

# 18 Other professional and occupational licensing

States and Territories are reviewing a range of professional and occupational licensing instruments under the NCP. The regulation of veterinary surgeons is discussed in chapter 13 (which focuses on agricultural matters), of health professions in chapter 16, of the legal profession in chapter 17, of teachers in chapter 22, and of building-related professions and occupations in chapter 24. This chapter covers other significant professional and occupational regulation, including the regulation of motor vehicle dealers, real estate agents, second-hand dealers and travel agents.

Various tables throughout the chapter present information on jurisdictions' review and reform of legislation regulating these professional and occupational licensing groups. Given the wide scope of regulation, the National Competition Council's assessment covers only those areas of regulation for which review and reform activity is complete. This does not imply that jurisdictions are not addressing their NCP legislation review and reform responsibilities in other professional areas not discussed in this chapter.

## Legislative restrictions on competition

Governments' regulation of professions and occupations restricts competition in several ways; for example, State and Territory legislation incorporates licensing requirements, the reservation of practice, constraints on ownership and other commercial restrictions. There are differences in the nature of licensing arrangements across the States and Territories. Some jurisdictions require complex tests of practitioners' qualifications and character, while others operate negative licensing schemes whereby practitioners are not required to register but must hold prescribed qualifications. Some professions and occupations are covered by general business licence arrangements rather than licensing of practitioners.

There are also differences in jurisdictions' approaches to particular professions and occupations. For some professions, including motor vehicle traders, real estate agents, pawnbrokers and travel agents, every jurisdiction requires that a person be licensed to practise. However, for several other professions, licensing is a requirement in some but not all jurisdictions. Example are wool, hide and skin dealers who must be licensed only in New

South Wales and employment agents who must be registered in order to practise in four of the eight jurisdictions.

For a number of professions and occupations, legislation specifies service standards and/or establishes mechanisms for consumer protection. For motor vehicle dealers, legislation typically sets standards for disclosure of information, minimum warranties and behaviour standards. For real estate agents, legislation sets requirements for fidelity funds, trust accounts and maximum permissible fees. Similarly, for travel agents, a licensing process aims to ensure service and quality standards and a compulsory consumer compensation scheme to protect consumers from financial loss if a travel agent defaults (the Travel Compensation Fund). In addition, general consumer protection mechanisms in fair trading laws in each State and Territory provide avenues for redress of complaints about service provision.

## Regulating in the public interest

The restrictions that are relevant for NCP reviews of the professions and occupations discussed in this chapter include licensing requirements, entry requirements (rules or standards governing who may provide services), the reservation of practice (where only certified practitioners are allowed to perform certain areas of practice), ownership and other commercial restrictions. A National Competition Council staff paper sets out how these measures restrict competition and explores issues raised by professional regulation (Deighton-Smith, Harris and Pearson 2001). It also highlights principles for regulating professions and occupations, including the desirability of:

- regulatory objectives being clearly identified;
- links between specific restrictions and the reduction of harms being identifiable;
- regulations and other rules of conduct being transparent and public;
- restrictions being consistently applied, with a presumption against 'grandfather clauses';
- enforcement actions being open, accountable and consistent;
- regulatory bodies having broad representation, with strong community involvement; and
- regulation being the minimum necessary to achieve the government's objectives.

Governments need to identify legislation in all areas of occupational licensing or registration to determine whether there is a net community benefit in

restrictions on competition and whether the objectives of the legislation can be addressed without restricting competition.

## Review and reform activity

### Licensing in some jurisdictions

There is a particular issue arising where occupations are registered or licensed in some but not all jurisdictions ('partially registered'). Governments recognised in the early 1990s that this issue warranted attention, given the costs both to practitioners wishing to move or operate across jurisdictions and to governments in ensuring compliance. Governments established the Vocational Education, Employment and Training Committee (VEETAC) Working Party on Mutual Recognition to examine occupations registered in some but not all jurisdictions. The working party was asked to determine whether each occupation should be deregistered or fully registered in all jurisdictions.

It reported in May 1993 (VEETAC 1993), recommending that existing partially registration requirements be removed for a variety of occupations (table 18.1). Some governments have since removed registration requirements for some of these occupations, although for several occupations some governments continue to require registration (table 18.2).

Decisions by some governments not to require licensing/registration of particular occupations raise questions about the case supporting licensing elsewhere. The Council has closely examined the public interest case supporting licensing where a profession or occupation is licensed in some but not all jurisdictions. This section discusses review and reform of legislation regulating auctioneers, conveyancers, employment agents, hairdressers and hawkers.

**Table 18.1:** Occupations for which VEETAC working party recommended deregistration

No.	Jurisdiction	Occupation	No.	Jurisdiction	Occupation
1	Vic	Wildlife controller	218	Vic	Firearms instructor
2	Vic	Wildlife dealer	220	Vic	Director, friendly society
3	Vic	Wildlife demonstrator	225	Qld	Motor dealer manager
4	Vic	Wildlife displayer	226	WA	Motor vehicle yard manager (see 225)
5	Vic	Wildlife producer	227	Qld	Pastoral house director
8	Vic	Animal experimenter	230	NSW	On-site residential property manager

(continued)

Table 18.1 continued

No.	Jurisdiction	Occupation	No.	Jurisdiction	Occupation
9	All except ACT	Artificial breeding operator	231	NSW	Strata managing agent operator
10	SA, WA	Semen collector	232	NSW, ACT	Stock and station agent (see 227)
11	NSW	Instructor (insemination)	233	Qld	Pastoral house manager (see 227)
12	NSW	Instructor (artificial breeding)	234	Qld, SA, Tas	Real estate manager
15	Vic	Abattoir and meat inspector	237	WA	Employment agent
16	Vic	Sheep skin buyer	238	Qld	Private employment agent
18	Vic	Wildlife taxidermist	239	Vic	Nurses agent
19	NSW, Qld	Pasteuriser operator	244	WA	Marine stores dealer
20	NSW	Buttermaker/cheesemaker	249	SA	Security alarms agent
21	Qld	Check egg grader	250	NSW	Security installer/repairer
22	NSW, Vic	Dried fruit classer	257	ACT	Business agent
23	Qld	Bulk milk grader	259	SA	Hotel broker
24	NSW, Tas	Milk and cream grader	260	All except ACT	Real estate/business sales representative
25	Qld	Dairy grader (factory) (see 24)	261	NSW	Security sales representative/consultant
26	NSW, Tas	Milk and cream tester	262	NSW, Vic, Qld, Tas	Valuer
27	Qld	Dairy produce tester (see 26)	263	SA, WA	Land valuer (see 262)
28	Vic	Sheep carrier	264	NSW	Valuer licensed premises (see 262)
29	Vic	Sheep skin employee	265	Qld, WA	Motor vehicle salesman
30	Vic, Qld, SA, Tas	Teacher	266	All except SA, ACT	Auctioneer
42	ACT	Needle exchange worker	282	NSW, Vic, WA	Boxing judge
53	NSW	Baker	283	Vic	Martial arts judge
55	NSW, SA, WA, Tas	Hairdresser	284	NSW, Vic	Kickboxing judge
56	Vic, SA	Cinematograph operator	285	NSW	Kickboxing kick counter
57	SA	Theatre fireman	286	NSW, Vic, WA	Boxing manager
139	Qld, SA	Driller	287	Vic	Martial arts manager
146	All except ACT	Inquiry agent	288	NSW, Vic	Kickboxing manager
147	NSW, Vic, Qld, SA, WA	Tow truck driver/operator	289	WA, ACT	Swimming pool manager
148	Qld	Tow truck assistant operator	293	NSW	Ski Instructor — Kosciusko
157	All except ACT, NT	Driving instructor	294	NSW, Vic	Kickboxing promoter

(continued)

