15 National legislation review and reform matters

This chapter discusses legislation review and reform matters that are being conducted on an interjurisdictional basis or are issues for which all governments have collective responsibility to achieve compliance with National Competition Policy (NCP) obligations. The NCP program involves 12 national reviews of which nine have been completed; implementation of the reform recommended by the reviews, however, is incomplete in most cases. In addition to participating in national reviews of legislation, governments have a responsibility arising from the Agreement to implement the National Competition Policy and Related Reforms to ensure the decisions of Ministerial councils and other bodies that set national standards (including voluntary codes or instruments with which compliance is widely expected to require compliance) reflect good regulatory practice.

National reviews

The Competition Principles Agreement (CPA) provides, where a review raises issues with a national dimension or effect on competition (or both), that the government responsible for the review will consider whether the review should be undertaken on a national (interjurisdictional) basis. Where a government considers a national approach to be appropriate, it must consult other interested governments before determining the terms of reference and the appropriate body to conduct the review.

Nine national reviews have been completed under the NCP program, with a further three in progress. In most cases, however, governments are still to complete the implementation of reforms recommended by the national reviews. Table 15.1 summarises the current status of national review and reform activity.

Delays in completing national review and reform activity often arise as a result of protracted interjurisdictional consultation. An added dimension is that sometimes review and reform activity by each State and Territory must await the conclusion of the national process, which can mean significant delay in reforming relevant State and Territory legislation.

The National Competition Council acknowledges the importance of thoroughly investigating relevant issues and adequately consulting affected governments. It also accepts that there has been useful progress in reviewing several significant regulation issues and that the national focus has improved

the consistency of regulation among jurisdictions. The Council would be concerned, however, if the current processes are not concluded within a reasonable period to enable reform of State and Territory legislation to proceed. It considers that all governments have a collective responsibility to ensure the completion of national reviews and resulting policy recommendations.

Assessment

Most of the national reviews that are listed in Table 15.1 are now finalised. In some cases, however, Ministerial councils or jurisdictions have requested further reports by working parties on the implications of the review recommendations and thus had not decided their reform strategy by 30 June 2002, the target date set by CoAG for completing the legislative review and reform program. In other cases, such as the reviews of radiation protection, architects and petroleum (submerged lands) legislation, the jurisdictions have agreed on an implementation strategy but have not completed their implementation of legislative changes arising from the reviews.

Where reviews have been completed and Ministerial councils and governments have agreed and committed to firm implementation strategies, the Council considers that NCP requirements have been fulfilled. The Council's approach reflects CoAG's agreement in November 2000 that satisfactory implementation of reforms may include having in place firm transitional arrangements that extend beyond CoAG's deadline for regulatory review and reform. The Council considers, for example, the radiation protection strategy to be a firm transitional arrangement and therefore compliant with CPA clause 5 obligations, even though it will not be fully implemented until 2004. The Council will monitor adherence to the implementation timetable in these cases.

Where national reviews have not been completed, or the reform strategy has not been decided, governments are yet to comply with CPA clause 5 obligations. The Council will finalise its assessment in 2003.

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Table 15.1: Current status of national reviews

Review	*Details of review*	*Current status of review*
Agricultural and Veterinary Chemicals Act 1994 and related Acts	This review covers legislation that created the National Registration Scheme for Agricultural and Veterinary Chemicals and legislation controlling the use of agricultural and veterinary chemicals in Victoria, Queensland, Western Australia and Tasmania. Separate to that review, the jurisdictions of New South Wales, South Australia and the Northern Territory conducted reviews of their own control-of-use legislation to be aggregated with the NCP review. The Victorian Minister for Agriculture and Resources commissioned the review on behalf of Commonwealth, State and Territory Ministers for agriculture/primary industries following a decision by the Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ). The consultant's final report was presented on 13 January 1999. The steering committee accepted that the report fulfilled the terms of reference. On 3 March 1999, the Standing Committee on Agricultural Resource Management (SCARM) publicly released the report and established a jurisdictional Signatories (to the National Registration Scheme for Agricultural and Veterinary Chemicals) Working Group to prepare an intergovernmental response to the report's recommendations. SCARM/ARMCANZ endorsed the intergovernmental response to the review in 2000. The Council of Australian Governments (CoAG) Committee on Regulatory Reform (CRR) cleared the response. This response accepted some of the recommendations and established working groups to consider the other issues.	Reports of these other working groups are expected to be finalised in 2002 and then will proceed to the Primary Industries Standing Committee/Primary Industries Ministerial Council. State and Territory reform will follow the Primary Industries Ministerial Council's consideration and endorsement of a new national framework. Chapter 4 discusses this review.

