6 Health and pharmaceutical services

Australians rely on health care services to restore and maintain health and wellbeing. National expenditure on health services has grown steadily over time. In 1999-2000, Australians spent $53.7 billion on health and pharmaceutical services — around 8.5 per cent of gross domestic product. Governments contributed around 71 per cent of this amount, while private spending comprised the remainder (ABS 2002a).

All Australian governments have enacted legislation that restricts competition in the health and pharmaceutical sector. The States and Territories regulate a range of health professions and the pharmacy sector. Commonwealth legislation underpinning the Medicare system — which provides rebates for medical services in the private sector, free point-of-service hospital care based on need, and subsidised access to pharmaceuticals — affects competition among health professions and providers of related services such as pathology. Governments also have a wide variety of population health legislation.

In this 2002 National Competition Policy (NCP) assessment, the National Competition Council has considered key competition issues relating to the regulation of health professionals, drugs and poisons, pharmacy, Medicare, pathology licensing, private health insurance and population health.

Regulating the health professions

Health services are delivered by a range of different health practitioners, including doctors, nurses and allied health vocations. Each State and Territory has legislated to protect public health and safety by limiting who may practise as a health professional and how service providers may represent themselves.

Most health practitioner legislation requires practitioners to hold certain qualifications before they can enter a profession, and to be licensed by a registration board while they continue to practise. Some health practitioner legislation also reserves the right to practise in certain areas of heath care exclusively for certain professions. In addition, health practitioner legislation often regulates the business conduct of registered professionals.

The Council released a staff paper in 2001 that sets out how these measures restrict competition and explores issues raised by professional regulation

(Deighton-Smith, Harris and Pearson 2001). The staff paper highlights the importance of governments clearly identifying regulatory objectives, linking any restrictions on competition to the objectives, and then (by applying the principles of transparency, consistency and accountability) ensuring the restrictions represent the minimum necessary to achieve their objectives.

Key competition issues in regulating the health professions

Business ownership and association

Many health services in Australia have traditionally been delivered through small suburban practices run as sole practices or as partnerships of health professionals. In some areas of health care, such as general medical practice, increasing numbers of practices are owned by nonprofessional entities such as corporations. In other areas, such as dentistry and optometry, some jurisdictions prohibit employment of health professionals by nonprofessionals, or ownership of health care practices by nonhealth professionals.

Ownership restrictions potentially impose significant costs on the community. They limit health care businesses' access to capital, thus constraining innovation and growth. As a result, ownership restrictions may increase the cost of health care and limit the range of services that health practitioners are able to offer to their patients. Ownership restrictions also impose costs on health care practitioners. They reduce employment options for practitioners who prefer to concentrate on clinical care rather than management, and those who prefer salaried employment to the financial risk of partnership or self-employment. The principal benefit attributed to ownership restrictions is that they ensure the owners of a practice are held accountable for the standard of care provided, thus protecting the public from inappropriate commercial influences on clinical decision-making.

The Council accepts that it may be in the public interest to place some controls on business conduct to protect patients. Generally, it is not in business owners' interest to expose themselves to the loss of income/profit or litigation due to fraud or negligence. In some circumstances, however, owners of health care practices may have a commercial incentive to act in ways that may not be in the best interests of their patients.

Registered health practitioners who own health care businesses risk disciplinary action (and potential de-registration) if they engage in unprofessional conduct; nonregistrant owners do not face this risk. Requiring the owners of health care businesses to be health practitioners ensures that only people who can be held accountable for their professional conduct through the disciplinary system can own health care businesses.

There are, however, alternative ways of protecting patients from inappropriate commercial interference in clinical decision-making. Making it an offence for an employer to direct or incite a health practitioner to engage in unprofessional conduct is a more direct way of addressing the problem. Although governments may incur some costs in enforcing the offences, this approach avoids the costs associated with ownership restrictions.

Several governments have established offences along these lines. In some cases, they have combined the offence provisions with a power to ban people found guilty of an offence from participating in a health care business in the future. This approach provides an additional level public protection, while still avoiding the costs of prohibiting nonpractitioner ownership of health care businesses.

The other benefit sometimes attributed to ownership restrictions is that they protect incumbents from competition with new entrants, including large corporate interests. This protection benefits the existing owners of health care businesses and, arguably, also the broader community because otherwise corporate owners might purchase independent practices in smaller towns and then rationalise services to major regional centres. The general difficulties of attracting practitioners to these areas mean that new competitors might not enter the small town market, even if entry would be profitable. The ownership restrictions therefore help to maintain access to services and employment in regional areas.

Potential impacts on regional services and employment are legitimate concerns, which should be considered in assessments of whether restrictions are in the public interest. It is important to assess these impacts carefully, however, because maintaining anticompetitive ownership restrictions may not deliver the intended welfare benefits. In particular, legislation reviews have revealed little evidence to support the argument that removing ownership restrictions would result in large corporate interests purchasing independent practices and then rationalising services to major regional centres.

Further, ownership restrictions have drawbacks that may outweigh any potential employment benefits. As discussed above, much of the benefit of restricting ownership flows to the owners of the businesses, while some community welfare is lost because the barrier to competition increases the cost of health care. This cost increase may pressure governments to increase health care subsidies and/or cause patients to pay more or wait longer for treatment than they would in a competitive market.

Governments determine the objectives of their legislation, including employment and access objectives. Alternatives to ownership restrictions (such as incentive schemes or labour market programs) may offer more efficient and effective means of achieving these objectives.

Reserved areas of practice

Practice reservations help to protect patients by ensuring only professionals with the skills and expertise to provide safe and competent care perform certain potentially risky activities. Practice reservations can also increase costs for patients, however, if they prevent patients seeking treatment from other competent professions.

Reserving broadly defined practices or even entire disciplines can raise competition issues. Most professional disciplines involve a range of activities. Many activities are common to a number of professions, and some activities are more risky than others. Limiting the scope of the restriction to specific high risk 'core practices' minimises the costs of the practice restriction. Restricting an entire discipline is likely to create anomalies because it can mean some common low risk activities are inappropriately restricted.

The method of practice reservation can also raise competition issues. Most health practitioner legislation prohibits unregistered persons from performing a task, but sometimes the legislation places a restriction on performing the task for financial reward. Restricting financial rewards (but not proscribing the task) often implies a commercial objective rather than public protection.

Professional indemnity insurance

Professional indemnity insurance is designed to meet client or third party claims of civil liability that may arise from practitioners' negligence or error. Until recently, few health professionals were required by law to hold professional indemnity insurance. Many health practitioners, given the risks involved, voluntarily purchased professional indemnity insurance. Other practitioners were insured through their employer.

An emerging trend of legislation reviews is to propose requiring practitioners to hold (or be covered by) adequate professional indemnity insurance as a condition of registration. As discussed in the 2001 NCP assessment, the Council considers that mandatory professional indemnity insurance requirements are consistent with the objectives of the NCP (NCC 2001, p. 16.6).

In response to recent premium increases and the collapse of United Medical Protection, some stakeholders have called for reforms to professional indemnity insurance arrangements. The Royal Australasian College of Surgeons, for example, proposed creating a single monopoly provider of professional indemnity insurance for medical practitioners (RACS 2002). Chapter 10 discusses the competition questions associated with statutory insurance monopolies.

Review and reform activity

More than 80 legislative instruments regulate around a dozen health professions across the States and Territories. New South Wales, Victoria, South Australia and Tasmania reviewed each piece of health practitioner legislation individually. Victoria has completed its review and reform activity, while the other three States have completed their legislation review but still have some legislation that they have not yet reformed.

Queensland, Western Australia, the ACT and the Northern Territory each conducted an omnibus review of most or all of their practitioner legislation. Queensland adopted a three-stage reform process. The first two stages involved establishing common complaint and disciplinary processes, and enacting new registration legislation for each profession. The third stage (which is under way) involves reviewing and reforming practice restrictions. Western Australia announced key directions for reforms to its health practitioner legislation (with the exception of medical practitioners) in June 2001, and is preparing separate replacement legislation for each profession. The ACT and the Northern Territory are both preparing omnibus Acts to replace most of their existing health practitioner legislation.

Chiropractors

The 2001 NCP assessment reported that New South Wales, Victoria and Tasmania had met their CPA clause 5 obligations in relation to the review and reform of legislation governing chiropractors. The 2002 NCP assessment considers whether the other jurisdictions have met their CPA clause 5 obligations in this area.

Queensland

Queensland is reforming its health practitioner legislation in three stages.

- The first stage, completed in February 2000, involved enacting new legislation to govern the health practitioner registration boards and their complaints and disciplinary systems.

- The second stage, completed in May 2001, involved enacting new registration legislation for each registered health profession. The *Chiropractors Act 2001*:

  - continues to reserve the title of 'chiropractor' for registered practitioners, but simplifies the registration eligibility criteria and provides for alternative routes to registration;

  - significantly scales back restrictions on commercial and business conduct by replacing prescriptive advertising restrictions with

provisions that reflect consumer protection legislation and by removing business licensing requirements; and

- prohibits conduct that compromises registrants' autonomy and the making or accepting of payments for recommendations or referrals.

- The third stage, which is under way, will reform practice restrictions. The Chiropractors Act retains the practice restrictions from the *Chiropractors and Osteopaths Act 1979,* pending the outcomes of the core practices review (see below).

Core practices review

Queensland commissioned PricewaterhouseCoopers to review and refine a set of possible core practices, and to conduct a public benefit test assessment of the costs and benefits of reserving the right to perform these practices for registered members of particular health professions. The Queensland Treasurer endorsed the public benefit test report in January 2001. Following Cabinet approval, Queensland Health released the report for public consultation in August 2001 (Queensland Government 2002).

The public benefit test proposed reserving three core practices: thrust manipulation of the spine; prescription of optical appliances for the correction or relief of visual defects; and surgery of the muscles, tendons, ligaments and bones of the foot and ankle. It considered, but rejected, a range of activities including: the movement of spinal joints beyond a person's usual physiological range; the fitting of contact lenses; electrotherapy; physiological testing; psychotherapy; the assisted feeding of persons with a neurological impairment; pharmaceutical dispensing; and soft tissue and nail surgery of the foot.

The changes implemented in Queensland and the core practices model recommended by the public benefit test report appear consistent with the Competition Principles Agreement (CPA) clause 5 guiding principle. The Council cannot, however, finalise the assessment of overall compliance until Queensland has announced and implemented its response to the core practices review. Queensland advised the Council that it had yet to finalise its policy approach following public consultations on the public benefit test assessment, but that it expected to make legislative amendments by mid-2002. The Council will finalise its assessment of CPA compliance in 2003.

Western Australia

Western Australia has completed the review of its health practitioner legislation. In April 2001, the Government approved the drafting of a new template health practitioner Act and agreed to replace the majority of the State's laws governing health professions as soon as it finalises the template legislation.

Western Australia released *Key Directions*, a paper outlining the policy framework for the new health practitioner legislation, in July 2001 (after the 2001 NCP assessment). The proposed changes include:

- replacing prescriptive advertising restrictions with provisions that reflect consumer protection legislation,
- removing requirements for businesses to register with the board and for the board to approve business names,
- providing for codes of practice (relating to clinical matters only) to be approved by the Minister;
- requiring practitioners to hold professional indemnity insurance; and
- removing restrictions on business ownership.

Key Directions also states that Western Australia will replace current practice protection provisions with core practice restrictions. Western Australia will retain the existing practices for three years from June 2001, while the Health Department facilitates a project to help the professions identify the core practices that warrant restriction. If the professions are unable to determine core practices within three years, then the existing practice protection will be removed from the legislation (Health Department of Western Australia 2001, p. 5).

The reform proposals outlined in *Key Directions* would, if developed and implemented in relevant legislation, comply with the CPA clause 5 principles. Western Australia has advised the Council that Parliamentary counsel has been instructed to draft the legislation and that the Government is finalising its legislative priorities for 2002 (Department of Treasury and Finance 2002).

By retaining its existing practice restrictions for three years, Western Australia has not met the Council of Australian Governments' (CoAG) deadline of 30 June 2002 for completing the review and reform of legislative restrictions on competition. The Council accepts that the potential risks to public safety justify retaining the existing practice restrictions as a transitional measure while the core practices are developed. The Council also accepts that the core practices model is a significant reform, requiring substantial input and participation from health practitioners and other experts over time. The Council will consider Western Australia's progress with its core practices review in the 2003 NCP assessment, to ensure it remains on track for completion by June 2004.

South Australia

South Australia completed a review of the *Chiropractors Act 1990*, which registers both chiropractors and osteopaths, in 1999. The review recommended amending the Act to register chiropractors and osteopaths separately, and renaming the Act to reflect its administration of two separate

professions. The review also recommended limiting the practices reserved for chiropractors and osteopaths to 'manipulation or adjustment of the joints or spinal column', and removing business licensing. Further, the review recommended amending advertising restrictions to prohibit only false and misleading advertising.

South Australia has advised that it is preparing a Bill to amend the Act (Government of South Australia 2002). South Australia has yet to complete its review and reform activity, so has not met its CPA clause 5 obligations in relation to this legislation. The Council considers that the review recommendations satisfactorily address competition questions. It will finalise its assessment of CPA compliance in 2003.

The ACT

The ACT completed a consolidated review of its 11 health profession Acts in March 2001. The review found a net public benefit in maintaining a system for registering health professionals who meet specified statutory entry standards, and restricting the use of relevant professional titles to registered health practitioners. It did not find an overwhelming benefit from maintaining the current scope of practice restrictions, and recommended removing legislative restrictions on practice by unregistered persons.

The review recommended recasting existing restrictions on the conduct of health practitioners so they are expressed as specific, unambiguous requirements with an identifiable and direct public protection role. It also recommended replacing advertising restrictions with a general ban on misleading advertising.

The ACT Government approved the drafting of legislation that incorporates the review recommendations (ACT Government 2002). It will release an exposure draft Health Professions Bill 2002 in July 2002, and anticipates tabling the final Bill in the Legislative Assembly in late 2002. The reforms recommended by the review appear consistent with CPA principles, but the Council cannot finalise the assessment of compliance until the Bill is introduced to, and passed by, Parliament. The Council will finalise its assessment of CPA compliance in 2003.

The Northern Territory

The Northern Territory registers chiropractors, Aboriginal health workers, occupational therapists, osteopaths, physiotherapists and psychologists under the *Health Practitioners and Allied Professionals Registration Act*. The Act sets entry standards, requires registration, protects the various titles and reserves the area of practice for each discipline.

The former Northern Territory Government commissioned the Centre for International Economics to review the Act. Completed in May 2000, the review recommended continuing to reserve the use of professional titles for

registered practitioners, but making entry requirements more flexible and clarifying personal fitness criteria.

The review also recommended giving the board the ability to restrict treatments or procedures that have a high probability of causing serious damage, if they are likely to be performed by people without the appropriate skills and expertise. Any person who demonstrates that they are appropriately qualified and experienced, however, would be permitted to perform these practices. The review envisaged that any practice restrictions would have the status of subordinate legislation, requiring them to undergo regulation impact assessment before introduction.

The former Northern Territory Government accepted the review recommendations in May 2001 and decided to prepare a new omnibus Health Practitioners Registration Bill to replace the Health Practitioners and Allied Professionals Registration Act and five other health practitioner registration Acts. The Department of the Chief Minister has advised the Council that the current Government will shortly be asked to consider the review recommendations and a draft omnibus Bill.

The review recommendations regarding the regulation of chiropractors appear consistent with the CPA clause 5 guiding principle, but the Council cannot finalise the assessment of compliance until the Bill is introduced to, and passed by, Parliament. The Council will finalise its assessment of CPA compliance in 2003.

Table 6.1: Review and reform of legislation regulating the chiropractic profession

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Chiropractors and Osteopaths Act 1991*	Entry, registration, title, practice, discipline, advertising	New South Wales completed the review in January 2000. The review recommended limiting reserved practice to spinal manipulation and removing some advertising restrictions.	New South Wales enacted a new *Chiropractors Act 2001* in line with recommendations.	Meets CPA obligations (June 2001).
Victoria	*Chiropractors and Osteopaths Act 1978*	Entry, registration, title, practice, discipline, advertising	Victoria completed the review in 1996. The review recommended retaining title protection and removing commercial and practice restrictions.	Victoria enacted a new *Chiropractors Registration Act 1996* in line with the recommendations.	Meets CPA obligations (June 2001).
Queensland	*Chiropractors and Osteopaths Act 1979*	Entry, registration, title, practice, discipline, advertising, business	Queensland completed its health professions review in 1999. A brief summary appears in the 2001 NCP annual report. The review of core practice restrictions has been completed, but its recommendations are yet to be implemented.	Queensland enacted new chiropractic legislation in May 2001. The Government expected to amend legislation to implement reforms to practice restrictions by mid-2002.	Council to finalise assessment in 2003.
Western Australia	*Chiropractors Act 1964*	Entry, registration, title, practice, discipline	Issues paper was released in October 1998. *Key Directions* paper was released in June 2001.	The Government has instructed Parliamentary counsel to draft replacement legislation.	Council to finalise assessment in 2003.
South Australia	*Chiropractors Act 1991*	Entry, registration, title, practice, discipline, advertising	South Australia completed the review in 1999. The review recommended removing ownership restrictions and amending practice reservation and advertising codes.	Cabinet has approved drafting of amendments to the Act. A Bill is being drafted.	Council to finalise assessment in 2003.

(continued)

Table 6.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania	*Chiropractors Registration Act 1982*	Entry, registration, title, practice, discipline, advertising	Tasmania enacted new legislation after assessing it under clause 5(5) of the CPA.	Tasmania enacted a new *Chiropractors and Osteopaths Act 1997*.	Meets CPA obligations (June 2001).
ACT	*Chiropractors and Osteopaths Act 1983*	Entry, registration, title, practice, discipline	The ACT completed its health practitioner legislation review in March 2001. The review recommended revisions to advertising and conduct provisions. It did not establish an overwhelming benefit from maintaining the scope of practice restrictions.	The Government will release an exposure draft of an omnibus Health Professions Bill 2002 (incorporating review recommendations) in July 2002, and anticipates tabling the final Bill in the Legislative Assembly in late 2002.	Council to finalise assessment in 2003.
Northern Territory	*Health Practitioners and Allied Professionals Registration Act*	Entry, registration, title, practice, discipline	Review was completed in May 2000. Its recommendations include retaining title restriction and removing generic practice restrictions.	Omnibus Bill is being drafted.	Council to finalise assessment in 2003.

Dental practitioners

Dental practitioners include dentists and related para-professionals such as dental auxiliaries (dental therapists and dental hygienists), dental prosthetists and dental technicians. The 2001 NCP assessment reported that Tasmania had met its CPA obligations in relation to dental practitioners. This 2002 NCP assessment considers other jurisdictions compliance with their CPA clause 5 obligations regarding dental practitioner legislation.

New South Wales

The *Dentists Act 1989* reserves the title 'dentist' and the practice of dentistry to dentists registered under the Act. It also restricts the employment of dentists by nondentists (which has the effect of preventing nondentist ownership of dental practices).

The Department of Health completed a review of the Dentists Act in March 2001. The review recommended continuing to regulate dental practitioners by reserving relevant titles for registered members of the profession; replacing the current restriction on the practice of dentistry with five restricted core practices; and removing restrictions on the employment of dentists and the ownership of dental practices (NSW Health 2001, p. 51).

