

8 Fair trading and consumer protection legislation

States and Territories have enacted a range of legislation dealing with fair trading and consumer protection issues. This legislation regulates aspects of business conduct, including advertising, dealings with customers and the provision of information. It falls into three broad categories: general fair trading legislation, which includes governments' fair trading acts; legislation regulating the provision of consumer credit, including the Consumer Credit Code; and trade measurement legislation, which deals with the measurement of goods for sale. Attempts have been made to achieve national uniformity in each of these areas, but variation across jurisdictions remains.

A subset of legislation aimed at protecting consumers deals with the licensing of occupations. Progress in review and reform of this legislation is discussed in chapters 4 and 5 of volume 2.

Legislative restrictions on competition

Fair trading and consumer protection legislation regulates business conduct by prohibiting:

- misleading or deceptive conduct;
- the employment of harassment or coercion to win sales; and
- certain types of sales technique (such as pyramid and referral selling).

These Acts and related legislation also impose other restrictions, including:

- price controls;
- mandatory cooling-off periods;
- the requirement to disclose products from which goods are made;
- the requirement to provide warranties;
- the banning of unsafe goods; and
- quality standards.

Regulation of the provision of consumer credit generally involves licensing requirements and restrictions on the conduct of credit providers. Such restrictions may take the form of:

- documentary and disclosure requirements;
- the provision for change in contractual arrangements;
- limits on commissions and the types of product that may be offered; and
- restrictions on advertising and methods of sale.

Legislation dealing with trade measurement specifies the method of sale of certain goods, including:

- labelling and licensing requirements;
- the units of measurement in which certain goods may be sold;
- the types of measuring instrument that businesses may use; and
- requirements relating to the verification, certification and servicing of measuring instruments.

Regulating in the public interest

Fair trading and consumer protection legislation aims to protect consumers by addressing market failure such as information asymmetries between businesses and consumers which may lead to some businesses gaining an unfair advantage. The legislation may encourage competition by, for example, promoting consumer confidence and improving consumers' ability to choose suppliers based on improved understanding of the product they offer. It may also impose some costs. In particular, legislative restrictions on market entry and competitive conduct may increase compliance costs for businesses and have an impact on product innovation and consumer choice.

Regulating to protect consumers' interests requires governments to balance these considerations. In assessing jurisdictions' compliance with the National Competition Policy (NCP), the National Competition Council looks for appropriate regulatory outcomes. In the Council's view, such outcomes require restrictions on business activity to be as closely targeted to market failure as possible, proportionate to the market failure's potential detriment, and the least restrictive means available of achieving the regulatory objectives.

The Council has used these principles to assess jurisdictions' review and reform activity against obligations under clause 5 of the Competition Principles Agreement (CPA).

The Council considers that fair trading Acts do not require NCP review where they mirror part V of the *Trade Practices Act 1974* (TPA), because the TPA's consumer protection provisions are pro-competitive. The Council has considered all other restrictions in these Acts against the general principles for appropriate regulation.

Review and reform activity

Fair trading legislation

Commonwealth, State and Territory consumer affairs Ministers agreed in 1983 to adopt nationally uniform consumer protection legislation, with the objective of promoting efficiency and reducing compliance costs. The model chosen as the model for the uniform scheme was the consumer protection provisions (Part V) of the TPA, which include general prohibitions against misleading or deceptive conduct in trade or commerce, as well as more specific prohibited practices. Each jurisdiction adopted these provisions in mirror legislation.

Fair trading Acts

The Council has previously assessed Victoria, Tasmania, the Northern Territory and the ACT as having met their CPA clause 5 obligations in relation to their fair trading Acts.¹ Table 8.1 outlines the progress of jurisdictions' review and reform of these Acts.

New South Wales

The review of the *Fair Trading Act 1987* and *Door to Door Sales Act 1967* was completed in March 2002. The Government accepted the review's recommendations in August 2002 and released the review report in September 2002.

The review found that the legislation was pro-competitive and that the regulatory arrangements for consumer protection have net public benefits. It recommended legislative amendments, however, to remove or reduce the effect of restrictions where these were not justified on public benefit grounds, including the removal of mandatory codes of practice for traders.

