7 Legal services

Legal services have an important role in ensuring justice according to the law and in the daily operations of citizens and businesses. Legal practitioners provide services in areas such as finance, housing, wills, compensation for injury, and family law. The legal services sector has an annual turnover of more than $6 billion per year and employs more than 70 000 people (ABS 2000c).

Legislative restrictions on competition

A range of laws, regulations, professional rules and court responsibilities govern legal practitioners and how they operate. Each State and Territory has legislation to facilitate the administration of justice and to protect consumers by limiting who may practice as a lawyer and how legal practitioners may represent themselves.

Legal practitioner legislation requires practitioners to meet certain character, training and practice experience requirements before they can enter the legal profession, and to be licensed by a registration board while they continue to practice. It also reserves for registered legal practitioners the exclusive right to perform certain types of legal work. In addition, it regulates the business conduct of registered legal practitioners.

The National Competition Council released a staff paper in 2001 that sets out how these measures restrict competition and explores many of the issues raised by professional regulation (Deighton-Smith, Harris and Pearson 2001). The paper highlights the importance of clearly identifying regulatory objectives, linking any restrictions on competition to these objectives and then (by applying the best practice principles of transparency, consistency and accountability) ensuring that the restrictions represent the minimum necessary to achieve the objective.

The 2001 National Competition Policy (NCP) assessment reported that the Council considers there is a public benefit case to support, in principle, the licensing and registration of legal practitioners. Other restrictions may raise competition issues, however. These restrictions relate to:

- reserved areas of practice;
- restrictions on advertising;

- restrictions on legal practice ownership; and
- the monopoly provision of professional indemnity insurance for solicitors.

In assessing compliance with Competition Principles Agreement (CPA) clause 5 obligations, the Council looks for robust public interest justifications for these restrictions, and for regulatory outcomes that meet best practice principles outlined (as listed above).

Reservation of practice

State and Territory laws reserve certain legal work for registered legal practitioners by making it an offence for unqualified persons to supply such services. This reservation of practice helps to protect the public by ensuring legal work is carried out by qualified practitioners who are subject to a disciplinary system.

Practice reservations can increase costs to consumers, however, by limiting the number of people who can carry out legal work. Conveyancing fees in New South Wales fell 17% between 1994 and 1996, after the Government removed the legal profession's monopoly on conveyancing (and removed price scheduling and advertising restrictions). In addition, the absence of competition from nonlawyers may act as a disincentive to innovate in the delivery of legal services.

The work reserved for lawyers varies across jurisdictions, but generally includes the drawing up or preparation of wills or documents that affect rights between parties, affect real or personal property or relate to legal proceedings, and probate work. Reservation of broadly defined practices can raise competition issues by because it can mean that some lower risk services are inappropriately restricted. Broad practice reservations can prevent appropriately trained nonlawyers performing some work that they could undertake without undue risk to the community.

All jurisdictions except Queensland, Tasmania and the ACT permit conveyancers to settle real estate transactions. (Legislation regulating conveyancers is assessed in chapter 8). Most legal practitioner legislation, however, draws little if any distinction between other services (such as the drafting of simple wills) that appropriately trained nonlawyers could perform and complex technical matters that require legal training. Some legislation reviews have identified scope to open up additional areas of reserved legal work to competition from nonlawyers.

Advertising restrictions

Advertising allows lawyers to inform potential clients about the services they offer and their terms, thus assisting consumer choice. Advertising controls

restrict competition by making it harder for new entrants to make themselves known to potential clients, and harder for consumers to compare the services and prices being offered. They tend to hinder innovation, discourage price competition and reduce consumer choice.

Legal practitioner legislation and professional conduct rules traditionally contained stringent advertising controls to ensure that consumers were not misled by deceptive advertising and that the legal profession was not brought into disrepute. In the late 1980s and early 1990s, advertising controls were relaxed. Generally, the only remaining restriction on advertising by lawyers is that it should not be false, misleading or deceptive, in line with the requirements of the *Trade Practices Act 1974* (TPA) and equivalent State and Territory fair trading legislation. The Northern Territory also has rules dealing with advertised prices and Western Australia has advertising guidelines.