(*continued*)

Table 15.1 continued

Review	*Details of review*	*Current status of review*
Mutual Recognition Agreement and the *Mutual Recognition (Commonwealth) Act 1992*	Review was conducted in 1997-1998 by a working group of the CoAG Committee on Regulatory Reform, comprising representatives from the Commonwealth, New South Wales, Queensland (chair) and Western Australia. The review report noted that the scheme is generally working well. It made 30 recommendations addressing the operation of the Act and recommended that jurisdictions endorse the continued operation of the Act.	The review found that the scheme is generally working well to minimise the impediments to freedom of trade in goods and services and to establish a national market in goods and services in Australia. The review data indicated that the Mutual Recognition Agreement has increased competition and consumer choice, and reduced business costs. In relation to the NCP review, the review recommended retaining all existing (potentially anti-competitive) exceptions to the Mutual Recognition Agreement. Jurisdictions generally support the review's recommendations. Queensland had concerns about recommendations 17 (pornographic material), 23 (manner of sale of goods) and 27 (packaging and labelling requirements relating to transport, storage and handling). Victoria expressed concerns about recommendation 24 (packaging and labelling for drugs and poisons). The upcoming 2003 review of the Mutual Recognition Agreement will take up recommendations of the review and the concerns expressed by Queensland and Victoria.
Petroleum (Submerged Lands) Acts	The Act regulates exploration for and development of undersea petroleum resources. This legislation forms part of a national scheme. In April 2000, an independent consultant was commissioned to review the scheme. In response to its report, the Review Committee reported that the legislation is essentially pro-competitive and, to the extent that there are restrictions on competition (for example, in relation to safety, the environment, and resource management) these are appropriate given the net benefits to the community. The ANZMEC Ministerial Council endorsed the report on 25 August 2000. The final report was made public on 27 March 2001, following consideration by the CoAG Committee on Regulation Reform.	Two specific legislative amendments flow from the review. One will address potential compliance costs associated with retention leases and the other will expedite the rate at which exploration acreage can be made available. These amendments were incorporated in the Commonwealth's Petroleum (Submerged Lands) Legislation Amendment Bill 2002, which was introduced into Parliament on 15 May 2002, and is being considered. This Bill also proposes a rewrite of the *Petroleum (Submerged Lands) Act 1967*. Amendment and rewrites of the counterpart State and Northern Territory legislation will follow. Chapter 3 discusses this review.

(*continued*)

Table 15.1 continued

Review	*Details of review*	*Current status of review*
Drugs, poisons and controlled substances legislation	The State, Territory and Commonwealth governments commissioned a review to examine legislation and regulation that imposes controls over access to, and supply of drugs, poisons and controlled substances. The review's report has been finalised and presented to the Australian Health Ministers Conference which is required by the review's terms of reference to forward the report to CoAG with their comments. The final report was publicly released in January 2001.	The Health Ministers referred the review report to the Australian Health Ministers' Advisory Council (AHMAC), which established a working party to develop a draft response to the review recommendations for CoAG consideration. The working party has prepared a draft response, which has been endorsed by AHMAC and is now being considered by the Primary Industries Ministerial Council. Once any issues raised by the Primary Industries Ministers have been resolved, the draft response will be forwarded to CoAG. Following this process, individual governments will need to respond to the report and, where appropriate, initiate legislative change. Chapter 6 discusses this review.
Food Acts	The legislation for review comprises the Food Acts in each State and Territory and New Zealand. The objectives of the Food Acts are to ensure compliance and enforce food standards in each jurisdiction. The review was established in 1996 at the request of the Australia New Zealand Food Standards Council. The Australia New Zealand Food Authority coordinated the review, on behalf of the other jurisdictions and included representatives of the jurisdictions on the review panel. The authority released the review report in May 1999 and recommended removing some restrictive provisions of the Food Acts (for example opening up food inspections to third party auditors). The review concluded that governments should retain exclusive powers, in recognition of the appropriateness of government's enforcement role.	On 3 November 2000, CoAG agreed to the food regulatory reform package, of which the model food Act is a part. In addition, CoAG signed off on an Intergovernmental Agreement on Food Regulation agreeing to implement the new food regulation system. All jurisdictions agreed to use their best endeavours to introduce legislation based on the model food Act into their respective Parliaments by November 2001. Victoria, Queensland, South Australia, Tasmania and the ACT modified their food legislation in 2001, while New South Wales and the Northern Territory intend to introduce the legislation in 2002. Western Australia has not reported its timetable for introducing the model food Bill. Chapter 4 discusses this review.

