3 Health and pharmaceutical services

Australians rely on health care services to restore and maintain health and wellbeing. National expenditure on health services has grown steadily, at about 4.9 per cent a year from 1992-93 to 2000-01. In 2000-01, Australians spent A$60.8 billion on health and pharmaceutical services — around 9 per cent of gross domestic product. Governments contributed around 70 per cent of this amount, while private spending comprised the remainder (AIHW 2002).

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

In its assessments, the National Competition Council considers Commonwealth, State and Territory governments' compliance with National Competition Policy (NCP) obligations under the Competition Principles Agreements (CPA) on key competition issues relating to the regulation of health professionals, drugs and poisons, pharmacy, Medicare, pathology licensing, private health insurance and population health.

Regulating the health professions

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

Most health practitioner legislation requires practitioners to hold certain qualifications before they can enter a profession, and to be licensed by a registration board while they continue to practise. Some health practitioner legislation also reserves the right to practise in certain areas of heath care

exclusively for certain professions. In addition, health practitioner legislation often regulates the business conduct of registered professionals.

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

Key competition issues in regulating the health professions

Business ownership and association

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

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

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

Registered health practitioners who own health care businesses risk disciplinary action (and potential de-registration) if they engage in

unprofessional conduct; nonregistrant owners do not face this risk. Requiring the owners of health care businesses to be health practitioners ensures only people who can be held accountable for their professional conduct through the disciplinary system can own health care businesses.

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

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

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

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

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

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

Reserved areas of practice

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

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

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

Professional indemnity insurance

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

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

In response to recent premium increases and the collapse of United Medical Protection, some stakeholders have called for reforms of professional indemnity insurance arrangements. The Royal Australasian College of Surgeons, for example, proposed creating a single monopoly provider of professional indemnity insurance for medical practitioners (RACS 2002). Chapter 6 of this volume discusses the competition questions associated with statutory insurance monopolies.

Review and reform activity

More than 80 legislative instruments regulate around a dozen health professions across the States and Territories. New South Wales, Victoria, South Australia and Tasmania reviewed each piece of health practitioner legislation individually. Victoria completed its review and reform activity, but is commencing another round of review of health practitioner registration legislation. The other three States have largely completed their legislation reviews but still have some legislation that they have not yet (where warranted) reformed.

Queensland, Western Australia, the ACT and the Northern Territory each conducted omnibus reviews of most or all of their practitioner legislation. Box 3.1 outlines the staged reform process that Queensland has adopted, which involves establishing common administrative and operational support arrangements for the health practitioner registration boards and complaints and disciplinary processes, and enacting new registration legislation for each profession, including reforms to practice restrictions.

Box 3.2 discusses Western Australia's key directions for reforms of its health practitioner legislation (except its medical practitioner legislation, which is subject to a separate review process) and its core practices review. Western Australia is preparing separate replacement legislation for each profession based on a common template. In April 2001, it undertook to replace the majority of State laws governing health professions as soon as it had finalised the template legislation (NCC 2002). The legislation will retain title protection. It will also retain broad practice restrictions and some business conduct and ownership restrictions for up to three years (from 1 July 2001) while a more focused review is undertaken to determine appropriate core practices for each profession and to assess the need to retain other restrictions over the longer term.

The ACT and the Northern Territory are preparing omnibus Acts to replace most of their existing health practitioner legislation. As outlined in box 3.3, the ACT Health Professionals Bill 2002 establishes a framework for the regulation of health professions, which does not restrict the use of specific titles but makes it an offence for unregistered practitioners to pretend to be registered professionals. The Northern Territory, like the States, proposes to continue to reserve the use of professional titles for registered practitioners, but intends to make entry requirements more flexible.

Chiropractors

The 2001 NCP assessment reported that New South Wales, Victoria and Tasmania had met their CPA clause 5 obligations in relation to the review and reform of legislation governing chiropractors. This 2003 assessment considers whether the other jurisdictions have met their CPA clause 5 obligations in this area.

Queensland

As noted above, Queensland is reforming its health practitioner legislation, which includes chiropractors, in stages. In the first stage, generic framework reforms were implemented. At the second stage the Government enacted the *Chiropractors Registration Act 2001* to replace the *Chiropractors and Osteopaths Act 1979*. The new Act continues to reserve the title of 'chiropractor' for registered practitioners in the public interest, but removes other anticompetitive restrictions on commercial and business conduct, including advertising restrictions. The Act also retains broad practice restrictions pending the outcome of a further core practices review (see box 3.1).

The Queensland Treasurer endorsed the recommendations of the PricewaterhouseCoopers review to reserve the core practice of thrust manipulation of the spine to chiropractors, medical practitioners, osteopaths, and physiotherapists. A Bill to implement these reforms was introduced into Parliament in June 2003. This legislation had not been passed, so Queensland has not met its CPA obligations regarding its chiropractic legislation.

Box 3.1: Queensland's review and reform of health practitioner legislation

Queensland commenced a general review of its health practitioner legislation in 1993 and completed its NCP review in 1998. The Government accepted the review findings and commenced a staged reform process to replace the existing health practitioner registration legislation with new and consistent legislation that meets the objectives of protecting the public and promoting accountability, fairness, peer and public involvement, efficiency and effectiveness.

Framework reforms

In February 2000, Queensland enacted new generic legislation — the *Health Practitioners Registration Boards (Administration) Act 1999* and the *Health Practitioners (Professional Standards) Act* — to govern the administrative and operational support for the health practitioner registration boards and to implement a fairer and more transparent complaints and disciplinary system.

(continued)

Box 3.1 continued

Specific registration reforms[a]

In May 2001, Queensland enacted 13 new Acts to govern the registration of the following professions: chiropractors; dental practitioners; dental technicians and dental prosthetists; medical practitioners; medical imaging technologists, nuclear medicine technologists and radiation therapists; occupational therapists; optometrists; osteopaths; pharmacists; physiotherapists; podiatrists; psychologists; and speech therapists. Other changes were also made via these Acts and the *Health Practitioners Legislation Amendment Act 2000*. Together the reforms:

- continued to provide title protection for registered practitioners, but simplified the registration eligibility criteria and provided alternative routes to registration;
- significantly scaled back restrictions on commercial and business conduct by:
  - replacing prescriptive advertising restrictions with provisions that reflect fair trading principles for consumer protection (that is, prohibiting, false misleading and deceptive advertising or advertising that promotes a harmful or potentially harmful service);
  - replacing business licences with negative licences, which permit nonregistrants to own health service businesses, but make it an offence to direct or induce registrants to do something that would constitute grounds for disciplinary action;
- prohibited conduct that compromises registrants' autonomy and the making or accepting of payments for recommendations or referrals; and
- preserved practice restrictions pending the outcome of the NCP core practices review.

Core practice reforms[a]

Queensland commissioned PricewaterhouseCoopers to review and refine a set of possible core practices, and to conduct a public benefit test assessment of the costs and benefits of reserving the right to perform certain defined practices for registered members of particular health professions. The Queensland Treasurer endorsed the public benefit test report in January 2001, which proposed reserving three core practices: thrust manipulation of the spine; prescription of optical appliances for the correction or relief of visual defects; and surgery of the muscles, tendons, ligaments and bones of the foot and ankle. It considered, but rejected, a range of activities, including: the movement of spinal joints beyond a person's usual physiological range; the fitting of contact lenses; electrotherapy; physiological testing; psychotherapy; the assisted feeding of persons with a neurological impairment; pharmaceutical dispensing; and soft tissue and nail surgery of the foot. The Government introduced the Health Legislation Amendment Bill 2003 into Parliament in June 2003 to implement these core practice reforms.

[a] Separate reviews were conducted to consider registration and core practices reforms in dentistry and other oral health services (see p. 3.16). Ownership restrictions in pharmacy were considered at the national level (see p. 3.53).

Western Australia

Western Australia completed its NCP review of health practitioner legislation (including the *Chiropractors Act 1964*) and, in April 2001, the Government approved the drafting of new template health practitioner Acts to replace the Chiropractors Act and other health professions legislation. It also agreed to replace the majority of the State's health practitioner legislation as soon as the new template legislation was finalised. The template legislation will establish broad chiropractic practice restrictions. This restriction is scheduled to be automatically repealed under the template legislation by 1 July 2004, but may be replaced sooner by specific core practice restrictions, depending on

the outcome of the core practices review under way. The Government's *Key directions* paper sets out the policy framework that is the basis for the new legislation. Box 3.2 provides details on the policy framework and core practices review.

In it 2002 NCP assessment, the Council undertook to monitor Western Australia's progress in completing its core practices review. The Department of Health released a discussion paper in March 2003 and expects the Government to be in a position to introduce any amending legislation to Parliament in late 2003. The Council considers these amendments to be a significant issue because they have the potential to deliver substantial benefits to the Western Australian community and the economy more generally. The Council is concerned, however, that the template health practitioner legislation, which the Government commenced drafting in 2001, is yet to be finalised.

The Council assesses Western Australia as not having met its CPA obligations in relation to chiropractic legislation because it has not completed its review and reform process.

Box 3.2: Western Australia's policy framework and core practices review

Western Australia's *Key directions* paper, released in July 2001, outlines the policy framework for the reform of its health practitioner legislation — namely, the *Chiropractors Act 1964*, *Dental Act 1939*, *Dental Prosthetists Act 1985*, *Nurses Act 1992*, *Occupational Therapists Registration Act 1980*, *Optometrists Act 1940*, *Osteopaths Act 1997* (amendment only), *Physiotherapists Act 1950*, *Podiatrists Registration Act 1984* and *Psychologists Registration Act 1976.* The proposed template legislation retains title protection for health professions and will:

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

In addition, the Government decided to retain broad practice restrictions (except for physiotherapy) in the template legislation for three years (from June 2001), while it undertook a review to identify core practices that warrant restriction (as identified by the NCP review). If the project could not be completed within the time allowed (that is, by 1 July 2004), then the practice protection would be automatically removed under a sunset clause in the template legislation.

In March 2003, the Department of Health released its *Core practices* discussion paper, which seeks views on whether it is appropriate to retain certain core practices for chiropractors, dentists and other oral health care practitioners, medical practitioners, nurses, occupational therapists, optometrists, osteopaths, pharmacists, physiotherapists, podiatrists and psychologists. It also seeks views on the supervisory arrangements for oral health care practitioners (except dentists) and title protection for occupational therapists.

(continued)

Box 3.2 continued

The Council's view of Western Australia's progress

In its 2002 NCP assessment, the Council stated that it:

… accepts that the potential risks to public safety justify retaining the existing practice restrictions as a transitional measure while the core practices are developed. The Council also accepts that the core practices model is a significant reform, requiring substantial input and participation from health practitioners and other experts over time. The Council will consider Western Australia's progress with its core practices review in the 2003 NCP assessment, to ensure it remains on track for completion by June 2004. (NCC 2002, p. 6.7)

This view reflected an undertaking from Western Australia, accepted by the Council, that Western Australia's core practices review would be completed and fully implemented by 30 June 2004. The Council is concerned that Western Australia has not yet finished drafting the replacement template legislation (except for nursing legislation, for which drafting instructions were approved in 2001). Western Australia's progress with the core practices review has also been slow. Nevertheless, in relation to the timetable for implementing a core practices model, Western Australia advised the Council (D Morrison (Department of Treasury and Finance) 2003, pers. comm. regarding advice from the Department of Health, 8 July) that a department steering committee has been established, a discussion paper has been released and extensive consultation has been undertaken with stakeholders. The steering committee is reviewing the submissions received, and a draft review report will soon be available for the Minister for Health's consideration. The Government considers that this report will enable legislative amendment to be implemented by June 2004.

South Australia

South Australia completed a review of the *Chiropractors Act 1990*, which registers both chiropractors and osteopaths, in 1999. The review recommended amending the Act to register chiropractors and osteopaths separately, and renaming the Act to reflect its administration of two separate professions. The review also recommended limiting the practices reserved for chiropractors and osteopaths to 'manipulation or adjustment of the joints or spinal column', removing business licensing and amending advertising restrictions to prohibit only false and misleading advertising.

South Australia advised that it has prepared the Bill to amend the Act and finalised consultation with the Chiropractors Board of South Australia. The Government intends to undertake public consultation on the Bill, then introduce it to Parliament in the second half of 2003 (Government of South Australia 2003). While the Council considers that the review recommendations satisfactorily address competition questions, South Australia has not completed its review and reform activity, so has not yet met its CPA clause 5 obligations in relation to this legislation.

The ACT

The ACT completed its NCP review of health practitioner legislation, which included the *Chiropractors and Osteopaths Act 1983* (box 3.3), in March 2001. The review recommended continuing to register chiropractors, subject to

meeting minimum entry standards. It also recommended maintaining protection of title, but not restricting practices to any specific professions and removing unnecessary business conduct restrictions. The Government accepted the review's recommendations and has completed consultation on an exposure draft of the Health Professionals Bill 2002. The Bill will repeal the existing health professionals Acts and replace them with a consolidated Act. The ACT anticipates considering the final package in the ACT Legislative Assembly spring 2003 session.

The proposed reforms are in line with CPA principles, but the ACT has not completed its review and reform process, so it has not met its CPA obligations in relation to chiropractic legislation.

Box 3.3: The ACT's review and reform of health practitioner legislation

In March 2001, the ACT completed a consolidated review of health profession Acts, comprising the *Medical Practitioners Act 1930*, *Nurse Act 1988*, *Dentists Act 1931*, *Chiropractors and Osteopaths Act 1983*, *Dental Technicians and Dental Prosthetists Registration Act 1988*, *Optometrists Act 1959*, *Pharmacy Act 1931*, *Physiotherapist Act 1977*, *Podiatrists Act 1994* and *Psychologists Act 1994*.

The ACT Government approved the drafting of legislation that incorporates the review recommendations. It released an exposure draft of the Health Professionals Bill 2002 in November 2002. Consultation on the draft was due to close in mid-December 2002, but was extended until the end of February 2003 in response to interest from the public. The Government anticipates considering the final package in the ACT Legislative Assembly spring 2003 session. The Bill will repeal the existing health professional Acts and replace them with a consolidated Act.

The Bill provides for registration of practitioners of regulated professions and for ongoing review of the standard of practice of registered practitioners. It does not restrict the use of any specific titles, instead making it an offence for unregistered practitioners to pretend to be registered professionals. Regulations under the Act set out registration requirements for the suitability to practise. The Regulations also provide for required standards of practice for health professions (including requirements that professionals are competent to practice and that advertising is not misleading).

In line with the review recommendation, the Act does not reserve specific practices for specific professions. Instead, it protects consumers by making it an offence for an unregistered person to provide a health service ordinarily provided only by practitioners of a regulated health profession (s. 73). There are no restrictions on the practices that individual regulated professions may perform, but the Regulations state that a registered practitioner who demonstrates a lack of competence or endangers public health and safety breaches the required standards of practice.

Source: Department of Health and Community Care 1999; Government of the ACT 2002 and 2003.

The Northern Territory

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

The former Northern Territory Government commissioned the Centre for International Economics to review the Act. Completed in May 2000, the

review recommended continuing to reserve the use of professional titles for registered practitioners, but making entry requirements more flexible and clarifying personal fitness criteria. The review also recommended giving the professional boards the ability to restrict treatments or procedures that have a high probability of causing serious damage, if they are likely to be performed by people without the appropriate skills and expertise. Any person who demonstrates that they are appropriately qualified and experienced, however, would be permitted to perform these practices. The review envisaged that any practice restrictions would have the status of subordinate legislation, requiring them to undergo a regulation impact assessment before introduction.

The former Northern Territory Government accepted the review recommendations and determined in April 2001 that the current legislation regulating health professionals would be repealed and that an omnibus Act would be created to replace the existing six Acts. The current Government endorsed this position and approved drafting of the new legislation on 18 March 2003. The Health Practitioners Bill incorporates the legislative changes recommended by the NCP reviews of the six Acts and the professional board's 1998 review. (Some recommendations from the 1998 review did not require legislative amendments and have been administratively implemented.)

The review recommendations regarding the regulation of chiropractors are consistent with the CPA clause 5 guiding principle, but the legislation is not expected to be introduced to the Legislative Assembly until the November 2003 sittings. Consequently, the Northern Territory Government has not met its NCP obligations because it has not completed the reform process. The costs imposed on the community from reform delays are low, however, because the new legislation will retain many of the core restrictions on competition (which the review found to be in the public interest).

