

d) identify relevant alternatives to the Act, including non-legislative approaches;

e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the Act and alternatives identified in (d);

f) identify the different groups likely to be affected by the Act and alternatives;

g) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate;

h) determine a preferred option for regulation, if any, in light of objectives set out in (2); and

i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the Act and, where it differs, the preferred option.

4 In undertaking the review, the Committee is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

5. Within 6 months of receiving the Committee's report, the Government intends to announce what action is to be taken, after obtaining advice from the Minister and where appropriate, after consideration by Cabinet.

PUBLIC CONSULTATION

A call for submissions was advertised nationally on 1 May 1998, with a closing date of 5 June 1998. Thirty submissions were received. There has also been extensive consultation with stakeholders (individual firms, industry peak bodies, consumers, experts and government agencies), comprising individual and group meetings and site visits.

REVIEW PROGRESS

A draft report is being completed for release to stakeholders for comment.

MOTOR VEHICLE STANDARDS ACT 1989 (Department of Transport and Regional Services)

REVIEW PANEL

The review of the *Motor Vehicle Standards Act 1989* commenced in December 1997.

It is being undertaken by a taskforce of officials, headed by the Federal Office of Road Safety with representatives from the Department of Industry, Science and Resources, the Australian Customs Service, the National Road Transport Commission and Environment Australia.

An independent reference committee is assisting the review process by ensuring the taskforce's work is independent, strategic and effective by reflecting as broadly as possible the views of stakeholders. The reference committee comprises Mr Roger Mauldon (former Industry Commissioner), Mr Don Dunoon (former Chief Engineer

of Nissan Australia Ltd) and Mr Lachlan McIntosh (Chief Executive of the Australian Automobile Association).

This Act provides the mechanism for setting national safety, emissions and anti-theft standards for road vehicles supplied to the Australian market.

TERMS OF REFERENCE

The *Motor Vehicle Standards Act 1989*, with its associated regulations, determinations and administrative arrangements (the Legislation), except for the technical aspects of the Australian Design Rules which are subject to a separate review, is referred to the Task Force of inter-governmental Officials (the Task Force).

The Task Force, under the guidance of an Independent Reference Committee, is to review and report on the appropriateness of the legislation and its effectiveness and efficiency in improving vehicle safety, emissions and anti-theft standards and recommend to Government any changes that should occur.

The Task Force is to ensure, to the extent possible, that any matters arising from the Review of the Australian Design Rules are taken into account in the review of the legislation.

A. The Task Force is to assess the appropriateness, effectiveness and efficiency of the Legislation and, in particular, is to assess and report on:

- the objectives of the Legislation and the extent to which those objectives remain appropriate, including the nature and magnitude of the problem which the Legislation seeks to address;
- the costs and benefits to the community and industry of the Legislation in achieving its objectives;
- any restrictions on competition that the Legislation imposes, including the costs and benefits of those restrictions on the economy generally;
- the impact the Legislation has on safety, the environment, equity, health, regional development, consumer interests or business competitiveness;
- the degree to which the Legislation, operating in conjunction with the *National Road Transport Commission Act 1991* and other

Commonwealth, State and Territory legislation, has been effective in preventing non-compliant or unsafe road vehicles entering the market;

- the effectiveness and efficiency of the Low Volume Manufacture Scheme, in terms of ensuring vehicle safety, emissions compliance and reducing compliance costs for imports of enthusiasts' or specialist vehicles supplied to the Australian market in small numbers;

- the current administrative arrangements, including the effectiveness and efficiency of these arrangements in relation to vehicle standards and client service;

- the level of compliance costs for industry and regulatory costs for governments, the impact on small business and ways to reduce the compliance and paperwork burden; and

- the current cost recovery arrangements and the extent, if any, of cross subsidy between and within industry sectors and the relevance of charging practices to the services carried out for each sector.

B. The report of the Task Force is to cover the matters referred to in paragraph A and in addition is to identify, assess and report on:

- the costs and benefits to the community and industry of alternative arrangements, including non-regulatory arrangements, for establishing and ensuring compliance with appropriate vehicle standards;

- the costs and benefits to the community and industry, including impacts on trade, of harmonising Australian vehicle standards with international vehicle regulation and of maintaining some unique Australian vehicle standards; and

- the preferred approach for meeting future vehicle standards requirements.

C. In assessing future options and preferred arrangements, the review is to have regard to the National Competition Principles Agreement and a range of relevant matters, including:

- measures to improve the effectiveness of current arrangements, taking account of the proposed Road Vehicle Certification System, alternatives to that scheme and client service charters;

- the role of the Low Volume Manufacture Scheme within the overall vehicle certification and compliance scheme;

- the intention that arrangements minimise regulatory requirements, having regard to costs and benefits to the community as a whole; and

- current and likely future developments in:

  – international safety regulation, including approaches in place and under consideration in the United Nations — Economic Commission for Europe, Japan and other Asian markets, Europe, North America and New Zealand;

  – emissions control and environment protection, both overseas and in Australian jurisdictions;

  – anti-theft standards and measures being proposed by manufacturers, law enforcement agencies and consumer groups in Australia and overseas; and

  – other future requirements.

D. The review is to consider:

- changes in Government policies impinging on the industry;

- current and emerging industry trends and practices, including standardisation of safety features and components;

- the relationship between Commonwealth controls imposed on road vehicles first provided to the market and in-service vehicle standards principally controlled by the States;

- the improving levels of vehicle safety, vehicle emissions and anti-theft controls in vehicles manufactured in Australia and overseas;

- the findings of Australian and international reviews and expert reports on motor vehicle safety standards, emission controls and anti-theft devices; and

- current and potential arrangements for cost recovery.

E. In undertaking the review the Task Force is to:

- advertise nationally for submissions;

- consult with key stakeholders, interest groups and affected parties;

- list individuals and groups consulted during the review and outline their views; and

- publish a report of its findings at the time of the Government's decision on its recommendations or earlier.

PUBLIC CONSULTATION

As a result of advertisements in the national press following the announcement of the review in December 1997 by the Minister for Transport and Regional Development and the circulation of a discussion paper to 3000 stakeholders, 57 submissions were made to the review. The taskforce also met with a number of key stakeholders representing a broad range of interests.

REVIEW PROGRESS

The taskforce is currently preparing a draft report, which it aims to finalise with the reference committee and forward to the Minister in early 1999.

NATIONAL RESIDUE SURVEY ADMINISTRATION ACT 1992 AND RELATED ACTS (Department of Agriculture, Fisheries and Forestry)

REVIEW PANEL

The review of *the National Residue Survey Administration Act 1992* and related Acts commenced in June 1998.

It is being conducted by a committee of officials, composed of representatives of the Department of Industry, Science and Resources, the Attorney-General's Department and the National Registration Authority.

The National Residue Survey manages monitoring programs for chemical residues in many Australian agricultural food commodities. The legislation puts in place statutory arrangements under which the National Residue Survey Trust Account can operate on a full cost recovery basis.

TERMS OF REFERENCE

1. The *National Residue Survey Administration Act* 1992 (NRS Administration Act), and associated legislation, will be referred to a Committee of Officials for evaluation and report by 30 November 1998. The Committee of Officials is to focus on the objectives of the legislation and on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The Committee of Officials is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

a) legislation/regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can only be achieved by restricting competition. Alternative approaches which may not restrict competition include co-regulation, quasi-regulation and self regulation;

b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation;

c) the need to promote consistency between regulatory regimes and efficient regulatory administration, through improved coordination to eliminate unnecessary duplication; and

d) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the Committee of Officials is to have regard to the analytical requirements for regulation assessment by

the Commonwealth, including those set out in the Competition Principles Agreement. The report of the Committee of Officials should:

a) identify the nature and magnitude of the social, environmental or other economic problem(s) that the NRS Administration Act and associated legislation seeks to address;

b) clarify the objectives of the NRS Administration Act and associated legislation;

c) identify whether, and to what extent, the NRS Administration Act and associated legislation restricts competition;

d) identify relevant alternatives to the NRS Administration Act and associated legislation, including non-legislative approaches;

e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of NRS Administration Act and associated legislation and alternatives identified in (d);

f) identify the different groups likely to be affected by the NRS Administration Act and associated legislation and alternatives;

g) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate;

h) determine a preferred option for regulation, if any, in light of objectives set out in (2); and

i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the NRS Administration Act and associated legislation and, where it differs, the preferred option.

4 In undertaking the review, the Committee of Officials is to consult with key interest groups and affected parties, and publish a report.

5. Within 3 months of receiving the Committee of Officials report, the Bureau of Resource Sciences intends to announce what action is to be taken, after obtaining advice from the Minister.

PUBLIC CONSULTATION

The National Residue Survey (NRS) Secretariat has sent letters to peak industry bodies that have an NRS Program and to other interested groups. Notification of the review appeared in the national press on 8 August 1998.

PIG INDUSTRY ACT 1986 AND RELATED ACTS (Department of Agriculture, Fisheries and Forestry)

REVIEW PANEL

The review of the *Pig Industry Act 1986 and Pig Industry (Transitional Provisions) Act 1986* commenced in June 1998.

It is being conducted by a committee of officials, composed of representatives of the Department of Agriculture, Fisheries and Forestry, the Australian Bureau of Agricultural and Resources Economics and the Department of Industry, Science and Resources.

This legislation establishes the Australian Pork Corporation, whose functions include improving the production, consumption, promotion and marketing of pigs and pork both in Australia and overseas.

TERMS OF REFERENCE

1. The *Pig Industry Act 1986* and *Pig Industry (Transitional Provisions) Act 1986* are referred to the Committee of Officials for evaluation and report by 31 January 1999. The Committee of Officials is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The Committee of Officials is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

   a) legislation/regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can only be achieved by restricting competition. Alternative approaches which may not restrict competition include co-regulation, quasi-regulation and self regulation;

   b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and

safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation;

c) the need to promote consistency between regulatory regimes and efficient regulatory administration, through improved co-ordination to eliminate unnecessary duplication; and

d) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the Committee of Officials is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The report of the Committee of Officials should:

a) identify the nature and magnitude of the social, environmental or other economic problem(s) the *Pig Industry Act 1986* and *Pig Industry (Transitional Provisions) Act 1986* seek to address;

b) clarify the objectives of *the Pig Industry Act 1986* and *Pig Industry (Transitional Provisions) Act 1986*;

c) identify whether, and to what extent, the *Pig Industry Act 1986* and *Pig Industry (Transitional Provisions) Act 1986* restrict competition;

d) identify relevant alternative to the *Pig Industry Act 1986* and *Pig Industry (Transitional Provisions) Act 1986* including non-legislative approaches;

e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the *Pig Industry Act 1986* and *Pig Industry (Transitional Provisions) Act 1986* and alternatives;

f) identify the different groups likely to be affected by the *Pig Industry Act 1986* and *Pig Industry (Transitional Provisions) Act 1986* and alternatives;

g) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate;

h) determine a preferred option for regulation, if any, in light of objectives set out in (2); and

i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the *Pig Industry Act 1986* and *Pig Industry (Transitional Provisions) Act 1986* and, where it differs, the preferred option.

4. In undertaking the review, the Committee of Officials is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

5. Within 6 months of receiving the Committee of Officials report, the Government intends to announce what action is to be taken, after obtaining advice from the Minister and, where appropriate, after consideration by Cabinet.

PUBLIC CONSULTATION

A call for submissions was advertised nationally on 22 August 1998, with a closing date of 9 October 1998. Three submissions were received (all from industry organisations or associations).

PRIMARY INDUSTRIES LEVIES ACTS AND RELATED COLLECTION ACTS

(Department of Agriculture, Fisheries and Forestry)

REVIEW PANEL

The review of the Primary Industries Levies Acts and related collection Acts commenced in June 1998.

It is being conducted by a committee of officials, composed of representatives of the Department of Agriculture, Fisheries and Forestry and the Department.

This legislation authorises the collection of statutory levies imposed on primary industries under separate legislation for specified purposes (for example, research and development, promotion, statutory marketing authorities, National Residue Survey, capital raising) and provides administrative arrangements for levy collection.

The review is operating closely and cooperatively with the review of legislation relating to the National Residue Survey Administration (see page 47).

TERMS OF REFERENCE

1. The Primary Industries Levies Acts and related Collection Acts, and associated regulations, are referred to the Committee of Officials for evaluation and report by 31 December 1998. The Committee of Officials is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The Committee of Officials is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

a) legislation/regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can only be achieved by restricting competition. Alternative approaches which may not restrict competition include co-regulation, quasi-regulation and self regulation;

b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation;

c) the need to promote consistency between regulatory regimes and efficient regulatory administration, through improved coordination to eliminate unnecessary duplication; and

d) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the Committee of Officials is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The report of the Committee of Officials should:

a) identify the nature and magnitude of the social, environmental or other economic problem(s) that the Primary Industries Levies Acts and related Collection Acts seeks to address;

b) clarify the objectives of the Primary Industries Levies Acts and related Collection Acts;

c) identify whether, and to what extent, the Primary Industries Levies Acts and related Collection Acts restricts competition;

d) identify relevant alternatives to the Primary Industries Levies Acts and related Collection Acts, including non-legislative approaches;

e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the Primary Industries Levies Acts and related Collection Acts and alternatives identified in (d);

f) identify the different groups likely to be affected by the Primary Industries Levies Acts and related Collection Acts and alternatives;

g) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate;

h) determine a preferred option for regulation, if any, in light of objectives set out in (2); and

i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the Primary Industries Levies Acts and related Collection Acts and, where it differs, the preferred option.

4. In undertaking the review, the Committee of Officials is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

5. Within 6 months of receiving the Committee of Officials report, the Department of Primary Industries and Energy intends to announce what action is to be taken, after obtaining advice from the Minister, and where appropriate, after consideration by Cabinet.

PUBLIC CONSULTATION

The Committee has identified key stakeholders who will be asked to provide input into the review. The review was advertised nationally on 31 October 1998. The initial closing date of 30 November has been extended.

TORRES STRAIT FISHERIES ACT 1984 AND RELATED ACTS (Department of Agriculture, Fisheries and Forestry)

The review of the *Torres Strait Fisheries Act 1984* and related acts commenced in February 1998.

It is being conducted by a committee of officials, composed of representatives of the Island Coordinating Council, the Torres Strait Regional Authority and Torres Strait Fisheries.

This legislation regulates all fishing within the Australian jurisdiction of the Torres Strait Protected Zone established by the Torres Strait Treaty between Australian and Papua New Guinea. It provides the powers for the Commonwealth to undertake fisheries management in the Torres Strait Protected Zone, the mechanism for the recovery of the Commonwealth's costs and the imposition and collection of a research and development levy.

TERMS OF REFERENCE

1. The *Torres Strait Fisheries Act 1984* and related Acts, and associated regulations, are referred to the Committee of Officials for evaluation and report by 31 July 1998. The Committee of Officials is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The Committee of Officials is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

a) legislation/regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can only be achieved by restricting competition. Alternative approaches which may not restrict competition include co-regulation, quasi-regulation and self regulation;

b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation;

c) the need to promote consistency between regulatory regimes and efficient regulatory administration, through improved co-ordination to eliminate unnecessary duplication; and

d) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the Committee of Officials is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the *Competition Principles Agreement*. The report of the Committee of Officials should:

a) identify the nature and magnitude of the social, environmental or other economic problem(s) the *Torres Strait Fisheries Act 1984* and related Acts seeks to address;

b) clarify the objectives of the *Torres Strait Fisheries Act 1984* and related Acts;

c) identify whether, and to what extent, the *Torres Strait Fisheries Act 1984* and related Acts restricts competition;

d) identify relevant alternative to the *Torres Strait Fisheries Act 1984* and related Acts, including non-legislative approaches;

e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the *Torres Strait Fisheries Act 1984* and related Acts and alternatives;

f) identify the different groups likely to be affected by the *Torres Strait Fisheries Act 1984* and related Acts and alternatives;

g) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate;

h) determine a preferred option for regulation, if any, in light of objectives set out in (2); and

i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the *Torres Strait Fisheries Act 1984* and related Acts and, where it differs, the preferred option.

4. In undertaking the review, the Committee of Officials is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

5. Within 6 months of receiving the Committee of Officials report, the Government intends to announce what action is to be taken, after obtaining advice from the Minister and where appropriate, after consideration with Cabinet.

REVIEW PROGRESS

The draft of the final report is currently being considered by committee members.

TRADE PRACTICES ACT 1974 – SUB-SECTIONS 51(2) AND 51(3) EXCEPTION PROVISIONS (Department of the Treasury)

REVIEW PANEL

The review of sub-sections 51(2) and 51(3) of the *Trade Practices Act 1974* commenced in June 1998.

It is being conducted by the National Competition Council.

Sub-sections 51(2) and 51(3) of the *Trade Practices Act 1974* (TPA) provide for exemptions for a variety of activities concerning intellectual property rights, employment regulations, export arrangements and approved standards from many of the competition laws contained within Part IV of the TPA.

This part prohibits a number of anti-competitive trade practices including: anti-competitive agreements and exclusionary provisions; secondary boycotts; misuse of market power; exclusive dealing; resale price maintenance; anti-competitive price discrimination; and, mergers that would have the effect or likely effect of substantially lessening competition in a substantial market.

Under the *Conduct Code Agreement*, if the Commonwealth wishes to modify sections 51(2) and 51(3) of the TPA it will be necessary to have held prior consultations with the States and Territories, and to obtain a majority of votes of the governments in support of the amendment.

TERMS OF REFERENCE

I, PETER COSTELLO, hereby in accordance with the Commonwealth Government's Legislation Review Schedule, refer to the National Competition Council subsections 51(2) and 51(3) (exemption provisions) of the *Trade Practices Act 1974 (TPA)* for inquiry and report within nine months of receipt of this reference.

2. To meet the requirements of the Competition Principles Agreement (CPA) legislation/regulation which restricts competition should only be retained if the benefits to the community as a whole outweigh the costs, and if the objectives of the legislation/regulation cannot be achieved more efficiently through other means, including non-legislative approaches.

3. In undertaking this inquiry the Council should have regard to:

(a) relevant Federal and State industrial relations legislation and international agreements relating to labour that recognise collective bargaining;

(b) the common law doctrine of restraint in relation to restrictive covenants pertaining to employment, partnerships, and the protection of goodwill in the sale of a business;

(c) standards made by the Standards Association of Australia;

(d) the Government's obligations under intellectual property treaties and conventions arising from Australia being a signatory to various International Intellectual Property Agreements and Conventions, including the World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights;

(e) Australian intellectual property legislation including the *Copyright Act 1968*, the *Designs Act 1906*, the *Patents Act 1990*, the *Trade Marks Act 1995*, the *Circuit Layouts Act 1989* and the *Plant Breeder's Rights Act 1994*;

(f) other nations' experience with provisions similar to s51(2) and s51(3) of the TPA (i.e. provisions that provide/allow for specific exemptions from the application of general competition laws);

(g) consequential effects that the exemption provisions have through the Competition Code in each State and Territory; and

(h) any other matters the Council considers relevant to this inquiry.

4. The Council is to have regard to the analytical requirements for regulation assessment by all Australian governments set out in the CPA. Without limiting the scope of the reference, the final report from the Council should:

(a) identify the nature and, as far as reasonably practical, the magnitude of the social and economic problems that subsections 51(2) and 51(3) (exemption provisions) of the TPA seek to address;

(b) clarify the objectives of the exemption provisions and determine whether these objectives continue to be relevant;

(c) identify whether, and to what extent, the exemption provisions allow certain individuals/corporations to engage in specific anti conduct that may otherwise be prohibited by the general prohibitions in Part IV of the TPA;

(d) identify relevant alternatives to the exemption provisions, including non-legislative approaches;

(e) analyse, and, as far as reasonably practical, quantify the benefits, costs and overall effects of the exemption provisions and alternatives identified in (d) on the Australian economy;

(f) list the individuals and groups that provided written submissions and/or were consulted during the review and take into account their views;

(g) determine a preferred option for regulation — i.e. whether the exemption provisions should be abolished, modified or maintained; and

(h) advise on possible mechanisms for monitoring and reviewing any changes to the exemption provisions after the Government's announced response.

5. In undertaking the review, the Council is to advertise nationally, take written submissions, consult with key interest groups and affected parties, and release a draft report or options paper for comment prior to a final report.

6. Upon receipt of the Council's final report, the Government will consider the recommendations made and announce what action is to be taken as soon as possible.

PUBLIC CONSULTATION

In undertaking the review, interested parties have had two opportunities to put forward their views. First, in response to the issues paper released in June 1998 and, secondly, to the draft report and recommendations released on 11 November 1998.

-competitive

Review not Commenced

ENVIRONMENTAL PROTECTION (NUCLEAR CODES) ACT 1978 (Department of Health and Aged Care)

In August 1997, the Government agreed to establish of a new agency, the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), to regulate Commonwealth places and undertakings in relation to radiation protection and nuclear safety.[11] In this context, it also agreed that the *Environmental Protection (Nuclear Codes) Act 1978* and associated codes should be reviewed by an inter committee.

This committee recommended that the *Environmental Protection (Nuclear Codes) Act 1978* should be abolished as the codes will, in the future, be overseen by ARPANSA.

The Department of Health and Family Services wrote to the Office of Regulation Review on 8 August 1998, advising that it should liaise with the new agency, once established, concerning the need, if any, to proceed with a review of the Act.

PETROLEUM RETAIL MARKETING SITES ACT 1980 AND PETROLEUM RETAIL MARKETING FRANCHISE ACT 1980 (Department of Industry, Science and Resources)

Following a 1994 review by the (then) Industry Commission, and a 1996 review by the ACCC, on 20 July 1998, the Government announced its intention the repeal the *Petroleum Retail Marketing Sites Act 1980* and the *Petroleum Marketing Franchise Act 1980*.

A joint statement by the Treasurer and the (then) Minister for Industry, Science and Tourism in December 1996, following receipt of the ACCC report, indicated that the Government would be disposed towards the removal of these Acts once oil companies, distributors and retailers reach agreement on a new Oilcode and appropriate Code of Conduct. These matters are currently being negotiated.

---

[11] Legislation formally establishing ARPANSA came into force on 5 February 1999.

SPECTRUM MANAGEMENT AGENCY (SMA) – REVIEW OF SMA'S MARKET-BASED REFORMS AND ACTIVITIES (Department of Communications, Information Technology and the Arts)

Development of terms of reference for the review of the Spectrum Management Agency's (now Australian Communications Authority) market based reforms and activities has been delayed pending the outcome of the review of the *Radiocommunications Act 1992* currently being conducted.

Legislation Brought Forward for Review in 1997-98

This section details progress in legislation reviews originally scheduled for later review but subsequently brought forward for review in 1997-98.

AUSTRALIA NEW ZEALAND FOOD AUTHORITY ACT 1991 (Department of Health and Aged Care)

REVIEW PANEL

The review was originally scheduled for 1998-99 but was brought forward to coincide with the broader Food Regulation Review, undertaken by the Food Regulation Review Committee (*see* page 133).

TERMS OF REFERENCE

1. The *Australia New Zealand Food Authority Act 1991* (the Act) is referred to the Food Regulation Review Committee for evaluation and report by 30 June 1998. The Food Regulation Review Committee is to focus on those parts of the Act which restrict competition, or which impose costs or confer benefits on business. (The Food Standards Code is being reviewed over a five year period ending in December 1999 and this review will be expanded (with separate terms of reference) to address the national competition principles.)

2. The Food Regulation Review Committee is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

   a) legislation/regulation should be retained only if the benefits to the community as a whole outweigh the costs, and if the objectives of the legislation/regulation can not be achieved more efficiently through other means, including non-regulatory approaches;

b) in assessing the matters in (a), regard should be had, where relevant, to effects on public health and safety, the environment, welfare and equity, occupational health and safety, economic development, consumer interests, the competitiveness of business including small business, efficient resource allocation and international obligations; and

c) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the Food Regulation Review Committee shall apply the legislation review principles incorporated in the *Competition Principles Agreement* and shall have regard to the analytical requirements for regulation assessment applied by the Commonwealth. The report of the Food Regulation Review Committee should:

a) identify the nature and magnitude of the social, environmental or other economic problem(s) that the Act seeks to address;

b) clarify the objectives of the Act;

c) identify whether, and to what extent, the Act restricts competition;

d) identify relevant alternatives to the Act, including non-legislative approaches;

e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of Act and alternatives identified in (d);

f) identify the different groups likely to be affected by the Act and its alternatives;

g) list the individuals and groups consulted during the review and outline their views;

h) determine a preferred option(s) for regulation, if any, in light of objectives set out in (2); and

i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the Act and, where it differs, the preferred option.

4. In undertaking the review, the Food Regulation Review Committee is to advertise in Australia and New Zealand, consult with key interest groups and affected parties, and publish a report.

5. Within 6 months of receiving the Food Regulation Review Committee report, the Parliamentary Secretary to the Minister for Health and Family Services will announce what action is to be taken.

PUBLIC CONSULTATION

See page 133.

REVIEW RECOMMENDATIONS

The final report of the Food Regulation Review Committee, *Food: A Growth Industry*, was provided to Government in August 1998, and is publicly available.

The review report recommends a number of amendments to the legislation to remove potentially anti-competitive provisions and improve the efficiency of the food standards setting processes. In particular, the report recommends:

- the inclusion of an objective into the Act; amendment to the current section 10 objectives used for developing standards and updating of ANZFA's legislated functions; and

- the inclusion of a new section that provides that in carrying out is regulatory functions, the Authority must consider whether the benefits to the community as a whole will outweigh the costs and whether there are no alternatives which are more cost-effective in achieving such benefits.

These recommendations have been provided to the responsible Ministers and the Australia New Zealand Food Standards Council.

PROCEEDS OF CRIME ACT 1987 AND REGULATIONS (Attorney-General's Department)

REVIEW PANEL

The scheduled review of the *Proceeds of Crimes Act 1987* and associated regulations was brought forward from 1998-99 and incorporated into a general review of proceeds

of crime legislation being conducted by the Australian Law Reform Commission (ALRC).

TERMS OF REFERENCE

Additional terms of reference were issued to the ALRC by the Attorney-General on 14 April 1998, as approved by the Office of Regulation Review, requiring that:

- the Commission is also to inquire into and report on the additional matter of the impact of the *Proceeds of Crime Act 1987* on business; and
- in performing its functions in relation to that additional matter, the Commission is to have regard to:
  - the requirements for legislation reviews set out in the *Competition Principles Agreement*; and
  - the requirements for regulation assessment as outlined in the statement by the Prime Minister, the Hon John Howard MP, "More Time for Business" (24 March 1997) and the document "A Guide to Regulation" (October 1997).

The ALRC is required to report no later than 31 December 1998.

1.2.2 Legislation Scheduled for Review in 1996-97 – Reform Not Finalised by 30 June 1997

The *1996-97 Commonwealth Legislation Review Annual Report* outlined the progress of those legislation reviews scheduled to commence within that year (or earlier). Many of the reviews had not reached the reform implementation stage by the end of the reporting period.

This section updates the progress of these reviews and any reforms that have consequently been implemented.

1.2.2.1 Review Completed and Reform Outcomes Announced

ABORIGINAL AND TORRES STRAIT ISLANDER HERITAGE PROTECTION ACT 1984 (Department of Environment and Heritage)

REVIEW PANEL

In October 1995, the Government commissioned a review of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* by retired judge Elizabeth Evatt. This review was already underway at the time of publication of the CLRS in June 1996.

~~TERMS OF REFERENCE~~ ~~Terms of reference for the review of the operation of the Act~~

~~The *Aboriginal and Torres Strait Islander Heritage Protection Act* was passed in 1984~~ under the power given to the Commonwealth parliament by the 1967 referendum to enact legislation in relation to indigenous affairs. The review will examine and report on the operation of the Act in the 11 years since its passage. In particular the review will consider:

(i) the effectiveness of the provisions of the Act in providing protection for areas and objects of significance to Aboriginal and Torres Strait Islander people;

(ii) ~~the efficacy of the reporting process under section~~ 10(4) of the Act and

(iii) the effectiveness of interaction between Commonwealth and State and Territory indigenous heritage protection legislation;

(iv) protection under the Act;

(v) the minimum requirements for information which must be included in the applications;

(vi) how secret/sacred information should be dealt with under the Act;

(vii) alternative processes and/or structures which could be established to provide advice to the Minister;

(viii) including the Minister's role in making declarations;

(ix) the efficacy of the time limits currently included in the Act and the desirability of placing additional time limits on processes under the Act;

(x) whether the Act makes appropriate provisions for the protection of areas and objects while mediation or reporting processes are underway;

(xi) successfully resolved through mediation;

(xii) whether the Act gives the Minister appropriate discretion to decide not to deal with or to defer consideration of applications;

(xiii) the development of administrative guidelines under the Act;

(xiv) required to administer the Act; and

(xv) any other matters relevant to the operation of the Act.

The review will be required to report six months after it commences.

GOVERNMENT RESPONSE

The Evatt Report was received by the Minister for Aboriginal and Torres Strait Islander Affairs in August 1996. The recommendations of this report were taken into consideration when formulating the *Aboriginal and Torres Strait Islander Heritage Protection Bill 1998*. The Bill was re-introduced into the House of Representatives on 12 November 1998.