(*continued*)

Table 15.1 continued

Review	*Details of review*	*Current status of review*
Pharmacy Regulation	The National Review of Pharmacy Regulation (Wilkinson Review) was completed in February 2000. The review recommended retaining registration, the protection of title, practice restrictions and disciplinary systems (although with minor changes to the registration systems recommended for individual jurisdictions). Further, the review recommended maintaining existing ownership restrictions and removing business licensing restrictions.	CoAG referred the Wilkinson Review to a senior officials' working party, which has reported back to CoAG. Approval to release the report was given by CoAG out-of-session. Chapter 6 discusses this review.
Review of legislation regulating the architectural profession	In November 1999, the Productivity Commission commenced a nine-month review of the legislation regulating the architectural profession. This inquiry served as a national review of participating States and Territories' legislation. On 4 August 2000, the Productivity Commission completed the review and released the final report on 16 November 2000. The recommended (and preferred) approach was that State and Territory architects Acts (under review) should be repealed after an appropriate (two-year) notification period to allow the profession to develop a national, nonstatutory certification and course accreditation system which meets requirements of Australian and overseas clients.	A national working group comprising representatives of all States and Territories was convened to recommend a consolidated response to the Productivity Commission's findings. The working group supported the Productivity Commission's broad objectives and, guided by these broad objects, rejected the recommended preferred approach as not being in the public interest. It recommended, instead, adopting the alternative approach of adjusting existing legislation to remove elements deemed to be anticompetitive and not in the public interest. Each government has committed to the reform agenda developed by the working party. Chapter 13 discusses this review.

(continued)

Table 15.1 continued

Review	*Details of review*	*Current status of review*
Review of radiation protection legislation	In December 1998, CoAG agreed to the conduct of a single joint national NCP review of radiation protection legislation. The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) would coordinate the review. One of ARPANSA's aims is to promote national uniformity in radiation protection and nuclear safety policy and practices. To this end it formed the National Uniformity Implementation Panel (Radiation Control) in August 1998 as a working group of its Radiation Health Committee. It comprises officers from the Commonwealth, States and Territories' radiation protection agencies. The NUIP (RC) is also the Steering Committee for this NCP review. A draft Issues Paper was released for public comment on 16 October 2000. Following submissions, a draft final report was released for public comment in March 2001. A series of consultation meetings were held, before drafting the final report, which was approved by the Steering Committee and produced on 8 May 2001.	In August 2001 ARPANSA sought and received jurisdictions' responses to the recommendations in the final report. and presented them to AHMAC. The final list of recommendations was approved by AHMAC on 30 May 2002. Generally, the review found the current legislative framework for radiation protection to be appropriate. The retention of a generally prescriptive regulatory approach was found to be necessary to protect public health and safety and the environment from the harmful effects of radiation. Most of the existing restrictions were found to be of net public benefit. The only restriction that was recommended for removal was that relating to advertising and promotional activities (this applies only to Western Australia). Recommendations were made for further action to improve the efficiency of the legislation. AHMAC approved an implementation plan for the recommendations, which contains 12 projects for implementation by various jurisdictions. Completion dates vary, but in any case do not extend beyond 30 June 2004.