The review also recommended repealing the *Door to Door Sales Act*, and amending the *Fair Trading Act* to streamline the existing disciplinary

¹ The Council's assessment of Tasmania covered all fair trading provisions except those applying to motor vehicle dealers, which are discussed in chapter 5.

scheme, add consumer protections in relation to direct selling practices and change the existing consumer protection provisions to mirror those of the TPA. The Fair Trading Amendment Bill 2003 was introduced into Parliament on 21 May 2003 to effect these changes. The Bill was passed by Parliament on 3 July 2003.

The Council assesses New South Wales as having met its CPA clause 5 obligations.

Queensland

The *Fair Trading Act 1989* regulates mock auctions and door-to-door selling and provides for information and safety standards. A targeted public review of the Act was completed in August 2002. The review found that a number of the Act's restrictive provisions were in the public interest and recommended their retention. These provisions included:

- the prohibition on the conduct of mock auctions;
- the prohibition on the use of obscene material in relation to unsolicited goods;
- the regulation of door-to-door trading;
- requirements relating to information and safety standards;
- the empowerment of the Minister to restrict or prohibit the sale of unsafe goods; and
- specific standards for folding laundry trolleys, leather goods, shoes, furniture, fibre content and projectile toys.

The Queensland Government accepted the recommendations of the review, implementing the required minor amendments via the *Fair Trading and Another Act Amendment Act 2002* in December 2002. The amendments involved:

- increasing the threshold at which the door-to-door provisions apply to contracts from \$A50 to \$A75 (with the amount to be subject to a regular review); and
- reducing coverage of contracts for emergency repairs that satisfy the requirements of a door-to-door contract and are not regulated by the *Domestic Building Contracts Act 2000*.

The Council assesses Queensland as having met its CPA clause 5 obligations.

Western Australia

Western Australia reviewed the *Fair Trading Act 1987* and the *Consumer Affairs Act 1971* as part of the State's consumer justice strategy which is scheduled for completion in December 2003. The strategy emphasises the

investigation of complaints and the imposition of sanctions on those who contravene acceptable standards. The NCP review of the Acts has been completed and endorsed by Cabinet on 4 August 2003.

The report recommended that the following restrictions are in the public interest and should be retained:

- product safety regulations and product safety recall orders;
- product information standards;
- product quality standards;
- packaging standards; and
- product safety orders or regulations.

The report recommended that as part of a general review of both the Acts, consideration should be given to combining the product safety provisions into a single Act and removing unnecessary duplication.

The Council assesses Western Australia as having met its CPA clause 5 obligations.

South Australia

South Australia did not include the *Fair Trading Act 1987* on its original legislation review schedule. In response to Council comments in the 2002 NCP assessment, the Government requested that the relevant agency ensure the Act's provisions (beyond those that duplicate parts of the TPA) are reviewed according to CPA principles.

South Australia completed a NCP review during 2002. The review report recommended retaining all provisions of the Act for their net public benefit, but highlighted some trivial restrictions on competition for consideration in a forthcoming general review of the Act:

- increasing the door-to-door sales threshold from \$A50 to \$A100;
- reviewing the need to retain fair reporting provisions when sufficient time has elapsed, to ascertain the adequacy of the Commonwealth Privacy Act;
- considering the repeal of the s. 40 requirements on the clarity of the price information on ticketed prices; and
- repealing, or increasing the level of certainty in, third party trading scheme provisions.

The Council assesses South Australia as having met its CPA clause 5 obligations in this area.

Table 8.1: Review and reform of fair trading Acts

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Fair Trading Act 1987</i>	Regulation of the supply, advertising and distribution of goods and services and the disposal of interests in land	Combined review of this Act and the <i>Door to Door Sales Act 1967</i> was completed in March 2002. The Government accepted the review's recommendations in August 2002 and released the review report in September 2002. The review found that the legislation was pro-competitive and that the regulatory arrangements for consumer protection had net public benefits. The review recommended various legislative amendments, however, to remove or reduce the effect of restrictions that were not justified on public benefit grounds.	The Fair Trading Amendment Bill 2003 was passed by Parliament on 3 July 2003 to effect the review recommendations.	Meets CPA obligations (June 2003)
Victoria	<i>Fair Trading Act 1999</i>	Requirements imposed on 'off business premises sales' including a mandatory five-day cooling-off period for contact sales	Act was assessed against NCP principles at its introduction. Assessment recommended retaining restrictions on the grounds that they are the least restrictive means of achieving the Act's objectives, so are in the public interest.	Restrictive provisions were retained.	Meets CPA obligations (June 2001)
Queensland	<i>Fair Trading Act 1989</i>	Quality/technical standards, business conduct restrictions, measures that confer a benefit	A targeted public review against NCP principles was completed in August 2002. The review found that a number of the Act's restrictive provisions were in the public interest and recommended their retention.	The Queensland Government accepted the recommendations of the review, retaining restrictive provisions and making the required minor amendments via the <i>Fair Trading and Another Act Amendment Act 2002</i> in December 2002.	Meets CPA obligations (June 2003)