AUSTRALIAN POSTAL CORPORATION ACT 1989 (Department of Communications, Information Technology and the Arts)

REVIEW PANEL

The review of the *Australian Postal Corporation Act 1989* commenced in May 1997.

It was conducted by the National Competition Council.

TERMS OF REFERENCE

I, PETER HOWARD COSTELLO, hereby:

1. In accordance with the Commonwealth Government's Legislation Review Schedule, refer to the National Competition Council the *Australian Postal Corporation*

the establishment of an authority, tribunal or commission and the resources

whether there is adequate scope for under the Act for applications to be

Act 1989 (and associated regulatory and institutional arrangements) for inquiry and report within nine months of the date of receipt of this reference.

2. Request that the Council advise on practical courses of action to improve competition, efficiency and consumer welfare in the postal services sector. In so doing, the Council should have regard to the objective that the legislation/regulation should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation cannot be achieved more efficiently through other means, including non-legislative approaches.

3. Request that the Council, in so doing, have regard to:

(a) the Government's commitments to maintain Australia Post in full public ownership and provide a standard letter service to all Australians at a uniform price;

(b) the Government's commitment to accelerate and strengthen the micro-economic reform process, including through improving the competitiveness of markets, particularly those which provide infrastructure services, in order to improve Australia's economic performance and living standards;

(c) the Government's obligations under the Competition Principles Agreement executed in April 1995 which embodies commitments in relation to competitive neutrality, structural reform of public monopolies, access to services provided by means of significant infrastructure facilities, price oversight and legislation review;

(d) the current obligations on Australia Post specified in s26, s27 and s28 of the *Australian Postal Corporation Act 1989* to: perform its functions in a manner consistent with sound commercial practice; provide a letter service at a single uniform rate of potage for carriage within Australia, by ordinary post, of letters that are standard postal articles; and meet any performance standards set for it;

(e) Australia Post's current and prospective level of financial and service performance and the flow of benefits to the community from that performance improvement;

(f) the findings and reforms arising from the 1992 report by the Industry Commission on mail, courier and parcel services; and

(g) experience with postal regulatory reforms undertaken overseas.

4. Without limiting the scope of the reference, request that the Council examine:

(a) the need for a statutory reservation to Australia Post of the exclusive right to carry letters and the implications of a reduction or removal of the reservation;

(b) the specification, scope and extent of:

(i) the current letter service reservation and whether it is consistent with the Government's commitment to provision of a universal letter service; and

(ii) the current community service obligations provided under s27 of the *Australian Postal Corporation Act 1989* and whether current arrangements satisfactorily meet the Government's commitment to community access to services;

(c) the scope, extent and organisational structure of commercial activities undertaken by Australia Post other than the reserved letter service. The competitive neutrality issues that may arise including the associated benefits and costs from these activities, should be identified and addressed as necessary;

(d) the operation of the current letter mail interconnection arrangements and the possible application of the general interconnection arrangements under the *Trade Practices Act 1974*; and

(e) the consequences for small business and other users of further reform of the *Australian Postal Corporation Act 1989*.

5. Request the Council in undertaking the review advertise nationally, consult with key interest groups and affected parties, and release an interim and a final report. The Government will respond to the final report produced by the Council.

PUBLIC CONSULTATION

The National Competition Council (NCC) consulted widely during the review, receiving 138 submissions from a wide range of stakeholders in response to advertisements in national and state newspapers. It also held approximately 130

meetings with interest groups a number of workshops to discuss key issues. An interim report in the form of an options paper was released in September 1997, with a period of two months provided for people interested in the review to respond to the issues raised.

REVIEW RECOMMENDATIONS

The NCC's final report was released in March 1998. The key report recommendations were:

- the retention of the letter delivery Universal Service Obligation on the grounds the community service obligation (CSO) costs incurred are fully justified by the social benefits, and there is no effective alternative means of providing the social benefits;

- that the uniform rate of postage apply to individuals and households posting standard size letters. Australia Post should be allowed to offer discounts to business customers, but no business should be charged more than the uniform rate for posting a standard size letter. The Government should review the possibility of introducing a maximum affordable charge for household letter services in 2005;

- funding of CSOs by direct budgetary payments (or an industry levy as the next best alternative method);

- that the Government negotiates CSO funding in advance for five year periods;

- business mail should be opened to competition. The minimum competitors can charge for those letters which remain in the monopoly (household mail) should be two times the standard letter rate; and

- inward international mail should be opened to competition.

Further recommendations included:

- a compulsory undertaking, to be approved by the Australian Competition and Consumer Commission (ACCC), be developed by Australia Post for CSO and post office box services; and if Australia Post does not submit an acceptable undertaking the ACCC should determine the terms and conditions of access;

- only the direct cost of providing access to CSO and post office box services should be taken into account in determining access prices. These costs would include consideration of Australia Post's return on assets;

- Australia Post's exemption from Part IIIA of the *Trade Practices Act 1974* (TPA), which sets out the conditions under which one business has a right to use infrastructure owned and operated by another business, should be repealed;

- a new section of the TPA dealing specifically with anti-competitive conduct in the market for postal services. The need for this provision should be reviewed in 2005;

- the right of Australia Post to erect posting boxes should be maintained for ordinary red posting boxes suitable for posting standard letters. Otherwise, Australia Post should be subject to the same requirements as other postal service providers; and

- a requirement for detailed auditing and accounting information on Australia Post's activities, to provide for transparency of the financial relationships between different elements of the business (e.g. retail operations, reserved services and CSO funded services).

Recommendations relating specifically to competitive neutrality issues are identified on page 151.

GOVERNMENT RESPONSE

The Government responded to the final report on 16 July 1998.

It did not accept the NCC's recommendation that business mail be opened to competition — indicating that the postal reform package it had announced delivered a range of benefits to all sectors of the community by balancing the needs of industry with a commitment to service standards for all users of the postal network.

However, the announced postal reform package does involve:

- reducing the weight threshold to competition for Australia Post's reserved letter service from 250 grams to 50 grams;

- reducing the price threshold to competition for Australia Post's reserved letter service from four times the standard postal rate to one times the standard rate;

- exposing the delivery of incoming international mail to full competition from 1 July 2000; and

- permitting the carriage of reserved letters for the purposes of aggregation to meet the minimum requirements for bulk lodgments.

It is intended that the reforms will be effective from 1 July 2000.

Arrangements will also be put in place to provide access by competitors to Australia Post's network on a similar basis, and on terms and conditions not less favourable than Australia Post offers its own customers.

The standard letter rate will be maintained at 45 cents until at least 1 January 2003 and Australia Post's CSOs will continue to be funded by internal cross subsidy.

The Act will be reviewed again in 2002-03 to assess the effect of the above arrangements and to recommend on the need for further change.

CUSTOMS TARIFF ACT 1995 – TEXTILES, CLOTHING AND FOOTWEAR ARRANGEMENTS (Department of Industry, Science and Resources)

REVIEW PANEL

The *Customs Tariff Act 1995 – Textiles, Clothing and Footwear Arrangements* were reviewed as part of the 1997 Industry Commission inquiry into textiles, clothing and footwear (TCF) industries.

TERMS OF REFERENCE

I, PETER COSTELLO, Treasurer, under Part 2 of the *Industry Commission Act 1989*, hereby:

1. refer Australia's textile, clothing and footwear (TCF) industries for inquiry and report within nine months of receiving this reference. The inquiry will include early stage processing of raw materials, top-making and tanning and higher value-added manufacturing, including spinning, knitting, weaving, fabric and leather dying and finishing;

2. specify that, in making its recommendation on assistance arrangements for these industries post 2000, the Commission aims to improve the overall economic performance of the Australian economy;

3. request that the Commission have regard to the Government's desire to encourage the development of sustainable, prosperous and internationally competitive TCF manufacturing activities in Australia; to improve the overall economic performance of the Australian TCF industries; and to provide good quality, competitively priced TCF products to the Australian consumer; and its commitment to abide by Australia's international obligations and commitments;

4. request that the review and report have regard to the Legislative Review provisions of the Competition Principles Agreement;

5. specify that: the report include options, including a preferred option, and implementation strategy and the Commission consider how the Australian TCF industries will evolve within a world trading environment through the next decade; and the Commission consider APEC developments in market liberalisation, and the timing and extent of cost reductions from other microeconomic reforms;

6. request that the Commission report, so far as practicable:

   a) emerging national and international market factors affecting the industries, including their current structure, rationalisation, competitiveness and support mechanisms by other countries, and barriers facing Australian exports, drawing international comparisons where appropriate;

   b) the advantages and disadvantages of Australia as an investment location for all phases of TCF industries, from research and development, training through to manufacturing, marketing, import substitution and export;

   c) the potential for further development of the TCF industries, including the scope for improving productivity and workplace practices;

   d) the impact of the current development arrangements, as well as regulatory and standards arrangements, on the structure, performance and competitiveness of the industries (with specific assessment given to the impact on small and medium sized firms), and on Australian consumers, resource allocation and growth prospects generally;

   e) any measures which could be undertaken to remove impediments or otherwise contribute to the efficiency and development of the industries, including ways of reducing the regulatory burden on small and medium-sized firms;

f) the identification of groups who would benefit, or would be disadvantaged by, any measures flowing from 5 and 6(e) above;

g) the effectiveness of the Australian research and educational infrastructure in providing design, engineering, production management and other skill capabilities; and

h) the impact of its proposals on relative assistance between the textile, clothing and footwear sectors;

7. specify that the Commission take account of any recent substantive studies, and have regard to the economic, social and environmental and regional development objectives of the Government; and

8. note the intention that the Commission's recommendations will be considered by the Government and its decisions will be announced as soon as possible.

PUBLIC CONSULTATION

The Industry Commission placed advertisements in the national daily papers inviting public participation in the inquiry and released an issues paper, which was circulated widely to interested parties and upon request. The Commission received an initial 163 submissions, and an additional 111 submissions following the release of a draft report on 30 June 1997.

Informal discussions were also held with key stakeholders to gain background information and an understanding of the main issues. Public hearings were held in Sydney and Melbourne during February. Following the release of the draft report, additional hearings were held in Sydney, Melbourne and Brisbane. A transcript of the hearings was made publicly available.

A workshop was held in August 1997 to discuss modelling results. Participation was by invitation only but included industry, government and academic participants.

REVIEW RECOMMENDATIONS

The Industry Commission presented its final report on 7 September 1997. Its major recommendations and implementation strategy included:

- that this should be the last sectoral program to apply to these industries. The program for changes to assistance should be legislated and tariff reductions inscribed in Australia's APEC Individual Action Plan;

- a program of phased tariff reductions to 5 per cent by 1 July 2008 should be implemented without pause from 1 July 2001;

- policy by-laws should be terminated as of 1 July 2008;

- the Overseas Assembly Provisions Scheme should be extended and simplified; and

- a program of adjustment assistance should be implemented to accompany the tariff reduction program.

GOVERNMENT RESPONSE

The Government decided to continue with the current schedule for TCF tariff phase down until 1 July 2000, at which point tariff levels would be maintained until 1 January 2005. Following this date, tariffs would be reduced to a maximum of 17.5%.

This position was based on a commitment to promoting job security within this industry, involving the adoption of a range of practical transition arrangements, by encouraging additional investment and promoting the development of an internationally competitive TCF sector in the lead up to the free trade environment beyond 2010.

TCF tariffs are to be further reviewed in 2005, with consideration to be given to APEC free trade commitments and progress on market access.

DUTY DRAWBACK (CUSTOMS REGULATIONS 129-136B) AND TEXCO (TARIFF EXPORT CONCESSION SCHEME) – CUSTOMS TARIFF ACT 191995, SCHEDULE 4, ITEM 21, TREATMENT CODE 421 (Attorney-General's Department)

REVIEW PANEL

A review of the tariff export concessions scheme (TEXCO), duty drawback and temporary importation provisions commenced in June 1997.

It was undertaken by a taskforce of officials, composed of representatives from the Department of Industry, Science and Tourism (DIST), Treasury, the Department of Foreign Affairs and Trade, the Australian Customs Service ACS) and the Australian Taxation Office.

TERMS OF REFERENCE

1. The duty drawback (Section 168 of the *Customs Act 1901,* Customs Regulations 129 to 136B), TEXCO (Tariff Export Concession Scheme) — *Customs Tariff Act 1995,* Schedule 4 Item 21, and temporary importation provisions (Sections 162 and 162A of the *Customs Act 1901,* Customs Regulations 124 to 125B) are referred to a Taskforce of Officials for evaluation and report by end September 1997.

2. The Taskforce of Officials is to take into account the following objectives:

a) legislation/regulation should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can not be achieved more efficiently through other means, including non-legislative approaches;

b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation; and

c) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the Taskforce of Officials is to have regard to the analytical requirements for regulation assessment by the Commonwealth including those set out in the Competition Principles Agreement. The report of the Taskforce should:

a) identify the nature and the magnitude of the social, environmental and other economic problems that the provisions specified in (1) seek to address;

b) clarify the objectives of these provisions;

c) identify whether, and to what extent, the provisions restrict competition;

d) identify relevant alternatives to the provisions, including non-legislative approaches;

e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the provisions and any alternatives identified in (d);

f) identify the different groups likely to be affected by the provisions and any alternatives identified in (d);

g) list the individuals and groups consulted during the review and outline their views;

h) determine a preferred option for regulation, if any, in light of objectives set out in (2); and

i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the current provisions and, where it differs, the preferred option.

4. In undertaking the review, the Taskforce of Officials is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

5. Within 3 months of receiving the report from the Taskforce of Officials, the Government is to announce what action is to be taken after obtaining advice from the Minister for Industry, Science and Tourism and where appropriate, after consideration by Cabinet.

PUBLIC CONSULTATION

The review involved the preparation of a discussion paper, public consultations (35 submissions were received, with 16 leading to follow up consultations) and the release of a draft report.

REVIEW RECOMMENDATIONS

The review was completed in mid-September 1997. The main recommendations were:

1. the main elements of the duty drawback, TEXCO and temporary importation provisions be retained;

2. the objective of the provisions should be to provide relief from customs duties, sales tax and excise duty on imported goods which are not consumed or used in the domestic market and which are subsequently re-exported;

3. before making any significant changes to the duty free regime a thorough cost/benefit analysis and consultation with key stakeholders be undertaken;

4. to improve program efficiency, the current duty drawback and TEXCO arrangements should be changed to include:

- a greater emphasis on exemptions rather than drawbacks;
- greater adoption, in practice, of a risk management approach more in line with the small scale of these programs and in with greater reliance on self assessment and targeted audits; and
- a formal agreement between DIST and the ACS outlining program performance criteria and desired outcomes and which includes an agreed annual reporting mechanism.

5. existing drawback, TEXCO and temporary importation provisions be brought together under one program to be called TRADEX;

6. TRADEX be based primarily on exemption. It would apply to goods which at the time of importation are intended for export in the same condition, after processing or treatment or after being incorporated in other goods, or eligible for temporary importation provisions. The up-front exemption of duty under TRADEX will not be available for duty free shopping.

TRADEX would also contain:

- a drawback facility for imported goods where final destination is unknown at time of importation, the exporter is not the importer, or the goods qualify for drawback on exportation;
- a liability provision where the conditions of an exemption as set out in the Customs regulations are not met (i.e. goods are diverted into the home market), or the goods imported under the up-front exemption provisions have not been exported after 12 months (subject to Customs discretion); and
- drawback/liability for excisable goods which are exported;

7. TRADEX users be required to register with the ACS. All existing drawback and TEXCO users be automatically registered while new applicants be required to satisfy the ACS as to the adequacy and integrity of their internal accounting systems;

8. TRADEX should be extensively marketed. The campaign to be coordinated by DIST in conjunction with the ACS and AUSTRADE. Other agencies to be involved in the campaign as considered appropriate;

9. the current practice of excluding re-landed goods from drawback eligibility should be eliminated;

10. the ACS examine the appropriateness of:

- the current 30% standard value for imputation, and
- allowing individual companies the opportunity to present their own company specific percentage, and this to be adopted if adequate documentary evidence is provided;

11. the current requirement of pre-notification in relation to drawback claims be dropped; and

12. the ACS explore the possibility of:

- simplifying the drawback procedures for exported goods on which an Import Credit instrument has been used at time of importation; and
- establishing an arrangement with New Zealand Customs whereby the customs value for duty on Australian imports is the invoice price less the drawback amount even though a claim may be unpaid at time of trans-Tasman importation.

GOVERNMENT RESPONSE

The Government included its response to this report in the Prime Minister's 8 December 1997 industry statement "*Investing for Growth*".

It announced that the existing Duty Drawback and TEXCO arrangements would be integrated into a single, simplified and more accessible scheme called TRADEX. The scheme would provide relief from customs and excise duty and sales tax on imported goods intended for re-export or used as inputs to exports.

MIGRATION ACT 1958 – SUB-CLASSES 120 AND 121 (BUSINESS VISAS)

(Department of Immigration and Multicultural Affairs)

REVIEW PANEL

The review of sub-classes 120 and 121 of the *Migration Act* commenced in February 1997.

It was undertaken by a review committee, chaired by Dr Ian Lin, Managing Director, Allinton Pty Ltd and including Mr Roger Shipton (Director, Roger Shipton Associates), Mr Alan Matheson (Australian Council of Trade Unions), Ms Joan Kennedy (Department of Employment, Education Training and Youth Affairs and Mr Eric Brookbanks (Department of Immigration and Multicultural Affairs).

These provisions are considered to have the potential to affect the ability of Australian businesses to obtain suitably qualified staff from abroad.

TERMS OF REFERENCE

A Committee of Review shall report to the Minister for Immigration and Multicultural Affairs on the operation and the effectiveness of policies and procedures governing the permanent entry into and permanent stay in Australian of employer people under the Employer Nomination Scheme (ENS) and Labour Agreements.

1. The Committee will have regard to the rapidly changing nature of the business environment and the identification of present and future skills requirements of Australian companies in meeting global competition.

2. The Committee will also have regard to:

   a) the role of these two forms of entry in meeting identified skill shortages in the labour market;

   b) the overall operation of existing criteria, definitions and procedures in relation to the ENS and Labour Agreements, including the roles of DIMA, DEETYA and DIR in the assessment process;

   c) the need to have procedures which enable employers to recruit and transfer key personnel smoothly and quickly;

d) the growing importance of temporary rather than permanent movements to the internationalisation of the Australian economy, and the need to develop linkages between the two forms of entry, including the possibilities for change of status from temporary to permanent resident once in Australia;

e) the obligations in regard to the training of Australian employees to be satisfied by employers filling a position with a permanent resident under the ENS or a Labour Agreement;

f) the Government's commitment to ensuring that English proficiency and, in light of the Australian Government's strong international orientation, bilingual and multilingual skills, are given high priority for permanent skilled migrants; and

g) the options for ensuring that people entering under the ENS and Labour Agreement categories are guaranteed financial support from their employer in the initial years after arrival.

3. The Committee in formulating its views will consult with interested representative community bodies, including a range of employers, employer organisations, unions and other interested groups and persons.

NOTE: In June 1996, the Government announced its review schedule for all portfolios as part of its obligations under the Competition Principles Agreement (CPA). Included in the schedule for 1996-97 was the conduct of a review of the Employer Nomination Scheme and Labour Agreements *(Migration Act 1958* – subclasses 120 and 121 and related visas).

In accordance with the requirements for all reviews on that schedule, the Committee notes that:

- its Review and Report have had regard to the legislative review provisions of the CPA;

- the report will be published prior to the Government announcing what actions will be taken on the recommendations to the review; and

- it has consulted with a wide range of organisations including interested groups and persons beyond those listed in the Terms of Reference.

PUBLIC CONSULTATION

Comment and responses to a discussion paper were received from a wide cross-section of the community, including Commonwealth Government departments, migration agents, Department of Immigration and Multicultural Affairs' overseas posts and regional offices, peak employment bodies, employers, unions and other parties.

REVIEW RECOMMENDATIONS

The review of the Employer Nominated Scheme and Labour Agreements was completed in March 1997.

It was a substantial review with over 47 recommendations. The committee concluded that no major overhaul was required. Its recommendations were aimed at strengthening the integrity and streamlining the operation of both skilled entry programs.

Key integrity recommendations included the introduction of the vocational English requirement, the 45 years of age requirement, the requirement to enter into a three year contract and the need to satisfy Australian licensing and registration requirements.

Key streamlining recommendations included lodgement of the nomination and visa application at the same time, removal of the Pre-Qualified Business Sponsors (PQBS) bar for sub-class 457 applicants applying onshore and a more flexible labour market testing regime.

GOVERNMENT RESPONSE

The Government accepted the key review recommendations on 29 July 1997. The necessary amendments to the Migration Regulations commenced on 1 November 1997.

MIGRATION ACT 1958 – SUB-CLASSES 560, 562 AND 563 (STUDENT VISAS) (Department of Immigration and Multicultural Affairs)

REVIEW PANEL

The review of sub-classes 560, 562 and 563 of the *Migration Act 1958* commenced in November 1996.

It was undertaken by a taskforce of officials from within the Department of Immigration and Multicultural Affairs, supported by an independent reference group chaired by Professor Judith Sloan, (former Director of the National Institute of Labour Studies) and including Professor Michael Osborne (Vice-Chancellor, La University), Mr Rod Gilbert (Manager, Queensland Education Overseas Unit), Dr John Nieuwenhuysen
Christine Bundeson (Director ICTE, University of Queensland).

These provisions are considered to have the potential to affect the institutions and businesses which service foreign students studying in Australia.

TERMS OF REFERENCE

The purpose of the Review is:

1. to evaluate the Overseas Student Visa Program and its enabling legislation and regulations; and

2. to report on the appropriate arrangements for regulation, if any, for the entry into Australia of overseas students, taking into account:

    2.1 the objectives of regulation;

    2.2 the need to maintain the integrity of Australia's immigration program;

    2.3 the costs and benefits of regulation to the integrity of Australia's immigration program, the community, the education and training industry, and consumers;

    2.4 the effects of regulation on the competitiveness of businesses seeking to provide education and training to overseas students; and

    2.5 the findings of the Joint Standing Committee on Australia's Visa System for Visitors.

3. The Review will research and report on:

    3.1 the nature, intent and impact of current legislation and regulations on the international education and training industry, consumers and the community;

ICHO. Committee for Economic Development) and Ms

3.2 the conduct of overseas students in Australia, including the nature, extent and costs of non-compliance;

3.3 options for regulation;

3.4 the costs and benefits of each option for regulation on the international education and training industry, consumers and the community; and

3.5 proposed legislative changes, including a timetable for implementation and transitional arrangements.

4. The Review of the Program will be undertaken by the Department of Immigration and Multicultural Affairs, guided by a Reference Group with an independent Chairperson and comprised of industry and consumer representatives, which will report to the Minister.

5. The following consultation will be undertaken:

5.1 the Office of Regulation Review;

5.2 representatives from "peak" bodies within the overseas education and training industry; and

5.3 any other interested person or group.

6. The Report will be published prior to the Government announcing what action will be taken on the recommendations of the Review, including any necessary legislative response.

PUBLIC CONSULTATION

Comments and submissions in response to a discussion paper were received from a wide variety of stakeholders from Australia's export education industry, including Commonwealth and State agencies, education providers, overseas students and members of the public. A substantial amount of direct consultation was also undertaken.

REVIEW RECOMMENDATIONS

The review of the Student Visa Program was completed in July 1998.

A number of measures were recommended to allow controlled and sustainable growth in student numbers, particularly from the newly emerging markets of China, India, Pakistan and Vietnam, without the migration program as a whole being compromised.

The package intended to:

- further deregulate the student visa program for students from gazetted countries;
- review the gazetted country regime and the special entry requirements for students from the People's Republic of China annually;
- pilot the concept of the Pre-Qualified Institution (PQI), designed to manage growth in student numbers from non-gazetted countries;
- ensure that only genuine students access work rights in Australia; and
- increase compliance and other measures to ensure students abide by the conditions of their visa.

GOVERNMENT RESPONSE

The Government endorsed the review recommendations in July 1998. Legislative changes have been made, with associated policy and procedural changes to be in place for the 1999 academic year.

Officials from the Department of Immigration and Multicultural Affairs of have undertaken consultations with industry representatives to determine which education providers will participate in the PQI pilot in 1999.

MIGRATION ACT 1953 (PART 3 – MIGRATION AGENTS AND IMMIGRATION ASSISTANCE, AND RELATED REGULATIONS), MIGRATION AGENTS REGISTRATION (APPLICATION) LEVY ACT 1992 AND MIGRATION AGENTS REGISTRATION (RENEWAL) LEVY ACT 1992

(Department of Immigration and Multicultural Affairs)

REVIEW PANEL

The review of Part 3 of the *Migration Act 1958* and related legislation commenced in August 1996.

It was conducted by a taskforce of officials from within the Department of Immigration and Multicultural Affairs and guided by a reference group of independent experts headed by Mr Ian Spicer (former Chief Executive of the Australian Chamber of Commerce and Industry). The members of the reference group were selected as individuals rather than as representatives of particular interest groups.

The Migration Agents Registration Scheme (MARS) regulates those persons providing immigration assistance.

TERMS OF REFERENCE

The purpose of the Review is:

1. to evaluate the Migration Agents Registration Scheme (the Scheme) and its enabling legislation and regulations;

2. to report on the appropriate arrangements for any regulation of the migration advice industry, including the prospects for enhanced self-regulation, taking into account:

    2.1 the goals of regulation;

    2.2 the costs and benefits of the Scheme to the community, industry and consumers;

    2.3 the effects of the Scheme on consumer interests, the competitiveness of businesses seeking to provide migration advice and efficient resource allocation;

    2.4 the feasibility of reducing compliance costs to the migration advice industry, including small business; and

    2.5 the findings of the Joint Standing Committee on Migration review of the Scheme.

3. The Review will research and report on:

    3.1 the nature, intent and impact of the legislation and regulations on the migration advice industry, consumers and the community;

    3.2 the conduct of migration agents, including the nature, extent and costs of non-compliance;

3.3 options for any regulation, including self-regulation;

3.4 any arrangements that may need to be established, in the absence of industry-specific regulation, to develop alternative sources of redress for consumers with complaints about the activities of migration agents; and

3.5 proposed legislative changes, including a timetable for implementation and transitional arrangements.

4. The Review of the Scheme will be undertaken by the Department of Immigration and Multicultural Affairs, guided by a Reference Group with an independent Chairperson and comprised of industry and consumer representatives, which will report to the Minister. The review of the Levy Acts will be undertaken by a Committee of officials and will also report to the Minister.

5. The following consultations will be undertaken:

5.1 Office of Regulation Review;

5.2 representatives of comparable self-regulating industries;

5.3 representatives of current migration industry "peak" bodies and the MAR Board; and

5.4 any other interested person or group.

6. The Minister will present a preferred option to Cabinet, including any necessary legislative response.

PUBLIC CONSULTATION

The taskforce prepared an exposure draft report for comment in January 1997, which was circulated to 37 stakeholders. Twenty submissions were received. In addition, bilateral discussions were held with major stakeholders, the Migration Institute of Australia and the Law Council of Australia.

REVIEW RECOMMENDATIONS

The review was completed in March 1997, and the report publicly released in July 1997. The key findings were:

- in the absence of regulation, the market for migration advice had tended to operate imperfectly with consumers bearing an unacceptable cost in terms of exploitation and inappropriate practice by a sector of the industry;

- the MARS had provided a measure of consumer protection and its credibility as a consumer protection mechanism had strengthened somewhat in the time the Joint Standing Committee on Migration conducted its review of the scheme;

- the scheme had not adversely affected competition on the migration advice market; and

- there is a need to improve competency standards in a way that will not adversely affect the level of competition in the industry.

The review made nine recommendations that included:

- because of the state of the industry, including consumer protection concerns, voluntary self-regulation is not immediately achievable and self needs to be underpinned by statute at this stage (Recommendation 8); and

- a transitional arrangement needs to be in place to enable the industry to prepare for self regulation (Recommendation 9).

GOVERNMENT RESPONSE

Legislation to implement statutory self regulation for the MARS commenced on 21 March 1998. Changes were also made to the *Migration Agents Regulations*, commencing on 1 April 1998.

QUARANTINE ACT 1908 (IN RELATION TO HUMAN QUARANTINE)

(Department of Health and Aged Care)

REVIEW PANEL

The review of the human quarantine provisions of the *Quarantine Act 1908* commenced in September 1997.

It was conducted by a committee of officials comprising representatives of the Department of Defence, the Australian Customs Services, the Australian Quarantine and Inspection Service, the Department of Immigration and Multicultural Affairs, the Chief Quarantine Officer and the Department of Health and Family Services.

TERMS OF REFERENCE

1. Human quarantine provisions of the *Quarantine Act 1908*, and associated regulation and proclamations, are referred to the Human Quarantine Review Steering Committee for evaluation and report by March 1998. The Human Quarantine Review Steering Committee (HQRSC) is to focus on those parts of the legislation relating to human quarantine (HUMAN QUARANTINE PROVISIONS OF THE ACT) which restrict competition, or which impose costs or confer benefits on business.

