

8 Other professions and occupations

States and Territories are reviewing a range of professional and occupational licensing instruments under the National Competition Policy (NCP). The regulation of some professions is discussed in other chapters (veterinary surgeons in chapter 4 on primary industries, health professions in chapter 6, the legal profession in chapter 7, teachers in chapter 12 and building-related professions and occupations in chapter 13). This chapter covers other significant professional and occupational regulation, including the regulation of motor vehicle dealers, real estate agents, second-hand dealers and travel agents.

Legislative restrictions on competition

Governments' regulation of professions and occupations restricts competition in several ways, including through licensing requirements, entry requirements (rules or standards governing who may provide services), the reservation of practice (where only certified practitioners are allowed to perform certain areas of practice) constraints on ownership and other commercial restrictions.

Licensing requirements vary. Some licensing schemes require complex tests of practitioners' qualifications and character. Others involve a 'negative licensing' approach whereby practitioners are not required to register but must hold prescribed qualifications. In some cases, licensing requirements are applied to individual practitioners; in others, licensing arrangements apply to the business rather than the practitioner.

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

Regulating in the public interest

Most regulation of professions and occupations aims to protect consumers of professional services and the broader community. Market failures, such as information asymmetries and externalities, create an ongoing need for some regulation of a range of occupations; regulation, however, can impose costs as well as benefits. Regulatory restrictions are most likely to provide a net benefit to the public where they relate directly to the objective of protecting the public, and are the least restrictive means available of achieving this objective (Deighton-Smith, Harris and Pearson 2001).

There are some occupations to which every jurisdiction applies a licensing or registration scheme. For other occupations, licensing is a requirement in some but not all jurisdictions. In the 2001 NCP assessment, the National Competition Council noted that cases of partial licensing warranted close examination; in particular, the decision of some governments not to require licensing or registration of particular occupations raised questions about the public interest case supporting licensing elsewhere (NCC 2001, p.18.3). The Council has considered cases of partial licensing/registration in this assessment.

Review and reform activity

Licensing in all jurisdictions

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

Commercial agents, inquiry agents and security providers

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

The 2001 NCP assessment determined that Queensland had complied with its Competition Principles Agreement (CPA) obligations in relation to commercial agents, Western Australia had complied in relation to private inquiry agents, security guards and crowd controllers, and the Northern Territory had complied in relation to commercial and private agents. This assessment considers whether the other jurisdictions have now met their CPA obligations in these areas.

New South Wales

New South Wales has separate legislation governing the security industry and the private investigation and debt collection industry.

New South Wales reviewed security industry licences under its Licence Reduction Program. This review recommended the repeal of four security industry licences. Following a comprehensive inquiry by Mr Justice Peterson into the regulation of the security industry and firearms, the Government decided not to proceed with the repeal of the four security industry licences.

Instead, the Government introduced the *Security Industry Act 1997*, which repealed and replaced the *Security (Protection) Industry Act 1985*. The new Act established a revised licensing system in accordance with the recommendations of the Peterson Inquiry and taking into account the findings of the Royal Commission into the New South Wales Police Service.

New South Wales assessed the Security Industry Act generally, and the retention of the licences specifically, against the tests for new legislation that restricts competition under clause 5(5) of the CPA (New South Wales Government 1998). It has met the CPA new legislation obligations in relation to the Security Industry Act.

New South Wales established a working party in late 1997 to examine legislation governing the private investigation industry. The working party recommended replacing the *Commercial Agents and Private Inquiry Agents Act 1963* with new legislation, adopting a business licensing (rather than an occupational licensing) approach, and removing licensing requirements for repossession agents and process servers. New South Wales commenced a formal NCP review of the Act in November 2001, and completed the final report in April 2002. The Government anticipates introducing any legislative reforms arising from the NCP review during 2002 (New South Wales Government 2002).

New South Wales did not complete review and reform activity by the CoAG deadline of 30 June 2002, but its review and reform activity is considerably advanced. Given that the Government anticipates completing the review and making any legislative reforms required during 2002, the Council will finalise the assessment of CPA compliance in 2003.

Victoria

Freehills Regulatory Group completed an NCP review of the *Private Agents Act 1966* in 1999. The review recommended retaining occupational licensing for security providers and making further efforts to develop a national regulatory model for the industry. It recommended replacing licensing requirements for commercial agents with a 'light-handed' registration scheme (combined with greater use of trade practices/fair trading legislation to deal with problem operators) and reforms to the commercial agents surety scheme. The review also recommended reviewing whether the exemptions provided to certain occupational groups are still appropriate.

The Government delayed responding to the NCP review while it conducted a broader policy review of the Act. It subsequently advised the Council that it needs to undertake further targeted consultation before considering legislative amendments (Department of Treasury and Finance 2002). Victoria consequently did not complete the reform of the Private Agents Act by the CoAG deadline of 30 June 2002. Given that Victoria is continuing to progress this matter, the Council will finalise the assessment of CPA compliance in 2003.

Queensland

The *Security Providers Act 1992* requires licensing of private investigators, crowd controllers, security guards and security firms. The Office of Fair Trading is reviewing the Act, and released a draft public benefit test report in early 2002 for consultation. The draft report concludes that licensing of private investigators, crowd controllers, security officers and security firms is necessary to protect the consumers and the public, and that the existing entry requirements provide a net benefit to the community and should be retained.

Queensland expected to complete the legislation review in the first half of 2002. Given the State's continuing progress in this matter, the Council will finalise the assessment of compliance in 2003.

The draft public benefit test report also recommends that the Office of Fair Trading assess some new requirements proposed during the review. These include requiring insurance agents and loss adjusters who are not members of the Australasian Institute of Chartered Loss Adjusters to hold private investigator licences, and requiring alarm installers, lock smiths, security consultants and closed-circuit television monitoring staff to hold security officer licenses. If Queensland introduces new restrictions on competition, then it will need to demonstrate that they are in the public interest.

Tasmania

The Government has introduced the Security and Investigations Agents Bill 2002, to replace the *Commercial and Inquiry Agents Act 1974*. The Bill streamlines the licence application process by transferring responsibility for

licence approval from the courts to the Commissioner for Corporate Affairs. It removes requirements for process servers to hold licences and for commercial agents to lodge fidelity bonds. It also introduces a new provision that automatically disqualifies people from holding a licence for a period of five years if they have been convicted of an indictable offence and sentenced to three or more years imprisonment (Patmore 2002).

Tasmania assessed the Bill under its legislation gatekeeper process. It has met its CPA obligations in relation to the assessment of new legislation.

The ACT

The ACT security industry is governed by five mandatory codes of practice issued under section 34 of the *Fair Trading Act 1992*. Each code covers a different sector: access control, bodyguards, cash transit, crowd control, and guard and patrol services. The Department of Justice and Community Safety commissioned an independent review of the codes in 2001.

The review identified the registration requirements as the code's primary restrictions on competition: principals and employees of security firms may be excluded from registration if a criminal history check reveals that they have been convicted of certain offences. The review found that these requirements provide a significant net benefit to the community by minimising public risk.

The codes also set standards of conducts for security firms. The conduct standards do not discriminate against potential new entrants, so their impacts on competition are minor and outweighed by the benefits to the public of maintaining appropriate standards by those engaged in security activities.

The ACT has met its CPA obligations in relation to the review and reform of the security codes.

Other jurisdictions

Western Australia has a review of the *Debt Collectors Licensing Act 1964* under way. South Australia advises that the review of its *Security and Investigation Agents Act 1995* is being finalised (Government of South Australia 2002). Neither jurisdiction has met its obligation to complete the review and reform of this legislation by 30 June 2002. Given the progress by each jurisdiction, however, the Council will finalise the assessment of compliance in 2003.

Table 8.1: Review and reform of legislation regulating commercial agents, inquiry agents and security providers

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Occupations</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Commercial Agents and Private Inquiry Agents Act 1963</i>	Licensing, registration, entry requirements (qualifications, experience, character, age, not convicted of offence), the reservation of practice, disciplinary processes, business conduct (advertising must specify agent's name and place of business, maintenance of records, trust account, fidelity bonds)	Commercial agents, private inquiry agents and their subagents	The Government established a Working Party established in 1997 to consider the legislation governing the private investigation industry in the context of reforms made to security industry regulation. The working party recommended replacing the Act with new legislation, adopting a business licensing rather than an occupational licensing approach for commercial agents, and removing licensing for repossession agents and process servers. The formal NCP review commenced in November 2001; an issues paper was released in January 2002 and the final report was submitted to the Minister for Police in April 2002.	The Government anticipates that any legislative reforms arising from the NCP review will be addressed during 2002.	Council to finalise assessment in 2003.
	<i>Security (Protection) Industry Act 1985</i>	Licensing and regulation	Security providers		Act was repealed and replaced by the <i>Security Industry Act 1997</i> .	Meets CPA obligations (June 2001).
	<i>Security Industry Act 1997</i>	Licensing, registration, entry requirements (qualifications, experience, competency, fit and proper person, age, not convicted of relevant offence), reservation of practice, disciplinary processes, business conduct, (advertising must contain licence number)	Security providers	Act was assessed under new legislation gatekeeper process.	New legislation.	Meets CPA obligations (June 2002).

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Table 8.1 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Occupations</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Victoria	<i>Private Agents Act 1966</i>	Licensing, registration, entry requirements (all good character, others vary), reservation of practice, disciplinary processes, business conduct (no misleading or deceptive conduct, financial sureties for commercial agents)	Security guards, crowd controllers, security firms, private inquiry agents, commercial agents, subagents	Freehills Regulatory Group completed an NCP review in October 1999. It recommended: retaining occupational licensing for security providers and making efforts to develop a national regulatory model for the industry; replacing licensing requirements for commercial agents with a 'light-handed' registration requirement; reforming the surety scheme; and considering establishing an appropriate compensation fund or minimum insurance requirement. General review is now underway: a discussion paper was released in 2000.		Council to finalise assessment in 2003.
Queensland	<i>Auctioneers and Agents Act 1971</i>	Licensing, registration, entry requirements (residency, over minimum age, of good character, written exam [not required for commercial sub-agents]), the reservation of practice, business conduct (suitable premises, trust account receipts, audits, no misleading or deceptive, no unlawful entry)	Commercial agents, managers, commercial subagents	Review by PricewaterhouseCoopers was completed in 2000. It recommended reforms to entry requirements (removing age and residency tests, replacing character tests with suitability assessments, introducing competence assessment), relaxing business premises standards, rationalising the number of licence types, and introducing a requirement that agents only act for one party.	Act repealed and replaced with <i>Property Agents and Motor Dealers Act 2000</i> .	Meets CPA obligations for commercial agents (June 2001).
	<i>Security Providers Act 1992</i>	Licensing, entry requirements, the reservation of practice	Security officers, private investigators, crowd controllers (not in-house security officers)	Minor departmental review is under way. Issues paper and draft public benefit test report were released. Draft report concluded that the restrictions are in the public interest and should be retained.		Council to finalise assessment in 2003.

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Table 8.1 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Occupations</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Western Australia	<i>Debt Collectors Licensing Act 1964</i>	Licensing, entry requirements (age, fit and proper person), the reservation of practice, business conduct (trust accounts, fidelity bonds)	Debt collectors (commercial agents)	Department review is underway. Issues paper was released July 2000.		Council to finalise assessment in 2003.
	<i>Inquiry Agents Licensing Act 1954</i> <i>Securities Agents Act 1976</i>	Licensing			Acts were repealed and replaced by <i>Security and Related Activities (Control) Act 1996</i> .	Meets CPA obligations (June 2001).
	<i>Security and Related Activities (Control) Act 1996</i>	Licensing, registration, entry requirements (training, character, possible medical exam for security officers), the reservation of practice, business conduct (operating restrictions, no advertising unless licensed), business licensing	Providers of security and inquiry activities	WA Police Service has completed a review, which did not involve consultation. The review concluded the security and related industries need statutory control to ensure high standards and to instil public confidence, especially in the area of crowd control. It also concluded that the legislation is effective and provides the necessary controls to maintain and improve the industry.	The Government endorsed the review recommendation in 2000.	Meets CPA obligations (June 2001).
South Australia	<i>Security and Investigation Agents Act 1995</i>	Barrier to market entry, market conduct	Private inquiry agents, security providers	Final report in preparation.		Council to finalise assessment in 2003.