Table 18.1 continued

No.	Jurisdiction	Occupation	No.	Jurisdiction	Occupation
158	NSW	Motorcycle riding instructor	295	NSW, Vic, WA	Boxing Promoter
159	NSW	Motorcycle riding testing Officer	296	Vic	Martial arts promoter
167	NSW	Loss assessor (motor vehicle)	297	Vic	Boxing ring announcer
173	Qld	Driver (pilot vehicle)	298	Vic, WA	Boxing agent
184	NSW, WA	Porter	301	NSW, Vic, WA	Boxing second
194	Qld	Overseer of works	302	NSW	Kickboxing second
195	Vic, Qld	Municipal/local government engineer	309	Vic, WA	Boxing timekeeper
196	Vic	Municipal electrical engineer	310	NSW	Kickboxing timekeeper
197	Vic, Qld	Local government auditor	319	Qld	Professional engineer <sup>a</sup>
198	Qld	Town planner	320	Vic	Engineer (water supply/hydraulic) <sup>a</sup>
199	Vic	Building inspector <sup>a</sup>	323	Qld	Registered trustee <sup>b</sup>
200	Vic	Building surveyor <sup>a</sup>	325	Qld	Registered issuer of marketable securities <sup>b</sup>
201	Vic	Health surveyor	326	Qld	Registered finance mortgage broker <sup>b</sup>
202	Vic, Qld, WA, Tas	Municipal clerk	327	Qld	Registered packager of mortgages <sup>b</sup>
203	NSW, Vic, Qld, WA	Pawnbroker	328	NSW, Vic, SA, ACT	Users of chlorofluorocarbons
204	WA	Marine collector	329	NSW	Motor mechanic
206	NSW, Vic, Qld, SA, NT	Commercial agent	330	NSW	Motorcycle mechanic
207	NSW, Vic, Qld, NT	Commercial sub-agent	331	NSW	Brake mechanic
208	Qld	Commercial agent manager	332	NSW	Front end specialist
209	WA	Debt collector	333	NSW	Body maker
211	Qld	Armourer	334	NSW	Painter tradesman <sup>a</sup>
212	Qld	Theatrical ordnance supplier	335	NSW	Panel beater
213	Qld	Credit reporting agent	336	NSW	Transmission specialist
214	SA, Tas, NT	Process server/private bailiff	337	NSW	Radiator repairer
217	WA	Firearms repairer	338	NSW	Exhaust repairer
			339	NSW	Automotive electrician

<sup>a</sup> Planning, building or developing service provider. See chapter 24. <sup>b</sup> Financial service provider. See chapter 20.

Source: VEETAC (1993).

**Table 18.2:** Occupational licensing in some but not all jurisdictions

<i>Occupation</i>	<i>NSW</i>	<i>Vic</i>	<i>Qld</i>	<i>WA</i>	<i>SA</i>	<i>Tas</i>	<i>ACT</i>	<i>NT</i>	<i>VEETAC recommended deregistration</i>
Auctioneers		✓	✓			✓	✓	✓	✓
Conveyancers	✓			✓	✓				
Employment agents	✓	✓	✓	✓	✓				✓
Hairdressers	✓		✓	✓	✓	✓			✓
Hawkers	✓		✓				✓	✓	
Other occupations:									
• Boxing, wrestling and martial arts	✓	✓		✓				✓	
• Entertainment industry	✓								
• Wool, hide and skin dealers	✓								
• Introduction agents		✓ <sup>a</sup>							
• Firearm repairers				✓					✓

<sup>a</sup> New legislation.

## Auctioneers

Victoria, Queensland, Western Australia, Tasmania, the ACT and the Northern Territory have separate legislation for licensing auctioneers (which also generally includes business conduct requirements) (table 18.3). Governments' objectives for licensing auctioneers include increasing consumer confidence in the auction system, protecting vendors and purchasers against specific unfair and anticompetitive conduct at auctions, and preventing and tracing the sale of stolen or diseased livestock at auctions (Ministry of Fair Trading 2000; Victoria University Public Sector Research Unit 1999).

Licensing of particular auctioneers and business conduct requirements is also contained in other legislation, discussed elsewhere in this chapter. In South Australia, for example, auctioneers are not licensed, but the *Land Agents Act 1994* requires land agents who sell by auction to be registered and the *Land and Business (Sale and Conveyancing) Act 1994* requires auctioneers selling land or a small business by auction to make the vendors statement available.

## Conveyancers

New South Wales, Western Australia, South Australia and the Northern Territory have separate legislation for non-lawyer conveyancers (or

settlement agents) (table 18.4). Victoria permits non-lawyer conveyancing for reward under the *Legal Practice Act 1996*. These governments introduced licensing of non-lawyer conveyancers to improve competition in the provision of conveyancing services, which were previously the sole responsibility of lawyers (see chapter 17) (Department of Fair Trading 2000a). The objective of licensing is generally to protect clients of conveyancers by providing that conveyancers be accountable and meet certain standards of competence.

The scope of work that conveyancers are permitted to do varies across jurisdictions. In New South Wales, conveyancers are able to undertake a broad scope of work, covering commercial, rural and residential real estate as well as personal property. The definition is not restricted to transactions involving land but also permits the transfer of goodwill, stock-in-trade and other personal property without there being a related sale of land (Department of Fair Trading 2000a).

In Western Australia, real estate settlement agents are able to effect settlements of land transactions (except farming businesses or mining tenements) and business settlement agents are able to effect settlements of business transactions (except where the business comprises real estate of a mining tenement). Settlement agents are allowed to prepare some legal documents, such as some caveats (Ministry of Fair Trading 1999).

In South Australia, conveyancing work is limited to preparing conveyancing instruments for fee or reward. It does not cover legal advice on conveyancing transactions generally, such as the preparation of contracts, or on the legal effect of certain transactions.

In Victoria, non-lawyer conveyancing firms are unable to prepare any document that creates, varies, transfers or extinguishes an interest in land, or to give legal advice. These firms generally engage solicitors to do this legal work, while non-lawyers perform the non-legal work (such as obtaining title searches, making enquiries of statutory authorities and attending settlement).

In the Northern Territory, conveyancing agents facilitate the transaction of real property, via services such as land title searches, the preparation and execution of sale contracts, the arrangement of settlement, document lodging and completed power of attorney. However, conveyancers cannot prepare mortgage leases or business sales (which conveyancers are able to prepare in New South Wales and South Australia) (CIE 2000c).

The NCP review of the Commonwealth's *Mutual Recognition Act 1992* highlighted the disparities in the roles of conveyancers and the implications for mutual recognition. In particular the review quoted a South Australian Office of Consumer and Business Affairs submission:

*OCBA [Office of Consumer and Business Affairs] also expresses concern over the mutual recognition by SA of WA settlement agents and NT conveyancing agents, as these two groups do not draft their own documents and their work does not include commercial property*

*and its components. To date OCBA has not had to refuse any applications received from WA or NT agents, but it is anticipated that this situation could change. (CoAG 1998)*

## Employment agents

Employment agents offer services such as finding employment for unemployed persons or those who want to change employment, recruiting staff for an employer and acting as a counsellor and careers adviser, providing assistance with résumé and interview preparation (Department of Fair Trading 2000b). New South Wales, Victoria, Queensland, Western Australia and South Australia have legislation for licensing employment agents (table 18.5).

Regulation of employment agents is designed to address problems that arise as a result of differences in the information held by service providers and consumers (known as information asymmetry). The potential risks to consumers include misleading advertising, inappropriate charging of fees, deceptive conduct, unskilled career counselling, inappropriate disclosure of confidential information and business failure (Department of Fair Trading 2000b). Employment agents are also subject to State and Territory Fair Trading Acts which mirror the consumer protection provisions of the Commonwealth *Trade Practices Act 1974* (TPA). These Acts prohibit practices that seek to exploit or misinform the community, such as deceptive conduct, false representation and misleading advertising.

## Hairdressers

New South Wales, Queensland, Western Australia, South Australia and Tasmania regulate hairdressers (table 18.6). New South Wales and Western Australia require hairdressers to be licensed. Queensland licenses hairdressing premises and mobile hairdressers, and imposes various business conduct requirements. South Australia has a negative licensing scheme for hairdressers, whereby a person is not permitted to carry on the practice of hairdressing for fee or reward unless they hold appropriate qualifications.

## Hawkers

In 1996 when governments developed their legislative review timetables, New South Wales, Queensland, the ACT and the Northern Territory had legislation requiring hawkers to be licensed (since repealed in New South Wales and the Northern Territory) (table 18.7). Hawkets are generally defined as persons who sell, or hold themselves out as being ready to sell goods carried on their person, on an animal or from a vehicle (Office of Fair Trading 2000; Allen Consulting Group 2000a). The activities of hawkers are also governed by State and Territory Fair Trading Acts (see chapter 19).