2. The HQRSC is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

a) legislation/regulation should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation cannot be achieved more efficiently through other means, including non-legislative approaches;

b) in assessing the matters in (a), regard should be had, where relevant, to effects on the health of the community, environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation; and

c) compliance costs and the paper work burden on small business and government should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the HQRSC is to have regard to the analytical requirements for regulation assessment by the Commonwealth set out in the Competition Policy Agreement and the Government Regulatory Impact Statement Guidelines. The report of the HQRSC should:

a) identify the nature and magnitude of the health, social, environmental or other economic problems that human quarantine provisions of *the Quarantine Act 1908* seek to address;

b) clarify the objectives of human quarantine provisions of *the Quarantine Act 1908*;

c) identify whether and to what extent human quarantine provisions of the *Quarantine Act 1908*, restrict competition;

d) identify relevant alternatives to human quarantine provisions of the *Quarantine Act 1908*, including non-legislative approaches;

e) analyse, and as far as is reasonably practical, quantify the benefits, costs and overall effects of human quarantine provisions of the *Quarantine Act 1908* and alternatives contained in (d);

f) list the individuals and groups consulted during the review and outline their views;

g) determine a preferred option for regulation, if any, in light of objectives set out in 2, and including consideration of animal and plant and international quarantine regulatory issues and process; and

h) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the human quarantine provisions of the *Quarantine Act 1908* and, where it differs, the preferred option.

4. In undertaking the review, the HQRSC is to consult nationally with key interest groups and affected parties, and publish a report.

5. The HQRSC is to report to the Minister for Health by June 30 1998.

PUBLIC CONSULTATION

A discussion paper was developed, and an advertisement placed in the national press on 11 April 1998 advising of its availability and calling for submission from any interested parties.

The steering committee also actively sought submissions from groups potentially affected by the human quarantine provisions. This stakeholder list covered approximately 150 bodies.

The public consultation process closed on 15 May 1998. Responses from the targeted consultation process and national advertising campaign numbered 30.

REVIEW RECOMMENDATIONS

The review determined that the human quarantine provisions of the *Quarantine Act 1908* have minimal impact on competition and business.

Where an impact was identified, the review was satisfied that the costs to the government and industry were minor, and were outweighed and justified by the benefits to public health from the prevention of disease outbreaks.

However, the review found that the current human quarantine provisions, though adequate, would benefit from possible updating to ensure they provide the best legislative framework to undertake human quarantine activity in the year 2000 and beyond.

GOVERNMENT RESPONSE

On 2 July 1998, the Minister for Health and Family Services approved the report and endorsed the proposal for a second phase review of the human quarantine provisions. The objective of this review is to examine, with a view to updating and improving, these provisions to ensure they provide the best possible legislative framework for future human quarantine activity.

A project plan and terms of reference are being developed and are expected to be cleared by the HQRSC (continued from the initial review) and the Minister. It is expected that, once the terms of reference are endorsed, the second phase review will be undertaken over a 12 month timeframe.

TRADE PRACTICES (CONSUMER PRODUCT INFORMATION STANDARDS) (CARE FOR CLOTHING AND OTHER TEXTILE PRODUCTS LABELLING) REGULATIONS (Department of the Treasury)

REVIEW PANEL

The review of the *Trade Practices (Consumer Product Information Standards) (Care Labelling for Clothing and other Textile Products) Regulations* commenced in February 1997.

It was undertaken by a committee of officials, comprising representatives of the Department of Industry, Science and Tourism and the Australian Competition and Consumer Commission.

TERMS OF REFERENCE

1. The Trade Practices (Consumer Product Information Standards) (Care for clothing and other textile products labelling) Regulations (Care Labelling Regulations)

are referred to the Federal Bureau of Consumer Affairs for evaluation and report by 30 June 1997. In line with the Competition Principles Agreement, a Committee of Officials (consisting of the Federal Bureau of Consumer Affairs — Chair, the Australian Competition and Consumer Commission and the Department of Industry, Science and Tourism), hereafter called the Committee, will undertake the review and focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The Committee is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

a) the Regulation should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation cannot be achieved more efficiently through other means, including non-legislative approaches;

b) in assessing matters in (a), regard should be had where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation; and

c) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the Committee is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The report of the Committee should:

a) identify the nature and magnitude of the social, environmental or other economic problem(s) that the Care Labelling Regulations seek to address;

b) clarify the objectives of the Care Labelling Regulations;

c) identify whether, and to what extent, the Care Labelling Regulations restrict competition;

d) identify relevant alternatives to the Care Labelling Regulations, including non-legislative approaches;

e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of Care Labelling Regulations and alternatives identified in (d);

f) identify the different groups likely to be affected by the Care Labelling Regulations and alternatives;

g) list the individuals and groups consulted during the review and outline their views;

h) determine a preferred option for regulation, if any, in light of the objectives set out in (2); and

i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the Care Labelling Regulations and, where it differs, the preferred option.

4. In undertaking the review, the Committee is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

5. The Committee will submit its recommendations to the Minister for Small Business and Consumer Affairs.

6. Within 6 months of receiving the Committee's report, the Government intends to announce what action is to be taken, after taking advice from the Minister for Small Business and Consumer Affairs.

PUBLIC CONSULTATION

The review involved wide consultation with industry, consumer and key stakeholders. The review process included preparation of a discussion paper addressing the terms of reference for public consultation and advertisements in the national press calling for public submissions.

REVIEW RECOMMENDATIONS

The review was completed in June 1997.

Following consideration of public comments, a report to was made to the relevant Ministers. It concluded that the regulation should remain, albeit in less prescriptive terms, to reduce regulatory burdens on business. The report of the review was publicly released on 8 October 1997.

GOVERNMENT RESPONSE

The Government accepted the committee's recommendation that the regulations be updated and made less prescriptive.

A period of further consultation, involving the issue of a further discussion paper to industry, consumer groups and key stakeholders outlining the form of the proposed new regulations was undertaken. Following consideration of comments received, a new mandatory consumer product information standard under the TPA was declared by the Minister for Customs and Consumer Affairs on 15 July 1998.

Review Completed, Recommendations under Consideration 1997. The

INTERNATIONAL ARBITRATION ACT 1974 (Attorney General's Department)

REVIEW PANEL

The review of the *International Arbitration Act 1974* (Attorney General's Department) is to focus primarily on those parts of the legislation December 1996.

It was conducted by officers from within the Attorney-General's Department.

The Act implements international conventions that provide a voluntary framework for the settlement of international commercial disputes.

TERMS OF REFERENCE

1. The International Arbitration Act 1974 (Cth) ("the Act") is referred to the Attorney
Attorney
which restrict competition, or which impose costs or confer benefits on business.

The Act gives effect in Australia to three international instruments which facilitate international commercial dispute resolution. The 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) provides a mechanism for recognition and enforcement of foreign arbitral awards in Australian courts. The Convention on the Settlement of Investment Disputes between the States and Nationals of Other States (ICSID) provides access to the International Centre for the Settlement of Investment Disputes for the purposes of resolving investment

disputes between States and nationals of other States. The Act also implements the UNCITRAL Model Law on the International Commercial Arbitration (the Model Law) which provides procedural rules for the conduct of international commercial arbitrations in Australia.

2. The
arrangements for regulation, if any, of the matters covered by the Act, taking into account the following objectives:

(a) legislation should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation cannot be achieved more efficiently through other means, including non-legislative approaches. In developing any options, the Department will seek to ensure certainty in the market place, contract dealings and other commercial transactions, minimise the regulatory burden on business and government, and keep litigation and costs to a minimum;

(b) in assessing the matters in (a), regard should be had to the effects on economic development, consumer interests, the competitiveness of business including small business, and efficient resource allocation; and

(c) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to matters in (2) the Attorney-General's Department is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement signed by the Commonwealth and all State and Territory Governments in April 1995. The report of the Attorney-General's Department should:

(a) identify the nature and magnitude of the problems(s) that the Act seeks to address in facilitating international commercial dispute resolution;

(b) clarify the objectives of the Act;

(c) identify whether, and to what extent, the Act restricts competition;

(d) identify relevant alternatives to the Act and make recommendations on strategies to address and/or minimise the effects of those parts of the Act that restrict competition, or impose costs or confer benefits on business or government, taking into account, but not limited to:

Attorney-General's Department is to report on the appropriate

- the potential application of alternatives to legislation and court-based remedies, and mechanisms to support these measures;

- the effect upon any sector of business and, in the case of the ICSID Convention, a State or Commonwealth government, which is involved in international commercial arbitration proceedings whether held in Australia or overseas; and

- international repercussions;

(e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the Act and alternatives identified in (d);

(f) identify the different groups likely to be affected by the Act and alternatives identified in (d);

(g) list the individuals and groups consulted during the review and outline their views;

(h) determine a preferred option, if any, for regulation, in light of the objectives set out in (2); and

(i) examine the means for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the Act and, where it differs, the preferred option, if any.

4. In undertaking the review, the Attorney-General's Department is to advertise nationally, consult with key interest groups and affected parties, both international and domestic, and publish a report.

Written submissions from interested individuals and organisations should be forwarded to the Attorney-General's Department for [date to be notified].

Submissions and enquiries should be directed to:

Ms Josephine Brook
International Trade Law Section
Attorney-General's Department
Robert Garran Offices
National Circuit
BARTON ACT 2600

Telephone: (06) 250 6583
Facsimile: (06) 250 5929

5. Within 6 months of receiving the Attorney-General 's Department's report, the Government intends to announce what action is to be taken, after obtaining advice from the Minister and where appropriate, after consultation by Cabinet.

PUBLIC CONSULTATION

Consultations were made with interested parties such as the Law Council of Australia, and the International Legal Services Advisory Council.

REVIEW RECOMMENDATIONS

The review was completed in August 1997.

It concluded that the legislation is an important part of Australia's legal and economic infrastructure. It further noted that it is not regulatory legislation, and thus imposes no compliance costs or paperwork burden.

The report suggested that far from having a restrictive effect on business competition, the legislation has great potential as a means of promoting exports in the legal services sector, thus contributing to economic growth. See the Department's Internet page: Window on the Law,

The only alternative to the legislative implementation of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the International Convention for the Settlement of Investment Disputes, or the UNCITRAL Model Law on International Commercial Arbitration, would be for Australian businesses that engaged in international trade and commerce to rely on costly and uncertain litigation in the courts in relation to any dispute arising out of those trade and commercial dealings.

The review, therefore, recommended that the Act be retained and that it not be subject to further review under the CPA. The report of the review is available on the Attorney
http://law.gov.au.

POOLED DEVELOPMENT FUNDS ACT 1992 (Department of Industry, Science and Resources)

REVIEW PANEL

The review of the *Pooled Development Funds Act 1992* commenced in March 1997.

It was conducted by a taskforce of officials, comprising representatives of the Department of Industry, Science and Resources, Treasury, and the Australian Taxation Office.

The Pooled Development Fund program is part of a suite of initiatives aimed at improving the financing of small and medium sized enterprises. It operates through a tax concession.

TERMS OF REFERENCE

1. The Pooled Development Funds (PDF) Program is referred to a Taskforce of seconded officials for evaluation. The Taskforce is to consider and report on:

a) the Program's appropriateness, that is whether government intervention of this nature is warranted on market failure or other grounds and if so, whether the economic benefits of intervention outweigh its economic costs; and

b) the program's effectiveness and efficiency, that is, whether the program is achieving its objectives in a least cost manner.

2. Without limiting the ambit of the task force's investigation of the PDF program's appropriateness, effectiveness and efficiency, the task force is explicitly directed to:

a) clarify and assess the appropriateness of the PDF program's objectives;

b) identify, analyse and assess the economic costs and benefits flowing from the program, with particular reference to identifying any restrictions on competition, and to the effect of those restrictions on competition and the economy more generally;

c) assess whether there are alternative means, including non-legislative means, for achieving PDF objectives more effectively;

d) consider and report on any matters that might bear on the program including: the competitiveness of Australian businesses; economic and regional development (including employment and investment growth); interests of consumers or a class of consumers; ecologically

sustainable development; social welfare or equity; government policies relating to matters such as occupational health and safety, industrial relations and access and equity; and

e) assess the impact of the PDF program on small business, and if appropriate, also report on amendments to administration of the program to reduce any compliance and paperwork burden on small business associated with the program.

3. In undertaking the evaluation the taskforce is to consult with the PDF Board, key interest groups and affected parties.

4. On the basis of the above, the Taskforce is to report, and make recommendations, as to whether the PDF program should continue in its present or modified form, to the (then) Minister for Industry, Science and Tourism by 30 June 1997. Subject to the Minister's agreement, the report, including the basis of its findings and recommendations, will subsequently be made publicly available.

5. The Government will announce its intention in relation to the PDF program in the context of the 1998/99 Budget.

PUBLIC CONSULTATION

Public consultation was conducted through advertising for submissions in national newspapers on 11 and 14 March 1997 and by direct approach to pooled development funds and potential stakeholders (i.e. banks etc.).

REVIEW RECOMMENDATIONS

The review was completed in June 1998. Government is expected to announce its response to the review recommendations in the first half of 1999. The review report will be made publicly available at that time.

TRADESMEN'S RIGHTS REGULATION ACT 1946 (Department of Employment, Workplace Relations and Small Business)

REVIEW PANEL

The review of the *Tradesmen's Rights Regulation Act 1946* commenced in December 1997.

It was undertaken by a committee of officials, comprising representatives of Department of Employment, Workplace Relations and Small Business, Department of Immigration and Multicultural Affairs, Department of Finance and Administration, National Office of Overseas Skills Recognition in the Department of Education, Training and Youth Affairs, and three independent members from the community.

TERMS OF REFERENCE

The review will be undertaken by a committee of senior officers from:

. Department of Workplace Relations and Small Business (Chair),
. Department of Immigration and Multicultural Affairs,
. National Office of Overseas Skill Recognition, and
. Department of Finance and Administration.

The committee will also include appropriate independent persons from the community.

The Office of Regulation Review will provide advice to the committee on the legislation review process as required.

The committee will:

1. clarify the objectives and describe the operations of the *Tradesmen's Rights Regulation Act 1946* (TRR Act) and the role of Trades Recognition Australia (TRA), including in the administration of the migration program;

2. assess the appropriate role, if any, for the Federal Government in the recognition of trades skills by business and the wider community. In considering this issue the committee should be guided by recognised principles for government involvement, such as the existence of market failure and welfare or equity considerations;

3. take into account any matters that bear on the efficiency, effectiveness and equity of TRA and the TRR Act including, where appropriate, social welfare and equity considerations; government legislation and policies relating to vocational training, occupational health and safety, workplace relations and access and equity; economic development, including employment and investment growth; and the competitiveness of Australian businesses;

4. examine the impact of the TRR Act and TRA on individuals, business and the community in general and determine:

- whether there are any costs for business or any restrictions on competition (particularly in the labour market);
- whether there are any economic benefits; and
- the balance of costs (including compliance costs of users as well as the full administrative costs of TRA and the TRR Act) and benefits;

5. have regard to any other relevant reviews and legislation which affects skills recognition and/or occupational registration;

6. assess the impact of the TRR Act and TRA on small business and report on ways to reduce any compliance and paper work burden;

7. examine the efficiency of the administration of the TRR Act and of TRA's operations, including interaction with state/territory recognition mechanisms;

8. consider alternative means for achieving the same objectives; including non-legislative, state/territory government and private sector-based approaches. This will include consideration of the ability of the private market to provide the necessary services and relevant equity, efficiency and qualitative issues; and

9. consider, as appropriate, any legislative amendments to the TRR Act, its repeal or its replacement with a new Act.

The committee will consult with relevant interested parties, including:

- TRA users;
- employer and employee bodies currently party to the operations under the TRR Act;
- the Department of Defence;
- representatives of the ethnic community; and
- State and Territory training authorities.

The consultation process will include the invitation of formal submissions through national press advertisement.

The committee will finalise the review and report to the Minister for Workplace Relations and Small Business by July 1998. The report will address the committee's

findings and its basis for them, and will include recommendations. The report will be publicly available.

PUBLIC CONSULTATION

The consultative process for the review comprised formally inviting submissions from key stakeholders, advertising for submissions from any other interested parties, meeting with key stakeholders within the metal and electrical industries, presentations to other stakeholders and circulating an interim report to key stakeholders for comment.

Key stakeholders included members of the Central Trades Committees (CTCs) established under the TRR Act, employer and employee organisations represented on the CTCs, the Australian Chamber of Commerce and Industry, the Australian National Training Authority, state and territory training authorities, the Federation of Ethnic Communities' Councils of Australia, the Migration Institute of Australia and representatives of the Department of Employment, Workplace Relations and Small Business.

REVIEW RECOMMENDATIONS

The review was completed on 18 November 1998, with a report provided to the Minister for Employment, Workplace Relations and Small Business on 9 December 1998. The main recommendations were:

- the TRR Act should be repealed and the Commonwealth Government should vacate the domestic skills recognition field, and all domestic skills recognition should be undertaken on a free competition basis directly by Registered Training Organisations (RTOs) established under the Australian Recognition Framework (ARF);

- detailed consideration should be given to the implementation arrangements and lead time for winding up activities under the TRR Act, having regard to the implementation of the ARF and the establishment of an adequate network of RTOs; and

- the Commonwealth Government should ultimately vacate the migration skills assessment field and assessments should be undertaken on a free competition basis directly by RTOs established under the ARF, subject only to the requirements for RTOs to be designated as relevant Australian authorities under the regulations to the Migration Act.

The Minister endorsed the report on 15 December 1998, writing to the Prime Minister and relevant Ministers to seek their agreement to the proposed response.

Review Commenced but not Completed

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) ACT 1976 AND ASSOCIATED REGULATION (Department of Prime Minister and Cabinet)

REVIEW PANEL

The *Aboriginal Land Rights (Northern Territory) Act 1976* provides for the granting of traditional aboriginal land in the Northern Territory.

A review of Part IV (mining provisions) of the *Aboriginal Land Rights (Northern Territory) Act 1976* was originally scheduled for 1996-97. Terms of reference were developed and approved. The Government decided, however, to proceed with a comprehensive review of the costs and benefits of all the provisions of this Act.

The Minister for Aboriginal and Torres Strait Islander Affairs postponed the scheduled competition policy review on the basis that it should be conducted separately, following completion of this review. A detailed review report was received in August 1998, prepared by Mr John Reeves QC.

The scheduled competition policy review of Part IV of the Act is to be conducted by a committee of officials drawn from key agencies.

TERMS OF REFERENCE

The *Aboriginal Land Rights (Northern Territory) Act 1976* (the Act) was included in the Commonwealth Government's Legislation Review Schedule examining legislation that restricts competition.

1. Part IV of the Act is referred to the Review Body for evaluation and report within three months of the commencement of the review. The Review Body is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The Review Body is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

a) legislation/regulation should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation cannot be achieved more efficiently through other means, including non-legislative approaches;

b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business (including small business), and efficient resource allocation; and

c) compliance costs and paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to matters in (2), the Review Body is to have regard to the analytical requirements for regulation assessment set out in the Competition Principles Agreement and the Government's regulation impact statement guidelines. The report should:

a) identify the nature and magnitude of the social, environmental or other economic problem(s) that Part IV of the Act seeks to address;

b) clarify the objectives of Part IV of the Act;

c) identify whether, and to what extent, Part IV of the Act restricts competition;

d) identify relevant alternatives to part IV of the Act, including non-legislative approaches that improve free competition;

e) identify the different groups likely to be affected by Part IV of the Act and alternatives;

f) analyse and, as far as practical, quantify the benefits, costs and overall effects of Part IV of the Act and alternatives identified in (d);

g) list the individuals and groups consulted during the review and outline their views and what stakeholding they enjoy;

h) determine a preferred option for regulation, if any, in this area in light of the objectives set out in (2); and

i) examine mechanisms for increasing overall efficiency, including minimising the compliance costs and paper burden on small business, of Part IV of the Act, and where it differs, the preferred option.

In undertaking the review, the Review Body is to advertise the review in National newspapers and the NT News, consult with key interest groups and affected parties, taking into account relevant outcomes of the Reeves review, and publish a report.

BILLS OF EXCHANGE ACT 1909 (Department of the Treasury)

REVIEW PANEL

The review of the *Bills of Exchange Act 1909* commenced in April 1997.

It is being undertaken by a taskforce of officials, comprising representatives of the Commonwealth Treasury, the Reserve Bank of Australia and the Attorney General's Department.

A key aim of the review is to examine the effectiveness, including the cost effectiveness, of the *Bills of Exchange Act* in the context of the impact of electronic commerce on the trading of money market securities, including negotiable instruments, covered by the Act.

TERMS OF REFERENCE

1. The *Bills of Exchange Act* is referred to an Inter-Departmental Working Group (the Working Group) for evaluation and report by December 1997. The Working Group, which is comprised of officers from the Treasury, the Reserve Bank of Australia and the Attorney-General's Department, is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business. However, the Working Group may give consideration to a possible broadening of the scope of the Act to encompass financial rights and obligations, whether in the form of a physical instrument or otherwise, which are negotiable in nature, but which are not currently encompassed by the Act.

2. The Act encompasses three types of negotiable instruments, namely, bills of exchange, promissory notes and also cheques drawn before 1 July 1987. The legislation prescribes the form of the instruments, determines many of the rights and obligations of the parties to the instruments and establishes procedures for their drawing up and resale. The Act does not apply to other money market instruments,

some of which have come to be regarded as negotiable instruments, such as certificates of deposit, floating rate notes, Commonwealth Government securities, including Treasury Notes and Treasury Bonds.

3. The Working Group is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

(a) legislation should be retained only if the benefits to the community as a whole outweigh the costs, and if the objectives of the legislation can not be achieved more efficiently through other means, including non-legislative approaches. In developing any options, the Working Group will seek to ensure efficiency in the money market in relation to the trading of the instruments to which the Act applies; and

(b) compliance costs and the paper work burden on business should be reduced where feasible.

In assessing these matters, regard should be had, where relevant, to effects on economic development, investor rights, consumer interests, the competitiveness of business including small business, and efficient resource allocation, taking into account rapid technological developments in electronic commerce and trade.

4. In making assessments in relation to the matters in (3), the Working Group is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the *Competition Principles Agreement*. The report of the Working Group should:

(a) clarify and review the objectives of the *Bills of Exchange Act* in the light of continuing technological developments in electronic trading, clearing and settlement of money market securities;

(b) identify the nature and impact of impediments in the *Bills of Exchange Act* on the development of electronic techniques for the issue of, trading in and transfer of ownership of, negotiable instruments, including bills of exchange and promissory notes, and determine in the light of technological advances permitting the transfer of money market instruments by electronic means in screen-based or book depository systems, whether the Act should be extended to cover negotiable instruments other than bills of exchange and promissory

notes; in addition, determine whether *the Bills of Exchange Act* should recognise mechanisms for the creation, recording and transfer by electronic means of payment obligations with equivalent characteristics to negotiable instruments;

(c) identify whether, and to what extent, the *Bills of Exchange Act* restricts competition;

(d) identify relevant alternatives to the *Bills of Exchange Act* (including non-legislative approaches) and determine a preferred option for regulation, if any, in light of objectives set out in (3);

(e) determine the need to identify Saturdays as non business days of the purposes of the Act;

(f) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the *Bills of Exchange Act* and alternatives identified in (d);

(g) identify the different groups likely to be affected by *the Bills of Exchange Act* and alternatives identified in (d);

(h) list the individuals and groups consulted during the review and outline their views; and

(i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on business including small business, of the *Bills of Exchange Act* and, where it differs, the preferred option.

5. In undertaking the review, the Working Group is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

6. Within 6 months of receiving the Working Group's report, the Government intends to announce what action is to be taken, after obtaining advice from the Treasurer and where appropriate, after consideration by Cabinet.

PUBLIC CONSULTATION

Submissions addressing the terms of reference continued to be received during 1998, and there have been ongoing consultations with interested parties. A discussion paper

is being prepared for consideration by the working party, and is to be circulated for public comment in April 1999.

REVIEW PROGRESS

Completion of the review has been delayed to enable consideration of related proposals being developed to address the impact of electronic commerce on paper-based money market transactions.

COMMERCE (IMPORTS) REGULATIONS AND CUSTOMS (PROHIBITED IMPORTS) REGULATIONS (Department of Industry, Science and Resources)

A working group to review the regulations made under the *Customs Act 1901* and the *Commerce (Trade Descriptions) Act 1905* was endorsed by the Government in 1996. This recognised that many of the regulations made under these Acts had become redundant, obsolete or been duplicated in other legislative instruments.

This review preceded the publication of the CLRS, and so did not necessarily follow the guidelines later established for the conduct of competition policy reviews.

Nevertheless, the review process resulted in the repeal of a large number of unnecessary regulatory requirements, producing simpler control and compliance procedures for goods moving into and out of Australia. It also highlighted the need for active, ongoing management of these control barriers.

Since finalising the review of the *Customs (Prohibited Imports) Regulations*, made under the *Customs Act 1901*, there have been subsequent additions and amendments to ensure maximum regulatory efficiency.

The review of the *Commerce (Imports) Regulations*, made under the *Commerce (Trade Descriptions) Act 1905*, has been delayed pending finalisation of new domestic country of origin labelling requirements.

With the commencement in August 1998 of amendments to the *Trade Practices Act 1974* to enact a voluntary compliance regime for businesses making country of origin representations, a formal legislation review process to examine the outstanding requirements contained in the *Commerce (Imports) Regulations* will be undertaken.

FOREIGN INVESTMENT POLICY, INCLUDING ASSOCIATED REGULATION (Department of the Treasury)

REVIEW PANEL

The review of foreign investment policy (including associated regulation) is being conducted by the Commonwealth Treasury, with input from the Foreign Investment Review Board (FIRB). A report will be made to the Treasurer.

TERMS OF REFERENCE

There are no established terms of reference.

PUBLIC CONSULTATION

A formal public consultation process has not been undertaken.

REVIEW PROGRESS

In announcing the review, the Government confirmed that the basic receptive approach to foreign investment will continue. In addition, the current identified restricted areas are expected to continue to apply.

In the context of the review the Government has made it clear that the general preclusion of foreign interests buying developed residential real estate is expected to continue and any approval for foreign interest to acquire vacant land for development will be on the condition that continuous construction commences within a 12 month approval period.

During 1997-98, the Treasury and the FIRB continued to consider issues and to provide advice to the Treasurer on matters relevant to the review.

RADIOCOMMUNICATIONS ACT 1992 AND RELATED ACTS (Department of Communications, Information Technology and the Arts)

REVIEW PANEL

The review of the *Radiocommunications Act 1992* and related legislation commenced in June 1997.

It is being undertaken by a taskforce of officials, drawn from the Department of Communications, Information Technology and the Arts, the Department of Transport and Regional Services and the Department of Defence, in conjunction with an independent reference group of experts.

The reference group provides expertise in the areas of administrative law, economics and radio spectrum management. It is composed of Mr Tom Sherwin AO (former Australian Government Solicitor, former chair of the National Crime Authority), Professor Max Neutze AO (Australian National University), Professor Henry (Auckland University), Professor Reg Coutts (Adelaide University) and Mr John Burton (KPMG).

TERMS OF REFERENCE

1. The *Radiocommunications Act 1992* (the Act) and related Acts and subordinate legislation, are referred to the Taskforce of Officials (the Taskforce) for review by 30 June 1998. The review is to evaluate the appropriateness, effectiveness and efficiency of spectrum management provided for in the Act and related legislation.

2. In undertaking the review, the Taskforce is to advertise nationally for submissions, consult with key interest groups and affected parties, and publish a report.

3. The Taskforce is to inquire into the most appropriate arrangements for achieving the objectives of the Act, taking into account the costs and benefits to the community and radiocommunications users, and having particular regard to:

a) the efficient use of spectrum in an environment where access to spectrum has an increasing economic value and uses of spectrum are changing;

b) Australia's international obligations in relation to spectrum management;

c) the most appropriate arrangements for licensing the use of radiofrequency spectrum, and, in that context:

i) the rights and obligations that should attached to a licence of any type;

ii) the most appropriate methods for calculating fees and taxes relating to licensing, spectrum use and spectrum management in

general, based on the principle that fees should be efficient, transparent and equitable;

iii) the appropriate periods for a licence of any type, including whether it should be finite with renewal rights; and

iv) the most appropriate methods for regulating the use of spectrum for satellite services;

d) the most appropriate arrangements for providing for new uses, or users, of spectrum whether occupied or unoccupied, with particular regard to:

i) the criteria for decisions and process to be followed to allow or facilitate new uses or users;

ii) the treatment of incumbent licensees and other users of the relevant spectrum;

iii) the costs of changes in spectrum usage, and who should bear them; and

iv) the respective roles of the parties involved in spectrum usage changes, namely any incumbent users/licensees, the prospective new user/licensee, and the radiocommunications regulatory body;

e) the most appropriate arrangements for providing the public authority and community service uses of spectrum, and the payment for such use;

f) whether, and what, special provision should be made for:

i) any radiofrequency requirements relating to the fulfillment of universal service obligations under telecommunications legislation for the provision of services;

ii) spectrum relating to defence, national security and intelligence; and

iii) the interface between the radiocommunications and broadcasting regimes;

g) the effectiveness of the technical regulation regime for spectrum;

h) the need for the
industry self-regulation by various means, including the delegation of powers to other bodies;

i) whether there is scope to reduce the costs of regulation, particularly the compliance costs and paper work burden on small business, including through such measures as promoting the use of electronic commerce; and

j) the most appropriate enforcement mechanisms for the Act.