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Table 8.1 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Occupations</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Tasmania	<i>Commercial and Inquiry Agents Act 1974</i>	Licensing, entry requirements (suitable person, not convicted of an offence of dishonesty, financial reputation), the reservation of practice, disciplinary processes, business conduct (trust accounts, maintain records, audits)	Commercial agents, commercial sub-agents, inquiry agents, process servers, security agents, security guards	Review complete. Public consultation involved issues paper, draft report and submissions. Draft report recommended maintaining most restrictions, but removing licensing requirements for process servers, making minor changes to entry requirements, retaining option of imposing education requirements, and moving responsibility for licence approval from the courts to the Commissioner for Corporate Affairs.	The Government introduced the <i>Security and Investigations Agents Bill 2002</i> to repeal and replace the Act.	Meets CPA obligations (June 2002).
ACT	<i>Fair Trading Act 1992</i>	Registration, entry requirements (competency, character — criminal record check), the reservation of practice, disciplinary processes, business licensing.	Bodyguards, security guards, cash transit industry, crowd marshals, and guard and patrol services. (No licensing of debt collectors, but ban on undue harassment).	Independent review was completed in 2001. The review found that the restrictions provided significant benefits (by minimising public risk) that outweigh their costs.	No reforms are required.	Meets CPA obligations (June 2002).

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Table 8.1 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Occupations</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Northern Territory	<i>Commercial and Private Agents Licensing Act</i>	Licensing, registration, entry requirements (age, residency, fit and proper person, not found guilty of offence that warrants refusal of licence, no objection by any person to issuing of licence), the reservation of practice, disciplinary processes, business conduct (bond provision, trust account, prescribed records, requirement for local [but not interstate] licensed agents to have a nominee and branch manager resident in the Territory), business licensing.	Commercial agents, process servers, inquiry agents, private bailiffs	Review was completed in November 1999. It recommended: introducing negative licensing for all persons of particular occupations who perform agent roles incidental to their occupation; continuing licensing of employees and subagents; issuing licenses for a fixed rather than an indefinite period; transferring responsibility for licensing from the courts to the Industries and Business portfolio; making various changes to business conduct requirements (requirement to issue receipts, change to trust account arrangements; reconsideration of bonds and indemnity insurance in late 2000); and undertaking a further review to implement best practice licensing processes.	The Government approved the recommendations and enacted legislation in 2000 to transfer the licensing to the Commissioner for Consumer Affairs and introduce fixed three-year licence terms. Legislation commenced in December 2001.	Meets CPA obligations (June 2001).

Driving instructors

Governments regulate driving instructors to protect consumers and ensure the safety of learner drivers. Generally, driving instructor legislation reserves the practice of teaching learners to drive for fee or reward to registered or accredited instructors. Usually, instructors must demonstrate their competency (which may involve attending a training course or passing a test), be of good character, and have held a drivers licence for three years before they can register. These requirements potentially restrict entry to the market for driving instruction.

The 2001 NCP assessment found that Victoria had met its CPA new legislation obligations in relation to the *Road Safety (Driving Instructors) Act 1998* and the Northern Territory had met its CPA obligations in relation to the review and reform of the driving instructor provisions of the *Motor Vehicles Act*. Queensland repealed the *Motor Vehicle Driving Instruction Schools Act 1969* in 1995, replacing it with a self-accreditation and self-regulation scheme implemented through amendments to the *Transport Operations (Road User Management) Act 1995*. Queensland's actions meet CPA obligations.

New South Wales

New South Wales completed the review its driving instructor legislation in September 2001. The Government anticipated responding to the final review report by 30 June 2002 (New South Wales Government 2002). Given that New South Wales is progressing this matter, the Council will finalise the assessment of compliance in the 2003 NCP assessment.

Tasmania

As part of the progressive review and reform of the *Traffic Act 1925*, Tasmania repealed the vehicle registration and driver licensing provisions (including those relating to driving instructors) of the Act and replaced them with the *Vehicle and Traffic Act 1999*. As in other jurisdictions, Tasmania requires driving instructors to demonstrate competency and be of good character. Private individuals may teach learners to drive provided they do not seek fee or reward. Tasmania has met its CPA obligations for the review and reform of the driving instructor provisions of the Traffic Act.

The ACT

The ACT introduced the *Road Transport (Driver Licensing) Act 1999* in 1999, in accordance with the national transport reform requirements. In addition to licensing drivers, the Act establishes an accreditation system for driving instructors. Unlike some jurisdictions, the ACT does not reserve the practice

of 'driving instruction for reward'; although accredited instructors must display their accreditation when using a motor vehicle for instruction. The ACT has met its CPA obligations for the review and reform of its legislation governing driving instructors.

Other jurisdictions

The 2001 NCP assessment reported advice from Western Australia that the Government would add the *Motor Vehicle Drivers Instructors Act 1963* to the legislation review program and schedule a review before June 2002 (NCC 2001, p 18.28). The Council acknowledges that the significant resource demands of the legislative review program mean that legislation reviews scheduled late in the program may not be completed by the Council of Australian Governments (CoAG) deadline. The Council will finalise the assessment of compliance in the 2003 NCP assessment.

South Australia has completed a review of the tow truck operator and driving instructor provisions of the *Motor Vehicles Act 1958*. It did not complete its reform activity by the CoAG deadline of 30 June 2002, however, and so has not met its CPA obligations in relation to legislation regulating driving instructors. South Australia is nevertheless making progress, with the Government considering the review recommendations (Government of South Australia 2002). The Council will finalise its assessment of compliance in the 2003 NCP assessment.

Table 8.2: Review and reform of legislation regulating driving instructors

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Driving Instructors Act 1992</i>	Licensing, entry requirements (completed course, aged at least 21 years, possible test, medical exam, character), reservation of practice (teaching for monetary or other reward), business conduct (maintenance of records, regulations may make provisions for displaying identification and advertising)	Final report was completed in September 2001.	The Government anticipated making a decision on the final report by 30 June 2002.	Council to finalise assessment in 2003.
Victoria	<i>Road Safety (Driving Instructors) Act 1998</i>	Licensing, entry requirements (must pass a training course, be a fit and proper person, have held licence for at least three years and pass criminal and driving record checks), reservation of practice (teaching someone without a licence on a highway for financial gain), business conduct (must display photograph and have zero blood alcohol level)	Act was examined under Victoria's new legislation gatekeeping arrangements.		Meets CPA obligations (June 2001).
Queensland	<i>Motor Vehicle Driving Instruction School Act 1969</i>		Not for review.	Act repealed and replaced with an accreditation scheme under the <i>Transport Operations (Road Use Management) Act 1995</i> .	Meets CPA obligations (June 2002).
Western Australia	<i>Motor Vehicle Drivers Instructors Act 1963</i>	Licensing, entry requirements (competency, aged at least 21 years, fit and proper person, may require test or course), the reservation of practice (teaching for reward), business conduct (dual control vehicle, regulations may make provisions for displaying identification)	Review is to be scheduled before June 2002.		Council to finalise assessment in 2003.

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Table 8.2 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
South Australia	<i>Motor Vehicles Act 1958 (Part 3A)</i>	Licensing, entry requirements (must be proficient as instructor [possible test], be fit and proper person and have held licence for at least three years), practice reservation (teaching for reward), business conduct (must display licence)	Review of tow truck operators, motor driving instructors and compulsory third party insurance is complete.	The Government is considering the review recommendations.	Council to finalise assessment in 2003.
Tasmania	<i>Traffic Act 1925</i>	Licensing, entry requirements (must have appropriate knowledge and experience [possible test and/or course], be at least 21 years old, be of good character, be a suitable person and have held a licence for at least three years), practice reservation (teaching for reward), business conduct (dual-control vehicle, unless vehicle is provided by person under instruction)	Act is being progressively reviewed.	Relevant provisions were repealed and replaced by <i>Vehicle and Traffic Act 1999</i> .	Meets CPA obligations for driving instructors (June 2002).
ACT	<i>Road Transport (Driver Licensing) Act 1999</i>	Licensing, entry requirements (accreditation: skills, completed training course, aged at least 21 years, suitable person, medically fit), practice reservation, business conduct (vehicle requirements unless vehicle provided by person under instruction, must display certificate)	Assessed under new legislation gatekeeper process.		Meets CPA obligations for driving instructors (June 2002).
Northern Territory	<i>Motor Vehicles Act</i>	Licensing, entry requirements (must be proficient as driving instructor [possible test], of good character and have held a licence for at least three years), reservation of practice (teaching for reward)	Review was completed in 1999. It concluded that the overall public benefits of the Act — lower accident and injury rates, and reduction in road damage from overloaded or unsafe vehicles — justify the restrictions imposed.	The Government endorsed the review recommendation.	Meets CPA obligations for driving instructors (June 2001).

Motor vehicle dealers

All governments except Tasmania license motor vehicle dealers (or traders). Tasmania's *Fair Trading (Code of Practice for Motor Vehicle Traders) Regulations 1996* imposes business conduct requirements on motor vehicle traders.

Motor vehicle dealers are regulated to protect consumers. Consumers may be unable to assess the quality of used cars, may not be familiar with prices and the process of vehicle transfers, and may incur costs to get information on price and quality. Motor dealer legislation in some States and Territories also aims to reduce the avenues for the disposal of stolen vehicles (Department of Treasury and Finance 2001; CIE 2000b).

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

The 2001 NCP assessment reported that Victoria, Queensland and Tasmania had met their CPA obligations in relation to legislation regulating motor dealers in June 2001. The following section assesses the remaining governments' compliance with their CPA obligations in this area.

New South Wales

New South Wales completed the review of the *Motor Dealers Act 1974* and the *Motor Vehicle Repair Act 1980* in 2000. The review recommended allowing licensees to operate from more than one place of business. It also recommended that licensees who operate from multiple locations should be required to keep registers of stock and prescribed parts at only one place of business.

New South Wales introduced amending legislation, the *Motor Trades Amendment Act 2001*, to implement the review recommendations. New South Wales has met its CPA obligations for the review and reform of legislation governing motor dealers.

Western Australia

The Ministry of Fair Trading undertook a general review of the *Motor Vehicle Dealers Act 1973* in 1996. It established the Motor Vehicle Sales Industry Reference Group to recommend changes to the Act. During the review, Western Australia also conducted a separate NCP assessment of the Act. The reference group recommendations incorporated the findings of the NCP assessment.

The reference group recommended retaining licensing for motor vehicle dealers, retaining statutory warranties for used vehicles, repealing licensing requirements for car market operators and removing the Motor Vehicle Licensing Board's power to set standards for dealer premises.

The Western Australian Parliament passed amending legislation that implements the review recommendations. Western Australia has met its CPA obligations to review and reform the Motor Vehicle Dealers Act.

South Australia

South Australia completed the review of the *Second-hand Vehicle Dealers Act 1995* in March 2001. The review panel found that continued regulation of second-hand vehicle dealers is in the public interest because the significance of vehicle transactions, combined with the increasing complexity and technological sophistication of second-hand vehicles, render consumers vulnerable to the risk of significant financial loss in this market.

The review panel concluded that the current legislation is the least restrictive and most effective means of achieving the objective of consumer protection. The only recommended change is to the provisions regarding people who have been convicted of an offence of dishonesty. The panel recommended that convictions for summary offences of dishonesty should exclude someone from obtaining or holding a licence for 10 years, while offences of a more serious nature should continue to incur a permanent prohibition.

South Australia met its CPA obligations to review and reform the Second-Hand Vehicle Dealers Act when the Parliament passed amendments to implement the review recommendation in October 2001.

The ACT

The *Sale of Motor Vehicles Act 1977* requires motor vehicle dealers, wholesalers and car market operators to hold a licence. Applicants for licences must be at least 18 years old, a suitable person, not bankrupt and have sufficient financial resources to carry on their proposed scope of business. In addition, applicants must be likely to comply with their licence obligations, as determined by their understanding of the obligations, previous business experience and employment, level of education and personal capacity.

The ACT completed an interdepartmental review of Sale of Motor Vehicles Act in 2001. The review found a strong public interest case for retaining the regulatory regime, but recommended amending the Act to remove archaic provisions. The Government implemented the review recommendations through the *Justice and Community Safety Legislation Amendment Act 2001*. The ACT has met its CPA legislation review and reform obligations for this Act.

The Northern Territory

The Centre for International Economics completed a review of the Northern Territory *Consumer Affairs and Fair Trading Act* in 2000. The review covered arrangements affecting motor vehicle dealers, pawnbrokers and second-hand dealers, tow truck operators, and door-to-door sales and credit providers.

The review concluded that the regulation of motor vehicle dealers delivers net benefits to the community. To reduce the costs of meeting the regulatory objectives, however, the review recommended:

- removing the requirement that licensees submit annual financial returns;
- formalising the financial test applied for new licences, to make requirements clearer;
- removing the powers to require a banker's guarantee; and
- removing requirements for approval of dealer managers (CIE 2000b).