Table 3.1: Review and reform of legislation regulating the chiropractic profession

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Chiropractors and Osteopaths Act 1991*	Entry, registration, title, practice, discipline, advertising	New South Wales completed the review in January 2000. The review recommended limiting reserved practice to spinal manipulation and removing some advertising restrictions.	New South Wales enacted a new *Chiropractors Act 2001* in line with recommendations.	Meets CPA obligations (June 2001)
Victoria	*Chiropractors and Osteopaths Act 1978*	Entry, registration, title, practice, discipline, advertising	Victoria completed the review in 1996. The review recommended retaining title protection and removing commercial and practice restrictions.	Victoria enacted a new *Chiropractors Registration Act 1996* in line with the recommendations.	Meets CPA obligations (June 2001)
Queensland	*Chiropractors and Osteopaths Act 1979*	Entry, registration, title, practice, discipline, advertising, business	Queensland completed its health professions review in 1999. Its NCP review of core practice restrictions was completed in 2001. Recommendations included retaining title protection and entry restrictions, but removing other unnecessary anticompetitive restrictions (see box 3.1, p. 3.6).	Queensland passed framework legislation in 1999 and enacted the *Chiropractors Registration Act 2001*. It also introduced a Bill to reform practice restrictions in June 2003. All implemented and proposed reforms are in line with NCP review recommendations.	Review and reform incomplete
Western Australia	*Chiropractors Act 1964*	Entry, registration, title, practice, discipline	*Key directions* paper was released in June 2001. It proposed removing prescriptive advertising restrictions; requiring practitioners to hold professional indemnity insurance; removing restrictions on business ownership; and retaining broad practice restrictions for three years pending the outcome of the core practices review (which is under way).	In April 2001, the Government approved the drafting of new template health practitioner Acts to replace the health professions legislation.	Review and reform incomplete

(*continued*)

Table 3.1: continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Chiropractors Act 1991*	Entry, registration, title, practice, discipline, advertising, ownership	South Australia completed the review in 1999, which recommended removing ownership restrictions and amending practice reservation and advertising codes.	Following consultation, the Government intends to introduce an amending Bill to Parliament in the second half of 2003.	Review and reform incomplete
Tasmania	*Chiropractors Registration Act 1982*	Entry, registration, title, practice, discipline, advertising	Tasmania enacted new legislation after assessing it under clause 5(5) of the CPA.	Tasmania enacted a new *Chiropractors and Osteopaths Act 1997*.	Meets CPA obligations (June 2001)
The ACT	*Chiropractors and Osteopaths Act 1983*	Entry, registration, title, practice, discipline	The ACT completed its health practitioner legislation review in March 2001. The review recommended revisions to advertising and conduct provisions. It recommended removing practice restrictions.	The Government released an exposure draft of the omnibus Health Professions Bill 2002 (incorporating the review recommendations) in July 2002 and anticipates tabling the final Bill in the Legislative Assembly in late 2003.	Review and reform incomplete
Northern Territory	*Health Practitioners and Allied Professionals Registration Act*	Entry, registration, title, practice, discipline	Review was completed in May 2000. Its recommendations included retaining title restriction and removing generic practice restrictions.	Omnibus Bill is being drafted, which incorporates the recommendations for legislative change. Other reforms will be implemented administratively.	Review and reform incomplete

Dental practitioners

Dental practitioners include dentists and related para-professionals such as dental auxiliaries (dental therapists and dental hygienists), dental prosthetists and dental technicians. The 2002 NCP assessment reported that Victoria and Tasmania had met their CPA obligations in relation to dental practitioner legislation in 2001. This 2003 NCP assessment considers other jurisdictions' compliance with their CPA clause 5 obligations in relation to this area.

New South Wales

The *Dentists Act 1989* reserved the title 'dentist' and the practice of dentistry to dentists registered under the Act. It also restricted the employment of dentists by nondentists (with the effect of preventing nondentist ownership of dental practices). The Department of Health completed a review of the Dentists Act in March 2001. The review recommended continuing to regulate dental practitioners by reserving relevant titles for registered members of the profession, but replacing the current restriction on the practice of dentistry with five restricted core practices.

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

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

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

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

- other nondentists can apply to the Dental Board for permission to employ dentists and therefore own dental practices, by demonstrating that it is in

the public interest (excluding the interests of registered dentists) that they be allowed to do so (Government of New South Wales 2002, pp. 19–20).

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

New South Wales ruled out the negative licensing model on the basis that the costs of establishing and enforcing the offences would outweigh the benefits. Based on the approach adopted in New South Wales for medical practitioners, to exclude a person from the market requires a criminal conviction, which can be complex, time consuming and expensive, particularly if the matter goes to appeal (Government of New South Wales 2003).

The impact on competition of New South Wales' employment and ownership restrictions depends on how the Dental Board uses its power to grant exemptions. If the board uses the exemption power to protect patient welfare and not incumbent service providers, then adverse impacts on competition are likely to be minimal.

The Council acknowledges that the Dental Practice Act directs the board to exclude the interests of the profession when assessing the public interest. The Premier indicated to the Council that New South Wales does not intend to use the employment and ownership restrictions to protect incumbents. To finalise its assessment, the Council sought information on how the board will apply the public interest test. In response, the Government commented:

> *…at the time of completing the review of the Dentists Act 1989 (March 2001), the Dental Board had granted employment exemptions to enable seven separate organisations to employ dentists in sixteen dental clinics. It is noted that the restrictive effect of the provisions was substantially lessened following the 1996 Court of Appeal decision in NIB Health Services Ltd v Dental Board. Since this date the only applicants for new approvals have been private health insurance companies, which have all received decisions in their favour. This record would appear to indicate that there have been no adverse impacts on these or other potential employers.* (Government of New South Wales 2003, p. 17)

The Council notes that the Court of Appeal found that the Dental Board, in refusing NIB's application to operate a dental care clinic at Newcastle, had considered the interests of dentists, which contravenes the Act. The court upheld NIB's appeal and ordered that the board reconsider the application in accordance with the law.

Since the appeal decision, however, the objectives under which the board makes its decisions have changed. Under the Dentists Act, the board could not grant an exemption unless 'satisfied that the interests of the public generally or of *any section of the public* [emphasis added], other than dentists, warrant the granting of the approval'. Under the reforms contained in the Dental Practice Act, the board cannot grant an exemption 'unless it is satisfied that it is in the public interest (excluding the interest of registered dentists) to do so'. Private health funds are also granted an automatic exemption from the ownership restrictions.

Only private health insurance companies have applied for exemption since the Court of Appeal decision. There has been no opportunity, therefore, to assess the quality of the public benefit tests undertaken by the board and thus determine how well the exemption mechanism is operating.

The application/exemption process may create a barrier to entry. In contrast to New South Wales, the Victorian Branch of the Australian Dental Association claims that more than 100 non-dentist owned practices have established in Victoria since the deregulation of ownership restrictions in June 2000. This claim supports a finding that the exemption model is not the least restrictive approach to achieving the objectives of health practitioner legislation and, therefore, does not comply with CPA obligations.

The Council accepts that a negative licensing approach may not be as cost-effective as the approach that New South Wales has chosen to adopt. Nevertheless, this cost factor does not rule out the use of potentially less restrictive alternatives. A formal positive licensing approach, for example, would be less restrictive of competition than is the 'exemptions' model, because it would provide greater transparency and accountability in decision-making. Alternatively, rather than requiring applicants to satisfy the board that their exemption would be in the public interest, the Act could simply require applicants to show that exemption approval would not be contrary to the public interest. New South Wales has not properly considered such alternatives.

The Council considers that New South Wales has not made a convincing case that employment and ownership restrictions are necessary to achieve its regulatory objectives. It thus assesses New South Wales as not having met its CPA obligations in relation to the review and reform of its dental practitioner legislation.

Queensland

Queensland introduced legislation to reform all of its health practitioner legislation (see box 3.1, p. 3.6). A separate, but similar review of legislative restriction of dentistry was commenced in 1999 and endorsed by the Government in October 2000. The new dental legislation — the *Dental Practitioners Registration Act 2001* and the *Dental Technicians and Dental Prosthetists Registration Act 2001* — mirrors most elements of other health

practitioner legislation, but adds provision for registering specialist dentists (for example, oral maxilla-facial surgeons).

A separate core practices review for the dentistry profession was undertaken by PriceWaterhouseCoopers, which recommended relaxing some of the restrictions on practice. The proposed model would limit the performance of invasive or irreversible procedures on the oral facial complex to dentists, dental specialists and medical practitioners, but would not restrict dental technical work, advice and diagnosis, or noninvasive and nonpermanent procedures.

The report also recommended removing or amending some commercial restrictions to:

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

After undertaking further consultations, Queensland introduced the Health Legislation Amendment Bill 2003 to Parliament in June 2003 to implement the recommended core practice reforms in dentistry and other health professions.

The changes already implemented in Queensland and the proposed core practices reforms are consistent with the CPA clause 5 guiding principle. That said, Queensland has not complied with its CPA obligations because it has not completed the core practices reforms.

Western Australia

Box 3.2 (p. 3.8) discusses the general health practitioner legislation reforms announced in Western Australia's *Key directions* policy framework paper. In this paper, the Government proposed reforms specific to dentistry and other oral health professions, including:

- removing the restriction on the number of dental therapists and dental hygienists that a dentist may employ;
- allowing dental prosthetists to construct and fit partial dentures, providing the practitioner meets specific training requirements set by the board;
- removing the restrictions on the ownership of dental practices; and
- removing the ban on the private sector employment of school dental therapists (Department of Health 2001, pp. 5–6).

The Government also decided to retain broad practice restrictions for three years (from June 2001) pending the outcome of the core practices review, which is under way.

As discussed in the section on chiropractors (p. 3.7), the Council considers health practitioner reforms to be a significant issue — one that has the potential to deliver substantial benefits to the Western Australian community and the economy more generally. The Council is concerned that the template health practitioner legislation drafted in 2001 is yet to be introduced in Parliament. Western Australia has not met its CPA obligations in relation to dentistry legislation because it has not completed its review and reform process.

South Australia

The Competition Policy Review Team in the Department of Human Services reviewed the South Australian *Dentists Act 1984* in 1998, producing a final report in February 1999. In response to the review, South Australia passed a new *Dental Practice Act 2001*, which commenced in June 2003. This Act implements most of the recommendations of the review, but does not adopt one key recommendation. The review recommended that 'all ownership restrictions, direct and indirect, contained in the Act should be removed' (Department of Human Services 1999a, recommendation 18), whereas the new Act retains the restrictions on ownership and association.

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

South Australia released its application form for exemption to the ownership restrictions (s. 45(3) of the Dental Practice Act) on 23 May 2003. The s. 2 criteria for exemption states:

> *An exemption may be provided pursuant to Section 45(3) if the Governor determines that good reason exists for doing so in the particular circumstances of the case. In deciding whether good reason exists, the following will be considered:*
>
> - *Whether the provider is considered fit and proper to provide dental services;*
> - *That such an exemption provides a public benefit, consideration will be given to issues of access and quality.*

South Australia, New South Wales and Western Australia are the only jurisdictions with restrictions on the ownership of dental practices. Western Australia advised, however, that dental legislation being drafted will remove

the restriction on ownership of practices. Victoria removed ownership restrictions following its NCP review. Queensland's and Tasmania's new dental practitioner Acts did not introduce ownership restrictions.

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

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

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

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

The Council notes that an application/exemption process may create a barrier to entry and considers there to be potentially less restrictive means available for achieving outcomes consistent with the objectives of Dental Practice Act.

The Council raised it concerns about the ownership restrictions with South Australia in November 2000. It undertook to monitor the situation before finalising the assessment noting that the impacts on competition will depend on how the Government uses its power to grant exemptions from the restrictions. In particular, they will depend on the transparency and consistency of the decision-making process, and on whether decisions are based on protecting patients or incumbent dental practice owners. If South Australia demonstrably uses the exemption power to safeguard the welfare of patients, then the ownership restrictions are likely to have negligible adverse impacts on competition.

South Australia advised in its 2002 NCP annual report that it there is already nondentist ownership of dental practices. It has also provided additional evidence that it is using the exemption power to promote competition in a way that is consistent with the objectives of the Act. It advised that no application for exemption has been refused. At the time of the commencement of the Act, all nine applications received for exemption were approved and a further batch of applications received are being processed (R Williams (Director of the National Competition Policy Unit of the Cabinet

Office) 2003, pers. comm., 28 August). This indicates that South Australia's exemption power, although broad and allowing for Ministerial discretion, does focus on safeguarding patient welfare. The mechanism has been in operation for such a short duration of time, however, that it is difficult to properly assess its true impact on competition.

On balance, the Council considers that South Australia, like New South Wales, has not made a convincing case that ownership restrictions are necessary to achieve its regulatory objectives. For this reason, South Australia has not met its CPA obligations in relation to the review and reform of its dental practitioner legislation. Nevertheless, the evidence to date suggests that, at least in South Australia's case, the restrictive effect is likely to be small because the application/exemption process has not significantly impeded market entry.

The ACT

The section on chiropractors (p. 3.9) discusses the general health practitioner reforms recommended by the ACT's health practitioner legislation review. In addition to the general recommendations applying to all health professions, the review made specific recommendations in relation to dental practitioners.

- The review recommended removing requirements for the registration of dental technicians. It considered that since dental technicians work to the order of registered dentists or dental prosthetists, it is these employers that should be responsible for ensuring the technician is qualified and competent.
- The review recommended removing the requirement for dental prosthetists to hold professional indemnity insurance (and not imposing insurance requirements on other professions). It found that while these requirements reinforce good commercial practice, it is not clear that they either provide a demonstrable public benefit or belong in legislation concerning the direct fitness and standards of a health profession.
- The review recommended removing the restrictions on the scope of practice of dental hygienists and dental therapists. It noted that limiting hygienists' and therapists' practice minimises risks, but found that other provisions requiring hygienists and therapists (and any registered dentist who may direct their activities) to maintain safe standards of professional practice have a similar effect.

The Government accepted the review's recommendations and has completed consultation on an exposure draft of the Health Professionals Bill 2002. The Bill will repeal the existing health professionals Acts and replace them with a consolidated Act. The ACT anticipates considering the final package in the ACT Legislative Assembly spring 2003 session.

While the proposed reforms are in line with the CPA guiding principle, the ACT has not completed its review and reform process and therefore has not met its CPA obligations in relation to dental practitioner legislation.

The Northern Territory

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

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

The Government accepted the review recommendations in May 2001 and commenced drafting a new omnibus Health Practitioners Registration Bill to replace the Dental Act and five other health practitioner registration Acts. The Bill is expected to be ready for introduction to the Legislative Assembly in November 2003. While the proposed reforms to the Northern Territory dental practitioner legislation are consistent with the CPA guiding principles, the Government has not complied with its CPA obligations in this area because it has not completed its review and reform process. If, however, the Northern Territory Government is able to meet its proposed timetable for passing the legislation, then the costs imposed on the community from the delay would be insignificant.

Table 3.2: Review and reform of legislation regulating the dental professions

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Dental Technicians Registration Act 1975* *Dentists Act 1989*	Entry, registration, title, practice, discipline, advertising	Review was completed in March 2001. It recommended reserving 'core' practices only and removing restrictions on the employment of dentists and the ownership of dental practices.	Legislation was replaced by the *Dental Practice Act 2001,* which implements most review recommendations but retains some restrictions on the employment of dentists.	Does not meet CPA obligations (June 2003)
Victoria	*Dental Technicians Act 1972* *Dentists Act 1972*	Entry, registration, title, practice, discipline, advertising, ownership	Review was completed in July 1998. It recommended retaining restrictions on use of title, types of work, and fair and accurate advertising; removing ownership restrictions; removing restrictions on 'disparaging remarks' in advertising; and allowing dental therapists to work in the private sector.	Legislation was replaced with the *Dental Practice Act 1999*. The new Act was amended in 2000 to require practitioners to hold professional indemnity insurance and allow the board to impose advertising restrictions. Further amendments made in 2002 require the Minister to approve advertising restrictions proposed by the board.	Meets CPA obligations (June 2002)
Queensland	*Dental Act 1971* *Dental Technicians and Dental Prosthetists Act 1991*	Entry, registration, title, practice, discipline, advertising, business	Queensland completed its health professions review in 1999. Its NCP review of core practice restrictions was completed in 2001. Recommendations included retaining title protection and entry restrictions, but removing other unnecessary anticompetitive restrictions (see box 3.1, p. 3.6). The review of practice restrictions in dentistry recommended relaxing a number of the restrictions.	Queensland passed framework legislation in 1999 and enacted the new dental registration legislation in 2001. The Government is considering the recommendations of the core practices review, and expects to make legislative amendments implementing the final policy approach in 2003.	Review and reform incomplete
Western Australia	*Dental Act 1939* *Dental Prosthetists Act 1985*	Entry, registration, title, practice, discipline	Issues paper was released in October 1998 and *Key directions* paper was released in June 2001. The latter stated that ownership restrictions would be removed, but current practice restrictions would be retained for three years to allow the identification of core practices.	Amendments are being drafted.	Review and reform incomplete

(*continued*)

Table 3.2 continued

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

Medical practitioners

The 2002 NCP assessment reported that New South Wales and Victoria had met their CPA obligations in relation to medical practitioners. This 2003 NCP assessment considers whether the other jurisdictions have met their CPA obligations in this area and reports on new regulatory developments in Victoria.

Victoria

Victoria amended the *Medical Practice Act 1994* in 2002 to:

- create a negative licensing scheme to regulate corporate owners of medical practices who direct or incite medical practitioners to engage in unprofessional conduct; and
- give the Medical Practitioners Board powers to manage poorly performing medical practitioners.

These changes are consistent with the CPA guiding principle so Victoria remains in compliance with its CPA obligations in relation to the regulation of medical practice.

Queensland

Queensland began its reform program for health professions regulation through the framework legislation enacted for all health professions late in 1999. The second stage of reform, new registration legislation, was completed in May 2001 with the enactment of the *Medical Practitioners Registration Act 2001*. This Act provides for specialist registration, and special-purpose registration and the registration of interns.

Core practice reforms are in the process of being implemented (see box 3.1, p. 3.6) to retain the restriction on the practices of thrust manipulation of the spine and prescribing optical appliances for correction or relief of visual defects, but remove the practice restrictions that apply to surgery of the muscles, tendons, ligaments and bones of the foot and ankle. A Bill to implement these reforms was introduced into Parliament in June 2003. This legislation had not been passed, so Queensland has not met its CPA obligations in relation to medical practitioner legislation.

Western Australia

A Ministerial Working Party, chaired by Dr Bryant Stokes (Chief Medical Officer, Health Department of Western Australia), has reviewed the competition restrictions as part of a broader review of its *Medical Act 1894*.

The working party released a draft review report in October 1999. The final report was released in 2001 and contained the following recommendations:

- retaining registration requirements, including specialist registration;
- retaining title protection for 'registered medical practitioners' only, but prohibiting nonregistrants from using any title that may induce people to believe they are a registered practitioners (consistent with the approach adopted in Victoria);
- making major changes to the disciplinary system, including establishing a medical tribunal (independent of the Medical Board) to deal with more serious disciplinary matters;
- revising advertising restrictions to prohibit the advertising of medical services in a manner that offers a discount, gift or inducement to attract patients where the terms and conditions of such an offer are not outlined, but also to remove other prescriptive controls on the form and content of advertising by medical practitioners;
- undertaking further consultation to determine whether and how to regulate the activities of bodies corporate involved in the provision of medical services; and
- initiating a process to examine whether a link between registration and a requirement for ongoing professional development be established.