(continued)

Table 8.1 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Western Australia	<i>Fair Trading Act 1987</i>	Regulation of the supply, advertising and distribution of goods and services	A major general review is now being undertaken, as part of the Consumer Justice Strategy, which is scheduled for completion in December 2003. An NCP review of the Act has been completed and was endorsed by Cabinet on 4 August 2003.	The report recommended that certain restrictions should be retained and that the product safety provisions of this Act and the <i>Consumer Affairs Act 1971</i> be combined into a single Act to remove unnecessary duplication.	Meets CPA obligations (June 2003)
South Australia	<i>Fair Trading Act 1987</i>	Regulation of the supply, advertising and distribution of goods and services	Act was not included in the legislation review schedule. South Australia undertook a review in 2002.	The review report recommends the retention of all provisions, which are justified on the basis of a net public benefit. A further review of trivial restrictions of competition is forthcoming.	Meets CPA obligations (June 2003)
Tasmania	<i>Fair Trading Act 1990</i> Fair Trading (Code of Practice for Motor Vehicle Traders) Regulations 1996	Code of practice requirement that manufacturers provide warranties for motor vehicles and to establish a system for dealing with customer complaints	Minor review of code of practice was completed. Act assessed as not restricting competition.	Restrictive provisions were retained.	Meets CPA obligations (June 2001) in relation to nonmotor vehicle dealer provisions. Motor vehicle dealer provisions are discussed in chapter 8.

(continued)

Table 8.1 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
ACT	<i>Fair Trading Act 1992</i>	Regulation of the supply, advertising and distribution of goods and services	Intradepartmental review was completed in 2001, covering the <i>Fair Trading Act 1992</i> , the <i>Door-to-Door Trading Act 1991</i> , the <i>Fair Trading (Consumer Affairs) Act 1973</i> , the <i>Lay-by Sales Agreements Act 1963</i> and the <i>Sale of Goods Act 1954</i> . The Fair Trading Act was assessed as not restricting competition.	Act was retained without reform.	Meets CPA obligations (June 2002)
Northern Territory	<i>Consumer Affairs and Fair Trading Act</i>	Sundry provisions (including the regulation of advertising and the banning of potentially unsafe goods), a requirement that traders notify consumers where a reporting agency report has been used, and that reporting agencies disclose information relating to a person when requested by that person.	Review found that the benefits of the fair reporting provisions have not been demonstrated and that the provisions should be repealed. It recommended, however, that their repeal be deferred pending resolution of new national issues relating to residential tenancy databases.	Amendments introduced into Parliament in July 2002 that implement the review recommendations. The Government accepted the recommendation to defer repealing the fair reporting provisions and stated that it would further consider the issue. Motor vehicle dealer provisions are discussed in chapter 5.	Meets CPA obligations (June 2002)

Other fair trading legislation

In the 2002 NCP assessment, the Council assessed governments as having met their CPA clause 5 obligations in relation to the following legislation:

- New South Wales — *Prices Regulation Act 1948* and *Retirement Villages Act 1999*;
- Queensland — *Retirement Villages Act 1988*, *Sale of Goods Act 1896* and the *Sale of Goods (Vienna Convention) Act 1986*;
- Tasmania — *Door to Door Trading Act 1986*; and
- Northern Territory — *Retirement Villages Act*.

The Council also previously assessed jurisdictions as having met their CPA clause 5 obligations in relation to other fair trading legislation (table 8.2). The following sections discuss governments' progress in reviewing and reforming further miscellaneous fair trading legislation.

New South Wales

The review of the *Funeral Funds Act 1979* was completed in November 2001. It found that the impact of the legislation on competition was not significant. The review established a net public benefit case for retaining key consumer protections such as ensuring industry participants are of fit character and clarifying consumer rights in pre-paid contracts. Proposed new legislation would remove restrictions on funeral directors where these are not justified on public benefit grounds. These restrictions cover:

- the minimum and maximum numbers of fund directors and trustees;
- the nomenclature of funeral funds; and
- a cap on management fees and benefits paid.