## Other occupations

Various other occupations are licensed by some but not all jurisdictions (table 18.8).

**Table 18.3:** Review and reform of legislation regulating auctioneers

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Victoria	<i>Auction Sales Act 1958</i>	Licensing, entry requirements (resident in State, character), the reservation of practice (auctioneers of goods, including livestock) , business conduct (suitable premises, no music, no disorderly conduct, maintenance of register for cattle and sheep skins, no collusion)	Review by Victoria University completed in November 1999. Review recommended that licensing be discontinued, but that a minimal registration scheme be introduced for livestock auctioneers, in the interests of livestock disease control.	Government accepted recommendation to discontinue licensing, but rejected the registration proposal as unnecessary. An Auction Sales (Repeal) Bill been introduced into Parliament and is scheduled for passage in the Spring 2001 session.	Council to assess progress in 2002.
Queensland	<i>Auctioneers and Agents Act 1971</i> <i>Property Agents and Motor Dealers Act 2000</i>	Auctioneers: licensing, registration, entry requirements (resident in State or within 65-kilometre border, aged at least 21 years, good fame and character, fit and proper person, two years experience (including four auctions) on provisional licence before general licence), the reservation of practice, business conduct (suitable business premises, maximum commission)	Review completed. Targeted public model, undertaken by PricewaterhouseCoopers. Public consultation involved circulation of issues paper, submissions and consultations. Review recommendations included reducing some requirements for licensing, expanding licensing requirements to some property developers, introducing a time limit for exclusive real estate agent arrangements, and removing maximum commissions and the maximum cap on buyers' premium commissions for auctioneers and removing maximum commissions on sales of vehicles on consignment for motor vehicle dealers. For real estate agents, the review recommended removing maximum commissions subject to monitoring and transitional arrangements, including a public education campaign.	Government repealed the <i>Auctioneers and Agents Act 1971</i> and replaced it with the <i>Property Agents and Motor Dealers Act 2000</i> . Legislation incorporates most of review recommendations, except recommendation for auctioneers to remove maximum commissions and the maximum cap on buyers' premium commissions.	Council to assess progress in 2002.

*(continued)*

Table 18.3 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Western Australia	<i>Auction Sales Act 1973</i>	Licensing of auctioneers, entry requirements (fit and proper person, requires two years experience on restricted licence before general licence), the reservation of practice, business conduct (maintenance of records in relation to livestock and vendor accounts)	Review underway. Discussion paper released in September 2000 inviting submissions. Discussion paper recommended that: the licensing system be retained until a full legislative review of the Act within the next 12 months; unless justified by new reasons arising from that review, the licensing system be repealed; and if licensing, or some other form of occupational regulation, is justified after completion of a full legislative review, then the administration of such a system be the responsibility of a single Government organisation.		Council to assess progress in 2002.
South Australia	<i>Land and Business (Sale and Conveyancing) Act 1994</i>	Business conduct (requirement for sale of land or small business, that the auctioneer make the vendors statement available)	Review completed in 1999. Review involved public consultation. Review recommended no reform.	Government endorsed review recommendation.	Meets CPA obligations for auctioneers' business conduct (June 2001).
Tasmania	<i>Auctioneers and Real Estate Agents Act 1991</i>	Auctioneers: licensing, registration, entry requirements (sufficient knowledge, fit and proper person), business conduct (no misrepresentation, bids by owners or collusion at auctions)	Review underway. Act likely to be repealed and replaced by new legislation.		Council to assess progress in 2002.
ACT	<i>Auctioneers Act 1959</i>	Licensing, entry requirements (age, good character, no pawnbrokers), the reservation of practice, business conduct (maintenance of records for at least 12 months)	Review underway. Departmental targeted public review in conjunction with <i>Agents Act 1968</i> . Issues paper in preparation. Review scheduled to be completed in 2001.		Council to assess progress in 2002.

*(continued)*

**Table 18.3** continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Northern Territory	<i>Auctioneer's Act</i>	Licensing, entry requirements (aged over 18 years, good character, fit and proper person), the reservation of practice, business conduct (maintenance of records for at least 12 months, auctions between 8am and 11pm)	Semi-public review underway.		Council to assess progress in 2002.

**Table 18.4:** Review and reform of legislation regulating conveyancers

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Conveyancers Licensing Act 1995</i>	Licensing, registration, entry requirements (age, qualifications, training, experience), the reservation of practice (lawyers also able to provide these services), disciplinary processes, business conduct (record keeping, trust monies, receipts, professional indemnity insurance)	Review underway. Issues paper released in March 2000. A final report is in preparation.		Council to assess progress in 2002.
Western Australia	<i>Settlements Agents Act 1981</i>	Licensing, entry requirements (qualifications, two years experience, age, good character, fit and proper person, material and financial resources, resident in Western Australia), the reservation of practice, business conduct (supervision, trust accounts, maximum fees, professional indemnity insurance, fidelity fund), business licensing	Department review underway. A discussion paper was sent to industry participants and the Consumer Association of Western Australia. Consultation was conducted through a reference group comprising industry, the Settlement Agents Board and consumer representatives.		Council to assess progress in 2002.

*(continued)*

Table 18.4 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
South Australia	<i>Conveyancers Act 1994</i>	Licensing, registration, entry requirements (qualifications, no convictions for offences of dishonesty), the reservation of practice, disciplinary processes, business conduct (professional indemnity insurance, trust accounts, ownership), business licensing	Review completed in 1999. Review involved public consultation. Review recommendations included: changing entry requirements in relation to fitness and propriety; removing ownership restrictions (but introducing requirement that a director of an incorporated company must not unduly influence a registered conveyancer); and removing the requirement that the sole object of a conveyancing company is carrying on business as a conveyancer.	Amendments to implement recommendations introduced in Parliament in late 2000.	Meets CPA obligations (June 2001).
	<i>Land and Business (Sale and Conveyancing) Act 1994</i>	Business conduct of agents, conveyancers and vendors of property for sale of land or small business (information provision, cooling-off, subdivided land, relationship between agent and principal, preparation of conveyancing instruments, representations)	Review completed. Review involved public consultation. Review recommended no reform.	Government endorsed review recommendation.	Meets CPA obligations (June 2001).
Northern Territory	<i>Agent's Licensing Act</i>	Licensing (real estate agents, agent's representative, conveyancing agent), registration, entry requirements (fit and proper person, aged at least 18 years, education or experience, competency), the reservation of practice, business conduct (office in Northern Territory, professional indemnity insurance, fidelity fund, trust monies)	Review completed in November 2000. Recommended changes to entry requirements, the reservation of practice, and business conduct.	Government approved most recommendations. Does not support investigating tendering out sole rights to deliver realty education. Wider non-NCP specific review to occur.	Council to assess progress in 2002.

**Table 18.5:** Review and reform of legislation regulating employment agents

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Employment Agents Act 1996</i>	Licensing, entry requirements (fit and proper person, aged at least 18 years, suitable premises, no previous cancellation), the reservation of practice, business conduct (separate licence for each premises, registered person in charge, no charge to jobseekers, maintenance of records, no misleading advertising)	Review underway. Issues paper released in March 2000. A final report is in preparation.		Council to assess progress in 2002.
Victoria	<i>Employment Agents Act 1983</i>		Not for review.	Act never brought into operation. Act repealed by the <i>Training and Further Education Acts (Amendment) Act 2000</i> .	Meets CPA obligations (June 2001).
Queensland	<i>Private Employment Agencies Act 1983</i>	Licensing, entry requirements (resident in Queensland, fit and proper person, suitable premises), the reservation of practice, business conduct (no charge to jobseekers except performers and models, maintenance of records, no misleading advertising)	Department review completed. Review report finalised, canvassing the repeal of the Act and the incorporation of fee-charging restrictions into the <i>Industrial Relations Act 1999</i> .	Government expects to consider review report in the first half of 2001.	Council to assess progress in 2002.
Western Australia	<i>Employment Agents Act 1976</i>	Licensing, entry requirements (fit and proper person), the reservation of practice, business conduct (scale of fees, maintenance of records, no misleading advertising)	Department review underway. Consultation involves a questionnaire sent to 355 licensed employment agents, public submissions on issues, and stakeholder responses to draft report.		Council to assess progress in 2002.
South Australia	<i>Employment Agents Registration Act 1993</i>	Licensing, entry requirements (fit and proper, manager with sufficient knowledge and experience to manage business), the reservation of practice, business conduct (maintenance of records, no misleading advertising)	Review completed October 2000. Review involved public consultation.	Government considering review report.	Council to assess progress in 2002.