The Government accepted the review recommendations except that regarding the ownership restrictions. The *Dental Practice Act 2001* (which replaces the Dentists Act) retains restrictions on the employment of dentists by nondentists.

New South Wales argues that the Dental Practice Act gives effect to the spirit of the review and delivers most of the benefits that would have resulted from removing the employment restriction, noting that:

- the new Act provides an exemption for health insurance funds (which are generally the only organisations to have indicated interest in entering the market, so are expected to be the main source of increased competition); and

- other nondentists can apply to the Dental Board for permission to employ dentists and therefore own dental practices, by demonstrating that it is in the public interest (excluding the interests of registered dentists) that they be allowed to do so (New South Wales Government 2002, p. 19–20).

To comply with the CPA clause 5 guiding principle, governments must demonstrate that any remaining legislative restrictions on competition are necessary to achieve the objectives of the Act. In this case, the object of the Act is to protect the health and safety of members of the public. The employment restrictions may contribute to this objective by screening out some potential employers (owners) who might seek to exploit dental patients.

The review of the Act found, however, that there less restrictive ways of protecting patients.

The Dentists Act review recommended negative licensing of dental practice owners, by making it an offence for an employer to direct a dentist to provide unnecessary services or engage in unprofessional conduct, and providing a power to ban people found guilty of an offence from participating in health care businesses. The review considered that this approach would eliminate the potential risk of commercial considerations overriding professional obligations while having only marginal impacts on competition (NSW Health 2001, p. 49).

New South Wales ruled out the negative licensing model on the basis that the costs of establishing and enforcing the offences would outweigh the benefits (New South Wales Government 2002, p. 19). It did not provide any evidence to support this claim, even though it applies a similar negative licensing approach to medical practices. That both Tasmania and Queensland operate similar systems of offences for dental practice owners raises further questions about New South Wales' argument.

Further, other options may be less restrictive than the New South Wales' approach. A formal positive licensing approach would be less restrictive of competition than the 'exemptions' model because it would provide greater transparency and accountability regarding decision-making. Alternatively, rather than requiring applicants to satisfy the board that it is in the public interest to approve their exemption, the Act could simply require applicants to show that approval is not contrary to the public interest.

The Council finds that as New South Wales has provided scant evidence to justify ruling out potentially less restrictive alternatives, it has not made a convincing case that employment and ownership restrictions are necessary to achieve its regulatory objectives. New South Wales has therefore not met its CPA obligations in relation to the review and reform of its dental practitioner legislation.

The competition impacts of New South Wales' employment and ownership restrictions will depend on how the Dental Board uses its power to grant exemptions. If the board uses the exemption power to protect patient welfare and not incumbent service providers, then adverse impacts on competition are likely to be minimal. The Council acknowledges that the Dental Practice Act directs the board to exclude the interests of the profession when assessing the public interest. The Premier indicated to the Council that New South Wales is not intending to use the employment and ownership restrictions to protect incumbents. The Council has sought information on how the board will apply the public interest test in practice, and it will finalise the assessment in 2003.

Victoria

Victoria reformed its regulation of dental professions (dentists and technicians) with the *Dental Practice Act 1999*. The Act retains the

requirement for registration and the reservation of title and practice, and introduced a requirement for registrants to be adequately covered by professional indemnity insurance. The Act removed a number of restrictions on the conduct of business, but retains a power for the registration board to examine advertising.

Victoria reviewed its general approach to regulating advertising by health practitioners during its review of the *Nurses Act 1993* and *Medical Practice Act 1994*. The review recommended a common set of advertising provisions for adoption in all Victorian health practitioner legislation. It also recommended empowering the boards to issue guidelines to clarify those provisions.

Victoria amended the advertising provisions of the Dental Practice Act in mid-2000. The amendments took account of the Medical Practice Act review but went beyond the review recommendation. They allowed the Dental Board to 'issue guidelines about the minimum standards acceptable to the board for or with respect to the advertising of dental services' (s. 66[1]). This gave the board a capacity to impose standards on any aspect of advertising services and potentially restrict practitioners' activity beyond what is necessary to clarify the provisions of the legislation. This provision could result in a net cost to the community if, for example, the board imposes restrictions that unnecessarily limit information flow.

Further, the amendments did not hold the board accountable to the Parliament for the content of any advertising guidelines that it issues. Often, where a board proposes professional standards, the relevant Minister must endorse the standards. This reduces the danger of 'regulatory creep' — the danger that a profession-dominated regulatory body will increase restrictions that reduce competition among members of the profession. The board's power to issue guidelines therefore appeared to exceed the CPA clause 5(1) test that restrictions on competition are necessary to achieve the objectives of the legislation.

In 2002, the Victorian Parliament passed further amendments to require Ministerial endorsement of advertising guidelines. External approval mechanisms help to ensure any guidelines issued by the board serve the interests of the public and do not sanction anticompetitive conduct. As a result, the Council considers that Victoria has met its CPA obligations in relation to the review and reform of legislation governing dental practitioners.

Queensland

Queensland introduced legislation to reform all of its health practitioner legislation. The new dental legislation — the *Dental Practitioners Registration Act 2001* and the *Dental Technicians and Dental Prosthetists Registration Act 2001* — mirrors most of the elements of the chiropractic legislation described earlier. The most significant difference is that the Dental Practitioners Registration Act provides for a register for specialist dentists (for example, oral maxilla-facial surgeons).

Like the chiropractic legislation, the Dental Practitioners Registration Act retains the existing practice restrictions pending the outcomes of a core practices review. Queensland commissioned PricewaterhouseCoopers to undertake a public benefit test of restrictions on the practice of dentistry. The Government released the public benefit test report for further consultation in June 2001.

The report recommended relaxing some of the restrictions on practice. The proposed model would limit the performance of invasive or irreversible procedures on the oral facial complex to dentists, dental specialists and medical practitioners, but would not restrict dental technical work, advice and diagnosis, or noninvasive and nonpermanent procedures.

The report also recommended removing or amending some commercial restrictions, including:

- removing the requirement that dental technicians work to the written prescription of a dentist, dental specialist or dental prosthetist;
- removing the requirement that dental therapists work in the public sector; and
- removing the prohibition on dental therapists treating adults (allowing dental therapists to treat adults under supervision) (PricewaterhouseCoopers 2000b).

Queensland advised that it needs to undertake further targeted consultations to resolve stakeholder concerns with some of the review recommendations, which it expected to complete by May 2002. It anticipated making legislative amendments to reform the practice restrictions in mid-2002.

The changes implemented in Queensland and the core practices model recommended in the public benefit test report appear consistent with the CPA clause 5 guiding principle. The Council cannot, however, finalise the assessment of compliance until Queensland has announced and implemented its response to the core practices review. Given that Queensland expected to make legislative amendments by mid-2002, the Council will finalise its assessment of CPA compliance in 2003.

Western Australia

The section on chiropractors discusses the general health practitioner legislation reforms announced in Western Australia's *Key Directions* paper. In addition, *Key Directions* announced some reforms specific to the dental professions. Western Australia will:

- remove the restriction on the number of dental therapists and dental hygienists that a dentist may employ;

- allow dental prosthetists to construct and fit partial dentures, providing the practitioner meets specific training requirements set by the board;
- remove the restrictions on the ownership of dental practices; and
- remove the ban on private sector employment of school dental therapists (Western Australia Department of Health 2001, pp. 5–6).

The Government has instructed Parliamentary counsel to draft legislation (Department of Treasury and Finance 2002).

Western Australia did not met CoAG's deadline of 30 June 2002 for completing the review and reform of legislative restrictions on competition The reforms outlined in *Key Directions* are likely to meet the CPA clause 5 obligations if developed and implemented in legislation. *Key Directions* is only a framework for reform, however, so the Council cannot use it as a basis for assessment. Further, Western Australia proposes to retain its existing practice restrictions until June 2004 as a transitional measure.

The Council accepts that the potential risks to public safety justify Western Australia retaining the existing practice restrictions as a transitional measure while the core practice restrictions are developed. The Council also accepts that the core practices model is a significant reform, requiring substantial input and participation from health practitioners and other experts. The Council will consider Western Australia's progress towards completing the core practices review in the 2003 NCP assessment to ensure that it remains on track for completion by June 2004.

South Australia

The Competition Policy Review Team in the Department of Human Services reviewed the South Australian *Dentists Act 1984* in 1998, producing a final report in February 1999. In response to the review, South Australia passed a new *Dental Practice Act 2001* in June 2001. This Act implements most of the recommendations of the review, but does not adopt one key recommendation.

The review recommended that 'all ownership restrictions, direct and indirect, contained in the Act should be removed' (Department of Human Services 1999a, recommendation 18). South Australia's new Act retains business licensing requirements, limits on the number of registrants able to be employed in a practice, and restrictions on ownership and association.

The new Act also includes a power for the Governor to grant exemptions by proclamation. The Government intends to use the exemption provisions 'to cater for situations on a case by case basis, such as Health Funds providing dental services via registered practitioners as part of their service to members, organisations providing dental services for their employees and families, and the South Australian Dental Service' (Brown 2000).

The Council raised the ownership restrictions with South Australia in November 2000. In its 2002 NCP annual report, South Australia noted that it had introduced new exemption powers and observed that there is already nondentist ownership of dental practices, which it expects to continue (Government of South Australia 2002).

South Australia, New South Wales and Western Australia are the only jurisdictions with restrictions on the ownership of dental practices. Western Australia has advised that dental legislation being drafted will remove the restriction on ownership of practices. Victoria removed ownership restrictions following its NCP review. Queensland's and Tasmania's new dental practitioner Acts did not introduce ownership restrictions.

To comply with the CPA principles, governments need to show that legislative restrictions on competition are necessary to achieve the objective of the legislation. In this case, the objective of the Act is to protect the health and safety of members of the public. The ownership restrictions may contribute to this objective by screening out some of the potential employers who might seek to exploit dental patients, but there are less restrictive alternatives.

South Australia's Dental Practice Act makes it an offence to pressure a dentist to act unlawfully, improperly, negligently or unfairly in relation to the provision of dental treatment. Where a government considers that such offence provisions alone may not provide adequate protection, it is open to the government to adopt additional measures, such as either

- a negative licensing system for dental practice owners, which would allow people found guilty of pressuring dentists to engage in unprofessional conduct to be banned from any further involvement in health care businesses; or

- a positive licensing system, which would allow potential dental practice owners to be screened before they purchase a business, but would still provide greater transparency and accountability than provided by South Australia's exemptions model.

The Council considers that South Australia has not met its CPA obligations in relation to the review and reform of its dental practitioner legislation, because it has not offered a public interest case for retaining the ownership restrictions. The impacts on competition will depend, however, on how the Government uses its power to grant exemptions from the restrictions. In particular, it will depend on the transparency and consistency of the decision-making process, and on whether decisions are based on protecting patients or incumbent dental practice owners.

If South Australia demonstrably uses the exemption power to safeguard the welfare of patients, then the ownership restrictions are likely to have negligible adverse impacts on competition. The Council recognises that South Australia already has some nondentist ownership of dental practices. It has sought a commitment that South Australia will focus the exemption power on

safeguarding patient welfare. It will monitor the exemption process and finalise its assessment of CPA compliance in 2003.

The ACT

The section on chiropractors discusses the general health practitioner reforms recommended by the ACT's health practitioner legislation review. In addition to the general recommendations applying to all health professions, the review made some specific recommendations in relation to dental practitioners.

- The review recommended removing requirements for the registration of dental technicians. The review considered that, given that dental technicians work to the order of registered dentists or dental prosthetists, the dentists/dental prosthetist is responsible for ensuring the technician is qualified and competent.

- The review recommended removing the requirement for dental prosthetists to hold professional indemnity insurance (and not imposing insurance requirements on other professions). The review found that while these requirements reinforce good commercial practice, it is not clear that they either provide a demonstrable public benefit or belong in legislation concerning the direct fitness and standards of a health professions.

- The review recommended removing the restrictions on the scope of practice of dental hygienists and dental therapists. The review noted that limiting hygienists' and therapists' practice minimises risks, but found that other provisions requiring hygienists and therapists (and any registered dentist who may direct their activities) to maintain safe standards of professional practice have a similar effect.

The Government approved the drafting of legislation that incorporates the review recommendations. It will release an exposure draft of the Health Professionals Bill in July 2002, and anticipates tabling the final Bill in the Legislative Assembly in late 2002.

The ACT did not meet CoAG's 30 June 2002 deadline for completing legislation review and reform. Given that it expects to introduce the Health Professionals Bill into the Legislative Assembly in late-2002, however, the Council will finalise its assessment of CPA compliance in 2003.

The Northern Territory

Dental services in the Territory are provided by dental specialists, dentists, dental therapists, dental hygienists (all of whom are regulated by the *Dental Act*), Aboriginal health workers (registered under a separate Act) and dental prosthetists (not currently registered). The former Northern Territory Government commissioned the Centre for International Economics to conduct a review of the Dental Act. Completed in May 2000, the review recommended:

- maintaining registration for practitioners covered by the Act and extending registration to dental prosthetists;
- requiring registrants to demonstrate continuing competency;
- clarifying personal fitness criteria in the legislation;
- restricting the right of title for the various classifications;
- amending reserved practice to promote mobility between oral health professionals, by:
  - expressing allowable activities in terms of core competencies and what each professional is capable of doing; and
  - including provisions for other persons (including nondental professionals) who can demonstrate competence to provide otherwise reserved treatments and procedures;
- removing restrictions on dental therapists working outside the public sector;
- removing restrictions on dental therapists providing services to adults;
- removing the ownership restrictions; and
- retaining the advertising restrictions, which are based on the principles of the *Trade Practices Act 1974* (the TPA).

The former Northern Territory Government accepted the review recommendations in May 2001 and decided to prepare a new omnibus Health Practitioners Registration Bill to replace the Dental Act and five other health practitioner registration Acts. The Department of the Chief Minister has advised the Council that the current Government will shortly be asked to consider the review recommendations and a draft omnibus Bill.

The Northern Territory did not meet CoAG's 30 June 2002 deadline for completing the review and reform of its legislation regulating dentists. The Northern Territory will comply with the CPA clause 5 guiding principle, however, if the current Government implements the review recommendations. Given that the Northern Territory is making progress towards completing its review and reform activity, the Council will finalise its assessment of CPA compliance in 2003.

Table 6.2: Review and reform of the legislation regulating the dental professions

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Dental Technicians Registration Act 1975* *Dentists Act 1989*	Entry, registration, title, practice, discipline, advertising	Review was completed in March 2001. It recommended reserving 'core' practices only and removing restrictions on the employment of dentists and the ownership of dental practices.	Legislation was replaced by the *Dental Practice Act 2001,* which implements most review recommendations but retains some restrictions on the employment of dentists.	Employment/ownership restrictions - Council to finalise assessment in 2003. Other areas- meets CPA obligations.
Victoria	*Dental Technicians Act 1972* *Dentists Act 1972*	Entry, registration, title, practice, discipline, advertising, ownership	Review was completed in July 1998. It recommended retaining restrictions on use of title, types of work, and fair and accurate advertising; removing ownership restrictions; removing restrictions on 'disparaging remarks' in advertising; and allowing dental therapists to work in the private sector.	Legislation was replaced with the *Dental Practice Act 1999*. The new Act was amended in 2000 to require practitioners to hold professional indemnity insurance and allow the board to impose advertising restrictions. Further amendments made in 2002 require the Minister to approve advertising restrictions proposed by the board.	Meets CPA obligations (June 2002).
Queensland	*Dental Act 1971* *Dental Technicians and Dental Prosthetists Act 1991*	Entry, registration, title, practice, discipline, advertising, business	Review of health practitioner Acts was completed in 1999. Brief summary appears in the 2001 NCP annual report. Review of the restrictions on the practice of dentistry was also completed and released for public comment in June 2001.	New dental legislation was passed in May 2001. Government is considering the recommendations of the core practices review, and expected to make legislative amendments implementing the final policy approach by mid-2002.	Council to finalise assessment in 2003.
Western Australia	*Dental Act 1939* *Dental Prosthetists Act 1985*	Entry, registration, title, practice, discipline	Issues paper was released in October 1998. *Key Directions* paper was released in June 2001. It stated that ownership restrictions would be removed, but current practice restrictions would be retained for three years to allow the identification of core practices.	Amendments are being drafted.	Council to finalise assessment after core practices review.

(*continued*)

Table 6.2 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Dentists Act 1984*	Entry, registration, title, practice, discipline, ownership, advertising, business	Review was completed in February 1999. Its recommendations included: changing the disciplinary process; introducing paraprofessional registration; removing some areas of reserved practice; and removing ownership restrictions.	Act was repealed and replaced by the *Dental Practice Act 2001*. The new Act retains limits on ownership and related restrictions, contrary to review recommendations.	Ownership restrictions — Council to finalise assessment in 2003. Other areas — meets CPA obligations.
Tasmania	*Dental Act 1982* *Dental Prosthetists Registration Act 1996* *School Dental Therapy Act 1965*	Entry, registration, title, practice, discipline, advertising	Tasmania assessed the new *Dental Practitioner Act 2001* under clause 5(5) of the CPA.	Tasmania passed a new *Dental Practitioner Act 2001* in April 2001, removing some restrictions on practice and all specific restrictions on advertising, and clarifying that there are no restrictions on ownership.	Meets CPA obligations (June 2001).
ACT	*Dental Technicians and Dental Prosthetists Registration Act 1988* *Dentists Act 1931*	Entry, registration, title, practice, discipline	Review was completed in March 2001. It recommended revisions to advertising and conduct provisions. Review did not establish an overwhelming benefit from maintaining the scope of practice restrictions.	The Government will release an exposure draft of an omnibus Health Professions Bill 2002 (incorporating review recommendations) in July 2002, and anticipates tabling the final Bill in the Legislative Assembly in late 2002.	Council to finalise assessment in 2003.
Northern Territory	*Dental Act*	Entry, registration, title, practice, discipline, advertising, ownership	Review was completed in May 2000. Its recommendations included registering all paraprofessionals, amending practice restrictions and removing ownership restrictions.	Omnibus health practitioner Bill is being drafted.	Council to finalise assessment in 2003.

Medical practitioners

The 2001 NCP assessment reported that New South Wales had met its CPA obligations in relation to medical practitioners. This 2002 NCP assessment considers whether the other jurisdictions have met their CPA obligations in this area.

Victoria

Victoria began its review of the *Medical Practice Act 1994* with a discussion paper released in October 1998. The Victorian Parliament introduced amendments to the Act in mid-2000. These amendments required registrants to hold professional indemnity insurance and revised the advertising provisions to allowed the Medical Practitioners Board to issue guidelines regarding advertising (see the section on dentists).

The Medical Practice Act review recommended conferring on the Medical Practitioners Board a power to issue guidelines to clarify the advertising provisions (State Government of Victoria 2001a). The provisions enacted by Victoria were inconsistent with this recommendation, however, and appeared to have the potential to restrict competition more than was necessary to achieve the objectives of the legislation (see the section on dentists).

In response to concerns raised by the Council, Victoria amended the Medical Practice Act in April 2002 to require Ministerial endorsement of advertising guidelines developed by the board (see the section on dentists). External approval mechanisms help to ensure any guidelines issued by the board serve the interests of the public and do not sanction anticompetitive conduct. As a result, Council considers that Victoria has now met its CPA obligations in relation to the review and reform of its medical practitioner legislation.