The New South Wales Government accepted the review's recommendations in February 2002 and prepared an Exposure Bill to facilitate public consultation. The review report was publicly released in April 2002. New South Wales has since been discussing with the Commonwealth Government whether funeral funds are regulated as a financial product under the *Corporations Act 2001* (Cwlth), in which case there may be further opportunities for reform. New South Wales advised the Council that its position was unclear, given changes introduced under the Commonwealth financial services reforms in 2001. In March 2003, the Commonwealth made a Regulation exempting particular funeral expense policies from the Corporations Act.

As a result, New South Wales advised the Council that it would prepare a draft Bill to implement the review recommendations. Subsequently, New South Wales advised the Council that the Commonwealth had decided not to regulate funeral funds, and as a result New South Wales would be considering whether new legislation is required to implement the review recommendations. The Council assesses New South Wales as not having met its CPA clause 5 obligations because it has not completed the reform process.

Queensland

The *Profiteering Prevention Act 1948* introduced powers to control prices in the context of severe shortages of goods and services following World War II. A reduced NCP review recommended repeal of the legislation because the Act lacked contemporary relevance (and the last order under the Act was issued in 1967). The Act was subsequently repealed by the *Tourism, Racing and Fair Trading (National Competition Policy) Amendment Act 2002*, which received assent in September 2002. The Council assesses Queensland as having met its CPA clause 5 obligations in relation to this Act.

The *Funeral Benefit Business Act 1982* regulates the operation of funeral benefit businesses. A targeted public review (completed in October 2000) recommended against changing the rights and responsibilities of parties under existing contracts. For any new contracts entered into, or new business conducted, however, the review recommended the following:

- the introduction of a cooling-off period for all new contracts;
- the provision of a short 'client care' statement in plain English on parties' rights and responsibilities when entering into the contract;
- the provision of choice for consumers to deposit pre-payment monies with either a funeral director or an authorised investment manager;
- the removal of the restriction that only companies may operate funeral benefit businesses;
- the extension of the Act to apply to any person who sells a funeral benefit to a consumer in Queensland;
- the removal of the cap on the value of funeral benefits;
- the removal of the requirement that the public officer/company secretary reside, or the registered office be located, in Queensland;
- the removal of the provisions requiring Office of Fair Trading approval of all advertising; and
- the removal of the registration requirement.

The Queensland Government responded to the review in April 2003, and accepted all recommendations. It advised the Council that the *Second-Hand Dealers and Pawnbrokers Bill 2003*, which incorporates the amendments to the Funeral Benefit Business Act to give effect to the recommendations, was released for consultation on 19 May 2003, with submissions closing on 6 June 2003. The Bill was introduced to Parliament on 19 August 2003. The Council assesses Queensland as not having met its CPA clause 5 obligations in relation to the *Funeral Benefit Business Act 1982* because it did not complete the reform process.

Western Australia

The Government endorsed a review of the *Retirement Villages Act 1992* in May 2002. The review recommendations included:

- amending restrictions on the use of retirement village land. The review concluded that the advantages of the Act's protection of tenure, and of residents' investments in a retirement village, clearly outweigh the disadvantages of restricting the use of the land for retirement village purposes. The Government could, however, lessen such restrictions by simplifying the processes for terminating a village scheme and removing a memorial from the village land;
- incorporating the Act and the Code of Fair Practice for Retirement Villages into a single Act, to remove unnecessary regulatory duplication and ease the process of effecting fundamental change; and
- amending restrictions on the marketing and price determination rights of residents. Residents will have the right to be involved in the marketing of their unit, receive monthly marketing reports, and influence the determination of unit price.

The review recommended retaining the Act's remaining restriction on competition which relates to parties' representation in proceedings before the Retirement Villages Disputes Tribunal. The restriction requires parties to any proceedings before the tribunal to present their own case at the hearing, unless (1) the party is unable to appear personally or conduct proceedings properly, (2) all parties agree to the representation by legal practitioners or (3) an order is sought for a monetary amount in excess of \$A10 000. The review concluded that this restriction provides residents and administering bodies with access to a relatively quick, informal and inexpensive dispute resolution forum, unencumbered by the expense and complexity that legal practitioners might bring to a hearing.