**Table 18.6:** Review and reform of legislation regulating hairdressers

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Factories, Shops and Industries Act 1962</i>	Licensing, entry requirements (training and exams or otherwise qualified), reservation of practice (hairdressing for fee, gain or reward), disciplinary processes	Review by Department of Industrial Relations underway. Issues paper released in June 2000. A final report is in preparation.		Council to assess progress in 2002.
Queensland	<i>Health Act 1937</i>	Licensing for hairdressing premises and mobile hairdressers, business conduct (premises constructed and maintained to specific standards, standards of practice)	Review completed in December 1999, recommending discontinuing licensing.	Implementation of new legislation to discontinue licensing expected to be finalised by mid-2002.	Council to assess progress in 2002.
Western Australia	<i>Hairdressers Registration Act 1946</i>	Licensing, registration, entry requirements (good character, training and exam), reservation of practice and title, disciplinary processes	Review by independent consultants underway. A consultative committee has been established (including industry, Government and consumer representatives). Review has called for public submissions.		Council to assess progress in 2002.
South Australia	<i>Hairdressers Act 1988</i>	Negative licensing, entry requirements (qualifications), reservation of practice (washing, cutting, colouring, setting, permanent waving or other treatment of a person's hair or the massaging or other treatment of a person's scalp for fee or reward)	Review completed. Review involved public consultation. Review recommended reducing the scope of work reserved for hairdressers and reviewing the Act in three years with view to its repeal.	Government endorsed review recommendations. Parliament passed legislative amendments in March 2001.	Meets CPA obligations (June 2001).
Tasmania	<i>Hairdressers' Registration Act 1975</i>	Licensing, registration of hairdressers (hairdresser, master, principal), entry requirements, business conduct (licensing of hairdressers' premises, premises compliance with prescribed requirements in relation to design, construction, furnishings and equipment)	Review underway.		Council to assess progress in 2002.

**Table 18.7:** Review and reform of legislation regulating hawkers

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Hawkers Act 1974</i>	Licensing, business conduct	Review completed.	Act repealed.	Meets CPA obligations (June 2001).
Queensland	<i>Hawkers Act 1984</i>	Licensing, entry requirements (age, no mental disease, fit and proper), business conduct (no business between 6 p.m. and 7 a.m.). Act does not apply to certain businesses (for example, charity or sale by maker of goods).	Reduced NCP review underway. Short form report has been developed to assess reform options available, including repeal of the restrictive provisions. Review undertaken by Office of Fair Trading, with a review committee of Office of Fair Trading, Queensland Police, Department of Communication and Information, Local Government, Planning and Sport and Treasury. Targeted consultation with licensed hawkers, local governments and consumers association. Draft report under consideration. Treasury expected to endorse final report in first quarter in 2001.		Council to assess progress in 2002.
ACT	<i>Hawkers Act 1936</i>	Licensing, entry requirements (age, good character, fit and proper person), business conduct (geographic and time restrictions, business structure)	Review by Allen Consulting Group completed. Joint review with <i>Collections Act 1959</i> . Review involved targeted public consultation with issues paper, meetings and submissions. Recommended: refocusing legislation on land use and continuing positive licensing for hawkers operating from a single location, but having negative licensing for mobile hawkers; removing restrictions on number of vehicles a hawker can operate, number of people hawkers can employ and their age; removing 180-metre exclusion zone from traditional shops, and regulating health, liquor and contraband goods via other legislation.	Government accepted most review recommendations. Legislation is being drafted for introduction into the Legislative Assembly in the 2001 Spring sitting.	Council to assess progress in 2002.
Northern Territory	<i>Hawkers Act</i>	Licensing, business conduct.	Stakeholder focused review completed in August 2000. The review found licensing requirements, exemption provisions and restrictions on hawking on Crown land were anticompetitive, although necessary to protect the public in terms of proper commercial dealings and annoyance. Regardless, it was also found that the objectives of the legislation could be pursued through other legislation. The review recommended repealing the legislation, pending consideration of other legislative means for regulating hawking offences.	Government accepted recommendations in September 2000. Bill to repeal passed in November 2000 (brought into effect in April 2001).	Meets CPA obligations (June 2001).



**Table 18.8:** Review and reform of legislation regulating other occupations licensed by some, but not all jurisdictions

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Commonwealth	<i>Migration Act 1958</i> , part 3 (migration agents)	Licensing, registration, entry requirements (qualifications, good character), disciplinary processes, business conduct (abide by code of conduct)	Review completed in 1997. Review combined with that for <i>Migration Agents Registration (Application) Levy Act 1992</i> and <i>Migration Agents Registration (Renewal) Levy Act 1992</i> . Review concluded that due to consumer protection concerns voluntary self-regulation was not immediately achievable, and a transitional arrangement needs to be in place to enable the industry to prepare for self regulation.	Government accepted review findings, and passed legislation to implement statutory self-regulation for two years then voluntary self-regulation. Also announced a further review of statutory self-regulation during the two-year period to assess the extent to which the migration advice industry had developed the capacity to be fully self-regulating.	Council to assess progress in 2002.
New South Wales	<i>Boxing and Wrestling Control Act 1986</i>	Conduct of professional boxing, provision for the Boxing Authority of NSW and definition of its functions, conduct of wrestling and amateur boxing contests	Review underway. Issues paper being prepared by consultants.		Council to assess progress in 2002.
	<i>Entertainment Industry Act 1989</i>	Licensing for entertainment industry agents, managers and venue consultants, maximum fees for entertainment industry agent	Review underway. Issues paper being drafted.		Council to assess progress in 2002.
	<i>Wool, Hides and Skins Dealers Act 1935</i>	Restrictions on the buying and selling of wool, hides and skins	Review completed. Review recommended that the Act should be repealed.	Government to consider review recommendations concurrently with the findings of the Pastoral and Agricultural Crime Working Party, completed in late 2000.	Council to assess progress in 2002.

*(continued)*

Table 18.8 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Victoria	<i>Introduction Agents Act 1997</i>	Negative licensing, business conduct (disclosure requirements, cooling-off period, restriction on advance payments to 30 per cent of the total contract price)	New legislation examined under Victoria's legislation gatekeeping arrangements.	New legislation.	Meets CPA obligations (June 2001).
	<i>Professional Boxing and Martial Arts Act 1985</i>	Registration (professional contestants, promoters, trainers, match-makers, referees and judges), business conduct	Department review completed in August 1999. Consultation involved release of discussion paper, receipt of submissions and further targeted consultation. Review recommendations were to: streamline contestant registration system so the Act refers to competition in a professional contest (rather than a boxing or martial arts contest); examine scope for replacing detailed rules and conditions with less prescriptive national or international standards; amend the provision that exempts the Victorian Amateur Boxing Association from Act's requirements so other suitable qualified amateur boxing association can be exempted.	Government accepted all recommendations except to examine scope for replacing detailed rules and conditions. Government rejected this because the industry is fragmented into different bodies that follow various rules, so it is not possible for it to adopt one set of rules. Parliament considering amending legislation (Bill will change the name of legislation to Professional Boxing and Combat Sports Act).	Council to assess progress in 2002.
Western Australia	<i>Boxing Control Act 1987</i>	Registration (boxers, trainers, promoters and judges)	Department review completed in 1997. Consultation involved submissions. Review found that the restrictions were in the public interest.	Government endorsed review. Legislation retained without reform.	Meets CPA obligations (June 2001).
	<i>Firearms Act 1973</i>	Registration (firearm repairers)	Act removed from the legislation review timetable in view of a national approach to firearms policy.		Meets CPA obligations.