4. The report of the Taskforce should:

a) cover the matters referred to in paragraph 3 and make recommendations relating to those matters;

b) identify the benefits and costs to the community and industry (including business, manufacturers and licensees) of options for regulatory arrangements for spectrum management;

c) include an assessment of the effect of current spectrum regulation on competition in the delivery of communications services, and on Australian business generally;

d) include an assessment of the impact of the legislation being examined on small business and report on ways to reduce the compliance and paperwork burden associated with the legislation;

e) include an assessment of the Australian approach to spectrum management in terms of international benchmarking;

f) list the individuals and groups consulted during the review, and outline their views; and

g) be published at the time of the Government's decisions on its recommendations, or earlier.

PUBLIC CONSULTATION

radiocommunications regulatory body to promote

The taskforce advertised nationally for submissions in July 1997, and has conducted a range of discussions with interested persons and bodies. Forty seven responses were received.

It is intended that a discussion paper be released, followed by a number of workshops/seminars, as a means of engaging interested parties in detailed consultations on the issues raised in the review.

REVIEW PROGRESS

The review was to be completed by June 1998, but this date was extended to 31 October 1998 to avoid adversely affecting the outcome of the Commonwealth spectrum licence auctions. A further extension is likely to be sought to provide time for additional consultations with interested parties.

1.2.2.4 Review not Commenced.

MIGRATION ACT 1958 – SUB-CLASSES 676 AND 686 (TOURIST VISAS)
(Department of Immigration and Multicultural Affairs)

On 17 June 1998, the Minister for Immigration and Multicultural Affairs sought permission from the Prime Minister and the Treasurer to remove the review of sub-classes 676 and 686 of the *Migration Act 1958* (tourist visas) from the CLRS on the basis that:

- the Joint Standing Committee on Migration will report by June 1999 on entry arrangements for the Olympic Games. The terms of reference will address the issue of existing temporary arrangements; and

- in the 1998 Budget, the Government introduced a $50 visitor visa charge to take effect from 1 July 1998. The full impact of the charge is not expected to be felt until at least 1999-2000, making a review inappropriate at this time.

This matter has not yet been resolved.

1.2.3. Legislation Scheduled for Review in 1997-98 — Deferred

This section identifies those Acts originally scheduled for review in 1997-98, for which the review process has been deferred.

ANTI-DUMPING AUTHORITY ACT 1988, CUSTOMS ACT 1901 PART XVB AND CUSTOMS TARIFF (ANTI-DUMPING) ACT 1975 (Attorney-General's Department)

The review of the *Anti* , *Customs Act 1901* Part XVB and the *Customs Tariff (Anti-dumping) Act 1975* has been rescheduled to commence in the first half of 1999, to allow implementation of the Government's commitments to reduce the time taken for individual inquiries into possible dumping of imports.

The details as to the timing and terms of reference for the inquiry are yet to be finalised.

BROADCASTING SERVICES ACT 1992, BROADCASTING SERVICES (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) ACT 1992, RADIO LICENCE FEES ACT 1964, TELEVISION LICENCE FEES ACT 1964. (Department of Communications, Information Technology and the Arts)

The review has been rescheduled to commence in 1998-99, due to changes in the work program of the Productivity Commission (which is to conduct the review).

Terms of reference, specific timing and details concerning the conduct of the review are currently being developed.

EXPORT CONTROL (UNPROCESSED WOOD) REGULATIONS UNDER THE EXPORT CONTROL ACT 1982 (Department of Agriculture, Fisheries and Forestry)

The review of the Export Control (Unprocessed Wood) Regulations under the *Export Control Act 1982* has been deferred until 1998–99, as a consequence of amendments to these regulations that, in conjunction with the making of new regulations (the Export Control Regulations and Regional Forest Agreements), implement a process to

progressively remove export controls on unprocessed wood from Australian plantations and native forests.

INSURANCE (AGENTS & BROKERS) ACT 1984 (Department of the Treasury)

In recognition of the changes taking place to implement the recommendations of the Financial System (Wallis) Inquiry, the review of the *Insurance (Agents and Brokers) Act 1984* has been deferred until 1998-99

The arrangements covered by this Act are currently being examined in the context of a general review of financial intermediary licensing underway as part of the Corporate Law Economic Reform Program (CLERP).

CLERP paper No. 6 entitled *Financial Markets and Investment Products*, released in December 1997, proposed harmonised licensing arrangements for all financial intermediaries. This would involve replacing the current arrangements for insurance agents and brokers with a direct licensing scheme. Under existing arrangements agents are not licensed and brokers are registered.

It would be premature to commence the scheduled review of the Act until the CLERP review is complete. It is expected that draft legislation arising from the CLERP review will be released for public exposure in mid 1999.

SUPERANNUATION (RESOLUTION OF COMPLAINTS) ACT 1993 (Department of the Treasury)

As a consequence of the changes taking place to implement the recommendations of the Financial System (Wallis) Inquiry, an extension of one year was granted for the conduct of the review of superannuation legislation, including the *Superannuation (Resolution of Complaints) Act 1993*.

Recent findings of the Federal Court have resulted in a broader consideration of alternative policy approaches to meeting the objectives of this Act, with High Court consideration of these findings expected to determine whether or not operative parts of the Act are constitutionally valid. A decision is not anticipated until early 1999.

In the interim, options to provide a fair, low-cost and accessible alternative dispute resolution mechanism for complaints in the area of superannuation are being examined. In this context, legislation was enacted in late 1998 to provide the

Superannuation Complaints Tribunal (SCT) with powers to arbitrate complaints with the consent of parties.

In addition, possible mechanisms for achieving a permanent solution to the current inoperability of the SCT are being examined. These include:

- restoring, as far as possible, the SCT's powers through legislative amendments to the *Superannuation (Resolution of Complaints) Act*;

- replacing the SCT with one or more approved industry based schemes. This includes options arising from the overall review of financial intermediary licensing currently underway as part of the Corporate Law Economic Reform Program.

Industry and consumer groups will be consulted in the process of developing these options.

In light of these circumstances it is considered premature to proceed with the scheduled review until the High Court has handed down its decision and the alternative arrangements have been examined further.

OCCUPATIONAL SUPERANNUATION STANDARDS REGULATIONS APPLICATIONS ACT 1992, SUPERANNUATION ENTITIES (TAXATION) ACT 1987, SUPERANNUATION (FINANCIAL ASSISTANCE FUNDING) LEVY ACT 1993, SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993 AND THE SUPERANNUATION SUPERVISORY LEVY ACT 1991 (Department of the Treasury)

The scheduled review of the above legislation relating to superannuation and insurance has been deferred until 1998-99, on the grounds that there was little merit in conducting a review at a time when major changes to the regulatory environment are being implemented in response to the Financial System Inquiry (FSI).

The *Superannuation Entities (Taxation) Act 1987* has been renamed the *Superannuation (Excluded Funds) Taxation Act 1987*, as this Act has been amended to collect levies only from excluded superannuation funds.

The *Superannuation Supervisory Levy Act 1991* has been renamed the *Superannuation (Excluded Funds) Levy Imposition Act 1991*, as this Act has been amended to impose levies only on excluded superannuation funds**.**

1.2.4. Legislation Added to the CLRS in 1997-98

This section identifies legislation included on the CLRS within the period 1997-98, although not necessarily scheduled for review within this period.

HEALTH INSURANCE ACT 1973 PART IIA (Department of Health and Aged Care)

The Pathology Licensed Collection Centre Scheme, which forms a part of the three year Pathology Agreement negotiated between the Commonwealth and the profession following the 1996-97 Budget, and the relevant sections of Part IIA of the *Health Insurance Act 1973*. Is to be reviewed in 1998-99. Competition policy issues will be addressed in the terms of reference.

NAVIGATION ACT 1912 (Department of Transport and Regional Services)

The *Navigation Act 1912* is to be reviewed in 1998-99. The review is to be conducted by an independent chair, supported by a steering committee.

1.2.5 Legislation Deleted from the CLRS in 1997-98

This section identifies legislation deleted from the CLRS during the period 1997-98.

GENERAL INSURANCE SUPERVISORY LEVY ACT 1989 (Department of the Treasury)

The *General Insurance Supervisory Levy Act 1989*, scheduled for review in 1997-98, was repealed as part of the response to the Wallis Inquiry. As a result, it has been removed from the CLRS.

This Act has been replaced by the *General Insurance Supervisory Levy Imposition Act 1998*. As a satisfactory Regulation Impact Statement was prepared covering the 1998 Act, it does not need to be added to the CLRS.

LIFE INSURANCE SUPERVISORY LEVY ACT 1989 (Department of the Treasury)

The *Life Insurance Supervisory Levy Act 1989*, scheduled for review in 1997-98, was repealed as part of the response to the Wallis Inquiry. As a result, it has been removed from the CLRS.

This Act has been replaced by the *Life Insurance Supervisory Levy Imposition Act 1998*. As a satisfactory Regulation Impact Statement was prepared covering the 1998 Act, it does not need to be added to the CLRS.

WOOL INTERNATIONAL ACT 1993 (Department of Agriculture, Fisheries and Forestry)

The *Wool International Act 1993* has been deleted from the CLRS, conditional on the wool stockpile being sold off and the Act repealed by the end of year 2000.

1.2.6 Clarification regarding specific scheduled reviews

EMPLOYMENT SERVICES ACT 1994 (Department of Employment, Workplace Relations and Small Business)

The 1996-97 Commonwealth Legislative Review Annual Report noted that the review of the *Employment Services Act 1994* was deleted from the CLRS because of reforms to the delivery of employment services announced in the 1996-97 Budget. Specifically, this involved the replacement of the case management provisions of this Act by the *Reform of Employment Services Bill 1996*. The Bill, and the associated consequential amendment legislation, was introduced in the Senate on 12 December 1996 and then referred to the Senate Community Affairs Legislation Committee, which reported on 18 March 1997. The Senate subsequently amended the Bill.

These amendments were unacceptable to the Government, and so both Bills were discharged on 2 March 1998. The Government introduced its reforms by administrative means through the through the new Job Network, which commenced operations on 1 May 1998. Since then the Government has not relied on the *Employment Services Act 1994* to implement its employment programs.

QUARANTINE ACT 1908 (DEPARTMENT OF AGRICULTURE, FISHERIES AND FORESTRY)

The review of the *Quarantine Act 1908* (Nairn Review) was underway prior to its listing on the CLRS. To ensure the legislation review requirements have been fully met, the Department of Agriculture, Fisheries and Forestry will conduct a further review of those elements of the Act (if any) that were unchanged following the Nairn Review and that restrict competition. The review will commence in 1999.

1.3 Legislation subject to National Review

The CPA provides that where a review raises issues with a national dimension or effect on competition (or both), the party responsible for the review will consider whether the review should be undertaken on a national (inter-jurisdictional) basis. Where this is considered appropriate, other interested parties must be consulted prior to determining the terms of reference and the appropriate body to conduct the review. National reviews do not require the involvement of all jurisdictions.

The scheduled reviews of the following Commonwealth legislation have been incorporated into national reviews commencing in 1997-98.

AGRICULTURAL AND VETERINARY CHEMICALS ACT 1994 (Department of Agriculture, Fisheries and Forestry)

REVIEW PANEL

The *Agricultural and Veterinary Chemicals Act 1994* was originally scheduled for review in 1998-99. However, on 24 March 1997, the Prime Minister, with the agreement of all jurisdictions, brought forward the review to 1997-98, as part of the Commonwealth Government's response to the report by the Small Business Deregulation Taskforce.

The aim of the Small Business Deregulation Taskforce was to produce a report recommending ways of reducing the compliance costs and paper work burden on Australian businesses, in particular small business.

The review covers legislation that created the National Registration Scheme for Agricultural and Veterinary Chemicals and legislation controlling the use of agricultural and veterinary chemicals in Victoria, Queensland, Western Australia and Tasmania.

The jurisdictions of New South Wales, South Australia and the Northern Territory have decided to conduct separate National Competition Policy reviews of their control of use legislation.

The national review of Commonwealth, State and Territory Agricultural and Veterinary Chemicals Legislation was commissioned by the Victorian Minister for Agriculture and Resources, on behalf of Commonwealth, State and Territory Ministers for Agriculture/Primary Industries.

The key features of the agreed process for the conduct of the review are:

- It will include the Commonwealth's legislation to establish the National Registration Authority for Agricultural and Veterinary Chemicals (NRA) and the complementary adoptive State and Territory legislation. The review will also cover control of use legislation for AgVet chemicals in Western Australia, Queensland, Victoria and Tasmania; and

- it will be independent, with a consultant being selected by a multi-jurisdictional project team with responsibility for overall project management of the review.

A public tender process conducted during June/July 1998 resulted in the selection of PriceWaterhouseCoopers and Francis Abourizk Lightowlers to jointly undertake the review, in accordance with Victoria's competition policy guidelines. Victoria is providing the secretariat for the review.

The consultants are conducting the review under the guidance of a project team, comprising representatives of the Victorian Department of Natural Resources and Environment, the Commonwealth Department of Agriculture, Fisheries and Forestry and the Western Australian Department of Agriculture.

The project team is responsible for the overall management of the review, under the guidance of a steering committee (the membership of which is specified in the terms of reference).

The terms of reference for the review were agreed to on 4 June 1998, with the consultants required to report on the review findings to the Commonwealth, State and Territory Ministers for agriculture/primary industries by November 1998.

TERMS OF REFERENCE

The review will examine the case for reform of any legislative restrictions on competition contained in Agricultural and Veterinary Chemicals Legislation, including subordinate legislation, as listed in Appendix 2, in accordance with the Victorian Government's Guidelines for the Review of Legislative Restrictions on Competition, including those provisions relating to national reviews. With the concurrence of CoAG, New South Wales, South Australia and the Northern Territory will be undertaking separate reviews of their respective control of use legislation.

In particular, the review will:

- clarify the objectives of the legislation;
- identify the nature of the restrictions on competition;
- identify and consult with the groups likely to be affected by the legislation listed at Appendix 2;
- analyse the likely effect of the restriction on competition and on the economy in general;
- examine the need to promote greater integration of the different regulatory restrictions;
- assess the net public benefit of each restriction;
- identify relevant alternatives to the legislation, including non-legislative approaches; and
- assess the net public benefit of the alternatives.

Reform Options

Without limiting the scope of the review, the review should specifically consider whether particular provisions of the legislation listed in Appendix 2 restrict competition including:

- the requirement for AgVet products to be registered (permitted/exempted) before sale or distribution;
- the requirement for chemical producers to pay fees for registration assessment, charges for annual renewal of registration, and annual levies based on value of registered products sold and the basis for setting these fees, charges and levies;
- the requirement for manufacturers of veterinary chemicals to be licensed in order to manufacture such products; and

- the requirement for AgVet chemicals to be subject to State/Territory control of use regulation and the nature and extent of such regulation.

Legislation under Review (Appendix 2)

Agricultural and Veterinary Chemicals Act 1994 and Determination (under section 23)
Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994
Agricultural and Veterinary Chemical Products Levy Imposition (Customs) Act 1994 and Regulations
Agricultural and Veterinary Chemical Products Levy Imposition (Excise) Act 1994
Agricultural and Veterinary Chemical Products Levy Imposition (General) Act 1994
Agricultural and Veterinary Chemicals (Administration) Act 1992 and Regulations
Agricultural and Veterinary Chemicals Code Act 1994 and Regulations and Order
Agricultural and Veterinary Chemicals (Victoria) Act 1994 and Regulations (Vic)
Agricultural and Veterinary Chemicals (Western Australia) Act 1995 and Regulations (WA)
Agricultural and Veterinary Chemicals (Tasmania) Act 1994 and Regulations (Tas)
Agricultural and Veterinary Chemicals (NSW) Act 1994 and Regulations (NSW)
Agricultural and Veterinary Chemicals (South Australia) Act 1994 and Regulations (SA)
Agricultural and Veterinary Chemicals (Queensland) Act 1994 and Regulations (Qld)
Agricultural and Veterinary Chemicals (Northern Territory) Act 1994 and Regulations (NT)

State Control of Use Legislation

Victoria

Agricultural and Veterinary Chemicals (Control of Use) Act 1992; Regulations 1996 and Hormonal Growth Promotants Regulations 1993

Queensland

Agricultural Chemicals Distribution Control Act 1966
Agricultural Chemicals Distribution Control Regulations 1998
Chemical Usage (Agricultural and Veterinary) Control Act 1988
Chemical Usage (Agricultural and Veterinary) Control Regulations 1989

Western Australia

Agriculture Bill drafting instructions – sections dealing with resource protection
Veterinary Preparations and Animal Feeding Stuffs Act 1976 and Regulations
Agricultural Produce (Chemical Residues) Act 1983 and Regulations
Aerial Spraying Control Act 1966 and Regulations

Health (Pesticides) Regulations 1956
Agriculture and Related Resources Protection (Spraying Restrictions) Regulations 1979

Tasmania

Agricultural and Veterinary Chemicals (Control of Use) Act 1995
Agricultural and Veterinary Chemicals (Control of Use) Regulations 1996 and Orders

PUBLIC CONSULTATION

An issues paper was released for public comment on 31 August 1998, with comments to be provided to the consultants by 30 September 1998.

MUTUAL RECOGNITION ACT 1992 (Department of Education, Training and Youth Affairs and Department of Industry, Science and Resources)

REVIEW PANEL

The review of the *Mutual Recognition Act 1992* was conducted by a working group of the Council of Australian Governments (CoAG) Committee on Regulatory Reform (CRR), comprising representatives from the Commonwealth New South Wales, Queensland and Western Australia. Queensland was the lead jurisdiction for the review.

TERMS OF REFERENCE

The Review Group reviewing the legislation regarding the Mutual Recognition Agreement (the Agreement) shall be required to conduct the review in accordance with the terms for legislation reviews set out in the Competition Principles Agreement. The guiding principle of the review is 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.

Without limiting the scope of the review of the legislation regarding the Agreement, the Review Group shall:

- clarify the objectives of the legislation;

- identify the nature of the restrictive effects on competition;

- analyse the likely effect of any identified restriction on competition on the economy generally;

- assess and balance the costs and benefits of the restrictions identified;

- consider Mutual Recognition Arrangements (MRA) made or sought, including non-legislative approaches;

- consider whether the scope of the legislation should be extended to other areas of regulation. This term of reference does not include revisiting the issue of partially registered occupations;

- examine options for improving the interaction between the mutual recognition and other microeconomic and regulatory reforms; for example, the Trans Tasman Mutual Recognition Arrangement (TTMRA) makes direct reference to standards being developed in accordance with the CoAG principles and guidelines, maybe a similar link in the Agreement would be useful;

- identify appropriate mechanisms for monitoring the ongoing operation of mutual recognition. There may be some mechanisms that could be established to better monitor the operation of the goods side of mutual recognition, or registration bodies could be required to provide mutual recognition data to CRR annually to assist with ongoing monitoring and provide information for future reviews; and

- in undertaking its work, have regard to the independent review of the scheme by the Commonwealth Office of Regulation Review entitled *Impact of Mutual Recognition in Australia: A Preliminary Assessment*, January 1997.

In the course of the review the Review Group should:

- identify any issues of market failure which need to be, or are being addressed by the legislation; and

- consider whether the effects of the legislation contravene the competitive conduct rules in Part IV of the Trade Practices Act 1974 (Commonwealth) and the Competition Codes of each jurisdiction.

The team shall consult with and take submissions from consumers, producers and other interested parties.

The Review Group shall present its report to CoAG Senior Officials by 1 March 1998.

PUBLIC CONSULTATION

The working group advertised for public submissions in the national press, receiving over 100 submissions.

REVIEW PROGRESS

The review was conducted between October 1997 and July 1998. On 14 November 1998, the Prime Minister wrote to Premiers and Chief Ministers as well as the Minister for Education, Training and Youth Affairs and the Minister for Industry, Science and Resources, seeking their endorsement of the recommendations arising from the review.

A detailed CoAG response indicating action taken to implement each of the recommendations is to be prepared by CRR for public release.

1.3.1`Other National Reviews with Commonwealth Involvement

The Commonwealth is also participating in various national reviews that do not involve Commonwealth legislation currently scheduled for review or for which there is no applicable Commonwealth legislation. These reviews are detailed below.

DRUGS, POISONS AND CONTROLLED SUBSTANCES LEGISLATION

The State, Territory and Commonwealth Governments have commissioned a review to examine legislation and regulation pertaining to drugs, poisons and controlled substances.

This legislation forms part of a broader public health framework that seeks to promote:

- the public health and safety from dangerous substances; and

- good health through appropriate use of drugs, poisons and controlled substances.

It relates to State and Territory responsibility for drugs for human and veterinary use, agricultural chemicals and household chemicals.

The CoAG Committee on Regulatory Reform (CRR) has agreed the terms of reference for the review. The Prime Minister has written to the State Premiers and Territory Chief Ministers seeking their agreement.

TERMS OF REFERENCE

In April 1995 State, Territory and Commonwealth Governments agreed to a wide ranging program of micro-economic reform under National Competition Policy. The aim of National Competition Policy is to increase economic growth and the wellbeing of the community as a whole through increased competition across the Australian economy. The scope for increased competition will vary from sector to sector depending on the extent to which other policy objectives of government can be achieved in conjunction with increased competition.

In accordance with obligations under National Competition Policy and the Competition Principles Agreement, a review has been commissioned by State, Territory and Commonwealth Governments to examine legislation and regulation pertaining to drugs, poisons and controlled substances.

The review will identify and assess restrictions contained in legislation against criteria outlined in clause 5(1) of the Competition Principles Agreement. When assessing restrictions on competition against clause 5(1) the review may also have regard to a range of other policy considerations outlined in clause 1(3) of the Agreement. After receiving the review report, Governments will develop a response.

Legislation to be Reviewed

The review will examine the case for reform of legislative restrictions on competition contained in the legislation and regulation governing drugs, poisons and controlled substances. The Acts and Regulations to be reviewed are listed at Appendix A.

The review will have regard to the relevant sections of the Competition Principles Agreement, the CoAG Guidelines and principles for Standard Setting and Regulatory Action and make use of material contained in the guidelines published by Government on regulatory impact statements and on conducting National Competition policy

legislation reviews. The review should have regard to the Mutual Recognition Agreements, particularly when considering issues relating to packaging and labelling. The review should also have regard to public health considerations and the need for consumers to make an informed choice from a safe range of products.

There has already been significant work done in the areas of drugs, poisons and controlled substances and the review should have regard to previous reviews including but not limited to:

- the 1996 report of the Industry Commission into the Pharmaceutical Industry;
- "Review of the Poisons Scheduling Process in Australia" (Brian Wall 1996);
- Review of the Brand Advertising of Schedule 3 (Pharmacists Only) Medicines, Brian Wall October 1997;
- The Review of the Mutual Recognition Act (CoAG Committee for Regulatory Reform).

The review will not address the issues of:

a) the legalisation of illicit drugs;

b) the interface of drugs, poisons and controlled substances regulation with harm minimisation strategies (e.g. needle exchange programs);

c) who has professional prescribing (including possession, administration and supply) rights and the extent of those rights;

d) pharmacy ownership and the circumstances under which a pharmacist may practice; and

e) criteria for listing in schedules.

The Chair will report on the appropriate arrangements for regulation, if any, and in particular will:

- clarify the objectives of the legislation;
- identify whether and to what extent the drugs, poisons and controlled substances legislation and regulation restrict competition;

- identify the nature and magnitude of the health problems that the drugs, poisons and controlled substances legislation seeks to address;

- analyse the effect of variation of legislation and regulation across jurisdictions;

- analyse the drugs and poisons interface with other legislative regimes;

- identify relevant alternatives to drugs, poisons and controlled substances legislation and regulation, including non-legislative and less restrictive approaches;

- analyse the likely effect of the restrictions on competition and on the economy in general;

- examine mechanisms for increasing the overall efficiency, including minimising the compliance costs of drugs, poisons and controlled substances legislation and regulation;

- assess and balance the costs and benefits and overall effects of drugs, poisons and controlled substances legislation and regulation and alternative less restrictive approaches;

- consider, where uniformity exists or is achieved as a result of this review, a framework for maintaining uniformity in the future; and

- list the individuals and groups consulted during the review and outline their views.

Review Issues

Having regard to the above, the Review should specifically address the following main issues:

1. Relationship between the processes and arrangements for decisions on drugs and poisons scheduling and drugs and poisons regulation.

There is currently a national process for the scheduling of drugs and poisons but there is not a national process for the development of regulations and legislation that applies to those schedules. Consideration should be given to the development of a coherent process/connection between scheduling and regulation. For example, consideration

could be given to whether the scheduling committee should make recommendations to another body which considers issues of legislation policy.

2. National uniformity of regulation and administration of that legislation.

Inconsistencies in regulation that could be addressed by the review include:

- Licensing of manufacturers, wholesalers and retail suppliers of drugs and poisons;

  For example, licensing currently occurs in some areas at both Commonwealth and State levels for the same establishments. Options could include rationalising current licensing arrangements and analysing the effectiveness of current codes of practice. An assessment could be made of the potential for further development of codes of practice and other appropriate regulatory options.

- Packaging and labelling standards;

  In the case of most goods, the costs imposed on business of different labelling standards between states have been significantly reduced by the Mutual Recognition Agreement (MRA). An exception to the mutual recognition principle applies to requirements relating to the "manner of sale". Because of the link between packaging and labelling and availability under drugs and poisons packaging and labelling requirements form the scope of the MRA. Without limiting its consideration of packaging and labelling standards the review should consider options for reducing costs imposed on businesses through greater uniformity of packaging and labelling requirements between jurisdictions. Alternatively, the review might consider the impact of applying the MRA to drugs and poisons packaging and labelling as a means of addressing non-uniformity issues or to underpin any proposals for uniform arrangements.

- Advertising restrictions;

- Storage and handling requirements;

  Some jurisdictions require medicines, labelled "to be kept out of reach of children" when displayed for sale, be kept above a certain height. Other jurisdictions have no particular requirements for retailers on this issue.

- Additional requirements such as recording of sale;

It is known that there are variations in the requirements for the lists of substances in Schedule 3 (Pharmacists Only). While substances included in Schedule 3 are identical each State and Territory makes its own decisions about how this schedule is to be applied. Similarly substances may be put into a more restrictive schedule to address specific public health concerns related to misuse or abuse within a particular jurisdiction.

3. The number and range of schedules having regard to public access to substances, cost, simplicity of compliance by industry and professions and the optimisation of public health.

4. Interfaces with related legislation to maximise efficiency in the administration of legislation regulating this area.

For example, an analysis of the potential effects of the lifting of the exemptions applying to therapeutic products currently under the Mutual Recognition Act and the Trans-Tasman Mutual Recognition Agreement.

Advertising restrictions may be imposed by both the Therapeutic Goods Act and Drugs, Poisons and Controlled Substances legislation. The increasing importance of the drug-food interface needs to be addressed through an analysis of the relationship between the Australian and New Zealand Food Authority Act 1991 and the State and Territory Drugs, Poisons and Controlled Substances legislation.

5. Manner of supply by professionals of drugs, poisons and controlled substances.

Whilst the issue of prescribing rights is to be excluded from the review, the manner of supply including the way prescriptions are written, handled and processed should be considered having regard to consistency across professions and across jurisdictions.

For example, regardless of profession, when a medicine is supplied, labelling detailing safe use may be required.

Review Arrangements

The review will be conducted by an independent chair who will be supported by a Secretariat. The Chair will be advised by a Steering Committee specifically established for that purpose.

The Chair will be appointed by the Heads of Government at the time the terms of reference are approved. The Chair will be selected from a nominee/nominees provided by the Chair of the National Public Health Partnership ("NPHP") in consultation with the Chair of the CoAG Committee on Regulatory Reform.

The NPHP will nominate membership of the Steering Committee and ensure that each jurisdiction in represented. Jurisdictions which are not members of the NPHP will provide a representative on the Committee. The Committee should aim for consensus decisions but where a vote is required, each member of the Committee shall have one vote. In addition, there will be other officers nominated by the CoAG Committee on Regulatory Reform. There should also be expertise in health risk analysis and public health law available to the Chair. The Chair may co-opt people as deemed necessary. The Chair will consult with jurisdictions regarding the obtaining of wider expertise to ensure others affected by the legislation are consulted. For example, those responsible for the administration of agricultural and veterinary chemicals, and industrial chemicals. The Steering Committee will meet as often as is deemed necessary by the Chair.

Work may be done from time to time by consultants as identified as necessary by the Chair in consultation with the Steering Committee.

The Chair is to be supported by a Secretariat which will be based at the Therapeutic Goods Administration in Canberra and which will be responsible for all administrative matters relating to the review. The cost of the review, including secretariat, the Chair's fees and recurrent costs, will be shared proportionately according the population of each State and Territory. The Commonwealth will fund half the cost of the review. Where considered appropriate by the Chair, a jurisdiction may second an officer to the review secretariat, as part or all of its contribution to the cost of the review. Each jurisdiction will cover the steering committee participation costs.

The Chair will report their findings to the Australian Health Ministers Conference. Upon consideration of the report and comments from jurisdictions the report and recommendations will be made to CoAG.