Western Australia advised the Council that it is drafting amendments to enact these reforms. The Council assesses Western Australia as not having met its CPA clause 5 obligations because it has not completed the reform process.

The Northern Territory

The *Prices Regulation Act* provides for the setting and enforcement of maximum prices for declared goods and services. Under the Act, the Minister may appoint a Controller of Prices who has the power to declare and set maximum prices for controlled goods or services. The Controller of Prices would have a range of powers to enforce the maximum prices, including:

- the power to require the production of balance sheets and other financial records;
- powers to enter premises and inspect records; and
- powers to summon witnesses and require disclosure of information.

Other provisions of the Act are aimed at preventing suppliers from circumventing controls, such as prohibiting suppliers from:

- bundling declared goods or services with undeclared goods or services and charging a total price that embodies a price higher than the current market value for the undeclared product;
- packaging smaller quantities of goods in containers than were ordinarily packed in such containers when the control was introduced; or
- reducing the quality of the declared goods from the quality at the time of introduction of the controls.

As with similar legislation in other jurisdictions, the Prices Regulation Act dates back to the period immediately following World War II. At that time, the Government was focussing on curbing rising inflation and addressing problems arising from shortages of goods. Since 1993, when the last general price control was lifted, the Act has been held in reserve to be used following states of emergency and other adverse events. The provisions were last used in the Katherine region following the 1998 Australia Day floods, when the Government controlled the prices of items such as foodstuffs and building products.

The Act underwent a NCP review by the Centre for International Economics in 2000. The review recommended restricting the exercise of powers to regulate prices to controlling incidents of price exploitation following natural disasters or similar events that have a severe impact on the operation of markets. Further, if there is a demonstrated need for more permanent regulation of monopoly or oligopoly companies then the Government should introduce separate case specific legislation to impose these controls. The review also recommended amending the Act to limit the length of time for which a price control can be in effect.

The Northern Territory Government accepted the report, together with the proposed legislation, and passed the *Prices Regulation Amendment Act 2002*. In keeping with a new purpose clause, and to better describe its functions, the

Act was renamed the *Price Exploitation Prevention Act*. The Council assesses the Northern Territory as having met its CPA clause 5 obligations in relation to this area.

Table 8.2: Review and reform of other fair trading legislation

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Business Licences Act 1990</i>	Licensing requirements	Review was completed in 1998.	This Act was repealed by the <i>Business Licences Repeal and Miscellaneous Amendments Act 2001</i> .	Meets CPA obligations (June 2001)
	<i>Funeral Funds Act 1979</i>	Controls and regulations on contributory and pre-arranged funeral funds	Review was completed in 2001. It found that the impact of the legislation on competition was not significant, but recommended the removal of some restrictions on funeral funds. The Government accepted the review's recommendations in February 2002, as well as the preparation of an Exposure Bill to facilitate further public consultation. The review report was released in April 2002. New South Wales has been discussing with the Commonwealth Government whether funeral funds are also regulated as a financial product under the <i>Corporations Act 2001</i> (Cwlth). On 6 March 2003, the Commonwealth Government made a Regulation exempting particular funeral expense policies from regulation under the Corporations Act.	New South Wales originally advised that it would prepare a draft Bill to implement the review recommendations. Subsequently, New South Wales advised the Council that the Commonwealth had decided not to regulate funeral funds, and as a result it would be considering whether new legislation is required to implement the review recommendations.	Review and reform incomplete
	<i>Prices Regulation Act 1948</i>	Regulation of prices and rates for certain goods and services	Review was completed in 1996.	Prices Commission was abolished and prices regulation powers were transferred to the Independent Pricing and Regulatory Tribunal.	Meets CPA obligations (June 2002)

(continued)