In March 2002, the Medical Practitioners Board issued draft advertising guidelines for consultation. The draft guidelines appear to contain some new restrictions on competition. They prohibit, for example, any use of 'before and after photographs', whereas the Act appears to prohibit only the false, deceptive or misleading use of these photographs. The Department of Human Services is consulting with the board to resolve concerns about the additional restrictions, and expects that the final guidelines issued by the board will be consistent with the advertising provisions of the Medical Practice Act. The Ministerial approval process provides Victoria with scope to ensure any new restrictions in the final guidelines comply with CPA requirements.

Queensland

Queensland began its reform program for health professions regulation through the framework legislation enacted for all health professions late in

1999. The second stage of reform, new registration legislation, was completed in May 2001 (see the section on chiropractors).

The *Medical Practitioners Registration Act 2001* contains some differences from the chiropractic legislation. It contains specialist registration and special-purpose registration, and provides for the registration of interns. Practice restrictions are subject to further NCP review.

The reforms implemented in Queensland appear consistent with CPA principles, but the Government did not complete its reforms to practice restrictions before the CoAG deadline of 30 June 2002. Given that Queensland expected to make legislative amendments to implement practice restriction reforms by mid-2002, the Council will finalise its assessment of CPA compliance in 2003.

South Australia

South Australia completed a review of the *Medical Practitioners Act 1983* in March 1999. The Government introduced a new Medical Practice Bill to the Parliament in May 2001, which implements the recommendations of the review. Given that the Bill lapsed following the State election, the Council will finalise its assessment of CPA compliance in 2003 NCP.

Western Australia

Western Australia has completed an NCP review of its *Medical Act 1894* as part of a broader review of the Act, with the aim of producing new legislation that complies with NCP principles. The review released a draft report in October 1999, which recommended that the new Act should retain registration requirements, remove prohibitions on nonregistrants practising medicine, limit the number of reserved titles, incorporate major changes to the disciplinary system, and incorporate revised advertising restrictions (Medical Act Review 1999). The Government has advised that it is now finalising its response.

Western Australia did not complete its review and reform activity at 30 June 2002. Given that it has completed the review, however, and is finalising its response, the Council will finalise the assessment of CPA compliance in 2003.

Northern Territory

The former Northern Territory Government commissioned the Centre for International Economics to undertake a review of its *Medical Act*. Completed in May 2000, the review recommended continuing to reserve the title 'medical practitioner' for registered medical practitioner, but repealing residency requirements, allowing greater flexibility for assessing entry qualifications and introducing a requirement for continuing professional education. The review recommended removing the reservation of practice, but empowering

the board to restrict treatments or procedures that have a high probability of causing serious damage. The review also recommended removing advertising and ownership restrictions.

The former Northern Territory Government accepted the review recommendations in May 2001 and decided to prepare a new omnibus Health Practitioners Registration Bill to replace the Medical Act and five other health practitioner registration Acts. The Department of the Chief Minister has advised the Council that the current Government will shortly be asked to consider the review recommendations and a draft omnibus Bill.

The Northern Territory did not meet CoAG's 30 June 2002 deadline for completing the review and reform of its legislation regulating medical practitioners. The Northern Territory will comply with the CPA clause 5 guiding principle, however, if the current Government implements the review recommendations. Given that the Northern Territory is making progress towards completing its review and reform activity, the Council will finalise its assessment of CPA compliance in 2003.

Other jurisdictions

Tasmania has completed a review of the *Medical Practitioners Registration Act 1996*, but did not complete its reform activity by 30 June 2002. Cabinet will, however, consider the review soon (Government of Tasmania 2002).

The ACT did not complete the reform of its health practitioner legislation before CoAG's 30 June 2002 deadline. The ACT Government has approved the drafting of legislation that incorporates the review recommendations (see the section on chiropractors) and expected to introduce the resulting Bill into the Legislative Assembly by late-2002.

Given that both jurisdictions are progressing reforms of their medical practitioner legislation, the Council will finalise its assessment of CPA compliance in 2003.

Table 6.3: Review and reform of legislation regulating the medical profession

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Medical Practice Act 1992*	Entry, registration, title, practice, discipline, advertising	Review report was released in December 1998. Its recommendations included inserting an objectives clause, clarifying entry requirements, reforming the disciplinary system and removing the business and practice restrictions.	*Medical Practice Amendment Act 2000* was passed in July 2000, which implemented the review recommendations.	Meets CPA obligations (June 2001).
Victoria	*Medical Practice Act 1994*	Entry, registration, title, practice, discipline, advertising	Victoria released a discussion paper in October 1998 and completed the review report in March 2001.	*Health Practitioner Acts (Amendment) Act 2000* amended advertising provisions, including the ability of the board to impose additional restrictions. Further amendments in 2002 required Ministerial endorsement of advertising restrictions proposed by the board.	Meets CPA obligations (June 2002)
Queensland	*Medical Act 1939*	Entry, registration, title, practice, discipline, advertising, business	Queensland completed a review of its health practitioner registration Acts in 1999. The review report is not publicly available, but a brief summary appears in Queensland's 2001 NCP annual report. The core practices review has been completed, but the Government is yet to decide on the final policy approach.	Framework legislation was passed in 1999. New *Medical Practitioners Registration Act 2001* was passed in May 2001, preserving practice restrictions subject to review.	Council to finalise assessment in 2003.
Western Australia	*Medical Act 1894*	Entry, registration, title, practice, discipline, advertising	Draft report released October 1999. Its recommendations included removing reserved practice, limiting the reservation on title, changing the disciplinary system and introducing new advertising restrictions.		Council to finalise assessment in 2003.

(continued)

Table 6.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Medical Practitioners Act 1983*	Entry, registration, title, practice, discipline, advertising, business	Review was completed in 1999. It recommended removing ownership restrictions, registering medical students, requiring declaration of commercial interests and requiring professional indemnity insurance.	New legislation was introduced in May 2001, but lapsed following the calling of the State election.	Council to finalise assessment in 2003.
Tasmania	*Medical Practitioners Registration Act 1996*	Entry, registration, title, practice, discipline, advertising	Review has been completed. Ownership restrictions are the key NCP issue.	Cabinet is to consider review shortly.	Council to finalise assessment in 2003.
ACT	*Medical Practitioners Act 1930*	Entry, registration, title, practice, discipline, advertising	Consolidated review of all ACT health professional legislation commenced with the release of an issues paper in May 1999 and was completed in March 2001.	The Government will release an exposure draft of an omnibus Health Professions Bill 2002 (incorporating review recommendations) in July 2002, and anticipates tabling the final Bill in the Legislative Assembly in late 2002.	Council to finalise assessment in 2003.
Northern Territory	*Medical Act*	Entry, registration, title, practice, discipline, advertising, ownership, business	Review was completed in May 2000. Its recommendations included removing generic practice, ownership and advertising restrictions, and retaining title protection.	Omnibus health practitioner Bill is being drafted to replace this and other Acts.	Council to finalise assessment in 2003.

Nurses

The 2001 NCP assessment reported that South Australia and Tasmania had met their CPA obligations in relation to nurses. This 2002 NCP assessment considers whether other jurisdictions have met their CPA obligations in this area.

New South Wales

NSW Health commenced a review of the *Nurses Act 1991* in 1999 and submitted the final report to the Minister for Health in February 2000. The Government approved the review's recommendations in November 2001 and agreed to the drafting of legislation to implement the recommendations (New South Wales Government 2002, p. 18).

The review considered that any regulation of nurses and midwifery should have two objectives: first, to protect the health and safety of members of the public by providing mechanisms to ensure nurses and midwives are fit to practise; and second, to provide mechanisms to enable the public and employers to readily identify nurses and midwives who are fit to practise.

The review recommended continuing to regulate nurses and midwives by restricting the use of their professional titles to registered members of the profession. It recommended maintaining the system whereby the board accredits education courses for registration purposes, but making the process more open and transparent by introducing an appeal mechanism. It also recommended removing the minimum age requirement for registration.

To ensure the ongoing competence of registered practitioners, the review recommended that nurses and midwives be required to make declarations about their professional activities and ongoing fitness to practise. It also recommended giving the board the power to inquire into a practitioner's competence or fitness to practise if it is not satisfied with the practitioner's declaration.

Other recommended changes included relaxing practice restrictions in the area of midwifery, requiring the board to seek the Minister's approval of any codes of conduct that it develops, changing the size and composition of the board, and reforming the complaints and disciplinary systems.

New South Wales has enacted legislation allowing advanced nurse practitioners to have limited prescribing and referring rights, but did not complete its reform activity by the CoAG deadline of 30 June 2002. Given that New South Wales has advised the Council that it intends to introduce amending legislation into Parliament during 2002 (New South Wales Government 2002, p. 18), the Council will finalise its assessment of CPA compliance in 2003.

Victoria

The Department of Human Services conducted a review of the *Nurses Act 1993* in combination with the Medical Practice Act during 1998-99. The department released an issues paper for consultation in October 1999, although the final report was not publicly released. The Government also commissioned a report into nurse practitioners, which was released in July 2000.

Victoria amended its nursing legislation in late 2000 in response to both reviews. In the 2001 NCP assessment, the Council considered that the remaining restrictions on competition generally appeared to provide a net community benefit, but it questioned the ability of the nursing board to impose additional advertising restrictions (see the section on dentistry).

In response to the Council's concerns, Victoria amended the Act to require Ministerial approval of any advertising guidelines issued by the board. External approval mechanisms help to ensure any guidelines issued by the board serve the interests of the public and do not sanction anticompetitive conduct. The Council considers that the advertising restriction now complies with CPA principles.

During the passage of the original amendments in 2000, the Minister for Health undertook to further consider outstanding concerns of key stakeholders. The Department of Human Services released a discussion paper in August 2001 which examined a range of issues, including the regulation of nursing agencies and the regulation of nursing practice.

In March 2002, the Government introduced legislative amendments to create a negative licensing scheme for nurses agents, with the aim of ensuring agents do not pressure nurses to engage in unprofessional conduct. As discussed in the 2001 NCP assessment, the Council considers that legislating limits on the influence of health care business owners on health professional's clinical decisions does not contravene CPA principles provided that the limits are applied in a nondiscriminatory manner.

Northern Territory

The former Northern Territory Government commissioned the Centre for International Economics to undertake a review of the *Nursing Act*. The review recommendations included:

- retaining restrictions on the use of professional titles;
- requiring registrants to demonstrate continuing competence;
- removing the reservation of practice (but empowering the board to restrict certain treatments or procedures that have a high probability of causing serious damage);

- retaining requirements for bodies corporate that provide nursing services to provide information to the board; and
- removing advertising restrictions.

The former Northern Territory Government accepted the review recommendations in May 2001 and decided to prepare a new omnibus Health Practitioners Registration Bill to replace the Nursing Act and five other health practitioner registration Acts. The Department of the Chief Minister has advised the Council that the current Government will shortly be asked to consider the review recommendations and a draft omnibus Bill.

The Northern Territory did not meet CoAG's 30 June 2002 deadline for completing the review and reform of its legislation regulating nurses. The Northern Territory will comply with the CPA clause 5 guiding principle, however, if the current Government implements the review recommendations. Given that the Northern Territory is making progress towards completing its review and reform activity, the Council will finalise its assessment of CPA compliance in 2003.

Other jurisdictions

Queensland is reviewing the *Nursing Act 1992* separately from its review of other health practitioner registration legislation. Queensland Health commenced an NCP review of the Nursing Act in October 1999, and released a discussion paper in November 2001. Queensland expected to release the public benefit test report in March 2002 and implement amending legislation (if any) by mid-2002 (Queensland Government 2002).

Western Australia has completed an omnibus review of its health practitioner legislation and announced the policy framework for replacement legislation (see the section on chiropractors). Western Australia announced one reform specific to nurses: that is, nurses registered in other Australian jurisdictions or New Zealand who are responding to an emergency or retrieving organs in Western Australia will be deemed to be registered in Western Australia. Cabinet has instructed Parliamentary counsel to draft the replacement legislation (Department of Treasury and Finance 2002).

The ACT included the *Nurses Act 1988* in its review of health practitioner legislation. The review recommendations are outlined in the section on chiropractors. The review did not make any specific recommendations regarding nurses. The ACT Government has approved the drafting of legislation that incorporates the review recommendations, and expects to introduce the resulting Bill into the Legislative Assembly in late-2002 (ACT Government 2002).

Queensland, Western Australia and the ACT did not complete their review and reform activity by 30 June 2002. They have made considerable progress, however, so the Council will finalise its assessment of their CPA compliance in 2003.

Table 6.4: Review and reform of legislation regulating the nursing profession

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Nurses Act 1991*	Entry, registration, title, practice, discipline	Review commenced in 1999 with the release of an issues paper and was completed in February 2000.	The Government approved the review recommendations. Amending legislation is to be introduced during 2002.	Council to finalise assessment in 2003.
Victoria	*Nurses Act 1993*	Entry, registration, title, discipline	Discussion paper was released in October 1998. Review report is not publicly available.	Amending legislation was passed in November 2000. Further amendments to advertising provisions were made in 2002.	Meets CPA obligations (June 2002).
Queensland	*Nursing Act 1992*	Entry, registration, title, practice, discipline	Review commenced in October 1999. Discussion paper was released November 2001. Government expected to release the public benefit test report in March 2002, but has not yet done so.	The Government expected to implement amending legislation (if any) by mid-2002.	Council to finalise assessment in 2003.
Western Australia	*Nurses Act 1992*	Entry, registration, title, practice, discipline	Review has been completed. Issues paper was released in October 1998. *Key Directions* paper was released in June 2001.	Legislation is being drafted.	Council to finalise assessment in 2003.
South Australia	*Nurses Act 1984*	Entry, registration, title, practice, discipline	Review was completed in 1998. Its recommendations included improving accountability, removing restrictions on advertising and making minor changes to entry requirements.	New *Nurses Act 1999* was enacted in line with recommendations.	Meets CPA obligations (June 2001).
Tasmania	*Nursing Act 1995*	Entry, registration, title, practice, discipline	Review was completed in 1999. Restrictions related to registration were assessed as providing a net community benefit because they provide information to the consumer.	*Nurses Amendment Act 1999* removed practice restrictions.	Meets CPA obligations (June 2001).

(continued)

Table 6.4 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT	*Nurses Act 1988*	Entry, registration, title, discipline	Consolidated review of all ACT health professional legislation commenced with the release of an issues paper in May 1999, and was completed in March 2001.	The Government will release an exposure draft of an omnibus Health Professions Bill 2002 (incorporating review recommendations) in July 2002, and anticipates tabling the final Bill in the Legislative Assembly in late 2002.	Council to finalise assessment in 2003.
Northern Territory	*Nursing Act*	Entry, registration, title, practice, discipline, advertising	Review was completed in May 2000. Its recommendations included removing advertising and practice restrictions, and retaining title protection.	Omnibus health practitioner bill is being drafted to replace this and other Acts.	Council to finalise assessment in 2003.

Optometrists and optical paraprofessionals

The 2001 NCP assessment reported that Victoria had met its CPA obligations in relation to the review and reform of its legislation governing optometry professions. This 2002 NCP assessment considers whether the other jurisdictions have met their CPA obligations in this area.

New South Wales

The Department of Health completed a review of the *Optometrists Act 1930* in December 1999. The review recommended extending prescribing rights, limiting reservation of practice and replacing restrictions on the ownership of optometry practices with a negative licensing system and restrictions on pressuring dental practitioners to engage in unprofessional conduct.

The Government introduced the Optometrists Bill 2001 to Parliament in October 2001. The Bill lapsed with the proroguing of Parliament in February 2002, so the Government introduced a revised Bill (the Optometrists Bill 2002*)* in April 2002. If passed, the Bill will implement most of the review recommendations, but it retains some ownership restrictions. Nonoptometrists may own optometry practices only if they owned the business before the ownership restrictions were introduced in 1945 (or, between 1945 and 1969, were granted an exemption) and they continue to operate at the same premises, or if they are exempted by the Minister or by regulation.

Most jurisdictions do not restrict optometry ownership. Western Australia and the ACT have never restricted ownership. Ownership restrictions were removed in South Australia in 1992, in Victoria in 1996 and in Queensland in March 2002. In addition, the Northern Territory has endorsed a recommendation to remove ownership restrictions. Tasmania is yet to complete its review.

New South Wales argued that it is in the public interest to retain ownership restrictions because:

- removing the ownership restrictions would result in a progressive concentration of optometry ownership that could undermine the viability of independent optometrists and therefore employment opportunities, particularly in small rural and regional areas;
- removing the ownership restrictions would, over time, reduce competition in some areas with only marginal improvements in competition in other areas that are already well served by competitive markets; and
- any net benefit arising from increased competition in some areas would not offset the costs of establishing offences to ensure nonoptometrist-owned practices maintain professional standards.

For the following reasons, the Council does not consider that these arguments provide a convincing public interest justification for retaining the ownership restrictions.

- It is not clear that removing ownership restrictions would undermine rural and regional employment opportunities.
  - The legislation review concluded that there is little evidence to suggest that large optical dispensing chains would purchase independent practices and then rationalise services to major regional centres, or engage in predatory conduct that would force smaller rural operators out of business.
  - The Australian Competition and Consumer Commission has found no evidence of regional monopolies. Its investigations have found evidence of effective entry in the past and of a growing competitive presence as a result of health funds establishing their own eye-care stores.
  - Australian Institute of Health and Welfare data on the optometrist workforce in 1998-99 show no relationship between jurisdictions with ownership restrictions and jurisdictions with high numbers of optometrists in rural and remote areas.
- Deregulating ownership would not necessarily reduce competition in some areas.
  - Contestable markets deliver competitive outcomes and the ACCC has found evidence of effective entry in the past.
  - The TPA provides a mechanism for dealing with concerns about regional monopolies.
- New South Wales has not provided any evidence to support its claim that the costs of establishing a system of offences outweigh the benefits of deregulating ownership.
  - The review identified benefits from removing the restrictions.
  - The review found that the risks associated with nonoptometrist ownership 'are of low level significance'. It also found that these risks have presented in optometrist-owned practices, raising doubts about the effectiveness of restricting ownership as a means of maintaining standards.
  - Queensland has applied similar offence provisions to its health professions, and New South Wales has applied this approach to owners of medical practices, suggesting that the costs of establishing the offences are not prohibitive.
- New South Wales did not investigate the use of a positive licensing system to ensure nonoptometrist owners maintain professional standards. A

positive licensing system would be less restrictive of competition than New South Wales' exemptions model because it would provide greater transparency and accountability.

The Council considers that New South Wales has not made a convincing case that the ownership restrictions provide a net benefit to the public and are necessary to achieve the objectives of the Act, so has not met its CPA obligations in relation to the review and reform of its optometry legislation.

The competition impacts of New South Wales's approach to regulating optometry ownership will depend on how the Government uses its power to grant exemptions. The Council considers that New South Wales will minimise the ownership restriction's adverse impacts on competition if it establishes a transparent and consistent process for making decisions on exemption applications, and bases decisions solely on community protection.

The Council raised its concerns with New South Wales during the 2002 NCP assessment and sought a commitment that the Government would use its ownership restrictions to protect the community rather than incumbent service providers. Although the Government assured the Council that its intention is not to restrict competition unless there is a clear consumer-based need, New South Wales has not yet explained how the exemptions will operate. The Council will monitor the exemption process and finalise the assessment in 2003.

Queensland

Queensland optometry regulation is undergoing a reform program common to the other health professions (see the section on chiropractors).