The Government introduced legislative amendments to implement most of the review recommendations in June 2002. It rejected one recommendation: the recommendation to remove the requirement for the approval of dealer managers.

The Northern Territory has advised the Council that it considers that the costs of this restriction are low, whereas the costs to consumers of not having an approved dealer manager on site could be significant. Licensing of motor vehicle dealer managers also allows for the screening of motor vehicle dealers and helps provide confidence that dealers are reputable.

The Northern Territory's public interest justification for retaining the requirement for dealer management approval meets the CPA clause 5 tests. The Council notes that the Government intends to reconsider this issue as part of a more general review of motor dealer regulation being undertaken by the Department of Justice (Toyne 2002). It considers, however, that the Northern Territory will meet its CPA obligations in relation to legislation regulating motor vehicle dealers when the Legislative Assembly passes the Consumer Affairs and Fair Trading Bill.

Table 8.3 Review and reform of legislation regulating motor vehicle dealers

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Motor Dealers Act 1974</i>	Licensing (motor dealer, wrecker, wholesaler, motor vehicle parts reconstruction, car market operator, motor vehicle consultant), entry requirements (fit and proper person, sufficient financial resources, dealer qualifications and expertise or experience), the reservation of practice, disciplinary processes, business conduct (record-keeping, compensation fund)	Review complete. Act was reviewed in conjunction with review of <i>Motor Vehicles Repair Act 1980</i> . Recommendations included: allowing licensees to operate from more than one place of business; and keeping registers of stock and parts only at one place of business where multiple locations are operated by one licensee.	The Government accepted the review recommendations, with amendments made by the <i>Motor Trades Amendment Act 2001</i> . The first stage of the Act commenced on 1 March 2002.	Meets CPA obligations (June 2002).
Victoria	<i>Motor Car Traders Act 1986</i>	Licensing, registration, entry requirements (must be at least 18 years old, possess sufficient financial resources, must not be insolvent, must be 'likely to carry on such a business honestly and fairly', and must not have been convicted of serious offence in past 10 years), practice reservation, disciplinary processes, business conduct (statutory warranties, requirement for authority to conduct public auction, maintenance of records, no tampering with odometers, cooling-off period, fees and penalties paid into Motor Car Traders Guarantee Fund for losses from licensed traders not complying with Act, no consignment selling, suitable premises, advertising)	Internal departmental review complete. It recommended: replacing the 'suitable premises' requirement with a requirement to have all relevant planning approvals for any premises at which the trader conducts business, or proposes to carry on business, as a motor car trader; removing the eligibility criterion for a trader conducting a business 'efficiently'; and reducing the potential for unwarranted claims on the Guarantee Fund.	Government accepted review recommendations, with amendments made by <i>Tribunals and Licensing Authorities (Miscellaneous Amendment) Act 1998</i> .	Meets CPA obligations (June 2001).

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Table 8.3 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Queensland	<i>Auctioneers and Agents Act 1971</i>	For motor dealers, licensing, registration, entry requirements (dealer and manager: residency, age at least 21 years, fit and proper, three of past five years as licensed manager or salesperson [or employ someone who has that experience], written test), the reservation of practice, business conduct (appropriate business premises, maintenance of register, no bogus advertising, no tampering with odometers, maximum commission for sales on consignment)	Review by PricewaterhouseCoopers completed 2000. It recommended: reforms to entry requirements; removing requirement that business premises have enclosed office accommodation and an enclosed display area facing the road; removing maximum commission for sales on consignment; introducing statutory warranties and introducing a cooling off period for used-car transactions.	Act repealed and replaced with <i>Property Agents and Motor Dealers Act 2000</i> . The new Act implements all of the review recommendations in relation to motor dealers.	Meets CPA obligations for motor dealers (June 2001).
Western Australia	<i>Motor Vehicle Dealers Act 1973</i>	Licensing (motor vehicle dealers, yard managers, car market operators, sales persons), entry requirements (dealers: solvency, understanding of obligations under the ACT; yard managers: completion of four-day course), business conduct (statutory warranties on used vehicles), power to the Motor Vehicle Licensing Board to set standards for premises	Review was completed in 1997. It recommended: retaining restrictions on licensing for motor vehicle dealers and yard managers; retaining statutory warranties for used vehicles; repealing restrictions on licensing for car market operators and salespersons; and repealing the power of the Motor Vehicle Licensing Board to set standards for premises.	The Government endorsed the review recommendations. Amending legislation was passed in May 2002.	Meets CPA obligations (June 2002).
South Australia	<i>Second-Hand Vehicle Dealers Act 1995</i>	Barrier to market entry, business conduct	Review complete. It recommended a distinction between summary and indictable offences for dishonesty.	Amendments were passed by Parliament in October 2001.	Meets CPA obligations (June 2002).

(continued)

Table 8.3 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Tasmania	<i>Fair Trading Act 1990</i> <i>Fair Trading (Code of Practice for Motor Vehicle Traders) Regulations 1996</i>	Mandatory code of practice covering business conduct (written contracts, warranty, complaints system, no deception, no false representation, no misleading advertising)	Minor review complete. It found that the restrictive provisions requiring manufacturers to provide warranties for motor vehicles and establishing a system for dealing with customer complaints are in the public interest.	The Government endorsed the review conclusion.	Meets CPA obligations (June 2001).
ACT	<i>Sale of Motor Vehicles Act 1977</i>	Registration and business conduct of motor vehicle dealers	Intradepartmental review was completed in 2001. It found a strong public interest case for retaining the regulatory regime, but recommended amending the Act to remove archaic provisions.	Review recommendations implemented by the Justice and Community Safety Legislation Amendment Act 2001.	Meets CPA obligations (June 2002).
Northern Territory	<i>Consumer Affairs and Fair Trading Act</i>	Licensing, entry requirements (fit and proper person, sufficient financial and material resources), business conduct (maintenance of records, prescribed forms of contract, submission of annual returns, prohibition on sale of certain vehicles [such as those registered interstate], warranties)	Review by Centre for International Economics was completed in 2000. It recommended: removing requirements for licensee to submit annual financial returns; removing requirements for approval of dealer managers; removing power to require banker's guarantee; and formalising the financial test applied for new licences.	Consumer Affairs and Fair Trading Amendment Bill, introduced into the Legislative Assembly in June 2002, implements the review recommendations with the exception of the recommendation to remove requirements for approval of dealer managers.	Meets CPA obligations (June 2002).

Pawnbrokers and second-hand dealers

Governments are concerned that the businesses of pawnbrokers and second-hand dealers are potential avenues for the disposal of stolen property. Regulation of pawnbrokers aims to reduce the incidence of property-related crime by screening potential operators. It seeks to make this route for disposing of stolen property less attractive, generally by ensuring that potential operators are fit and proper persons, requiring sellers of goods to produce identification and providing the police with access to information on the trade of second-hand goods. Regulation also aims to protect consumers by increasing transparency and clarifying consumers rights in dealing with pawnbrokers (CIE 2000a).

Governments have similar competition restrictions in their legislation regulating pawnbrokers and second-hand dealers (table 8.4). Most require pawnbrokers and second-hand dealers to obtain a formal licence. South Australia and Tasmania have negative licensing systems in conjunction with a requirement for pawnbrokers to notify (or register with) the police.

The 2001 NCP assessment reported that Victoria, Western Australia, South Australia, Tasmania and the Northern Territory had met their CPA obligations for legislation governing pawnbrokers and second-hand dealers. The following section assesses the remaining governments' compliance with their CPA obligations.

New South Wales

The Department of Fair Trading completed an NCP review of the *Pawnbrokers and Second-hand Dealers Act 1996*. The review found that regulation of the pawnbroking and second-hand dealing industries is necessary to prevent the socially undesirable activity of property crime within these industries, and to address information imbalances between pawnbrokers and their customers regarding their rights and obligations under a pawn agreement.

The review concluded that the current licensing regime, although it restricts competition, is the regulatory option that best achieves the objectives of the Act and provides the greatest net public benefit. The review also identified reforms that would enhance the efficiency and effectiveness of the licensing system and reduce the regulatory burden for licensees. These reforms include measures to clarify and update existing legislation in regard to record keeping and proof of identity requirements and to allow pawnbrokers to sell unredeemed goods either at their business premises or at auction.

The Government is conducting public consultations on the review recommendations, so is yet to meet its CPA obligations in respect of the reform of the Pawnbrokers and Second-hand Dealers Act. The Council will

finalise the assessment of compliance with CPA obligations in the 2003 NCP assessment.

Queensland

Queensland is jointly reviewing the *Pawnbrokers Act 1984* and the *Second-hand Dealers and Collectors Act 1984*. It expected to complete the review before 30 June 2002, but anticipated that implementation of any reforms would extend beyond this date (Queensland Government 2002). Given that Queensland is continuing to advance its responsibilities in this area, the Council will finalise the assessment of CPA compliance in 2003.

The ACT

The ACT has separate legislation governing pawnbrokers and second-hand dealers.

The Department of Justice and Community Safety completed a review of the application of the *Second-hand Dealers and Collectors Act 1906* (New South Wales) to the ACT in 2000. The review found significant benefits in retaining licensing and record keeping requirements and police powers of inspection, given the risk of dealers being used to pass on stolen goods. The review recommended revising the definition of second-hand goods (and moving it to the regulations), altering business conduct requirements to take into account new technology, repealing a number of the business rules in the legislation and repealing provisions regarding the licensing of collectors. The Government accepted the review recommendations and implemented them through the *Justice and Community Safety Legislation Amendment Act (No. 1) 2001*.

The Department of Justice and Community Safety completed a review of the *Pawnbrokers Act 1902* in September 2001. As for second-hand dealers, the review recommended retaining the Act but restructuring and modernising the regulations. The Government introduced legislative amendments into the Legislative Assembly in June 2002 which implement the review recommendations.

The ACT has met its CPA obligations in relation to second-hand dealers. It will meet its CPA obligations in relation to pawnbrokers when the Justice and Community Safety Legislation Amendment Bill 2002 is passed by the Legislative Assembly.

Table 8.4: Review and reform of legislation governing pawnbrokers and second-hand dealers

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Pawnbrokers and Second-Hand Dealers Act 1996</i>	Licensing (pawnbrokers, second-hand dealers for prescribed goods), registration, entry requirements (age, not mentally incapacitated, not undischarged bankrupt, no conviction of dishonesty offence in past 10 years), practice reservation, disciplinary processes, business conduct (pawnbrokers: prescribed records, computer records, public auction of unredeemed goods over \$50, minimum redemption period, operation from fixed premises; second-hand dealers: prescribed records, computer records, prescribed minimum period for holding goods, must require seller to provide identification, cooperation with police)	Issues paper released in 2000. Final report completed in 2001, and released for public consultation May 2002.	New South Wales anticipates that any legislative amendments will be introduced into Parliament during 2002.	Council to finalise assessment in 2003.
Victoria	<i>Second-hand Dealers and Pawnbrokers Act 1989</i>	Licensing (pawnbrokers, second-hand dealers for non-exempt goods), registration, entry requirements (not convicted of disqualifying offence in past five years, not insolvent), practice reservation, disciplinary processes, business conduct (pawnbrokers: prescribed records, auction of unredeemed goods over \$40; second-hand dealers: prescribed records, prescribed minimum period for holding goods, requirement that seller provide identification, interest rates, cooperation with police)	Departmental review (completed 1996) recommended: replacing 'fit and proper' with 'no serious offences'; removing the obligation to retain metals for seven days after acquisition (with some exceptions); removing the requirement to conduct certain transactions at registered business premises or a market (instead requiring registration of habitually used places); and removing interest rate restrictions.	The Government accepted all the review recommendations. Amendments were made by the <i>Law and Justice Legislation Amendment Act 1997</i> .	Meets CPA obligations (June 2001).
Queensland	<i>Pawnbrokers Act 1984</i>	Licensing, entry (must be at least 18 years old, not mentally incapacitated, fit and proper person, not a collector, not convicted of fraud or dishonesty offence in past five years), practice reservation, disciplinary processes, business conduct (prescribed records, public auction of unredeemed goods over \$40, cooperation with police)	Review (combined with review of second-hand dealers legislation) is underway and was due to be completed by 30 June 2002.		Council to finalise assessment in 2003.