Western Australia's 2003 NCP annual report advised that Cabinet accepted the review's recommendations and approved drafting of a Medical Practitioners Registration Bill, which will replace the current Act. The Government intends to introduce the Bill to Parliament in the latter half of 2003, in parallel with reforms to establish a State Administrative Tribunal to deal with more serious disciplinary matters relating to medical practitioners.

Western Australia has not complied with its CPA obligation in relation to its medical practitioner legislation because it has not completed its review and reform activity.

South Australia

South Australia completed a review of the *Medical Practitioners Act 1983* in March 1999, which recommended removing ownership restrictions, registering medical students, requiring the declaration of commercial interests and requiring practitioners to have professional indemnity insurance. The former Government introduced a new Medical Practice Bill to the Parliament in May 2001, which implements the recommendations of the review. The Bill lapsed following the State elections. The current Government advised that it is further consulting on proposed medical practitioner legislation reforms and intends making some amendments, including

amendments relating to infection control, accountability and honesty. It aims to introduce a new Bill to Parliament in the second half of 2003.

The Council considers that the review recommendations satisfactorily address competition questions. South Australia has not completed its review and reform activity and, therefore, has not met its CPA clause 5 obligations in relation to this legislation.

Tasmania

Tasmania completed a review of the *Medical Practitioners Registration Act 1996*. The review found that the registration of medical practitioners is justified in the public interest, but that restrictions on the ownership of medical practices and controls on advertising were not (Government of Tasmania 2003). The Cabinet has accepted all the review recommendations and legislation is set for introduction into Parliament in October 2003 (P Mussared (Acting Secretary of the Department of Treasury and Finance) 2003, pers. comm., 25 August).

While the review recommendations are in line with CPA principles, Tasmania has not complied with it obligations in this area because it has not completed its reform activity.

The ACT

The ACT completed its NCP review of health practitioner legislation in March 2001, including the *Medical Practitioners Act 1930* (box 3.3, p. 3.10). The review recommended continuing to register practitioners (subject to them meeting minimum entry standards) and maintaining protection of title, but not restricting practices to specific professions and removing unnecessary business conduct restrictions. The Government accepted the review recommendations and anticipates considering the final package of reforms in the ACT Legislative Assembly spring 2003 session.

While proposed reforms in the ACT are in line with CPA principles, the ACT has not complied with its obligations in this area because it has not completed its reform activity.

The Northern Territory

The Northern Territory Government commissioned the Centre for International Economics to undertake a review of its *Medical Act*. Completed in May 2000, the review recommended continuing to reserve the title 'medical practitioner' for registered medical practitioners, but repealing residency requirements, allowing greater flexibility for assessing entry qualifications and empowering the medical board to require registrants to demonstrate continuing competence in order to gain or renew a license. The review also recommended removing the reservation of practice, but empowering the board

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

The Northern Territory Government accepted the review recommendations in May 2001 and commenced drafting a new omnibus Health Practitioners Registration Bill to replace the Medical Act and five other health practitioner registration Acts. The draft omnibus Bill is expected to be ready for introduction to the Legislative Assembly during November 2003.

While the proposed reforms are consistent with the CPA guiding principle, the Northern Territory has not complied with its NCP obligations because it has not completed its review and reform.

Table 3.3: Review and reform of legislation regulating the medical profession

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Medical Practice Act 1992*	Entry, registration, title, practice, discipline, advertising	Review report was released in December 1998. Its recommended inserting an objectives clause, clarifying entry requirements, reforming the disciplinary system and removing of business and practice restrictions.	*Medical Practice Amendment Act 2000* was passed in July 2000, implementing the review recommendations.	Meets CPA obligations (June 2001)
Victoria	*Medical Practice Act 1994*	Entry, registration, title, practice, discipline, advertising	Victoria released a discussion paper in October 1998 and completed the review report in March 2001.	*Health Practitioner Acts (Amendment) Act 2000* amended the advertising provisions, including the ability of the board to impose additional restrictions. Further amendments in 2002 required Ministerial endorsement of the board's advertising proposals.	Meets CPA obligations (June 2002)
Queensland	*Medical Act 1939*	Entry, registration, title, practice, discipline, advertising, business	Queensland completed its health professions review in 1999. Its NCP review of core practice restrictions was completed in 2001. Recommendations included retaining title protection and entry restrictions, but removing other unnecessary anticompetitive restrictions (see box 3.1, p. 3.6). The core practices review recommended removing practice restrictions on foot surgery.	Queensland passed framework legislation in 1999 and enacted the *Medical Practitioners Registration Act 2001.* It also introduced a Bill to reform practice restrictions in June 2003. All implemented and proposed reforms accord with review recommendations.	Review and reform incomplete
Western Australia	*Medical Act 1894*	Entry, registration, title, practice, discipline, advertising	Draft report (October 1999) recommended: retaining registration and title protection; changing the disciplinary system; removing of prescriptive controls on advertising; further considering of issues relating to the regulation of bodies corporate; and linking registration with a requirement for ongoing professional development.	Cabinet intends to introduce a package of reforms in the latter half of 2003 to implement the review's recommendations.	Review and reform incomplete

(*continued*)

Table 3.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Medical Practitioners Act 1983*	Entry, registration, title, practice, discipline, advertising, business	Review was completed in 1999. It recommended removing ownership restrictions, registering medical students, requiring the declaration of commercial interests and requiring practitioners to have professional indemnity insurance.	New legislation was introduced in May 2001, but lapsed with the calling of the State elections. After further consultation, a new Bill will be introduced to Parliament in the second half of 2003.	Review and reform incomplete
Tasmania	*Medical Practitioners Registration Act 1996*	Entry, registration, title, practice, discipline, advertising	Review has been completed. The review found that the registration of medical practitioners is justified in the public interest, but that restrictions on the ownership of medical practices and controls on advertising were not.	The Government has accepted the recommendations and legislation is expected to be introduced to Parliament in October 2003.	Review and reform incomplete
ACT	*Medical Practitioners Act 1930*	Entry, registration, title, practice, discipline, advertising	The ACT completed its health practitioner legislation review in March 2001. The review recommended revisions to advertising and conduct provisions. It recommended removing practice restrictions.	The Government released an exposure draft of the omnibus Health Professions Bill 2002 (incorporating the review recommendations) in July 2002 and anticipates tabling the final Bill in the Legislative Assembly in late 2003.	Review and reform incomplete
Northern Territory	*Medical Act*	Entry, registration, title, practice, discipline, advertising, ownership, business	Review was completed in May 2000. Its recommendations included removing generic practice, ownership and advertising restrictions, and retaining title protection.	Omnibus health practitioner and allied professionals registration legislation is being drafted to replace this and other Acts.	Review and reform incomplete

Nurses

The 2002 NCP assessment reported that Victoria, South Australia and Tasmania had met their CPA obligations in relation to the regulation of nurses. This 2003 NCP assessment considers whether other jurisdictions have met their CPA obligations in this area.

New South Wales

In 1998, New South Wales enacted legislation allowing advanced nurse practitioners to have limited prescribing and referring rights. NSW Health commenced a review of the *Nurses Act 1991* in 1999. The review considered that any regulation of nurses and midwifery should have two objectives: first, to protect the health and safety of members of the public by providing mechanisms to ensure nurses and midwives are fit to practise; and second, to provide mechanisms to enable the public and employers to readily identify nurses and midwives who are fit to practise.

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

To ensure the ongoing competence of registered practitioners, the review recommended that nurses and midwives be required to make declarations about their professional activities and ongoing fitness to practise. It also recommended giving the board the power to inquire into a practitioner's competence or fitness to practise if it is not satisfied with the practitioner's declaration. Other recommended changes included relaxing practice restrictions in the area of midwifery, requiring the board to seek the Minister's approval of any codes of conduct that it develops, changing the size and composition of the board, and reforming the complaints and disciplinary systems.

The Government approved the review's recommendations in November 2001. The Nurses Amendment Bill 2003 was passed by the Legislative Assembly on 18 June 2003. It is currently before the Legislative Council.

While the review's recommendations are consistent with clause 5 of the CPA, New South Wales has not completed its reform activity. Given, however, that the review recommended retaining restrictions on the use of professional titles for nurse and midwives, which are the major restrictions on competition, some delay in New South Wales meeting its CPA obligations in this area is unlikely to impose a significant cost on the community.

Queensland

Queensland reviewed the *Nursing Act 1992* separately from its review of other health practitioner registration legislation. Queensland Health commenced the NCP review of the Nursing Act in October 1999. It released a discussion paper in November 2001 and the final public benefit test report in August 2003. The review recommended that separate title and practice restrictions be maintained for nurses and midwifes, but that practice restrictions be refined to:

- allow persons without nursing (midwifery) authorisation to practice under the supervision of a nurse (midwife);
- recognise the role of other health professionals that provide services, within their professional training and expertise, that may be regarded as nursing (midwifery) type services; and
- develop a Ministerial endorsed document that provides guidance with respect to the scope of nursing (midwifery) practice;

The review also recommended that penalties for contravening the restrictions be increased.

The review concluded that these restrictions provide a net benefit by overcoming information asymmetries and reducing the risks to people receiving care.

The proposed reforms are consistent with the CPA guiding principle. Nevertheless, Queensland has not met it CPA obligations in relation to legislation regulating the nursing and midwifery profession because it has not yet implemented the reforms. The Government is expected to implement amending legislation in 2003.

The Northern Territory

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

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

- removing advertising restrictions.

These recommendations are consistent with the CPA clause 5 guiding principle. The former Northern Territory Government accepted the review recommendations in May 2001 and elected to prepare new omnibus legislation to replace the Nursing Act and five other health practitioner registration Acts. The current Northern Territory Government also endorsed the recommendations of the review. It advised the Council that it expects to introduce the omnibus Health Practitioners Registration Bill to the Legislative Assembly in November 2003.

The Council assesses the Northern Territory as not having met its CPA obligations in this area because it has not completed its review and reform activity.

Other jurisdictions

Western Australia completed an omnibus review of its health practitioner legislation and announced the policy framework for replacement legislation. It has commenced a review to determine whether broad practice restrictions should be replaced with the identification of core practices in nursing (see box 3.2, p. 3.8). One reform specific to nurses was implemented through amendment to the *Nurses Act 1992*: it deems nurses registered in other Australian jurisdictions or New Zealand responding to an emergency or retrieving organs in Western Australia to be registered in Western Australia (Government of Western Australia 2002).

The ACT included the *Nurses Act 1988* in its review of health practitioner legislation (see box 3.3, p. 3.10), but the review did not make any specific recommendations regarding the regulation of nurses. The ACT Government approved the drafting of legislation that incorporates the review recommendations and expects to introduce the final package of reforms — which will repeal the Nurses Act and replace it with a consolidated health practitioners Act — to the Legislative Assembly in spring 2003.

The proposed reforms to be implemented in Western Australia and the ACT are consistent with the CPA guiding principle. These jurisdictions have not completed their reform activity, however, so they have not met their CPA obligations in relation to legislation regulating the nursing profession.

Table 3.4: Review and reform of legislation regulating the nursing profession

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Nurses Act 1991*	Entry, registration, title, practice, discipline	Review commenced in 1999 with the release of an issues paper and was completed in February 2000.	The Government approved the review recommendations. Amending legislation has been passed in the Legislative Assembly and is before the Legislative Council.	Review and reform incomplete
Victoria	*Nurses Act 1993*	Entry, registration, title, discipline	Discussion paper was released in October 1998. Review report is not publicly available.	Amending legislation was passed in November 2000. Further amendments to advertising provisions were made in 2002.	Meets CPA obligations (June 2002)
Queensland	*Nursing Act 1992*	Entry, registration, title, practice, discipline	Review commenced in October 1999. Discussion paper was released November 2001. The final public benefit test report was released in August 2003. It recommended retention of key competition restrictions in the public interest.	The Government is expected to implement amending legislation (if any) in 2003.	Review and reform incomplete
Western Australia	*Nurses Act 1992*	Entry, registration, title, practice, discipline	Review has been completed. Issues paper was released in October 1998. *Key directions* paper was released in June 2001 and the *Core practices* discussion paper was released in March 2003.	The Nurses Amendment Bill 2003, which deems Australian and New Zealand nurses to be registered in Western Australia in certain emergency situations, received the Governor's assent in April 2003.	Review and reform incomplete
South Australia	*Nurses Act 1984*	Entry, registration, title, practice, discipline	Review was completed in 1998. Its recommendations included improving accountability, removing restrictions on advertising and making minor changes to entry requirements.	New *Nurses Act 1999* was enacted in line with review recommendations.	Meets CPA obligations (June 2001)

(continued)

Table 3.4 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania	*Nursing Act 1995*	Entry, registration, title, practice, discipline	Review was completed in 1999. Restrictions related to registration were assessed as providing a net community benefit because they provide information to the consumer.	*Nurses Amendment Act 1999* removed practice restrictions.	Meets CPA obligations (June 2001)
ACT	*Nurses Act 1988*	Entry, registration, title, discipline	The ACT completed its health practitioner legislation review in March 2001. The review recommended revisions to advertising and conduct provisions. It recommended removing practice restrictions.	The Government released an exposure draft of the omnibus Health Professions Bill 2002 (incorporating the review recommendations) in July 2002 and anticipates tabling the final Bill in the Legislative Assembly in late 2003.	Review and reform incomplete
Northern Territory	*Nursing Act*	Entry, registration, title, practice, discipline, advertising	Review was completed in May 2000. Its recommendations included removing advertising and practice restrictions, and retaining title protection.	Omnibus health practitioner legislation is being drafted to replace this and other Acts. It is expected to be introduced into the Legislative Assembly in November 2003.	Review and reform incomplete

Optometrists and optical paraprofessionals

The 2002 NCP assessment reported that Victoria had met its CPA obligations in relation to the review and reform of its legislation governing optometry professions. This 2003 NCP assessment considers whether the other jurisdictions have met their CPA obligations in this area.

New South Wales

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

The Government introduced the Optometrists Bill 2001 to Parliament in October 2001. The Bill lapsed with the proroguing of Parliament in February 2002, so the Government introduced a revised Bill that was passed, creating the *Optometrists Act 2002*. On commencement this Act will repeal the Optometrists Act 1930 and the *Optical Dispensers Act 1963*. The Optometrists Act 2002 implements most of the review recommendations, but retains some ownership restrictions. Nonoptometrists may own optometry practices only if they owned the business before the ownership restrictions were introduced in 1945 (or, between 1945 and 1969, were granted an exemption) and they continue to operate at the same premises, or if they are exempted by the Minister or by regulation. New South Wales also advised that on commencement of the Optometrists Act 2002, in early 2004, clear guidelines will be in place to implement the ownership exemption process.

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

Despite the findings of the NCP review, New South Wales argued in 2002 that it is in the public interest to retain ownership restrictions because:

- removing the ownership restrictions would result in a progressive concentration of optometry ownership that could undermine the viability of independent optometrists and therefore employment opportunities, particularly in small rural and regional areas;
- removing the ownership restrictions would gradually reduce competition in some areas and only marginally improve in competition in other areas that are already well served by competitive markets; and

- any net benefit arising from increased competition in some areas would not offset the costs of establishing offences to ensure nonoptometrist-owned practices maintain professional standards.

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

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

medical practices, suggesting that the costs of establishing the offences are not prohibitive.

- New South Wales did not investigate the use of a positive licensing system to ensure nonoptometrist owners maintain professional standards. A positive licensing system would be less restrictive of competition than would New South Wales' exemptions model, because it would provide greater transparency and accountability.

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

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

The Council raised its concerns with New South Wales during the 2002 NCP assessment and sought a commitment that the Government would use its ownership restrictions to protect the community rather than incumbent service providers. The Government assured the Council that its intention is not to restrict competition unless there is a clear consumer need to do so. New South Wales did not, however, explain how the exemptions will operate. The Council therefore considers that New South Wales has not complied with its CPA obligations in relation to its review and reform of legislation governing the optometry profession.

Queensland

Optometry regulation is part of a wider Queensland reform program for health professions (see box 3.1, p. 3.6). Queensland replaced the *Optometrists Act 1974* with the *Optometrists Registration Act 2001*. The new Act removed restrictions on the ownership of optometry practices and the supply and fitting of optical appliances.

The Government is in the final stages of implementing core practice reforms, which will retain the practice restriction on prescribing optical appliances for correction or relief of visual defects, but will remove the restriction on the fitting of contact lenses. A Bill to implement these reforms was introduced into Parliament in June 2003. This legislation had not been passed, so Queensland has not met its CPA obligations in relation to optometry legislation.

Western Australia

In April 2001, the Government approved the drafting of new template health practitioner Acts to replace the *Optometrists Act 1940* and other health professions legislation. The Government's *Key directions* paper sets out the policy framework that is the basis for this new legislation and provides details on the core practices review, which is under way (see box 3.2, p. 3.8).

In *Key directions* the Government announced that it had decided to retain the *Optical Dispensers Act 1966* for 12 months while further assessing the need for this restriction. In February 2002, the Department of Health released the *Review of the practices of optical dispensers*, seeking submissions on this issue. Based on the feedback received, the review's advisory committee is finalising its deliberations.

As discussed in the section on chiropractors (p. 3.7), the Council is concerned that that the template health practitioner legislation drafted in 2001 is yet to be introduced to Parliament. While restrictions on optical dispensing are unlikely to have a significant impact on competition, the overall package of reforms has the potential to deliver substantial economic benefits to Western Australia. The Council notes that Queensland has removed restrictions on the supply and fitting of optical appliances.

Western Australia has not met its CPA obligations in relation to optometrists legislation because it has not completed its review and reform process.

South Australia

South Australia completed its review of legislation regulating optometrists in April 1999. The review recommended extending legislative coverage to optical dispensers, removing the restriction on training providers and introducing a code of conduct. A Cabinet submission seeking approval for the recommendations and approval to draft amendments has been prepared. The Bill is expected to be drafted in the second half of 2003 and introduced to Parliament in 2004 (Government of South Australia 2003). While the review recommendations appear consistent with the CPA clause 5 guiding principle, South Australia has not met it CPA obligations in this area because it has not completed its review and reform activity.