Table 8.2 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales (continued)	<i>Retirement Villages Act 1989</i>	Regulation of the termination of resident's occupation rights, the provision of jurisdiction over certain matters to the Residential Tenancies Tribunal	Review was completed in 2001.	Act was repealed by the <i>Retirement Villages Act 1999</i> which retained certain requirements for terminating resident's occupation rights.	Meets CPA obligations (June 2002)
Victoria	<i>Funerals (Pre-Paid Money) Act 1993</i>		Scoping study showed that the Act does not restrict competition.		Meets CPA obligations (June 2001)
	<i>Retirement Villages Act 1986</i>		Scoping study showed that the Act does not restrict competition.		Meets CPA obligations (June 2001)
Queensland	<i>Funeral Benefit Business Act 1982</i>	Limitations on the registration of corporations, business conduct requirements	A targeted public review was completed in October 2000. The Government has accepted the recommendations of the review. The <i>Second-Hand Dealers and Pawnbrokers Bill 2003</i> , which incorporates the amendments to the Act to give effect to the review recommendations, was released for consultation on 19 May 2003 with submissions closing on 6 June 2003.	The Bill was introduced to Parliament on 19 August 2003.	Review and reform incomplete
	<i>Profiteering Prevention Act 1948</i>	Price controls, restrictions on business conduct	Reduced NCP review was completed. Repeal of the legislation was recommended because it lacks contemporary relevance. The last order under the Act was issued in 1967.	The Act was repealed without review by the <i>Tourism, Racing and Fair Trading (National Competition Policy) Amendment Act 2002</i> which received assent in September 2002.	Meets CPA obligations (June 2003)

(continued)

Table 8.2 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Queensland (continued)	<i>Retirement Villages Act 1988</i>	Entry requirements, statutory charges, reduced requirements for charitable organisations	Reduced NCP review was completed in 1998. New Bill was assessed against NCP obligations.	New Bill was passed in 1999, retaining some restrictions on competition.	Meets CPA obligations (June 2002)
	<i>Sales of Goods Act 1896</i> <i>Sale of Goods (Vienna Convention) Act 1986</i>	Stipulations relating to the sale or purchase of goods, affecting the rights and remedies of buyers and sellers	Review was completed in 2001. No competition restrictions were identified.	Acts were retained without reform.	Meets CPA obligations (June 2002)
Western Australia	<i>Retirement Villages Act 1992</i>	Restrictions on business conduct	Departmental review was completed in 2002. It recommended: changing restrictions on the use of retirement village land; incorporating the Code of Fair Practice for Retirement Villages into the Act; and changing restrictions on residents' marketing and price determination rights.	Amendments are being prepared.	Review and reform incomplete
South Australia	<i>Prices Act 1948</i>	Price controls, restrictions on business conduct	Review recommended the removal of a number of restrictive provisions but the retention of price controls for infant foods, returns of unsold bread, towing, recovery, storage and quoting for repair of motor vehicles and the carriage of freight to Kangaroo Island.	The Government enacted amendments in line with recommendations in 2000.	Meets CPA obligations (June 2001)

(continued)

Table 8.2 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Tasmania	<i>Door to Door Trading Act 1986</i>	Definition of a prescribed contract, prohibition of contractual terms, requirement for certain information to be incorporated under prescribed contracts, limitation on the hours in which a dealer may call on a person	Minor review of the Act was completed. Restrictive provisions were justified as being in the public interest.	Restrictive provisions were retained.	Meets CPA obligations (June 2002)
	<i>Flammable Clothing Act 1973</i>	Requirement to mark or label prescribed clothing (children's nightwear) with the flammability of the garment	Minor review of the Act was completed. Restrictive provision was justified as being in the public interest.	Restrictive provision was retained.	Meets CPA obligations (June 2001)
	<i>Goods (Trade Descriptions) Act 1971</i>	Requirement for manufacturers to disclose the materials from which textile products are made, provisions relating to safety footwear	Minor review of the Act was completed. Requirement relating to textile products was justified as being in the public interest.	Restrictive provision relating to textile products was retained. New regulations were made to replace safety footwear provisions.	Meets CPA obligations (June 2001)
	<i>Mock Auctions Act 1973</i>	Prohibition on auctions where items are sold at a price lower than the highest bid		Act was repealed.	Meets CPA obligations (June 2001)
ACT	<i>Law Reform (Manufacturers Warranties) Act 1977</i>		Act was assessed as not restricting competition and was removed from the NCP review timetable.	Act was repealed by the <i>Fair Trading Act 2002</i> , which duplicates more extensive provisions in the TPA.	Meets CPA obligations (June 2001)

(continued)