Queensland replaced the *Optometrists Act 1974* with the *Optometrists Registration Act 2001* in May 2001. The new Act removed restrictions on the ownership of optometry practices and the supply and fitting of optical appliances, but retained the previous Act's restrictions on the practice of optometry pending the outcomes of an NCP review of core practice restrictions.

Queensland Health released the core practice review public benefit test for public consultation in July 2001. In relation to optometry, the public benefit test recommended narrowing the restricted area of practice to 'prescribing optical appliances for the correction or relief of visual defects'. Queensland has yet to finalise details of its proposed policy approach following the consultation process (Queensland Government 2002).

Queensland did not finish the core practice reforms by 30 June 2002, so has not met its CPA obligations in relation to legislation regulating the optometry professions. Given that Queensland's reforms are consistent with the CPA clause 5 guiding principle and that the Government has indicated that it expected to make legislative amendments to implement the final core practice approach by mid-2002, the Council will finalise its assessment in 2003.

Western Australia

Western Australia has completed an omnibus review of its health practitioner legislation, and released a *Key Directions* paper outlining the policy framework for replacement legislation (see the section on chiropractors). The Government announced one reform specific to the optometry professions: it retained the *Optical Dispensers Act 1966* for 12 months to provide practitioners and other interested parties with an opportunity to provide submissions on why optical dispensers should remain regulated (Health Department of Western Australia 2001, p. 3). The review of this matter is under way: the Government has appointed the review committee, and expected it to complete the review in July 2002.

Western Australia did not complete the review and reform of its legislation regulating the optometry professions by 30 June 2002. Its review and reform activity is progressing, however, so the Council will finalise its assessment in 2003.

South Australia

South Australia completed its review of legislation regulating optometry in April 1999. The review recommended extending legislative coverage to optical dispensers, removing the restriction on training providers and introducing a code of conduct. The Minister is considering the review report (Government of South Australia 2002). South Australia did not complete its review and reform activity by 30 June 2002. The review recommendations appear consistent with the CPA clause 5 guiding principle, however, and the Government is considering its reform response, so the Council will finalise its assessment in 2003.

Tasmania

Tasmania is finalising a review of its optometry legislation. The key issues for the review are the extent of any restrictions on the ownership of practices and on the advertising of services (Government of Tasmania 2002). Tasmania did not complete its review and reform activity by 30 June 2002. Given that Tasmania is making progress, however, the Council will finalise its assessment in 2003.

The ACT

The ACT included the *Optometrists Act 1956* in its review of health practitioner legislation. The review recommendations are outlined in the section on chiropractors.

The review made one specific recommendation regarding optometrists: that is, to continue restricting the sale of spectacles or contact lenses that have not been prescribed by a medical practitioner or optometrist, but conduct a

further review of these restrictions. The review found a public protection case for keeping the restriction, but also found a case for undertaking a more focussed assessment of the restriction. The Council considers that this approach complies with the CPA clause 5, provided the further review is conducted within a reasonable timeframe.

The ACT Government has approved the drafting of legislation that incorporates the review recommendations and expects to introduce the resulting Bill into the Legislative Assembly in late 2002 (ACT Government 2002). The ACT did not complete its reform activity by the CoAG deadline of 30 June 2002. Its activity is considerably advanced, however, so the Council will finalise its assessment in 2003.

The Northern Territory

The former Northern Territory Government commissioned the Centre for International Economics to undertake a review of the *Optometrists Act* in 2000. The review recommendations include:

- retaining registration;
- requiring registrants to demonstrate continuing competency;
- defining fit and proper person criteria in the Act;
- modifying restrictions on practice to allow the board to authorise any person (regardless of professional classification) to practise aspects of optometry if they demonstrate competence;
- lifting restrictions on the use of drugs to measure the powers of vision for practitioners able to demonstrate competence; and
- removing ownership restrictions.

The former Northern Territory Government accepted the review recommendations in May 2001 and decided to prepare a new omnibus Health Practitioners Registration Bill to replace the Optometrists Act and five other health practitioner registration Acts. The Department of the Chief Minister has advised the Council that the current Government will shortly be asked to consider the review recommendations and a draft omnibus Bill.

The Northern Territory did not meet CoAG's 30 June 2002 deadline for completing the review and reform of its legislation regulating optometrists. The Northern Territory will comply with the CPA clause 5 guiding principle, however, if the current Government implements the review recommendations. Given that the Northern Territory is making progress towards completing its review and reform activity, the Council will finalise its assessment of CPA compliance in 2003.

Table 6.5: Review and reform of legislation regulating the optometry professions

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Optical Dispensers Act 1963* *Optometrists Act 1930*	Entry, registration, title, practice, discipline, ownership	Review was completed December 1999 and released in April 2001. It recommended removing ownership restrictions, limiting reserved practice and extending prescribing rights.	Optometrists Bill 2001 lapsed on proroguing of Parliament; amended was Bill introduced in May 2002. Bill retains ownership restrictions.	Council to finalise assessment in 2003.
Victoria	*Optometrists Registration Act 1958*	Entry, registration, title, practice, discipline, advertising	Review was completed and new legislation assessed under the CPA clause 5(5). The new Act removes most commercial practice restrictions and reservation of practice, and retains reserved titles and investigation of advertising (to ensure it is fair and accurate).	Victoria enacted a new *Optometrists Registration Act 1996* in line with review recommendations.	Meets CPA obligations (June 2001).
Queensland	*Optometrists Act 1974*	Entry, registration, title, practice, discipline, ownership, advertising	Queensland completed a review of its health practitioner registration Acts in 1999. The review report is not publicly available, but a brief summary appears in Queensland's 2001 NCP annual report. The core practices review has been completed, but the Government is yet to decide on the final policy approach.	*Optometrists Registration Act 2001* was passed in May 2001, removing ownership restrictions but preserving practice restrictions subject to review.	Council to finalise assessment in 2003.
Western Australia	*Optical Dispensers Act 1966* *Optometrists Act 1940*	Entry, registration, title, practice, discipline, advertising	Issues paper was released in October 1998. *Key Directions* paper released 2001. Further review of need to regulate optical dispensers under way.	Parliamentary counsel has been instructed to draft legislation.	Council to finalise assessment in 2003.

(continued)

Table 6.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Optometrists Act 1920*	Entry, registration, title, practice, discipline, advertising	Review was completed in 1999. It recommended extending registration to optical dispensers.	The Government is considering the review recommendations.	Council to finalise assessment in 2003.
Tasmania	*Optometrists Registration Act 1994*	Entry, registration, title, practice, discipline, advertising	Review is nearing completion, with the final report in preparation.		Council to finalise assessment in 2003.
ACT	*Optometrists Act 1956*	Entry, registration, title, practice, discipline, advertising	Review was completed in March 2001, recommending revisions to advertising and conduct provisions. Review did not establish an overwhelming benefit from maintaining the scope of practice restrictions.	The Government will release an exposure draft of an omnibus Health Professions Bill 2002 (incorporating review recommendations) in July 2002, and anticipates tabling the final Bill in the Legislative Assembly in late 2002.	Council to finalise assessment in 2003.
Northern Territory	*Optometrists Act*	Entry, registration, title, practice, discipline, ownership	Review was completed in May 2000. Its recommendations included removing ownership restrictions, modifying practice restrictions and retaining title protection.	An omnibus health practitioner Bill is being drafted to replace this and other health practitioner Acts.	Council to finalise assessment in 2003.

Osteopaths

The 2001 NCP assessment found that New South Wales, Victoria, Queensland and Tasmania had met their CPA obligations in relation to the review and reform of legislation regulating the osteopathy profession. This 2002 NCP assessment considers whether the other jurisdictions have met their CPA obligations in this area.

Western Australia

Western Australia is using the *Osteopaths Act 1997* as model legislation in its review of health practitioner legislation. It expects to make minor amendments to the Act as a consequence of the review (Department of Treasury and Finance 2002). In addition, it will retain practice protection for osteopaths for three years, pending the completion of a project to determine core practices (see the section on chiropractors).

Western Australia did not complete the review and reform of its legislation regulating osteopaths by the CoAG deadline of 30 June 2002. Its review and reform activity is considerably advanced, however, so the Council will finalise the assessment in 2003.

South Australia

South Australia registers osteopaths as chiropractors. South Australia's review of its chiropractic legislation recommended establishing separate registers for osteopaths and chiropractors in a new Chiropractors and Osteopaths Act (see the section on chiropractors). South Australia did not meet CoAG's 30 June 2002 deadline for completing its review and reform of the Chiropractors Act 1990. Given that South Australia is preparing a Bill to amend the Act, however, the Council will finalise its assessment in 2003.

The ACT

The ACT included the *Chiropractors and Osteopaths Act 1983* in its review of health practitioner legislation. The review recommendations are outlined in the section on chiropractors. The review did not make any specific recommendations regarding osteopaths. The ACT Government has approved the drafting of legislation that incorporates the review recommendations and expected to introduce the resulting Bill into the Legislative Assembly in late-2002.

The ACT did not complete its reform activity by 30 June 2002. Its review and reform activity is considerably advanced, however, so the Council will finalise its assessment in 2003.

The Northern Territory

The Northern Territory registers osteopaths through the Health Practitioners and Allied Professionals Registration Act. The former Government commissioned the Centre for International Economics to conduct a review of the Act (see the section on chiropractors). The recommendations regarding osteopaths appear consistent with the CPA principles.

The former Northern Territory Government accepted the review recommendations in May 2001 and decided to prepare a new omnibus Health Practitioners Registration Bill to replace the Health Practitioners and Allied Professionals Registration Act and five other health practitioner Acts. The Department of the Chief Minister has advised the Council that the current Government will shortly be asked to consider the review recommendations and a draft omnibus Bill.

The Northern Territory did not meet CoAG's 30 June 2002 deadline for completing the review and reform of its legislation regulating osteopaths. The Northern Territory will comply with the CPA clause 5 guiding principle, however, if the current Government implements the review recommendations regarding the regulation of osteopaths. Given that the Northern Territory is making progress towards completing its review and reform activity, the Council will finalise its assessment of CPA compliance in 2003.

Table 6.6: Review and reform of legislation regulating the osteopathy profession

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Chiropractors and Osteopaths Act 1991*	Entry, registration, title, practice, discipline, advertising	As for chiropractors.	New *Osteopaths Act 2001* was passed in line with review recommendations.	Meets CPA obligations (June 2001).
Victoria	*Chiropractors and Osteopaths Act 1978*	Entry, registration, title, practice, discipline, advertising	As for chiropractors.	New *Osteopaths Registration Act 1996* was enacted in line with review recommendations.	Meets CPA obligations (June 2001).
Queensland	*Chiropractors and Osteopaths Act 1979*	Entry, registration, title, practice, discipline, advertising, business	As for chiropractors.	New *Osteopaths Registration Act 2001* was passed in May 2001. The Act does not contain practice restrictions.	Meets CPA obligations (June 2001).
Western Australia	*Osteopaths Act 1997*	Entry, registration, title, discipline	As for chiropractors.		Council to finalise assessment in 2003.
South Australia	*Chiropractors Act 1991*	Entry, registration, title, practice, discipline, advertising, business	As for chiropractors.	As for chiropractors.	Council to finalise assessment in 2003.
Tasmania	*Chiropractors Registration Act 1982*	Entry, registration, title, practice, discipline, advertising	As for chiropractors.	New *Chiropractors and Osteopaths Act 1997* enacted in 1997.	Meets CPA obligations (June 2001).
ACT	*Chiropractors and Osteopaths Act 1983*	Entry, registration, title, practice, discipline, advertising	As for chiropractors.	As for chiropractors.	Council to finalise assessment in 2003.
Northern Territory	*Health Practitioners and Allied Professionals Registration Act*	Entry, registration, title, practice, discipline	As for chiropractors.	As for chiropractors.	Council to finalise assessment in 2003.

Physiotherapists

The 2001 NCP assessment reported that Victoria and Tasmania had met their CPA obligations in relation to the review and reform of legislation regulating the physiotherapy profession. This 2002 NCP assessment considers whether the other jurisdictions have complied with the CPA obligations in this area.

New South Wales

The Department of Health completed a review of the *Physiotherapists Registration Act 1945* in March 2001. The review recommended adopting a 'title and core practices' model for the regulation of physiotherapists. Under this model, the Act would restrict the titles 'physiotherapist' and 'physical therapist' to registered physiotherapists (although three other titles would no longer be protected). The Act would no longer reserve the practice of physiotherapy, but would restrict the core practices of spinal manipulation and electrotherapeutic treatments to physiotherapists (and certain other health professions).

Other recommendations included removing minimum age requirements for registration, giving the board the power to accredit training courses for the purposes of registration if the courses meet criteria set out in the regulations, and changing the structure of the board and the disciplinary system. The review also recommended that controls on advertising be brought in line with the TPA.

The New South Wales Parliament passed the *Physiotherapists Act 2001* in September 2001, to repeal and replace the Physiotherapists Registration Act in line with the recommendations of the review. The Physiotherapists Act 2001 has yet to be proclaimed. When it commences, New South Wales will meet its CPA obligations in relation to the review and reform of its legislation governing the physiotherapy profession.

Queensland

Queensland physiotherapy regulation is undergoing a reform program common to that for the other health professions (see the section on chiropractors).

Like other Queensland health practitioner registration Acts, the new *Physiotherapists Registration Act 2001* retains practice restrictions from the previous legislation pending the outcomes of an NCP review of core practice restrictions. The Government released the core practices review public benefit test for consultation in July 2001, but is yet to finalise its policy approach following the consultation process (Queensland Government 2002).

Queensland did not finish the core practices reforms by CoAG's deadline of 30 June 2002. Its reforms are consistent with the CPA clause 5 guiding principle, however, and Queensland expected to make legislative amendments to implement the final core practices approach by mid-2002, so the Council will finalise its assessment in 2003.

Western Australia

Western Australia has completed an omnibus review of its health practitioner legislation, and released a *Key Directions* paper outlining the policy framework for replacement legislation (see the section on chiropractors). Western Australia did not complete the review and reform of its physiotherapist legislation by 30 June 2002. The Government has, however, instructed Parliamentary counsel to draft replacement legislation, so the Council will finalise its assessment in 2003.

South Australia

South Australia completed a review of the *Physiotherapists Act 1991* in February 1999. The review recommended:

- requiring physiotherapists to demonstrate continuing competence;
- replacing broad practice restrictions with core practice restrictions;
- publishing a code of conduct (without advertising restrictions);
- removing the requirement for the board to approve business names;
- removing restrictions on the ownership of physiotherapy practices; and
- banning the exercise of undue influence over registered physiotherapists.

The review recommendations appear consistent with CPA principles.

South Australia did not complete the reform of its physiotherapy legislation by the CoAG deadline of 30 June 2002. Given that South Australia has completed the review and prepared a Bill (Government of South Australia 2002), however, the Council will finalise its assessment in 2003.

The ACT

The ACT included the *Physiotherapists Act 1977* in its review of health practitioner legislation. The review recommendations are outlined in the section on chiropractors. The review did not make any specific recommendations regarding physiotherapists. The ACT Government has approved the drafting of legislation that incorporates the review recommendations and expects to introduce the resulting Bill into the Legislative Assembly in late 2002 (ACT Government 2002).

The ACT did not complete its reform activity by 30 June 2002. Given that the ACT's review and reform is considerably advanced, however, the Council will finalise its assessment of CPA compliance in 2003.

The Northern Territory

The Northern Territory registers physiotherapists through the Health Practitioners and Allied Professionals Registration Act. The former Government commissioned the Centre for International Economics to conduct a review of the Act (see the section on chiropractors). The recommendations in relation to physiotherapists appear consistent with the CPA clause 5 guiding principle.

The former Northern Territory Government accepted the review recommendations in May 2001 and decided to prepare a new omnibus Health Practitioners Registration Bill to replace the Health Practitioners and Allied Professionals Registration Act and five other health practitioner Acts. The Department of the Chief Minister has advised the Council that the current Government will shortly be asked to consider the review recommendations and a draft omnibus Bill.

The Northern Territory did not meet CoAG's 30 June 2002 deadline for completing the review and reform of its legislation regulating physiotherapists. The Northern Territory will comply with the CPA clause 5 guiding principle, however, if the current Government implements the review recommendations regarding physiotherapists. Given that the Northern Territory is making progress towards completing its review and reform activity, the Council will finalise its assessment of CPA compliance in 2003.

Table 6.7: Review and reform of legislation regulating the physiotherapy profession

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Physiotherapists Registration Act 1945*	Entry, registration, title, practice, discipline	Review was completed in March 2001. Its 28 recommendations included lessening restrictions on practice and advertising.	*Physiotherapists Act 2001* was enacted in line with review recommendations.	Meets CPA obligations (June 2002).
Victoria	*Physiotherapists Act 1978*	Entry, registration, title, practice, discipline, advertising	Review was completed in 1997. It recommended removing most commercial practice restrictions and practice reservation, and retaining reserved titles and the investigation of advertising (to ensure it is fair and accurate).	*Physiotherapists Registration Act 1998* was enacted in line with review recommendations.	Meets CPA obligations (June 2001).
Queensland	*Physiotherapists Act 1964*	Entry, registration, title, practice, discipline	Queensland completed a review of its health practitioner registration Acts in 1999. The review report is not publicly available, but a brief summary appears in Queensland's 2001 NCP annual report. The core practices review has been completed, but the Government is yet to decide on the final policy approach.	Framework legislation was enacted in December 1999. New *Physiotherapists Registration Act 2001* preserves practice restrictions subject to review.	Council to finalise assessment in 2003.
Western Australia	*Physiotherapists Act 1950*	Entry, registration, title, practice, discipline	Issues paper was released in October 1998. *Key Directions* paper was released June 2001.	The Government has instructed Parliamentary counsel to draft replacement legislation.	Council to finalise assessment in 2003.
South Australia	*Physiotherapists Act 1991*	Entry, registration, title, practice, discipline, advertising, ownership	Review was completed in 1999. It recommended removing ownership and advertising restrictions.	Cabinet has approved drafting amendments. A Bill has been prepared.	Council to finalise assessment in 2003.

(continued)

Table 6.7 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania	*Physiotherapists Registration Act 1951*	Entry, registration, title, practice, discipline, advertising	Tasmania assessed the replacement legislation under through its new legislation gatekeeping process under the CPA clause 5(5).	Act was repealed and replaced by *Physiotherapists Registration Act 1999*.	Meets CPA obligations (June 2001).
ACT	*Physiotherapists Act 1977*	Entry, registration, title, practice, discipline	Consolidated review of all ACT health professional legislation commenced with the release of an issues paper in May 1999 and was completed in March 2001.	The Government will release an exposure draft of an omnibus Health Professions Bill 2002 (incorporating review recommendations) in July 2002, and anticipates tabling the final Bill in the Legislative Assembly in late 2002.	Council to finalise assessment in 2003.
Northern Territory	*Health Practitioners and Allied Professionals Registration Act*	Entry, registration, title, practice, discipline	Review was completed in May 2000. Its recommendations included retaining title protection and removing generic practice restrictions.	Omnibus health practitioner Bill is being drafted to replace this and other Acts.	Council to finalise assessment in 2003.

Podiatrists

The 2001 NCP assessment reported that Victoria and Tasmania had met their CPA obligations with respect to the review and reform of legislation regulating the podiatry profession. The Northern Territory does not regulate the podiatry profession. This 2002 NCP assessment considers whether the other jurisdictions have complied with their CPA obligations in this area.