Tasmania

Tasmania completed its review of its optometry legislation. The key issues for the review were the extent of restrictions on the ownership of practices and on the advertising of services (Government of Tasmania 2003). Tasmania advised that the Cabinet accepted all the review recommendations on 21 July 2003 (P Mussared (Acting Secretary of the Department of Treasury and Finance) 2003, pers. comm., 25 August). Tasmania has not met its CPA obligations in this area because it has not completed its review and reform activity.

The ACT

The ACT included the *Optometrists Act 1956* in its review of health practitioner legislation. The review recommendations are outlined in box 3.3 (p. 3.10). The one specific recommendation regarding optometrists was to continue restricting the sale of spectacles or contact lenses not prescribed by a medical practitioner or optometrist, but further review these restrictions. The review found a public protection case for keeping the restriction, but also a case for undertaking a more focussed assessment of the restriction. The Council considers that this approach complies with the CPA clause 5, provided that a focused assessment is conducted within a reasonable timeframe.

The Government accepted the review recommendations. In August 2002, it announced that it would also introduce legislation to allow optometrists to prescribe certain therapeutic ocular drugs. It consulted on a draft exposure of the Health Professionals Bill 2002, which incorporated all proposed reforms and will replace the existing Optometrists Act and other health professional Act with a consolidated Act. The ACT anticipates considering the final package in the ACT Legislative Assembly spring 2003 session.

The Northern Territory

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

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

The former Northern Territory Government accepted the review recommendations in May 2001 and decided to prepare a new omnibus legislation to replace the Optometrists Act and five other health practitioner registration Acts. The Department of the Chief Minister advised the Council that the current Government approved drafting of an omnibus Health Practitioners and Allied Professionals Registration Bill, which is expected to be introduced to the Legislative Assembly in November 2003. The proposed reforms are consistent with the CPA clause 5 guiding principle.

The Northern Territory has not yet met its CPA obligations, however, because it has not completed the review and reform of its legislation regulating optometrists.

Table 3.5: Review and reform of legislation regulating the optometry professions

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Optical Dispensers Act 1963* *Optometrists Act 1930*	Entry, registration, title, practice, discipline, ownership	Review was completed December 1999 and released in April 2001. It recommended removing ownership restrictions, limiting reserved practice and extending prescribing rights.	Optometrists Bill 2001 lapsed on proroguing of Parliament. The *Optometrists Act 2002* implements most of the review's recommendations, but retains ownership restrictions.	Does not meet CPA obligations (June 2003)
Victoria	*Optometrists Registration Act 1958*	Entry, registration, title, practice, discipline, advertising	Review was completed and new legislation was assessed under the CPA clause 5(5). The new Act removes most commercial practice restrictions and the reservation of practice, and retains reserved titles and investigation of advertising (to ensure it is fair and accurate).	Victoria enacted a new *Optometrists Registration Act 1996* in line with review recommendations.	Meets CPA obligations (June 2001)
Queensland	*Optometrists Act 1974*	Entry, registration, title, practice, discipline, ownership, advertising	Queensland completed its health professions review in 1999. Its NCP review of core practice restrictions was completed in 2001. Recommendations included retaining title protection and entry restrictions, but removing other unnecessary anticompetitive restrictions (see box 3.1, p. 3.6).	Queensland passed framework legislation in 1999 and enacted the *Optometrists Registration Act 2001*, removing ownership restrictions. It also introduced a Bill to reform practice restrictions in June 2003. All implemented and proposed reforms are in line with NCP review recommendations.	Review and reform incomplete

(*continued*)

Table 3.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Optical Dispensers Act 1966* *Optometrists Act 1940*	Entry, registration, title, practice, discipline, advertising	*Key directions* paper was released in June 2001. It proposed removing prescriptive advertising restrictions; requiring practitioners to hold professional indemnity insurance; removing restrictions on business ownership; and retaining broad practice restrictions for three years pending the outcome of the core practices review (which is under way).	In April 2001, the Government approved the drafting of new template health practitioner Acts to replace the health professions legislation. The proposed reforms retain restrictions on optical dispensing.	Review and reform incomplete
South Australia	*Optometrists Act 1920*	Entry, registration, title, practice, discipline, advertising	Review was completed in 1999. It recommended extending registration to optical dispensers, removing the restriction on training providers and introducing a code of conduct.	A Cabinet submission seeking approval to implement the review recommendations has been prepared. Reform process is expected to be completed in 2004.	Review and reform incomplete
Tasmania	*Optometrists Registration Act 1994*	Entry, registration, title, practice, discipline, advertising	Review completed. The key issues for the review were the extent of restrictions on the ownership of practices and on the advertising of services.	Cabinet accepted all the review recommendations on 21 July 2003.	Review and reform incomplete

(*continued*)

Table 3.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT	*Optometrists Act 1956*	Entry, registration, title, practice, discipline, advertising	The ACT completed its health practitioner legislation review in March 2001. The review recommended revisions to advertising and conduct provisions. It recommended removing practice restrictions.	The Government released an exposure draft of the omnibus Health Professions Bill 2002 (incorporating the review recommendations) in July 2002 and anticipates tabling the final Bill in the Legislative Assembly in late 2003.	Review and reform incomplete
Northern Territory	*Optometrists Act*	Entry, registration, title, practice, discipline, ownership	Review completed in May 2000. Its recommendations included removing ownership restrictions, modifying practice restrictions and retaining title protection.	Omnibus health practitioner legislation is being drafted to replace this and other health practitioner Acts.	Review and reform incomplete

Osteopaths

The 2001 NCP assessment found that New South Wales, Victoria, Queensland and Tasmania had met their CPA obligations in relation to the review and reform of legislation regulating the osteopathy profession. This 2003 NCP assessment considers whether the other jurisdictions have met their CPA obligations in this area and provides an update on proposed new reforms in Queensland.

Queensland

The Queensland NCP review of core practices recommended that the practice of thrust manipulation of the spine be reserved for osteopaths, chiropractors, medical practitioners and physiotherapists (see box 3.1, p. 3.6). A Bill to implement these reforms was introduced into Parliament in June 2003. The Council considers this recommendation to be consistent with the CPA clause 5 guiding principle, but Queensland has not yet met its CPA obligations in this area because it has not completed its reform activity.

Western Australia

Western Australia is using the *Osteopaths Act 1997* as model legislation in its review of health practitioner legislation. It expects to make minor amendments to the Act as a consequence of the review. In addition, it is undertaking a review of core practices to determine appropriate protections to apply to osteopaths (see box 3.2, p. 3.8). Consequently, Western Australia has not met its CPA obligations to complete its review and reform of osteopath legislation.

South Australia

South Australia registers osteopaths as chiropractors. South Australia's review of its chiropractic legislation recommended establishing separate registers for osteopaths and chiropractors in a new Chiropractors and Osteopaths Act (see the section on chiropractors, p. 3.9). South Australia has not met its CPA clause 5 obligations in relation to this area because it has not completed its review and reform activity.

The ACT

The ACT included the *Chiropractors and Osteopaths Act 1983* in its review of health practitioner legislation. The review recommendations (see box 3.3, p. 3.10) did not include any specific recommendations regarding osteopaths. The ACT Government approved the drafting of legislation that incorporates

the review recommendations and expected to introduce the resulting Bill to the Legislative Assembly in late 2002.

While the proposed reforms are in line with the CPA guiding principle, the ACT has not completed its review and reform process and therefore has not met its CPA obligations in relation to in this area because it has not completed its review and reform process.

The Northern Territory

The Northern Territory registers osteopaths through the Health Practitioners and Allied Professionals Registration Act. The former Government commissioned the Centre for International Economics to conduct a review of the Act (see the section on chiropractors, p. 3.10). The recommendations regarding osteopaths are consistent with the CPA principles.

The former Northern Territory Government accepted the review recommendations and determined in April 2001 that the current legislation regulating health professionals would be repealed and that an omnibus Act would be created to replace the existing six Acts. The Health Practitioners Bill incorporates the recommendations for legislative change from the NCP reviews of the six Acts and the professional boards 1998 review. (Some recommendations from the 1998 review did not require legislative amendments and have been administratively implemented.)

The review recommendations regarding the regulation of osteopaths are consistent with the CPA clause 5 guiding principle. The Northern Territory Government has not met its NCP obligations in this area, however, because it has not completed the reform process.

Table 3.6: Review and reform of legislation regulating the osteopathy profession

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*[a]	*Reform activity*	*Assessment*
New South Wales	*Chiropractors and Osteopaths Act 1991*	Entry, registration, title, practice, discipline, advertising	As for chiropractors.	New *Osteopaths Act 2001* was passed in line with review recommendations.	Meets CPA obligations (June 2001)
Victoria	*Chiropractors and Osteopaths Act 1978*	Entry, registration, title, practice, discipline, advertising	As for chiropractors.	New *Osteopaths Registration Act 1996* was enacted in line with review recommendations.	Meets CPA obligations (June 2001)
Queensland	*Chiropractors and Osteopaths Act 1979*	Entry, registration, title, practice, discipline, advertising, business	As for chiropractors.	The *Osteopaths Registration Act 2001* does not contain practice restrictions. The Health Legislation Amendment Bill 2003 introduces restrictions on the practice of thrust manipulation of the spine. All reforms are in line with NCP review recommendations.	Meets CPA obligations (registration) (June 2001); review and reform incomplete (core practice restrictions)
Western Australia	*Osteopaths Act 1997*	Entry, registration, title, discipline	As for chiropractors.	As for chiropractors.	
South Australia	*Chiropractors Act 1991*	Entry, registration, title, practice, discipline, advertising, business	As for chiropractors.	As for chiropractors.	
Tasmania	*Chiropractors Registration Act 1982*	Entry, registration, title, practice, discipline, advertising	As for chiropractors.	New *Chiropractors and Osteopaths Act 1997 was* enacted in 1997.	Meets CPA obligations (June 2001)
ACT	*Chiropractors and Osteopaths Act 1983*	Entry, registration, title, practice, discipline, advertising	As for chiropractors.	As for chiropractors.	
Northern Territory	*Health Practitioners and Allied Professionals Registration Act*	Entry, registration, title, practice, discipline	As for chiropractors.	As for chiropractors.	

[a] See table 3.1, p. 3.12.

Pharmacists

Pharmacists retail prescription drugs and medicines, over-the-counter medications and related goods and services such as toiletries, cosmetics and health care products. Pharmacists also provide consumers with advice on the safe use of medications.

Each State and Territory requires pharmacists to hold appropriate qualifications and be registered. State and Territory legislation also prohibits people other than registered pharmacists from handling or selling certain pharmaceuticals in a retail environment. Reserving the practice of pharmacy to registered pharmacists ensures consumers receive appropriate professional advice before taking potentially harmful medicines. It may also, however, result in greater costs for pharmacy goods due to proprietors' need to offer salaries sufficient to attract qualified staff pharmacists.

In all States and Territories, except the Northern Territory, pharmacist legislation confines the ownership of pharmacies to registered pharmacists, with limited exemptions. The main exemptions are pharmacies owned by friendly societies and pharmacies owned by nonpharmacists before the present ownership restrictions came into force. Other related restrictions include:

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

State and Territory pharmacist legislation is closely interlinked with the regulation of drugs, poisons and controlled substances, and with Commonwealth legislation underpinning the Pharmaceutical Benefits Scheme (PBS), both of which are discussed in later sections of this chapter.

National review of pharmacy legislation

The Council of Australian Governments (CoAG) commissioned a major national review of restrictions on competition in State, Territory and Commonwealth pharmacy legislation in 1999. The National Review of Pharmacy Regulation, chaired by Warwick Wilkinson AM, reported to governments in February 2000. It considered legislative restrictions in key areas: ownership restrictions and registration requirements in State and

Territory pharmacy legislation, and restrictions on pharmacy locations under the PBS.[1]

The review sought to set the boundaries of acceptable legislative restrictions on competition, considering that:

> *… where a jurisdiction's regulation does not extend as far as the Review's recommended line, that jurisdiction should not be compelled to extend that regulation. If a jurisdiction's regulations go beyond that line, however, any excessive regulation should be wound back.* (Wilkinson 2000, p. 19).

In relation to State and Territory pharmacist legislation, the review recommended:

- retaining the statutory registration of pharmacists and continuing to restrict the practice of pharmacy and the use of titles such as 'pharmacist' to registered pharmacists. It found, on balance, that registering a pharmacist as competent to a minimum level of proficiency for unsupervised practice was justifiable in the public interest;

- retaining restrictions on who may own a pharmacy. It found that these restrictions provide a net public benefit to the community through improved professional conduct of pharmacy practice;

- lifting restrictions on the number of pharmacies that a pharmacist can own, but continuing to require pharmacist supervision of pharmacy operations. It found that numerical restrictions are arbitrary, artificial, easy to breach and difficult to enforce, but that requirements for pharmacist supervision of pharmacies ensure the provision of safe and competent services;

- continuing to permit friendly societies to own pharmacies, but prohibiting those not already operating in a given jurisdiction from operating pharmacies in that jurisdiction in the future. It considered that friendly society pharmacies are relics of a bygone era when governments did not fund health services, so found it hard to justify the future entry of new players into the friendly society pharmacy sector; and

- retaining prohibitions on nonpharmacists having a direct proprietary interest in pharmacies, but lifting restrictions on other forms of pecuniary interest. It took the view that regulatory authority scrutiny is generally not needed for the commercial relationships and transactions of pharmacy businesses, so long as authorities can act on matters where safe and competent pharmacy practice is compromised.

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[1] Queensland limited its involvement in the review to ownership provisions because it had a separate NCP process under way for the review of registration provisions in its *Pharmacy Act 1976*. Tasmania also chose not to include its pharmacy registration provisions in the review.

The Council considered the national review recommendations in the 2001 NCP assessment but did not conclude its assessment because governments had yet to announce their responses to the review. CoAG referred the national review to a working group comprising senior Commonwealth, State and Territory officers. The working group released its report in August 2002, recommending that CoAG accept most of the national review's recommendations.

The working group questioned, however, the evidence supporting the national review's conclusion that restricting pharmacy ownership is in the public interest. It found that the national review, in coming to this conclusion, was hampered by a lack of evidence and did not seem to examine the different treatment of business ownership in the context of other Australian professions or overseas experience. It also questioned the value of ownership requirements in view of the review's recognition that requirements for pharmacists' supervision of pharmacies ensures safe and competent pharmacy services.

Nonetheless, the working group recommended that CoAG accept the recommendation to retain the ownership restrictions. It considered that the impact of deregulating ownership could be too disruptive for the industry in the short term, given the other significant reforms proposed by the review (including proposals to limit restrictions on commercial aspects of pharmacy practices and to remove caps on the number of pharmacies that a pharmacist may own).

The working group proposed that CoAG reject the recommendation to prevent friendly societies operating pharmacies in jurisdictions where they are not already present. It considered that the only issue that should determine the extent of friendly societies' participation in community pharmacy is whether they can run good pharmacies. On this basis, it concluded that friendly society pharmacies, as a sector, should be permitted to operate in the same way as other pharmacist proprietors.

The working group endorsed the recommendation to remove restrictions on the number of pharmacies that a pharmacist may own. It noted, however, that New South Wales remains concerned about the potential for monopolies to arise in regional areas and will further assess this issue as part of the reform implementation process.

The working group recommended continuing to reserve the practice of pharmacy as only an interim measure. It questioned the need for any practice reservation, given provisions in drugs and poisons legislation that require various drugs to be obtained through a qualified pharmacist. It also questioned practice reservation without a workable definition of the activities involved, because such an approach does not provide certainty and risks unduly restricting related practices.

Assessment

The Council considers that the review's conclusion that ownership restrictions provide a net benefit to the community is based on questionable evidence (for a detailed discussion of the issues, see NCC 2002 pp. 6.78–6.80). The CoAG senior official's working group, however, provided an alternative public interest case: that is, that deregulating ownership would be too disruptive for the pharmacy industry in the short term given the other reforms being implemented. In this 2003 NCP assessment, therefore, the Council focuses on the evidence supporting the working group's case.

The national review noted that the community pharmacy sector has long enjoyed shelter from the full force of market competition. While there is competition between pharmacies, that competition occurs within a relatively homogeneous, conservative and stable market. Good professionals do not necessarily make good managers and businesspeople. The current regulatory arrangements, however, have made it easier for poorer business performers to be protected from themselves, such that pharmacies (unlike other small to medium-sized businesses) are perceived as low risk businesses by those who own and finance them (Wilkinson 2000).

In this environment, 'providing the best possible professional service to consumers at the best price may not always be the strongest driving factor in pharmacy proprietor's business outlooks and decision-making processes' (Wilkinson 2000). The national review received evidence that levels of service received at pharmacies are often less than optimal, with the quality of service of many pharmacies described as 'relatively indifferent and patchy' (Wilkinson 2000).

This indicates that some pharmacist proprietors would find it difficult to compete with entrepreneurial new entrants. In the United States, Canada and the United Kingdom, consumers have 'voted with their feet'. Chain pharmacies in these countries have increased their market share at the expense of smaller independent pharmacies, suggesting that they provide cost, quality and/or convenience benefits to consumers (PC 1999d).

Consequently, the proprietors of pharmacies that perform under consumer expectations would be likely to find that the capital value of their businesses falls. From a community-wide perspective, this represents an 'income transfer' rather than a true economic cost — the loss to pharmacist proprietors would be matched by an income benefit to consumers (who would spend less on medications) and taxpayers (who would outlay less on the PBS) (PC 1999d).

Existing pharmacist proprietors face substantial challenges in adjusting to a more competitive market environment, however. The pharmacy industry has traditionally been relatively insular and self-contained (Wilkinson 2000, p. 35). Pharmacist proprietors tend to be older, and many are no longer in active practice (AIHW 1996). Further, the small scale of many pharmacies makes it uneconomic for independent pharmacist proprietors to introduce specialist management and retailing skills (PC 1999d, p. 36).