New South Wales and Queensland have recently introduced new restrictions on advertising personal injury legal services, in response to rising public liability insurance premiums. To comply with the CPA clause 5 guiding principle, government must support these restrictions on advertising with a public interest case that establishes a clear link between the regulatory restriction and the reduction of the identified harm.

Restrictions on business ownership and association

Most States and Territories restrict legal practitioners' ability to share profits with nonlegal partners. These restrictions make it difficult for legal practitioners to form multidisciplinary practices with other professionals such as accountants, conveyancers and management consultants. They may also create an entry barrier for new firms or limit expansion by existing firms, by limiting the source of potential funds available to them.

The legal profession historically used the need to preserve the confidentiality and trust of the lawyer/client relationship to justify controls over the ownership and organisation of legal practices. It argued that lawyers must be able to pursue their clients' interests to the exclusion of the interests of third parties involved in the practice. It also argued that nonlawyer owners or partners would not be bound by the legal practitioners' professional obligations, for example, to decline to act where there is an actual or potential conflict of interest.

Ownership restrictions potentially impose significant costs on legal practices and thus on consumers of legal services, however. They make decision-making complex, and may unnecessarily complicate management structures. They also limit legal firms' ability to raise capital for expansion or entry into other markets (Shaw 2000, p. 7624). Further, legislation reviews have found limited evidence that ownership restrictions help to maintain professional

ethics. Maintaining a clear focus on the accountability of individuals may be more effective than restricting ownership in achieving professional legal objectives.

Professional indemnity insurance

Professional indemnity insurance is designed to meet client or third party claims of civil liability that arise from practitioners' negligence or error. In all jurisdictions, registered legal practitioners are required to hold professional indemnity insurance. In some jurisdictions, barristers may obtain their professional indemnity insurance from a selection of approved providers. Solicitors are usually required to obtain this insurance from a single body on the terms and conditions set by that body.

Some jurisdictions exempt national law firms from the requirement to insure through the approved monopoly supplier if they can show that they have appropriate cover in place. These firms are effectively free to choose their insurer from the options provided by different States and Territories. Legal firms have demonstrated sensitivity to premiums by seeking to insure with low cost schemes. Last year, a number of prominent New South Wales firms insured with Victoria's professional indemnity insurance scheme because it offered lower premiums than those of the New South Wales scheme (Department of Treasury and Finance 2002). Chapter 9 examines the competition questions associated with statutory insurance monopolies.

Harmonising legislation regulating the legal profession

In March 2002, the Standing Committee of Attorneys-General agreed on the need for uniform rules to govern the legal profession. It has asked a working group to develop policy options for various aspects of legal profession regulation, including practice reservation, professional indemnity insurance requirements and business structures. The working group is due to submit the policy proposals to a meeting of the standing committee on 25 July 2002, with the aim of developing model provisions for Ministerial consideration by November 2002 and enacting legislation during 2003.

Consistent regulation would reduce barriers to competition across State and Territory boundaries, and significantly enhance competition in the legal services industry at a national level. Some jurisdictions have delayed part or all of their review and reform activity, given the national model laws project. They consider that the benefits of ensuring national consistency and avoiding double-handling of reform implementation outweigh the costs of delaying some reforms for a short period beyond the CoAG deadline of 30 June 2002.

The Council accepts that there is a benefit in this approach, provided that it does not result in unreasonable delays.

Review and reform activity

In most jurisdictions, review and reform of legislation regulating legal practitioners is still under way (table 7.1). The 2001 NCP assessment reported that Victoria had met its CPA clause 5 obligations in relation to legislation regulating legal practitioners, except for the statutory monopoly over professional indemnity insurance (where the Council was conducting further work with Victoria). Since that assessment, New South Wales has completed its review and implemented significant reforms; Queensland commenced assessing its legislation and proposed a reform package against the CPA clause 5 guiding principle; South Australia and Tasmania have completed reviews; and Western Australia and the Northern Territory are close to finalising their reviews.