(continued)

Table 15.1 continued

Review	*Details of review*	*Current status of review*
Review of trustee corporations legislation	The Standing Committee of Attorneys General (SCAG) is conducting a NCP review of the regulation of trustee companies with a view to replacing the current State-by-State regulation with a national scheme of complementary laws. SCAG released a consultation paper a draft uniform Bill in May 2001. The consultation paper discusses the key features of the trustee corporations industry, undertakes a competition analysis of the provisions and proposes alternative options for the future regulation. The draft Bill seeks to provide for regulation of the trustee corporations industry that is commensurate with the nature of the industry and the risks posed to consumers by defaults of trustee corporations.	Governments have not completed their consideration of the issues raised in the consultation paper and the draft Bill.
Review of travel agents legislation	The Ministerial Council on Consumer Affairs has commissioned a national review (coordinated by Western Australia), which is under way. As part of the national review, the Ministerial Council released a review report by the Centre for International Economics for public comment in August 2000. The report recommended removing entry qualifications for travel agents. The report also recommended maintaining compulsory insurance, but dropping the requirement for agents to hold membership of the Travel Compensation Fund (the compulsory insurance scheme). It considered instead that a competitive insurance system, whereby private insurers compete with the Travel Compensation Fund, would be a better approach.	The Western Australian Department of Consumer and Employment Protection is coordinating the preparation of the response to the national review. The department has prepared a draft response, expected for final endorsement by the Ministerial Council on Consumer Affairs by September 2002. Chapter 8 discusses this review.

(*continued*)

Table 15.1 continued

Review	*Details of review*	*Current status of review*
Consumer credit legislation	In 1993 State and Territory governments entered into the Australian Uniform Credit Laws Agreement, which provides for the adoption of a national Consumer Credit Code. The code, which came into effect in November 1996, replaced various State and Territory statutes governing credit, money lending and aspects of hire purchase. The code is enacted by template legislation, with Queensland being the lead legislator. All jurisdictions except Western Australia and Tasmania have enacted legislation applying the Consumer Credit Code as in force in Queensland. Western Australia has enacted alternative consistent legislation, which will require amendment by the Western Australian Parliament to remain consistent when the code is amended. Tasmania has enacted a modified template system. State and Territory governments are jointly undertaking an NCP review of the Consumer Credit Code legislation. In addition to this review, several jurisdictions have identified other consumer credit-related legislation for review, possible review or amendment A national review of the Consumer Credit Code commenced in late 1999, with Queensland as the lead agency, based on a review process approved by the CoAG Committee on Regulatory Reform.	A draft report of the national NCP review of the Consumer Credit Code was released for public consultation in December 2001. It recommends maintaining the current provisions of the code, reviewing its definitions to bring sale of land, conditional sale agreements, tiny term contracts and solicitor lending within the scope of the code, and enhancing the code's disclosure requirements. The Ministerial Council on Consumer Affairs considered the final report on 2 August 2002. Chapter 11 discusses this review.

(*continued*)

Table 15.1 continued

Review	*Details of review*	*Current status of review*
Trade measurement legislation	Each State and Territory has legislation that regulates weighing and measuring instruments used in trade and controls for pre-packaged goods. Regulated instruments include shop scales, public weighbridges and petrol pumps. Governments (except Western Australia) formally agreed to a nationally uniform legislative scheme for trade measurement in 1990 to facilitate interstate trade and reduce compliance costs. Participating jurisdictions have since progressively enacted the uniform legislation. The legislation places the onus on owners to ensure instruments are of an approved type and maintained in an accurate condition. Governments identified that the national scheme involves legislation that may have an impact on competition. As a result, a national NCP review of the scheme for uniform trade measurement legislation is being undertaken. Some jurisdictions have indicated that they will review the Acts administering the national scheme, in addition to those applying it.	A scoping paper for the national review concluded that restrictions on the method of sale appear to have little adverse effect on competition and provide benefits for consumers. The one exception concerns about restrictions on the sale of nonprepacked meat. A draft report on such meat was circulated to jurisdictions during February 2002 and the review's working group is now finalising the report. The Standing Committee of Officials on Consumer Affairs will consider the report before it is passed to the Ministerial Council on Consumer Affairs. Chapter 11 discusses this review.