*(continued)*

Table 18.8 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
ACT	<i>Boxing Control Act 1993</i>		National review completed in August 1999. Review concluded that a registration and licensing system enhances the safety of participants and minimises the incidence of malpractice in professional bouts. The working group proposed a national registration system to improve the management of professional boxing and combat sports. ACT internal review underway (which should reflect national directions).		Council to assess progress in 2002.
	<i>Collections Act 1959</i>		Review by Allen Consulting Group completed in 2000. Joint review with <i>Hawkers Act 1936</i> . Review involved targeted public consultation, with an issues paper, meetings and written submissions. Recommended that: Act should not place limits on the level of fundraising costs or remuneration; the regulatory emphasis should be on the disclosure of fundraising details to potential donors; the Collections Act should not limit the locations where collections can be undertaken or the number of organisations collecting at any particular time; rather than focusing on funds raised and costs incurred for particular collections, all organisations that produce audited accounts should be required to lodge those accounts with the registrar on an annual basis; organisations that do not have audited accounts should be required to keep appropriate records and have those records signed off by an 'appropriate person' as being in order; collectors should be required to wear a badge (or prominently display information) relating to the collection; and the Act should be drafted to apply to any direct or indirect appeal for support value.	Government accepted most review recommendations. Legislation is being drafted for introduction into the Legislative Assembly in the 2001 Spring sitting.	Council to assess progress in 2002.

## Licensing in all jurisdictions

All jurisdictions license or register commercial agents, inquiry agents and security providers, driving instructors, motor vehicle dealers, pawnbrokers and second-hand dealers, real estate agents and travel agents.

### Commercial agents, inquiry agents and security providers

Generally all jurisdictions require commercial agents (debt collectors), private inquiry agents (private investigators or detectives), various security services providers (such as security guards and other patrol services, crowd controllers, security firms, body guards, and the cash transit industry), process servers and private bailiffs to be licensed and/or registered. Governments' objectives in requiring this are to protect consumers and clients. In the course of their work, agents may collect confidential information about people and their businesses, may have large sums of other people's money entrusted to them, and their work may involve the potential and actual use of force against people (table 18.9).

### Driving instructors

All jurisdictions require driving instructors to be licensed (table 18.10). Regulation of driving instructors aims for consumer protection and safety. Restrictions on competition include registration, entry requirements and business conduct. Entry requirements across jurisdictions are broadly similar, and include competency as a driving instructor (which may require attending a training course or passing a test), being of good character (or a fit and proper person), and in most cases, having held a drivers licence for the past three years.

### Motor vehicle dealers

All governments except Tasmania license motor vehicle dealers (or traders) (table 18.11). Tasmania's Fair Trading (Code of Practice for Motor Vehicle Traders) Regulations 1996 imposes business conduct requirements on motor vehicle traders. Motor vehicle dealers are regulated to protect consumers. The risk to consumers is generally seen to arise because consumers may be unable to assess the quality of used cars, may not be familiar with prices and the process of vehicle transfers, and may incur costs to get information on price and quality. Motor dealer legislation in some States and Territories also aims to reduce the avenues for the disposal of stolen vehicles (Government of Victoria 2001; CIE 2000d).

The Queensland review of its legislation observed that the number of complaints about motor vehicle dealers has risen in recent years and is high relative to the number of complaints in the real estate industry. Complaints tend to relate to mechanical and structural defects in vehicles, false warranties, false representation of the age of vehicles, and misleading advertising and unfair sales techniques (PricewaterhouseCoopers 2000).

## Pawnbrokers and second-hand dealers

Governments regulate the activity of pawnbrokers and second-hand dealers generally on the grounds that these businesses can potentially be avenues for the disposal of stolen property. The argument is that regulating pawnbrokers and second-hand dealers helps reduce the incidence of property-related crime and assists police to track stolen property. Regulation of pawnbrokers also aims to protect consumers by increasing transparency and clarifying consumers rights in dealing with pawnbrokers (CIE 2000d).

Legislation aims to achieve these objectives by:

- screening potential operators;
- requiring sellers of goods to produce identification, thus reducing the attractiveness of disposing of stolen property in this way; and
- providing the police with access to information on the trade of second-hand goods (CIE 2000d).

Jurisdictions have similar competition restrictions in their pawnbroker and second-hand dealer legislation (table 18.12). Most jurisdictions require pawnbrokers and second-hand dealers to obtain a formal licence. In South Australia and Tasmania, there are negative licensing systems in conjunction with notifying (or registering with) the police.

## Real estate agents

In all States and Territories, a person cannot provide real estate services for payment on behalf of an owner or purchaser unless they are licensed (table 18.13). Real estate services generally include buying and selling (by auction or private treaty) residential property, commercial property or businesses and managing or renting residential or commercial property. Real estate agents conduct most sales and letting of residential property in Australia. The Real Estate Institute of Victoria estimates that around 96 per cent of owners use real estate agents to sell their homes (KPMG Consulting 2000).

Real estate services are regulated to protect consumers from problems due to information imbalances between agents and their clients, and from the risk of financial loss caused by agents' criminal or fraudulent conduct ('defalcation').

Consumers, particularly residential homeowners, often lack experience in purchasing real estate services, because they are generally infrequent participants in the real estate market. Residential home transactions are one of the largest investments for many people so there is the potential for significant loss if consumers receive poor marketing and advice. As well, the sale of a property has legal implications. Financial loss may arise from the misappropriation of funds (such as deposits on transactions and rent) held in trust.

## Travel agents

Travel agents legislation aims to protect consumers from financial loss when a travel agent defaults and to ensure a minimum standard of service delivery. Regulation of travel agents involves a licensing process and a compulsory consumer compensation scheme (CIE 2000a). The requirements for holding a licence are similar across jurisdictions. An agent must be 18 years or older, be a fit and proper person, and have experience and/or qualifications to operate a travel agency or have a manager with the relevant experience and/or qualifications (CIE 2000a).

Governments are taking a national approach to reviewing their travel agent legislation. The Ministerial Council on Consumer Affairs has commissioned a national review (coordinated by Western Australia), which is underway. As part of the national review, the Ministerial council released a review report by the Centre for International Economics for public comment in August 2000. The report recommended removing entry qualifications for travel agents. The report also recommended maintaining compulsory insurance, but dropping the requirement for agents to hold membership of the Travel Compensation Fund (the compulsory insurance scheme). It considered instead that a competitive insurance system, where private insurers compete with the Travel Compensation Fund, would be a better approach (CIE 2000a). The Ministerial council is to consider responses to the review report and will prepare a response in consultation with CoAG's Committee on Regulatory Reform (Government of Victoria 2001).

**Table 18.9:** Review and reform of legislation regulating commercial agents, inquiry agents and security providers

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Occupations</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Commercial Agents and Private Inquiry Agents Act 1963</i>	Licensing, registration, entry requirements (qualifications, experience, good fame and character, fit and proper person, aged at least 18 years, not convicted of an offence punishable on indictment within past 10 years), the reservation of practice, disciplinary processes, business conduct (advertising must specify agent's name and place of business, maintain records, trust account, fidelity bonds)	Commercial agents, private inquiry agents and their subagents	Review completed. Review recommended the Act should be repealed and replaced by new legislation. Recommended new legislation should involve business licensing (rather than occupational licensing) and should remove licensing for repossession agents and process servers.	Reform deferred pending outcomes of Royal Commission and Industrial Relations Commission Inquiry, the Peterson Report on the security industry and revisions to the Security Industry Act.	Council to assess progress in 2002.
	<i>Security (Protection) Industry Act 1985</i>	Licensing and regulation	Providers of security or protection for persons or property	Review completed.	Act repealed and replaced by the <i>Security Industry Act 1997</i> .	Meets CPA obligations (June 2001).
	<i>Security Industry Act 1997</i>	Licensing, registration, entry requirements (qualifications, experience, competency, fit and proper person, aged at least 18 years, not convicted of relevant offence within past 10 years), the reservation of practice, disciplinary processes, business conduct, (advertising must contain licence number)	Providers of security or protection for persons or property	New legislation examined under legislation gatekeeping arrangements.	New legislation.	Council to assess in 2002.