As discussed in Chapter 9, the Council considers that the current uncertainty in the insurance environment, and the work governments are undertaking on insurance-related issues, warrants deferring to 2003 the final assessment of governments' compliance with their CPA clause 5 obligations in relation to legislative restrictions on insurance markets. This 2002 assessment therefore considers the restrictions on competition in legal practitioner legislation that do not relate to insurance. The Council will finalise its assessment of statutory legal professional indemnity insurance monopolies, and advertising restrictions aimed at maintaining affordable public liability insurance premiums, in 2003.

New South Wales

New South Wales completed a review of its *Legal Profession Act 1987* in 1998. The Attorney-General's department conducted the review, with advice from a reference group including representatives of consumers, practitioners, the insurance industry and the courts. The review recommended giving further consideration to removing the reservation of certain categories of legal work. It considered that the criteria for any reservation of work should be based on the potential harm to the public if a nonlawyer undertakes that work. It recommended reserving functions for lawyers where there is a genuine and necessary requirement for legal professional skills, but allowing appropriate competition among various professions in other areas.

The review recommended removing the rule requiring solicitors to have majority control of multidisciplinary practices, and allowing solicitors and barristers to form incorporated practices under the Corporations Law. In both cases, however, the review considered that the regulatory system should ensure that solicitors' professional and ethical obligations are maintained,

and that insurance and fidelity cover is at least as favourable to clients as in the case of other solicitors.

The review recommended deregulating the market for professional indemnity insurance for solicitors, subject to appropriate client protection through minimum standards for policies, run-off cover and indemnity. The review found general support for deregulation, but suggested using a levy on premiums to fund the Law Society and Bar Association to provide risk and practice management training, because this is also an important mechanism for containing the costs of legal services.

The review did not find justification for reintroducing controls on advertising. It noted that in some areas of practice, such as wills and conveyancing, advertising may have facilitated competition. It found limited evidence of harm to the public as a result of advertising restrictions being removed, and considered that the public benefit conferred by freedom to advertise outweighs any such harm.

Implementation of review recommendations

The New South Wales Government is progressively implementing reforms. It amended legislation in October 2000 to allow solicitors to incorporate. Its incorporation model requires individual solicitors (but not their incorporated practices) to hold practising certificates and requires incorporated legal practices to have at least one solicitor on their board of directors (New South Wales Government 2001).

In May 2002, the Parliament passed legislation to implement a range of further reforms, including:

- providing for voluntary membership of professional associations;
- allowing accreditation of training schemes not conducted by the professional associations;
- allowing solicitors to practise in multidisciplinary partnerships despite anything to the contrary in Law Society rules;
- requiring professional rules to be exposed for public comment before being made; and
- allowing lawyers from other States to practice in New South Wales even if their jurisdiction does not have complementary legislation.

The Government rejected the recommendation to deregulate professional indemnity insurance; instead, it is drafting legislation to establish a new mutual fund to cover all solicitors (except those with exemptions), which it anticipates would be administered by an insurer selected by an independent board (New South Wales Government 2002; see also chapter 9 on insurance and superannuation services).

New restrictions on advertising

Recent changes in New South Wales restrict the nature of advertising of personal injury services by legal practitioners. Regulations introduced in May 2001 restricted advertising of workers compensation services. In March 2002, the Legal Profession (Advertising) Regulation 2002 extended these restrictions to cover all personal injury services. The regulation states that lawyers must not advertise personal injury services except by means of a statement that:

- states only the name and contact details of the lawyer, together with information as to their area of practice or speciality; and
- is published only by certain allowable methods such as printed publications, and electronic databases and directories on the internet.

The regulation does not permit personal injury services advertisements in hospitals or on the radio or television. It also does not permit advertisements for personal injury services to include information about the availability of 'no-win no-fee' arrangements. Lawyers registered in New South Wales can be found guilty of professional misconduct if they contravene the advertising regulations, with penalties ranging from reprimands to deregistration.