Review Process

The Chair will establish a process for national consultation with key interest groups and affected parties and publish a report. The review will use the structure of the National Public Health Partnership for establishing links with all jurisdictions and for ease of administration.

Key Dates

The review will commence on the date on which the Steering Committee is established. The review will report within 12 months of the establishment of the Steering Committee.

Secretariat

The Secretariat will be based at the Therapeutic Goods Administration in Canberra. The Secretariat will report to the Chair and work as directed by the Chair. The Secretariat will consist of officers with expertise in the review of legislation under National Competition Policy, an understanding of the structure and workings of the National Public health partnership and an understanding of public health law, drugs, and poisons administration and micro economics.

The Secretariat will take responsibility for all administrative arrangements relating to the review and work as directed by the Chair.

APPENDIX A – LEGISLATION TO BE REVIEWED

New South Wales

Poisons and Therapeutic Goods Act 1966
Poisons and Therapeutic Goods Regulations 1994
Drugs Misuse and Trafficking Act 1985

Queensland

Health Act 1937
Health (Drugs and Poisons Regulations) 1996

South Australia

Controlled Substances Act 1984
Controlled Substances (Declared Drugs of Dependence) Regulations 1993
Drugs of Dependence (General) Regulations 1985
Controlled Substances Act (Exemptions) Regulation 1989
Controlled Substances (Poisons) Regulations 1996
Controlled Substances (Volatile Solvents) Regulations 1996

Tasmania

Poisons Act 1971
Poisons Regulations 1975
Alcohol and Drug Dependency Act 1968
Pharmacy Act 1908
Criminal Code Act 1924

Victoria

Drugs, Poisons and Controlled Substances Act 1981
Drugs, Poisons and Controlled Substances Regulation 1995

Western Australia

Poisons Act 1964
Poisons Regulations 1965
Division 5 (Drugs), Division 6 (Medicines and disinfectants) and Division 7 (Manufacture of therapeutic substances) of Part VIIA of the Health Act 1911
Health (Drugs and Allied Substances) Regulations

Australian Capital Territory

Drugs of Dependence Act 1989
Drugs of Dependence Regulations 14/1993
Drugs of Dependence Regulations 26/1995
Drugs of Dependence Regulations 29/1995
Poisons Act 1933
Poisons Regulations 1933
Poisons and Drugs Act 1978
Poisons and Drugs Regulations 1993
Public Health (Sale of Food and Drugs) Regulations

Northern Territory

Poisons and Dangerous Drugs Act
Poisons and Dangerous Drugs Regulations
Therapeutic Goods and Cosmetics Act
Pharmacy Act

FOOD ACTS

The Australia New Zealand Food Authority (ANZFA) is co-ordinating the development of nationally uniform Food Acts through the review of the Model Food Act, each State and Territory Food Act and the New Zealand Food Act. There is no Commonwealth food legislation.

The Food Regulation Review Committee was chaired by Dr Blair, and comprised representatives of industry, consumers and government.

The timely adoption of nationally uniform Food Acts is important to the development and implementation of several food reforms being developed by ANZFA in collaboration with the States and Territories and New Zealand, namely:

- implementation and uniform interpretation and enforcement of the Australia New Zealand Food Standards Code by 1 January 2000;
- implementation of food hygiene reforms;
- the development of a national surveillance system; and
- the requirement to have all anti-competitive legislation reviewed and reforms implemented by 2000.

This project is linked with the Australian National Public Health Partnership legislation reform process.

Written submissions were sought from the public. Public hearings and focus groups and workshops were also organised. A draft report was released in May 1998 for public comment.

The final report of the Food Regulation Review Committee, *Food: A Growth Industry*, was provided to Government in August 1998, and is publicly available. The report recommends major legislative, procedural and structural reforms intended to produce a more efficient and effective food regulatory system, covering primary production, processing, retailing and catering, with improved consumer safety and a reduced regulatory burden on industry.

An exposure draft of the Food Bill will be released for public comment. A recommended Food Act, regulatory impact assessment and competition policy analysis together with an inter-governmental agreement in relation to uniform

implementation of the Food Act will be presented to the Australia New Zealand Food Standards Council and then to CoAG in 1999.

PHARMACY REGULATION

A national review to examine State and Territory legislation relating to pharmacy ownership and registration of pharmacists, together with Commonwealth legislation relating to regulation of the location of premises for pharmacists approved to supply pharmaceutical benefits, was formally agreed to by all governments on 1 May 1998.

The review is to commence in the first half of 1999.

The Commonwealth legislation referred to involves a Ministerial Determination under subsection 99L(1) of the *National Health Act 1953*, relating to the approval of the location of premises from which pharmacists may supply pharmaceutical benefits. The review will also require examination of aspects of the existing Commonwealth/Pharmacy Guild of Australia Agreement.

Terms of reference and administrative details for the review are currently being finalised.

1.4. New and Amended Regulation (enacted since April 1995)

The CPA requires all new and amended legislation that restricts competition to be accompanied by evidence that the benefits of the restriction to the community as a whole outweigh the costs, and that the objectives of the legislation can only be achieved by restricting competition.

The Prime Minister's *More Time for Business* policy statement (March 1997), prepared in response to the recommendations of the Small Business Deregulation Taskforce, expanded this requirement to apply to all Commonwealth regulation that imposes costs or confers benefits on business.

1.4.1 Regulation Impact Statements

In order to make transparent the possible impact of proposed legislation on competition, a Regulation Impact Statement (RIS) must be prepared for all proposed

new and amended Commonwealth regulation with the potential to restrict competition, or impose costs or confer benefits on business. This Statement must assess the costs and benefits of alternative means of fulfilling the relevant policy objective.

The ORR is responsible for providing guidance and training to Commonwealth Departments and agencies in preparing a RIS, and for assessing its technical adequacy. RIS requirements are detailed in the ORR handbook *A Guide to Regulation*. A second edition of this publication was released in December 1998, and is available from the ORR.

Box 6: What is the purpose of the RIS process?

The RIS process is intended to ensure that a comprehensive assessment of all policy options, and the associated costs and benefits, is undertaken. This information is then used to inform the decision making process. In this regard, it provides a comprehensive checklist that outlines public policy decision making best practice.

This process is to be used to develop the appropriate policy solution, not to construct a justification after the event.

Where a regulatory solution is intended, a formal RIS is to accompany the proposed legislation on introduction to Parliament. This provides a public statement of the decision making process.

The Commonwealth's overall performance against the RIS requirements, incorporating compliance for new or amended primary legislation, subordinate legislation, quasi-regulation and treaties, is assessed in detail in the Productivity Commission report *Regulation and its Review 1997-98*.

This report notes that, for the period 1997-98, 104 bills were introduced into Parliament for which a RIS was required. A RIS was prepared in 97% of cases. However, in only 38% of cases was a RIS included in the documentation provided to the final decision-makers. For subordinate legislation, of the 338 relevant instruments, a RIS was prepared in less than 50% of cases.[12]

[12] Productivity Commission (1998), *Regulation and its Review 1997-98,* AusInfo, Canberra, p.xvii.

1.4.1.1. Commonwealth Compliance

While the CPA requires new legislation that restricts competition be accompanied by evidence that it satisfies the public benefit test, the formal RIS requirement was not promulgated until 1997 following the *More Time for Business* statement and the initial release of the ORR's *A Guide to Regulation* in October 1997.

A significant amount of legislation that is potentially anti-competitive or imposes costs or confers benefits of business introduced after April 1995 and prior to mid 1997, was not supported by a comprehensive RIS.

The Commonwealth is now seeking to ensure that this legislation, or more recent regulation for which a RIS was not prepared, meets the net community benefit requirement. Where the circumstances appear to warrant it, legislation may be considered for inclusion on the CLRS.

As a result, Commonwealth portfolios have assessed relevant legislation to determine those efforts necessary to meet any residual obligations in this area.

In some cases, the legislation may be deemed not cost effective to review or of a mechanical nature and so not require a RIS[13].

The *Road Transport Reform (Dangerous Goods) Amendment Act 1997* provides heads of power in the principal Act for regulation making. It was, therefore, regarded as a machinery measure not warranting a RIS. Similarly, the *Dairy Produce Amendment Act 1996*, administered by the Department of Agriculture, Fisheries and Forestry, made minor but necessary amendments to the *Dairy Produce Act 1986* to ensure consistency between industry milk payment practises and the domestic market support legislation introduced on 1 July 1995. A RIS statement was not prepared due to the minor nature of the amendments.

In other cases, the principal Act to which amending legislation relates is to be reviewed under the existing CLRS process or other review requirements of a satisfactory nature that have been established.

For example, in relation to the *Bankruptcy (Registration Charges) Act* 1997 administered by the Attorney-General's Department, those provisions relevant to

---

[13] Productivity Commission (1998), *Regulation and its Review 1997-98* outlines those circumstances in which a RIS is not required.

registration of private sector bankruptcy trustees are being reviewed as part of the CLRS process (*see* page 35).

The provisions of the *Ozone Protection (Licence Fees – Manufacture) Act 1995* and the *Hazardous Waste (Regulation of Exports and Imports) Amendment Act 1996*, administered by the Department of the Environment and Heritage, will be considered in relevant reviews scheduled under the CLRS for 1999-00 and 1998-99 respectively.

The *Dairy Produce Amendment Act 1995*, administered by the Department of Agriculture Fisheries and Forestry, amended the *Dairy Produce Act 1986* to implement replacement domestic market support arrangements for the Australian dairy industry. These changes were regarded as a direct and unavoidable consequence of the Uruguay Round of trade negotiations, while also fulfilling the Government's commitment to the Australian dairy industry. While a RIS was not prepared for this Act, the *Dairy Produce Act 1986* is scheduled for review by the Productivity Commission under the CLRS to commence in 1998–99.

A RIS was also not prepared for the following pieces of legislation administered by the Department of Education, Training and Youth Affairs:

- *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Act (No. 1) 1996*, which extended the sunset clause in the principal Act by two years until 1 January 1999;

- *Education Services for Overseas Students (Registration Charges) Act 1997*, which provided for Australia's international education and training providers to contribute to the cost of regulating the industry; and

- *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Act (No. 1) 1997*, which made consequential amendments to the principal Act to reflect the introduction of registration charges (*see* above).

However, a 1996 review of the principal Act (prior to the amendments) involved extensive national consultation and found universal support for a continuation of the existing industry regulation arrangements. The ORR advised that, although a RIS had not been prepared, this review had adopted the essential elements of a RIS.

Furthermore, a Bill to extend the force of the principal Act by a further three years (until 1 January 2002) was introduced into Parliament on 24 June 1998. A full RIS cleared by the ORR was included in the Explanatory Memorandum. Following a

public hearing, the Senate Employment, Education and Training Legislation Committee reported on 13 August 1998 recommending the Senate pass the Bill without amendment.

The *Australian Meat and Livestock (Quotas) Act 1995* amended then existing arrangements that enabled the (now abolished) Australian Meat and Live-stock Corporation (AMLC) to impose a system of quotas to protect the orderly export of goods. As part of industry reforms implemented from 1 July 1998, responsibility for quota administration was transferred from AMLC to the Department of Agriculture, Fisheries and Forestry. The Department intends to review the administration of quota arrangements and, if any changes are proposed as a result of this review, prepare a RIS.

The *Human Services and Health Legislation Amendment Act (No.2) 1995,* which restricts temporary resident doctors from participating in Medicare arrangements, and the *Health Insurance Amendment Act (No.2) 1996*, which imposes a requirement for medical graduates to complete post-graduate education in order to gain access to Medicare provider numbers, are in a similar position.

These measures were introduced in the context of the General Practice Strategy established in the 1991-92 Budget, to, among other things, restrain the increasing costs to Medicare of general practice services by addressing the increasing (and over-) supply of general practitioners.

The Strategy was reviewed in conjunction with the medical profession, "General Practice: Changing the Future Through Partnerships" March 1998, with continuation of the workforce initiatives receiving general support.

While the RIS process was not utilised, there are review mechanisms already provided for in the legislation. For example, the *Health Insurance Amendment Act (No.2) 1996* inserted a sunset clause as part of the new section 19AA of the *Health Insurance Act 1973* to the effect that this section will cease to operate on 1 January 2002. More importantly, it also established section 3GC as a review mechanism to provide ongoing annual review of the operation of the legislation. Section 3GC of the *Health Insurance Act 1973* establishes a Medical Training and Review Panel that assists with the dissemination of information relating to employment opportunities for medical practitioners. Reports submitted by the Panel to the Minister are laid before Parliament and as such provide a significant measure of public accountability in the administration of the legislation.

In other circumstances, changes in government policy see the repeal of legislation and so the removal of the requirement to demonstrate RIS compliance. For example, the *Health Legislation Amendment (Private Health Insurance Incentives) Act 1997*, introduced to provide financial incentives to low and middle income earners to purchase or retain private health insurance, was repealed and replaced with the Government's private health insurance 30% rebate scheme.

There is also scope to re-present a RIS, or part of a RIS, where the original statement has been deemed inadequate by the ORR.

For example, the *Child Care Payments Act 1997* establishes a system to allow Centrelink to calculate Childcare Assistance payments for parents based on attendance information provided to Centrelink by parents. The RIS prepared for this Act was assessed by the ORR as not meeting the adequacy test, through not containing an adequate level of analysis of the costs and benefits of all the options.

In January 1998, the Government decided not to proceed with these changes and deferred the implementation of the *Child Care Payments Act 1997*. It then passed the *Child Care Legislation Amendment Act 1998* in order to implement the 1997 Budget changes to childcare.

Some of the amendments required changes to the Child Care Guidelines. The ORR found that in relation to one of the guidelines relating to the ability to provide long day care (i.e. eight hours continuous care), although a RIS had been prepared the RIS requirements were not fully met as it failed to provide an adequate assessment of all feasible options. In particular, it did not discuss in any depth the effect of the proposal on those centres that did not provide long day care and were in receipt of child care assistance.

The ORR and the responsible department, the Department of Health and Aged Care, have now reached a negotiated position whereby a revised version of the RIS for this guideline will be prepared and provided to the ORR for further assessment.

The *Interstate Road Transport Amendment Act 1995*, administered by the Department of Transport and Regional Services, is to be subject to a comprehensive review accordance with National Competition Policy principles to commence in January 1999, with an anticipated completion date in mid 1999.

1.4.2. Legislation enacted since 1 January 1997 that may restrict competition

Those Commonwealth Acts introduced in the period 1 January 1997 to 30 June 1998 identified by the ORR as having the potential to restrict competition are identified in **Table 2**. The potential impact of these Acts varies from relatively minor to significant. The actual impact will depend on how the various legislative provisions are utilised.

Table 2: Potentially Anti-Competitive Commonwealth Legislation Enacted Between 1 January 1997 and 30 June 1998

Commonwealth Acts

Australian Meat and Live-Stock Industry Act 1997

Bankruptcy (Registration Charges) Act 1997

Broadcasting Services Amendment Act (NO.2) 1997

Broadcasting Services Legislation Amendment Act 1997

Child Care Payments Act 1997

Communications Legislation Amendment Act (NO.1) 1997

Customs Depot Licensing Charges Act 1997

Education Services for Overseas Students (Registration Charges) Act 1997

Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Act 1997

Health Legislation Amendment (Private Health Insurance Incentives) Act 1997

Industrial Chemicals (Registration Charge-Customs) Act 1997

Industrial Chemicals (Registration Charge-Excise) Act 1997

Industrial Chemicals (Registration Charge-General) Act 1997

Migration Legislation Amendment (Migration Agents) Act 1997

Private Health Insurance Incentives Act 1997

Radiocommunications Amendment Act 1997

Radiocommunications Legislation Amendment Act 1997

Radiocommunications (Receiver Licence Tax) Amendment Act 1997

Radiocommunications (Spectrum Licence Tax) Act 1997

Radio Licence Fees Amendment Act 1997

Retirement Savings Accounts Act 1997

Road Transport Reform (Dangerous Goods) Amendment Act 1997

Road Transport Reform (Heavy Vehicles Registration) Act 1997

Sydney Airport Demand Management Act 1997

Telecommunications Act 1997

Telecommunications (Carrier Licence Charges) Act 1997

Telecommunications (Numbering Fees) Amendment Act 1997

Telecommunications (Universal Service Levy) Act 1997

Television Licence Fees Amendment Act 1997

Child Care Legislation Amendment Act 1998

2. COMPETITIVE NEUTRALITY

2.1 Why implement Competitive Neutrality?

The *Competition Principles Agreement* (CPA) establishes a policy of competitive neutrality (CN). This requires that government businesses operating in a market in which there are actual or potential competitors should not enjoy any net competitive advantages simply as a consequence of their public ownership.

The objective of this policy is to eliminate potential resource allocation distortions arising from the public ownership of significant business activities operating in a contestable environment, and to encourage fair and effective competition in the supply of those goods and services.

The ability of government owned business activities to compete 'unfairly' can have significant economic efficiency and equity implications. This is because pricing decisions taken by government businesses may not fully reflect actual production costs or other business costs borne by their private sector competitors. This may result from a lack of market pressure and discipline, such as that applied through the requirement for private sector firms to earn a commercial rate of return and make dividend payments to shareholders, or special exemptions from the payment of taxes and charges or compliance with planning regulations. These advantages may be sufficient to enable the government business to undercut private sector competitors, as well as provide an effective barrier to the entry of potential competitors.

If consumers choose to purchase from the lower priced government provider, the production and investment decisions of both that business and actual and potential competitors will be influenced. If the government business is not otherwise the least cost producer, the allocation of resources toward production by this business is inefficient.

As a result, removing those advantages enabling under pricing should encourage more economically efficient outcomes, and ensure resources are allocated to their best uses.

It also means that where public funds continue to be used to provide significant business activities, increased competitive pressures and performance monitoring should result in more efficient operations. Consumers will benefit from more competitive pricing practices and improved quality of government services.

Furthermore, where public funds are removed from the provision of goods and services considered best left to the private sector, and those remaining activities are provided more efficiently, a greater proportion of total public funds can be directed toward the provision of social policy priorities such as health, education and welfare.

This improved government business competitiveness does not come at the expense of satisfying legitimate community service obligations. However, as discussed in **section 2.1.3**, CN does encourage greater transparency and efficiency in their provision.

2.1.1 Which government activities are subject to CN?

The *Commonwealth Competitive Neutrality Policy Statement* (June 1996) (CNPS) deems all Government Business Enterprises, Commonwealth share limited companies and Commonwealth Business Units to be 'significant business activities' and, consequently, required to apply CN.

- Designated Government Business Enterprises are legally separate from the Commonwealth Government, being either a statutory authority established under enabling legislation or a Commonwealth *Corporations Law* company. Their principal function is to sell goods and services for the purpose of earning a commercial rate of return and paying dividends to the Budget.

- Commonwealth share-limited companies are established under *Corporations Law*. Where not designated as a Government Business Enterprise, these companies need not earn a commercial rate of return and are generally financed through subsidies from the Budget and/or receipts from levies or industry taxes. In certain circumstances, they may borrow from commercial markets.

- Business Units are separate commercial activities within a Commonwealth Department. They are distinct in an accounting, but not a legal sense, and have access to the Commercial Activities Fund of the Commonwealth Public Account.

Other commercial activities undertaken by Commonwealth authorities and Departments that do not fall within these categories but which meet the established

definition of a 'business' and have commercial receipts exceeding $10 million per annum, are assessed on a case by case basis for the requirement to apply CN.

These include bids by Commonwealth Government in-house units for activities subject to the *Competitive Tendering and Contracting* guidelines issued by the Commonwealth Department of Finance and Administration.

To be considered a business activity the following criteria must be met:

- there must be user charging for goods and services;
- there must be an actual or potential competitor either in the private or public sector i.e. users are not restricted by law or policy from choosing alternative sources of supply; and
- managers of the activity must have a degree of independence in relation to the production or supply of the good or service and the price at which it is provided.

Activities that meet these criteria and have a turnover in excess of $10m per annum are also considered significant business activities.

Non-significant commercial business activities (those with a turnover under $10m per annum) may be deemed subject to CN following a complaint to the Commonwealth Competitive Neutrality Complaints Office (*see* **section 2.3**). Such activities may choose to implement CN principles on a notional basis to pre-empt a complaint on the grounds of an unfair competitive advantage.

CN is required to be implemented only where the benefits of this course of action exceed the costs, and it is cost effective to do so. This requires consideration of the same matters identified in relation to the public interest test for legislation review, including social welfare and equity issues such as community service obligations.

Commonwealth statutory authorities and *Corporations Law* companies are subject to the governance and financial accountability arrangements established under the *Commonwealth Authorities and Companies Act 1997*. All other government bodies are subject to the provisions of the *Financial Management and Accountability Act 1997*.

2.1.2. What does the application of CN require?

The *Commonwealth Competitive Neutrality Guidelines for Managers* provides assistance with the practical application of the CN principles, as identified in the CNPS, to the wide range of Commonwealth significant business activities.

In general terms, CN implementation involves:

- adoption of a
  Enterprises;

- payment of all relevant Commonwealth and State direct and indirect taxes or tax equivalents;

- payment of debt neutrality charges or commercial interest rates, directed towards offsetting competitive advantages provided by explicit or implicit government guarantees on commercial or public loans;

- attainment of a pre-tax commercial rate of return on assets (to ensure, among other things, payment of CN components is not simply accommodated through a reduction in profit margin);

- compliance with those regulations to which private sector competitors are normally subject, for example, planning and approvals processes; and

- pricing of goods and services provided in contestable markets to take account of all direct costs attributable to the activity and the applicable CN components.

The actual application of CN varies significantly, depending on the nature of the business activity to which it is being applied and the specific operating conditions being assessed. Examples of this flexibility are detailed below.

EXAMPLE 1

Government businesses may compete predominantly against private or other government organisations that are recipients of special arrangements in relation to the payment of taxes. In these circumstances, the Government business is only required to pay the same taxes as paid by the majority of its major competitors. A practical example of this is evident in the CN arrangements applying to the Commonwealth Scientific and Industrial Research Organisation (*see* page 170).

EXAMPLE 2

Where commercial activities are undertaken within a non-Government Business Enterprise statutory authority, CN policy requires as a first best solution the structural (legal) separation of those activities from the parent body. However, if this is not cost effective, strict accounting separation between contestable and non-contestable services will be accepted. Where neither of these options are implemented in a satisfactory manner, CN is to be applied across the board. This ensures that entities do not cross subsidise competitive services from their non-contestable or reserved business activities.

EXAMPLE 3

Commonwealth businesses in the process of being corporatised or restructured along commercial lines may have a lower pre-tax rate of return target set to accommodate identified public sector employment cost disadvantages for a transitional period of up to three years.

Box 7 clarifies some common misconceptions with regard to CN.

Box 7: Competitive Neutrality — Some Misconceptions

- ❖ CN does not apply to non-business, non-profit activities of publicly owned entities. It also does not prevent activities being conducted as community service obligations.
- ❖ CN does not have to be applied to Commonwealth business activities where the costs of implementation would outweigh the expected benefits, only privatisation would overcome the disadvantages.
- ❖ CN is neutral with respect to the nature and form of ownership of business enterprises. It does not require corporatisation. Where the Government decides to privatise a former public monopoly, the requirements of clause 4 of the CPA must be met (*see* **Chapter 3**).
- ❖ CN does not require outsourcing of Commonwealth activities – but when public bids are made under competitive tendering and contracting (CTC) arrangements, they must be CN compliant. As a result, in-house units should not have any unfair advantage over other public or private sector bidders.

❖ Regulatory neutrality does not require the removal of legislation that applies only to the Government business enterprise or agency (and not to its private sector competitors) where the regulation is considered to be appropriate. However, anti-competitive legislation may be reviewed under the Commonwealth Legislation Review program (*see* **Chapter 1**).

2.1.3. Community Service Obligations

A Community Service Obligation (CSO) arises when the Government specifically requires a business to carry out an activity or process that:

- the organisation would not elect to do on a commercial basis, or that it would only do commercially at higher prices; and
- the Government does not, or would not, require other organisations in the public or private sectors to undertake or fund.

CSOs are often established to meet government social policy objectives. A well known example is the requirement that Australia Post provide a standard letter delivery service throughout Australia for a uniform postage rate (currently 45 cents).

CN does not prevent the provision of CSOs, but it does establish certain requirements in terms of their costing, funding and interaction with other CN obligations. The intention is to encourage more effective and transparent provision of such services, with minimal impact on the efficient provision of other commercial services.

Where an organisation wishes to have an activity recognised as a CSO, it must be directed explicitly to carry out that activity on a non-commercial basis by legislation, Government decision or publicly available directions from shareholder Ministers (for example, identified in the annual report of the relevant Commonwealth Department or authority annual report).

CSOs should be funded from the purchasing portfolio's budget, with costs determined as part of a commercially negotiated agreement. CSO agreements should include similar CN requirements as applied to other activities, that is, these activities should be able to pay taxes and earn a commercial rate of return (as if contracted out).

Where direct funding of CSOs entails unreasonably large transaction costs, portfolio Ministers may choose to purchase CSOs by notionally adding to the provider organisation's revenue result, for the purpose of calculating the achieved rate of

return. CSOs should be costed as if directly funded. The notional adjustment should be transparently recorded in an auditable manner.

Under CN arrangements, no adjustment should be made to the commercial rate of return target applied to the service provider to accommodate CSOs.

2.2 COMMONWEALTH ENTITIES AND ACTIVITIES SUBJECT TO COMPETITIVE NEUTRALITY

Portfolio Ministers are responsible for ensuring that all significant business activities within their portfolio comply with the established CN requirements.

CN arrangements were required to be implemented by 1 July 1998. Commonwealth progress toward ensuring their adoption by all significant business activities is summarised at **Appendix B**.

Detailed information concerning the application of CN to specific organisations or activities is provided below.

2.2.1 Government Business Enterprises

Government Business Enterprises (GBEs) are required to have their CN arrangements approved by the Minister for Finance and Administration and the responsible portfolio Minister. The CN guidelines require that GBEs:

- pay all Commonwealth direct and indirect taxes, and State indirect taxes or tax equivalents (to have commenced by 1 July 1997);
- earn a commercial rate of return on assets as determined by their shareholder Minister(s);
- where borrowing from private financial markets, have a debt neutrality charge set by their shareholder Minister(s) based on stand alone credit rating advice; and
- where borrowing from the Budget, pay a commercial interest rate determined by the Department of Finance and Administration based on stand alone credit rating advice.

AUSTRALIAN DEFENCE INDUSTRIES LIMITED

Australian Defence Industries Limited (ADI Ltd) is in the process of being sold, with a short list of bidders invited to proceed to the binding offer stage.

Prior to being offered for sale ADI Limited complied with all CN principles.

It does have an advance from the Department of Defence to fund regeneration of ADI land polluted by the Commonwealth. This loan is not, subject to interest payments other than indexation amounts. However, its private sector borrowings are short-term local borrowings, with interest charged at commercial rates. Furthermore, while ADI Ltd does have a Commonwealth loan, the established interest rate includes a margin based on the former Commonwealth Borrowing Levy.

Given the advanced stage of the sale process, no further action with regard to CN compliance has been undertaken.

AUSTRALIAN INDUSTRY DEVELOPMENT CORPORATION

The Australian Investment Development Corporation Limited (AIDC Ltd), a commercial subsidiary of the Australian Industry Development Corporation, was sold to a private consortium on 3 February 1998. AIDC Ltd was a specialised investment banking business, providing project and structured finance services, principally to infrastructure and resource companies. The company's principal liability was its debt to the Australian Industry Development Corporation, arising from its borrowings under the Corporation's Commonwealth Government Guarantee.

The sale achieved the repayment of AIDC Ltd's $3.2 billion debt to the Corporation (which then repaid $600 million of its Commonwealth guaranteed borrowings) and delivered proceeds to the Commonwealth of around $100 million from the sale of its assets.

The Corporation has no residual CN obligations.

AUSTRALIAN NATIONAL LINE LIMITED

Australian National Line Limited (ANL) is a wholly owned Commonwealth share-limited company. It operates as a commercial entity, but is the beneficiary of an explicit Government guarantee put in place on 21 December 1995 to permit its restructuring prior to sale.

Legislation was introduced into Parliament on 26 November 1997 to facilitate the sale process, the commencement of which was formally announced on 18 December 1997. On 26 August 1998, the Government announced that contracts had been signed for the sale of ANL's liner shipping and bulk shipping businesses and that negotiations were continuing on the sale of ANL's land-based businesses.

In this context, CN principles were not applied during 1997-98.

AUSTRALIAN NATIONAL RAILWAYS COMMISSION

The sale and transfer of Australian National Railways Commission (AN) undertakings to other businesses was completed in 1997-98, with the rail access business and assets transferring to the Australian Rail Track Corporation from 1 July 1998. AN has no remaining business undertakings and will be wound up in 1998-99.

In this context, CN principles were not applied during 1997-98.

AUSTRALIAN POSTAL CORPORATION

Australia Post pays all Commonwealth and State taxes and charges. An independent review of its credit rating is currently being undertaken by a credit ratings agency, and will provide the basis for determining any debt neutrality margin to apply to Australia Post borrowings in respect of 1998-99.

The review is to take into account a number of developments, including the outcome of the Government's response to the National Competition Council (NCC) review of the *Australian Postal Corporation Act 1989* (*see* page 66) The relevant review recommendations are reproduced below.