New South Wales

The Department of Health commenced a review of the *Podiatrists Act 1989* in 1999. The department has prepared a draft of the final review report and the Government is consulting with stakeholders. The review's major proposal is to replace the current whole-of-practice restrictions on podiatry with three core practice restrictions, which would allow podiatrists, nurses and medical practitioners to carry out foot treatments.

New South Wales did not complete the review and reform of its podiatrist legislation by the CoAG deadline of 30 June 2002, but its review and reform activity is well advanced. Given that the Government expected to complete the review and then introduce amending legislation in the current session of Parliament, the Council will finalise its assessment in 2003.

Queensland

Queensland podiatry regulation is undergoing a reform program common to the other health professions (see the section on chiropractors). The changes so far implemented in Queensland are consistent with the CPA clause 5 guiding principle, but as with other Queensland health practitioner registration Acts, the *Podiatrists Registration Act 2001* maintains restrictions on practice pending the outcomes of the core practices review. The Government released the core practices review public benefit test for consultation in July 2001, but has yet to finalise the details of its proposed policy approach following the consultation process (Queensland Government 2002).

Queensland did not complete the core practice reforms by the CoAG deadline of 30 June 2002. The only outstanding area of reform is the practice restrictions, however, and Queensland expected to make legislative amendments to implement the final core practices model by mid-2002, so the Council will finalise its assessment in 2003.

Western Australia

Western Australia has completed an omnibus review of its health practitioner legislation and released a *Key Directions* paper outlining the policy framework for replacement legislation (see the section on chiropractors).

Western Australia did not complete the review and reform of its podiatry legislation by 30 June 2002, but its review and reform activity is advanced. Given that the Government has instructed Parliamentary counsel to draft replacement legislation, the Council will finalise its assessment in 2003.

South Australia

South Australia completed a review of the *Chiropodists Act 1950* in January 1999. The review recommending changing references to chiropody in the Act to podiatry, limiting practice reservation and removing ownership and advertising restrictions. The review recommendations appear consistent with CPA clause 5 guiding principle.

South Australia did not complete the reform of its podiatry legislation by the CoAG deadline of 30 June 2002, but review and reform activity is advanced. Given that the Government has prepared a Bill to implement reforms (Government of South Australia), the Council will finalise its assessment in 2003.

The ACT

The ACT included the *Podiatrists Act 1994* in its omnibus health practitioner legislation review. The review recommendations are outlined in the section on chiropractors. The review did not make any specific recommendations regarding physiotherapists (Department of Health and Community Care 1999). The ACT Government has approved the drafting of legislation that incorporates the review recommendations and expects to introduce the resulting Bill into the Legislative Assembly in late 2002 (ACT Government 2002).

The ACT did not complete its reform activity by 30 June 2002. It appears that the Government will implement its reforms within the next few months, however, so the Council will finalise its assessment in 2003.

Table 6.8: Review and reform of legislation regulating the podiatry profession

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Podiatrists Act 1989*	Entry, registration, title, practice, discipline	Issues paper was released in April 2000. Review is nearing completion.		Council to finalise assessment in 2003.
Victoria	*Chiropodists Act 1968*	Entry, registration, title, practice, discipline, advertising	Review was completed in 1997. It recommended removing most restrictions on commercial practice and the reservation of practice restrictions.	Legislation was replaced with the *Podiatrists Registration Act 1997* in line with the review recommendations.	Meets CPA obligations (June 2001).
Queensland	*Podiatrists Act 1969*	Entry, registration, title, practice, discipline	Review of health practitioner legislation was completed in 1999. The review report is not publicly available, but a brief summary appears in Queensland's 2001 NCP annual report. The core practices review has been completed, but the Government is yet to decide its final policy approach.	Framework legislation was passed in December 1999. New *Podiatrists Registration Act 2001* was enacted in May 2001, preserving practice restrictions subject to review.	Council to finalise assessment in 2003.
Western Australia	*Podiatrists Registration Act 1984*	Entry, registration, title, practice, discipline	Issues paper was released in October 1998. *Key Directions* paper was released in June 2001.	Parliamentary counsel has been instructed to draft a Bill.	Council to finalise assessment in 2003.
South Australia	*Chiropodists Act 1950*	Entry, registration, title, practice, discipline, advertising	Review was completed in 1999. It recommended removing ownership and advertising restrictions and limiting reserved practice.	Cabinet has approved drafting amendments.	Council to finalise assessment in 2003.
Tasmania	*Podiatrists Registration Act 1995*	Entry, registration, title, discipline, advertising	Review was completed in 2000.	Amending legislation was passed in November 2000, removing advertising and ownership restrictions.	Meets CPA obligations (June 2001).

(continued)

Table 6.8 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT	*Podiatrists Act 1994*	Entry, registration, title, practice, discipline	Issues paper was released in May 1999. The review was completed in September 1999.	The Government will release an exposure draft of an omnibus Health Professions Bill 2002 (incorporating review recommendations) in July 2002, and anticipates tabling the final Bill in the Legislative Assembly in late 2002.	Council to finalise assessment in 2003.

Psychologists

The 2001 NCP assessment reported that Queensland and Tasmania had met their CPA obligations in relation to the review and reform of legislation governing the psychology profession. This 2002 NCP assessment considers whether the other jurisdictions have complied with their CPA obligations in this area.

New South Wales

The Department of Health completed a review of the *Psychologists Act 1989* in December 1999. The review recommended retaining entry requirements, registration and title protection. The review found a continuing justification for government intervention to minimise the risks of harm or injury.

The Government introduced a Psychologists Bill in October 2000. Given concerns raised by the profession (New South Wales Government 2001, p. 449), the Government withdrew the Bill. It introduced an amended Bill in 2001, which was passed by Parliament and received the Governor's assent on 11 October 2001. New South Wales anticipated that the *Psychologists Act 2001* would commence on 1 July 2002.

In line with the review report's recommendations, the Psychologists Act 2001 contains an introductory clause to ensure its objectives are clear and continues to reserve the title of psychologists for registered professionals (to provide information to consumers). The Act also removes restrictions on business premises and advertising, overhauls the disciplinary system and improves accountability and administration. These reforms meet the State's CPA clause 5 obligations in relation to the review and reform of legislation regulating the profession of psychology.

Victoria

Victoria replaced the *Psychologists Act 1978* with the *Psychologists Registration Act 2000*. In the 2001 NCP assessment, the Council questioned the ability of the nursing board to impose additional advertising restrictions (see the section on dentistry). In response to the Council's concerns, Victoria amended the Act in April 2002 to require Ministerial approval of any advertising guidelines issued by the board. The Council considers that Victoria has now met its CPA obligations in relation to its psychologist legislation.

Western Australia

Western Australia has completed an omnibus review of its health practitioner legislation and released a *Key Directions* paper outlining the policy

framework for replacement legislation (see the section on chiropractors). Western Australia did not complete the review and reform of its podiatry legislation by 30 June 2002. Review and reform activity is well advanced, however, because the Government has instructed Parliamentary counsel to draft replacement legislation. The Council will finalise its assessment in 2003.

South Australia

South Australia completed a review of the *Psychological Practices Act 1973* in January 1999. The review recommended retaining title protection for psychologists, but removing the ban on unregistered people administering or interpreting intelligence tests or personality tests, instructing in the practice of psychology, and soliciting human subjects for psychological research. The review also recommended removing advertising restrictions. The review recommendations appear consistent with the State's CPA obligations.

South Australia did not complete the review and reform of the Psychological Practices Act by the CoAG deadline of 30 June 2002. Its review and reform activity is progressing, however, and a draft Bill has been prepared (Government of South Australia 2002), so the Council will finalise its assessment in 2003.

The ACT

The ACT included the *Psychologists Act 1994* in its omnibus health practitioner legislation review. The review recommendations are outlined in the section on chiropractors. The review did not make any specific recommendations regarding psychologists (Department of Health and Community Care 1999). The ACT Government has approved the drafting of legislation that incorporates the review recommendations and expects to introduce the resulting Bill into the Legislative Assembly in late 2002 (ACT Government 2002).

The ACT did not complete its reform activity by the CoAG deadline of 30 June 2002. Given that it is, however, preparing legislation to implement the review recommendations, the Council will finalise its assessment in 2003.

The Northern Territory

The Northern Territory registers physiotherapists through the Health Practitioners and Allied Professionals Registration Act. The former Government commissioned the Centre for International Economics to conduct a review of the Act (see the section on chiropractors). The recommendations relating to psychologists appear consistent with the CPA clause 5 guiding principle.

The former Northern Territory Government accepted the review recommendations in May 2001 and decided to prepare a new omnibus Health Practitioners Registration Bill to replace the Health Practitioners and Allied Professionals Registration Act and five other health practitioner Acts. The Department of the Chief Minister has advised the Council that the current Government will shortly be asked to consider the review recommendations and a draft omnibus Bill.

The Northern Territory did not meet CoAG's 30 June 2002 deadline for completing the review and reform of its legislation regulating psychologists. The Northern Territory will comply with the CPA clause 5 guiding principle, however, if the current Government implements the review recommendations regarding psychologists. Given that the Northern Territory is making progress towards completing its review and reform activity, the Council will finalise its assessment of CPA compliance in 2003.

Table 6.9: Review and reform of legislation regulating the psychology profession

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Psychologists Act 1989*	Entry, registration, title, practice, discipline	Review report was completed December 1999. It recommended retaining registration, but removing restrictions on advertising and premises. A number of recommendations provide clarity and accountability.	New *Psychologists Act 2001* was passed in line with review recommendations.	Meets CPA obligations (June 2002).
Victoria	*Psychologists Act 1978*	Entry, registration, title, practice, discipline, advertising, business	Review was completed in 1998. It recommended removing most commercial practice restrictions and the reservation of practice, but retaining reserved title and the investigation of advertising (to ensure it is fair and accurate).	Act was repealed and replaced by the *Psychologists Registration Act 2000*. The new Act was amended in 2002 to require Ministerial endorsement of any advertising restrictions proposed by the board.	Meets CPA obligations (June 2002).
Queensland	*Psychologists Act 1977*	Entry, registration, title, practice, discipline, advertising	Review of health practitioner legislation was completed in 1999. The review report is not publicly available, but Queensland's 2001 NCP annual report contains a brief summary. The core practices review has been completed, but the Government is yet to decide its final policy approach.	Framework legislation was passed in December 1999. New *Psychologists Registration Act 2001* was passed in May 2001. It does not contain practice restrictions.	Meets CPA obligations (June 2001).
Western Australia	*Psychologists Registration Act 1976*	Entry, registration, title, practice, discipline	Issues paper was released in October 1998. *Key Directions* paper was released in June 2001.	Legislation is being drafted.	Council to finalise assessment in 2003.
South Australia	*Psychological Practices Act 1973*	Entry, registration, title, practice, discipline, advertising	Review was completed in 1999. It recommended removing advertising and practice restrictions.	Draft Bill has been prepared.	Council to finalise assessment in 2003.

(continued)

Table 6.9 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania	*Psychologists Registration Act 1976*	Entry, registration, title, discipline, advertising	Review has been completed. Review report is not available to the Council. Tasmania assessed the replacement legislation under its CPA clause 5(5) new legislation gatekeeping process.	Act was repealed and replaced by *Psychologists Registration Act 2000,* which removes advertising restrictions and practice reservation.	Meets CPA obligations (June 2001).
ACT	*Psychologists Act 1994*	Entry, registration, title, practice, discipline	Issues paper was released in May 1999. Review completed in March 2001.	The Government will release an exposure draft of an omnibus Health Professions Bill 2002 (incorporating review recommendations) in July 2002, and anticipates tabling the final Bill in the Legislative Assembly in late 2002.	Council to finalise assessment in 2003.
Northern Territory	*Health Practitioners and Allied Professionals Registration Act*	Entry, registration, title, practice, discipline, advertising	Review was completed in May 2000. Its recommendations included retaining title protection and removing generic practice restrictions.	Omnibus health practitioner Bill is being drafted to replace this and other Acts.	Council to finalise assessment in 2003.

Other health professions

Four health professions are regulated in some, but not all, Australian jurisdictions: occupational therapists, speech therapists, radiographers and practitioners of traditional Chinese medicine.

Governments have recognised for some time the difficulties raised by partially registered professions. They set up a working party on this matter while developing the mutual recognition legislation in the early 1990s. The working party reported that the Australian Health Ministers Advisory Council (AHMAC) supported registration of radiographers in all States but found no case for continued registration of occupational therapists or speech therapists (VEETAC 1993, pp. 35–6).

Occupational therapists

Occupational therapists develop activities to help people with physical, psychological or developmental injuries and disabilities recover from their disease or injury, and (re)integrate into society. Their area of practice overlaps with that of other health professions. Nurses and physiotherapists provide a range of rehabilitative therapy services, for example, as do nonregistered practitioners such as rehabilitation counsellors and diversional therapists. Most occupational therapists are employed by hospitals (36 per cent), community health centres (21 per cent), rehabilitation services (15 per cent) and schools (7 per cent); relatively few (7 per cent) work in private practice (AIHW 2001, p. 8).

Queensland, Western Australia, South Australia and the Northern Territory have legislation regulating occupational therapists. In each case, the legislation reserves the title 'occupational therapist' for registered practitioners. To be eligible for registration, practitioners must hold certain qualifications, be of good character and pay fees. Any registrants who fail to comply with the Act are subject to disciplinary action, perhaps even de-registration. Western Australia also reserves the practice of occupational therapy for occupational therapists.

New South Wales, Victoria, Tasmania and the ACT do not regulate occupational therapists. These jurisdictions rely on general mechanisms such as the common law, the TPA and independent health complaints bodies to protect patients.

The Council of Occupational Therapists Registration Boards considers that regulation of occupational therapists protects the health and safety of the public. It also argues that Australia-wide registration would have several other benefits: it would reduce mutual recognition issues, support effective and inexpensive complaints mechanisms and enable accurate studies of the occupational therapy labour force.

The reservation of the title 'occupational therapist', however, potentially restricts competition between occupational therapists and other practitioners who provide similar services, by making it difficult for these other practitioners to describe their services in ways that are meaningful to potential consumers. In addition, the qualifications, character tests and fees required of applicants for registration restrict entry to the profession of occupational therapy and potentially weaken competition among occupational therapists.

Queensland

Queensland repealed the *Occupational Therapists Act 1979* and replaced it with the *Occupational Therapists Registration Act 2001*. The new Act retains title protection for occupational therapists. It does not include restrictions on practice. Queensland has provided a detailed public benefit rationale to support retaining title protection (Queensland Government 2002). It argues that title protection:

- protects consumers from the risk of being harmed by inadequately trained or incompetent providers, by ensuring that registered providers are competent and subject to complaints/disciplinary process;
- assures consumers that registered occupational therapists, having satisfied registration requirements, are appropriately trained and fit to practise safely and competently;
- provides consumers with information that reduces their search costs by enabling them to differentiate between registered and unregistered providers;
- minimises the volume of complaints to the Government and the Health Rights Commission about occupational therapists, thus reducing the administrative costs of dealing with these complaints;
- promotes public confidence in the Government's ability to protect health consumers because the registration system enables the government to assure consumers that occupational therapists are safe and competent; and
- benefits occupational therapists by giving them more ability than nonregistrants have to promote their services, and by increasing their perceived professional/social status.

Queensland also identified some costs to consumers, in that title reservation limits consumers' ability to gain information about services provided by nonregistrants, and may also increase the cost of occupational therapy due to registrants passing on their registration costs. In addition, it identified costs to the Government from administering the registration legislation and costs to the registered occupational therapists from having to pay the $120 initial registration fee and $181 annual renewal fee.

Queensland considered that the benefits of title protection for occupational therapists are significant, although maybe not as great as for other health professions. It argued that title protection provides net benefits for consumers, particularly in the area of consumer protection, and that this, in combination with the minimal impacts on the Government, the profession and nonregistrants, produces an overall net benefit to the public.

Queensland rejected two less restrictive alternatives — self-regulation and negative licensing — on the basis that they would not provide adequate consumer protection, for the following reasons.

- Self-regulation would not prevent inadequately trained practitioners from calling themselves 'occupational therapists'. Consumers generally assume that practitioners using a professional title have been objectively assessed as competent and fit to practise, and are subject to discipline by an appropriate regulatory body.

- Without title protection, consumers would have difficulty identifying competent occupational therapists.

  - Consumers would have difficulty determining the validity of professional qualifications.

  - Consumers would be unable to rely on membership of a professional association to indicate that a practitioner is competent, because unqualified practitioners could form their own association.

  - Consumers would be unable to rely on referrals from other health practitioners, as practitioners who do not regularly provide referrals to occupational therapists may have limited knowledge about the competency level of the therapists to which they refer patients.

- Consumers would not have access to a complaints/disciplinary system through which they could seek redress against unscrupulous or incompetent providers, as they would under a registration system.

Queensland ruled out a negative licensing approach because it would allow the Government to intervene only after the practitioners had shown themselves to be incompetent in practice, rather than before they started treating patients. It also considered that negative licensing would involve greater costs to the Government resulting from the need to take court action against providers.

The Council considers that the strength of the evidence supporting Queensland's claim of significant consumer protection benefits from protecting the 'occupational therapist' title is questionable. Title protection can reasonably be expected to protect patients from risks of harm only if, first, there is a risk that incompetently performed occupational therapy will result in harm to the patient; and, second, title reservation is likely to reduce the risk of occupational therapy being incompetently performed.

The first criterion may have been met. Legislation reviews in other jurisdictions have identified harms that could result from occupational therapy activities — although, as South Australia's occupational therapy legislation review acknowledged: 'there is not a significant risk of irreversible harm or injury, as in the case of other professions' (Department of Human Services 1999b, p. 9). It is not clear, however, that statutory registration will reduce the risk of these harms occurring.

In theory, title reservation protects the public by assuring patients that practitioners who use particular professional titles possess certain skills and qualifications. By enabling patients to identify competent practitioners, registration schemes reduce the risk that patients will expose themselves to harm by inadvertently engaging an unqualified health care provider.

The nature of occupational therapy and the structure of service provision mean that few patients are likely to make direct contact with a therapist. Most occupational therapy is provided through health facilities such as hospitals, nursing homes, community health centres and rehabilitation services. Patients seek the services of the facility, rather than an 'occupational therapist'. These facilities are well positioned to assess the competency of the staff they employ, and they have a common law duty to ensure that their employees are not employed to undertake activities for which they are not competent.

Some occupational therapists work in private practice. Many of their patients are referred by other professionals. Practitioners who make referrals infrequently may have limited knowledge of the competency of individual therapists, but they can be expected to make use of alternative information sources such as their more experienced colleagues. In addition, the TPA provides some protection for patients against unqualified practitioners holding themselves out to be qualified occupational therapists.

Further, there is considerable evidence to suggest that reservation of the title 'occupational therapist' is not necessary to protect patients. New South Wales, Victoria, Tasmania and the ACT do not regulate occupational therapists. To protect patients, these jurisdictions rely on self-regulation supplemented by general mechanisms such as the common law, the TPA and independent health complaints bodies.

While unqualified practitioners could form their own association only one professional association, OT Australia, represents occupational therapists at the moment. OT Australia administers and markets an occupational therapist accreditation scheme, which helps patients, referrers and employers identify therapists that meet high professional and ethical standards of practice. The scheme also features a process for handling complaints about accredited therapists.