Restrictions on advertising restrict competition by making it harder for newly qualified practitioners, and practitioners entering new markets, to inform potential clients of their services and terms. The Council recognises that, although Legal Profession (Advertising) Regulation restricts advertising of personal injury services, it does not prohibit it and nor does it constrain advertising of other legal services — which limits its adverse impacts on competition. The competition impacts that do arise may be justified if the restrictions are necessary to meet the Government's regulatory objectives.

The New South Wales Government acknowledges that the advertising restrictions raise competition issues, but considers that they provide a net public benefit by helping to keep public liability insurance premiums affordable. It cites evidence that that the increasing number of personal injury claims and the cost of these claims are contributing to an increase in public liability insurance premiums. This rise in premiums is adversely affecting nongovernment service delivery and small business.

The evidence provided by New South Wales regarding the link between restricting advertising and maintaining affordable public liability insurance is much less clear. New South Wales deregulated advertising in 1994. If there has since been a fundamental shift in community values and a lasting increase in the community's knowledge of their legal rights to compensation for personal injuries perhaps as a result of advertising by lawyers), then re-regulating advertising may not be effective in reducing the number of claims.

Even if restricting advertising does reduce the number of claims, it is not clear how effective this would be in reducing premium rises. Other drivers of recent premium increases include increases in the compensation awarded for

a given severity of injury, and the state of the insurance market cycle (Trowbridge Consulting 2002). These factors may be more significant than the number of claims per se.

Further, New South Wales has not shown that it is necessary to restrict advertising to achieve its objective of maintaining affordable public liability insurance. Governments are considering a range of reforms to ensure insurance is available at reasonable prices. Many of these reforms appear, in principle, less restrictive of competition than are restrictions on advertising by lawyers.

Finalising the assessment of compliance

New South Wales did not complete the review and reform of its legal practitioner legislation by CoAG's deadline of 30 June 2002. Given that it has made significant progress in implementing reforms, however, and that two potential compliance issues (the proposed monopoly mutual fund for professional indemnity insurance and the advertising restrictions) are both insurance related, the Council will finalise its assessment of CPA compliance in 2003. In that assessment, the Council will look for evidence from New South Wales that advertising restrictions are a necessary component of its package of reforms to address public liability insurance premium issues.

Queensland

The Queensland Government conducted a two-stage review of legal profession regulation. The first stage was broad ranging review of contemporary legal profession regulation issues, involving the release of a discussion paper in 1998, followed by a green paper in 1999.

The green paper recommendations included introducing a new complaints mechanism, allowing common admission of barristers and solicitors, removing the reservation of conveyancing practice, developing a framework for facilitating incorporation of legal practices and maintaining mandatory professional indemnity insurance requirements but providing competition in the insurance market.

The Government announced a series of proposed reforms to the legal profession in December 2000. It accepted the green paper recommendations to introduce a new complaints mechanism and allow common admission of barristers and solicitors. It also announced that it would:

- remove restrictions on professional indemnity insurance cover (subject to minimum standards), while allowing the current arrangements to continue for a further three years;
- further consider the incorporation of legal practices further through the Standing Committee of Attorneys-General in light of concerns regarding

the implications for national firms of the States adopting different approaches; and

- further consider the reservation of conveyancing work through a separate NCP review of legal profession legislation (see below).

The second stage of Queensland's review process involves an NCP review of competition-related issues in legal profession legislation (including the December 2000 proposals). This review began with the release of an issues paper in November 2001. It is examining a range of restrictions, including requirements for admission to the legal profession, qualifications for practice, ownership restrictions, practice reservation and the legislated arrangements for professional indemnity insurance.

Queensland expected to complete the NCP review in the first half of 2002, and to introduce a Bill to implement resulting reforms in mid-2002. Subject to the outcomes of the NCP review, Queensland anticipates that the Bill will also implement the reform proposals announced in December 2000 (Queensland Government 2002).