In these circumstances, ownership deregulation in the short-term could raise significant structural adjustment issues. Gradual reform implementation, however, can help to minimise transitional costs to independent pharmacists. The reforms that the working group endorsed provide existing pharmacist proprietors with scope to develop more efficient, innovative and competitive businesses, and enable efficient providers to expand their operations. They thus provide a sound base for successful longer term deregulation of pharmacy ownership.

On this basis, the Council accepts that if governments implement the reforms recommended by the working group, the retaining ownership restrictions in the short term may have a net public benefit (bearing in mind that the CPA obliges governments to review retained restrictions within 10 years).

The following sections consider reform implementation in each jurisdiction.

New South Wales

New South Wales is concerned that lifting the restrictions on pharmacy ownership could lead to the emergence of monopolies in regional areas, and it indicated it would investigate this matter. The CoAG working group (CoAG 2002) found that while the Commonwealth legislation retains location restrictions (which effectively prevent new businesses from entering the market) there is capacity for small pockets of market domination to occur. The national review found, however, that numerical restrictions are readily circumvented, so it is hard to perceive further restriction as necessary or having significant benefits. This finding supports the view that ownership restrictions are not the least restrictive approach to achieving the objectives of the New South Wales pharmacy legislation. For this reason, the restrictions do not comply with CPA obligations.

The New South Wales Government’s final proposals for legislative changes to its pharmacy legislation are before Cabinet, but were delayed by New South Wales’ pre-election caretaker conventions (Government of New South Wales 2003). Consequently, New South Wales has not complied with its CPA obligations in relation to pharmacy legislation because it has not completed its review and reform activity.

Victoria

Victoria released a discussion paper in August 2002 that considered ways in which to implement the recommendations of the national review, and examined any competition restrictions within the *Pharmacists Act 1973* that were not considered by the national review, along with any proposed regulation that might restrict competition if implemented (Government of Victoria 2003). Victoria advises that the Minister for Health is considering the recommendations arising from responses to the discussion paper. Victoria has not met its CPA obligations in relation to pharmacy legislation because it has not completed its review and reform process.

Queensland

Queensland passed the *Pharmacists Registration Act 2001* to replace the *Pharmacy Act 1976*, as part of its package of health practitioner legislation reforms (see box 3.1, p. 3.6). The new Act contains entry and registration requirements, reserves the title of 'pharmacist' for registered pharmacists, and removes unnecessary anticompetitive advertising restrictions. These provisions are consistent with the CPA clause 5 guiding principle.

The new Act also preserves the practice and ownership restrictions from the Pharmacy Act, pending the outcomes of the national review process. Queensland intends to introduce amending legislation to implement the review recommendations soon, and expects the new arrangements to commence by the end of 2003. To comply with its CPA obligations on this matter, Queensland will need to give effect to the working group recommendations to remove numerical restrictions on ownership and amend the pecuniary interest provisions. The Council thus assesses that Queensland has not met its CPA obligations in relation to pharmacy legislation because it has not completed its review and reform activity.

Western Australia

The Department of Health is considering the recommendations of the national review process in consultation with key stakeholders. Consequently, Western Australia has not met its CPA obligations in relation to pharmacy legislation because it has not completed its review and reform activity.

South Australia

The South Australian Government is considering a draft Bill to implement the decision of the CoAG working party. It anticipates introducing the Bill to Parliament in the second half of 2003 or early 2004. Such reform would be consistent with the CPA guiding principle. South Australia has not complied with its CPA obligations in this area, however, because it has not yet implemented its pharmacy reforms.

Tasmania

Tasmania repealed its *Pharmacy Act 1908* and replaced it with the *Pharmacists Registration Act 2001*. The registration provisions of the new Act are similar to those in other recently enacted Tasmanian health practitioner registration legislation and consistent with the CPA clause 5 guiding principles.

The new Act retains stringent restrictions on the number of pharmacies in which a registered pharmacist may have a direct or indirect interest, contrary to the recommendation of the national review. It also introduced new

restrictions limiting the number of pharmacies that a friendly society may operate in Tasmania.

Tasmania has also advised that the final content of its pharmacy legislation would depend on its assessment of the outcome of the national review of this legislation, including CoAG's recommendations. To comply with its CPA obligations, Tasmania will need to amend its Act to implement the working group's recommended treatment of friendly societies.

The Council thus assesses Tasmania as not meeting its CPA obligations in this area because it has not completed its review and reform activity.

The ACT

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

The ACT Legislative Assembly passed a private member's Bill to amend the *Pharmacy Act 1931* in August 2001 to ensure only registered pharmacists, or companies controlled and managed by registered pharmacists, could own and operate pharmacies (Tucker 2001). The ACT Government advised the Council that these amendments do not impose any additional obligations on the ownership of pharmacy property. Given the apparent discrepancies between the ACT Government advice, the second reading speech and the Wilkinson Review finding, the Council asked the ACT Government in 2002 to provide legal advice to clarify the effect of the amendments. In response, the ACT Government Solicitor's Office advised that the *Pharmacy Amendment Act 2001* limits pharmacy ownership so only registered pharmacists may own a pharmacy and that this approach is consistent with the original provisions and intention of the Pharmacy Act. Section 45(2)(a) of the 1931 Act, however, allows for a company to own a pharmacy, which means someone other than a registered pharmacist can own a pharmacy. The Pharmacy Amendment Act redresses this anomaly.

The ACT considers that the Wilkinson review allowed for a generous interpretation of the ownership provisions of the Pharmacy Act. The review accorded too much weight to the potential for a nonregistered pharmacist to own a pharmacy, rather than recognising the intention of the Act to keep ownership solely in the preserve of pharmacists. The latter approach would have accorded with the conventional interpretation that the review applied to similar legislation in other States.

When the ACT implements the proposed reforms from its review of its health professional legislation, it may provide exceptions to the ownership restrictions to allow operation of friendly society pharmacies. Under its

proposal, the current Pharmacy Act will be replaced through consolidation within the Health Professionals' Bill. The ACT intends to include pharmacy-specific provisions within a schedule to the revised legislation. The health practitioner registration provisions of the Bill are consistent with the CPA clause 5 guiding principle (see section on chiropractors, p. 3.9), but whether the ACT meets its CPA obligations in this area will depend on its decision regarding friendly society pharmacies.

The Council assesses the ACT as not meeting it CPA obligations in relation to pharmacy legislation because it has not completed its review and reform activity.

The Northern Territory

The Northern Territory intends to introduce a consolidating Health Practitioner Registration Bill to Parliament in 2003. The Department of Health and Community Services has advised the Council that the Minister for Health intends use the Bill to introduce ownership restrictions on pharmacies, but provide some discretion for the Minister to grant exemptions to this restriction.

As discussed earlier, the Council questioned the strength of the evidence supporting the national review's conclusion that ownership restrictions are in the public interest. In assessing compliance with the CPA clause 5 guiding principle, therefore, the Council looked for the Northern Territory to provide additional evidence that the benefits of restricting ownership (subject to some discretion to provide exemptions) outweigh the costs, such as evidence that restricting pharmacy ownership is likely to improve pharmacy services in the Northern Territory.

The Wilkinson Review found that the Northern Territory's pharmacy legislation did not rule out the ownership of pharmacies by persons other than pharmacists (although, as in other jurisdictions, the Act requires restricted pharmaceuticals to be dispensed by registered pharmacists). The review considered, however, that the Northern Territory's pharmacy ownership provisions fell within the boundary of acceptable regulation and that the Northern Territory did not need to amend its Act (Wilkinson 2000, p. 48). The Government will nevertheless need to provide a rigorous public interest case that restricting ownership provides a net public benefit and is the least restrictive option available.

The Northern Territory has not met its CPA obligations in relation to pharmacy legislation because it has not completed its review and reform activity.

Table 3.7: Review and reform of legislation regulating the pharmacist profession

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Pharmacy Act 1964*	Entry, registration, title, practice, discipline, advertising, business ownership, licensing	National Review of Pharmacy Regulation (Wilkinson Review) was completed in February 2000. The review recommended retaining registration, the protection of title, practice restrictions and disciplinary systems (although with minor changes to the registration systems for individual jurisdictions). Further, the review recommended maintaining ownership restrictions and removing business licensing restrictions. CoAG referred the national review to a senior officials working group, which recommended that CoAG accept most of the national review recommendations (except the recommendation on nonpharmacy ownership of pharmacies by friendly societies and other nonpharmacists that currently own pharmacies).	A proposal for legislative change is before Cabinet.	Review and reform incomplete
Victoria	*Pharmacists Act 1974*	Entry, registration, title, practice, discipline, advertising, business ownership, licensing		Victoria commenced a further review to examine implementation options for Wilkinson Review recommendations and to assess other outstanding restrictions. It released a discussion paper in August 2002.	Review and reform incomplete
Queensland[a]	*Pharmacy Act 1976*	Entry, registration, title, practice, discipline, advertising, business ownership		Queensland passed the *Pharmacists Registration Act 2001*. Queensland intends to introduce reforms to implement the review recommendations soon and expects the new arrangements to commence by the end of 2003.	Review and reform incomplete
Western Australia	*Pharmacy Act 1974*	Entry, registration, title, practice, discipline, advertising, business ownership, licensing, residence		Western Australia is consulting with stakeholders on the recommendations from the national review.	Review and reform incomplete

[a] Queensland limited its involvement in the review to ownership provisions because it had a separate NCP process under way for the review of registration provisions in its Pharmacy Act.

(continued)

Table 3.7 continued

<table>
<tr><th>Jurisdiction</th><th>Legislation</th><th>Key restrictions</th><th>Review activity</th><th>Reform activity</th><th>Assessment</th></tr>
<tr><td>South Australia</td><td>Pharmacy Act 1991</td><td>Entry, registration, title, practice, discipline, advertising, business ownership, licensing</td><td rowspan="4">National Review of Pharmacy Regulation (Wilkinson Review) was completed in February 2000. The review recommended retaining registration, the protection of title, practice restrictions and disciplinary systems (although with minor changes to the registration systems for individual jurisdictions). Further, the review recommended maintaining ownership restrictions and removing business licensing restrictions.

CoAG referred the national review to a senior officials working group, which recommended that CoAG accept most of the national review recommendations (except the recommendation on nonpharmacy ownership of pharmacies by friendly societies and other nonpharmacists that currently own pharmacies).</td><td>South Australia anticipates a Bill to implement the decisions of the CoAG senior officials' working party will be introduced into Parliament in the second half of 2003.</td><td>Review and reform incomplete</td></tr>
<tr><td>Tasmania[b]</td><td>Pharmacy Act 1908</td><td>Entry, registration, title, practice, discipline, advertising, business ownership</td><td>Act was repealed and replaced with the Pharmacists Registration Act 2001, which retained ownership restrictions pending its consideration of the outcome of the national review process.</td><td>Review and reform incomplete</td></tr>
<tr><td>ACT</td><td>Pharmacy Act 1931</td><td>Entry, registration, title, practice, discipline</td><td>In July 2002, the ACT released an exposure draft of the omnibus Health Professions Bill 2002 to repeal and replace this and other health practitioner registration Acts. It anticipates introducing the final Bill to Parliament in late 2003.</td><td>Review and reform incomplete</td></tr>
<tr><td>Northern Territory</td><td>Pharmacy Act 1996</td><td>Entry, registration, title, practice, discipline</td><td>The Government intends to introduce a consolidating Health Practitioner Registration Bill in 2003, which will introduce pharmacy ownership restrictions.</td><td>Review and reform incomplete</td></tr>
</table>

b Tasmania chose not to include its pharmacy registration provisions in the review.

Physiotherapists

The 2002 NCP assessment reported that New South Wales, Victoria and Tasmania had met their CPA obligations in relation to the review and reform of legislation regulating the physiotherapy profession. This 2003 NCP assessment considers whether the other jurisdictions have complied with their CPA obligations in this area.

Queensland

Queensland enacted the *Physiotherapists Registration Act 2001* to replace the *Physiotherapists Act 1964*. The new Act continues to reserve title for registered physiotherapists in the public interest, but removes other anticompetitive restrictions on commercial and business conduct, including advertising restrictions. The Act also retained broad practice restrictions, but the Government introduced the Health Legislation Amendment Bill 2003 to Parliament in June 2003, which will reserve only the practice of thrust manipulation of the spine for physiotherapist and other related health professions (see box 3.1, p. 3.6). The proposed reforms are consistent with the CPA guiding principle. Queensland has not met its CPA obligations in relation to physiotherapist legislation because it has not completed the implementation process.

Western Australia

In April 2001, the Government approved the drafting of new template health practitioner Acts to replace the *Physiotherapists Act 1950* and other health professions legislation. The Government's *Key directions* paper sets out the policy framework that is the basis for this new legislation and provides details on the core practices review, which is under way (see box 3.2, p. 3.8).

The proposed reform in *Key directions* will remove anticompetitive restrictions found in the NCP review to not be in the public interest, although the Government will retain practice restrictions for three years while undertaking a focused review. The Council assesses that Western Australia has not met its CPA obligations in relation to the physiotherapy profession because it has not implemented any of its proposed health practitioner reforms.

South Australia

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

- retaining registration and a requirement that physiotherapists demonstrate continuing competence;

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

The Government approved drafting of amending legislation on 28 August 2000. Having completed consultation with the professional board, it expects to release a draft Bill for wider public consultation in the latter half of 2003 and to implement reforms in the first half of 2004 (Government of South Australia 2003). While the review recommendations are consistent with CPA principles, South Australia has not met its CPA obligations in relation to physiotherapy legislation because the reform process is yet to be completed.

The ACT

The ACT included the *Physiotherapists Act 1977* in its review of health practitioner legislation. The review recommendations (outlined in the section on chiropractors) did not include any specific recommendations regarding physiotherapists. The Government accepted the review recommendations and completed consultation on a draft exposure of the Health Professionals Bill 2002. The Bill will repeal the existing health professional Acts and replace them with a consolidated Act. The ACT anticipates considering the final package in the ACT Legislative Assembly spring 2003 session. Box 3.3 (p. 3.10) provides details on ACT's review and reform of health practitioner legislation. The proposed reforms are in line with CPA principles. The ACT is yet to meet its CPA obligations with regard to physiotherapist legislation because it has not completed its review and reform process.

The Northern Territory

The Northern Territory registers physiotherapists through the Health Practitioners and Allied Professionals Registration Act. The former Government commissioned the Centre for International Economics to conduct a review of the Act (see the section on chiropractors, p. 3.10). The review recommendations in relation to physiotherapists are consistent with the CPA clause 5 guiding principle.

The former Northern Territory Government accepted the review recommendations in May 2001 and decided to prepare a new omnibus Health Practitioners Registration Bill to replace the Health Practitioners and Allied Professionals Registration Act and five other health practitioner Acts. The current Government endorsed this position and approved drafting of the new legislation on 18 March 2003. The legislation is not expected to be introduced in the Legislative Assembly until the November 2003 sittings. The Council

thus assesses the Northern Territory as not meeting its NCP obligations in this area because it has not completed the reform process.

Table 3.8: Review and reform of legislation regulating the physiotherapy profession

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Physiotherapists Registration Act 1945*	Entry, registration, title, practice, discipline	Review was completed in March 2001. Its 28 recommendations included lessening restrictions on practice and advertising.	*Physiotherapists Act 2001* was enacted in line with review recommendations.	Meets CPA obligations (June 2002).
Victoria	*Physiotherapists Act 1978*	Entry, registration, title, practice, discipline, advertising	Review was completed in 1997. It recommended removing most commercial practice restrictions and practice reservation, and retaining reserved titles and the investigation of advertising (to ensure it is fair and accurate).	*Physiotherapists Registration Act 1998* was enacted in line with review recommendations.	Meets CPA obligations (June 2001)
Queensland	*Physiotherapists Act 1964*	Entry, registration, title, practice, discipline	Queensland completed its health professions review in 1999. Its NCP review of core practice restrictions was completed in 2001. Recommendations included retaining title protection and entry restrictions, but removing other unnecessary anticompetitive restrictions (see box 3.1, p. 3.6). It also recommended preserving the restriction for thrust manipulation of the spine.	Queensland passed framework legislation in 1999 and enacted the *Physiotherapists Registration Act 2001.* It also introduced a Bill to reform practice restrictions in June 2003. All implemented and proposed reforms are in line with NCP review recommendations.	Review and reform incomplete
Western Australia	*Physiotherapists Act 1950*	Entry, registration, title, practice, discipline	*Key directions* paper was released in June 2001. It proposed removing prescriptive advertising restrictions; requiring practitioners to hold professional indemnity insurance; removing restrictions on business ownership; and retaining broad practice restrictions for three years pending the outcome of the core practices review (which is under way).	In April 2001, the Government approved the drafting of new template health practitioner Acts to replace the health professions legislation.	Review and reform incomplete

(*continued*)

Table 3.8 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Physiotherapists Act 1991*	Entry, registration, title, practice, discipline, advertising, ownership	Review completed in 1999. It recommended removing ownership and advertising restrictions, retaining registration subject to a demonstration of ongoing competence and replacing broad practice restrictions with core practice restrictions.	Consultation on a draft Bill designed to implement the reforms is being undertaken. Bill is likely to be introduced into Parliament in 2004.	Review and reform incomplete
Tasmania	*Physiotherapists Registration Act 1951*	Entry, registration, title, practice, discipline, advertising	Tasmania assessed the replacement legislation through its new legislation gatekeeping process under the CPA clause 5(5).	Act was repealed and replaced by the *Physiotherapists Registration Act 1999*.	Meets CPA obligations (June 2001)
ACT	*Physiotherapists Act 1977*	Entry, registration, title, practice, discipline	The ACT completed its health practitioner legislation review in March 2001. The review recommended revisions to advertising and conduct provisions. It recommended removing practice restrictions.	The Government released an exposure draft of the omnibus Health Professions Bill 2002 (incorporating the review recommendations) in July 2002 and anticipates tabling the final Bill in the Legislative Assembly in late 2003.	Review and reform incomplete
Northern Territory	*Health Practitioners and Allied Professionals Registration Act*	Entry, registration, title, practice, discipline	Review was completed in May 2000. Its recommendations included retaining title protection and removing generic practice restrictions.	Omnibus health practitioner Bill is being drafted to replace this and other Acts. The Government expects to introduce the Bill into Parliament in November 2003.	Review and reform incomplete

Podiatrists

The 2002 NCP assessment reported that Victoria and Tasmania had met their CPA obligations in relation to the review and reform of legislation regulating the podiatry profession. The Northern Territory does not regulate the podiatry profession. This 2003 NCP assessment considers whether the other jurisdictions have complied with their CPA obligations in this area.