Queensland, like other States, has an independent health complaints body to which complaints can be made about any health provider (registered or not), which provides some protection for patients. Complaints about occupational therapists are rare in Queensland, and are no more frequent in jurisdictions

that do not regulate occupational therapists. Queensland's Health Rights Commission received two complaints about occupational therapists in three years, while the Health Care Complaints Commission in New South Wales did not receive any in the past four years and Victoria's Health Services Commissioner received one in the past five years (Health Care Complaints Commission 2000, 2001; Health Rights Commission 1999, 2000, 2001; Health Services Commissioner 1999, 2000, 2001).

No legislation review has argued that patients in New South Wales, Victoria, Tasmania and the ACT experience unacceptable rates of harm from occupational therapy. AHMAC's finding that there is no case for continued registration of occupational therapists also gives cause for doubting Queensland's public interest case for registration.

The Council considers, therefore, that Queensland's decision to retain title protection for occupational therapists therefore does not comply with the CPA clause 5 guiding principle. The adverse impacts on competition from retaining this restriction are, however, insignificant. The cost of the restriction on the use of the occupational therapist title is trivial because nonregistrants can promote their services using unrestricted titles such as 'rehabilitation consultant', 'diversional therapist' and 'activity supervisor'. Further, the registration system's administration costs are low.

Western Australia

Western Australia reviewed the *Occupational Therapists Registration Act 1980* as part of an omnibus review of health practitioner legislation. It released a *Key Directions* paper in July 2001, after the 2001 NCP assessment. *Key Directions* indicated that the Government will continue to reserve the title 'occupational therapist' for registered practitioners, and that it will draft replacement legislation for occupational therapists. As with other proposed health practitioner legislation, this Act will also retain practice protection for three years to allow for a review of core practices (see the section on chiropractors).

Western Australia's justification for continuing to regulate occupational therapists by maintaining title protection is that it 'accepted that a range of activities practised by occupational therapists pose a potential risk of harm to the public that outweighed the benefits of further competition and therefore should continue to be regulated' (Department of Treasury and Finance 2002). As discussed in the assessment of Queensland's occupational therapy legislation, the Council has doubts about the strength of the evidence supporting claims of significant patient protection benefits from reserving the title of 'occupational therapist'. In addition, there is considerable evidence to suggest that title reservation is not necessary to ensure adequate patient protection.

The Council considers that Western Australia has not met its CPA obligations in relation to the review and reform of occupational therapy legislation. Western Australia has advised, however, that it will reconsider the legislation

review in the context of the core practices review, and at that time conduct a comprehensive net public benefit test for regulating occupational therapists. It expects to commence the core practices review in 2003. The costs of retaining this restriction on competition in the meanwhile are insignificant, as discussed in the assessment of Queensland's legislation.

South Australia

South Australia completed a review of the *Occupational Therapists Act 1974* in February 1999. The review recommended continuing to restrict the title 'occupational therapist' to registered practitioners, for the following reasons.

- Title reservation is a means of overcoming information asymmetry. The review stated 'this is particularly important in the context of occupational therapy, where consumers will often be vulnerable or "socially disadvantaged", due to the nature of their illness, age or disability' (Department of Human Services 1999b, p. 8).

- It provides a mechanism for addressing complaints against unprofessional and/or incompetent occupational therapists. The review noted that each jurisdiction that does not register occupational therapists has an independent health care complaints body to which complaints can be made about occupational therapists. South Australia did not have such a body at the time of the review.

- There is value in the consistent treatment of health professionals. The review suggested that 'all other health professions in South Australia are regulated by the same system of registration and title protection' (Department of Human Services 1999b, p. 13) and that 'consistency throughout Australia is important for … enabling movement between jurisdictions' (Department of Human Services 1999b, p. 13).

South Australia's Cabinet approved the drafting of amendments to the Act, and a draft Bill is being prepared (Government of South Australia 2002).

The Council does not consider that the review's reasoning provides a robust case justifying continued title protection for occupational therapists in South Australia, for the following reasons.

- The benefits of overcoming information asymmetry are unlikely to be significant in the case of occupational therapy.

  - The benefits of providing information through title protection are greatest where an ill-informed choice could result in a significant risk of harm. The review noted that 'in the case of occupational therapy, there is not significant risk of irreversible harm or injury as in the case of other professions' (Department of Human Services 1999b, p. 9).

  - The degree of information asymmetry is low. Approximately half of the occupational therapists in South Australia are employed in the public

sector (Department of Human Services 1999b, p. 9), and many in the private sector undertake work for Government agencies, other employers and WorkCover. Further, people are unlikely to seek occupational therapy services without assistance or referral, suggesting that most consumers are likely to be well informed about the services provided. Even without a referral from another health provider, consumers can access alternative information, such as reputation and membership of professional organisations. Trade practices legislation and common law provide further consumer protection.

- The Government introduced a Health and Community Services Complaints Bill into Parliament in 2001. The Bill lapsed following the calling of the State election. If re-introduced and passed, it would provide South Australia with an independent body to which complaints could be made about occupational therapists, as in other jurisdictions.

- Contrary to the review's assertion that all other health professions are regulated by title protection, several health professions (including speech pathologists, radiographers, Aboriginal health workers, naturopaths and personal care assistants) are not registered professions in South Australia.

- Further, the review concluded 'the system of registration in South Australia is a restriction on interstate applicants entering the market' (Department of Human Services 1999b, p. 22) and noted that South Australia may have to reconsider its position if other States and Territories repeal their occupational therapist legislation.

This raises questions as to whether legislation consistent with the review recommendations meets the CPA clause 5 guiding principle. As discussed in the assessment of Queensland's occupational therapy legislation, the costs of the noncompliance are not significant. Title reservation hinders nonregistrants' ability to promote their services, but the adverse impacts on competition are trivial because nonregistrants can still use unrestricted titles. The administration costs of the registration system are also low and are recovered through fees of $130 for initial registration and $120 for annual renewal.

The Northern Territory

The Northern Territory registers occupational therapists through the Health Practitioners and Allied Professionals Registration Act. The Centre for International Economics reviewed this Act in 2000 (see the section on chiropractors).

The legislation review recommended retaining title protection for occupational therapists. It claimed that title protection has the potential to reduce risks and costs to the Government from service users inappropriately choosing unqualified health care providers. It concluded that restricting the use of professional titles provides a net public benefit, provided the costs of operating the registration system are modest (CIE 2000d, p. 35). The review

did not, however, link the generic benefits of title protection to occupational therapy services in particular.

The former Northern Territory Government accepted the review recommendations in May 2001 and decided to prepare a new omnibus Health Practitioners Registration Bill to replace the Health Practitioners and Allied Professionals Registration Act and five other health practitioner Acts. The Department of the Chief Minister has advised the Council that the current Government will shortly be asked to consider the review recommendations and a draft omnibus Bill.

The Council has considerable doubt that the review's public interest reasoning supports the Northern Territory's decision to retain registration. As discussed in the assessment of Queensland's occupational therapist legislation, the Council has doubts about the strength of the evidence supporting claims of significant consumer protection benefits from reserving the 'occupational therapist' title. There is also considerable evidence that title protection is not necessary, particularly given that four jurisdictions do not regulate occupational therapists and AHMAC found no case for continued registration (VEETAC 1993).

The review recommendation and evidence in the review report did not address either the situation in other jurisdictions or the AHMAC conclusion. On the other hand, the review did note that fair trading legislation is sufficient, in principle, to avoid service users being misled without title protection under the Health Practitioners and Allied Professionals Registration Act (CIE 2000d, p. 35). This raises questions as to whether legislation consistent with the review recommendations meets the CPA clause 5 guiding principle.

The costs of any noncompliance are, however, insignificant. As discussed in the section on Queensland's occupational therapy legislation, title protection hinders nonregistrants' ability to promote their services but the adverse impacts are competition are likely to be negligible given that nonregistrants can still use unrestricted titles. The registration system's administration costs are also low.

Radiographers

Radiographers operate technical diagnostic equipment such as X-ray machines, often in conjunction with medically qualified radiologists or other health professionals. All jurisdictions have controls on radiation emissions levels and the storage and transport of radioactive materials; these controls influence the conduct of people working as radiographers. Queensland, Tasmania and the Northern Territory regulate radiographers under dedicated legislation.

The working party on partly registered occupations, which was set up to help develop the mutual recognition legislation in the early 1990s, reported

AHMAC support for the registration of radiographers in all jurisdictions (VEETAC 1993, p. 36). This recommendation provides a justification for governments to register radiographers. The CPA, however, allows individual governments to choose not to register radiographers if they consider that registration would not provide a net benefit to the community.

The 2001 NCP assessment reported that Queensland had met its CPA obligations for new legislation in relation to the *Medical Radiation Technologists Act 2001*, and that Tasmania had met its CPA obligations in relation to the review and reform of its *Radiographers Registration Act 1976*.

The Northern Territory did not complete the reform of the *Radiographers Act* by the CoAG deadline of 30 June 2002. The Government intends to repeal the Act, and transfer the current practising certificate and permit powers of the board to the licensing powers of the Chief Health Inspector under the *Radiation (Safety Control) Act*. Given that the national review of radiation safety legislation includes the Radiation (Safety Control) Act, the Northern Territory will delay the repeal of the Radiographers Act to avoid double handling the reform (Northern Territory Government, 2002).

The Council accepts that there is a benefit in synchronising these reforms, provided that this approach does not result in unreasonable delays. The Council will finalise its assessment of CPA compliance in 2003.

Speech pathologists

Speech pathologists assess and treat people who have communication disabilities (including speech, language, voice, fluency and literacy difficulties) and people who have physical problems with eating or swallowing.

Queensland is the only jurisdiction with legislation to reserve the use of the title 'speech pathologist' to practitioners registered under the Act. It repealed the *Speech Pathologists Act 1979* and replaced it with the *Speech Pathologists Registration Act 2001* in May 2001. The new Act retained restrictions on the use of the 'speech pathologist' title, but does not restrict the practice of speech pathology.

Queensland has provided a detailed rationale for providing title protection for speech pathologists. Its argument is identical to its case for providing title protection for occupational therapists: that is, that the net benefits to consumers (particularly in the area of consumer protection), together with the minimal impact on the Government, the profession and nonregistrants, produce an overall net public benefit (see the section on occupational therapists).

The Council has some doubt that these arguments provide a robust case that title protection provides significant consumer protection benefits. Title protection may not have a significant effect on the risk of speech pathology

resulting in harms to patients. Many speech pathologists work in hospitals, health centres, community clinics and schools. These facilities are well positioned to assess the competency of the staff they employ, and they have a common law duty to ensure their employees are not employed to undertake activities for which they are not competent.

Most patients accessing the services of speech pathologists working in private practice do so via referrals from other professionals, so they are likely to be well informed. In addition, the TPA provides some protection for patients against unqualified practitioners holding themselves out to be qualified occupational therapists.

Further, there is considerable evidence that reservation of the title 'speech pathologist' is not necessary to protect patients. Queensland is the only jurisdiction to regulate speech pathologists; to protect patients, every other state and territory relies on self-regulation supplemented by general mechanisms such as the common law, the TPA and independent health complaints bodies.

It is not necessary to create a registration system to provide consumers with a mechanism for seeking redress against incompetent speech pathologists. Consumers can register complaints with Queensland's independent Health Rights Commission, which has the power to investigate and conciliate complaints about any health care provider (regardless of whether they are registered or not).

In every other State and Territory, consumers use alternative information sources to indicate competency, such as whether the speech pathologist is a member of the Speech Pathology Australia (the professional association). Speech Pathology Australia limits membership to people with approved primary qualifications in speech pathology. Queensland argues that consumers may be unable to rely on professional association membership as a sign of competency because as unqualified providers could form their own association, but this does not appear to be an issue at the moment. Casting further doubt on Queensland's public interest case for registration is the AHMAC conclusion that no case has been established for continued registration of speech pathologists.

The Council considers, therefore, that Queensland's decision to retain title protection for speech pathologists does not comply with the CPA clause 5 guiding principle. As with registration of occupational therapists, however, the adverse impacts on competition from retaining this competition are insignificant. The cost of the restriction on the use of the 'speech pathologist' title is trivial because nonregistrants can promote their services using unrestricted titles such as 'speech tutor', while the registration system's administration costs are low.

Traditional Chinese medicine

Traditional Chinese medicine involves herbal medicine, acupuncture, massage, and food and exercise therapies. Victoria is the only jurisdiction to regulate traditional Chinese medicine. The Australian Council of Health Ministers agreed that Victoria should take the lead in developing model legislation. Victoria undertook an extensive review process before introducing legislation to the Parliament.

Victoria's *Chinese Medicine Registration Act 2000* contains a reservation of title, entry standards, a requirement to register and a disciplinary process. It also contains commercial restrictions such as a restriction on advertising (to ensure it is fair and accurate) and a requirement for professional indemnity insurance. In addition, the Act contains a new category of restricted goods, with prescribing rights available to only registrants and other health professionals.

The new legislation in Victoria is consistent with the review recommendations in most respects. In the 2001 NCP assessment, however, the Council questioned the ability of the board to impose additional advertising restrictions (see the section on dentistry). In response to the Council's concerns, Victoria amended the Act in April 2002 to require Ministerial approval of any advertising guidelines issued by the board. Given that external approval mechanisms help to ensure any guidelines issued by the board serve the interests of the public and do not sanction anticompetitive conduct, the Council considers that Victoria has met its CPA obligations in relation to this legislation.

Table 6.10: Review and reform of legislation regulating other health professions

Jurisdiction	*Profession*	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria	Traditional Chinese medicine practitioners	*Chinese Medicine Registration Act 2000*	Entry, registration, title, practice, discipline, advertising, insurance, prescribing	The Australian Council of Health Ministers agreed that Victoria should take the lead in developing model legislation. Extensive review was completed in 1999.	Legislation was passed in 2000. Advertising provisions include the ability of the board to impose additional restrictions.	Meets CPA obligations (June 2002).
Queensland	Occupational therapists	*Occupational Therapists Act 1979*	Entry, registration, title, practice, discipline	Review of health practitioner registration Acts was completed in 1999. Review report is not publicly available, but a brief summary appears in Queensland's 2001 NCP annual report. Queensland has completed the core practices review, but is yet to finalise its final policy approach.	Framework legislation is in place. New *Occupational Therapists Registration Act 2001* was passed in May 2001, maintaining registration.	Does not comply with CPA requirements (June 2002).
	Radiographers	*Medical Radiation Technologists Act 2001*	Entry, registration, title, discipline	Review of health practitioner registration legislation was completed in 1999. It recommended registering radiation therapists, medical imaging technologists/radiographers and nuclear imaging technologists.	Framework legislation was passed in December 1999. New *Medical Radiation Technologists Act 2001* was passed in May 2001. It does not restrict practice.	Meets CPA obligations (June 2001).
	Speech pathologists	*Speech Pathologists Act 1979*	Entry, registration, title, practice, discipline	Review was completed in 1999. It recommended retaining registration, including the restriction of title and disciplinary provisions, but removing practice restrictions.	Framework legislation was passed in December 1999. New *Speech Pathologists Registration Act 2001* was passed in May 2001.	Does not comply with CPA obligations. (June 2002).

(continued)

Table 6.10 continued

Jurisdiction	*Profession*	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	Occupational therapists	*Occupational Therapists Registration Act 1980*	Entry, registration, title, practice, discipline	Issues paper was released in October 1998. *Key Directions* paper was released in 2001, indicating that the Government will maintain title protection for occupational therapists.	Parliamentary counsel has been instructed to draft replacement legislation.	Council to finalise assessment in 2003.
South Australia	Occupational therapists	*Occupational Therapists Act 1974*	Entry, registration, title, practice, discipline	Review was completed in 1999. It recommended maintaining registration requirements.	Cabinet has approved drafting of amendments to the Act.	Council to finalise assessment in 2003.
Tasmania	Radiographers	*Radiographers Registration Act 1976*	Entry, registration, title, discipline	Tasmania assessed the replacement legislation through its new legislation gatekeeping process under CPA clause 5(5).	*Medical Radiation Science Professionals Registration Act 2000* was passed in November 2000. The Act does not contain practice or advertising restrictions, but does contain requirements for professional indemnity insurance.	Meets CPA obligations (June 2001).
Northern Territory	Occupational therapists	*Health Practitioners and Allied Professionals Registration Act*	Entry, registration, title, practice, discipline, advertising	Review was completed in May 2000. It recommended retaining title protection and removing generic practice restrictions.	Omnibus Bill is being drafted for introduction into the Legislative Assembly in August 2002.	Council to finalise assessment in 2003.
	Radiographers	*Radiographers Act*	Entry, registration, title, practice, discipline, advertising	Review was completed May 2000. Its recommendations included repealing the Act and transferring powers to the Chief Health Inspector under the Radiation (Safety Control) Act.	The Government has approved the drafting of legislation in line with review recommendations.	Council to finalise assessment in 2003.

Drugs, poisons and controlled substances

Drugs, poisons and controlled substances include over-the-counter medicines, certain chemicals, pharmaceuticals that a doctor or other professional must prescribe and complementary medicines. Legislation at both the Commonwealth and State levels limits the availability of, and access to, drugs, poisons and medications. This chapter focuses on drugs and medicines for human use; agricultural and veterinary chemicals are discussed in chapter 4.

Legislative restrictions on competition

A complex framework of Commonwealth, State and Territory legislation aims to ensure the safe and effective use of potentially poisonous drugs, poisons and controlled substances. The Commonwealth regulates the quality and efficacy of medicinal products (and agricultural and veterinary chemicals) supplied in Australia. State and Territory legislation is more concerned with the safe use of these products. The States and Territories regulate the use of medicines throughout the supply chain and in the community, and also all aspects of household poisons.

Under the Commonwealth *Therapeutic Goods Act 1989,* new medicines must be assessed for safety and entered in the Australian Register of Therapeutic Goods before being supplied in Australia. Subsequently, the National Drugs and Poisons Schedule Committee classifies the substance under various Standard for the Uniform Scheduling of Drugs and Poisons 'schedules' according to its toxicity, purpose of use, potential for abuse and safety in use, and the need for the substance.

Each schedule has labelling, packaging and advertising requirements. The schedules also specify the conditions relating to the sale of the product; for example, schedule 4 pharmaceuticals must be prescribed by a medical practitioner and dispensed by a registered pharmacist (with limited exemptions). Scheduling decisions generally have no effect until they are adopted into State and Territory legislation (Galbally 2001, pp. 7-12).

Regulating in the public interest

Drugs, poisons and controlled substances legislation aims to ensure public safety by reducing accidental or deliberate poisoning, medical misadventures and abuse. Used appropriately, many of the products covered by this legislation have considerable benefits for the community: medicines help to

improve health, for example, while household chemicals make cleaning easier. Drugs, poisons and controlled substances can have serious or even fatal consequences, however, when not used appropriately. Best practice regulation seeks to protect the community, while maintaining reasonable access to these products.

Drugs, poisons and controlled substances regulation may involve input or outcome controls. Typical input controls include wholesaler licensing and restrictions on who may prescribe and dispense particular substances. Outcome controls govern the end use of these substances by, for example, proscribing the misuse of controlled substances. Generally, outcome regulation involves lower costs and fewer restrictions on competition than those of input regulation. With particularly dangerous goods, however, the community protection benefits may justify the high costs of a mix of input and outcome controls. Best practice regulation tailors the scope and nature of the restrictions to a substance's potential for harm.