New restrictions on advertising

The Queensland Parliament passed the *Personal Injuries Proceedings Act 2002* in June 2002. The objective of the Act is to facilitate the ongoing affordability of insurance. In addition to reducing the costs of legal proceedings by introducing pre-court processes, the Act imposes restrictions on lawyer advertising so as to address the pressure on insurance premiums from increasing volumes of claims.

The advertising restrictions are similar to those implemented in New South Wales in March 2002. They prohibits lawyers from advertising personal injury services except by means of a statement that:

- includes only their name and contact details, together with information as to their area of practice or speciality; and

- is published only by certain allowable methods such as printed publications, and electronic databases and directories on the internet.

The Act does not permit advertising of 'no-win no-fee' personal injury services, or advertising in hospitals or on the radio or television. Queensland does, however, permit lawyers to advertise on the internet (although the advertisements are restricted to information about the law of negligence and a person's legal rights under that law, and the conditions under which the lawyer is prepared to provide personal injury services).

To demonstrate compliance with the CPA clause 5 guiding principle, Queensland needs to have evidence that restricting advertising will help to reduce the volume of personal injury claims and that reducing the volume of claims will reduce the pressure on insurance premiums. If community values

have fundamentally shifted, and community awareness of legal rights to compensation has increased, then restricting advertising may have little effect on the volume of claims. Further, the benefits of any reduction in claims volume will, in turn, depend on relative contribution of other factors (such the amount of compensation awarded for a given severity of injury and the state of the insurance market) in driving premium price increases.

Queensland also needs to demonstrate that it is necessary to restrict advertising to achieve its objective of maintaining affordable public liability insurance. As discussed in chapter 9, governments are considering a range of reforms to ensure insurance is available at reasonable prices. Many of these reforms appear, in principle, less restrictive of competition than are restrictions on advertising by lawyers.

Finalising the assessment of compliance

Queensland did not complete the review and reform of its legal profession legislation by the CoAG deadline of 30 June 2002. Given that it expects to implement legislative reforms in mid-2002, however, and that the advertising restrictions that potentially raise compliance issues are insurance-related, the Council will finalise its assessment of CPA compliance in 2003. In the 2003 NCP assessment, the Council will look for evidence from Queensland that advertising restrictions are a necessary part of its reform package.

Western Australia

Western Australia's review of the *Legal Practitioners Act 1893* is under way. The Government released an issues paper in June 2000, and the draft review report for public consultation in April 2002. The draft report's key recommendations included:

- reserving core areas of legal work (such as areas relating to appearances in court, the drawing up of wills and documents that create rights between parties, and probate work) for certified legal practitioners, but:
  - removing restrictions on the practice of tribunal-related work by nonlawyers;
  - prescribing arbitration services that can be undertaken by nonlawyers who satisfy prescribed competency standards; and
  - continuing to permit settlement agents to arrange or effect the settlement of real estate or business transactions for reward; and
- retaining compulsory professional indemnity insurance and the requirement to insure through the Law Society, but codifying in legislation the Law Society's practice of allowing practitioners to opt out of its scheme

where they give adequate notice and provide evidence of having made suitable alternative professional indemnity insurance arrangements; and

- removing restrictions on lawyers forming incorporated practices and multidisciplinary practices (Department of Justice 2002).

The draft report recommended implementing the review recommendations as a part of the national reform process under way under the auspices of the Standing Committee of Attorneys-General. It considered that there would be benefits in delaying its proposals, even though some could be implemented unilaterally, so they can be progressed as a single package with the national reforms.

The Government has decided to move ahead with implementing some of the draft review's recommendations, in advance of completing other aspects of the review. It is drafting an omnibus Bill to provide for:

- the incorporation of legal practices, which will enable lawyers to operate in multidisciplinary practices with other professions;

- the registration of foreign lawyers wishing to practise in Western Australia, which will reduce the barriers to entry by foreign lawyers into the local market; and

- national practice certificates, which will remove barriers to competition by providing automatic recognition of interstate lawyers' right to practice in Western Australia.