Table 8.2 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
ACT (continued)	<i>Law Reform (Misrepresentation) Act 1977</i>		Act was assessed as not restricting competition and was removed from the NCP review timetable.		Meets CPA obligations (June 2001)
Northern Territory	<i>Price Exploitation Prevention Act (formerly the Prices Regulation Act)</i>	Price controls, restrictions on business conduct	Review was completed in 2000, recommending the exercise of restrictions only at times of natural disaster (and with time limits), the specification of objectives and the regulation of monopoly behaviour under separate legislation.	Government accepted the review recommendations and passed the <i>Prices Regulation Amendment Act</i> , on 1 October 2002. The Act was renamed the <i>Prices Exploitation Prevention Act</i> .	Meets CPA obligations (June 2003)
	<i>Retirement Villages Act</i>	Regulation of the operation of retirement villages, regulation of the court's powers in respect of certain matters relating to retirement villages	Review was completed in 2002. The restrictions on competition contained in the Act were found to be in the public interest.	Act was retained without reform.	Meets CPA obligations (June 2001)

Consumer credit legislation

In 1993, State and Territory governments entered into the Australian Uniform Credit Laws Agreement, which provides for the adoption of a national Consumer Credit Code. The code, which came into effect in November 1996, replaced various State and Territory statutes governing credit, money lending and aspects of hire-purchase.

The code was developed to be applied equally to all forms of consumer lending and all credit providers in Australia, without restricting product flexibility and consumer choice. It applies rules that regulate credit providers' conduct throughout the life of a loan, generally relying on competitive forces to provide price restraint but providing redress mechanisms for borrowers if credit providers fail to comply with the legislation. Types of credit covered by the code include personal loans, credit cards, overdrafts, housing loans and the hire of goods.

The code was enacted by template legislation, with Queensland being the lead legislator. All jurisdictions except Western Australia and Tasmania enacted legislation applying the Consumer Credit Code as in force in Queensland. Western Australia originally enacted alternative consistent legislation, which required constant amendment by the Western Australian Parliament to remain consistent when the code was amended in Queensland. However, on 30 June 2003, it adopted the template legislation system favoured by all other States and Territories (except Tasmania), by passing the *Consumer Credit (Western Australia) Amendment Act 2003*. The Act adopts the national Uniform Consumer Credit Code, as in force from time to time in Queensland, as a law of Western Australia instead of having to enact consistent legislation each time the Code is amended. Tasmania enacted a modified template system.

State and Territory governments are jointly undertaking an NCP review of the Consumer Credit Code legislation. In addition to this review, several jurisdictions have identified other consumer credit-related legislation for review, possible review or amendment. Table 8.3 outlines the progress of jurisdictions' review and reform of this legislation.

NCP review of the Consumer Credit Code

The national review of the Consumer Credit Code commenced in late 1999, with Queensland as the lead agency, based on a review process approved by the Council of Australian Governments (CoAG) Committee on Regulatory Reform. A post implementation review of the code preceded the national review, being completed in late 1999. A draft report of the national NCP review of the Consumer Credit Code was released for public consultation in December 2001 (Uniform Consumer Credit Code Management Committee

2002). The review was undertaken by an independent consultant steered by a working party of representatives from each participating jurisdiction.

The Commonwealth Government's Office of Regulation Review reported in its latest annual report to the Council (see Volume 1, Chapter 6) that a CoAG regulatory impact statement was not prepared before the April 2002 introduction of mandatory comparison rate amendments to the uniform Consumer Credit Code.

The key recommendations of the draft review were:

- to maintain the code's current provisions and review its definitions to bring sale of land, conditional sale agreements, tiny terms contracts and solicitor lending within the scope of the code; and
- to enhance the code's disclosure requirements.

The Ministerial Council on Consumer Affairs endorsed the final report in 2002 and referred it to the Uniform Consumer Credit Code Management Committee which formed a working party to progress implementation of the review recommendations. Queensland is preparing a consultation review document to release for consultation. The Uniform Consumer Credit Code Management Committee is facilitating the resolution of certain issues (for example, credit issues relating to solicitors, electronic commerce and general disclosure provisions), following which Queensland will enact updated template legislation. Automatic updating of relevant legislation will then occur in all other States and Territories except Western Australia and Tasmania, which enacted legislation that is consistent with the template legislation. Changes to the legislation are occurring on an iterative basis. The full range of changes to the Consumer Credit Code arising from the post-implementation review and the national review are unlikely to be completed until 2004.

The NCP review followed the post-implementation review, which recommended legislative changes, some of which may have an impact on competition. The Council understands that the NCP review addressed those recommendations and that the Ministerial Council on Consumer Affairs considered the two reports together.

NCP reviews of related legislation

The Council previously assessed Victoria, Tasmania, the ACT and the Northern Territory as meeting their CPA clause 5 obligations in this area. The following sections discuss the remaining governments' progress in reviewing and reforming outstanding miscellaneous consumer credit legislation (table 8.3).