Review and reform activity

The Commonwealth, State and Territory governments commissioned a national review of drugs, poisons and controlled substances legislation. The review, chaired by Rhonda Galbally, presented its final report to the Australian Health Ministers Conference in early 2001.

The review found sound reasons for Australia to have comprehensive legislative controls that regulates drugs, poisons and controlled substances, notwithstanding the fact that many of these controls restrict competition (Galbally 2001, p. xii). The review also found, however, that:

- the level of regulation should be reduced in some areas and, in other areas, a co-regulatory approach is appropriate;
- the efficiency of the regulatory system and its administration should be improved by:
  - developing a uniform approach to drugs, poisons and controlled substances legislation across jurisdictions,
  - aligning specific drugs, poisons and controlled substances legislation with other related legislation in a rational way that avoids duplication and overlap; and
  - ensuring the legislation is administered efficiently and without imposing any unnecessary costs on industry, government or consumers; and
- nonlegislative measures should be used to complement drugs, poisons and controlled substances legislation.

The review made 27 detailed reform recommendations. The key recommendations included:

- transferring controls on advertising, product labelling and product packaging to Commonwealth legislation, and developing model uniform legislation for all matters related to the supply or drugs, poisons and controlled substances;

- amending the prohibition on advertising prescription medicines to permit informational (but not promotional) advertisements regarding the price of medicines in accordance with statutory guidelines;

- amending prohibitions on the supply of medicines from vending machines to permit the supply of small doses of unscheduled medicines (provided that unsupervised children are unlikely to access the vending machines and that the operators commission independent evaluations after two years);

- streamlining licensing requirements for wholesalers of schedule 2, 3, 4, 8 and 9 products, and removing licensing requirements for sellers of low risk (schedule 5 and 6) products in those jurisdictions that still have them;

- reforming requirements to record the supply of scheduled substances, including repealing recording requirements for the retail supply of schedule 3 medicines and all recording requirements for schedule 5 and 6 poisons in those jurisdictions that still have them;

- repealing State and Territory regulations regarding the supply of clinical samples of medicines and poisons, and instead making compliance with a proposed industry code of conduct a condition of manufacturers' and wholesalers' licences; and

- implementing outcomes-focused licence requirements.

The review's terms of reference require the Australian Health Ministers Conference to forward the review report, and a response to the report, to CoAG. The response is being prepared in consultation with the Primary Industries Ministerial Council because implementation of some of the Galbally review recommendations will impact on regulation of agricultural and veterinary chemicals.

The Health Ministers referred the review report to AHMAC, which established a working party to develop a draft response for CoAG consideration. The working party sought comments on the review recommendations from State and Territory health and agricultural departments and from other stakeholders that contributed to the review. It has prepared a draft response, which has been endorsed by AHMAC and is now being considered by the Primary Industries Ministerial Council. Once any issued raised by the Primary Industries Ministerial Council have been resolved, the final response will be forwarded to CoAG.

Jurisdictions did not complete the review and reform of their legislation governing drugs, poisons and controlled substances by the CoAG deadline of 30 June 2002. Jurisdictions are close, however, to finalising their response to the Galbally review. In addition, jurisdictions have commenced preliminary work to support the implementation of some Galbally review recommendations likely to be endorsed by CoAG that relate only to therapeutic goods and that cannot be affected by the consultation with the Primary Industries Ministerial Council. For example, a working group is developing a code of practice for advertising prescription medicine prices.

As discussed in chapter 15, the Council is concerned by the delay in finalising some national reviews. It recognises that the requirement for intergovernmental consultation slows the process of responding to reviews. In this case, the need to coordinate input from both health and agriculture portfolios has created additional delays. The Council urges jurisdictions, however, to finalise their response to the review and develop firm transitional arrangements to implement reforms within a reasonable period. The Council will finalise its assessment of CPA compliance in the 2003 NCP assessment.

Table 6.11: National review of drugs, poisons and controlled substances

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Therapeutic Goods Act 1989*	Scheduling restrictions on the labelling, packaging and advertising of listed substances, and to whom a product may be sold and under what conditions. Licensing restrictions on the handling, storage and reporting requirements of controlled substances for wholesalers and retailers.	The Galbally Review of Drugs, Poisons and Controlled Substances issued a final report in January 200,1 which concluded that there are sound reasons for comprehensive legislative controls that regulate drugs, poisons and controlled substances, notwithstanding that many of these controls restrict competition. The report found that the level of regulation should be reduced in some areas, the efficiency of the regulatory system could be improved, and nonlegislative measures would be a more appropriate policy response in some areas. The final report was presented to the Australian Health Ministers Conference in early 2001. An Australian Health Ministers Advisory Committee working party is examining the report and (with input from the Primary Industries Ministerial Council) providing recommendations to CoAG.		Council to finalise assessment in 2003.
New South Wales	*Poisons and Therapeutic Goods Act 1966* *Drugs Misuse and Trafficking Act 1985*				
Victoria	*Drugs, Poisons and Controlled Substances Act 1981*				
Queensland	*Health Act 1937*				
Western Australia	*Poisons Act 1964* *Health Act 1911 (Part VIIA)*				
South Australia	*Controlled Substances Act 1984*				
Tasmania	*Poisons Act 1971* *Alcohol and Drug Dependency Act 1968* *Pharmacy Act 1908* *Criminal Code Act 1924*				
ACT	*Drugs of Dependence Act 1989* *Poisons Act 1933* *Poisons and Drugs Act 1978*				
Northern Territory	*Poisons and Dangerous Drugs Act* *Therapeutic Goods and Cosmetics Act* *Pharmacy Act*				

Pharmacy

Pharmacy is the retail arm of the distribution network for restricted drugs and pharmaceuticals. Pharmacies sell medicines and related goods and services such as toiletries, cosmetics and health care products. Pharmacy is a significant retail activity in Australia, with a turnover of around $6 billion per year. Sales of restricted medicines (medicines that only pharmacists may sell) provides about three-quarters of this turnover.

The Commonwealth Government's Pharmaceutical Benefits Scheme (PBS) aims to provide the Australian community with timely, reliable and affordable access to necessary and cost-effective medicines. Under the scheme, consumers purchasing approved medicines pay up to a fixed maximum fee. The Commonwealth meets the rest of the cost of the medicine, which gives it considerable leverage over listed drug prices and helps to limit the overall costs of the scheme.

Australia has about 5000 retail pharmacy outlets, employing about 52 000 people. Access to pharmacy services varies significantly across Australia. In 1996, there were 70.9 pharmacists per 100 000 population in urban areas, falling to 30.8 pharmacists per 100 000 population in remote centres (AIHW 2000).

Compared with other retail businesses, pharmacy profit margins are high. The Productivity Commission found that the average pharmacy operating profit margin in 1991-92 was 8 per cent, compared with an all-retail average of 2 per cent (PC 1999e, p. 13). Commonwealth estimates for 1997 showed profit margins of 7.5–15.6 per cent (Commonwealth of Australia 1999b, p. 6). The relatively high profit margins may indicate a lack of competition in the pharmacy sector.

Legislative restrictions on competition

Pharmacy regulation is closely interlinked with the regulation of drugs, poisons and controlled substances, which is discussed in the previous section. State, Territory and Commonwealth legislation controls or influences virtually every aspect of pharmacy, including who is able to provide pharmacy services, who can profit from them, where they can be provided and (for most prescription medicines) the cost at which they can be sold to consumers (Wilkinson 2000, p. 19).

State and Territory legislation regulates the profession of pharmacy. Each State and Territory has legislation that requires pharmacists to be registered and that controls aspects of the professional and commercial practice of pharmacies. As for other professions, the details of these regulations vary among jurisdictions.

Commonwealth legislation underpins the PBS, supplemented by a contract between the Commonwealth and the Pharmacy Guild of Australia — namely, the Australian Community Pharmacy Agreement. The agreement sets out the terms under which the Commonwealth remunerates pharmacies for dispensing PBS medicines, and the conditions for the approval of new pharmacies and the relocation of existing pharmacies for PBS medicines.

Some restrictions applied to pharmacy raise significant competition issues, including:

- provisions in State and Territory legislation that prohibit the handling and selling of certain pharmaceuticals in a retail environment by persons other than registered pharmacists;
- provisions in State and Territory legislation that restrict how pharmacy businesses can be run, including requirements that pharmacies be owned by registered pharmacists; and
- Commonwealth rules governing the number and location of PBS-licensed pharmacies.

Restrictions on the practice of pharmacy

The States and Territories regulate the pharmacy profession in similar ways to the regulation of other health professions. Each State and Territory requires persons wishing to practice pharmacy to hold appropriate qualifications and be registered by a pharmacy board (or, in the case of Western Australia, the Pharmaceutical Council of Western Australia). Only people who are registered may use the title 'pharmacist'.

State and Territory legislation also prohibits the handling or selling of certain pharmaceuticals in a retail environment by persons other than registered pharmacists. This restriction ensures consumers receive appropriate professional advice before they take potentially harmful medicines. It may also result in greater costs for pharmacy goods due to proprietors' needs to offer salaries sufficient to attract qualified staff pharmacists and to ensure the pharmacy business complies with the regulatory requirements.

As discussed previously, a 2001 Council staff paper sets out how these measures restrict competition and explores many of the issues raised by professional regulation (Deighton-Smith, Harris and Pearson 2001).

Restrictions on business conduct

In all States (but not the ACT or Northern Territory), pharmacy legislation confines the ownership of pharmacies to registered pharmacists, with limited exemptions. The main exemptions are pharmacies owned by friendly

societies, and pharmacies owned by nonpharmacists before the present ownership restrictions came into force.

Other related restrictions include:

- limits on the number of pharmacies that an individual may own (between two and four, depending on the jurisdiction);
- restrictions on the permitted ownership structures (for example, requirements for all shareholders and directors of a body corporate to be registered pharmacists); and
- provisions that prevent nonpharmacists having direct or indirect pecuniary interests in a pharmacy (for example, holding shares in a pharmacy business or profiting from the transactions of that business).

The discussion of the business association and ownership restrictions in the earlier section on health professions provides a guide to the costs and benefits of pharmacy ownership restrictions. A Council staff paper (Deighton-Smith, Harris and Pearson 2001) also examined this issue.

Location restrictions

In accordance with the Community Pharmacy Agreement, a Ministerial Determination under the *National Health Act 1953* limits new pharmacy approvals to pharmacies located in defined areas of community need, and more than a specified distance from existing pharmacies. The Determination also limits approvals for pharmacy relocations. Existing pharmacies may relocate within 1 kilometre of their current site without restriction; beyond that distance, they must maintain a specified distance from existing pharmacies. (There are some exemptions for relocations to shopping centres or private hospitals.)

The location restrictions support the PBS distribution network by ensuring adequate distances between pharmacies, and help to contain the cost of the PBS by limiting access to subsidised medicines. They also limit the opportunity for new entrants to local pharmacy markets, however, which protects inefficient pharmacies from effective competition on price and service, and thus increases costs to the community and limits consumer choice.

National review of pharmacy regulation

CoAG commissioned a major national review of restrictions on competition in State, Territory and Commonwealth pharmacy legislation in 1999. The National Review of Pharmacy Regulation, chaired by Warwick Wilkinson AM, reported to governments in February 2000.

The review considered that the objectives of pharmacy regulation are to protect the public by ensuring that pharmacy services are provided in a competent and accountable manner, and to ensure that all Australians have reasonable equality of access to competent and efficient pharmacy services. Taking these objectives into account, the review sought to set the boundaries of acceptable legislative restrictions on competition. It considered that 'where a jurisdiction's regulation does not extend as far as the Review's recommended line, that jurisdiction should not be compelled to extend that regulation' (Wilkinson 2000, p. 19).

The review made recommendations on the registration of pharmacists, restrictions on the location of pharmacies and restrictions on pharmacy ownership.

- It broadly endorsed the restrictions on who may practise pharmacy. It recommended removing requirements for pharmacists to have particular personal qualities (other than proficiency in English and good character) and introducing competency assurance requirements to the annual registration renewal process.

- It recommended clearly separating the role of governments in setting standards and the role of regulatory authorities in implementing and enforcing those standards. It proposed structuring regulatory boards so they are accountable to the community through government and they focus at all times on promoting and safeguarding the interests of the public.

- It found that the Commonwealth Government has a legitimate interest in ensuring pharmacy numbers provide satisfactory access and do not exceed a level capable of being sustained by taxpayers.

  - It concluded, however, that the most effective approach would be to use remuneration tools to deliver a manageable pharmacy network while promoting vigorous competition among pharmacies. It recommended considering a remuneration-based approach and phasing out new pharmacy location controls by 1 July 2001.

  - It recommended, if a remuneration-based approach is not practicable, revising the current new pharmacy location controls by making the 'definite community need' criterion for new pharmacy approvals more relevant to the needs of underserviced communities, and by exempting new pharmacies in eligible medical centres, private hospitals and aged care facilities from the distance criterion.

- It recommended phasing out restrictions on the relocation of existing pharmacies. It found that these restrictions place a higher priority on protecting pharmacies from competitors than on assuring communities of high quality and efficient services, and was not convinced that they provided a net benefit to the community.

- It considered that there is a net benefit to the community, on balance, from retaining pharmacist ownership of pharmacies.

  – It recommended retaining statutory prohibitions on nonpharmacists having direct proprietary interests in pharmacies (such as partnerships, shareholdings or directorships), but removing restrictions on pecuniary interests (such as joint ventures between pharmacists and supermarkets, preferred supplier arrangements and franchise agreements). It considered that pecuniary interests should be acceptable if the delivery of professional services remains under the control of a registered pharmacist (Wilkinson 2000, p. 62).

  – It recommended retaining exemptions from the ownership restrictions. It considered that friendly society pharmacies should be permitted to operate pharmacies where they currently do so, on the same basis as other permitted operators, and that permitted corporate-owned pharmacies should continue to be restricted under grandparenting arrangements.

  – It recommended removing restrictions on the number of pharmacies that an individual may own. It found that fair trading legislation provides a mechanism for addressing concerns about market dominance and market conduct, while modern information technology enables pharmacist proprietors to be involved with multiple pharmacies without compromising their supervision of their operation.

Review and reform activity

The Council considered the Wilkinson review recommendations in the 2001 NCP assessment but did not conclude an assessment because governments were still considering their responses to the review. It considered, however, that the review's conclusion that ownership restrictions provide a net benefit to the community is based on questionable evidence.

- The review argues that the community benefits from pharmacy owners having professional, as well as a commercial, interests in the safe and competent provision of pharmacy services by their businesses, but:

  – it noted that it is not in the commercial interests of nonpharmacist owners to expose themselves to loss of income/profit or litigation due to their pharmacies being unsafe or incompetently run;

  – it found that friendly society pharmacies and surviving corporate-owned pharmacies in Australia appear to work well, and are competently managed and professionally sensitive pharmacy businesses; and

  - it received evidence that the level of service received at pharmacies is often less than optimal, despite the current ownership controls in the six States.

- The review argued that, nonpharmacist proprietors could not be made readily accountable to regulatory authorities without a major and potentially costly re-adjustment of the regulatory infrastructure. It accepted, however, that it is feasible to hold nonpharmacist owners of pharmacies accountable to regulatory authorities. The review also noted that pharmacies owned by friendly societies are already held accountable to pharmacist registration boards.

- The review considered that promoting ownership by pharmacists encourages pharmacy proprietors to have a more direct relationship with a local community and promote the wise use of medicines, and ensures the maximum social and geographic reach of the community pharmacy network.

  - The review presented no evidence that pharmacies owned by other entities (such as friendly societies) are less likely to participate in public health promotions. The Council notes that corporate owners in other parts of the health sector participate in educational and public health campaigns.

  - The review did not offer any substantive evidence that restricting pharmacy ownership results in a distribution of pharmacies that maximises access to pharmacy services. The Council notes that pharmacists who own pharmacies are not immune to commercial pressures; like other business owners, they will generally seek to provide services in locations suitable to consumers. On the other hand, relaxing ownership controls would allow other entities to establish pharmacies, potentially including some in areas without access to a pharmacy.

- The review argues that the PBS is predicated on the stability of the distribution network, and that relaxing the ownership controls could result in costlier and less effective delivery of PBS medicines. On the other hand, the review notes that the ownership restrictions act as a barrier to greater efficiency in the pharmacy industry, with the result (under the current PBS arrangements) that consumers pay higher PBS dispensing costs than otherwise might be justifiable.

- The review found a significant cost saving from professional pharmacist services such as treating minor illnesses and providing advice on the safe use of pharmaceuticals. It concluded that pharmacist ownership, as well as management, of pharmacies reinforce this professional role and culture.

  - In this regard, the review (and many submissions to it) noted the high standard of care, professionalism and ethical behaviour demonstrated by most pharmacists, including those pharmacists who are employees rather than owners.

- The review appeared to find that ownership restrictions are not necessary to achieve governments' regulatory objectives. It commented that:

> *On balance, it is hard to agree with the argument that the whole operation of community pharmacy in Australia depends overwhelmingly on who may or not operate a pharmacy. Clearly, pharmacies run by friendly societies and grandparented for-profit corporations not only survive, but flourish … That nonpharmacist proprietors are capable of providing safe and competent pharmacy services suggests that allowing new nonpharmacist owners would not necessarily destroy the local pharmacy network and infrastructure to which Australians have become accustomed.* (Wilkinson 2000, p. 46).

CoAG referred the Wilkinson review report to a working group for advice. It asked the working group to consider the review recommendations, bearing in mind factors unique to the practice and regulation of pharmacy in Australia (Commonwealth of Australia 2002). [1]

As discussed in chapter 15, the Council is concerned by the delay in completing review and reform activity in some areas subject to national

[1] The Prime Minister released the working group's response to the review on 2 August 2002 (Howard 2002). The working group's conclusions on key issues are outlined below. The Council will consider the reforms implemented by jurisdictions, in conjunction with the working group response, in the 2003 NCP assessment.

- The working group found the Commonwealth's pharmacy location rules to have the most impact of all the restrictions on pharmacy businesses, and found these rules to be inherently anti-competitive in their operation and effects. It noted that the Commonwealth (while accepting that the review's proposals may well offer real alternatives) opted for an incremental easing of the location restrictions in the third Community Pharmacy Agreement, with an opportunity to review these arrangements in the lead up to the next agreement.

- The working group considered that the review, in coming to the conclusion that pharmacy ownership restrictions confer a net public benefit, was hampered by a lack of evidence and did not seem to consider the different treatment of business ownership in the context of other Australian professions, or overseas experience. Nonetheless, it considered that, given the other significant reforms proposed by the review, the impact of opening up pharmacy ownership could be too disruptive for the industry in the short term. It therefore suggested that CoAG accept the review's recommendation to retain pharmacist-only ownership of pharmacies.

- The working group suggested that CoAG support the review's recommendation to remove restrictions on the number of pharmacies that one person may own. It observed that the review's recognition that pharmacist-supervision requirements ensure safe and competent pharmacy services raises questions about the value of superimposing pharmacist-ownership requirements, let alone further rules limiting the numbers of pharmacies owned. It considered that, on balance, existing mechanisms would safeguard against the ill effects of market dominance, but noted that New South Wales (which remains concerned about the potential for monopolies to arise in regional areas) will further assess this issue as part of the implementation process.

reviews. The Council recognises that the need for effective intergovernmental consultation can slow the process of responding to reviews, but urges governments to demonstrate their commitment to their CPA obligations by implementing reforms to pharmacy legislation within a reasonable period.