The Government will consider the review's final recommendations as soon as possible, and implement reforms either on a national level (through the national model laws project) or via the omnibus Bill (Department of Treasury and Finance 2002).

Western Australia will not complete the review and reform of the restrictions on competition in the Legal Practitioners Act by CoAG's deadline of 30 June 2002. Given that it is close to completing the review, however, and that it is proceeding with an initial set of reforms in the interim, the Council will finalise its assessment of CPA compliance in 2003.

South Australia

South Australia completed a review of the *Legal Practitioners Act 1981* in October 2000. The review recommendations included:

- removing Australian residency requirements for applicants for admission as a barrister or solicitor;

- giving further consideration to opening up further areas of reserved work to nonlawyers with appropriate alternative formal qualifications;

- continuing to monitor developments in relation to business structures, but giving consideration to permitting multidisciplinary practices once ethical and consumer protection issues are resolved; and

- maintaining the Law Society's monopoly over professional indemnity insurance for legal practitioners, provided premiums remain competitive.

In response to the review, the former South Australian Government invited submissions on areas of reserved work that could be opened up to nonlawyers, and announced that it would work with the Standing Committee of Attorneys-General to devise a national legislative model for incorporated legal practices (Government of South Australia 2001a). It introduced a Bill to implement other recommendations, but the Bill lapsed at the calling of the State election.

Although South Australia did not complete the reform of its legal practitioner legislation by the CoAG deadline of 30 June 2002, it has completed its review. Given that the national model laws process provides a mechanism for addressing several review recommendations, and that the uncertain insurance environment and work under way on insurance market regulation of warrants delaying the assessment of professional indemnity insurance issues, the Council will finalise its assessment of CPA compliance in 2003.

Tasmania

Tasmania established a team to review the *Legal Profession Act 1993* in February 2000. The review team released a discussion paper in May 2000 and sought public comments on a regulatory impact statement in April 2001. The review's preliminary recommendations, as reflected in the regulatory impact statement, included:

- removing the reservation of conveyancing work (but regulating conveyancers);

- removing restrictions on business structures for legal practices;

- allowing legal practitioners to arrange their own insurance (see chapter 9);

- removing restrictions on advertising; and

- improving the disciplinary system.

The review team provided its final report to the Attorney-General and the Treasurer in August 2001. The Government has indicated that it will shortly consider a proposal in relation to conveyancing. It is re-considering the review's remaining recommendations in the light of the March 2002 decision of the Standing Committee of Attorneys-General to prepare and adopt uniform national laws for the legal profession.

Tasmania did not complete the review and reform of its legislation governing the legal profession by the CoAG deadline of 30 June 2002. Given the preparation of uniform national laws, and Tasmania's commitment progressing reform of the reservation of conveyancing in the interim, the Council considers it appropriate to finalise the assessment of CPA compliance in 2003.

The ACT

The Department of Justice and Community Safety began a two-stage review of the *Legal Practitioners Act 1970* in 1999. The first stage involved the releasing an options paper in November 2001, canvassing reform of the admission and licensing of legal practitioners, and the complaints and disciplinary systems. The second stage was to involve releasing an options paper that canvassed reforms to business conduct restrictions, including restrictions on multidisciplinary practices, fee setting, insurance and the statutory interest account.

As an interim measure, the ACT Government amended the Legal Practitioners Act to introduce a second insurance provider (ACT Government 1999). The ACT has ceased the review, however, and instead will progress its review and reform activity through the national model laws project, to ensure a uniform and nationally consistent framework for the industry (ACT Government 2002, p. 35).

The ACT did not complete the review and reform of its legal practitioner legislation by the CoAG deadline of 30 June 2002. Given that it intends to progress its review and reform activity through the national model laws project, however, and that it introduced interim reforms to professional indemnity insurance arrangements, the Council will finalise its assessment of CPA compliance in 2003.