1998 NCC REVIEW OF THE *AUSTRALIAN POSTAL CORPORATION ACT 1989* – RECOMMENDATIONS RELATING TO COMPETITIVE NEUTRALITY

To ensure that Australia Post's business is competitively neutral, the NCC recommends that:

- if there are any taxes, rates and charges remaining to which Australia Post is not currently subject, these should be imposed on Australia Post without delay in accordance with the CPA;

- the *Customs Act* be amended promptly to ensure that all postal operators are subject to a threshold to the same value;

- any provisions which grant Australia Post employees and contractors an exclusive right to operate motorcycles on footpaths be amended to ensure other postal deliverers can obtain similar exemptions when required;

- the following sections of the *Australian Postal Corporation Act 1989* should be removed:

    - section 32, which gives Australia Post the right to impose its own terms and conditions upon which its service can be supplied;

    - section 34, which exempts Australia Post from liability for any loss or damage suffered due to an act or omission by Australia Post;

    - section 46, which gives the Minister the power to influence whether Australia Post undertakes significant business activities;

    - section 90B, which prohibits any State or Territory law from discriminating against Australia Post; and

    - section 90D, which restricts the application of State and Territory building and construction laws to Australia Post prior to 1 January 1991;

- the following be amended as specified:

    - section 48, which requires Australia Post to comply with general policies of the Commonwealth Government if notified to do so by the Minister, be amended to ensure that the Minister must first table the applicable general policies in Parliament; and

- the following sections be extended to cover all postal operators:

    - section 90V, so that all participants are required to place a notification on an article that has been opened for any purpose or reason;

    - Division 2, Part 7B, so that all participants are required to comply with general privacy requirements; and

- section 101, so that all participants are granted title to all postal articles for the purpose of any legal proceeding and that the property rights of customers be clarified.

The NCC also recommended:

- the right of Australia Post to erect posting boxes should be maintained for ordinary red posting boxes suitable for posting standard letters. Otherwise, Australia Post should be subject to the same requirements as other postal service providers; and

- detailed auditing and accounting information on Australia Post's activities, to provide for transparency of the financial relationships between different elements of the business (e.g. retail operations, reserved services and CSO funded services).

AUSTRALIAN RAIL TRACK CORPORATION

The Australian Rail Track Corporation (ARTC) was established as a commercial entity in February 1998. Its primary purpose is to attract private operators to rail operations on the interstate network by providing a single point of access for this network.

ARTC will be required to meet commercially driven shareholder requirements, raise capital in the commercial finance sector, meet Government set commercial rate of return targets and achieve reasonable returns by way of dividend. As a commercial entity, it will be subject to all Commonwealth and State taxes.

AUSTRALIAN TECHNOLOGY GROUP LIMITED

The Australian Technology Group Limited (ATG) was formed in 1994, by the Commonwealth and three private shareholders, in response to a recommendation of the Task Force on Commercialisation of Research in its report *Bringing the Market to Bear on Research*. This report found that Australia's technology transfer bodies (e.g. commercial arms of universities) and venture capital firms did not have the resources, expertise or charter to source, supply or negotiate early stage commercialisation of technology in an adequate manner.

ATG is a technology commercialisation corporation set up to provide early stage venture capital and management expertise, with its staff working with investee personnel to develop a viable business plan and to bring new technology to market. It was established to operate entirely in the private sector of the early stage capital venture market and is governed by a Board of Directors formed by the shareholders.

A review of ATG is currently being carried out by Office of Asset Sales & Information Technology Outsourcing (OASITO), as part of the Government's ongoing broader review of equity holdings in all GBEs. The review is being coordinated by a working group representing OASITO, the Department of Finance and Administration and the Department of Industry, Science and Resources, who have retained the services of Deloitte Corporate Finance and Corrs Chambers Westgarth to conduct a scoping study.

The study will examine the various options for divestment and/or continued management of involvement of the Commonwealth's interest in ATG. The final report is expected in March 1999.

DEFENCE HOUSING AUTHORITY

The Minister for Defence Industry, Science and Personnel and the Minister for Finance and Administration have announced that the Defence Housing Authority would be retained in Commonwealth ownership. A number of structural and corporate governance arrangements are still being considered. This includes development of a CN implementation plan.

ESSENDON AIRPORT LIMITED

Essendon Airport Limited (EAL) is a Commonwealth owned *Corporations Law* company established to operate Essendon Airport, under lease from the Commonwealth.

EAL is subject to the same regulatory regime as privatised airports. Full CN principles apply, with the company subject to the same taxes as other airports. An appropriate rate of return target is being negotiated.

A single shareholder arrangement has been introduced to separate the Government's role as shareholder and regulator. The Minister for Finance and Administration is

responsible for shareholder issues, and the Minister for Transport and Regional Services for regulatory issues.

EXPORT FINANCE AND INSURANCE CORPORATION

The Export Finance and Insurance Corporation (EFIC) undertakes activities to ensure that Australian exporters have access to competitive export finance, insurance and guarantee services.

There have been a number of reviews into the ownership, role and structure of EFIC, with the most recent being undertaken in 1997-98. This latest review took into account the recommendations of the National Commission of Audit, the GBE governance arrangements resulting from the Humphry review[14] and the pre-existing requirement to apply CN to EFIC. Government considered the review findings in December 1997.

The Government decided to retain ownership of EFIC, but as a non-GBE statutory authority. Implementation arrangements for applying CN to EFIC are currently being finalised.

FEDERAL AIRPORTS CORPORATION

The Federal Airports Corporation (FAC) was a government authority established in 1988 to own and operate Federal airports (major city airports) around Australia. The Government privatised three of the FAC's twenty-two airports in 1996-97, and a further fourteen in 1997-98.

Prior to this process, the FAC was largely self-regulating. As part of privatisation, a regulatory regime was established to separate airport regulation and ownership. Regulatory responsibilities brought back to the Commonwealth included regulation of ownership and control, environmental and planning issues, economic regulation and some other regulations pertaining to airport operations.

While Government policy is to transfer regulation of on-airport commercial activities such as liquor licensing and trading to the relevant State or Territory, in some instances, it has been necessary for the Commonwealth to regulate as well.

---

[14] Humphry, R. (1997), *Review of GBE Governance Arrangements*, Commonwealth of Australia, March

Those airports remaining in Commonwealth hands (the Sydney Basin and Essendon Airports) were transferred to new Commonwealth owned *Corporations Law* GBEs on 30 June and 1 July 1998. Corporatisation placed these companies under the same regulatory regime as applies to the privatised airports. As at July 1998, the FAC no longer owned or operated any airports. The FAC ceased operating on 24 September 1998.

As a result of these changes, it was not considered necessary to put in place CN arrangements for the FAC during its final year of operation.

HEALTH SERVICES AUSTRALIA LIMITED

Health Services Australia (HSA) was established on 1 July 1997 as a wholly Commonwealth owned share limited *Corporations Law* company. It was formerly the Australian Government Health Service, a branch within the Commonwealth Department of Health and Family Services.

Its principal function is to provide accessible, expert and independent health and medical services in the corporate, occupational and related sectors.

During 1997-98, HSA was subject to an operating structure consistent with its competitors. It pays all Commonwealth taxes and tax equivalents of State and Territory taxes. Rate of return targets have been set by shareholder Ministers.

HOUSING LOANS INSURANCE CORPORATION

The Housing Loans Insurance Corporation was sold on 15 December 1997.

MEDIBANK PRIVATE LIMITED

From 1 March 1998, responsibility for the operation of Medibank Private was transferred to a new company, Medibank Private Limited, under the *Health Insurance Commission (Reform and Separation of Functions) Act 1997*. On 1 May 1998, ownership of Medibank Private Limited was transferred from the Health Insurance Commission to the Commonwealth.

The principal function of Medibank Private Limited is to provide high quality health financing to the Australian public.

The main objective for separating Medibank Private from the Health Insurance Commission was to ensure compliance with CN requirements. During 1997-98, Medibank Private was subject to the same Commonwealth, State and Territory tax regime as its competitors. This included its registration under the *National Health Act 1953* as a not-for-profit organisation.

NATIONAL RAIL CORPORATION

The formal establishment period for the National Rail Corporation (NRC), during which shareholders provided agreed payments to compensate the company for the high initial costs of inefficient functions transferred from shareholder rail authorities, ended on 31 January 1998.

The company now operates on a fully commercial basis, with no CN compliance issues arising during the year 1997-98.

NRC is subject to a sale process, which is expected to be completed in 1999.

SNOWY MOUNTAINS HYDRO-ELECTRIC AUTHORITY

Legislation to corporatise the Snowy Mountains Hydro-electric Authority (SMHEA) was passed by the Commonwealth, New South Wales and Victoria in the second half of 1997.

Once corporatised, Snowy Hydro Limited (the name of the corporatised body) will be subject to all State and Commonwealth taxes and the debt currently carried by SMHEA will be re-financed on commercial terms.

Implementation agreements are currently being negotiated between the three Governments and will be finalised following completion of the Snowy Water Inquiry.

SYDNEY AIRPORTS CORPORATION LIMITED

The Sydney Airports Corporation Limited (SACL) is a Commonwealth owned *Corporations Law* company established to operate the Sydney Basin Airports (Sydney (Kingsford Smith) Airport, Bankstown Airport, Camden Airport and Hoxton Park Airport), under lease from the Commonwealth.

It is subject to the same regulatory regime as privatised airports. Full CN principles apply, with the company subject to the same taxes as other airports. An appropriate rate of return target is being negotiated.

A single shareholder arrangement has been introduced to separate the Government's role as shareholder and regulator. The Minister for Finance and Administration is responsible for shareholder issues, and the Minister for Transport and Regional Services for regulatory issues.

TELSTRA CORPORATION LIMITED

Telstra has been partially privatised, with consideration being given to further privatisation. It pays all Commonwealth, State and Territory taxes and charges. An independent credit ratings agency has recently indicated that its credit rating of Telstra is determined on a "stand alone" basis, which suggests a zero debt neutrality margin for CN purposes.

2.2.2. Non GBE Commonwealth Share-Limited Companies

Non-GBE Commonwealth share-limited *Corporations Law* companies should have their CN arrangements approved by the responsible portfolio Minister. The CN guidelines require that these companies:

- pay all Commonwealth direct and indirect taxes, as well as State indirect taxes or tax equivalents;
- where borrowing from private financial markets, have a debt neutrality charge set by their shareholder Ministers based on stand-alone credit rating advice; and
- where borrowing from the Budget, have a commercial interest rate determined by the Department of Finance and Administration based on stand alone credit rating advice.

EMPLOYMENT NATIONAL LIMITED & SUBSIDIARY

Employment National Limited and its subsidiary company, Employment National (Administration) Limited were established in May 1998.

A transitional rate of return is to be applied in the formative stages of Employment National's operation due to the uncertainties associated with the relatively untested employment services market.

In consultation with the Department of Finance and Administration, a commercial rate of return target applicable from 1999-2000 has been determined as part of the (inaugural) 1998 corporate plan negotiation process. Employment National was advised of this target on 5 June 1998 by shareholder Ministers. A dividend ratio was also agreed.

In relation to its bids for Job Network contracts, Employment National is treated in the same manner as other tenderers. The operations of Employment National Limited and the competitive tendering process for the Job Network contracts both comply with CN principles.

2.2.3 Commonwealth Business Units

CN arrangements applied to Commonwealth Business Units are to be approved by the responsible portfolio Minister. The CN guidelines require Business Units:

- pay Fringe Benefits Tax (FBT) and Wholesale Sales Tax (WST), unless an exemption is available for reasons other than their public ownership;
- make tax equivalent payments for remaining Commonwealth and State taxes;
- meet the required commercial rate of return on assets target set by the relevant Department, in consultation with the Department of Finance and Administration; and
- where borrowing from the Budget, pay a commercial interest rate determined by the relevant portfolio Minister in consultation with the Department of Finance and Administration, based on stand alone credit rating advice.

ARTBANK

Artbank has no significant CN issues (there has been no change to its activities from the previous reporting period).

payout

ASSET SERVICES

Asset Services was sold on 30 September 1997.

AUSCRIPT

Auscript was sold on 26 June 1998.

AUSTRALIAN GOVERNMENT ANALYTICAL LABORATORY

In March 1997, a Memorandum of Understanding (MOU) was agreed between the (then) Minister for Finance and the (then) Minister for Administrative Services for the purpose of establishing a framework for the operations of the Australian Government Analytical Laboratory (AGAL).

The MOU requires AGAL to operate under an individual Group 2 Trust Account (now FMA Commercial Activities Fund) and to comply fully with the CPA. AGAL is required to meet the principles established in the Commonwealth's CNPS.

In 1997-98, AGAL made payments to the Australian Taxation Office in respect of FBT, and paid into consolidated revenue a tax equivalent amount in lieu of indirect taxes consisting of payroll tax, WST and state government stamp duties.

A rate of return requirement has been set, however, no payments were made in 1997-98 against a trading loss of $1.9 million (subject to audit).

Members of supplier panels set up to deliver outputs for AGAL's CSO funded Public Interest Program have been required to declare they operate under an appropriate CN regime.

AUSTRALIAN GOVERNMENT HEALTH SERVICE

On 1 July 1997, the Australian Government Health Service, a branch of the Department of Health and Family Services was corporatised as a wholly Commonwealth owned share limited company established under the *Corporations Law*, Health Services Australia (*see* page 156).

AUSTRALIAN GOVERNMENT PUBLISHING SERVICE

Market testing during the period 1997-98 resulted in the divestment of a range of commercial activities and the subsequent sale of the Australian Government Publishing Service (AGPS).

- The Tuggeranong (ACT) Instant Print and Copy Centre was transferred to the Department of Social Security. Surplus equipment was offered for sale under the tender for sale of the printing operations. The transfer of the copy centre was finalised during June 1997, and the assets in October 1998.

- The Canberra (ACT) and Melbourne (Queen St, Vic) Instant Print and Copy Centres were closed during July 1997, with no commercial interest in their sale. Assets from these two sites were made available for sale in subsequent tender processes.

- Security Printing (Kingston, ACT), which produced the Australian Passport, was sold on 18 July 1997 to the American Banknote Company.

- The Hobart (Tas) Instant Print and Copy Centre was sold to Snap Franchising Limited on 25 July 1997.

- The Brisbane (Qld) Instant Print and Copy Centre was sold to Moffat Printing Pty Limited on 25 July 1997.

- The Government Printing Office, which included the Kingston (ACT) Instant Print and Copy Centre, was sold to CanPrint Communications Pty Limited on 8 October 1997.

- The Information Solutions Group (ISG) ceased all new work in October 1997, and all outstanding projects and accounts were finalised by February 1998. Project managing printing and publishing is now the responsibility of each individual department or agency.

- The Belconnen (ACT) Instant Print and Copy Centre was sold to Shoreban Pty on 17 October 1997.

- The Melbourne (Nauru House, Vic) Instant Print and Copy Centre was sold to Pink Panther Printing on 17 October 1997.

Through the sale processes it was determined that there was no commercial interest the network of Government Info Shops, Publications Warehouse and TeleInfo Services. To finalise the market testing process, these services were put out to tender to find a facilities management solution. CanPrint Communications Pty Limited (ACT) won this tender. The negotiated handover date was 31 July 1998.

With the finalisation of the market testing of the former AGPS, the Commonwealth completed the handover of the Wentworth Avenue, Kingston facility to the ACT Government.

AUSTRALIAN GOVERNMENT SOLICITOR

Australian Government Solicitor (AGS) replaces the former Legal Service.

In 1997, the Government introduced a Bill into Parliament to amend the *Judiciary Act 1903* to establish AGS as a separate statutory authority. This Bill was passed by the House of Representatives in November 1997, but lapsed when the Parliament was prorogued in August 1998.

CN principles are not currently applied.

AUSTRALIAN OPERATIONAL SUPPORT SERVICES

Australian Operational Support Services was sold on 15 August 1997.

AUSTRALIAN PROPERTY GROUP

The Australian Property Group was sold on 1 October 1997.

AUSTRALIAN PROTECTIVE SERVICE

The Australian Protective Service has incorporated CN arrangements into its pricing since 1 July 1998.

AUSTRALIAN SURVEYING AND LAND INFORMATION GROUP

The Australian Surveying and Land Information Group (AUSLIG) market tested the sale of its commercial activities and the outsourcing of its CSO activities during 1997-98. As a result:

- AUSLIG's commercial activities were sold to a private sector firm;
- four external organisations were appointed to a panel of service providers for map and data production associated with AUSLIG's national mapping program;
- contracts were awarded:
  - for the provision of mapping under a facilities management arrangement using AUSLIG's equipment and procedures;
  - to construct, operate and maintain a laser ranging observatory to replace AUSLIG's obsolete observatory; and
  - to maintain AUSLIG's archive of aerial photography and manage distribution;
- map and data distribution functions were retained in-house after a market testing process revealed no advantage in outsourcing; and
- an existing contract for the operation of AUSLIG's remote sensing operations was continued.

AUSTRALIAN VALUATION OFFICE

The Australian Valuation Office implemented CN during 1997-98.

DAS CENTRE FOR ENVIRONMENTAL MANAGEMENT

DAS Centre for Environmental Management was sold on 23 October 1997.

DAS DISTRIBUTION

DAS Distribution was sold on 1 September 1997.

DAS INTERIORS AUSTRALIA

DAS Interiors Australia was sold on 12 September 1997.

DASFLEET

DASFLEET was sold on 1 September 1997.

NATIONAL TRANSMISSION AGENCY

The National Transmission Network (NTN) is a network of broadcasting transmission facilities used primarily to broadcast television and radio programs of the ABC and SBS. The NTN also accommodates commercial and community broadcasters, and telecommunications and radiocommunications service providers.

Since 1992, the NTN has been operated by the National Transmission Agency (NTA), a separate cost centre within the Commonwealth Department of Communications, Information Technology and the Arts. The Government announced its intention to sell the NTN on 10 July 1997.

The NTA is a Government business activity with a commercial turnover of more than $10 million per annum. However, CN principles have not been applied to the NTA as it has been Government policy to sell the NTN.

The *National Transmission Network Sale Bill 1997* and the *National Transmission Network Sale (Consequential Amendments) Bill 1997* lapsed when the Parliament was prorogued in August 1998.

REMOVALS AUSTRALIA

Removals Australia (the Commonwealth's relocation brokerage business) operates on a cost recovery basis, and is progressively being subject to commercial management practices (including achieving a commercial rate of return on assets).

ROYAL AUSTRALIAN MINT

CN arrangements were applied to the Royal Australian Mint from 1 July 1998. These arrangements include establishment of a commercial rate of return based upon its

weighted average cost of capital, payment of wholesale sales tax, implementation of a tax equivalent regime for other taxes, formal ministerial agreement for its coin museum CSO and repayment of budget borrowings at commercial rates.

WORKS AUSTRALIA

Works Australia was sold on 14 September 1997.

2.2.4 Commercial Business Activities (over $10m p.a.)

CN arrangements applying to significant commercial business activities provided by non-GBE statutory authorities or Commonwealth Departments are to be approved by the relevant portfolio Minister. The CN guidelines require significant commercial activities to:

- pay FBT and WST (unless exemptions are available to them for reasons other than their public ownership);
- make tax equivalent payments for remaining Commonwealth and State taxes;
- meet the required commercial rate of return on assets target set by the relevant Department, in consultation with the Department of Finance and Administration;
- where borrowing from private financial markets, have any debt neutrality charge set by the relevant portfolio Minister based on stand alone credit rating advice; and
- where borrowing from the Budget, pay a commercial rate of interest determined by the relevant portfolio Minister in consultation with the Department of Finance and Administration, based on stand alone credit rating advice.

AIRSERVICES AUSTRALIA

Airservices Australia is a monopoly provider of air navigation, rescue and fire fighting services in the aviation industry. In 1997, the Government initiated a review of the scope for introducing contestability and reducing the residual regulatory functions of what is by-and-large a commercial entity, albeit with a primary responsibility for

safety. The review, led by a New Zealand industry expert, reported in early 1998. The report has been considered by Government, but not published.

CN in the provision of services to airport operators by air traffic control providers – both Airservices Australia and other parties – has been addressed in the review. The Government has determined, and the Minister for Transport and Regional Services has stated publicly, that the Civil Aviation Safety Authority, will set entry standards for air traffic controllers and air traffic control processes, to ensure that Airservices Australia will not continue to manage entry to the industry at the time competition emerges.

Experienced overseas providers of air traffic control services have a presence in Australia, and some Australian firms are also capable of providing these services.

A similar situation applies with respect to rescue and fire-fighting services.

En-route services are now and will remain an Airservices Australia monopoly, for technical reasons.

ALBURY WODONGA DEVELOPMENT CORPORATION

At the 1995 Albury-Wodonga Ministerial Council meeting, it was agreed that the Albury Wodonga Development Corporation (AWDC) would be wound up over a five year period. Under the terms of this decision, the role of the AWDC is limited to the sale of its assets.

At the 1997 Ministerial Council meeting, the timeframe for the wind up of the Corporation was extended to eight years. It was also agreed that both NSW and Victoria would withdraw from the Albury-Wodonga Growth Centre Project subject to the repeal or amendment of the relevant State and Commonwealth legislation.

The necessary amendments to the *Albury-Wodonga Development Act 1973* have not yet been enacted. It is expected, therefore, that the withdrawal of NSW and Victoria may take some time.

ARMY AND AIR FORCE CANTEEN SERVICE

There are no major CN issues in relation to the retailing services of the Army and Air Force Canteen Service (the situation is unchanged from the previous reporting period).

AUSTRALIAN BROADCASTING CORPORATION

The Australian Broadcasting Corporation (ABC) has two business areas subject to CN. These are ABC Enterprises (consumer goods) and its facilities hire activities.

Discussions are continuing in relation to agreeing an appropriate CN model for these activities, including the payment of an appropriate taxation equivalent.

In November 1997, the ABC Chairman wrote to the Minister for Communications, the Information Economy and the Arts indicating a preference for applying accounting separation to ABC Enterprises rather than legal separation on the grounds of cost effectiveness. The Chairman also indicated that the ABC's business activity guidelines would be revised to ensure that ABC business activities operate in an environment of greater transparency and accountability.

In relation to ABC Enterprises, the ABC has subsequently advised that it has substantially implemented an accounting separation model and that arrangements to provide a greater level of transparency will be completed during 1998-99.

AUSTRALIAN NATIONAL UNIVERSITY

The Ministerial Council for Employment, Education, Training and Youth Affairs (MCEETYA) and the Council of Australian Governments (CoAG) Secretariat endorsed a CN implementation strategy for all universities (identified below).

The Australian National University is expected to conduct its commercial activities in accordance with this strategy. Efforts are currently being made to ensure that universities have a clear understanding of how to fully cost their activities. This includes the development of national pricing guidelines for universities.

MCEETYA AND COAG SECRETARIAT: COMPETITIVE NEUTRALITY IMPLEMENTATION STRATEGY FOR UNIVERSITIES

RECOMMENDATION

That Ministers note that a common approach to the implementation of competitive neutrality to universities should reflect the key principles of the Competition Principles Agreement that competitive neutrality should be applied to significant business activities and the benefits of implementation should outweigh the costs.

As a common approach Ministers agree that:

- the issues of competitive neutrality in respect of undergraduate and postgraduate education, enabling courses and libraries be considered further after the Commonwealth Review of Higher Education Financing and Policy has reported. The Commonwealth, States and Territories will then consider the recommendations made by the Review Committee on these issues;

- those activities of universities, which are undertaken on a fee for service basis but are also intrinsic to achieving the social, cultural and economic objectives of the higher education program, be subject to minimalist pricing principles to achieve transparency. Such activities would include research and development, consultancies, continuing education and residential colleges:

  - while the pricing principles would include all commercial costs, such as notional infrastructure costs and tax, their use would not preclude cross
    activities and non-commercial activities;

- activities which compete in a wider market place to a significant degree but are instrumental in achieving the objectives of the higher education program (such as residential accommodation, catering, bookshops) should be structurally separate and subject to minimalist pricing principles to achieve transparency. While these activities should not be required to make a fully commercial return on resources, any concessions that a university allows must be directed to those services directed within the university. Services provided in the wider market place should be on a fully competitively neutral basis, including a return on resources and notional taxes. Significance will need to be judged in the context of the specific market;

- where activities are significant and purely commercial in an external market (such as property development and manufacturing for retail and wholesale sale) a fully commercial regime should apply. Significance will need to be judged in the context of the specific market; and

- the Chair of MCEETYA send the recommendations to the Council of Australian Governments with a view to that Council adopting the recommendations for the higher education sector.

That Ministers agree to further work by the Taskforce as follows:

- the development of practical pricing guidelines for commercial activity undertaken by universities and report on progress to Ministers at the next MCEETYA meeting. Pricing principles would have to pay attention to the cost of adopting particular accounting regimes; and

- addressing any unresolved issues, including tax issues and the definition of structural separation.

AUSTRALIAN WHEAT BOARD

From 1 June 1998, the Australian Wheat Board (AWB), a statutory authority, has conducted its marketing, pooling and financing functions through subsidiary companies operating under *Corporations Law*-pooling subsidiary will be subject to income tax and

The wholly owned parent subsidiary (AWB Ltd) operates through two wholly owned subsidiaries: AWB (International) Ltd, which is responsible for pool marketing and grower payments; and, AWB (Australia) Ltd, which undertakes domestic grain trading and other commercial operations. AWB Ltd itself provides financing and other services to the subsidiaries.

These arrangements are the first stage in the conversion of the AWB Group to grower ownership from 1 July 1999. At this time, the levy on wheat sales to build up the Wheat Industry Fund (WIF) will cease and the WIF will be converted to B-class shares in AWB Ltd (the grower owned parent company) to become its capital base.

Under CN principles the non
State and Territory taxes during the transitional period. It was considered unnecessary to implement borrowing levy or commercial rate of return provisions, given the expected limited impact of these measures and the impending privatisation of the AWB.

The imposition of taxation regimes on the commercial activities of AWB Ltd during the transitional period will revoke the AWB's previous taxation advantage. This should improve competition in the domestic market for grains, with flow–on benefits to growers and end–users.

These transitional changes allow the AWB Group to adapt to a commercial environment, even though still being owned and controlled by the Government through the AWB. From 1 July 1999, CN will cease to be an issue as the companies

will be privatised and, therefore, subject to same taxes and charges as other private companies.

The only role for the Commonwealth government with respect to wheat marketing after 1 July 1999 will be to provide the wheat export monopoly under legislation through the new Wheat Export Authority.

COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH ORGANISATION

On 24 September 1997, the (then) Minister for Industry, Science and Tourism advised the Commonwealth Scientific and Industrial Research Organisation (CSIRO) of the Government's decision regarding the application of CN. Specifically, CSIRO is required to:

- include commercial pre-tax rate of return (RoR) and taxation equivalent regime (TER) components in the charges for any consulting and technical service activities undertaken; and

- use full cost pricing in the costing of research project bids, unless there are national interest considerations, and include allowances for tax and RoR targets if these are known to be incurred by competing bidders.

The Minister approved the framework for implementing CN in CSIRO on 11 May 1998, with CSIRO's policy on CN being released on 1 July 1998. The changes to CSIRO's costing and pricing policies apply to all new contracts entered into from 1 July 1998. All of CSIRO's commercial activities are now subject to CN principles and the CN complaints mechanism.

It is CSIRO policy that:

1. all projects/activities should be costed to identify their full costs (including divisional and corporate overheads) to CSIRO;

2. the pricing of commercial activities must be based on the perceived value to the client and estimate of their full costs;

3. for technical and consulting services, the price must cover the estimated full costs and include commercial pre-tax RoR and TER components (a CN on-cost factor);

4. for research projects, the price must cover the estimated full costs, unless there are national interest considerations, and include commercial pre-tax RoR and TER components (a CN on-cost factor), if tax and RoR requirements are known to be incurred by competing bidders; and

5. all pricing decisions, including the estimate of costs, must be fully documented and retained for audit purposes as part of the risk assessment in the contract approval process.

To ensure transparency of funding arrangements, commercial activities are required to be structured on a project/activity basis to facilitate accounting separation and attribute all costs (including divisional overheads) on a project/activity basis.

The Government has agreed that CN does not apply to services provided by the National Research facilities administered by CSIRO, as there is no actual or potential competitor. These facilities are the Australia Telescope, the Australian Animal Health Laboratory, the Oceanographic Research Vessel *Franklin* and the National Measurement Laboratory.

HEALTH INSURANCE COMMISSION

CN obligations were satisfied with the transfer of ownership of Medibank Private Limited to the Commonwealth on 1 May 1998 (*see* page 156).

RESERVE BANK OF AUSTRALIA

The following Reserve Bank of Australia (RBA) businesses have been subject to the application of CN: Note Printing Australia; Reserve Bank Information Transfer System (RITS); transaction banking; specialised cash distribution; and registry.

Note Printing Australia was corporatised on 1 July 1998, with the RBA exiting the specialised cash distribution business. The remaining businesses are being conducted with separate accounts based on full cost allocation and other CN principles. Performance data for those businesses will be provided in the RBA Annual Report.