New South Wales

The Department of Health commenced a review of the *Podiatrists Act 1989* in 1999 and completed the review in March 2003. The Government commenced consultation with stakeholders after the release of the draft report. While the report has not been released to the public yet, the Council understands that the review's major proposal is to replace the current whole-of-practice restrictions on podiatry with three core practice restrictions, restricting certain foot treatments to podiatrists, nurses and medical practitioners (Government of New South Wales 2003). It also recommended the removal of technical contraventions of the Act where other regulated practitioners such as physiotherapists administer foot treatment within their legitimate scope of practice.

The Government introduced an exposure draft of the Podiatrists Bill 2003 into the Legislative Assembly on 1 July 2003. The Bill will repeal and replace the Podiatrists Act 1989 and incorporates the review recommendations on practice restrictions. It also contains provisions to ensure that podiatrists maintain their competence through a more robust annual renewal process and introduces a new disciplinary system. The proposed reforms are consistent with the CPA guiding principle. New South Wales has not met its CPA obligations in relation to the regulation of podiatrists, however, because it has not completed the review and reform process.

Queensland

Podiatry regulation is being considered as part of a wider Queensland reform program for health professions (see box 3.1, p. 3.6). Queensland replaced the *Podiatrists Act 1969* with the *Podiatrists Registration Act 2001*, which retains those competition restrictions found in the NCP review to be consistent with the CPA guiding principle.

The Government is in the final stages of implementing core practice reforms, which will remove the outstanding restriction on the practice of soft tissue and nail surgery of the foot. A Bill to implement these reforms was introduced into Parliament in June 2003. This legislation had not been passed, so Queensland has not met its CPA obligations in relation to podiatry legislation.

Western Australia

In April 2001, the Government approved the drafting of new template health practitioner Acts to replace the *Podiatrists Registration Act 1984* and other health professions legislation. The Government's *Key directions* paper sets out the policy framework that is the basis for this new legislation and provides details on the core practices review, which is under way (see box 3.2, p. 3.8). Western Australia has not introduced to Parliament the template health practitioner legislation drafted in 2001, however, so has not met its CPA obligations in this area.

South Australia

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

The Government prepared a Bill to implement reforms and finalised consultation with the Podiatrists Board. After undertaking wider public consultation on a draft Bill, the Government intends to introduce reforms to Parliament in the second half of 2003 (Government of South Australia 2003). South Australia has not met its CPA obligations in relation to podiatry legislation because it has not completed its review and reform activity.

The ACT

The ACT included the *Podiatrists Act 1994* in its omnibus health practitioner legislation review. Box 3.3 (p. 3.10) provides details on the ACT's progress with its review and reform of health practitioner legislation. The review did not make any specific recommendations regarding podiatrists (Department of Health and Community Care 1999). While the proposed reforms are in line with the CPA guiding principle, the ACT has not completed its review and reform process and therefore has not met its CPA obligations in relation to podiatrist legislation.

Table 3.9: Review and reform of legislation regulating the podiatry profession

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Podiatrists Act 1989*	Entry, registration, title, practice, discipline	Review was completed in March 2003. Its key recommendation was the replacement of broad practice restrictions with three core practice restrictions.	The Government introduced an exposure draft of the Podiatrists Bill 2003 into the Legislative Assembly on 1 July 2003. The Bill will repeal and replace the Podiatrists Act 1989.	Review and reform incomplete
Victoria	*Chiropodists Act 1968*	Entry, registration, title, practice, discipline, advertising	Review was completed in 1997. It recommended removing most restrictions on commercial practice and the reservation of practice restrictions.	Legislation was replaced with the *Podiatrists Registration Act 1997* in line with the review recommendations.	Meets CPA obligations (June 2001)
Queensland	*Podiatrists Act 1969*	Entry, registration, title, practice, discipline	Queensland completed its health professions review in 1999. Its NCP review of core practice restrictions was completed in 2001. Recommendations included retaining title protection and entry restrictions, but removing other unnecessary anticompetitive restrictions (see box 3.1, p. 3.6). Removal of the current practice restrictions was also recommended.	Queensland passed framework legislation in 1999 and enacted the *Podiatrists Registration Act 2001*. It also introduced a Bill to reform practice restrictions in June 2003. All implemented and proposed reforms are in line with NCP review recommendations.	Review and reform incomplete
Western Australia	*Podiatrists Registration Act 1984*	Entry, registration, title, practice, discipline	*Key directions* paper was released in June 2001. It proposed removing prescriptive advertising restrictions; requiring practitioners to hold professional indemnity insurance; removing restrictions on business ownership; and retaining broad practice restrictions for three years pending the outcome of the core practices review (which is under way).	In April 2001, the Government approved the drafting of new template health practitioner Acts to replace the health professions legislation.	Review and reform incomplete

(*continued*)

Table 3.9 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Chiropodists Act 1950*	Entry, registration, title, practice, discipline, advertising [ownership, business licensing?]	Review was completed in 1999. It recommended removing ownership and advertising restrictions and limiting reserved practice.	The Government prepared a draft Bill containing the amendments, and consultation will occur before the Bill is introduced to Parliament in the second half of 2003.	Review and reform incomplete
Tasmania	*Podiatrists Registration Act 1995*	Entry, registration, title, discipline, advertising	Review was completed in 2000.	Amending legislation passed November 2000 removing advertising and ownership restrictions.	Meets CPA obligations (June 2001)
ACT	*Podiatrists Act 1994*	Entry, registration, title, practice, discipline	The ACT completed its health practitioner legislation review in March 2001. The review recommended revisions to advertising and conduct provisions. It recommended removing practice restrictions.	The Government released an exposure draft of the omnibus Health Professions Bill 2002 (incorporating the review recommendations) in July 2002 and anticipates tabling the final Bill in the Legislative Assembly in late 2003.	Review and reform incomplete

Psychologists

The 2002 NCP assessment reported that New South Wales, Victoria Queensland and Tasmania had met their CPA obligations in relation to the review and reform of legislation governing the psychology profession. This 2003 NCP assessment considers whether the other jurisdictions have complied with their CPA obligations in this area.

Western Australia

In April 2001, the Government approved the drafting of new template health practitioner Acts to replace the *Psychologists Registration Act 1976* and other health professions legislation. The Government's *Key directions* paper sets out the policy framework that is the basis for this new legislation and provides details on the core practices review, which is under way (see box 3.2, p. 3.8).

The proposed reform in *Key directions* will remove anticompetitive restrictions that the NCP review found not to be in the public interest. Practice restrictions, however, are being retained for three years while a focused review is undertaken. In relation to psychologists, the NCP review concluded that given the definitional difficulties and the lack of clearly definable harm, psychological testing and psychotherapy should not be included in the core practices model. The discussion paper on core practices review sought views on this conclusion and recommended that hypnosis be deregulated.

Western Australia has not implemented any of its proposed health practitioner reforms and so has not met its CPA obligations in relation to the psychology profession.

South Australia

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

Review and reform activity is still progressing. In its 2003 NCP annual report, South Australia advised that Cabinet approved drafting of amendments to the Act on 23 April 2001. The Government completed consultation with the professional board and intends to release a draft bill for wider public consultation in the second half of 2003. It plans to introduce any reforms to Parliament in 2004.

South Australia has not met it CPA obligations in this area because it has not completed its review and reform activity.

The ACT

The ACT included the *Psychologists Act 1994* in its omnibus health practitioner legislation review (see box 3.3, p. 3.10). The review did not make any specific recommendations regarding psychologists (Department of Health and Community Care 1999). The Government accepted the review's recommendations and has completed consultation on an exposure draft of the Health Professionals Bill 2002. The Bill will repeal the existing health professionals Acts and replace them with a consolidated Act. The ACT anticipates considering the final package in the ACT Legislative Assembly spring 2003 session.

While the proposed reforms are in line with the CPA guiding principle, the ACT has not completed its review and reform process and therefore has not met its CPA obligations in relation to the psychology profession because it has not completed its review and reform activity.

The Northern Territory

The Northern Territory registers psychologists through the Health Practitioners and Allied Professionals Registration Act. The former Government commissioned the Centre for International Economics to conduct a review of the Act (see the section on chiropractors, p. 3.10).

The former Northern Territory Government accepted the review recommendations in May 2001 and decided to prepare a new omnibus legislation to replace the Health Practitioners and Allied Professionals Registration Act and five other health practitioner registration Acts. In its 2003 NCP annual report, the Northern Territory advised that the current Government approved drafting of an omnibus Health Practitioners and Allied Professionals Registration Bill, which is expected to be introduced to the Legislative Assembly in November 2003. The proposed reforms are consistent with the CPA clause 5 guiding principle. The Northern Territory has not met its CPA obligations in this area because it has not completed the review and reform of its legislation regulating psychologists.

Table 3.10: Review and reform of legislation regulating the psychology profession

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Psychologists Act 1989*	Entry, registration, title, practice, discipline	Review report was completed in December 1999. It recommended retaining registration, but removing restrictions on advertising and premises. A number of recommendations provide clarity and accountability.	New *Psychologists Act 2001* was passed in line with review recommendations.	Meets CPA obligations (June 2002)
Victoria	*Psychologists Act 1978*	Entry, registration, title, practice, discipline, advertising, business	Review was completed in 1998. It recommended removing most commercial practice restrictions and the reservation of practice, but retaining reserved title and the investigation of advertising (to ensure it is fair and accurate).	Act was repealed and replaced by the *Psychologists Registration Act 2000*. The new Act was amended in 2002 to require Ministerial endorsement of any advertising restrictions proposed by the board.	Meets CPA obligations (June 2002)
Queensland	*Psychologists Act 1977*	Entry, registration, title, practice, discipline, advertising	Queensland completed its health professions review in 1999. Its NCP review of core practice restrictions was completed in 2001. Recommendations included retaining title protection and entry restrictions, but removing other unnecessary anticompetitive restrictions (see box 3.1, p. 3.6).	Queensland passed framework legislation in 1999 and enacted the *Psychologists Registration Act 2001*, which does contain practice restrictions. All implemented and proposed reforms are in line with NCP review recommendations.	Meets CPA obligations (June 2001)
Western Australia	*Psychologists Registration Act 1976*	Entry, registration, title, practice, discipline	*Key directions* paper was released in June 2001. It proposed removing prescriptive advertising restrictions; requiring practitioners to hold professional indemnity insurance; removing restrictions on business ownership; and retaining broad practice restrictions for three years pending the outcome of the core practices review (which is under way).	In April 2001, the Government approved the drafting of new template health practitioner Acts to replace the health professions legislation.	Review and reform incomplete

(*continued*)

Table 3.10 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Psychological Practices Act 1973*	Entry, registration, title, practice, discipline, advertising	Review was completed in 1999. It recommended removing advertising and practice restrictions.	The Government prepared a draft Bill and the consultation process is under way. The Bill is expected to be introduced into Parliament in 2004.	Review and reform incomplete
Tasmania	*Psychologists Registration Act 1976*	Entry, registration, title, discipline, advertising	Review was completed. Review report is not available to the Council. Tasmania assessed the replacement legislation under its CPA clause 5(5) new legislation gatekeeping process.	Act was repealed and replaced by *Psychologists Registration Act 2000,* which removes advertising restrictions and practice reservation.	Meets CPA obligations (June 2001)
ACT	*Psychologists Act 1994*	Entry, registration, title, practice, discipline	The ACT completed its health practitioner legislation review in March 2001. The review recommended revisions to advertising and conduct provisions. It recommended removing practice restrictions.	The Government released an exposure draft of the omnibus Health Professions Bill 2002 (incorporating the review recommendations) in July 2002 and anticipates tabling the final Bill in the Legislative Assembly in late 2003.	Review and reform incomplete
Northern Territory	*Health Practitioners and Allied Professionals Registration Act*	Entry, registration, title, practice, discipline, advertising	Review was completed in May 2000. Its recommendations included retaining title protection and removing generic practice restrictions.	Omnibus health practitioner Bill is being drafted to replace this and other Acts. The Government expects to introduce the Bill to Parliament in November 2003.	Review and reform incomplete

Review and reform of legislation regulating other health professions

Four health professions are regulated in only some Australian jurisdictions: occupational therapists, speech therapists, radiographers and practitioners of traditional Chinese medicine.

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

The 2002 NCP assessment reported that:

- Victoria had met its CPA obligations in relation to legislation regulating traditional Chinese medicine practitioners; and
- Queensland and Tasmania had met their CPA obligations in relation to legislation regulating radiographers.

This 2003 NCP assessment considers whether Queensland, Western Australia, South Australia and the Northern Territory have complied with their CPA obligations for the outstanding issues regarding the regulation of these four professions.

Occupational therapists

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

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

registration. Western Australia also reserves the practice of occupational therapy for occupational therapists.

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

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

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

Queensland

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

- protects consumers from the risk of being harmed by inadequately trained or incompetent providers, by ensuring registered providers are competent and subject to a complaints/disciplinary process;
- assures consumers that registered occupational therapists, having satisfied registration requirements, are appropriately trained and fit to practise safely and competently;
- provides consumers with information that reduces their search costs by enabling them to differentiate between registered and unregistered providers;
- minimises the volume of complaints to the Government and the Health Rights Commission about occupational therapists, thus reducing the administrative costs of dealing with these complaints;

- promotes public confidence in the Government's ability to protect health consumers, because the registration system enables the government to assure consumers that occupational therapists are safe and competent; and

- benefits occupational therapists by giving them more ability than nonregistrants have to promote their services, and by increasing their perceived professional/social status.

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

Queensland considered that the benefits of title protection for occupational therapists, while significant, may not be as great as for other health professions. It argued that title protection provides net benefits for consumers, particularly in the area of consumer protection, and that these benefits, along with the minimal impacts on the Government, the profession and nonregistrants, produce an overall net benefit to the public.

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

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

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

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

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

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

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

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

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

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

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

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

Some occupational therapists work in private practice. Many of their patients are referred by other professionals, who may have limited knowledge of the competency of individual therapists. The referring practitioners can be expected, however, to use alternative information sources, such as colleagues who regularly refer patients to occupational therapists. In addition, the TPA protects patients against unqualified practitioners holding themselves out to be qualified occupational therapists.

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

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

Queensland, like other States, has an independent health complaints body to which complaints can be made about any health provider (registered or not), which provides some protection for patients. Complaints about occupational therapists are rare in Queensland and no more frequent in jurisdictions that do not regulate occupational therapists. Queensland’s Health Rights Commission received two complaints about occupational therapists in three years and Victoria’s Health Services Commissioner has received one complaint in the past five years, while the Health Care Complaints Commission in New South Wales did not receive any in the past four years (Health Care Complaints Commission 2000, 2001; Health Rights Commission 1999, 2000, 2001; Health Services Commissioner 1999, 2000, 2001).

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

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

Western Australia

In April 2001, the Government approved the drafting of new template health practitioner Acts to replace the *Occupational Therapists Registration Act 1980* and other health professions legislation. The Government’s *Key directions* paper sets out the policy framework that is the basis for this new legislation and provides details on the core practices review, which is under way (see box 3.2, p. 3.6).

The *Key directions* paper indicated that the Government will continue to reserve the title 'occupational therapist' for registered practitioners and that it will draft replacement legislation for occupational therapists. Western Australia's justification for maintaining title protection is that a range of activities (for example, the use of electromyography and ultrasound equipment, which if not used properly may cause burns to a patient) practised by occupational therapists pose a potential risk of harm to the public that outweighs the benefits of further competition and therefore should continue to be regulated (Government of Western Australia 2002). As discussed in the assessment of Queensland's occupational therapy legislation, the Council doubts the strength of the evidence of significant patient protection benefits from reserving the title of 'occupational therapist'. In addition, considerable evidence suggests that title reservation is not necessary to ensure adequate patient protection.

In the 2002 NCP assessment, the Council considered that Western Australia had not met its CPA obligations in relation to the review and reform of occupational therapy legislation, but that the costs of retaining this restriction on competition are insignificant (as discussed in the assessment of Queensland's legislation). Based on the Council's assessment, Western Australia decided to reconsider this restriction in the context of the core practices review, which is under way. Western Australia has not met its CPA obligations in this area, therefore, because it has not completed its review and reform activity.

South Australia

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

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

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

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

South Australia's Cabinet approved the drafting of amendments to the Act, and a draft Bill has been prepared. The Government intends to undertake public consultation before introducing the Bill to Parliament in the first half of 2004 (Government of South Australia 2003).

In the 2002 NCP assessment, the Council considered that the review did not provide a robust case for continued title protection for occupational therapists in South Australia, for the following reasons.

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

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

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

  - Title restriction is not required for registration. Instead of title protection South Australia could make it an offence for unregistered practitioners to pretend to be registered professionals. This is the approach being adopted for registration of many health professionals in the ACT (see box 3.3, p. 3.10).

- The Government introduced a Health and Community Services Complaints Bill to Parliament in 2001. The Bill lapsed following the calling of the State election. The new Government introduced a more comprehensive version of the Bill on 19 February 2003; if passed, the Bill would provide South Australia with an independent body to which complaints could be made about occupational therapists, as in other jurisdictions.

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

- Further, the review concluded 'the system of registration in South Australia is a restriction on interstate applicants entering the market'

(Department of Human Services 1999b, p. 22) and noted that South Australia may have to reconsider its position if other States and Territories repeal their occupational therapist legislation.