Most jurisdictions were waiting for CoAG to respond to the Wilkinson review before they commence reforms to their pharmacy legislation. Four jurisdictions (the Commonwealth, Queensland, Tasmania and the ACT) implemented some reforms in advance, although they have yet to finalise their approach to pharmacy regulation. These jurisdictions' reforms are discussed in the following sections.

Commonwealth

The Commonwealth and the Pharmacy Guild of Australia signed a new Community Pharmacy Agreement in May 2000. This agreement, the third such agreement, operates from 1 July 2001 to 30 June 2005. The Commonwealth subsequently amended the National Health Act during 2000 to implement changes arising from the agreement. The amendments streamline the assessment criteria for new pharmacy location approvals and simplify the definition of community need.

The Commonwealth took into account the advice of the Wilkinson Review in negotiating the third Agreement with the Pharmacy Guild (Wooldridge 2000). The Agreement (and the amendments of the National Health Act) do not, however, phase out the restrictions on the relocation of existing pharmacies as recommended by the Wilkinson review. In addition, the Commonwealth rejected the Wilkinson review's proposal for a remuneration-based alternative to the location controls on new pharmacies.

The regulation impact statement relating to the amendments indicates that the Commonwealth rejected the review recommendation to replace location controls with a remuneration-based approach because it considered that:

- the reforms it implemented address shortcomings in the current location controls and provide a base for longer term deregulation;
- rapid and substantial deregulation would skew already imbalanced pharmacy distributions; and
- changes of this nature could be progressed only against the resistance of pharmacists and possibly the wider community (Wooldridge 2000, p. 28).

The Office of Regulation Review assessed the regulation impact statement, and considered that its analysis of the pharmacy location controls was adequate (PC 2000b, p. 24).

The arguments presented by the Commonwealth Government may justify phasing in reforms over time. They do not, however, provide convincing evidence that it is in the public interest to retain the location restrictions

indefinitely, particularly given the findings of the Wilkinson review. Governments, through CoAG, have yet to finalise their approach to pharmacy regulation (and therefore, to assess the restrictions in their legislation against NCP principles), so the Council will finalise its assessment of CPA compliance in 2003.

The Council notes that the terms of the Community Pharmacy Agreement will delay opportunities to reform the location restrictions until 2005. The Commonwealth, however, has some options for reducing the costs of the current restrictions.

- Clause 35 of the agreement provides for suspending restrictions on establishing pharmacies in aged care facilities following an examination by the parties to the agreement. This provisions allows scope to address one of the review recommendations.

- The Commonwealth could announce further reforms now, to take effect from July 2005. This approach would provide the pharmacy sector with a considerable period of time to adapt to the new environment, removing the need for further 'transitional' delays after 2005.

Queensland

Queensland passed a new *Pharmacists Registration Act 2001* in May 2001, as part of its reforms to all of its health practitioner legislation (see the section on chiropractors). The new Act contains entry and registration requirements, and reserves the title of 'pharmacist' to registered pharmacists. It also contains advertising restrictions that are common to other Queensland health practitioner legislation and that reflect the principles of the TPA. The Act preserves the practice and ownership restrictions from the *Pharmacy Act 1986*, pending the outcomes of the Wilkinson review process.

Queensland has indicated that it envisages further reform of its pharmacy legislation. Until CoAG decides its response to the Wilkinson review, however, Queensland cannot finalise its own response (Queensland Government 2002). The Council will finalise its assessment of CPA compliance in 2003.

Tasmania

Tasmania repealed the *Pharmacy Act 1908* and replaced it with the *Pharmacists Registration Act 2001*. The new Act retains stringent ownership controls from the previous Act, including (contrary to the Wilkinson review recommendations) restrictions on the number of pharmacies in which a registered pharmacist may have a direct or indirect interest.

Tasmania advised the Council that 'the final content of its pharmacy legislation will depend on its assessment of the eventual outcome of the

national review of this legislation, including CoAG's recommendations' (Government of Tasmania 2002). The Council will finalise its assessment of Tasmania's CPA clause 5 compliance in 2003.

The ACT

The Wilkinson review found that the ACT's pharmacy legislation did not rule out the ownership of pharmacies by persons other than pharmacists (although, as in other jurisdictions, the ACT legislation requires restricted pharmaceuticals to be dispensed by registered pharmacists). The review considered that the ACT's pharmacy ownership provisions, as they stood, fell within the boundary of acceptable regulation and that the ACT did not need to amend its Act (Wilkinson 2000, p. 48).

The ACT Legislative Assembly passed a private member's Bill to amend the *Pharmacy Act 1931* in August 2001. The second reading speech indicated that the amendments were intended to ensure pharmacies could be owned and operated only by registered pharmacists or companies controlled and managed by registered pharmacists (Tucker 2001).

The ACT Government has advised the Council that the legislative amendments do not impose any additional obligations with respect to the ownership of pharmacy property. Given the apparent discrepancies between the ACT Government advice, the second reading speech and the Wilkinson review finding, the Council asked the ACT Government to provide legal advice to clarify the effect of the amendments. The ACT has advised the Council that the ACT Government Solicitor's Office is preparing this advice.

The ACT Government is finalising a Bill to replace its existing health profession Acts, including the Pharmacy Act (see the section on chiropractors). The Government advised that this Bill is likely to address most of the Wilkinson review findings (Government of the ACT 2002, p. 33). The Council will complete its assessment in 2003.

Table 16.12: Legislation regulating the pharmacy profession

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth		PBS approvals (location of pharmacies).	National Review of Pharmacy Regulation (Wilkinson review) was completed in February 2000. The review recommended retaining registration, the protection of title, practice restrictions and disciplinary systems (although with minor changes to the registration systems for individual jurisdictions). Further, the review recommended removing controls on the relocation of existing pharmacies, considering remuneration-based alternatives to new pharmacy location controls, maintaining ownership restrictions and removing business licensing restrictions. CoAG referred the Wilkinson review to a senior officials' working party. The working party has completed it report. CoAG has yet to release its formal response.	The third Community Pharmacy Agreement between the Commonwealth and the Pharmacy Guild of Australia maintains location restrictions for new pharmacies and relocation restrictions for existing pharmacies (although with some simplification and amendment).	Council to finalise assessment in 2003.
New South Wales	*Pharmacy Act 1964*	Entry, registration, title, practice, discipline, advertising, business ownership, licensing			
Victoria	*Pharmacists Act 1974*	Entry, registration, title, practice, discipline, advertising, business ownership, licensing		Victoria commenced a further review in August 2001 (to examine implementation options for Wilkinson review recommendations and to assess other outstanding restrictions) but has been unable to proceed with the identification or implementation of reforms without a CoAG response to the Wilkinson review.	

(continued)

Table 16.12 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Pharmacy Act 1976*	Entry, registration, title, practice, discipline, advertising, business ownership	(see previous page)	Queensland passed a new *Pharmacists Registration Act 2001* in May 2001, but reserved ownership and practice restrictions pending the outcome of the CoAG working party process.	(see previous page)
Western Australia	*Pharmacy Act 1974*	Entry, registration, title, practice, discipline, advertising, business ownership, licensing, residence			
South Australia	*Pharmacy Act 1991*	Entry, registration, title, practice, discipline, advertising, business ownership, licensing			
Tasmania	*Pharmacy Act 1908*	Entry, registration, title, practice, discipline, advertising, business ownership		Act was repealed and replaced with *Pharmacists Registration Act 2001,* which retains ownership restrictions from the earlier Act pending the outcomes of the national review process.	
ACT	*Pharmacy Act 1931*	Entry, registration, title, practice, discipline		Act was amended by the *Pharmacy Amendment Act 2001.*	
Northern Territory	*Pharmacy Act 1996*	Entry, registration, title, practice, discipline			

Other health legislation

Commonwealth health legislation

Commonwealth legislation regulating therapeutic goods and the pharmaceutical benefits scheme is discussed in the section on pharmacy, drugs, poisons and controlled substances. In addition, the Commonwealth administers the Medicare health insurance system and regulates private health insurance through the *Health Insurance Act 1973* and the *National Health Act 1953*.

Review and reform activity

The Council has previously identified NCP questions relating to the Commonwealth's administration of the legislation regulating Medicare and private health insurance. These questions relate to:

- restrictions on access to Medicare provider numbers;
- the pathology licensed collection centre scheme;
- restrictions on the services covered by private health insurance; and
- community rating of private health insurance premiums.

Medicare provider numbers

The Commonwealth introduced legislation in 1996 that restricts access to Medicare provider numbers, with the aim of increasing the quality of general practice, restraining increasing Medicare costs induced by an increasing supply of general practitioners, and promoting a fairer distribution of medical practitioners in rural and remote areas. The *Health Insurance Amendment Act (No. 2) 1996* requires new medical graduates to complete additional training to gain access to Medicare provider numbers. This restricts entry to private medical practice, however, thereby restricting competition.

The CPA requires governments to have evidence to demonstrate that all new legislation that restricts competition complies with the CPA clause 5 guiding principle. In the 1997 NCP assessment, the Council found that the Commonwealth had not provided a robust case to show that the new restrictions on access to Medicare provider numbers are in the public interest. It also found that the Commonwealth appeared not to have examined

alternative, nonrestrictive, options for achieving the objectives of the legislation, as required by the CPA clause 5 guiding principle.

The Commonwealth's 1998 NCP annual report noted that the legislation, while not assessed under the new legislation 'gatekeeping' process, contained review mechanisms allowing public interest matters to be assessed. The Act included a sunset clause and established a Medical Training and Review Panel to report on employment opportunities for medical practitioners (Commonwealth of Australia 1999a, p. 138). In addition, the Commonwealth subjected the legislation to a mid-term review by an independent consultant (although this review did not specifically address NCP matters).

The Commonwealth amended the Health Insurance Act in 2001 to repeal the sunset clause. It prepared a regulation impact statement, which the Office of Regulation Reform approved. The regulation impact statement supported retaining the Medicare provider number restrictions, which were found to have improved access to general practitioners in rural areas and delivered substantial ongoing savings to the Government. It also found that removing the restrictions would not necessarily result in lower costs to individual consumers; medical practitioners who have not undergone the additional training attract lower Medicare rebates for their services, so patients could be asked to pay more than they would if they saw a practitioner with postgraduate qualifications.

The Council considers that the evidence provided by the regulation impact statement satisfies the Commonwealth's CPA obligation to have evidence demonstrating that the restrictions on access to Medicare provider numbers provide a net benefit to the community. The Commonwealth has not clearly demonstrated that its approach involves the least restriction of competition necessary to achieve its health care objectives. The Council notes, however, that the creation of an extra 50 postgraduate training places in the 2000 Federal Budget reduced the degree to which the requirement to undergo postgraduate training restricts competition.

Pathology collection centre licensing

The Commonwealth licenses pathology outlets under part IIA of the Health Insurance Act (the licensed collection centre scheme). Only licensed pathology outlets may provide services eligible for Medicare benefits. The Commonwealth limits the number of licenses that it issues. Regulations supporting the scheme also prevent entry by new service providers unless they meet conditions (including volume quotas), thus protecting licensees from competition. These barriers to entry have created a capital market for collection centre licences.

The Commonwealth added part IIA of the Health Insurance Act to its legislation review schedule in 1998-99. The Department of Health and Ageing commenced the review in 2000, releasing an issues paper early that year and receiving submissions until 30 June 2000. The department intends releasing the review report to stakeholders in July 2002, and finalising the review in

late 2002. Concurrent to the review, the Commonwealth introduced legislation to the Parliament in early 2000 that simplifies aspects of the licensed collection centre scheme while retaining licensing. Parliament passed this legislation in June 2001.

The Commonwealth will not complete the review and reform of its legislation regulating pathology by 30 June 2002. The Council acknowledges that the significant resource demands of the legislative review program mean that legislation reviews added to the schedule late may not be completed by the CoAG deadline. Given that the Commonwealth has introduced some reforms, and will soon complete the review, the Council will finalise its assessment of the Commonwealth's CPA compliance in the 2003 NCP assessment.

Restrictions on services covered by private health insurance

Private health insurance generally covers patients for some or all of the costs of hospital treatment as a private patient. In addition, people can purchase ancillary cover, which provides rebates for services out of hospital that are generally not provided under Medicare.

Commonwealth regulation limits the hospital services that private health funds may pay rebates for. Health funds may only pay rebates for hospital services provided by or on behalf of, medical practitioners, midwives and dental practitioners. This limitation restricts competition by preventing other health providers (such as podiatrists) negotiating with private health funds to attract a rebate for the substitute in-hospital services that they provide. The Council raised this matter with the Commonwealth in December 2000.

The Commonwealth Treasury has since advised the Council that the Department of Health and Ageing is establishing trials to assess the suitability of including 'podiatric surgery' within the definition of 'professional attention' under the Health Insurance Act. This would allow podiatrists to negotiate with private health funds to attract rebates for in-hospital podiatric surgery, as well as for podiatric treatments provided under ancillary insurance cover. Trials are underway in Western Australia and negotiations are continuing to establish a trial in Victoria. These trials will run for at least twelve months.

Given that the Commonwealth is investigating the merits extending the definition of 'professional attention' to include podiatric surgery, the Council will finalise its assessment of compliance with the CPA clause 5 guiding principle in 2003. The Council notes that the Department of Health and Ageing working party is investigating the regulation of the private health insurance industry (Patterson 2002). This may be a suitable vehicle for considering further extension of the definition of 'professional attention' to include other services provided by different health professions.

Community rating of private health insurance

Community rating requirements under the National Health Act prevent health funds setting different premiums for members on the basis of their health status, age and claims history. As a result, health funds are unable to quote differential premiums that reflect different levels of risk.

The Commonwealth referred the private health industry in Australia to the (then) Industry Commission for review in 1996. The Industry Commission reported in 1997. It found that major regulatory constraints on private health insurance funds — notably, community rating — make the market unattractive to enter and limit choice within the market (IC 1997, p. xxxiii). It found that the community rating system (together with the supporting 'reinsurance pool' arrangements) has:

- dulled the incentive for funds to reduce costs;
- lead to a proliferation of products designed to target particular groups while precluding development of some products that would otherwise be in demand; and
- heightened adverse selection (whereby low risk people have been leaving private health insurance funds while those expecting to make claims have been joining).

The Industry Commission inquiry recommended a series of incremental reforms to private health insurance regulation, including the adoption of 'lifetime community rating' to ameliorate adverse selection. The Government accepted most of the review recommendations and has implemented a series of legislative changes since 1998.

The inquiry's terms of reference prevented it examining the Government's policy of retaining community rating, however, so it did not consider the fundamental question of whether the community rating provisions comply with the CPA tests. Consequently, in the 1997 NCP assessment, the Council found that the Commonwealth had not met its CPA obligations in relation to the community rating provisions in its legislation regulating private health insurance. In the 2001 assessment, the Council stated that it would consider this matter further in 2002.

During the course of the 2002 assessment, the Commonwealth advised the Council that it considers that community rating provides a net community benefit by ensuring high-risk groups (such as the elderly and chronically ill) are able to afford private health insurance and do not rely entirely on the public health system. The Commonwealth also argued that the adverse impacts on competition of community rating are limited as it is a regulatory requirement that applies equally to all private health insurance funds and it does not prevent funds from competing on the basis of price or product type.

The Council acknowledges that the Commonwealth has implemented many of the reforms recommended by the Industry Commission inquiry. In addition,

the Minister for Health and Aged Care has announced the Government's intention to reform the regulation of the private health industry. The Minister has asked a Department of Health and Ageing working party to report by mid-2002 on whether the regulations are delivering the best outcomes for fund members and on ways of ensuring that health funds are as efficient and competitive as possible (Patterson 2002). This may result in further reforms to restrictions on competition in the legislation regulating private health insurance.

Given the Government's intention to reform private health insurance regulation, the Council will assess this matter again in 2003. Private health insurance, however, is one component of an interdependent health care system. The need for community rating of private health insurance, and its costs and benefits, ultimately depend on the nature and role of the public health system. The Industry Commission found, for example, that the equity grounds for community rating are stronger where there is no public system but are relatively weak where individuals can fall back on a free publicly funded health system for essential care (IC 1997, p.315). This means it may not be possible to demonstrate that community rating complies offers an overall net public benefit without examining the role of private health insurance within the health care system.

Table 6.13: Review and reform of Commonwealth health legislation

Legislation	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
National Health Act 1953 (part 6 and schedule 1) *Health Insurance Act 1973* (part 3)	Via community rating of private health insurance prevents insurers from setting different terms and conditions for insurance on the basis of sex, age or health status.	Productivity Commission completed a review of private health insurance in 1997. The review was specifically prevented from examining community rating.	Lifetime Health Cover was implemented in 2000, amending community rating to permit a premium surcharge for new entrants based on age at entry.	Council to finalise assessment in 2003.
National Health Act 1953 *Health Insurance Act 1973*	Limits the in-hospital services for which health funds may offer rebates to services provided by or on behalf of medical practitioners, midwives and dental practitioners.	The Department of Health is conducting trials to assess the suitability of including 'podiatric surgery' within the set of eligible in-hospital services. The Department is also conducting a review of private health insurance regulation.		Council to finalise assessment in 2003.
Human Services and Health Legislation Amendment Act (No. 2) 1995 *Health Insurance Amendment Act (No. 2) 1996*	Prevents new medical graduates from providing a service that attracts a Medicare rebate unless they hold postgraduate qualifications, are studying towards such qualifications or work in rural areas.	Mid-term review of provider number legislation completed in December 1999. It recommended removing the sunset clause on the legislation and addressing some training issues. The Medical Training Review Panel provides annual reports to Parliament on medical training and employment options.	The 2000 Federal Budget announced changes to general practice training, including more training positions. Act was amended in 2001 to remove the sunset clause.	Meets CPA obligations (June 2002).
Health Insurance Act 1973 (Part IIA)	Pathology collection centre licensing prevents entry to the market.	NCP review was commenced in 2000 and is due to be completed in mid-2002.	Legislation to modify the licensed collection centre scheme was introduced in June 2001.	Council to finalise assessment in 2003

Population health and public safety

States and Territories have a wide variety of population health legislation aimed at reducing the risks of infection. These laws include the licensing of facilities that provide health services and other activities that could pose a potential public health risk, and procedures for the use of potentially dangerous material and procedures.

The State and Territory legislation uses a variety of mechanisms to minimise the risk of harm to the community. To some extent, the different mechanisms reflect jurisdictions' different assessments of population health concerns; for example, Queensland has a number of laws relating to mosquitoes but Tasmania has none, reflecting the climatic differences between the two States.

Legislative restrictions on competition

Each jurisdiction has several legislative instruments scheduled for review that are concerned with maintaining of public health and safety. These include:

- licensing of occupational groups that undertake potentially dangerous activities, such as skin piercing;
- licensing of premises such as hospitals, aged care facilities and restaurants;
- prescriptive procedural legislation, such as legislated infection control procedures; and
- outcome measures with penalties for breaches, such as fines for serving contaminated food.

There is occasional overlap between the general objectives of public health legislation (to protect community health and safety) and environmental protection legislation. This overlap can require persons to meet standards set in two or more legislative instruments. The review and reform process has resulted in a number of governments discovering duplicated regulation either within their own jurisdiction or between levels of government. Governments subsequently repealed several laws to reduce this duplication and removed anticompetitive aspects of other public health legislation.

No significant concerns with population health legislation have been raised with the Council.