*(continued)*

Table 18.9 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Occupations</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Victoria	<i>Private Agents Act</i>	Licensing, registration, entry requirements (all good character, others vary), the reservation of practice, disciplinary processes, business conduct (no misleading or deceptive conduct, financial sureties for commercial agents)	Security guards, crowd controllers, security firms, inquiry agents (private detectives), commercial agents (debt collectors), and commercial sub-agents	Review by Freehills Regulatory Group of currently regulated activities completed in October 1999. Recommended: retaining occupational licensing; reviewing exemptions of certain groups, and making efforts to develop a national regulatory model for the industry; for commercial agents, removing licensing requirements and replacing them with a 'light-handed' registration requirement (with greater use of general trade practices/fair trading legislation to deal with problem operators); reforming the surety scheme; and considering establishing an appropriate compensation fund or minimum insurance requirement. Review of unregulated activities underway. Discussion paper released in 2000.	When review completed, draft Bill expected to be released for public comment.	Council to assess progress in 2002.
Queensland	<i>Auctioneers and Agents Act 1971</i> <i>Property Agents and Motor Dealers Act 2000</i>	Licensing, registration, entry requirements (resident in State or within 65-kilometre border, age at least 21 years, good fame and character, fit and proper, written exam (not required for commercial sub-agents)), the reservation of practice, business conduct (suitable premises, trust account receipts, audits, no misleading or deceptive, no unlawful entry)	Commercial agents, managers, commercial sub-agents	See summary in table 18.3 on auctioneers.	See summary in table 18.3 on auctioneers.	Meets CPA obligations for commercial agents (June 2001).
	<i>Security Providers Act 1992</i>	Licensing, entry requirements, the reservation of practice	Security officers, private investigators, crowd controllers (not in-house security officers)	Review yet to begin.		Council to assess progress in 2002.

(continued)



Table 18.9 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Occupations</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Western Australia	<i>Debt Collectors Licensing Act 1964</i>	Licensing, entry requirements (age, good fame and character, fit and proper person), the reservation of practice, business conduct (trust accounts, fidelity bonds)	Debt collectors (commercial agents)	Department review underway. Issues paper released.		Council to assess progress in 2002.
	<i>Inquiry Agents Licensing Act 1954</i> <i>Securities Agents Act 1976</i>	Licensing			Acts repealed and replaced by <i>Security and Related Activities (Control) Act 1996</i> .	Meets CPA obligations (June 2001).
	<i>Security and Related Activities (Control) Act 1996</i>	Licensing, registration, entry requirements (training, character, possible medical exam for security officers), the reservation of practice, business conduct (operating restrictions, no advertise unless licensed), business licensing	Providers of security and inquiry activities	Review by WA Police Service completed. Review involved no consultation. The review concluded the security and related industries need statutory control to ensure high standards and to instil public confidence, especially in the area of crowd control. The review concluded that the legislation is effective and provides the necessary controls to maintain and improve the industry.	Government endorsed review recommendation in 2000.	Meets CPA obligations (June 2001).
South Australia	<i>Security and Investigation Agents Act 1995</i>	Barrier to market entry, market conduct	Private inquiry agents, security providers	Review underway.		Council to assess progress in 2002.

(continued)

Table 18.9 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Occupations</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Tasmania	<i>Commercial and Inquiry Agents Act 1974</i>	Licensing, entry requirements (suitable person, not convicted of an offence of dishonesty within past five years, financial reputation), the reservation of practice, disciplinary processes, business conduct (trust accounts, maintain records, audits)	Commercial agents, commercial sub-agents, inquiry agents, process servers, security agents, security guards	Review completed. Public consultation involved issues paper, draft report and submissions. Draft report recommended maintaining most restrictions, but removing licensing requirements for process servers, making minor changes to entry requirements, retaining option of imposing education requirements, and moving responsibility for the granting, renewal, variation or refusal of a licence to the Commissioner for Corporate Affairs.	Act to be repealed and replaced by new legislation.	Council to assess progress in 2002.
ACT	<i>Fair Trading Act 1992</i>	Registration and mandatory codes of practice, entry requirements (competency, character — criminal record check), the reservation of practice, disciplinary processes, business licensing	Bodyguards, security guards, cash transit industry, crowd marshals, and guard and patrol services (No licensing of debt collectors, but Act has undue harassment provisions.)	Review underway.		Council to assess progress in 2002.

*(continued)*

Table 18.9 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Occupations</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Northern Territory	<i>Commercial and Private Agents Licensing Act</i>	Licensing, registration, entry requirements (age over 18 years, resident of the Territory, fit and proper, not found guilty of offence that warrants refusal of licence, any person may object to issuing of licence), the reservation of practice, disciplinary processes, business conduct (provide bond, trust account, prescribed records, local (but not interstate) licensed agent must have a nominee and branch manager resident in the Territory), business licensing	Commercial agents, process servers, inquiry agents, private bailiffs	Review completed in November 1999. Recommended: retaining exemption from positive licensing all persons of particular occupations who perform agent roles incidental to their occupation (but introducing negative licensing); continuing licensing of employees and sub-agents; issuing licenses for a fixed period (a suggested two years); transferring responsibility for licensing to the Industries and Business portfolio; making various changes to business conduct requirements (requirement to issue receipts, change to trust account arrangements; consideration of issue of bonds and indemnity insurance in late 2000); and undertaking a further review to implement best practice licensing processes.	Government approved recommendations, and enacted legislation in 2000 to transfer the licensing from the local court to the Commissioner for Consumer Affairs and to introduce fixed three-year licences in lieu of indefinite licences. Legislation awaits commencement.	Meets CPA obligations (June 2001).

**Table 18.10:** Review and reform of legislation regulating driving instructors

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Driving Instructors Act 1992</i>	Licensing, entry requirements (completed course, aged at least 21 years, may require test, medical exam, character), the reservation of practice (teach for monetary or other reward), business conduct (maintenance of records, regulations may make provisions for displaying identification and advertising)	Review underway. Final report being prepared.		Council to assess progress in 2002.
Victoria	<i>Road Safety (Driving Instructors) Act 1998</i>	Licensing, entry requirements (mandatory minimum standards including requirement to pass a training course, fit and proper person, held licence for at least three years, criminal and driving record checks), the reservation of practice (teaching someone without a licence on a highway for financial gain), business conduct (display photograph, instructor to have zero blood alcohol level)	New legislation examined under Victoria's legislation gatekeeping arrangements.	New legislation.	Meets CPA obligations (June 2001).
Queensland	<i>Transport Operations (Road Use Management) Act 1995</i>	Licensing, entry requirements (accreditation: qualifications and/or experience or competency assessment), the reservation of practice, business conduct (vehicle requirements, display identity card, maintenance of records, instructor to have zero blood alcohol level)			Council to assess progress in 2002.
Western Australia	<i>Motor Vehicle Drivers Instructors Act 1963</i>	Licensing, entry requirements (competency, aged at least 21 years, good character, fit and proper person, may require test or course), the reservation of practice (teach for reward), business conduct (dual control vehicle, regulations may make provisions for displaying identification)	Review to be scheduled before June 2002.		Council to assess progress in 2002.

*(continued)*

Table 18.10 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
South Australia	<i>Motor Vehicles Act 1958 (Part 3A)</i>	Licensing, entry requirements (proficient as instructor, may require test, fit and proper person, held licence for at least three years), the reservation of practice (teach for reward), business conduct (display licence)	Review underway into tow truck operators and motor driving instructors.		Council to assess progress in 2002.
Tasmania	<i>Traffic Act 1925</i> <i>Vehicle and Traffic Act 1999</i>	Licensing, entry requirements (knowledge and experience, may require test and/or complete course, aged at least 21 years, good character, suitable person, held licence for at least three years), the reservation of practice (teach for reward), business conduct (dual control vehicle, unless vehicle provided by person under instruction)			Council to assess progress in 2002.
ACT	<i>Road Transport (Driver Licensing) Act 1999</i>	Licensing, entry requirements (accreditation: skills, completed training course, aged at least 21 years, suitable person, medically fit), the reservation of practice, business conduct (vehicle requirements unless vehicle provided by person under instruction, display certificate)			Council to assess progress in 2002.
Northern Territory	<i>Motor Vehicles Act</i>	Licensing, entry requirements (proficient as driving instructor, may require test, good character, held licence for at least three years), the reservation of practice (teach for reward)	Review completed in 1999. Review found that the restrictions are in the public interest. Review determined that the benefits of reduced incidence of road accidents and trauma, road damage and lower noise and environmental pollution are likely to outweigh the enforcement and compliance costs and potential reductions in economic efficiency.	Government endorsed review recommendation.	Meets CPA obligations for driving instructors (June 2001).