National standard setting obligations

The Agreement to Implement the National Competition Policy and Related Reforms (the Implementation Agreement) obliges governments to ensure that Ministerial councils and intergovernmental standard-setting bodies set national regulatory standards in accord with principles and guidelines endorsed by the Council of Australian Governments (CoAG) and with advice from the independent Commonwealth Office of Regulation Review (ORR) on compliance with these principles and guidelines. The national standard-setting obligation is a collective responsibility of all governments.

The CoAG principles and guidelines aim to promote good regulatory practice in decisions by Ministerial councils and standard-setting bodies. The national standard-setting obligations seek to ensure that standards are the minimum necessary, such that they avoid imposing excessive or unnecessary requirements on businesses while accounting for governments' economic, environmental, health and safety concerns. CoAG aims for standards to be subject to a nationally consistent process that assesses their effectiveness in meeting these objectives. Accordingly, CoAG's principles and guidelines:

- set out consistent processes for Ministerial councils and intergovernmental standard-setting bodies to determine whether associated laws and regulations are appropriate; and

- describe, where regulation is shown to be warranted, the features of good regulation and recommend principles for standard setting and regulatory action.

CoAG's focus on ensuring effective national standard setting via the 1995 NCP program arose from concerns expressed by major business associations that Australia's regulatory system could undermine the economy's capacity to compete internationally and to attract investment. At the time, these associations considered Australia's regulatory system to be unnecessarily complex: the system was seen to generate delays, inconsistencies and additional costs for business investment, and inhibit risk taking. The Mutual Recognition Agreement, by highlighting discrepancies in standards among jurisdictions, was an impetus for the development of national standards during this period. Under the agreement, Ministerial councils can be called on to create a standard for any product or to develop nationally uniform criteria for the registration of any occupation.

Principal or delegated legislation, administrative direction or other measures can give effect to the regulatory agreements or decisions of Ministerial councils and national standard-setting bodies. The ORR, governments and standard-setting bodies usually agree on which types of agreement and decision are covered by CoAG's guidelines.

Around 40 Ministerial councils and a small number of standard-setting bodies make national decisions that have a regulatory impact (PC 2001a, p. 13). Bodies that develop voluntary codes and other advisory instruments need to take account of the principles and guidelines where their promotion and dissemination of the code or instrument could be widely interpreted as requiring compliance (CoAG 1997).

Where a Ministerial council or intergovernmental standard-setting body proposes to agree to a regulatory action or adopt a standard, it must first certify that a Regulatory Impact Statement (RIS) has been completed and that the analysis in the RIS justifies adoption of the regulatory measure. The RIS must:

- demonstrate the need for the regulation;
- detail the objectives of the measures proposed;
- outline the alternative approaches considered, including nonregulatory options, and explain why they were not adopted;
- document which groups benefit from regulation and which groups pay the direct and indirect costs of implementation;
- demonstrate that the benefits of regulation outweigh the costs (including the administrative costs);
- demonstrate that the regulation is consistent with relevant international standards (or justify any inconsistencies); and
- set a date for review or sunsetting of regulatory instruments (CoAG 1997).

The CoAG principles and guidelines state that the RIS process must be open and public, with advertisements placed in all jurisdictions to notify of the intention to adopt regulatory measures, advise that the RIS is available on request, and invite submissions. The RIS must list the persons who made submissions or were consulted, and contain a summary of their views. The Ministerial council or standard-setting body is required to consider views expressed during the consultation process.

The Commonwealth Office of Regulation Review

Under the CoAG guidelines, the ORR has a significant role in the RIS process. It advises Ministerial councils and standard-setting bodies on whether a draft RIS is consistent with CoAG's principles and guidelines. The relevant Ministerial councils or standard-setting body must notify the ORR that a RIS is to be drafted on a relevant topic. The ORR assesses each RIS at two stages: first, before the RIS is distributed for consultation with parties affected by the proposed regulation and, second just before the relevant body

makes a decision. The ORR assesses the RIS within two weeks and advises the Ministerial council or standard-setting body of its assessment. While not obliged to adopt the advice of the ORR, Ministerial councils and standard-setting bodies should respond to any significant matters that have not been addressed as recommended by the ORR.