The Council considers that the review recommendations on title protection are not consistent with the CPA clause 5 guiding principle. South Australian Government is undertaking consultation and expects to introduce the Bill to Parliament in 2004. Consequently, South Australia has not met its CPA obligations is this area.

The costs of the noncompliance in this case are not significant, however. As discussed in the assessment of Queensland, title reservation hinders nonregistrants' ability to promote their services, but the adverse impacts on competition are trivial because nonregistrants can still use unrestricted titles.

The Northern Territory

The Northern Territory registers occupational therapists through the Health Practitioners and Allied Professionals Registration Act. The Centre for International Economics reviewed this Act in 2000 (see the section on chiropractors, p. 3.10).

The legislation review recommended retaining title protection for occupational therapists. It claimed that title protection has the potential to reduce risks and costs to the Government from service users inappropriately choosing unqualified health care providers. It concluded that restricting the use of professional titles provides a net public benefit, provided the costs of operating the registration system are modest (CIE 2000e, p. 35). The review did not, however, link the generic benefits of title protection to occupational therapy services in particular.

The former Northern Territory Government accepted the review recommendations in May 2001 and decided to prepare a new omnibus legislation to replace the Health Practitioners and Allied Professionals Registration Act and five other health practitioner registration Acts. In its 2003 NCP annual report, the Northern Territory advised that the current Government approved drafting of an omnibus Health Practitioners Bill, which is expected to be introduced to the Legislative Assembly in November 2003.

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

The review recommendation and evidence in the review report did not address either the situation in other jurisdictions or the AHMAC conclusion. On the other hand, the review noted that fair trading legislation is sufficient, in principle, to prevent service users from being misled without title protection under the Health Practitioners and Allied Professionals Registration Act (CIE 2000e, p. 35). Consequently, the Council considers that the legislation and review recommendations do not meet the CPA clause 5 guiding principle.

The costs of any noncompliance are insignificant, however. As discussed in the section on Queensland's occupational therapy legislation, title protection hinders nonregistrants' ability to promote their services, but the adverse impacts on competition are likely to be negligible given that nonregistrants can still use unrestricted titles. The registration system's administration costs are also low. In any case, the Northern Territory has not completed the review and reform of its legislation regulating occupational therapists so it has not met its CPA obligations.

Radiographers

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

The working party on partly registered occupations, which was set up to help develop the mutual recognition legislation in the early 1990s, reported AHMAC support for the registration of radiographers in all jurisdictions (VEETAC 1993, p. 36). This recommendation provides a justification for governments to register radiographers. The CPA, however, allows individual governments to choose not to register radiographers if they consider that registration would not provide a net benefit to the community.

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

The Northern Territory completed its review of the *Radiographers Act* in May 2000, but is yet to complete the reforms. The Government intends to repeal the Act, and transfer the current practising certificate and permit powers of the board to the licensing powers of the Chief Health Officer under the *Radiation (Safety Control) Act*. Such reform is consistent with the CPA clause 5 guiding principle.

To avoid double handling the reform, the Northern Territory Government elected to delay the repeal of the Radiographers Act pending finalisation of the national review of radiation protection legislation, which includes the Radiation (Safety Control) Act and associated regulations (Government of the Northern Territory 2002). This review was completed in May 2001, and the Australian Health Ministers' Conference endorsed the recommendations (with some minor revisions) and Implementation Plan in September 2002. Development of new radiation protection legislation has commenced, and the Government plans to introduce it to the Legislative Assembly in November 2003.

The Council accepts that benefits can arise from synchronising reforms, so long as this approach does not result in unreasonable delays. If the Northern Territory can meet its proposed timetable for reform, then the delay would not appear unreasonable. Nevertheless, the Northern Territory has not met its CPA obligations regarding review and reform of radiographer legislation because it has not completed its review and reform activity.

Speech pathologists

Speech pathologists assess and treat people who have communication disabilities (including speech, language, voice, fluency and literacy difficulties) and people who have physical problems with eating or swallowing. Queensland is the only jurisdiction with legislation to reserve the use of the title 'speech pathologist' to practitioners registered under the Act. It repealed the *Speech Pathologists Act 1979* and replaced it with the *Speech Pathologists Registration Act 2001* in May 2001. The new Act retains restrictions on the use of the 'speech pathologist' title, but does not restrict the practice of speech pathology.

Queensland's argument for providing title protection for speech pathologists is identical to that for providing title protection for occupational therapists: that is, that the net benefits to consumers (particularly in the area of consumer protection), together with the minimal impact on the Government, the profession and nonregistrants, produce an overall net public benefit (see the section on occupational therapists, p. 3.72).

The Council doubts that these arguments provide a robust case that title protection provides significant consumer protection benefits. Title protection may not have a significant effect on the risk of speech pathology resulting in patient harm. Many speech pathologists work in hospitals, health centres, community clinics and schools, which are well positioned to assess the competency of their staff and have a common law duty to ensure their employees do not undertake activities in which they are not competent.

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

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

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

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

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

Table 3.11: Review and reform of legislation regulating other health professions

Jurisdiction	*Profession*	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria	Traditional Chinese medicine practitioners	*Chinese Medicine Registration Act 2000*	Entry, registration, title, practice, discipline, advertising, insurance, prescribing	The Australian Council of Health Ministers agreed that Victoria should take the lead in developing model legislation. Extensive review was completed in 1999.	Legislation was passed in 2000. Advertising provisions were amended in 2002 to require Ministerial approval of any guidelines issued by the Board.	Meets CPA obligations (June 2002)
Queensland	Occupational therapists	*Occupational Therapists Act 1979*	Entry, registration, title, practice, discipline	Queensland completed its health professions review in 1999. Its NCP review of core practice restrictions was completed in 2001. Recommendations included retaining title protection and entry restrictions, but removing other unnecessary anticompetitive restrictions (see box 3.1, p. 3.6).	Queensland passed framework legislation in 1999 and enacted the *Occupational Therapists Registration Act 2001*, which retains title protection.	Does not meet CPA obligations (June 2002)
	Radiographers	*Medical Radiation Technologists Act 2001*	Entry, registration, title, discipline	Review of health practitioner registration legislation was completed in 1999. It recommended registering radiation therapists, medical imaging technologists/radiographers and nuclear imaging technologists.	Framework legislation was passed in December 1999. New *Medical Radiation Technologists Act 2001* was passed in May 2001. It does not restrict practice.	Meets CPA obligations (June 2001)
	Speech pathologists	*Speech Pathologists Act 1979*	Entry, registration, title, practice, discipline	Review was completed in 1999. It recommended retaining registration, including the restriction of title and disciplinary provisions, but removing practice restrictions.	Framework legislation was passed in December 1999. New *Speech Pathologists Registration Act 2001* was passed in May 2001.	Does not meet CPA obligations (June 2002)

(*continued*)

Table 3.11 continued

Jurisdiction	*Profession*	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	Occupational therapists	*Occupational Therapists Registration Act 1980*	Entry, registration, title, practice, discipline	Issues paper was released in October 1998. *Key directions* paper was released in 2001, indicating that the Government would maintain title protection for occupational therapists. The Government is reconsidering this issue in the core practices review.	In April 2001, the Government approved the drafting of new template health practitioner Acts to replace the health professions legislation.	Review and reform incomplete
South Australia	Occupational therapists	*Occupational Therapists Act 1974*	Entry, registration, title, practice, discipline	Review was completed in 1999. It recommended maintaining registration requirements.	The Government is consulting on a draft Bill which it expects to introduce to Parliament in 2004.	Review and reform incomplete
Tasmania	Radiographers	*Radiographers Registration Act 1976*	Entry, registration, title, discipline	Tasmania assessed the replacement legislation through its new legislation gatekeeping process under CPA clause 5(5).	*Medical Radiation Science Professionals Registration Act 2000* was passed in November 2000. The Act removed practice and advertising restrictions, but contains requirements for professional indemnity insurance.	Meets CPA obligations (June 2001)
Northern Territory	Occupational therapists	*Health Practitioners and Allied Professionals Registration Act*	Entry, registration, title, practice, discipline, advertising	Review was completed in May 2000. It recommended retaining title protection and removing generic practice restrictions.	Omnibus health practitioner Bill is being drafted to replace this and other Acts.	Review and reform incomplete
	Radiographers	*Radiographers Act*	Entry, registration, title, practice, discipline, advertising	Review was completed May 2000. Its recommendations included repealing the Act and transferring powers to the Chief Health Inspector under the *Radiation (Safety Control) Act*.	The Government approved the drafting of legislation in line with review recommendations.	Review and reform incomplete

Drugs, poisons and controlled substances

Drugs, poisons and controlled substances include over-the-counter medicines, certain chemicals, pharmaceuticals that a doctor or other professional must prescribe and complementary medicines. Legislation at both the Commonwealth and State levels limits the availability of, and access to, drugs, poisons and medications. This section focuses on drugs and medicines for human use; agricultural and veterinary chemicals are discussed in chapter 1, volume 2.

Legislative restrictions on competition

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

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

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

Regulating in the public interest

Drugs, poisons and controlled substances legislation aims to ensure public safety by reducing accidental or deliberate poisoning, medical misadventures and abuse. Used appropriately, many products covered by this legislation have considerable benefits for the community: for example, medicines help to improve health, while household chemicals make cleaning easier. Drugs, poisons and controlled substances can have serious or even fatal

consequences, however, when not used appropriately. Best practice regulation seeks to protect the community, while maintaining reasonable access to these products.

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

Review and reform activity

The Commonwealth, State and Territory governments commissioned a national review of drugs, poisons and controlled substances legislation. The review, chaired by Rhonda Galbally, presented its final report to the Australian Health Ministers Conference in early 2001. The review found sound reasons for Australia to have comprehensive legislative controls that regulate drugs, poisons and controlled substances, even though many of these controls restrict competition (Galbally 2001). The review also found, however, that:

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

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

- transferring controls on advertising, product labelling and product packaging to Commonwealth legislation, and developing model uniform legislation for all matters related to the supply or drugs, poisons and controlled substances;
- amending the prohibition on advertising prescription medicines to permit informational (but not promotional) advertisements of the price of medicines in accordance with statutory guidelines;
- amending prohibitions on the supply of medicines from vending machines to permit the supply of small doses of unscheduled medicines (provided that unsupervised children are unlikely to access the vending machines and that the operators commission independent evaluations after two years);
- streamlining licensing requirements for wholesalers of schedule 2, 3, 4, 8 and 9 products, and removing licensing requirements for sellers of low risk (schedule 5 and 6) products in those jurisdictions that still have them;
- reforming requirements to record the supply of scheduled substances, including repealing recording requirements for the retail supply of schedule 3 medicines and all recording requirements for schedule 5 and 6 poisons in those jurisdictions that still have them;
- repealing State and Territory regulations regarding the supply of clinical samples of medicines and poisons, and instead making compliance with a proposed industry code of conduct a condition of manufacturers' and wholesalers' licences; and
- implementing outcomes-focused licence requirements.

The Australian Health Ministers Conference referred the review report to AHMAC, which established a working party to develop a draft response, in consultation with the Primary Industries Ministerial Council, for CoAG consideration. The working party sought comments from State and Territory health and agricultural departments and other stakeholders. AHMAC endorsed the draft response, which was considered by the Primary Industries Ministerial Council. The Therapeutic Goods Administration advised that it expects that CoAG will receive the final response, together with the Galbally Report, by September 2003 (Commonwealth of Australia 2003a).

Much of New South Wales' regulatory structure already reflected the recommendations of the national review. The Government amended the Poisons and Therapeutic Goods Regulation 2002, however, to implement the review's recommendations to automatically recognise in New South Wales any exemptions from the packaging and labelling requirements granted by the Commonwealth or another State or Territory, and to standardise the regulation of the distribution of clinical samples. These changes commenced on 1 September 2002 (Government of New South Wales 2003).

Other jurisdictions

Western Australia has already implemented some recommendations of the Galbally report, by:

- adopting all the scheduling decisions covered in the Standard for the Uniform Scheduling of Drugs and Poisons by reference;
- repealing the provisions applying to licences for substances with low and moderate potential for causing harm, and streamlining conditions that apply to poisons licenses in relation to schedule 2; and
- amending the record-keeping requirements to improve the efficiency and consistency of the regulations.

Tasmania is drafting a new Poisons Act to account for the outcome of the national review. In August 2003, the Northern Territory passed amendments to the *Poisons and Dangerous Drugs Act,* which included the adoption of the Standard for the Uniform Scheduling of Drugs and Poisons by reference The Northern Territory Government is awaiting CoAG's final response to the national review before implementing other reforms. The remaining jurisdictions — the Commonwealth, Victorian, Queensland, South Australian and ACT Governments — are also awaiting CoAG's final response to the national review before implementing reforms.

Assessment

As discussed in chapter 14 (volume 2), the Council recognises that the requirement for intergovernmental consultation slows governments' response to reviews. In this case, the need to coordinate input from both health and agriculture portfolios has created additional delays. In the 2002 NCP assessment, however, the Council urged jurisdictions to finalise their response to the review and develop firm transitional arrangements for implementing reforms within a reasonable period.

New South Wales and Western Australia demonstrated a commitment to meeting their CPA obligations by implementing those reforms that could be achieved in the absence of CoAG's final response. New South Wales thus completed its review and reform activity in this area, so it has complied with its CPA clause 5 obligations in relation to the regulation of drugs, poisons and controlled substances. Western Australia and other jurisdictions, however, have not complied with their CPA obligations in this area because they have not completed their review and reform activity.

Table 3.12: National review of drugs, poisons and controlled substances

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Therapeutic Goods Act 1989*	Controls on labelling, packaging, advertising and sales of listed substances	Final report was presented to the AHMC in early 2001. It found a net benefit from regulating drugs, poisons and controlled substances, but also found that controls could be reduced in some areas, efficiency improved, and nonlegislative policy responses used in some areas.	The AHMC referred the review report to AHMAC to develop a draft response, in consultation with the Primary Industries Ministerial Council. AHMAC endorsed the draft response. CoAG is expected to receive the final response by September 2003.	Review and reform incomplete
New South Wales	*Poisons and Therapeutic Goods Act 1966* *Drugs Misuse and Trafficking Act 1985*	As above	As above.	New South Wales implemented the recommended reforms in 2002. See Commonwealth for details of the CoAG response.	Meets CPA obligations (June 2003)
Victoria	*Drugs, Poisons and Controlled Substances Act 1981*	As above	As above.	See Commonwealth for details of the CoAG response.	Review and reform incomplete
Queensland	*Health Act 1937*	As above	As above.	See Commonwealth for details of the CoAG response.	Review and reform incomplete
Western Australia	*Poisons Act 1964* *Health Act 1911 (Part VIIA)*	As above	As above.	Western Australia amended its regulations to remove or alter some unnecessarily restrictive provisions and to implement the review recommendations on record keeping requirements. See Commonwealth for details of the CoAG response.	Review and reform incomplete

(continued)

Table 3.12 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Controlled Substances Act 1984*	Controls on labelling, packaging, advertising and sales of listed substances	Final report was presented to the AHMC in early 2001. It found a net benefit from regulating drugs, poisons and controlled substances, but also found that controls could be reduced in some areas, efficiency improved, and nonlegislative policy responses used in some areas.	See Commonwealth for details of the CoAG response.	Review and reform incomplete
Tasmania	*Poisons Act 1971* *Alcohol and Drug Dependency Act 1968* *Pharmacy Act 1908* *Criminal Code Act 1924*	As above	As above.	As above.	Review and reform incomplete
ACT	*Drugs of Dependence Act 1989* *Poisons Act 1933* *Poisons and Drugs Act 1978*	As above	As above.	As above.	Review and reform incomplete
Northern Territory	*Poisons and Dangerous Drugs Act* *Therapeutic Goods and Cosmetics Act* *Pharmacy Act*	As above	As above.	As above.	Review and reform incomplete

Commonwealth health legislation

The Commonwealth's *Health Insurance Act 1973* and the *National Health Act 1953* establish a fee-for-service approach to health care funding arrangements, which have three key aspects.

1. Australia's universal health insurance scheme, Medicare, provides free access to medical emergency services (except ambulances) and benefits for fees paid for medical practitioner consultations, pathology tests, x-rays, eye tests performed by optometrists, most surgery and therapeutic procedures performed by medical practitioners, and some dental surgery.

2. The Pharmaceutical Benefits Scheme (PBS) provides that consumers purchasing approved medicines pay up to a fixed maximum fee, with the Commonwealth Government meeting the remaining cost of the medicine.

3. Private health insurance provides added benefits for insured people — such as choice of doctor, choice of hospital and choice of timing of procedure — and can also help with meeting the costs of private sector services not covered by Medicare.

Regulating in the public interest

The Commonwealth's funding arrangements aim to provide universal access to good quality and cost-effective health care. The Commonwealth imposes some restrictions on the providers of health services to achieve these objectives. Alternative health care funding arrangements could reduce or remove the need for Commonwealth regulation of health service providers; but structural reform of health care funding falls outside the scope of the CPA. Accordingly, in assessing compliance with CPA clause obligations, the Council has looked for the Commonwealth Government to provide evidence that the retained restrictions provide net benefits to the community and represent the minimum necessary to achieve legislative objectives within the context of the current funding system.

Restrictions on providers of publicly funded services

The Commonwealth Government regulates who can provide services that attract Medicare or pharmaceutical benefits. The main aims of these restrictions are to:

- ensure the quality of the services that the Commonwealth funds;

- promote equitable geographical access to services; and

- limit the cost of Medicare and PBS.

For providers of publicly funded services, the key competition restrictions that raise NCP questions relate to restrictions on:

- Medicare provider numbers;
- pathology collection centre approvals; and
- PBS dispensing rights for pharmacies.

These regulations form significant barriers to entry to the medical services, pathology services, and community pharmacy markets. While the regulations do not prevent unapproved providers from offering services to consumers (subject to any relevant State and Territory health practitioner legislation), unapproved providers generally cannot compete with approved providers because their services do not attract a Government subsidy. The national review of pharmacy legislation, for example, found that a pharmacy business without PBS rights is all but unsustainable (Wilkinson 2000).