(continued)

Table 8.4 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Queensland (continued)	<i>Second-hand Dealers and Collectors Act 1984</i>	Licensing (second-hand dealers for non-exempt goods), registration, entry (age, not mentally incapacitated, fit and proper person, not convicted of fraud or dishonesty offence in past five years), practice reservation, disciplinary processes, business conduct (prescribed records, prescribed period for holding goods, must require sellers to provide identification, cooperation with police)	Review (combined with review of the pawnbroker legislation) is underway.		Council to finalise assessment in 2003.
Western Australia	<i>Pawnbrokers and Second-hand Dealers Act 1994</i>	Licensing (pawnbrokers, second-hand dealers for non-exempt goods), registration, entry requirements (good character, adequate management, supervision and control of business operations, not convicted of dishonesty, fraud or stealing offence in past five years), practice reservation, disciplinary processes, business conduct (pawnbrokers: prescribed records, computer records, notify pawner of surplus of proceeds of sale; second-hand dealers: prescribed records, must hold goods for prescribed period, requirement that seller provide identification, cooperation with police)	Review (by Police Service) complete. It recommended: retaining the current licensing provisions on the understanding that they may be modified following future review; conducting a further review after the current legislation had been in operation for an additional three years; and examining alternative approaches, including those likely to be introduced in other States.	The Government endorsed the review recommendations.	Meets CPA obligations (June 2001).
South Australia	<i>Second-Hand Dealers and Pawnbrokers Act 1996</i>	Negative licensing (pawnbrokers, second-hand dealers for all goods except cars), registration (that is, notification to police), entry (not convicted of dishonesty offence in past five years, not undischarged bankrupt/insolvent), practice reservation, disciplinary processes, business conduct (pawnbrokers: prescribed records, selling of unredeemed goods; second-hand dealers: prescribed records, prescribed period for holding goods, must require seller to provide identification [unless sale by phone], cooperation with police)	Review complete. It recommended no reforms.	The Government endorsed the review recommendation.	Meets CPA obligations (June 2001).

(continued)

Table 8.4 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Tasmania	<i>Pawnbrokers Act 1857</i> <i>Second-hand Dealers Act 1905</i>	Licensing, business conduct	Not for review.	Repealed in 1996 by <i>Second-Hand Dealers and Pawnbrokers Act 1994</i> .	Meets CPA obligations (June 2001).
	<i>Second-Hand Dealers and Pawnbrokers Act 1994</i>	Negative licensing (pawnbrokers, second-hand dealers, registration (notification at nearest police station), entry requirements (fit and proper person, no conviction of offence against the Act or offence of dishonesty), the reservation of practice, disciplinary processes, business conduct (pawnbrokers: prescribed records, redemption period of six months, auction of forfeited goods; second-hand dealers: prescribed records, holding of goods for prescribed period, requirement that seller provide identification, cooperation with police)	Minor review complete. Review found restrictive provisions were justified in the public benefit.	The Government endorsed the review recommendation.	Meets CPA obligations (June 2001).
ACT	<i>Pawnbrokers Act 1902 (NSW)</i> in application to ACT	Licensing, registration, entry requirements (aged over 18 years, fit and proper person), the reservation of practice, business conduct (prescribed records, public auction unredeemed goods over \$10, cooperation with police)	Intradepartmental review completed in 2001. It recommended the restructuring and modernisation of existing regulations.	Government introduced legislative amendments to implement the recommendations in June 2002.	Meets CPA obligations (June 2002).
	<i>Second-hand Dealers and Collectors Act 1906 (NSW)</i> in application to ACT	Licensing, registration, entry requirements (aged over 18 years, fit and proper person), the reservation of practice (persons who deal in certain second-hand goods), business conduct (prescribed records, holding of goods for prescribed period, cooperation with police)	Department review was completed in 2000. It recommended: updating the definition of second-hand goods; altering business conduct requirements to take new technology into account; repealing some business rules; and repealing provisions relating to collectors.	Recommendations were implemented by the <i>Justice and Community Safety Legislation Amendment Act (No. 2) 2001</i> .	Meets CPA obligations (June 2001).

(continued)

Table 8.4 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Northern Territory	<i>Pawnbrokers Act</i>	Licensing		Act repealed 1998.	Meets CPA obligations (June 2001).
	<i>Consumer Affairs and Fair Trading Act</i>	Licensing (pawnbrokers, second-hand dealers for not exempt goods), registration, entry requirements (minimum age, not undischarged bankrupt, not convicted of dishonesty offence in past 10 years), practice reservation, disciplinary processes, business conduct (pawnbrokers: prescribed records, sale of unredeemed goods; second-hand dealers: prescribed records, prescribed period for holding goods, requirement that seller provide identification, cooperation with police)	Review by Centre for International Economics was completed in 2000, recommending provisions be retained with no amendment.	The Government approved the review recommendations in relation to pawnbrokers and second-hand dealers in November 2000.	Meets CPA obligations for pawnbrokers and second-hand dealers (June 2001).

Real estate agents

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

Real estate services are regulated to protect consumers from problems due to information imbalances between agents and their clients, and from the risk of financial loss caused by agents' criminal or fraudulent conduct ('defalcation'). Consumers, particularly residential homeowners, often lack experience in purchasing real estate services, because generally they are infrequent participants in the real estate market. Residential home transactions are one of the largest investments for many people, so there is potential for significant loss if they receive poor marketing and advice. As well, the sale of a property has legal implications. Financial loss may arise from the misappropriation of funds (such as deposits on transactions and rent) held in trust.

New South Wales

The review of the *Property, Stock and Business Acts Act 1941* commenced in 1997 and was completed in 2001. The review recommended including competency standards (as a component of entry requirements), compulsory professional indemnity insurance and annual licence renewal. It also recommended developing a single property agents licence to replace the current system of separate licences for real estate agents, stock and station agents, business agents, strata management agents and on-site residential property agents.

In June 2002, the Parliament passed the Property, Stock and Business Agents Act to repeal and replace the 1941 Act. The new Act implements the review recommendations with one exception: the Government decided not to adopt a single licence regime because this could decrease the competency of agents and erode consumer protection (New South Wales Government 2002, p. 39). The multi-licensing approach enables experience and education requirements to be tailored to different competencies relevant to each industry sector (Aquilina 2001).

The requirement to obtain a separate licence could deter some property agents from expanding the range of real estate services that they offer, but the restriction on competition is minor. The Council accepts that the costs of this restriction may be outweighed by the benefits of having greater flexibility

to tailor entry requirements to the minimum necessary for each industry sector. The Council considers that New South Wales has met its CPA obligations in relation to legislation regulating real estate agents.

Victoria

Victoria completed a review of the *Estate Agents Act 1980* in 2000. The review recommended:

- retaining full licensing for residential property sales, but making the experience and education requirements less restrictive;
- applying a less restrictive form of licensing to agents who sell commercial property and business, and agents who manage property; and
- retaining regulation to protect against defalcation.

The Government released the report in December 2000 for consultation in formulating its response. It released an exposure draft of a Bill to amend the Estate Agents Act for consultation in June 2002. The Government is likely to introduce amending legislation in the spring 2002 parliamentary session (Department of Treasury and Finance 2002).

Although Victoria did not complete the review and reform of the Estate Agents Act by the CoAG deadline of 30 June 2002, it has made substantial progress. The Council will finalise the assessment of compliance in 2003.

Queensland

As discussed previously, PricewaterhouseCoopers completed a review of the Auctioneers and Agents Act in 2000. In relation to real estate agents, the PricewaterhouseCoopers recommended:

- reforming the entry requirements (removing age and residency requirements; substituting suitability assessment for the character and fitness tests; introducing competency assessment; and recognising prior learning);
- relaxing business premises standards to include any registered office;
- maintaining the requirement for a licence holder to operate at a principal office;
- introducing a 60-day time limit for exclusive real estate agent arrangements;
- removing requirements for real estate managers to be licensed;
- including developers and real estate marketers within the scope of the legislation; and

- removing maximum commission from sales and rentals, subject to monitoring and transitional arrangements, including disclosure, information and education campaigns (PricewaterhouseCoopers 2000a).

PricewaterhouseCoopers proposed transitional arrangements to support the smooth implementation of these reforms. It recommended conducting a public education campaign to make market participants aware of the changes to their rights and responsibilities. It suggested that 'the campaign should be commenced in a timeframe to allow it to take impact prior to the removal of regulated maximum commissions' (PricewaterhouseCoopers 2000a).

The committee that oversaw the review accepted and endorsed the consultant's report (Auctioneers and Agents National Competition Policy Review Committee 2000). Queensland repealed the Auctioneers and Agents Act and replaced it with the *Property Agents and Motor Dealers Act 2000*. In line with the transitional arrangements recommended by the consultants and the review committee, the new Act retains maximum commissions. The Government began an ongoing community education campaign when the Act commenced, and expects to complete a review of restrictions on commissions during 2002.

The Council accepts that there may be a net community benefit in temporarily retaining maximum commissions while market participants are educated about their rights and responsibilities. Given that Queensland intends to review commissions during 2002, the Council will finalise the assessment of compliance with CPA obligations in 2003.

Western Australia

Western Australia expects to complete the review of the *Real Estate and Business Agents Act 1978* (which has been underway for three years) in July 2002 (Department of Treasury and Finance 2002). The findings of other jurisdictions' reviews of legislation in this area suggest that the Western Australian review will identify scope for improvements to the regulation of real estate agents but that these will not greatly affect competition. The Council considers it appropriate to leave the final assessment of compliance to 2003 (despite the delay in completing the review).

South Australia

In South Australia, an interdepartmental review panel conducted a review of the *Land Agents Act 1994* and the Land Agents Regulations during 1999. The review recommended that the Land Agents Act be retained (because regulation provides a net public benefit) and made several recommendations relating to the qualifications of land agents and sales representatives, and to conduct restrictions.

- The review recommended that the qualifications held by legal practitioners be prescribed as sufficient for registration as a land agent, subject to legal practitioners demonstrating competence in appraisal.
- The review found that requiring land agents to hold qualifications provides a net benefit, but that the qualifications required for registration are excessive. It recommended, when National Competency Standards have been agreed, mandating for registration only those competencies necessary to combat consumer risk.
- The review found that the qualification requirements for sales representatives are appropriate but that the requirements of the TAFE course are inappropriately high. It recommended reviewing current competencies when National Competency Standards are agreed, then mandating only measures necessary to combat consumer risk be mandated (Office of Consumer and Business Affairs 1999b).

Subsequently, South Australia conducted a supplementary review to further consider the recommendation that legal qualifications, in combination with demonstrated competency in appraisal, should be sufficient to satisfy the qualifications criterion for registration as a land agent. This supplementary review was completed in March 2001 and upheld the recommendation of the original review (Government of South Australia 2001b).

The Government endorsed the review recommendations. The Commissioner for Consumer Affairs implemented the recommendations administratively, because they are within his discretion (Government of South Australia 2002). South Australia has met its CPA obligations in relation to the review and reform of the Land Agents Act.

Tasmania

Tasmania intends to replace the *Auctioneers and Real Estate Agents Act 1991* with new legislation in the 2002 spring session of Parliament (Government of Tasmania 2002). The Council considers it appropriate to leave the final assessment of CPA compliance to the 2003 NCP assessment.

The ACT

The ACT *Agents Act 1968* regulates real estate, stock and station, business, employment and travel agents. The Department of Justice and Community Safety completed an NCP review of the Act in April 2001. At the same time, in response to the significant shortcomings and age of the legislation, the department conducted a general review of the Act.

The NCP review concluded that there are no competition policy issues requiring legislative reform within the real estate, stock and station, and business agents' markets (ACT Government 2002b). The Government is considering the review findings.

Although the ACT has yet to announce its response to the review, it has made significant progress towards fulfilling its obligation to review and reform the Agents Act. Therefore, the Council will finalise its assessment of CPA compliance in the 2003 NCP assessment.

The Northern Territory

The Centre for International Economics completed a review of the Northern Territory *Agents Licensing Act* in October 2000. The review recommended changes to entry requirements, the reservation of practice and business conduct. The Government anticipated releasing its response to the review report during May 2002 (Northern Territory Government 2002a).

The Northern Territory did not complete its reform activity by the CoAG deadline of 30 June 2002, the Government is considering the report and proposed legislation. Therefore, the Council considers it appropriate to leave the final assessment of CPA compliance to the 2003 NCP assessment.