With regard to the RBA's registry operations performed on behalf of the Commonwealth Treasury, Treasury examined the option of putting the Registry business out to tender. For a number of reasons, including the small scale of the

operation, possible financial risks and undertakings provided by the RBA, it was decided not to proceed with this option.

SPECIAL BROADCASTING SERVICES

During 1997-98, the Minister for Communications, the Information Economy and the Arts wrote to the Chairman of the Special Broadcasting Services (SBS) to clarify the application of CN arrangements. The Minister indicated that the SBS' current arrangements for raising advertising and sponsorship revenue (its major commercial activity) are appropriate for meeting CN arrangements. The SBS is required to notify the Minister if these arrangements change or its competitive position improves.

The SBS Chairman has provided an assurance to the Minister that whenever SBS operates in a commercial market it will do so on a neutral basis and it will not gain a net competitive advantage simply as a result of its public ownership.

UNIVERSITY OF CANBERRA

On 1 December 1997, responsibility for the *University of Canberra Act 1988* was transferred from the Commonwealth to the Australian Capital Territory (ACT) by Schedule 1 of the *Education Legislation Amendment Act 1997*.

The application of CN principles to commercial activities undertaken by the University of Canberra will now be a matter for the ACT Government.

WOOL INTERNATIONAL

Wool International (WI) sells stockpile wool to Australia-based exporters and early stage processors. It does not act as a trader in fresh wool, and so is not in competition with wool traders. Rather, WI's wool sales activities are confined to supplying stockpile wool into the wool pipeline, in competition with sales of fresh wool by growers.

WI is required to sell the stockpiled wool on behalf of woolgrowers in a manner that is designed to enhance its value and, in turn, the value of wool production. The continuing existence of the wool stockpile remains a competitive force in the marketplace for woolgrowers, regardless of its ownership.

As the competitive impacts of WI's wool sales activities are confined to woolgrowers (whom they are designed to advantage), a Competitive Neutrality Working Group considered that CN policy is not applicable to the sale of wool from the stockpile.

2.2.5 Other Commonwealth Activities

There are a number of non-significant Commonwealth business activities for which the application of CN principles is being considered or undertaken. They may also be required to implement CN as a result of a complaint to the Commonwealth Competitive Neutrality Complaints Office (*see* **section 2.3**).

These non-significant business activities have to earn a commercial rate of return (set by their parent agency), pay WST and FBT (unless exemptions are available for reasons other than government ownership) and make tax equivalent payments for remaining Commonwealth indirect taxes.

Other CN costs may be incurred on an (auditable) notional basis, for example, payments of remaining Commonwealth direct taxes, State indirect taxes and debt neutrality charges.

EXAMPLES

While the **Bureau of Meteorology's** commercial activities are not significant, the Government is considering the application of CN to commercial meteorological services as part of its response to the report *"Capturing Opportunities in the Provision of Meteorological Services*".

The **Australian Geological Survey Organisation, the Australian Bureau of Agricultural and Resource Economics (ABARE) and the Bureau of Resource Sciences** have modified their costing models to include a tax equivalence regime and a proxy for a rate of return when costing for competitive bids.

A review of the operations of **Aboriginal Hostels Limited** is expected to commence in early 1999. The terms of reference include the requirement for the review to address the operations of the company in relation to CN principles and its CSOs.

2.2.6 Competitive Tendering & Contracting

Competitive tendering and contracting is a process of selecting a preferred supplier from a range of potential contractors by seeking offers and evaluating those offers on the basis of one or more selection criteria. This may involve a choice between an in-house supplier and external contractors (from either the private or public sector).

CN arrangements should be applied to all bids by Commonwealth Government 'in-house' units for activities subject to the Competitive Tendering and Contracting (CTC) Guidelines issued by the Department of Finance and Administration. This ensures that in-house units compete on a comparable basis to private (and other public) sector competitors.

In practice this means:

- in undertaking market testing to determine whether or not to competitively tender for the supply of a particular good or service, CN requirements are to be incorporated in costing in-house supply;

- where it is determined to competitively tender for the supply of the good or service, that activity is to be regarded as a commercial activity. Any significant in-house bid needs to reflect the full cost of providing the good or service:

    - this includes an attribution for any shared and joint costs, payment of FBT and WST (on direct purchases), tax equivalent payments for remaining Commonwealth and State taxes, debt neutrality charges, a notional amount equivalent to any public liability insurance premiums a private sector contractor may be required to pay; and

    - incorporate a commercial pre-tax rate of return on assets. Where plant and facilities are to be made available to all bidders as Government furnished, in house bids do not need to include a rate of return on such capital; and

- the Commonwealth purchaser of the good or service is entitled to require that all tender bids submitted by government owned or funded activities certify compliance with Commonwealth CN requirements:

- non-compliance could result in a complaint being made to the Commonwealth Competitive Neutrality Complaints Office (*see* **section 2.3**).

CTC units with turnover (bid) under $10 million per annum still have to earn a commercial rate of return (set by their parent agency), pay FBT and WST (unless exemptions are available for reasons other than government ownership) and tax equivalent payments for remaining Commonwealth indirect taxes. However, other CN costs may be incurred on an (auditable) notional basis e.g. payments of remaining Commonwealth direct taxes, States indirect taxes and debt neutrality charges.

EXAMPLES

AUSLIG market tested the sale of its commercial activities and the outsourcing of its CSO. Requests for Tender (RFT) were released for AUSLIG's mapping, satellite laser ranging and product distribution services. Where publicly owned or funded organisations responded to the RFT, they were required to demonstrate CN compliance, with the Commonwealth reserving the right to undertake an independent assessment on CN claims.

A major CTC process was undertaken to outsource a large proportion of the **Department of Finance and Administration** Corporate Group's operational activities. This process, although large, used standard methodology for tendering practices. No in-house bids were submitted, although various costing studies were progressed to determine real comparable costs. An in-house bid was made for the communication infrastructure rollout component. All tenderers were treated equally and the in-house bid was unsuccessful.

The **Productivity Commission** conducted market testing for the provision of information technology (IT) infrastructure and services, using external consultants to provide experience and objectivity in comparing bids. The Commission followed government procurement guidelines, and consulted the Victorian Government's *Guide to Implementing Competitively Neutral Pricing Principles* when preparing the statement of internal costs. Full cost attribution included human resources costs, accommodation costs, consumables and other costs directly incurred by the IT area, service costs, capital costs and a rate of return.

Box 8: Is the Bid really CN Compliant?

In the case of a 1997 mapping tender, AUSLIG engaged Ernst & Young to ensure that tenders by the government owned/funded NSW Land Information Centre and New Zealand Terralink met CN principles.

Terralink complied but the NSW Land Information Centre did not, although it was regarded as making progress toward full CN compliance. As a consequence, the NSW Land Information Centre was offered a position on a panel contract with the provision that no work would be issued until full CN compliance was demonstrated.

As a general rule, a statement by the publicly owned or funded tender to the effect that its bid price is CN compliant is sufficient. In some circumstances, it may not prove cost effective to pursue the matter further.

Where other bidders (including in-house bidders) are concerned that CN compliance has not been achieved, the matter can and should be referred to the relevant CN Complaints Office (State, Territory or Commonwealth).

2.3 Alleged Non Compliance with CN Principles

The Commonwealth Competitive Neutrality Complaints Office (CCNCO) is an autonomous unit within the Productivity Commission. It was established under the *Productivity Commission Act 1998* to receive complaints, undertake complaint investigation and advise the Treasurer on the application of CN to Commonwealth Government activities.

Any individual, organisation or government body may lodge a formal written complaint with the CCNCO on the grounds that:

- a Commonwealth business activity has not been exposed to CN arrangements (including a commercial activity below the $10m per annum turnover threshold[15]);
- a Commonwealth business activity is not complying with CN arrangements that apply to it; or
- current CN arrangements are not effective in removing a Commonwealth business activity's net competitive advantage, which arises due to government ownership.

---

15 This includes Commonwealth owned *Corporations Law* companies limited by guarantee, which are not otherwise subject to competitive neutrality requirements.

Where the CCNCO considers that CN arrangements are not being followed, it may directly advise government business entities as to the identified inadequacies and actions to improve compliance. If a suitable resolution to a complaint cannot be achieved in this manner, the CCNCO may recommend appropriate remedial action or that the Treasurer undertakes a formal public inquiry into the matter.

Any person contemplating a complaint should discuss their concerns with the government business involved and/or the CCNCO prior to initiating a formal complaint investigation process.

Commonwealth Competitive Neutrality Complaints Office
Locked Bag 3353
BELCONNEN ACT 2617

Telephone:	**(02) 6240 3377**
Facsimile:	**(02) 6253 0049**
Website:	**http://www.ccnco.gov.au**

2.3.1 Complaints Received in 1997-98

No formal CN complaints were received in 1997-98. Consequently, no remedial action by Commonwealth Departments or agencies in response to CCNCO recommendations was necessary.

2.4 Commonwealth Actions to Assist CN Implementation

2.4.1 Policy Measures

The Borrowing Levy under the *Commonwealth Borrowing Levy Act 1987* was set to zero on 16 December 1997, facilitating the introduction of debt neutrality charges. Debt neutrality charges, unlike the Borrowing Levy, can be uniquely determined for each specific business or activity.

It is also general Government policy not to issue a Commonwealth Government Guarantee on new borrowings. Where these are to be provided, the approval of the portfolio Minister, the Treasurer and the Prime Minister is required.

2.4.2 Publications

A handbook entitled *Commonwealth Competitive Neutrality Guidelines for Managers* was released in early 1998, to assist in the application of CN principles to the wide range of Commonwealth significant business activities. Copies of this handbook are available from the Commonwealth Department of the Treasury or the Treasury website.

The CCNCO released its research paper *Cost Allocation and Pricing* in October 1998. The paper examines these issues in the context of significant business activities operating within non-GBE Commonwealth authorities or Departments meeting their CN obligations. A second paper, *Rate of Return Issues*, was released in December 1998. This paper provides general advice on establishing a commercial rate of return on assets target, particularly for small government business activities, and those factors the CCNCO will take into account when rate of return issues arise in a complaint. These publications are available from the CCNCO.

In March 1998, the Commonwealth Department of Finance and Administration released its handbook *Competitive Tendering and Contracting Guidance for Managers*, which explains the requirement for CN compliance. This publication is available from that Department.

3. STRUCTURAL REFORM OF PUBLIC MONOPOLIES

3.1 Commonwealth Management of the Structural Reform Process

The *Competition Principles Agreement* (CPA) does not prescribe an agenda for the reform of public monopolies. Clause 4 of the CPA does, however, require that before the Commonwealth introduces competition into a sector traditionally supplied by a public monopoly, it must remove from the public monopoly any responsibilities for industry regulation. The relocation of these functions will prevent the former monopolist from establishing a regulatory advantage over its existing and potential competitors.

Furthermore, prior to introducing competition into a market traditionally supplied by a public monopoly and/or privatising a public monopoly, the Commonwealth must also undertake a review into:

- the appropriate commercial objectives for the public monopoly;
- the merits of separating any natural monopoly elements from potentially competitive elements of the public monopoly;
- the merits of separating potentially competitive elements of the public monopoly;
- the most effective means of separating regulatory functions from commercial functions of the public monopoly;
- the most effective means of implementing the competitive neutrality principles set out in the CPA;
- the merits of any community service obligations undertaken by the public monopoly and the best means of funding and delivering any mandated community service obligations;

- the price and service regulations to be applied to the industry; and
- the appropriate financial relationships between the owner of the public monopoly and the public monopoly, including rate of return targets, dividends and capital structure.

The requirement for review acknowledges that the removal of regulatory restrictions on entry to a marketplace may not be sufficient to foster effective competition in sectors currently dominated by public monopolies. Effective competition requires both a competitive market structures.

The public monopoly must be restructured on a competitively neutral basis to remove any unfair competitive advantages resulting from its government ownership. However, the new organisation must also be sufficiently flexible to respond in a changed environment, particularly if it is to be privatised. This may result in the organisation being separated into different entities.

Structural reform of public monopolies is often linked with the provision of access rights to essential infrastructure services previously under their sole control (*see* **Chapter 4**).

During the reporting period, the Commonwealth considered Clause 4 matters in relation to telecommunications, aviation services and wheat marketing arrangements.

3.1.1 Telecommunications Industry Sector

The telecommunications sector has been open to full competition since 1 July 1997. It is regulated by legislation, predominantly the *Telecommunications Act 1991* and Parts XIB and XIC of the *Trade Practices Act 1974* (TPA).

The Australian Communications Authority, an independent statutory authority, is generally responsible for ensuring industry compliance with legislative requirements. The Australian Competition and Consumer Commission (ACCC) is responsible for administering the telecommunications competition regime in Parts XIB and XIC of the TPA.

Telstra Corporation Limited, the previous monopoly supplier of telecommunications services, has no regulatory functions.

The Commonwealth's review obligations under clause 4 were broadly satisfied through a series of related reviews prior to the partial privatisation of Telstra in 1997. However, the National Competition Council has expressed concern that the Commonwealth has a residual obligation to examine the treatment of remaining monopoly elements.

The Australian Competition and Consumer Commission (ACCC) has established a telecommunications working group to review Telstra's accounting and cost allocation arrangements, to assist the development of an enhanced accounting separation model for Telstra businesses.

Amendments contained within the *Telecommunications Legislation Amendment Bill 1998* aim, among other things, to enhance the ACCC's powers to apply such a model. This model will assist the ACCC to ensure Telstra does not cross subsidise contestable activities being performed by its business units from the returns to its monopoly services.

The responsible Minister is required to initiate a review of Part XIB of the TPA by 1 July 2000. This review will provide an opportunity to consider the effectiveness of the accounting separation arrangements and other aspects of the regime.

3.1.2 Federal Airports Corporation

The Federal Airports Corporation (FAC) owned and operated most of Australia's major airports from 1988 until 1997, when privatisation of the airports through the sale of long term leases commenced.

Long-term leases for the first 3 of the 22 airports were signed in 1997, with the sale of leases for a further 14 airports completed by mid 1998. The remaining five airports (the Sydney Basin and Essendon Airports) were leased to newly created Commonwealth owned companies in mid 1998. The FAC ceased operating in September 1998.

Some aspects of airport operations exhibit monopoly characteristics. In approaching privatisation, the Commonwealth put considerable effort into creating a regulatory framework that would maximise competition and protect consumer interests following privatisation.

3.1.2.1 Airport Industry Regulation

The FAC was self regulating in a large number of areas, including land use and environmental planning and control, commercial and retail trading and liquor licensing. As part of the sale process, the Parliament passed the *Airports Act 1996* that removed these responsibilities from airport lessees.

Provisions were also put in place relating to land use planning and the environment that require airport lessees to develop long term plans for the development and protection of the environment at the airport.

Commonwealth-appointed statutory office holders assess day to day compliance with Building Control and Environmental Protection Regulations at the airports. These requirements apply to all the leased airports (including Commonwealth owned airports), with the exception of the Mount Isa and Tennant Creek airports. These airports are subject to the relevant State and Territory planning laws.

In relation to control of on-airport activities, including commercial and retail trading and liquor licensing, the approach has been to subject airport lessees to State or Territory regulations. The aim is to place on-airport businesses in a competitively neutral regulatory position with respect to businesses operating off-airport. In some cases, it was necessary for the Commonwealth to make regulations on these matters in order to ease the transition to the new arrangements under privatisation. However, the Commonwealth is continuing to work with relevant State and Territory agencies so that airport specific regulations can be removed over time.

3.1.2.2 Introducing Competition to Airports

The framework established by the Government creates incentives for airport lessees to operate in a commercial manner, while still ensuring the public interest is protected. For example, responsibility for development of the airports rests entirely with lessees. The Master Planning provisions of the *Airports Act*, however, require lessees to publicly document their plans for future development of the airport – this ensures lessees are undertaking such planning and allows stakeholders and the community to provide input to these planning processes.

Through legislative and sales processes, the Government has put in place arrangements that will encourage competition between airports to the greatest extent possible. The *Airports Act* requires airlines not own more than 5% of an airport operator company, and there are cross ownership restrictions of 15% between the

Sydney airports (Kingsford Smith and Sydney West) and Melbourne, Brisbane and Perth airports.

The *Airports Act* contains special provisions to ensure that businesses are able to obtain access to airport infrastructure to provide civil aviation services in line with Part IIIA of the *Trade Practices Act 1974*. These provisions are designed to promote competition between businesses on the airport.

An economic regulatory regime has also been established, administered by the ACCC, to protect users against potential abuse of monopoly power by airport lessees. The prices oversight regime provides for a CPI-X price cap on a defined set of aeronautical services at core regulated (major) airports for five years. The 'X' factor reflects expected productivity improvements at each airport. The ACCC is responsible for determining the X values, which range from 1.0 to 5.5.

A second element is price monitoring of aeronautical-related services. Aeronautical-related services are services outside the price cap where operators could exert significant market power at individual airports. The ACCC's role is to monitor the prices of these services and take action where appropriate.

A potential effect of the price cap is that a business operator could lower prices in line with the cap but also reduce costs by allowing the infrastructure to deteriorate. Complementary to the prices oversight regime is a "quality of service" monitoring regime. Quality of service monitoring is designed as a check against such an outcome. It is not designed to compare airports but to monitor individual airport performance over time.

3.1.3 Australian Wheat Board

From 1 July 1999, the statutory Australian Wheat Board (AWB) will cease to operate, and the wholly owned subsidiary companies, through which its marketing and financing operations have been conducted since June 1998, will become grower owned and controlled.

At this time the levy on wheat sales used to build up the Wheat Industry Fund (WIF) will cease, and the WIF will be converted to B-class shares in AWB Ltd (the grower owned parent company) to form its capital base. A–class shares in AWB Ltd will also be issued, but only to wheat growers, to provide for grower control of the company.

The AWB's current export control powers will transfer to a new statutory Wheat Export Authority (WEA).

Establishing a separate export control body, with an independent board without majority grower membership provides for the separation of regulatory and commercial functions in accordance with NCP principles. The only role for the Commonwealth government with respect to wheat marketing after 1 July 1999 will be to provide the wheat export monopoly under legislation.

The WEA will be required to monitor and report on the use of the monopoly by the pooling subsidiary AWB (International) Ltd, which will be given an automatic right to export bulk wheat through the legislation. It is also required to review AWB (International) Ltd's performance in using the monopoly before the end of 2004.

The *Wheat Marketing Act 1989*, as amended, is scheduled for review under the Commonwealth Legislative Review Schedule in 1999-2000.

4. ACCESS TO ESSENTIAL INFRASTRUCTURE

4.1 The Importance of Access to Infrastructure

Fair and reasonable access by third parties to essential infrastructure facilities such as electricity grids, gas pipelines, rail tracks, airports and communications networks, is important for effective competition.

Many infrastructure facilities exhibit natural monopoly characteristics that inhibit competition in related industries. For example, restrictions on access to rail track will prevent competition between different companies seeking to provide rail freight services. Where a gas producer cannot make use of an existing gas distribution network to reach potential clients, it is difficult to compete in or even enter the wholesale and retail gas supply markets.

It is generally not economically feasible to duplicate such infrastructure, and given the historic likelihood of vertically integrated owners, it can be difficult for actual and potential competitors in downstream and upstream industries to gain access to these often vital infrastructure services. Even if access is technically available, there is likely to be an imbalance in bargaining power between the infrastructure owner and potential third party users, influencing the terms and cost of access and potentially making entry prohibitive for competitors.

The outputs of these industries are significant inputs to a wide range of economic activities. Where restricted access arrangements result in higher prices or lower service quality, through reduced competition and/or limited supply, the impacts are incurred by both businesses and consumers.

As a result, governments have given increasing attention to establishing a right of access to these facilities, under established terms and conditions, where privately negotiated action is not expected to be a viable option.

4.2 Part IIIA of the Trade Practices Act 1974

Clause 6 of the *Competition Principles Agreement* (CPA) requires the Commonwealth to establish a legislative regime for third party access to services provided by means of significant infrastructure facilities where:

(a) it would not be economically feasible to duplicate the facility;

(b) access to the service is necessary in order to permit effective competition in a downstream or upstream market;

(c) the facility is of national significance having regard to the size of the facility, its importance to constitutional trade or commerce or its importance to the national economy; and

(d) the safe use of the facility by the person seeking access can be ensured at an economically feasible cost and, if there is a safety requirement, appropriate regulatory arrangements exist.

Further, this regime is not to cover a service provided by means of a facility located in a State or Territory that has established an access regime that both covers the facility and conforms with the principles set out Clause 6, unless the National Competition Council (NCC) determines that regime to be ineffective in relation to the interjurisdictional impact or nature of the facility.

To give effect to this commitment, Part IIIA was inserted into the *Trade Practices Act 1974* (TPA). This part is referred to as the national access regime, and is intended to provide for minimum intervention by the Commonwealth in determining actual terms and conditions of access.

The national access regime establishes three means by which third parties may seek access to nationally significant infrastructure services. These are:

- declaration of the infrastructure facility;

A person can apply through the NCC to have a service provided by a significant infrastructure facility 'declared' by decision of the relevant Minister. Where a service is declared, access to the service is able to be negotiated on a commercial basis between the service provider and an access seeker.

If agreement cannot be reached, the terms and conditions of access can be determined by the ACCC through a legally binding arbitration process. In making an access determination, the ACCC must take into account a range of factors, including the legitimate business interests of the service provider, the provider's investment in the facility and the public interest.

A decision on an application for declaration can be appealed to the Australian Competition Tribunal (ACT) within 21 days.

- through an undertaking to the ACCC; and

The operator of an infrastructure service can give a voluntary undertaking to the ACCC, setting out the terms and conditions on which access to that service will be provided. If an undertaking is accepted, this provides a legally binding means by which third parties can obtain access to the infrastructure service. A service that is subject to an undertaking cannot be declared as described above.

- certification of a State or Territory access regime as an 'effective regime'.

State or Territory governments may apply through the NCC to have an access regime certified as effective in relation to a particular service. The NCC then makes a recommendation to the relevant Commonwealth Minister on whether or not to certify the regime. In making this decision, the Minister must consider the NCC's recommendation and apply the relevant principles set out in the CPA.

Where an effective State or Territory access regime is in place the relevant infrastructure service cannot be declared.

A decision on an application for certification can be appealed to the ACT within 21 days.

Specific access regimes have also been established for particular infrastructure facilities, including those applying to telecommunications carriers, airport services provided at core regulated Commonwealth airports and for natural gas transmission and distribution pipelines. These regimes may or may not interact with the national access regime.

4.3 Commonwealth Activity under Part IIIA

This section identifies those actions under Part IIIA of the TPA involving infrastructure facilities under Commonwealth jurisdiction or requiring a decision by a Commonwealth Minister within the reporting period.

4.3.1 Airport Services

Section 192 of the *Airports Act 1996* contains an access regime applying to airport services at core regulated (major) Commonwealth airports.

Airport service means a service provided at core regulated airports, where the service:

(a) is necessary for the purposes of operating and/or maintaining civil aviation services at the airport; and

(b) is provided by means of significant facilities at the airport, being facilities that cannot be economically duplicated.

Where an airport lessee does not have an access undertaking for airport services approved by the ACCC within 12 months of privatisation, the Commonwealth Minister of Transport and Regional Services is required to make a determination that each airport service not covered by an access undertaking is a declared service for the purposes of Part IIIA of the TPA.

None of the three Phase 1 airports (Brisbane, Melbourne and Perth) were successful in having an access undertaking approved by the ACCC. Consequently, the (then) Minister for Transport and Regional Development made a determination in relation to these three airports in July 1998.

4.3.2 Application for Access Declaration at Sydney and Melbourne Airports by Australian Cargo Terminal Operators.

On 30 June 1997, the Commonwealth Treasurer declared certain freight handling services provided by the Federal Airports Commission (FAC) at the Sydney International Airport. This was in response to an application made through the NCC by the Australian Cargo Terminal Operators Pty Ltd.

On 21 July 1997, the FAC applied for a review of this declaration. The matter is currently under consideration by the Australian Competition Tribunal.

4.3.3 South Australian Access Regime for Gas Pipeline Services

In November 1997, the Council of Australian Governments (CoAG) endorsed a national regulatory regime for natural gas transmission and distribution pipelines. The national regime establishes a framework for third parties, such as gas retailers and end-users, to negotiate access to transmission and distribution gas pipelines on fair and reasonable terms and conditions. By removing supply bottlenecks in the industry, it aims to increase competition in the supply and sale of natural gas.

As part of the agreement, States and Territories agreed to submit a regime consistent with the national regime, as it is applied in their jurisdiction, through the NCC for certification under Part IIIA of the TPA.

On June 22 1998, the NCC received an application from the South Australian Government for certification of the South Australian regime. The NCC provided the Treasurer with its recommendation on 23 September 1998, supporting the application.

Having considered the recommendation, the Minister for Financial Services and Regulation certified the *South Australian Third Party Access Regime for Natural Gas Pipelines* as an effective access regime for a period of 15 years commencing on 8 December 1998.

5. PRICES OVERSIGHT OF GOVERNMENT BUSINESS ENTERPRISES

5.1 The Purpose of Prices Oversight

Prices oversight activities serve to identify and discourage unacceptable price increases occurring where firms have excessive market power, such as from a legislated or natural monopoly, or where the necessary conditions for effective competition are not otherwise met.

The Commonwealth has had its current prices oversight arrangements for public and private sector business activities under Commonwealth jurisdiction in place since 1983. However, there has been no comprehensive prices oversight of other jurisdictions' government enterprises. National competition policy aims to fill this void by encouraging the establishment of independent State and Territory prices oversight bodies.

Prices oversight of Government Business Enterprises (GBEs) is raised in Clause 2 of the *Competition Principles Agreement* (CPA). This requires that each State and Territory consider the establishment of an independent source of prices oversight where this does not exist already. All States and Territories, with the exception of Western Australia and the Northern Territory, have now established such a body.

An independent source of prices oversight must have the following characteristics:

- it should be independent from the GBE whose prices are being assessed;
- its prime objective should be one of efficient resource allocation but with regard to any explicitly identified and defined community service obligations imposed on a business enterprise by the Government or legislature of the jurisdiction that owns the enterprise;

- it should apply to all significant GBEs that are monopoly or near monopoly suppliers of good or services (or both);
- it should permit submissions by interested persons; and
- its pricing recommendations, and the reasons for them, should be published.

5.2 Commonwealth Prices Oversight

The Commonwealth has a range of existing prices surveillance and monitoring arrangements. Their objective is to promote competitive pricing, and restrain price rises in those markets where competition is less than effective. They apply across both the private and public sector, subject to Constitutional limitations.

The Australian Competition and Consumer Commission (ACCC), an independent Commonwealth authority, is responsible for administering the *Prices Surveillance Act 1993*.

The *Prices Surveillance Act* enables the ACCC to undertake price surveillance, price inquiries or price monitoring of selected goods and services in the Australian economy. These powers can be applied to business activities of the Commonwealth, State and Territory authorities, as well as trading, financial and foreign corporations and people or firms within the Australian Capital Territory and across State and Territory boundaries.

Once the responsible Commonwealth Minister formally declares an organisation, good or service subject to prices surveillance, the price of a declared product is not permitted to increase above its endorsed price or its highest price in the previous 12 months without notification to the ACCC.

Prices surveillance is currently applied to aeronautical services at Sydney Airport, charges made by Airservices Australia for terminal navigation, en-route navigation and rescue and firefighting services and various Australia Post charges.

Price inquiries involve studies of limited duration into pricing practices and related matters concerning the supply of particular goods and services, following direction from the responsible Commonwealth Minister. During the period of the inquiry, the price under examination may not be increased beyond its peak price in the previous 12 months without the approval of the ACCC. The findings of the inquiry are then reported to the Minister.

The responsible Commonwealth Minister may also request ongoing monitoring of prices, costs and profits in any industry or business. For example, the ACCC is currently required to undertake prices monitoring of all aeronautically related charges and price, cost and profit data for ACI Operations Pty Ltd. The findings of the exercise are then reported back to the Minister.

The ACCC also has special pricing powers in relation to specific infrastructure facilities, for example, aeronautical services at privatised core regulated airports (*see* page 182).

5.2.1Matters Referred to the ACCC

While recognising prices oversight of state and territory GBEs is primarily the responsibility of the State or Territory that owns the enterprise, clause 2 does provide that a State or Territory may generally or on a case by case basis, and with the approval of the Commonwealth, subject its GBEs to a prices oversight mechanism administered by the ACCC.

However, in the absence of the consent of the relevant State or Territory, a GBE may only be subject to prices oversight by the ACCC if:

(a) it is not already subject to a source of independent prices oversight advice;

(b) a jurisdiction which considers it is adversely affected by the lack of prices oversight has consulted the State or Territory that owns the GBE, and the matter has not been resolved to its satisfaction;

(c) the affected jurisdiction has then brought the matter to the attention of the National Competition Council (NCC), and the NCC has decided that the condition in point (a) exists and that the pricing of the GBE has a significant direct or indirect impact on constitutional trade or commerce;

(d) the NCC then has recommended that the responsible Commonwealth Minister declare the GBE for prices surveillance by the ACCC; and

(e) the responsible Commonwealth Minister has consulted the State or Territory that owns the enterprise.

No matters were referred to the ACCC under these arrangements for the period 1997-98.