The Northern Territory

The Northern Territory commenced its reviews of the *Legal Practitioners Act* and the *Legal Practitioners (Incorporation) Act* with the release of an issues paper in 2000. It has completed the review of the Legal Practitioners Act, but Cabinet has yet to consider the review report. It completed the review of the Legal Practitioners (Incorporation) Act in November 2002.

The Legal Practitioners (Incorporation) Act review found a need to ensure business structures do not compromise lawyers adherence to their legal professional obligations, but considered that there are less restrictive ways of achieving this objective than restricting the ownership and business structures of legal firms. It recommended removing business structure and ownership restrictions, and replacing them with:

- a requirement for incorporated legal practices to nominate at least one solicitor director, who is responsible for ensuring the company delivers legal services in accordance with professional obligations and for dealing with unsatisfactory professional conduct by employees; and

- a negative licensing scheme, under which companies found guilty of crimes or with a history of employing people found guilty of unsatisfactory professional conduct can be prohibited from providing legal services.

The Government accepted the review recommendations and issued drafting instructions for the preparation of appropriate legislation. The Department of Justice advised the Council that, while the Government anticipated introducing this legislation before 30 June 2002, the legislation might be delayed to ensure uniformity with the model Bill being developed by the Standing Committee of Attorneys-General.

The reforms recommended by the review of the Legal Practitioners (Incorporation) Act appear consistent with CPA principles, but the Council cannot finalise the assessment of compliance until the Bill is introduced to, and passed by, Parliament. Given that the Northern Territory is preparing legislation, and is also continuing to progress its CPA clause 5 obligations in relation to the Legal Practitioners Act, the Council will finalise its assessment of CPA compliance in 2003.

Table 7.1: Review and reform of legislation regulating legal services

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Legal Profession Act 1987*	Licensing, registration, the reservation of title and practice, disciplinary processes, business conduct (including monopoly professional indemnity insurance, advertising — which must not be false, misleading or deceptive — and mandatory continuing legal education)	Review was completed in 1998. Recommendations included allowing the incorporation of legal practices and allowing competition in professional indemnity insurance.	Reform implementation is under way. Restrictions on incorporation and multidisciplinary practices have been removed. Legislation providing for voluntary membership of professional associations, accreditation of training schemes and automatic recognition of interstate lawyers was passed in May 2002. The Government rejected the professional indemnity insurance recommendation and will establish a monopoly mutual fund under the administration of an independent board. New advertising restrictions for workers compensation services were introduced in May 2001 and extended in March 2002 to cover all personal injury services.	Council to finalise assessment in 2003.
Victoria	*Legal Practice Act 1996*	Licensing, registration, entry requirements, the reservation of title and practice, disciplinary processes, business conduct (including monopoly professional indemnity insurance)	Review of was completed in 1996. Victoria subsequently conducted two reviews of professional indemnity insurance arrangements. The first (by KPMG) recommended removing the monopoly. The second (by the Legal Practice Board) recommended retaining it. The Government released its response to the second review for comment in November 2000. In addition, the Government commissioned a general review of legal profession regulation. The report, released in November 2001, recommended changes to the regulatory structure, focusing on the complaints and disciplinary system.	The *Legal Practice Act 1996* implemented a range of reforms arising from the 1996 review. The Government accepted the Legal Practice Board review recommendation to retain the Legal Practice Liability Committee's monopoly over provision of professional indemnity insurance for solicitors. It is awaiting community input before acting on the November 2001 general review.	Professional indemnity insurance — Council to finalise assessment in 2003. Other areas — meets CPA obligations (June 1999).