Table 8.5: Review and reform of legislation regulating real estate agents

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Property, Stock and Business Agents Act 1941</i>	Licensing (real estate, stock and station, business and managing agents), registration, entry requirements (qualifications, sufficient experience, fit and proper person), the reservation of practice, disciplinary processes, business conduct (auctions, trust accounts)	Review complete. It recommended introducing competency standards as a component of entry requirements, compulsory professional indemnity insurance, annual licence renewal, and replacing the current multi-licensing system with a single licence.	Parliament passed the <i>Property, Stock and Business Agents Act 2002</i> in June 2002. The Act implements the review recommendations with one exception: the Government decided not to adopt the review's proposal to adopt a single licensing system.	Meets CPA obligations (June 2003).
Victoria	<i>Estate Agents Act 1980</i>	Licensing (real estate agents — not their representatives who are negatively licensed), registration, entry requirements (agents: licensed in past five years or qualifications and experience, at least 18 years of age, fit and proper person (not insolvent, no conviction for prescribed offence, not disqualified under Act); agent's representative: similar but no experience and lower level training), practice reservation (includes auctions of real estate or property), disciplinary processes, business conduct (ownership, name of business and address in advertising, no commission sharing, professional conduct, trust accounts, Estate Agents Guarantee Fund [funded from interest on trust accounts] to pay for administration and defalcation), business licensing	Review was completed in 2000. It recommended: retaining full licensing for residential property sales, but making experience and education requirements less restrictive; applying a less restrictive form of licensing to agents who sell commercial property and business and agents who manage property; and retaining regulation to protect against defalcation.	The Government released the report for consultation in formulating its response. Amending legislation is likely to be introduced in the autumn 2002 Parliamentary session.	Council to finalise assessment in 2003.

(continued)

Table 8.5 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Queensland	<i>Auctioneers and Agents Act 1971 Property Agents and Motor Dealers Act 2000</i>	Licensing (real estate agents, managers, salespersons), registration, entry requirements (residency, age, good character, fit and proper person, training and/or experience; for agent, one year experience in past five years), practice reservation, disciplinary processes, business conduct (suitable business premises, maximum commission, licence holder at business)	See summary in table 8.1 on commercial agents, inquiry agents and security providers.	See summary in table 8.1 on commercial agents, inquiry agents and security providers. An ongoing community education program regarding agents commissions began in 2001 and is being reviewed.	Council to finalise assessment in 2003.
Western Australia	<i>Real Estate and Business Agents Act 1978</i>	Licensing (agent's licence, sales representative's certificate), registration, entry requirements (age over 18 years, good character, fit and proper person [including completion of prescribed courses], understanding of duties and obligations under Act; for agent: sufficient material and financial resources), practice reservation, disciplinary processes, business conduct (managers for branch offices, supervision and control, records, trust accounts, audit, code of conduct, advertising, fidelity fund), business licensing	Department review is underway. Discussion paper was released in April 1999. Draft report is being finalised.	Maximum fees removed in 1998.	Council to finalise assessment in 2003.

(continued)

Table 8.5 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
South Australia	<i>Land Agents Act 1994</i>	Licensing (agents, not sales representatives who are negatively licensed), registration, entry requirements (qualifications, no conviction for an offence of dishonesty, no undischarged bankruptcy or suspension/disqualification from practising an occupation, trade or business), practice reservation, disciplinary processes, business conduct (provisions for maximum fees in regulations [but not used currently], indemnity fund, trust account), business licensing	Review (involving public consultation) complete. It recommended that legal practitioner qualifications be sufficient for registration as a land agent (subject to legal practitioners demonstrating competence in appraisal), and adopting national competency standards for agents and sales representatives (when agreed).	The Government endorsed the review recommendation, which has been implemented administratively.	Meets CPA obligations (June 2002).
Tasmania	<i>Auctioneers and Real Estate Agents Act 1991</i>	Licensing (real estate agents, managers and sales consultants), registration, entry requirements (education, experience, fit and proper person), the reservation of practice, disciplinary processes, business conduct	Review is complete.	Act will be repealed and replaced by new legislation in the spring 2002 session of Parliament.	Council to finalise assessment in 2003.
ACT	<i>Agents Act 1968</i>	Licensing (real estate agents, travel agents, business agents, stock and station agents), registration, entry requirements, the reservation of practice, disciplinary processes, business conduct	Intradepartmental review was completed in 2001. The review concluded that there are no competition policy issues requiring legislative reform within the real estate, stock and station and business agents markets	The Government is considering the review findings.	Council to finalise assessment in 2003.
Northern Territory	<i>Agent's Licensing Act</i>	Licensing (real estate agents, agents representatives, conveyancing agents), registration, entry requirements (fit and proper person, age at least 18 years, education or experience, competency), the reservation of practice, disciplinary processes, business conduct (maintenance of office in Northern Territory, professional indemnity insurance, fidelity fund, trust monies)	See summary in table 8.1 on commercial agents, inquiry agents and security providers.	See summary in table 8.1 on commercial agents, inquiry agents and security providers.	Council to finalise assessment in 2003.

Travel agents

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

Governments are taking a national approach to reviewing their travel agent legislation (see also chapter 15). The Ministerial Council on Consumer Affairs commissioned the Centre for International Economics (CIE) to review legislation regulating travel agents, and released the review report for public comment in August 2000. The review report recommended removing entry qualifications for travel agents. It also recommended maintaining the requirement for travel agents to hold insurance, but dropping the requirement for agents to be members of the Travel Compensation Fund (the compulsory insurance scheme). Instead, the report considered that a competitive insurance system, where private insurers compete with the Travel Compensation Fund, would be a better approach (CIE 2000g). The Western Australian Department of Consumer and Employment Protection is preparing a draft response to the review report, in liaison with the CoAG Committee on Regulatory Reform.

The States and Territories did not complete their review and reform activity by the CoAG deadline of 30 June 2002. As discussed in chapter 15, the Council is concerned by the delay in finalising some national reviews. The Council recognises that the requirement for intergovernmental consultation slows the review process; it urges jurisdictions, however, to demonstrate their commitment to fulfilling their CPA obligations by completing the review and implementing reforms within a reasonable period.

Licensing in some jurisdictions

This section discusses the review and reform of legislation regulating professions and occupations that are licensed in some (but not all) jurisdictions, including auctioneers, conveyancers, employment agents, hairdressers and hawkers.

Auctioneers

Victoria, Queensland, Western Australia, Tasmania, the ACT and the Northern Territory have separate legislation for licensing auctioneers (which generally also includes business conduct requirements). Governments'

objectives for licensing auctioneers include increasing consumer confidence in the auction system, protecting vendors and purchasers against specific unfair and anticompetitive conduct at auctions, and preventing and tracing the sale of stolen or diseased livestock at auctions (Ministry of Fair Trading 2000; Victoria University Public Sector Research Unit 1999).

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

The 2001 NCP assessment reported that South Australia had met its CPA obligations in relation to the review and reform of legislation governing auctioneers. The following section discusses the remaining jurisdictions' progress towards compliance with their CPA obligations.

Victoria

Victoria University completed a review of Victoria's *Auction Sales Act 1958* in November 1999. The review recommended discontinuing auctioneer licensing, but introducing a minimal registration scheme for livestock auctioneers in the interests of livestock disease control.

The Government accepted the review recommendation to discontinue licensing, but rejected the registration proposal as unnecessary (Department of Treasury and Finance 2001a). It passed the *Auction Sales (Repeal) Act 2001*, which takes effect no later than 1 January 2003, and so has met its CPA obligations for the review and reform of the Auction Sales Act.

Queensland

As discussed previously, PricewaterhouseCoopers completed a review of the Queensland Auctioneers and Agents Act in 2000. The review recommended reforms to the restrictions on market entry. These included removing age, residency and minimum experience requirements, substituting suitability assessment for character and fitness tests, introducing competency assessment, and replacing the requirement for suitable premises with a requirement to maintain a registered office.

The review also recommended reforms to restrictions on business conduct. It recommended deregulating maximum commissions and removing the maximum cap on buyers' premium commissions. It also recommended exempting auctioneers who are acting as *del credere* agents (that is, selling goods on credit and, for an additional premium or commission, guaranteeing the buyer's solvency to their principal) from trust accounting provisions.

PricewaterhouseCoopers proposed transitional arrangements to support the implementation of these reforms. It recommended a public education campaign to make market participants aware of the changes to their rights and responsibilities. The report suggests that 'the campaign should be commenced in a timeframe to allow it to take impact prior to the removal of regulated maximum commissions' (PricewaterhouseCoopers 2000a).

The committee that oversaw the review accepted and endorsed the consultant's report (Auctioneers and Agents National Competition Policy Review Committee 2000). The Queensland Government repealed the Auctioneers and Agents Act and replaced it with the Property Agents and Motor Dealers Act. In line with the transitional arrangements recommended by the consultants and the review committee, the Government retained the controls on maximum commissions but began an ongoing community education campaign when the Act commenced. The Government expects to complete a review of restrictions on commissions during 2002.

The Council accepts that there may be a net community benefit in temporarily retaining maximum commissions while market participants are educated about their rights and responsibilities. Given that Queensland expects to complete a review of restrictions on commissions during 2002, the Council will finalise the assessment of compliance in 2003.

Western Australia

The Ministry of Fair Trading completed an NCP review of the *Auction Sales Act 1973* in 2001. The review recommended retaining the current licensing system while the Ministry conducted a full legislative review of the Act, and then repealing the licensing system unless the full legislative review reveals new reasons to justify retaining it. The Department of Consumer Protection anticipated completing the general review of the Act in June or July 2002.

The Council acknowledges that implementing the recommendation to conduct a general review of the Act has made it difficult for Western Australia to complete reform implementation by 30 June 2002. Western Australia has, however, demonstrated its commitment to meeting its CPA obligations by its efforts to complete the general review within a reasonable timeframe. Therefore, the Council will finalise its assessment of compliance with CPA obligations in the 2003 NCP assessment.

Tasmania

Tasmania released the draft report of the review of the *Auctioneers and Real Estate Agents Act 1991* for public comment. The draft report found that there is no need to license general auctioneers, but that they should be subject to general trust accounting and record management requirements. Tasmania has advised that it intends to repeal the Act and replace it with new legislation in the spring 2002 session of Parliament.

Tasmania did not meet the CoAG deadline of 30 June 2002 for completing the review and reform of this legislation; it has, however, made significant progress towards fulfilling its CPA obligations. Given that Tasmania has replace the Act with new legislation in the spring 2002 session of Parliament, the Council will finalise its assessment of compliance in 2003.

The ACT

The ACT completed an NCP review of the *Auctioneers Act 1959* in conjunction with the *Agents Act* in 2001. The review found that the regulatory costs are minor, but the benefits appear insufficient to justify licensing auctioneers (Stefaniak 2001). The ACT anticipates repealing the *Auctioneers Act 1959* and incorporating relevant provisions into the *Agents Act* when it makes more general amendments to the *Agents Act*. The ACT will meet its CPA obligations in relation to the *Auctioneers Act* when it repeals the Act.

The Northern Territory

The Northern Territory completed the review of the *Auctioneers Act* in May 2002. The review found that the licensing requirements for auctioneers and auctioneers clerks are outdated and can no longer be justified. The review found that some restrictions on the conduct of auctions and record-keeping can be justified, and recommended setting out these requirements in an Industry Code of Practice under the *Consumer Affairs and Fair Trading Act*. The review also recommended that the Government consider imposing some regulations on the handling of trust moneys and trust accounting.

The Government approved the review recommendations and introduced a Bill to repeal the *Auctioneers Act* in the June 2002 sittings of the Legislative Assembly. It will commence the *Auctioneers Act Repeal Act* when the industry code of practice is in place (Toyne 2002). The Northern Territory will meet its CPA obligations in relation legislation regulating auctioneers when Parliament passes the *Auctioneers Act Repeal Bill*.