**Table 18.11:** Review and reform of legislation regulating motor vehicle dealers

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Motor Dealers Act 1974</i>	Licensing (motor dealer, wrecker, wholesaler, motor vehicle parts reconstruction, car market operator, motor vehicle consultant), entry requirements (fit and proper person, sufficient financial resources, dealer qualifications and expertise or experience), the reservation of practice, disciplinary processes, business conduct (record keeping, motor dealers compensation fund)	Review, in conjunction with review of <i>Motor Vehicles Repair Act 1980</i> , completed. Recommendations included: allowing licensees to operate from more than one place of business; and keeping registers of stock and parts only at one place of business where multiple locations are operated by one licensee.	Report awaiting Cabinet consideration.	Council to assess progress in 2002.
Victoria	<i>Motor Car Traders Act 1986</i>	Licensing, registration, entry requirements (age at least 18 years, financial resources, fit and proper person — that is, person who is not insolvent, person who is 'likely to carry on such a business honestly and fairly', and person (and spouse and business partner) who was not convicted of serious offence in past 10 years), the reservation of practice, disciplinary processes, business conduct (statutory warranties, requirement for authority to conduct public auction, maintenance of records, no tampering with odometers, cooling-off period, fees and penalties paid into Motor Car Traders' Guarantee Fund for losses from licensed traders not complying with Act, no consignment selling, suitable premises, advertising)	Internal departmental review completed. Review recommended: replacing the eligibility criterion of 'suitable premises' by a criterion that a trader have all relevant planning approvals for any premises at which the trader conducts business, or proposed to carry on business, as a motor car trader; removing the eligibility criterion for a trader conducting a business 'efficiently'; and reducing the potential for unwarranted claims on the Motor Car Traders' Guarantee Fund.	Government accepted review recommendations, with amendments made by <i>Tribunals and Licensing Authorities (Miscellaneous Amendment) Act 1998</i> .	Meets CPA obligations (June 2001).

*(continued)*

Table 18.11 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Queensland	<i>Auctioneers and Agents Act 1971</i> <i>Property Agents and Motor Dealers Act 2000</i>	For motor dealers, licensing, registration, entry requirements (dealer and manager: resident in State or within 65-kilometre border, age at least 21 years, good character and fit and proper, three of past five years as licensed manager or salesperson (or employ someone who has that experience), written test), the reservation of practice, business conduct (appropriate business premises, maintenance of register, no bogus advertising, no tampering with odometers, maximum commission for sales on consignment)	See summary in table 18.3 on auctioneers.	See summary in table 18.3 on auctioneers.	Meets CPA obligations for motor dealers (June 2001).
Western Australia	<i>Motor Vehicle Dealers Act 1973</i>	Licensing (motor vehicle dealers, yard managers, car market operators and sales persons), entry requirements (dealers must be solvent and understand their obligations under the Act, yard managers must complete a four-day course), business conduct (statutory warranties on used vehicles), power to the Motor Vehicle Licensing Board to set standards for premises	Review completed in 1997. Recommended: retaining restrictions on licensing for motor vehicle dealers and yard managers; retaining statutory warranties for used vehicles; repealing restrictions on licensing for car market operators and salespersons; and repealing the power of the Motor Vehicle Licensing Board to set standards for premises.	Government endorsed review recommendations. Amending legislation being drafted to implement review recommendations.	Council to assess progress in 2002.
South Australia	<i>Second-Hand Vehicle Dealers Act 1995</i>	Barrier to market entry, business conduct	Review underway.		Council to assess progress in 2002.

*(continued)*

Table 18.11 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Tasmania	<i>Fair Trading Act 1990</i> Fair Trading (Code of Practice for Motor Vehicle Traders) Regulations 1996	Mandatory code of practice covering business conduct (written contracts, warranty, complaints system, no deception, no false representation, no misleading advertising)	Minor review completed. Justified in the public interest the restrictive provisions requiring manufacturers to provide warranties for motor vehicles and establishing a system for dealing with customer complaints.	Government endorsed review conclusion.	Meets CPA obligations (June 2001).
ACT	<i>Sale of Motor Vehicles Act 1977</i>		Review underway. Full public review undertaken by department. Discussion paper being prepared. Review scheduled to be completed in 2001.		Council to assess progress in 2002.
Northern Territory	<i>Consumer Affairs and Fair Trading Act</i>	Licensing, entry requirements (fit and proper person, sufficient financial and material resources), business conduct (maintenance of records, prescribed forms of contract, submission of annual returns, prohibition on sale of certain vehicles (such as those registered interstate), warranties)	Review by Centre for International Economics completed in 2000. Recommended: removing requirements for licensee to submit annual financial returns; removing requirements for approval of dealer managers; removing power to require banker's guarantee; and formalising the financial test applied for new licences.	Government approved review recommendations except for removing requirements for the approval of motor vehicle dealer managers.	Council to assess progress in 2002.



**Table 18.12:** Review and reform of legislation regulating pawnbrokers and second-hand dealers

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Pawnbrokers and Second Hand Dealers Act 1996</i>	Licensing (pawnbrokers, second-hand dealers for prescribed goods), registration, entry requirements (aged over 18 years, not mentally incapacitated, not undischarged bankrupt, no conviction of dishonesty offence in past 10 years), the reservation of practice, disciplinary processes, business conduct (pawnbrokers: prescribed records, computer records, public auction of unredeemed goods over \$50, minimum redemption period of three months, operation from fixed premises; second-hand dealers: prescribed records, computer records, holding of goods for prescribed period, requirement that seller provide identification, cooperation with police)	Review underway. Issues paper released in 2000. A final report is in preparation.		Council to assess progress in 2002.
Victoria	<i>Second-hand Dealers and Pawnbrokers Act 1989</i>	Licensing (pawnbrokers, second-hand dealers for non-exempt goods), registration, entry requirements (not convicted disqualifying offence in past five years, not insolvent), the reservation of practice, disciplinary processes, business conduct (pawnbrokers: prescribed records, auction of unredeemed goods over \$40; second-hand dealers: prescribed records, hold goods for prescribed period, requirement that seller provide identification, interest rates, cooperation with police)	Departmental review completed in 1996. Recommended: replacing 'fit and proper' with 'no serious offences'; removing obligation to retain metals for seven days after acquisition (with some exceptions); removing requirement for dealers to conduct certain transactions at registered business premises or a market (instead requiring dealers to register any place habitually used); and removing interest rate restrictions.	Government accepted all review recommendations. Amendments made by the <i>Law and Justice Legislation Amendment Act 1997</i> .	Meets CPA obligations (June 2001).

*(continued)*

Table 18.12 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Queensland	<i>Pawnbrokers Act 1984</i>	Licensing, entry requirements (aged over 18 years, not mentally incapacitated, fit and proper person, not a collector, not convicted of fraud or dishonesty offence in past five years), the reservation of practice, disciplinary processes, business conduct (prescribed records, public auction of unredeemed goods over \$40, cooperation with police)	Review yet to begin. Targeted public model. Combined with review of second-hand dealers legislation. Framework for scoping and conducting the review being finalised at March 2001. Completion due in fourth quarter 2001.		Council to assess progress in 2002.
	<i>Second-hand Dealers and Collectors Act 1984</i>	Licensing (second-hand dealers for not exempt goods), registration, entry requirements (aged over 18 years, not mentally incapacitated, fit and proper person, not convicted of fraud or dishonesty offence in past five years), the reservation of practice, disciplinary processes, business conduct (prescribed records, holding goods for prescribed period, requirement that seller provide identification, cooperation with police)	To be reviewed with pawnbrokers legislation.		Council to assess progress in 2002.
Western Australia	<i>Pawnbrokers and Second-hand Dealers Act 1994</i>	Licensing (pawnbrokers, second-hand dealers for not exempt goods), registration, entry requirements (good character, fit and proper person — that is, adequate management, supervision and control of business operations, and no conviction of dishonesty, fraud, or stealing offence in past five years), the reservation of practice, disciplinary processes, business conduct (pawnbrokers: prescribed records, computer records, notify pawner of surplus of proceeds of sale; second-hand dealers: prescribed records, holding of goods for prescribed period, requirement that seller provide identification, cooperation with police)	Review by Western Australian Police Service completed. Review recommended: retaining the current licensing provisions on the understanding that they may be modified following future review; conducting a further review after the current legislation had been in operation for an additional three years; and examining alternative approaches, including those likely to be introduced in other States.	Government endorsed the review recommendations.	Meets CPA obligations (June 2001).