(continued)

Table 7.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Legal Practitioners Act 1995* *Queensland Law Society Act 1952*	Licensing, registration, entry requirements, the reservation of practice (including conveyancing), disciplinary processes, business conduct (including professional indemnity insurance and advertising)	Queensland has completed a general review of legal practitioner regulation, and announced proposed reforms in December 2000. Subsequently, it commenced an NCP review in the fourth quarter of 2001, releasing an Issues Paper in November 2001.	Queensland expects to introduce a Bill in mid-2002 to implement the reforms emanating from the NCP review, and (subject to the outcomes of the NCP review) the proposals arising from its previous general review of legal profession regulation.	Council to finalise assessment in 2003.
Western Australia	*Legal Practitioners Act 1893*	Licensing, registration, entry requirements, the reservation of title and practice, disciplinary processes, business conduct (including monopoly professional indemnity insurance, trust accounts, fees, advertising)	The review is under way. Issues paper was released in June 2000. Draft report was released in April 2002, recommending reserving core areas of legal work; allowing practitioners who have made suitable alternative arrangements to opt out of the Law Society's professional indemnity insurance scheme; and removing restrictions on incorporated practices and multidisciplinary practices.	Western Australia is drafting an omnibus Bill to provide for the incorporation of legal practices, the regulation of foreign lawyers wishing to practice in the State, and national practising certificates. The Government will consider the review's final recommendations shortly, and implement reforms through either the national model laws project or the omnibus Bill.	Council to finalise assessment in 2003.
South Australia	*Legal Practitioners Act 1981*	Licensing, registration, entry requirements, disciplinary processes, the reservation of title and practice, business conduct (including monopoly professional indemnity insurance)	Review was completed in October 2000. It recommended considering opening up further areas of legal work to competition with nonlawyers, monitoring national developments in relation to business structures and retaining the professional indemnity insurance monopoly.	The former Government indicated that it would monitor developments regarding multidisciplinary practices over the next two years, and retain the professional indemnity insurance monopoly. Bill to implement other reforms lapsed at the State election.	Council to finalise assessment in 2003.

(continued)

Table 7.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania	*Legal Profession Act 1993*	Licensing, registration, entry requirements, disciplinary processes, the reservation of title and practice, business conduct (including monopoly professional indemnity insurance, the operation of mandatory trust accounts and the power for Law Society to make rules on advertising)	Regulatory impact statement, released in April 2001, made preliminary recommendations to: remove the reservation of conveyancing; remove advertising and ownership restrictions; retain civil fee scales; improve the disciplinary system; and allow legal practitioners to arrange their own insurance. Review was completed in August 2001.	The Government will soon consider a proposal in relation to conveyancing. It is reconsidering the remaining review recommendations in light of the March 2002 agreement by Attorneys-General to prepare and adopt uniform national laws for the legal profession.	Council to finalise assessment in 2003.
ACT	*Legal Practitioners Act 1970*	Licensing, registration, entry requirements, disciplinary processes, the reservation of title and practice, business conduct (including professional indemnity insurance, ownership, advertising by locally-registered foreign lawyers)	Two-stage review by the Department of Justice and Community Safety commenced in 1999, but has now ceased in view of the decision of the Standing Committee of Attorneys-General to prepare uniform national laws for the legal profession.	The Government amended the Act to introduce a second approved insurance provider in 1999, as an interim measure pending the full NCP review. The SCAP process is expected to develop model legislation before the end of 2002.	Council to finalise assessment in 2003.

(continued)

Table 7.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory	*Legal Practitioners Act*	Licensing, registration, entry requirements, disciplinary processes, the reservation of title and practice, disciplinary processes, business conduct (including monopoly professional indemnity insurance and advertising)	Review is under way. Issues paper dealing with this Act and the Legal Practitioners (Incorporation) Act was released in 2000.	The Government anticipated introducing legislation into the June 2002 sittings of the Northern Territory Legislative Assembly.	Council to finalise assessment in 2003.
	Legal Practitioners (Incorporation) Act	Business structure and ownership	Issues paper was released in 2000, dealing with this Act and the Legal Practitioners Act. Review was completed in November 2001. It recommended allowing multidisciplinary practices, but providing for the disqualification of corporations found guilty of serious offences or with a history of employing persons found guilty of unsatisfactory professional conduct.	The Government has accepted the recommendations and issued drafting instructions for the preparation of legislation.	Meets CPA obligations (June 2003).