Restrictions on private health insurance

The Government regulates the products that registered health funds offer and the prices that they may charge for their products. It mandates community rating of private health insurance, for example, and requires private health funds to pay rebates for certain services while prohibiting rebates for other services. These regulations aim to encourage private funding of health services and ensure private health insurance is open to a wide range of people in the community. They constrain competition among health funds, however, by restricting choice in the private health insurance market and increasing the health funds' business costs (IC 1997).

Review and reform activity

Restrictions on Medicare provider numbers

The Commonwealth Government introduced legislation — the (*Health Insurance Amendment Act (No. 2) 1996* — that restricts access to private medical practice by requiring new medical graduates to complete additional training before they may be granted a Medicare provider number. The legislation aims to increase the quality of general practice and promote a fairer distribution of medical practitioners in rural and remote areas, while restraining the rise in Medicare costs from an increase in the supply of general practitioners.

The Commonwealth Government did not assess the Act under its new legislation gatekeeping process. The Act contained review mechanisms for assessing public interest matters, however, including a sunset clause and provisions establishing a Medical Training and Review Panel to report on employment opportunities for medical practitioners (Commonwealth of Australia 1999, p. 138). In addition, the Commonwealth subjected the legislation to a mid-term review by an independent consultant (although this review did not specifically address NCP matters).

The Commonwealth Government amended the Health Insurance Act in 2001 to repeal the sunset clause. It prepared a regulation impact statement, approved by the Office of Regulation Review, supporting the retention of the restriction on Medicare provider number restrictions. The regulation impact statement found that the restrictions had improved access to general practitioners in rural areas and delivered substantial ongoing savings to the Government. It also found that removing the restrictions would not necessarily result in lower costs to individual consumers. It reasoned that medical practitioners who have not undergone the additional training attract lower Medicare rebates for their services, so they may ask patients to pay more than would a practitioner with postgraduate qualifications who attracts a higher Medicare rebate.

The Commonwealth Government had provided sufficient evidence that the restrictions on access to Medicare provider numbers result in a net benefit to the community. Although the Government did not clearly assess whether there are alternative less restrictive approaches that would achieve its health care objectives. Such an analysis would be consistent with best practice principles for regulation making. Nevertheless, the additional training places funded under the 2000 Federal Budget reduce the degree to which the postgraduate training requirements serve as a barrier to entry. Consequently, the Council considers that the Commonwealth has met its CPA obligations with regard to Medicare provider numbers.

Restrictions on pathology services under Medicare

Part IIA of the Health Insurance Act specifies the criteria that pathology services must meet for Medicare benefits to be payable.

- The pathology service must be requested by a registered medical or dental practitioner, and a clinical need must be identified for the service.
- If the specimen is collected at a collection centre, then the centre must be an approved collection centre.
  - The approved collection centre scheme replaced the licensed collection centre scheme on 1 December 2001. Under this new scheme, the number of collection centres that an approved pathology authority may operate is based on pathology episode activity over a 12-month period.

Previously it was based on shares of a global entitlement calculated from the number of participants in the scheme.

- Pathology services must be provided by an approved pathology practitioner in an accredited pathology laboratory owned by an approved pathology authority.

The regulatory framework established through the Health Insurance Act is completed by two agreements between the Commonwealth Government and the pathology profession, which seek to restrain the growth of Medicare outlays on pathology services, facilitate structural reforms in the sector and improve quality.

The Commonwealth added part IIA of the Health Insurance Act to its legislation review schedule in 1998-99. A Steering Committee made up of two senior officials from the Department of Health and Ageing and one from the Commonwealth Department of the Treasury commenced the review in February 2000 and presented the final report to the Government in December 2002.

The steering committee found that the objectives of the legislation are to provide access to pathology services for all eligible Australians; ensure quality of service; and prevent fraud and overservicing. It concluded that it is necessary (so long as the current fee-for-service arrangements are maintained) to maintain the current legislative framework to achieve these objectives. It found, however, that the legislative requirements for approving pathology practitioners, laboratories and authorities were unnecessarily cumbersome and out of step with the corporate environment. The committee thus recommended:

- streamlining the approval process, and replacing the business conduct undertaking required of pathology practitioners with a strengthened undertaking from pathology authorities;

- revising the accreditation requirements for pathology laboratories to place greater emphasis on quality assurance and public disclosure; and

- amending the regulations to provide for point-of-care pathology testing, following trials to determine areas where it would be cost-effective and provide increased benefits to patients.

The committee also found that the approved collection centre scheme may not be appropriate or sustainable in the longer term. Given that the scheme had only recently been put in place, however, the committee recommended deferring further changes in this area to provide time to realise any benefits arising from the new arrangements.

Assessment

The Council considered the public interest case for deferring further reforms to the approved collection centre scheme. The approved collection centre scheme replaced the licensed collection centre scheme under which the Commonwealth limited the issue of licences in order to reduce the total number of collection centres. The licence restriction (in conjunction with collection centres' role in attracting business) gave licensed collection centres a commercial value greatly exceeding that of their physical assets.

The approved collection centre scheme represents a partial deregulation of pathology collection centres because although the Commonwealth still restricts the number of collection centres that an approved pathology authority may operate, the method for allocating approvals is based on market activity (rather than the number of approved pathology authorities) and this promotes competition. This partial deregulation should promote structural changes within the industry that will provide a sound foundation for further deregulation. Consequently, given that the approved collection centre scheme is being phased in over four years from December 2001, the Council accepts that there is a public interest case for retaining this system until 2005 to realise its benefits. If the Commonwealth Government were to accept the steering committee's recommendation and announce a review of regulations affecting the approved collection centre scheme to be conducted in 2005, then the Council would assess the Government as having complied with its CPA obligations in this area. The Commonwealth is yet to announce its response to the review, however, and so has not put in place adequate arrangements for completing its review and reform process and thus has not complied with its CPA obligations.

PBS dispensing rights

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

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

CoAG commissioned a major national review of restrictions on competition in State, Territory and Commonwealth pharmacy legislation in 1999 (see the section on pharmacist registration legislation). The review found that the Commonwealth Government has a legitimate interest in ensuring pharmacy numbers provide satisfactory access and do not exceed a level that taxpayers can sustain. It also found, however, that restrictions on pharmacy relocations place a higher priority on protecting pharmacies from competitors than on assuring communities of high quality and efficient services. It was not convinced, therefore, that the restrictions provide a net benefit to the community. It concluded that remuneration tools offer the most effective means of delivering a manageable pharmacy network while promoting vigorous competition among pharmacies. It recommended:

- considering a remuneration-based approach and phasing out controls on the location of new pharmacies by 1 July 2001;
- if a remuneration-based approach is not practicable, revising the new pharmacy location controls by:
  - making the 'definite community need' criterion more relevant to the needs of underserviced communities, and
  - exempting new pharmacies in eligible medical centres, private hospitals and aged care facilities from the distance criterion; and
- phasing out all restrictions on the relocation of existing pharmacies.

The Commonwealth Government and the Pharmacy Guild of Australia signed a new Community Pharmacy Agreement in May 2000. The third such agreement, it operates from 1 July 2001 to 30 June 2005. The Commonwealth Government subsequently amended the National Health Act to implement changes arising from the agreement.

The Commonwealth Government accounted for the national review findings in negotiating the third Community Pharmacy Agreement (Wooldridge 2000). While accepting that the review recommendations may offer real alternatives to the existing location rules, the Government instead opted for an incremental and targeted easing of existing regulations in the third agreement, with an opportunity to review these arrangements and consider the national review's recommendations in the lead-up to the next agreement (CoAG Working Group 2002).

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

- the reforms it had implemented address the shortcomings of the current location controls and provide a base for longer term deregulation;

- rapid and substantial deregulation would skew already imbalanced pharmacy distributions; and
- such changes could be progressed only against the resistance of pharmacists and possibly the wider community (Wooldridge 2000).

The Office of Regulation Review assessed that this analysis (as per the regulation impact statement) of the pharmacy location controls was adequate (PC 2000b).

Assessment

In the 2002 NCP assessment report, the Council found that Commonwealth Government's arguments may justify phased reforms but not indefinite retention of the location restrictions, particularly given the findings of the national review. The Council did not finalise its assessment of compliance in 2002, however, because governments (through CoAG) had yet to finalise their approach to pharmacy regulation.

CoAG referred the national review recommendations to a working group of senior officials, which reported in August 2002. The signing of the third Community Pharmacy Agreement before the working group began its deliberations effectively precluded a consideration of the location rules in a CoAG context. The working group noted, however, that the location restrictions have the most impact of all the restrictions on pharmacy businesses and are inherently anticompetitive in their operation and effects. It suggested that a thorough examination over the next five years of the possible of revising the pharmacy location rules would prepare the way for implementing revised arrangements to be implemented through the next agreement.

Having considered the working group report, the Council still considers that there is a public interest case for phasing in reforms to the location restrictions, but not for retaining them indefinitely. Further, the Council recognises that the Commonwealth and the Pharmacy Guild agreed to a further review of the location restrictions in the lead-up to the next community pharmacy agreement. The Council considers, therefore, that the Commonwealth has met its CPA obligations in relation to pharmacy location restrictions. It stresses, however, that the proposed review of location restrictions should adhere to NCP principles for robust and independent review processes (see chapter 4, volume 2).

Regulation of private health insurance

The Commonwealth Government regulates private health insurance funds under the National Health Act and associated regulations. Provisions in the Health Insurance Act also govern the conduct of health funds. The following restrictions are the key components of the regulation:

- *Registration requirements*. Funds must be registered and, as a condition of registration, maintain minimum levels of financial reserves.
- *Product controls*. Funds must offer some types of product and benefit but cannot offer others, and they must not apply initial waiting periods longer than the specified maximums.
- *Price controls*. Funds must not discriminate in premiums and benefits on the basis of factors such as age and health status (community rating), and changes in premiums must be subject to government screening.

The Commonwealth Government referred the private health insurance industry to the former Industry Commission in 1996. The Industry Commission found that there were no effective regulatory barriers, of a discriminatory kind, to the entry of new companies. It found, however, major regulatory constraints on all players that make the industry unattractive to enter. It considered that the price and product regulations (particularly community rating) have a restrictive effect on consumer choice, and impose costs on business (IC 1997).

Price controls: community rating

The Industry Commission inquiry made two recommendations proposing changes to community rating for private health insurance. These were:

1. the adoption of a 'lifetime community rating';[2] and
2. that community rating no longer apply to ancillary cover (but noted that the gains from this change are likely to be low).

The commission argued that implementation of these recommendations would moderate the effects of adverse selection in the short term and would be equitable. The Commonwealth Government accepted and implemented the first recommendation.

The commission did not consider the fundamental question of whether the community rating requirements comply with the CPA tests because the inquiry terms of reference precluded this (IC 1997). It did, however, caution that the adoption of a lifetime community rating 'still leaves many of the anomalies of the current system untouched' over the long term (IC 1997, p. 325). It recommended, therefore, that community rating principles be examined as part of a wider review of the health system. Such a review has

[2] Under community rating, health insurance premiums are based on the average risk of all members. The premiums of low risk members include an element of subsidy for high risk members, so high risk members have an incentive to retain cover and lower risk members have an incentive to drop out of private health insurance (adverse selection). This weakens risk profiles, leading to higher premiums, which in turn drive out more of the lower risk members and thus exaggerate cost pressures.

not been undertaken, so the Commonwealth Government has still to demonstrate explicitly the net benefit of community rating.

The Commonwealth Department of health and Ageing subsequently advised the Council that no review of the community rating policy is planned. It explained that that community rating is part of the Government's overall policy framework to give Australians greater choice in health care while ensuring a sustainable and balanced health system by supporting a private health sector that complements the public health system. Community rating is a regulatory requirement that applies equally to all private health insurance funds and is part of their competitive environment. It does not prevent funds from competing on the basis of price or product type offered. The Government considers that community rating provides a net public benefit by ensuring high risk groups, such as the elderly and chronically ill, are able to afford private health insurance and do not rely entirely on the public hospital system. In finalising its assessment, the Council considered the strength of the evidence supporting these public interest arguments.

There is limited evidence to support the argument that community rating provides a net benefit by ensuring high risk groups can afford private health insurance. Premiums for high risk groups are lower under community rating, even lifetime community rating, than under risk rating, but the higher costs incurred by healthier and younger policyholders (under the current scheme those under thirty) partly offsets this benefit. Further, community rating leads to higher premiums overall by dulling incentives for funds to reduce costs, and it reduces consumer welfare by distorting the range of products offered by funds (IC 1997 p. xxxiii).

There is stronger evidence to support the argument that community rating is in the public interest because it helps to maintain a significant element of private funding of health care. The existence of the publicly funded Medicare system weakens the incentives for consumers to purchase private health insurance. The Industry Commission inquiry forecast that if the government retained Medicare but deregulated private health insurance, then such insurance would tend to become peripheral to the health system, largely confined to those with the greatest income and risk aversion (IC 1997).

The commission considered that 'the objective of displacing public funding under Medicare can be seen as providing justification for some form of community rating of private health insurance', but noted that it will not resolve the inherent and ongoing tension between universal access under Medicare and voluntary community-rated private health insurance (IC 1997, p. 29). Given the current health funding system and the Government's objectives for the role of private health insurance within this system, therefore, the Council considers that lifetime community rating may be consistent with the CPA principles. Nevertheless, it is not clear that lifetime community rating provides a longterm net benefit. This benefit should be formally tested by reviewing the community rating principles, possibly as part of a wider review of the health system.

Product restrictions

The Industry Commission inquiry found that the prohibition on health funds providing insurance for certain services (including PBS medicines and the medical gap for out-of-hospital medical care) is intended to counteract some of the perverse incentives that the current health care system generates. The commission noted that these restrictions affect the ability of insurers to cover all aspects of care and to limit uncertain and potentially high out-of-pocket costs to consumers. It found, in the context of the current health care system, that these product restrictions have the rational motive of deterring cost shifting (IC 1997).

Commonwealth regulation also prevents health funds from paying rebates for certain hospital services unless they are provided by, or on behalf of, medical practitioners, midwives or dental practitioners. This restricts competition by preventing substitute health care providers (such as podiatrists) from negotiating with private health insurance funds to attract a rebate for their services. The Council raised this matter with the Commonwealth Government in December 2000.

The Department of Health and Ageing is establishing trials to assess the suitability of including 'podiatric surgery' within the definition of 'professional attention' under the Health Insurance Act. This would allow podiatrists to negotiate with health funds to attract rebates for in-hospital podiatric surgery, as well as for podiatric treatments provided under ancillary insurance cover. The Commonwealth Department of Treasury advised that formal trials have not yet commenced given the complexities in establishing cooperative industry-based trials (including the need to develop appropriate evaluation criteria). The Department of Health and Ageing conducted consultation with stakeholders, and several funds entered into agreements with private hospitals in Victoria and Western Australia for the purposes of the trials. A trial has commenced on an informal basis in Western Australia, arranged between the participating funds and private hospitals.

The Department of Health and Ageing is in the process of seeking Executive Council's approval in July–August 2003 for formal trials to commence. The trial results will be assessed to enable the Minister to determine whether legislative amendment is warranted. Consequently, the Commonwealth Government has not complied with its CPA obligations in this area because it has not completed its review and reform of product restrictions on private health insurance funds.

Table 3.13: Review and reform of Commonwealth health legislation

Legislation	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Human Services and Health Legislation Amendment Act (No. 2) 1995[a] *Health Insurance Amendment Act (No. 2) 1996*[a]	Prevention of new medical graduates from providing a service that attracts a Medicare rebate unless they hold postgraduate qualifications, are studying towards such qualifications or work in rural areas	Mid-term review of provider number legislation was completed in December 1999. It recommended removing the sunset clause on the legislation and addressing some training issues. The Medical Training Review Panel provides annual reports to Parliament on medical training and employment options.	The 2000 Budget announced changes to general practice training, including more training positions. Act was amended in 2001 to remove the sunset clause.	Meets CPA obligations (June 2002)
Health Insurance Act 1973 (Part IIA)	Pathology collection centre licensing which prevents entry to the market	NCP review was commenced in 2000 and was completed in December 2002. The review found under the current funding arrangements that it is necessary to maintain the current legislative framework to achieve the Government's objectives. It also found that the approved collection centre scheme may not be appropriate or sustainable in the longer term, but recommended deferring reforms in this area until 2005 to provide time to realise any benefits arising from the new arrangements.	Legislation to modify the licensed collection centre scheme was introduced in June 2001. The Commonwealth has not announced its decision on recommendations in the final review report, which it received in December 2002.	Review and reform incomplete

(*continued*)

Table 3.13 continued

Legislation	Key restrictions	Review activity	Reform activity	Assessment
National Health Act 1953 (part 6 and schedule 1) *Health Insurance Act 1973* (part 3)[a]	Via community rating of private health insurance, prevention of insurers from setting different terms and conditions for insurance on the basis of sex, age or health status	Productivity Commission completed a review of private health insurance in 1997. The review was prevented from examining community rating.	Lifetime Health Cover was implemented in 2000, amending community rating to permit a premium surcharge for new entrants based on age at entry.	Meets CPA obligations (June 2003)
National Health Act 1953[a] *Health Insurance Act 1973*	Limit on the in-hospital services for which health funds may offer rebates to services provided by or on behalf of medical practitioners, midwives and dental practitioners	Department of Health is establishing trials to assess the suitability of including 'podiatric surgery' within the set of eligible in-hospital services. The department is also conducting a review of private health insurance regulation.	Executive Council expected to consider whether it will approve the commencement of formal trials in July–August 2003.	Review and reform incomplete

[a] These Acts and regulations were not included in the 1996 Cabinet agreed list of legislation — the *Commonwealth Legislation Review Schedule.*

Population health and public safety

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

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

Legislative restrictions on competition

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

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

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

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