Table 8.6: Review and reform of legislation regulating auctioneers

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Victoria	<i>Auction Sales Act 1958</i>	Licensing, entry requirements (residency, character), practice reservation (auctioneers of goods, including livestock), business conduct (suitable premises, no music, no disorderly conduct, maintenance of register for cattle and sheep skins, no collusion)	Review by Victoria University completed in November 1999. It recommended discontinuing licensing and introducing a minimal registration scheme for livestock auctioneers (in the interests of livestock disease control).	The Government accepted the recommendation to discontinue licensing, but rejected the registration proposal as unnecessary. Act repealed by the Auction Sales (Repeal) Act 2001, with effect no later than January 2003.	Meets CPA obligations (June 2002).
Queensland	<i>Auctioneers and Agents Act 1971</i>	Auctioneers: licensing, registration, entry requirements (residency in State or within 65-kilometre border, age at least 21 years, good fame and character, fit and proper person, two years experience [including four auctions] on provisional licence before general licence), the reservation of practice, business conduct (suitable business premises, maximum commission)	Review by PricewaterhouseCoopers completed in 2000. Public consultation involved circulation of issues paper, submissions and consultations. Review recommendations included reducing some requirements for licensing, removing maximum commissions and the maximum cap on buyers' premium commissions, and exempting auctioneers acting as <i>del credere</i> agents from trust accounting provisions.	Act was repealed and replaced by <i>Property Agents and Motor Dealers Act 2000</i> . New Act incorporates most of review recommendations. Restrictions on commissions were retained to allow for community education campaign before deregulation. The Government is reviewing the commissions.	Council to finalise assessment in 2003.
Western Australia	<i>Auction Sales Act 1973</i>	Licensing of auctioneers, entry requirements (fit and proper person, requires two years experience on restricted licence before general licence), the reservation of practice, business conduct (maintenance of records in relation to livestock and vendor accounts)	Review was completed in 2001. Discussion paper was released in September 2000, inviting submissions. Discussion paper recommended retaining the licensing system to allow for a full legislative review within the next 12 months, and then repealing the licensing system unless the full review reveals new reasons justifying the system's retention. A general review of the Act is under-way and the Department of Consumer Protection expects to complete it by 30 April 2002.		Council to finalise assessment in 2003.

(continued)

Table 8.6 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
South Australia	<i>Land and Business (Sale and Conveyancing) Act 1994</i>	Business conduct (requirement for sale of land or small business, that the auctioneer make the vendor's statement available)	Review was completed in 1999. It involved public consultation. It recommended no reform, including no change to the requirement for auctioneers selling land or a small business by auction make the vendors statement available.	The Government endorsed the review recommendation.	Meets CPA obligations for auctioneers (June 2001).
Tasmania	<i>Auctioneers and Real Estate Agents Act 1991</i>	Auctioneers: licensing, registration, entry requirements (sufficient knowledge, fit and proper person), business conduct (no misrepresentation, bids by owners or collusion at auctions)	Review complete. Draft review report was released for consultation. It found that there is no need to license general auctioneers, but that they should be subject to general trust accounting and record management requirements.	The Government intends to repeal the Act and replace it with new legislation in the spring 2002 session of Parliament.	Council to finalise assessment in 2003.
ACT	<i>Auctioneers Act 1959</i>	Licensing, entry requirements (age, good character, no pawnbrokers), the reservation of practice, business conduct (maintenance of records for at least 12 months)	Intradepartmental review was completed in 2001. It found that while the regulatory costs are minor, the benefits appear insufficient to justify retaining the licensing requirements in the Act. The review recommended the repeal of the Act.	The Government anticipates repealing the Act and incorporating relevant provisions in the Agents Act.	Council to finalise assessment in 2003.
Northern Territory	<i>Auctioneer's Act</i>	Licensing, entry requirements (aged over 18 years, good character, fit and proper person), the reservation of practice, business conduct (maintenance of records for at least 12 months, auctions between 8am and 11pm)	Intradepartmental review was completed in May 2002. Public consultation involved releasing a consultative paper and inviting submissions. Review recommended replacing current licensing system with a negative licensing system through an Industry Code of Practice under the Consumer Affairs and Fair Trading Act. Review also recommended that the Government consider imposing some requirements for handling of trust moneys and trust accounts.	The Government introduced the Auctioneers Act Repeal Bill into the Legislative Assembly in June 2002.	Meets CPA obligations (June 2002).

Conveyancers

New South Wales, Victoria, Western Australia, South Australia and the Northern Territory have introduced legislation permitting non-lawyers to undertake certain activities traditionally reserved for legal practitioners, including conveyancing. Jurisdictions' review and reform of practice restrictions contained in legal practitioner legislation are discussed further in chapter 7; this section examines the review and reform of legislation specifically governing conveyancers.

New South Wales, Western Australia, South Australia and the Northern Territory have separate legislation for non-lawyer conveyancers (or settlement agents). The objective of licensing is generally to protect clients of conveyancers by providing that conveyancers be accountable and meet certain standards of competence.

The scope of work performed by conveyancers varies across jurisdictions.

- New South Wales permits conveyancers to undertake a broad scope of work, covering commercial, rural and residential real estate as well as personal property. Conveyancers are not restricted to transactions involving land, but are also permitted to transfer goodwill, stock-in-trade and other personal property without a related sale of land (Department of Fair Trading 2000a).
- Western Australia allows real estate settlement agents to effect settlements of land transactions (except farming businesses or mining tenements). Business settlement agents may effect settlements of business transactions (except where the business comprises real estate of a mining tenement). Settlement agents are allowed to prepare some legal documents, such as some caveats (Ministry of Fair Trading 1999).
- South Australia limits conveyancing work to preparing conveyancing instruments for fee or reward. Conveyancers are not permitted to provide legal advice on conveyancing transactions generally, such as the preparation of contracts, or on the legal effect of certain transactions.
- In Victoria, the *Legal Practice Act 1996* permits non-lawyer conveyancing firms to undertake the non-legal work associated with conveyancing, such as obtaining title searches, making enquiries of statutory authorities and attending settlement. These firms are not permitted to prepare any document that creates, varies, transfers or extinguishes an interest in land, or to give legal advice. Generally, they engage solicitors to do this legal work.
- Northern Territory conveyancing agents may facilitate the transaction of real property by performing land title searches, preparing and executing sale contracts, arranging settlement, and lodging documents and

completed powers of attorney. The Northern Territory does not permit conveyancers to prepare mortgage leases or business sales (CIE 2000a).

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

OCBA [Office of Consumer and Business Affairs] also expresses concern over the mutual recognition by SA of WA settlement agents and NT conveyancing agents, as these two groups do not draft their own documents and their work does not include commercial property and its components. To date OCBA has not had to refuse any applications received from WA or NT agents, but it is anticipated that this situation could change. (CoAG 1998)

The following section discusses jurisdictions' progress in completing the review and reform of their legislation regulating conveyancers.

New South Wales

The Department of Fair Trading reviewed the *Conveyancers Licensing Act 1995*, and submitted the final review report to the Minister for Fair Trading in October 2001.

The Government is currently considering a proposal arising from the recommendations of the review and intends to introduce amending legislation into Parliament during 2002 (New South Wales Government 2002). The information provided by New South Wales does not indicate whether the reform proposal addresses all of the review recommendations.

New South Wales will not complete the reform of the Conveyancers Licensing Act by the CoAG deadline of 30 June 2002. As New South Wales anticipates introducing amending legislation into Parliament during 2002, the Council will finalise its assessment of CPA compliance in 2003.

Western Australia

The review of the *Settlement Agents Act 1973* found a net public benefit in licensing settlement agents because the benefits of reduced risk of financial loss and increased consumer confidence outweighed the costs associated with reduced competition. The review recommended, however:

- replacing the requirement for agents to have 'sufficient material and financial resources' with provisions that:
 - prevent people holding settlement agents licences if they are insolvent or have a recent history of insolvency; and

- prevent businesses holding a licence if a partner or director is insolvent or has a recent history of insolvency;
- removing the residency requirement;
- replacing caps on the maximum fees that an agent can charge with a disciplinary offence of receiving or demanding an excessive fee and giving the Board power to order repayment of an excessive fee received; and
- retaining the requirement for agents to hold professional indemnity and fidelity insurance, but permitting licensees to choose their insurer.

The Cabinet endorsed the review recommendations in March 2002 (Department of Treasury and Finance 2002). Western Australia will meet its CPA obligations in respect of the Settlement Agents Act when it implements the review recommendations. The Council will finalise the assessment of CPA compliance in the 2003 NCP assessment.

South Australia

The 2001 NCP assessment reported that South Australia had met its CPA obligations in relation to conveyancers because the State had introduced legislation to Parliament to remove restrictions on the ownership of incorporated conveyancers. The Council notes that the Conveyancers (Registration) Amendment Bill lapsed in the Legislative Council on the prorogation of Parliament, and thus will need to be reintroduced. The Council will finalise its assessment of CPA compliance in 2003.

The Northern Territory

The Northern Territory Agents Licensing Act regulates realty agents who provide real estate, business and conveyancing services. The Government commissioned the Centre for International Economics to review the Act in 2000. The review report recommended changes to entry requirements, the reservation of practice, and business conduct.

- *Entry requirements* — the review recommended replacing the years-of-experience requirement with a competency-based approach, amending the fit and proper person test to signal to applicants the criteria that will be used; allowing any authorised registered training organisation to receive funding from the fidelity fund to provide realty education; and investigating the possibility of tendering out sole rights to deliver realty education (to promote competition between education providers).
- *Reservation of practice* — the review recommended allowing conveyancers who possess the necessary qualifications to provide mortgage lease and business sale contracts services; and investigating a 'restricted' conveyancing licence to overcome problems if some agents choose not to upgrade their skills.

- ***Business conduct*** — the review recommended removing the requirement to maintain an office in the Northern Territory (but retaining the requirement that realty businesses have a licensed agent in control of business); and maintaining the requirement for professional indemnity insurance and fidelity fund contributions.
- ***Other*** — the review recommended recomposing the Agents Licensing Board to include licensed conveyancing agents (CIE 2000a).

The Government is considering the report, together with proposed legislation. Although the Northern Territory did not complete its review and reform activity by the CoAG deadline of 30 June 2002; it has made significant progress, so the Council will finalise its assessment of CPA compliance in the 2003 NCP assessment.

Table 8.7: Review and reform of legislation regulating conveyancers

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Conveyancers Licensing Act 1995</i>	Licensing, registration, entry requirements (age, qualifications, training, experience), the reservation of practice (lawyers also able to provide these services), disciplinary processes, business conduct (record keeping, trust monies, receipts, professional indemnity insurance)	Review complete. Issues paper was released in March 2000. Final report submitted to the Minister for Fair Trading in October 2001.	The Government is considering a proposal arising from the review recommendations, and anticipates introducing amending legislation into Parliament during 2002.	Council to finalise assessment in 2003.
Western Australia	<i>Settlements Agents Act 1981</i>	Licensing, entry requirements (qualifications, two years experience, age, good character, fit and proper person, material and financial resources, residency in Western Australia), the reservation of practice, business conduct (supervision, trust accounts, maximum fees, professional indemnity insurance, fidelity fund), business licensing	Review found that licensing settlement agents is in the public interest, given the benefits of reduced risk of financial loss and increased consumer confidence. It recommended: replacing entry requirements relating to the financial resources of agents with provisions preventing insolvent persons holding a licence; removing the residency requirements; replacing the cap on fees with an offence of 'demanding a fee that is excessive'; and giving agents the option of arranging their professional indemnity and fidelity insurance through an insurer of their choice.	Cabinet has endorsed the review report.	Council to finalise assessment in 2003.

(continued)

Table 8.7 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
South Australia	<i>Conveyancers Act 1994</i>	Licensing, registration, entry requirements (qualifications, no convictions for offences of dishonesty), the reservation of practice, disciplinary processes, business conduct (professional indemnity insurance, trust accounts, ownership), business licensing	Review was completed in 1999. It involved public consultation. Recommendations included: revising entry requirements in relation to fitness and propriety; removing ownership restrictions (but introducing requirement that a director of an incorporated company must not unduly influence a registered conveyancer); and removing the requirement that the sole object of a conveyancing company is carrying on business as a conveyancer.	Amendments to implement recommendations were introduced in Parliament in late 2000.	Council to finalise assessment in 2003.
	<i>Land and Business (Sale and Conveyancing) Act 1994</i>	Business conduct of agents, conveyancers and vendors of property for sale of land or small business (information provision, cooling-off, subdivided land, relationship between agent and principal, preparation of conveyancing instruments, representations)	Review complete. Review involved public consultation. It recommended no reform.	The Government endorsed the review recommendation.	Meets CPA obligations (June 2001).
Northern Territory	<i>Agent's Licensing Act</i>	Licensing (real estate agents, agent's representatives, conveyancing agents), registration, entry requirements (fit and proper person, age at least 18 years, education or experience, competency), the reservation of practice, business conduct (office in Northern Territory, professional indemnity insurance, fidelity fund, trust monies)	Review was completed in November 2000. It recommended changes to entry requirements, the reservation of practice and business conduct.	The Government is considering the review recommendation and legislative proposal.	Council to finalise assessment in 2003.

Employment agents

Employment agents offer services such as finding employment for unemployed persons or those who want to change employment, recruiting staff for an employer, acting as a counsellor and careers adviser, and assisting with résumé and interview preparation (Department of Fair Trading 2000b).

When governments developed their legislative review timetables in 1996, New South Wales, Victoria, Queensland, Western Australia and South Australia had legislation for licensing employment agents (since repealed in Victoria). The ACT introduced licensing of employment agents through a private members Bill in 1999.