*(continued)*

Table 18.12 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
South Australia	<i>Second-Hand Dealers and Pawnbrokers Act 1996</i>	Negative licensing (pawnbrokers, second-hand dealers for all goods except cars), registration (that is, notify police), entry requirements (not convicted dishonesty offence in past five years, not undisclosed bankrupt/insolvent), the reservation of practice, disciplinary processes, business conduct (pawnbrokers: prescribed records, selling of unredeemed goods; second-hand dealers: prescribed records, holding of goods for prescribed period, requirement that seller provide identification (unless sale by phone), cooperation with police)	Review completed. No reform recommended.	Government endorsed review recommendation.	Meets CPA obligations (June 2001).
Tasmania	<i>Pawnbrokers Act 1857</i> <i>Second-hand Dealers Act 1905</i>	Licensing, business conduct	Not for review.	Repealed in 1996 by <i>Second-Hand Dealers and Pawnbrokers Act 1994</i> .	Meets CPA obligations (June 2001).
	<i>Second-hand Dealers and Pawnbrokers Act 1994</i>	Negative licensing (pawnbrokers, second-hand dealers, registration (notification at nearest police station), entry requirements (fit and proper person, not convicted of offence against the Act or offence involving dishonesty), the reservation of practice, disciplinary processes, business conduct (pawnbrokers: prescribed records, redemption period of six months, auction of forfeited goods; second-hand dealers: prescribed records, holding of goods for prescribed period, requirement that seller provide identification, cooperation with police)	Minor review completed. Review found restrictive provisions were justified in the public benefit.	Government endorsed review recommendation.	Meets CPA obligations (June 2001).

*(continued)*

Table 18.12 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
ACT	<i>Pawnbrokers Act 1902</i> (NSW) in application to ACT	Licensing, registration, entry requirements (aged over 18 years, fit and proper person), the reservation of practice, business conduct (prescribed records, public auction unredeemed goods over \$10, cooperation with police)	Review underway. Review being undertaken by department.		Council to assess progress in 2002.
	<i>Second-hand Dealers and Collectors Act 1906</i> (NSW) in application to ACT	Licensing, registration, entry requirements (aged over 18 years, fit and proper person), the reservation of practice (persons who deal in certain second-hand goods), business conduct (prescribed records, holding of goods for prescribed period, cooperation with police)	Department review completed in 2000. Recommended: updating definition of second-hand goods; altering business conduct requirements to take into account new technology; and repealing a number of the business rules in the legislation and repealing provisions dealing with the licensing and regulation of collectors.	Government accepted review recommendations. Amendments were introduced to Legislative Assembly in late 2000 (Justice and Community Safety Legislation Amendment Bill (No. 1) 2000).	Council to assess progress in 2002.
Northern Territory	<i>Pawnbrokers Act</i>	Licensing		Act repealed in 1998 and provisions included in the <i>Consumer Affairs and Fair Trading Act</i> .	Meets CPA obligations (June 2001).
	<i>Consumer Affairs and Fair Trading Act</i>	Licensing (pawnbrokers, second-hand dealers for not exempt goods), registration, entry requirements (aged at least 18 years, not undischarged bankrupt or convicted in the past 10 years of an offence involving dishonesty, fraud or stealing), the reservation of practice, disciplinary processes, business conduct (pawnbrokers: prescribed records, selling unredeemed goods, minimum redemption period, notification of pawner of surplus of proceeds of sale; second-hand dealers: prescribed records, holding of goods for prescribed period, requirement that seller provide identification, cooperation with police)	Review by Centre for International Economics completed in 2000, recommending provisions be retained with no amendment.	Government approved in November 2000 the review recommendations in relation to pawnbrokers and second-hand dealers.	Meets CPA obligations for pawnbrokers and second-hand dealers (June 2001).

**Table 18.13:** Review and reform of legislation regulating real estate agents

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Property, Stock and Business Agents Act 1941</i>	Licensing (real estate, stock and station, business and managing agents), registration, entry requirements (qualifications, sufficient experience, fit and proper person), the reservation of practice, disciplinary processes, business conduct (auctions, trust accounts)	Review completed.	An Exposure draft is in preparation for public consultation.	Council to assess progress in 2002.
Victoria	<i>Estate Agents Act 1980</i>	Licensing (real estate agents — not their representatives who are negatively licensed), registration, entry requirements (agents: licensed in past five years or qualifications and experience, over 18, fit and proper person (not insolvent, not convicted of prescribed offence or disqualified under Act); agent's representative: similar but no experience and lower level training), the reservation of practice (includes auctions of real estate or property), disciplinary processes, business conduct (ownership, name of business and address in advertising, no commission sharing, professional conduct, trust accounts, Estate Agents Guarantee Fund (funded from interest on trust accounts) to pay for administration and defalcation), business licensing	Review completed in 2000. Recommended: retaining full licensing for residential property sales, but making experience and education requirements less restrictive; applying a less restrictive form of licensing to agents selling commercial property and business and managing property; and retaining regulation to protect against defalcation.	Government released the report for consultation in formulating its response.	Council to assess progress in 2002.
Queensland	<i>Auctioneers and Agents Act 1971</i> <i>Property Agents and Motor Dealers Act 2000</i>	Licensing (real estate agent, manager, salesperson), registration, entry requirements (resident in State or within 65-kilometre border, aged at least 21 years, good fame and character, fit and proper person, training and/or experience; for agent, one year experience in past five years), the reservation of practice, disciplinary processes, business conduct (suitable business premises, maximum commission, license holder at business)	See summary in table 18.3 on auctioneers.	See summary in table 18.3 on auctioneers. In relation to removing maximum commissions for real estate agents, a working party is developing viable alternative options to commissions.	Council to assess progress in 2002.

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Table 18.13 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Western Australia	<i>Real Estate and Business Agents Act 1978</i>	Licensing (agent's licence, sales representative's certificate), registration, entry requirements (aged over 18 years, good character, fit and proper person (including having done prescribed courses, understands duties and obligations under Act), for agent, sufficient material and financial resources), the reservation of practice, disciplinary processes, business conduct (branch office/s require separate manager/s, supervision and control, records, trust accounts, audit, code of conduct, advertising, fidelity fund), business licensing	Department review underway. Discussion paper released in April 1999.	Maximum fees removed in 1998.	Council to assess progress in 2002.
South Australia	<i>Land Agents Act 1994</i>	Licensing (agents, not sales representatives who are negatively licensed), registration, entry requirements (qualifications, no conviction for an offence of dishonesty, not an undischarged bankrupt or no suspension or disqualification from practising an occupation, trade or business), the reservation of practice, disciplinary processes, business conduct (provisions for maximum fees in regulations (but not used currently), indemnity fund, trust account), business licensing	Review completed. Review involved public consultation. Council seeking public interest case for retained restrictions.	Government endorsed review recommendation.	Council to assess progress in 2002.
Tasmania	<i>Auctioneers and Real Estate Agents Act 1991</i>	Licensing (real estate agents, managers and sales consultants), registration, entry requirements (education, experience, fit and proper person), the reservation of practice, disciplinary processes, business conduct	Review underway.		Council to assess progress in 2002.

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Table 18.13 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
ACT	<i>Agents Act 1968</i>	Licensing (real estate agents, travel agents, business agents, stock and station agents), registration, entry requirements, the reservation of practice, disciplinary processes, business conduct	Review of real estate agents, business agents, stock and station agents provisions underway. Departmental targeted public review in conjunction with Auctioneers Act. Preparing issues paper. Review scheduled to be completed in 2001.		Council to assess progress in 2002.
Northern Territory	<i>Agent's Licensing Act</i>	Licensing (real estate agents, agent's representative, conveyancing agent), registration, entry requirements (fit and proper person, aged at least 18 years, education or experience, competency), the reservation of practice, disciplinary processes, business conduct (maintenance of office in Northern Territory, professional indemnity insurance, fidelity fund, trust monies)	See summary in table 18.4 on conveyancers.	See summary in table 18.4 on conveyancers.	Council to assess progress in 2002.