The ORR assesses in particular:

- whether the RIS guidelines have been followed;
- whether the type and level of analysis are adequate and commensurate with the potential economic and social impacts of the proposal; and
- whether the RIS has adequately considered alternatives to regulation.

Bodies that set national standards that require a complying RIS are:

- Ministerial councils (for example, the Australian Transport Council, the National Environment Protection Council and the Australia New Zealand Food Standards Council); and
- national entities (for example, the National Occupational Health and Safety Commission, the Australian Building Codes Board and the Australian Radiation Protection and Nuclear Safety Agency).

The ORR advises the relevant Ministerial council or standard-setting body of the assessed degree of compliance with the RIS requirements. It also reports to Heads of Government, through the CoAG Committee on Regulatory Reform, on significant decisions of Ministerial councils and standard-setting bodies that it considers are inconsistent with the CoAG guidelines. In addition, it reports to the CoAG Committee on Regulatory Reform annually on overall compliance with the guidelines.

The ORR annually advises the National Competition Council on governments' compliance with the national standard-setting obligations. This advice identifies the instances of regulation introduction that should have been subject to the CoAG guidelines and cases where the requirements have not been met. The ORR's report to the Council also covers broad planning and strategy decisions that have regulatory implications, along with best practice measures such as 'model' legislation that Ministerial Councils and standard-setting bodies sometimes agree on to influence the conduct of regulated entities. The ORR's reports to the Council do not comment on administrative decisions where the regulatory framework is already established. Further, the ORR does not comment on decisions that have an insignificant impact and thus would hardly benefit from undergoing a RIS process.

The ORR's advice forms the basis of the Council's consideration of governments' compliance with the national standard-setting obligation in the Implementation Agreement. For the 2002 NCP assessment, the Council sought ORR advice on governments' compliance over the period 1 April 2001 to 31 March 2002. This allowed the ORR time to consult with Ministerial

councils and standard-setting bodies on its draft findings before finalising the compliance report for the Council to consider in the 2002 NCP assessment.

Governments' compliance

The broad NCP obligation on governments is to demonstrate that bodies setting national standards have prepared a RIS, consistent with the CoAG principles and guidelines, for a proposed regulatory measure. The specification of the standard-setting obligation in the Implementation Agreement implies that the obligation is a collective responsibility of all governments. All governments usually are involved on Ministerial councils and all need to ensure standards set by national bodies involve an appropriate RIS.

In its 2002 report to the Council, the ORR identified 24 matters subject to the CoAG requirements which reached the decision stage during the 12-month period to 31 March 2002 (Office of Regulation Review, Australia 2002). The ORR considered that the CoAG requirements had been met in all except one of these matters: the prohibition of the sale of Level 2 18+ recordings to minors. (Level 2 18+ is a lyric advisory warning label designed to assist buyers of recordings.) At their 8 March 2002 meeting, Commonwealth, State and Territory censorship Ministers decided to ask the Australian Record Industry Association to amend its industry code of practice for labelling compact discs and tapes that contain explicit lyrics to prohibit the sale of Level 2 18+ recordings to minors. The meeting agenda had not included the proposal. The secretariat for the meetings of the censorship Ministers, the Office of Film and Literature Classification, therefore had not had an opportunity to prepare papers on the proposal. As a result, a RIS had not been prepared.

Table 15.2 lists the 23 cases where the ORR considers that the CoAG guidelines had been appropriately applied and the RIS requirements were satisfactorily met.