Regulation of employment agents is designed to address problems that arise from information asymmetry between service providers and consumers. The potential risks to consumers include misleading advertising, inappropriate charging of fees, deceptive conduct, unskilled career counselling, inappropriate disclosure of confidential information, and business failure (Department of Fair Trading 2000b).

Employment agents are also subject to State and Territory Fair Trading Acts, which mirror the consumer protection provisions of the Commonwealth *Trade Practices Act 1974*. These Acts prohibit practices that seek to exploit or misinform the community, such as deceptive conduct, false representation and misleading advertising.

New South Wales

The Department of Fair Trading completed its review of the *Employment Agents Act 1996* in February 2001. The review team found that there is no consistent reason that justifies the (albeit limited) competitive restrictions imposed by licensing employment agents. It recommended repealing the *Employment Agents Act* and amending the *Fair Trading Act 1987* to include specific consumer protection mechanisms in relation to employment agents.

The Government accepted the review recommendations in principle and approved the preparation of an exposure draft Bill for public consultation during 2002 (New South Wales Government 2002). New South Wales will meet its CPA obligations in relation to employment agents if it implements reforms consistent with the review recommendations. The Council will finalise the assessment of CPA compliance in the 2003 NCP assessment.

Queensland

The review of Queensland's *Private Employment Agencies Act 1983* recommended repealing the Act over a two-year period, implementing a simplified licensing regime until the Act expires, and incorporating

restrictions on the charging of fees by employment agents into the *Industrial Relations Act 1999*. Queensland met its CPA obligations through the *Private Employment Agencies and Other Acts Amendment Act 2002*, which implemented the recommendations of the review.

The ACT

In the ACT, employment agents are regulated under the Agents Act. The ACT completed a review of the Agents Act in 2001, in conjunction with a review of the Auctioneers Act. The review questioned the imposition of a licensing regime on the employment agents market. It found that the employment agent licensing scheme is essentially a revenue-raising measure to pay for a licensing system that does little to produce significant public benefits or prevent market failure. The Government is considering the review recommendations (ACT Government 2002).

Although the ACT will not complete its review and reform activity by 30 June 2002, it has made significant progress towards fulfilling its CPA obligations in relation to employment agents. Given this, the Council will finalise its assessment of CPA compliance in the 2003 NCP Assessment.

Other jurisdictions

Western Australia anticipated completing the review of the *Employment Agents Act 1976* in time for Cabinet to consider it before 30 June 2002. Therefore, the Council will finalise its assessment of whether Western Australia has compliance with its CPA obligations in relation to employment agents in the 2003 NCP assessment.

South Australia completed the review of the *Employment Agents Registration Act 1993* in October 2000. The previous government did not respond to the review, so the current government is considering the recommendations. Given that South Australia is continuing to progress this matter, the Council will finalise its assessment of CPA compliance in 2003.

Table 8.8: Review and reform of legislation regulating employment agents

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Employment Agents Act 1996</i>	Licensing, entry requirements (fit and proper person, age, suitable premises, no previous cancellation), practice reservation, business conduct (separate licence for each premises, registered person in charge, no charge to jobseekers, maintenance of records, no misleading advertising)	Review was completed February 2001. It recommended abolishing licensing of employment agents. It also recommended repealing the Act and inserting specific consumer protection mechanisms in relation to the use of employment agents in the <i>Fair Trading Act 1987</i> .	The Government accepted the review recommendations, in principle and approved preparation of an exposure draft Bill for public consultation during 2002.	Council to finalise assessment in 2003.
Victoria	<i>Employment Agents Act 1983</i>		Not for review.	Act was repealed in 2000 (had never been brought into operation).	Meets CPA obligations (June 2001).
Queensland	<i>Private Employment Agencies Act 1983</i>	Licensing, entry requirements (residency in Queensland, fit and proper person, suitable premises), the reservation of practice, business conduct (no charge to jobseekers except performers and models, maintenance of records, no misleading advertising)	Review was completed. It recommended: expiry of the Act over two years; implementing a simplified licensing scheme until the Act expires; establishing an advisory committee to develop a draft code of conduct and transferring fee-charging restrictions to the <i>Industrial Relations Act 1999</i> .	Review recommendations were implemented through the <i>Private Employment Agencies and Other Acts Amendment Act 2002</i> .	Meets CPA obligations (June 2002).
Western Australia	<i>Employment Agents Act 1976</i>	Licensing, entry requirements (fit and proper person), the reservation of practice, business conduct (scale of fees, maintenance of records, no misleading advertising)	A departmental review is underway. Consultation involved sending a questionnaire to licensed employment agents, inviting public submissions, and consulting on draft report. The final report was expected to be completed for Cabinet consideration before 30 June 2002.		Council to finalise assessment in 2003.

(continued)

Table 8.8 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
South Australia	<i>Employment Agents Registration Act 1993</i>	Licensing, entry requirements (fit and proper person, manager with sufficient knowledge and experience to manage business), practice reservation, business conduct (maintenance of records, no misleading advertising)	Review was completed October 2000. Review involved public consultation.	The Government is considering review report.	Council to finalise assessment in 2003.
ACT	<i>Agents Act 1968</i>	Licensing, entry requirements (age, not disqualified from holding a licence, character references, police check, requirement to advertise intention to seek registration), reservation of title, ownership (not-for-profit organisations cannot apply for a licence, restrictions on partnerships), business conduct (no charge to job-seekers).	Review was completed in 2001. It questioned the imposition of a licensing regime on the employment agent's market.	The Government is considering the review recommendations.	Council to finalise assessment in 2003.

Hairdressers

New South Wales, Queensland, Western Australia, South Australia and Tasmania regulate hairdressers. New South Wales and Western Australia require hairdressers to be licensed. Queensland licenses hairdressing premises and mobile hairdressers, and imposes business conduct requirements. South Australia has a negative licensing scheme for hairdressers, whereby a person is not permitted to practise hairdressing for fee or reward unless they hold appropriate qualifications. The 2001 NCP assessment reported that South Australia had met its CPA obligations in relation to hairdressers.

In New South Wales, the Department of Industrial Relations commenced a review of part 6 of the *Factories, Shops and Industries Act 1962* (which regulates hairdressers) in 2000. The department released an issues paper in June 2000, and conducted discussions and negotiations with stakeholders in preparing the review's final report (New South Wales Government 2002). Given that the Government anticipated making a decision on the final report by 30 June 2002, the Council will finalise the assessment of CPA compliance in 2003.

Queensland commissioned SKM Economics to conduct a review of its hairdressing, beauty therapy and skin penetration legislation. The review recommended replacing licensing of premises with licensing of businesses undertaking higher risk procedures (such as procedures involving skin penetration), and discontinuing licensing of hairdressers. The Government endorsed the recommendations, and expected to introduce amending legislation by mid-2002 (Queensland Government 2002). Queensland will meet its CPA obligations in relation to hairdressers when it discontinues licensing, as announced. The Council will finalise the assessment of CPA compliance in 2003.

Western Australia did not complete the review and reform of the *Hairdressers Registration Act 1946* by the CoAG deadline of 30 June 2002, although it expected to consider the Act in July 2002. The Council will finalise the assessment of CPA compliance in 2003.

Tasmania passed a Bill to repeal the *Hairdressers Registration Act 1975* in the Legislative Assembly in June 2002, thus meeting its CPA obligations in relation to hairdressers.

Table 8.9: Review and reform of legislation regulating hairdressers

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Factories, Shops and Industries Act 1962</i>	Licensing, entry requirements (training and exams or otherwise qualified), reservation of practice (hairdressing for fee, gain or reward), disciplinary processes	Review by Department of Industrial Relations is underway. Issues paper was released June 2000. Further discussions and negotiations with stakeholders are taking place in the preparation of the final review report.	The Government anticipated making a decision on the report by 30 June 2002.	Council to finalise assessment in 2003.
Queensland	<i>Health Act 1937</i>	Licensing for hairdressing premises and mobile hairdressers, business conduct (premises constructed and maintained to specific standards, standards of practice)	Review was completed in December 1999, recommending discontinuing licensing.	The Government endorsed the recommendations, and expects to finalise their implementation by mid-2002.	Council to finalise assessment in 2003.
Western Australia	<i>Hairdressers Registration Act 1946</i>	Licensing, registration, entry requirements (good character, training and exam), reservation of practice and title, disciplinary processes	Review by independent consultants is being finalised. A consultative committee has been established (including industry, Government and consumer representatives), and public submissions are being sought.		Council to finalise assessment in 2003.
South Australia	<i>Hairdressers Act 1988</i>	Negative licensing, entry requirements (qualifications), practice reservation (washing, cutting, colouring, setting, permanent waving or other treatment of a person's hair or the massaging or other treatment of a person's scalp for fee or reward)	Review found the entry requirements to be justified at the current time given the potential health and safety risks, the risk of substandard work, and the potential costs to consumers of enforcing their legal rights. It also found that this justification is unlikely to be sustainable in the longer term because none of these risks are significant. It recommended reducing the scope of work reserved for hairdressers and reviewing the Act in three years with a view to its repeal.	The Government endorsed the recommendations. Parliament passed the legislative amendments in March 2001.	Meets CPA obligations (June 2001).
Tasmania	<i>Hairdressers' Registration Act 1975</i>	Licensing, registration of hairdressers (hairdresser, master, principal), entry requirements, business conduct (premises must be licensed and comply with prescribed design, construction, furnishings and equipment requirements)	The Department of Infrastructure Energy and Resources undertook an assessment of the legislation and recommended repealing the Act.	Parliament passed the <i>Hairdressers Repeal Bill</i> in May 2002.	Meets CPA obligations (June 2002).

Hawkers

Hawkers are generally defined as persons who sell, or hold themselves out as being ready to sell goods carried on their person, on an animal or from a vehicle (Office of Fair Trading 2000; Allen Consulting Group 2000b). When governments developed their legislative review timetables in 1996, New South Wales, Queensland, the ACT and the Northern Territory had legislation requiring hawkers to be licensed (since repealed in New South Wales and the Northern Territory). The activities of hawkers are also governed by State and Territory Fair Trading Acts (see chapter 12).

The 2001 NCP assessment reported that New South Wales and the Northern Territory met their CPA obligations in relation to hawkers when they repealed their legislation regulating hawkers. Since then, Queensland has also passed legislation repealing its *Hawkers Act 1984*. The ACT is the only remaining jurisdiction with specific hawker legislation.

The ACT

The ACT's *Hawkers Act 1936* establishes a licensing scheme for hawkers. About 40 licensed hawkers work in the ACT at any time, mostly selling take-away food or a mix of flowers and fruit. Most hawkers operate stands at the side of major roads, although others set up near building sites or in car parks at the fringe of commercial areas.

The Department of Urban Services engaged the Allen Consulting Group to undertake a combined review of the *Hawkers Act* and the *Collections Act 1959*. The review found that the objectives of the *Hawkers Act* are to protect consumers from fraudulent commercial behaviour and to ensure that business is conducted in a safe and orderly fashion in public places.

The review was sceptical about the need for specific consumer protection regulations, but concluded that there is a need to regulate hawking in public spaces. In other jurisdictions, local government regulations minimise the impacts of hawking on public safety and pedestrian and vehicular traffic. Having only a single level of government, the ACT must legislate to address these issues (Allen Consulting Group 2000b).

The review recommended:

- continuing positive licensing for hawkers operating from a single location and adopting a negative licensing regime for mobile hawkers;
- removing the character and minimum age requirement for licence applicants;
- removing limits on the number of people that a hawker can employ and the number of vehicles that a mobile hawker can operate;

- permitting businesses to hold hawker licences; and
- replacing the ban on hawking within 180 metres of shops (unless exempted by the Minister) with alternative location controls similar to those used for moveable signs.

The ACT Government supports the major recommendations of the review, and intends to introduce legislation to implement these recommendations in the Legislative Assembly's spring 2002 sittings. It rejected the recommendation to replace the exclusion zone, however, because the alternative approach proposed by the review would be more prescriptive and increase administration costs whilst achieving largely the same outcome as the exclusion zone (ACT Government 2002b).

The Council accepts that some restrictions on the location of hawking are justified on public safety, traffic management and land use planning grounds. In principle, the review's proposal offers a more direct (and less restrictive) means of aligning hawking activities with public land use strategies and policies than an arbitrary exclusion zone. Given that both approaches appear to result in broadly similar location restrictions, the lower administration costs justify retaining the exclusion zone.