6. CONDUCT CODE AGREEMENT

6.1 The Competitive Conduct Rules

The *Conduct Code Agreement* (CCA) committed the States and Territories to passing application legislation extending the competitive conduct rules of Part IV of the *Trade Practices Act 1974* (TPA) to bodies within their Constitutional competence, and provided for its administration across Australia by the Australian Competition and Consumer Commission (ACCC).

It also defines a process for excepting (by legislation) conduct from Part IV of the TPA, modifying the competitive conduct rules and making appointments to the ACCC.

Part IV of the TPA prohibits a range of anti-competitive conduct, as well as providing for exceptions from the requirement to comply with all or part of the restrictive trade practices provisions. In particular, it prohibits:

- anti-competitive arrangements, primary boycotts and price agreements;
- secondary boycotts;
- misuse of market power by a business where the purpose is to damage or prevent a competitor from competing;
- third line forcing as well as exclusive dealing conduct that is anti-competitive;
- resale price maintenance; and
- anti-competitive acquisitions and mergers.

The ACCC has the power to authorise arrangements that technically breach these provisions, provided these arrangements satisfy the public benefit test under Part VII of the TPA. Authorisation, which must be sought in advance by a party, operates to immunise arrangements from Court action (except for section 46 conduct relating to misuse of market power). ACCC adjudication decisions (authorisations and

revocation of exclusive dealings notifications) are subject to review by the Australian Competition Tribunal.

Subsection 51(1) provides general exceptions from Part IV of the TPA for:

- things done or authorised or approved by federal or Territorial legislation other than legislation relating to patents, trademarks, designs or copyrights; and
- things done in any State or Territory specified in and specifically authorised by State or Territory legislation, as long as the State or Territory is a party to the CCA and the *Competition Principles Agreement*.

Subsections 51(2) and 51(3) exception provisions are currently under legislative review (**see** page 57).

6.2 Commonwealth exceptions under S.51(1) of the *Trade Practices Act 1974*

Any Commonwealth legislation reliant on a section 51(1) exception needs to be approved by the Treasurer.

6.2.1 Existing Legislation Reliant on s.51(1) after 20 July 1998

The CCA required the Commonwealth to notify the ACCC by 20 July 1998 of all Commonwealth legislation existing at 11 April 1995, enacted or made in reliance on section 51(I) of the TPA, that would continue to except conduct pursuant to subsection 51(1) after 20 July 1998.

A report was provided to the ACCC on 15 July 1998, advising that there was no Commonwealth legislation falling into the above category. However, it was noted that the *Competition Policy Reform Act 1995* inserted a subsection 33A(6A) into the *Australian Postal Corporation Act 1989*, which introduced a section 51(1) exception.

6.2.2 New Legislation: Exceptions made in 1997-98

The CCA also requires that written notification be provided to the ACCC of all legislation enacted since 11 April 1995 similarly reliant on section 51(1). This must occur within 30 days of the legislation being enacted. Exceptions made in 1997-98 are detailed below.

Proposed legislation that embodies restrictions on competition must satisfy the requirements of the CPA in relation to net community benefit and include a Regulation Impact Statement. This includes legislation incorporating an exception reliant on subsection 51(1) of the TPA.

6.2.2.1 Australian Wheat Board

Pursuant to subclause 2(1) of the CCA, the ACCC was advised on 11 August 1998 that the *Wheat Marketing Legislation Amendment Act 1998*, which received Royal Assent on 30 July 1998, contains a provision that relies upon Section 51 of the Competition Laws (as defined in the CCA).

This Act provides for the transfer of responsibility, from 1 July 1999, for wheat marketing from the statutory Australian Wheat Board (AWB) to a company owned and controlled by wheat growers, AWB Limited. From that time, the AWB and associated government underwriting arrangements will cease. The Government's residual role will be to provide the export monopoly to the grower company through the Wheat Export Authority (WEA).

Under the amendments, a wholly owned subsidiary (AWB (International Ltd) of AWB Ltd will be given the right to export wheat without the consent of the WEA. It is also given a veto right over the issue of export consents by the WEA for bulk wheat i.e. for exports other than in bags and containers.

As a result, AWB (international) Ltd will have a considerable degree of market power. There has been concern that the conduct of the company in respect of these statutory export monopoly arrangements could contravene section 46 of the TPA. The risk was considered sufficient to include in the *Wheat Marketing Act 1989* an exception provision to ensure that it could engage in activities consistent with its functions and objects without incurring any potential liability under Part IV of the TPA.

This provision inserts a new subsection 57(6) into the *Wheat Marketing Act*, with the effect of taking certain actions of AWB (international) Ltd outside the scope of Part IV of the TPA. These actions include the specific activities of the company in

exporting wheat under the monopoly arrangements, and the actions of the company in connection with the granting of export consents by the WEA under section 57 of the *Wheat Marketing Act*. It does not extend to actions the company may undertake in connection with, or related to, exporting wheat e.g. storage and handling of export wheat.

6.2.2.2 Country of Origin Representations

Pursuant to subclause 2(1) of the CCA, the ACCC was advised on 7 August 1998 that the *Trade Practices Amendment (Country of Origin Representations) Act 1998*, which received Royal Assent on 30 July 1998, contains a provision that relies upon Section 51 of the Competition Laws (as defined in the CCA).

This provision inserts a new section 173 into the *Trade Practices Act 1974* (TPA), which excepts the vesting of ownership of primary products by legislation from the application of section 50 of the TPA. This is intended to remove any uncertainty regarding the application of section 50 to statutory vesting of primary products, particularly in relation to the vesting of raw sugar under the Queensland *Sugar Industry Act 1991*.

7. COAG RELATED REFORMS (ELECTRICITY, GAS, WATER, ROAD TRANSPORT)

The requirements for reform of the major infrastructure areas of electricity, gas, water and road transport are set out in separate Inter-Governmental Agreements endorsed by the Council of Australian Governments (CoAG). Satisfactory progress in achieving these reforms was included in the *Agreement to Implement the National Competition Policy and Related Reforms*, as one of the conditions for receipt of National Competition Policy (NCP) payments.

These commitments are largely the responsibility of the States and Territories, although the Commonwealth does have some specific responsibilities (particularly in the area of gas reform). It also has a responsibility to assist the States and Territories in meeting their obligations.

The following sections set out the background to reform and progress achieved in each of the targeted areas, with emphasis on the role of the Commonwealth.

7.1 Electricity

In July 1991, CoAG agreed to develop a competitive electricity market in southern and eastern Australia. The Commonwealth has since taken a leadership role in this area to ensure implementation of electricity reforms on a national basis.

In 1997-98, the first stage of the National Electricity Market (NEM), which harmonised market arrangements between New South Wales, Victoria and the Australian Capital Territory, was consolidated and the ground laid for the introduction of the next stage in December 1998. The Commonwealth has continued to participate in working groups developing the policy and operational environment for the NEM. Legislation underpinning the NEM was passed in all participating jurisdictions. In January 1998, Queensland implemented NEM systems effectively providing a pilot for the national market.

The National Electricity Market Management Company (NEMMCO), which manages the operations of the wholesale electricity market and security of the power system, and the National Electricity Code Administrator (NECA), which administers the national electricity code, including compliance, enforcement and dispute resolution processes, also became operational.

The Commonwealth made a submission to the NECA review of network pricing arrangements in the National Electricity Code in April 1998. The submission highlighted the importance of a transparent methodology that allocates costs between generation and loads in as cost reflective and competitive manner as possible and minimises distortions to network usage and investment.

The Australian Competition and Consumer Commission (ACCC) granted authorisation to the National Electricity Code in December 1997 under the *Trade Practices Act 1974* (TPA), giving market participants protection from action by parties for possible breaches of the TPA (*see* **Chapter 6**).

7.2 Gas

The Australian natural gas market has traditionally comprised State based market structures, in which monopolies operated at the production, distribution and retailing stages. The supply chain was highly integrated, with legislative and regulatory barriers restricting interstate trade. These characteristics, in the absence of links between the States' pipeline systems, served to perpetuate low levels of competitive behaviour in the marketplace.

In February 1994, CoAG agreed to facilitate developments aimed at stimulating competition, thereby achieving "free and fair trade" in the natural gas sector. These commitments were integrated into the NCP reforms.

Governments and industry are required to:

- remove policy and regulatory impediments to retail competition in the natural gas sector;
- remove a number of restrictions on interstate trade; and
- develop a nationally integrated competitive natural gas market by:
    - establishing a national regulatory framework for third party access to natural gas pipelines; and

- facilitating the inter-connection of pipeline systems.

To date, governments and industry, through the Gas Reform Implementation Group and its predecessor the Gas Reform Task Force, have focused primarily on developing and implementing national arrangements for third party access to natural gas pipelines.

In November 1997, the Commonwealth, States and Territories agreed to enact legislation to apply a uniform national framework for third party access to all gas pipelines.

To realise the benefits of third party access in the natural gas retail market, a degree of separation between the monopoly pipeline transportation business and other potentially contestable businesses is required. The access regime includes 'ring fencing' provisions that require the monopoly transportation business to be separated from the retail business of the company, including separate accounts, staff and customer information.

7.2.1 Implementation of the Gas Access Code

The *Gas Pipelines Access (Commonwealth) Act 1998* was passed by Parliament on 9 July 1998. This Act gives effect to the Commonwealth's role in implementing the national third party access regime for natural gas pipelines (the national access regime) in fulfillment of the CoAG commitment to "free and fair" trade in natural gas. It also accords with the Commonwealth's obligations under the *Natural Gas Pipelines Access Agreement*, signed by Heads of Government at the CoAG meeting of 7 November 1997, to enact legislation to facilitate the national character of the scheme.

The Act makes operational the legislation enacted by each State and Territory to implement the National Gas Access Code. It ensures that the national competition bodies can exercise powers and carry out functions conferred on them by the States and Territories under this scheme, and provides that:

- the ACCC is the Regulator for transmission pipelines, and individual jurisdictions may confer on the ACCC the regulatory role for distribution pipelines;

- under Part IIIA of the TPA, the National Competition Council (NCC) has a role in assessing the effectiveness of State and Territory access legislation submitted to it, and an additional role of advisory body on coverage of pipelines; and

- the Australian Competition Tribunal to hear administrative appeals from decisions of the relevant Minister (on whether a pipeline is to be covered) and the ACCC and some state and territory based regulators on specified access matters.

The Act also completes the national coverage of the Code by ensuring its application to offshore waters, to relevant external territories and adjacent areas, the Jervis Bay Territory, and to the Moomba-Sydney pipeline.

In the case of the Moomba-Sydney pipeline, the Commonwealth legislation provides for the repeal of the Commonwealth's specific access legislation contained in Part 6 of the *Moomba* , allowing the relevant State or Territory scheme participants' Gas Pipelines Access Law to apply. The repeal of Part 6 of the *Moomba* took effect with the commencement of the South Australian *Gas Pipelines Access (South Australia) Act 1997* and corresponding legislation in New South Wales.

Amendments to the *Petroleum (Submerged Lands) Act 1967* (PSLA) to apply the national access regime to areas of Commonwealth jurisdiction beyond States and Territories territorial waters and in external territories were also enacted.

The common carriage provisions in the PSLA will be displaced where a pipeline is covered by the national access regime. For instance, when an access scheme is enacted by the States or Northern Territory, the State or Territory access legislation will be applied by the *Gas Pipelines Access (Commonwealth) Act 1998* to those pipelines in offshore areas adjacent to their territorial seas and in external territories within their jurisdiction. If the relevant jurisdiction does not have gas access legislation, the national access regime is called-up directly by the Commonwealth legislation and applied in the adjacent Commonwealth area.

The power to direct common carriage is also removed in respect of a pipeline for which a declaration is in force or for which an access undertaking has been accepted by the ACCC, under Part IIIA of the TPA (*see* **Chapter 4**).

7.3 Water

In February 1994, CoAG agreed to a strategic water reform framework to achieve an economically efficient and ecologically sustainable water industry. Major elements of the proposed reforms included pricing based on the principle of full cost recovery,

determination of water allocations and entitlements and trading of those entitlements, institutional reform and water for the environment.

The water industry reforms were drawn more closely into the micro-economic reform process in April 1995, when CoAG linked State implementation of the water reforms to the National Competition Policy (NCP) and associated second and third tranche competition payments.

In 1997-98, the Standing Committee on Agriculture and Resource Management (SCARM) continued to encourage and facilitate jurisdictions' implementation of the water industry reforms in line with the timeframe outlined by the CoAG Water Reform Framework and the NCP. A major achievement of SCARM in this period was the development of a set of guidelines to assist jurisdictions implement full cost recovery principles. These guidelines were forwarded to CoAG for endorsement and use in the National Competition Council implementation assessment.

The Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ) 1997 annual report to CoAG, and a SCARM review of a number of jurisdictions, indicated that good progress is being made on implementation of the reforms. However, there were a number of areas that needed further attention prior to the 2001 completion date for implementation. ARMCANZ is undertaking a number of projects to facilitate implementation of the water reforms, including in relation to water trading, industry performance monitoring, full cost recovery and cross subsidies.

7.4 Road Transport

In 1991, Heads of Government signed the Heavy Vehicles Agreement (HVA), directed at vehicles over 4.5 tonnes gross vehicle mass and intended to improve road safety and transport efficiency and reduce compliance and administration costs. It involved introducing uniform national arrangements for vehicle roadworthiness and driver licensing, and vehicle charges that reflect the full cost of providing road transport services.

The Commonwealth *National Road Transport Commission Act 1991* gave effect to the HVA and created the National Road Transport Commission (NRTC) to oversee development and implementation of the reform program. The Act also established the inter-jurisdictional Ministerial Council of Road Transport (MCRT) to manage implementation of the specific reforms developed by the NRTC.

In May 1992, the Light Vehicles Agreement (LVA) was signed. This extended the objective of national uniformity in road regulation to all other road users. The Commonwealth amended the NRTC Act to give effect to this agreement.

The NRTC was to implement the reforms progressively through six separate modules:

- uniform heavy vehicle charges;
- uniform arrangements for transportation by road of dangerous goods;
- vehicle operation reforms covering national vehicle standards, roadworthiness, mass and loading laws, oversize and overmass vehicles, and road rules;
- a national heavy vehicle registration scheme;
- a national driver licensing scheme; and
- a consistent and equitable approach to compliance and enforcement with road transport laws.

It was initially determined that governments would phase in the six reform modules using 'template' legislation. This involved the Commonwealth enacting legislation to apply the agreed reforms in the ACT; with the other states and territories applying the Commonwealth template 'by reference' in their own jurisdictions. However, in February 1997, MCRT agreed that, in certain circumstances, jurisdictions could implement approved reforms without waiting for the Commonwealth template. This was intended to improve the timeliness and reduce the resource burden of reform implementation.

In early 1997, the Commonwealth enacted the *Road Transport Reform (Dangerous Goods) Amendment Act 1997* and the *Road Transport Reform (Heavy Vehicles Registration) Act 1997*. A revised Australian Dangerous Goods Code (sixth edition) was subsequently published.

Following interjurisdiction consultation, on 25 June 1998, the Commonwealth passed the *National Road Transport Commission Amendment Act 1998*. This Act provides for the:

- insertion of the *First Heavy Vehicles Amending Agreement*, agreed to by all jurisdictions;

- the Australian Transport Council (ATC) to exercise the powers and functions previously held by the MRCT, and for the appointment of an ATC member to represent New Zealand; and

- the development of a road vehicle cooperation program between Australia and New Zealand, including the development of trans-Tasman Mutual Recognition Arrangement road vehicle standards that will facilitate free trade in vehicles between the two countries.

In April 1995, the road transport reforms were integrated into the NCP process — in recognition that full implementation of the HVA and LVA would boost national welfare and reduce the cost of road transport services. This involved all governments committing to the effective observance of road transport reforms by 1999, and to have fully implemented and continued observance of the reforms by no later than 2001.

Following a request from the CoAG Committee on Regulatory Reform, a Standing Committee on Transport working group reviewed the road transport reform program commitments, reporting subsequently to Ministers and CoAG. The road transport reform commitments and implementation timetable have now been agreed by all governments, and will form the basis for NCC assessment of State and Territory progress in this area.

APPENDIX A

Commonwealth Legislative Review Schedule (as at 30 June 1998) – by scheduled commencement date

NAME OF LEGISLATION	RESPONSIBLE DEPARTMENT
UNDERWAY IN 1996 *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*	Environment and Heritage
Bounty (Books) Act 1986	Industry, Science and Resources
Bounty (Fuel Ethanol) Act 1994	Industry, Science and Resources
Bounty (Machine Tools & Robots) Act 1985	Industry, Science and Resources
Census & Statistics Act 1905	Treasury
Commerce (Imports) Regulations and Customs Prohibited Imports Regulations	Industry, Science and Resources
Corporations Act 1989	Treasury
Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991	Education, Training and Youth Affairs
Financial system — comprehensive review of the regulatory framework	Treasury
Industrial Relations Act 1988	Employment, Workplace Relations and Small Business
Patents Act 1990, sections 198-202 (Patent Attorney registration *)*	Industry, Science and Resources
Protection of Movable Cultural Heritage Act 1986	Communications, Information Technology

NAME OF LEGISLATION	RESPONSIBLE DEPARTMENT
	and the Arts
Quarantine Act 1908	Agriculture, Fisheries and Forestry
1996-97	
Aboriginal Land Rights (Northern Territory) Act 1976	Prime Minister and Cabinet
Australian Maritime Safety Authority Act 1990	Transport and Regional Services
Australian Postal Corporation Act 1989	Communications, Information Technology and the Arts
Bills of Exchange Act 1909	Treasury
Customs Tariff Act 1995 – Automotive Industry Arrangements	Attorney-General's
Customs Tariff Act 1995 – Textiles Clothing and Footwear Arrangements	Attorney-General's
Duty Drawback (Customs Regulations 129 to 136B) and TEXCO (Tariff Export Concession Scheme) — *Customs Tariff Act 1995*, Schedule 4, Item 21, Treatment Code 421	Attorney-General's
Employment Services Act 1994 (case management issues)	Employment, Workplace Relations and Small Business
Foreign Investment Policy, including associated regulation	Treasury
Income Equalisation Deposits (Interest Adjustment) Act 1984 and *Loan (Income Equalisation Deposits) Act 1976*	Agriculture, Fisheries and Forestry
International Air Service Agreements	Transport and Regional Services
International Arbitration Act 1974	Attorney-General's
Migration Act 1958 — sub-classes 120 and 121 (business visas *)*	Immigration and Multicultural Affairs
Migration Act 1958 — sub-classes 560, 562 and 563 (student visas)	Immigration and Multicultural Affairs
Migration Act 1958 — sub-classes 676 and 686 (tourist visas)	Immigration and Multicultural Affairs

NAME OF LEGISLATION	RESPONSIBLE DEPARTMENT
Migration Act 1958, Part 3 (Migration Agents and Immigration Assistance) and related regulations	Immigration and Multicultural Affairs
Migration Agents Registration (Application) Levy Act 1992 and *Migration Agents Registration (Renewal) Levy Act 1992*	Immigration and Multicultural Affairs
National Road Transport Commission Act 1991 and related Acts	Transport and Regional Services
Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993 and regulations	Foreign Affairs and Trade
Pooled Development Funds Act 1992	Industry, Science and Resources
Quarantine Act 1908, in relation to human quarantine	Health and Aged Care
Radiocommunications Act 1992 and related Acts	Communications, Information Technology and the Arts
Rural Adjustment Act 1992 and States and Northern Territory Grants (Rural Adjustment) Acts	Agriculture, Fisheries and Forestry
Shipping Registration Act 1981	Transport and Regional Services
Trade Practices (Consumer Product Information Standards) (Care for clothing and other textile products labelling) Regulations	Treasury
Tradesmen's Rights Regulation Act 1946	Employment, Workplace Relations and Small Business
1997-98	
Affirmative Action (Equal Employment Opportunity for Women) Act 1986	Employment, Workplace Relations and Small Business
Agricultural and Veterinary Chemicals Act 1994	Agriculture, Fisheries and Forestry
Bankruptcy Act 1966 and Bankruptcy Rules — trustee registration provisions	Attorney General's

NAME OF LEGISLATION	RESPONSIBLE DEPARTMENT
Customs Act 1901 Sections 154-161L	Attorney-General's
Defence Housing Authority Act 1987	Defence
Environmental Protection (Nuclear Codes) Act 1978	Health and Aged Care
Higher Education Funding Act 1988 plus include*: Vocational Education & Training Funding Act 1992* and any other regulation with similar effects to the *Higher Education Funding Act 1988*	Education, Training and Youth Affairs
Imported Food Control Act 1992 and regulations	Agriculture, Fisheries and Forestry
International Air Services Commission Act 1992	Transport and Regional Services
Motor Vehicle Standards Act 1989	Transport and Regional Services
Mutual Recognition Act 1992	Education, Training and Youth Affairs and Industry, Science and Resources
National Health Act 1953 (Part 6 & Schedule 1) and *Health Insurance Act 1973* (Part 3)	Health and Aged Care
National Residue Survey Administration Act 1992 and related Acts	Agriculture, Fisheries and Forestry
Petroleum Retail Marketing Franchise Act 1980	Industry, Science and Resources
Petroleum Retail Marketing Sites Act 1980	Industry, Science and Resources
Pig Industry Act 1986 and related Acts	Agriculture, Fisheries and Forestry
Primary Industries Levies Acts and related Collection Acts	Agriculture, Fisheries and Forestry
Proceeds of Crime Act 1987 and regulations	Attorney General's
Torres Strait Fisheries Act 1984 and related Acts	Agriculture, Fisheries and Forestry

NAME OF LEGISLATION	RESPONSIBLE DEPARTMENT
Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations	Treasury
Trade Practices Act 1974 (s 51(2) and s 51(3) exemption provisions)	Treasury
Dumping *Authority Act 1988, Customs Act 1901 Pt XVB*	
Anti and *Customs Tariff (Anti-dumping) Act 1975*	Attorney General's
Australia New Zealand Food Authority Act 1991 Food Standards Code	Health and Aged Care
Broadcasting Services Act 1992, Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992, Radio Licence Fees Act 1964 and *Television Licence Fees Act 1964*	Communications, Information Technology and the Arts
Customs Act 1901 (Prohibited Exports — Nuclear Materials) — export controls under regulation 11	Attorney-General's
Dairy Industry Legislation	Agriculture, Fisheries and Forestry
Defence Force (Home Loans Assistance) Act 1990	Defence
Dried Vine Fruits Legislation	Agriculture, Fisheries and Forestry
Export Control Act 1982 — Export Control (Unprocessed Wood) Regulations	Agriculture, Fisheries and Forestry
Export Control Act 1982 (fish, grains, dairy, processed foods etc)	Agriculture, Fisheries and Forestry
Export Finance & Insurance Corporation Act 1991 and *Export Finance & Insurance Corporation (Transitional Provisions and Consequential Amendments) Act 1991*	Foreign Affairs and Trade
Financial Corporations Act 1974	Treasury
Financial Transactions Reports Act 1988 and regulations	Attorney General's
Fisheries Legislation	Agriculture, Fisheries and Forestry

NAME OF LEGISLATION	RESPONSIBLE DEPARTMENT
Hazardous Waste (Regulation of Exports and Imports) Act 1989, Hazardous Waste (Regulation of Exports and Imports) Amendment Bill 1995 and related regulations	Environment and Heritage
Health Insurance Act 1973 — Part IIA	Health and Aged Care
Insurance (Agents & Brokers) Act 1984	Treasury
Intellectual property protection legislation *(Designs Act 1906, Patents Act 1990, Trade Marks Act 1995, Copyright Act 1968* and possibly the *Circuit Layouts Act 1989)*	Attorney General's and Industry, Science and Resources
Land Acquisition Acts: a) *Land Acquisition Act 1989* and regulations*;* b) *Land Acquisitions (Defence) Act 1968;* c) *Land Acquisition (Northern Territory Pastoral Leases) Act 1981*	Finance and Administration
Navigation Act 1912	Transport and Regional Services
Prawn Boat Levy Act 1995	Agriculture, Fisheries and Forestry
Prices Surveillance Act 1983	Treasury
Review of market -based reforms and activities currently undertaken by the Spectrum Management Agency (now Australian Communications Authority).	Communications, Information Technology and the Arts
Superannuation Acts including: *Occupational Superannuation Standards Regulations Application Act 1992, Superannuation (Financial Assistance Funding) Levy Act 1993, Superannuation Entities (Taxation) Act 1987, Superannuation Industry (Supervision) Act 1993, Superannuation (Resolution of Complaints) Act 1993* and the *Superannuation Supervisory Levy Act 1991*	Treasury
Trade Practices Act 1974 — Part X (shipping lines)	Transport and Regional Services
Veterans' Entitlement Act 1986 — Treatment Principles (section 90) and Repatriation Private Patient Principles (section 90A)	Veterans' Affairs
World Heritage Properties Conservation Act 1983	Environment and Heritage
1999-00	

NAME OF LEGISLATION	RESPONSIBLE DEPARTMENT
Defence Act 1903 (Army and Airforce Canteen Services Regulations)	Defence
Home & Community Care Act 1985	Health and Aged Care
Moomba-Sydney Pipeline System Sale Act 1994 — Part 6 (access provisions)	Industry, Science and Resources
Native Title Act 1993 and regulations	Prime Minister and Cabinet
Ozone Protection Act 1989 and *Ozone Protection (Amendment) Act 1995*	Environment and Heritage
Petroleum (Submerged Lands) Act 1967	Industry, Science and Resources
Trade Practices Act 1974 (including exemptions) — Part IIIA (access regime)	Treasury
Trade Practices Act 1974 — 2D exemptions (local government activities)	Treasury
Trade Practices Act 1974 — fees charged	Treasury
Wheat Marketing Act 1989	Agriculture, Fisheries and Forestry

APPENDIX B

Commonwealth Business Activities Subject To CN as at 30 June 1998 – Progress Implementing Competitive Neutrality

Table B1: Government Business Enterprises

NAME	PROGRESS
Australian Defence Industries Limited	Sale in progress.
Australian Industry Development Corporation	Limited, a commercial subsidiary of AIDC, was sold on 3 February 1998. There are no residual CN requirements.
Australian National Line Limited	Sale in progress.
Australian National Railways Commission	1997-98, Commission to be wound up in1998 -99. CN not applied in 1997 -98.
Australian Postal Corporation	CN recommendations to be considered in further review.
Australian Rail Track Corporation	CN compliant.
Australian Technology Group Limited	Partially privatised, Commonwealth equity holding under review.

Defence Housing Authority	CN implementation under consideration.
Essendon Airport Limited	CN compliant.
Export Finance and Insurance Corporation	CN implementation arrangements being finalised following recent review.
Federal Airports Corporation	Assets divested during1996-97 and 1997-98.
Health Services Australia Limited	CN compliant.
Housing Loans Insurance Corporation	Sold 15 December 1997.
Medibank Private Limited	compliant.
National Rail Corporation	CN compliant, sale pending
Snowy Mountains Hydro-electric Authority	agreements under negotiation.
Sydney Airports Corporation Limited	CN compliant.
Telstra Corporation Limited	Partially privatised, CN compliant.
Employment National Limited, Employment National (Administration) Limited [16]	CN compliant, currently subject to a transitional rate of return target.

[16] Employment National and its subsidiary are non-Government Business Enterprise *Corporations Law* companies.

Table B2: Commonwealth Business Units

NAME	PROGRESS
Artbank	No major CN issues.
Asset Services	Sold 30 September1997.
Auscript	Sold 26 June 1998.
Australian Government Analytical Laboratory	CN compliant.
Australian Government Health Service	Corporatised 1 July1997.
Australian Government Publishing Service	1997 and 1998.
Australian Government Solicitor	CN under implementation.
Australian Operational Support Services	Sold 15 August 1997.
Australian Property Group	Sold 1 October 1997.
Australian Protective Service	CN under implementation.
Australian Surveying and Land Information Group	CN compliant.
Australian Valuation Office	CN compliant.
DAS Centre for Environmental Management	Sold 23 October 1997.
DAS Distribution	Sold 1 September 1997.
DAS Interiors	Sold 12 September 1997.
DASFLEET	Sold 1 September 1997.
National Transmission Agency	CN not implemented, sale in progress.
Removals Australia	CN under implementation.

Royal Australian Mint	CN compliant.
Works Australia	Sold 14 September1997

Table B3: Commercial Business Activities

NAME	PROGRESS
Airservices Australia	No major CN issues.
Albury Wodonga Development Corporation (commercial services)	CN not implemented, Corporation being wound down
Army and Air Force Canteen Service (retailing services)	No major CN issues.
Australian Broadcasting Corporation (consumer goods, studio rentals)	CN under implementation.
Australian National University (some teaching and consulting services)	CN under implementation.
Australian Wheat Board (domestic sales)	CN not implemented, Board will be divesting its commercial activities to growers on 1 July 1999.
Commonwealth Scientific and Industrial Research Organisation (research and consulting services)	CN compliant
Health Insurance Commission	CN compliant with Medibank Private's transfer to Commonwealth, May 1998.
Reserve Bank of Australia (financial services)	CN compliant
Special Broadcasting Service (consumer goods)	CN compliant
University of Canberra	Transferred to ACT government.
Wool International (wool sales)	No major CN issues