Table 15.2: Matters where Regulatory Impact Statement requirements were met, 1 April 2001 to 31 March 2002

Measure	*Body responsible*	*Date of decision*
National Code of Practice for the Defined Interstate Rail Network Volumes 1–3	Australian Transport Council	25 May 2001
National Standard for Commercial Vessels — Part D, Crew Competencies	Australian Transport Council	25 May 2001
Annual adjustment procedure for heavy vehicle charges	Australian Transport Council	25 May 2001
Policy framework for performance-based standards for heavy vehicle regulations	Australian Transport Council	25 May 2001

(*continued*)

Table 15.2 continued

Measure	*Body responsible*	*Date of decision*
Amendment to Building Code of Australia 1996 to increase the number of toilet pans for female patrons of certain theatres/cinemas	Australia Building Codes Board	15 June 2001
In-Service Diesel Vehicle NEPM	National Environment Protection Council	29 June 2001
National Approach to Firewood Collection	Australian and New Zealand Environment and Conservation Council	29 June 2001
Amendment of ADR 80 Emission Controls for Heavy Vehicles	Australian Transport Council	Out-of session decision process completed by 30 June 2001
Minimum energy performance standards for air conditioners	Australia and New Zealand Minerals and Energy Council	Out-of-session decision process completed by mid-July 2001
Minimum energy performance standards for electric motors	Australia and New Zealand Minerals and Energy Council	Out-of-session decision process completed by mid-July 2001
Approval of Joint Australia/New Zealand Standard addressing Brake Systems for Passenger Cars	ATC	6 July 2001
Adoption of provisions relating to bovine spongiform encephalopathy into the Food Standards Code	Australia New Zealand Food Standards Council	20 July 2001
Amendment of the Food Standards Code to permit the production in Australia of formulated caffeinated beverages	Australia New Zealand Food Standards Council	31 July 2001
Temperature compensation of petroleum fuels	Ministerial Council on Consumer Affairs	13 August 2001
Australian Standard for the Hygienic Production and Transportation of Meat and Meat Products for Human Consumption	Agriculture and Resource Management Council of Australia and New Zealand	17 August 2001
Permission for the irradiation of herbs, spices, seeds and herbal infusions	Australia New Zealand Food Standards Council	13 September 2001
Phase-out of use of chrysotile asbestos in Australia	National Occupational Health and Safety Commission	21 September 2001
Code of Practice for the Safe Transport of Radioactive Material	Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)	24 September 2001
Requirements to update signage for people with disabilities, including requirements for braille and tactile signs	ABCB	1 October 2001
Automatic annual adjustment of heavy vehicle registration charges	Australian Transport Council	8 January 2002

(*continued*)

Table 15.2 continued

Measure	*Body responsible*	*Date of decision*
Implementation Plan for Overweight Containers Strategy	Austroads	Out-of-session decision process completed by 28 February 2002
Revised Minimum Energy Performance Standards for Refrigerators and Freezers	Minister Council on Energy	Out-of-session decision process completed during March 2002
Minimum Energy Performance Standards for Lighting Ballasts	Ministerial Council on Energy	Out-of-session decision process completed during March 2002

Improved compliance rate

Compliance with the CoAG guidelines has improved since the 2001 NCP assessment. Only one of the 24 regulatory decisions made in the period 1 April 2001 to 31 March 2002 was not compliant with CoAG's requirements. This implies a compliance rate of 96 per cent, in contrast to the compliance rate of 71 per cent for the period of the first report (Office of Regulation Review, Australia 2001).

In its second report to the Council, the ORR reported on an additional aspect of compliance, accounting for the relative significance of each regulatory decision. It considered each regulatory proposal that requires a RIS in terms of the nature and magnitude of the proposal and its impact on affected parties and the community.

The ORR assessed six of the 24 regulatory decisions made in the 1 April 2001 to 31 March 2002 period as more significant than others.

- The Australian Transport Council (1) adopted a policy framework for performance-based standards for heavy vehicle regulations and (2) amended Australian Design Rule 80 in relation to emission controls for heavy vehicles.

- The Ministerial Council on Consumer Affairs decided that governments should change the uniform trade measurement legislation to introduce temperature compensation for petrol and diesel fuel loaded at refineries and terminals across Australia.

- The Australian Radiation Protection and Nuclear Safety Agency adopted an updated Code of Practice for the Safe Transport of Radioactive Material. This code affects the mining, medical and scientific industries.

- The Ministerial Council on Energy adopted revised minimum energy performance standards for refrigerators and freezers, which are expected to reduce significantly the electricity consumption by these appliances.