The ACT will meet its CPA obligations in relation to legislation regulating hawkers when the Government implements its response to the legislation review.

Table 8.10: Review and reform of legislation regulating hawkers

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Hawkers Act 1974</i>	Licensing, business conduct	Review complete.	Act has been repealed.	Meets CPA obligations (June 2001).
Queensland	<i>Hawkers Act 1984</i>	Licensing, entry requirements (age, no mental disease, fit and proper), business conduct (no business between 6 p.m. and 7 a.m.). Act does not apply to certain businesses (for example, charity or sale by maker of goods).	Reduced NCP review undertaken by Office of Fair Trading, overseen by a review committee comprising representatives of the Office of Fair Trading, Queensland Police, the Department of Communication and Information, the Department of Local Government, Planning and Sport and the Treasury. Review involved targeted consultation with licensed hawkers, local governments and consumer associations.	Act was repealed by the <i>Tourism and Fair Trading (Miscellaneous Provisions) Act 2002</i>	Meets CPA obligations (June 2002).
ACT	<i>Hawkers Act 1936</i>	Licensing, entry requirements (age, good character, fit and proper person), business conduct (geographic and time restrictions, business structure)	Reviewed by Allen Consulting Group, in conjunction with the <i>Collections Act 1959</i> . Review involved targeted public consultation with issues paper, meetings and submissions. It recommended: refocusing legislation on land use and continuing positive licensing for hawkers operating from a single location, but having negative licensing for mobile hawkers; removing restrictions on number of vehicles a hawker can operate, number of people hawkers can employ and their age; removing 180-metre exclusion zone from traditional shops, and regulating health, liquor and contraband goods via other legislation.	The Government supports the major recommendations of the review. Legislation is being drafted for introduction into the Legislative Assembly in May 2002.	Council to finalise assessment in 2003.
Northern Territory	<i>Hawkers Act</i>	Licensing, business conduct.	Stakeholder-focused review was completed in August 2000. The review found licensing requirements, exemption provisions and restrictions on hawking on Crown land were anticompetitive, although necessary to protect the public in terms of proper commercial dealings and annoyance. Regardless, it was also found that the objectives of the legislation could be pursued through other legislation. The review recommended repealing the legislation, pending consideration of other legislative means for regulating hawking offences.	The Government accepted the recommendations in September 2000. Bill to repeal Act was passed in November 2000 (and brought into effect in April 2001).	Meets CPA obligations (June 2001).

Other licensed occupations

The 2001 NCP assessment reported that Victoria had met the CPA new legislation obligations in relation to the *Introduction Agents Act 1997*, and that Western Australia had met its CPA obligations for the review and reform of the *Boxing Control Act 1987*. The following section discusses jurisdictions' review and reform activity since the 2001 NCP assessment.

Commonwealth

The Commonwealth completed a review of legislation governing migration agents in 1997. The review concluded that consumer protection concerns mean voluntary self-regulation is not immediately achievable. The review recommended implementing a transitional arrangement to enable the industry to prepare for self-regulation.

The Government accepted the review findings, and passed legislation to implement statutory self-regulation for two years from March 1998 then voluntary self-regulation. A further review in 1999 found that the industry was not ready for voluntary self-regulation. In response, the Commonwealth passed the *Migration Legislation Amendment (Migration Agents) Act 1999* to extend the transitional statutory self-regulation system for three years to March 2003.

The Government assessed the Migration Legislation Amendment (Migration Agents) Act under its new legislation gatekeeping arrangements. It prepared a regulatory impact assessment, which the Office of Regulation Review approved (PC 2001a). The Commonwealth has met its CPA legislation review and reform obligations in relation to migration agents.

New South Wales

New South Wales completed a review of the *Boxing and Wrestling Control Act 1986* and is preparing the final report of the *Entertainment Industry Act 1989* review. The Government has advised, however, that it anticipated considering a boxing reform proposal shortly and introducing amending legislation during 2002 and that it anticipated making a decision on the entertainment industry review by 30 June 2002. Although New South Wales did not complete the review and reform of either Act by the CoAG deadline of 30 June 2002, it is continuing to make progress, so the Council will finalise its assessment of CPA compliance in 2003.

The review of the *Wool, Hides and Skins Dealers Act 1935* recommended repealing the Act. The Government considered the review recommendations in conjunction with the findings of the Pastoral and Agricultural Crime Working Party, and decided to retain the Act as part of a package of rural crime measures. New South Wales has yet to demonstrate that retaining the

Wool, Hides and Skins Dealers Act 1935 complies with the requirements of the CPA. It advised, however, that it was developing a public benefit assessment to support the Act's retention, which it anticipated completing by June 2002. The Council will finalise the assessment of CPA compliance in 2003, after receiving the Government's public interest arguments.

Victoria

Victoria completed a review of the *Professional Boxing and Martial Arts Act 1985* in 1999. The Act aims to protect the health and safety of contestants in professional boxing and kickboxing contests. It requires promoters, trainers, match-makers, referees and judges of professional contests to hold a licence or permit and contestants to be registered. It also enables the Minister to prescribe rules for the proper conduct of professional contests.

The review recommended streamlining the contestant registration system to allow contestants competing in both boxing and martial arts contests to register once rather than separately for each category, and examining the scope for replacing detailed rules and conditions with less prescriptive national or international standards. The review also recommended amending the provision that exempts Victoria's Amateur Boxing Association from the Act's requirements, so that other suitable qualified amateur boxing associations can also be granted exemptions (Department of Treasury and Finance 2000).

The Government accepted all of the recommendations with one exception: it rejected the recommendation to consider replacing adopting national or international standards because the industry is fragmented into different bodies that follow various rules, so it is not possible to adopt a single set of rules. Victoria met its CPA obligations in relation to boxing when it implemented its response to the review through the *Professional Boxing and Martial Arts (Amendment) Act 2001*.

The ACT

The ACT *Boxing Control Act 1993* bans the conduct of boxing contests without the approval of the Minister, and requires officials and contestants in professional contests to be registered under New South Wales *Boxing and Wrestling Control Act 1986*. The references to the New South Wales Act in the ACT Act prevented the ACT from starting its review until the New South Wales review is finished. The ACT Government advised, however, that it expects to complete the review and implement reforms by September 2002 (ACT Government 2002b).

The ACT did not complete the review and reform of its legislation regulating boxers by the CoAG deadline of 30 June 2002. Given that the Act is unlikely to impede competition significantly, and that the ACT is committed to completing the review and reform within a few months, the Council will finalise the assessment of CPA compliance in 2003.

The *Collections Act 1959* governs public collections and fundraising. Under the Act, people or organisations collecting donations from members of the public in public places must hold a licence. The ACT Government commissioned the Allen Consulting Group to review the Collections Act 1959 (in conjunction with the Hawkers Act 1936). The review recommended:

- removing the power to refuse a licence-based on where the funds are to be spent, or on the level of fundraising costs or remuneration for collectors;
- streamlining the licensing system by issuing licences for periods of time rather than particular days, and requiring annual reporting of funds raises and expenses incurred rather than reporting for each collection; and
- increasing disclosure to the community by requiring collectors to wear a badge (or display information) relating to the collection and nature of the collector (volunteer, staff member or paid collector).

The ACT Government supports the major recommendations of the review and proposes to introduce amending legislation into the Legislative Assembly in the spring 2002 session. Given this progress, the Council will finalise the assessment of CPA compliance in the 2003 NCP assessment.

Table 8.11: Review and reform of legislation regulating other occupations licensed by some, but not all jurisdictions

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Commonwealth	<i>Migration Act 1958, part 3 (migration agents)</i>	Licensing, registration, entry requirements (qualifications, good character), disciplinary processes, business conduct (adherence to code of conduct)	Review was completed in 1997 in combination with review of <i>Migration Agents Registration (Application) Levy Act 1992</i> and <i>Migration Agents Registration (Renewal) Levy Act 1992</i> . Review concluded that voluntary self-regulation was not immediately achievable due to consumer protection concerns, and a transitional arrangement is required to enable the industry to prepare for self-regulation.	The Government accepted the review findings and passed legislation implementing statutory self-regulation for two years from March 1998 then voluntary self-regulation. Statutory self-regulation was extended to March 2003 after a review in 1999 found the industry was not ready for voluntary self-regulation.	Meets CPA obligations (June 2002).
New South Wales	<i>Boxing and Wrestling Control Act 1986</i>	Conduct of professional boxing, conduct of wrestling and amateur boxing contests	Issues paper was released in July 2001. Final report was submitted to the Minister for Sport and Recreation in February 2002.	The Government anticipated considering a reform proposal and introducing amending legislation during 2002.	Council to finalise assessment in 2003.
	<i>Entertainment Industry Act 1989</i>	Licensing (entertainment industry agents, managers and venue consultants), maximum fees (entertainment industry agent).	Review is under way. Issues paper was released in September 2001. Final report is being prepared.	The Government anticipated making a decision on the final report by 30 June 2002.	Council to finalise assessment in 2003.
	<i>Wool, Hides and Skins Dealers Act 1935</i>	Restrictions on the buying and selling of wool, hides and skins	Review recommended repeal of the Act.	The Government decided to retain the Act.	Council to finalise assessment in 2003.

(continued)

Table 8.11 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Victoria	<i>Introduction Agents Act 1997</i>	Negative licensing, business conduct (disclosure requirements, cooling-off period, restriction on advance payments to 30 per cent of the total contract price)	New legislation, examined under Victoria's legislation gatekeeping arrangements. Legislation was introduced after other forms of intervention failed to correct problems in the introduction services market. Government considered that the benefits (better informed consumers and reduced consumer loss) outweigh the compliance costs.		Meets CPA obligations (June 2001).
	<i>Professional Boxing and Martial Arts Act 1985</i>	Registration (professional contestants, promoters, trainers, match-makers, referees and judges), business conduct	Department review was completed in August 1999. Consultation involved release of discussion paper, receipt of submissions and further targeted consultation. It recommended streamlining the contestant registration system so the Act refers to competition in a professional contest (rather than a boxing or martial arts contest); examining scope for replacing detailed rules and conditions with less prescriptive national or international standards; and amending the provision that exempts the Victorian Amateur Boxing Association from the Act so other suitable qualified amateur boxing association can be exempted.	The Government accepted all the recommendations except that to examine the scope for replacing detailed rules with national standards. The Government rejected this recommendation because the industry is fragmented into bodies following various rules, so it is not possible for it to adopt one set of rules. Amending legislation was passed in 2001 (which also changed the Act's name to the Professional Boxing and Combat Sports Act).	Meets CPA obligations (June 2002).

(continued)

Table 8.11 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Western Australia	<i>Boxing Control Act 1987</i>	Registration (boxers, trainers, promoters and judges)	Department review was completed in 1997. Consultation involved submissions. Review found a public interest for the restrictions in the Act that limit who can practise as a boxer, promoter or manager of boxers, and that ensure the health of boxers is satisfactory. These benefits include improved boxer welfare, fewer serious injuries, reduced boxer health care costs, less litigation over claims of fraud and personal injury, and a decline in the costs for promoters.	The Government endorsed the review, and retained the legislation without reform.	Meets CPA obligations (June 2001).
	<i>Firearms Act 1973</i>	Registration (firearm repairers)	Act was removed from the legislation review timetable in view of a national approach to firearms policy.		Meets CPA obligations.
ACT	<i>Boxing Control Act 1993</i>	Registration of professional boxers, officials and promoters (defined in NSW <i>Boxing and Wrestling Control Act 1986</i>).	The ACT review cannot be done independently of the NSW Boxing and Wrestling Control Act Review. NSW review is due for completion by June 2002. ACT review is expected to be completed by September 2002.	Act will be amended to reflect relevant changes in NSW.	Council to finalise assessment in 2003.
	<i>Collections Act 1959</i>	Licensing (fit and proper person, cause must be in the public interest, costs/remuneration not likely to be excessive, funds raised to be applied in ACT – unless there is no ACT body supporting that cause,), business conduct (reporting of funds raised and costs,).	Review by Allen Consulting Group, in conjunction with review of the <i>Hawkers Act 1936</i> , was completed in 2000. Review involved targeted public consultation, with an issues paper, meetings and written submissions. It recommended: not limiting the level of costs/remuneration; removing the power to refuse a licence based on where the funds are to be spent; continuing to allow the refusal of licences on public interest grounds; not limiting the locations of or number of collections; requiring licensees to report funds raised and costs on an annual basis rather than for individual collections; and requiring collectors to wear a badge or prominently display information about the collection.	The Government accepted most review recommendations. Legislation is being drafted for introduction in spring 2002.	Council to finalise assessment in 2003.