- The Australia New Zealand Food Standards Council made an emergency decision to adopt provisions relating to bovine spongiform encephalopathy (BSE) into the Food Standards Code.

The ORR considered that the RISs prepared for the first five of the above six significant regulatory measures had an analytical content commensurate with their significance. The change to the Food Standards Code was an emergency regulatory decision in response to the BSE issue. Such decisions are exempt from CoAG's requirement for a RIS to inform the decision, but a RIS must be prepared after the decision. (A RIS is being prepared on the new Food Standards Code provision.) Governments' performance in meeting obligations for the more significant matters improved for the 2002 ORR report compared with the 2001 report, which found that four of the nine matters of greater significance were noncompliant with the RIS requirements.

Matters for which CoAG requirements were not met in the first reporting period

In its report to the Council for the 2001 NCP assessment (covering the period 1 July 2000 to 31 May 2001), the ORR provided information on six matters for which the RIS requirements had not been met. In four of these cases, the report described processes (proposed or under way) that may lead to improvement in outcomes. The Council asked the ORR to follow up on progress in these cases; the intention was to encourage governments to adopt implementation arrangements that would reduce the costs of the noncompliance.

The Australia New Zealand Food Standards Council decided in November 2000 to adopt a new joint Food Standards Code, including a requirement for the labelling of ingredients and nutrition on food products. RISs that had been previously prepared included a cost–benefit analysis that did not demonstrate net benefits from adopting the code. Ministers set up an intergovernmental task force to report on issues relating to the code's implementation, including application of the code to very small businesses. The ORR's report to the Council for the 2002 NCP assessment stated that the Australia New Zealand Food Standards Council decided not to exempt small businesses from the Code.

The Australia New Zealand Food Standards Council decided in July 2000 to regulate the labelling of genetically modified food and food ingredients (with the new labelling regulations to take effect from 7 December 2001). Prior to this decision, the ORR had found that the RIS did not satisfy CoAG requirements. In its report to the Council for the 2002 NCP assessment, the ORR stated that the Commonwealth has not conducted the stakeholder discussions that were suggested when the regulatory decision was made. Ministers have agreed, however, to a transitional arrangement whereby the labelling provisions will not apply to foods manufactured and packaged before

7 December 2001. These products are now allowed to remain in food outlets until sold (but not beyond December 2002). The ORR believes this measure will reduce transitional costs for food product businesses.

In November 2000, the Australian Transport Council released the National Road Safety Plan for 2001 and 2002. Some options in the plan, from which States and Territories may select to achieve the targeted reduction in fatalities, are regulatory. None of these options had been subject to RIS analysis. The ORR reported in 2001 that such analysis could be undertaken before States act on any of the options, which would help to establish each option's cost effectiveness. In its report to the Council for the 2002 NCP assessment, the ORR stated that no further decisions on specific measures in the Road Safety Plan were made in the last year. The Australian Transport Council complied, however, with CoAG's RIS requirements in other regulatory decisions made during the period of the second ORR report.

In November 2000, the Australian National Training Authority Ministerial Council made two regulatory decisions for which RISs should have been prepared. One decision related to the Australian Recognition Framework for skills, while the other requires the adoption of 'model clauses' for the legislative framework for vocational and educational training. In the latter case, the Ministerial council undertook to prepare a RIS before implementing the clauses; preparation of this RIS is under way.

The above four areas of regulation are important, and the Council is concerned that Ministerial councils did not originally follow the CoAG guidelines. Government actions taken over the past year mitigate the adverse effects of this noncompliance, but do not eliminate them. The four cases underline the importance of Ministerial councils adhering to the CoAG principles and guidelines.

Assessment

The compliance indicators exhibited significant improvement in the period 1 April 2001 to 31 March 2002, with the ORR finding that CoAG's requirements were not met in only one instance. The Council encourages Ministerial councils and standard-setting bodies to ensure they continue this good approach to making regulation. Officials in the secretariats of Ministerial councils can help to sustain the recent compliance performance by ensuring Ministers and new officials are briefed regularly on the CoAG principles and guidelines for standard setting and regulatory action. Such action would alleviate the adverse impact on institutional memory of the significant rate of turnover in the Ministerial council secretariats.