Queensland

After completing reviews of the *Credit Act 1987* and the *Hire Purchase Act 1959*, Queensland previously indicated to the Council that it intended to repeal both Acts. In regard to the Credit Act, however, Queensland since advised that it cannot repeal the Act until litigation in a small number of existing cases is finalised. The litigation still before the courts stemmed from lenders who breached their obligations under the Act and had to apply to the Supreme Court for reinstatement of their legal right to charge interest under the loan contracts affected by the breaches. The possible outcomes of that litigation are the reimbursement of interest to affected consumers and/or fines payable by the lender to the Office of Fair Trading. Queensland advised the Council that one matter has been completed, but that the completion date for the second matter is uncertain. Given the introduction of the Consumer Credit Code the Act regulates only the few outstanding personal loans up to A\$40 000 entered into before 1 November 1996.

The Council assesses Queensland as not having met its NCP obligations in relation to this Act because it has not completed the reform process.

The review of the Hire Purchase Act recommended repealing the Act and, at the same time, amending the *Credit (Rural Finance) Act 1996* to apply to hire purchase agreements and to provide for the accounting of surplus monies upon repossession (in a manner similar to that of the Consumer Credit Code). The Queensland Government subsequently amended the Credit (Rural Finance) Act to transfer certain protections for farmers. Legislative amendments to limit the Hire Purchase Act to existing contracts and insert a sunset clause became effective in January 2003. The Council assesses Queensland as having met its CPA clause 5 obligations in relation to this Act.

Queensland added the Credit (Rural Finance) Act to its legislation review program because the Act has a relationship with other scheduled Acts. The Act provides for the issue of default notices and relieving orders to protect farmers against the arbitrary enforcement of mortgages over essential farming equipment. A minor review the Act reported in February 2002. Based on similar provisions examined as part of the national NCP review of the Consumer Credit Code, it was concluded that the provisions relating to default notices were minor restrictions that were justified in the public interest. Some amendments to the Act were made as a result of recommendations made in the review of the Hire-Purchase Act. The Council assesses Queensland as having met its CPA clause 5 obligations in relation to this Act.

Western Australia

Western Australia has completed departmental reviews of the *Credit (Administration) Act 1984* and the *Hire-Purchase Act 1959*. The review of the Credit (Administration) Act found that the Act's licensing requirement does not provide a net public benefit, given the safeguards housed in other consumer protection legislation, but that the Act's disciplinary provisions do

have a public benefit. The review recommended repealing the licensing requirement and the provisions flowing from it, but retaining the disciplinary provisions. The Western Australian Government endorsed the review's recommendations and is drafting corresponding legislative amendments.

The Western Australian Government advised the Council, however, that Parliamentary Counsel, in preparing the first draft of the amendments, raised complex legal issues that require detailed consideration. A particular concern was the emergence in the marketplace of payday lenders. Amendments to the *Consumer Credit (WA) Act 1996* (the Code) in 2001 resulted in payday lenders becoming regulated under the Code thus emerging as an additional category of licensed credit providers under the Credit (Administration) Act.

A public benefit argument for retaining the licensing requirement for payday lenders made it necessary to reassess the NCP review's recommendations, to determine whether the amendments needed minor modifications. The original NCP report was re-examined to account for the relevant market changes. The amended report was endorsed by Cabinet on 4 August 2003. The report recommended that the Act be amended to:

- replace the licensing requirement for credit providers with a system of registration coupled with negative licensing; and
- replace the prohibition against persons having a business as a credit provider when in partnership with an unlicensed person, with a provision prohibiting a registered person from having a business in a partnership with a person who has been prohibited from having such a business under the proposed negative licensing provisions.

Western Australia is still to implement the endorsed recommendations through amendment of the Act. The Council assesses Western Australia as not having met its CPA clause 5 obligations in this area because it has not completed the reform process.

The review of the Hire-Purchase Act found that the introduction of the Consumer Credit Code had made most of the Act's provisions redundant. It found that three provisions, however, are justified on public interest grounds:

- the requirement for credit providers to refund any surplus amount following repossession of goods;
- the court's power to re-open 'harsh or unconscionable' hire-purchase arrangements; and
- restrictions on credit providers' ability to repossess farming goods.

The Hire-Purchase Act is being amended so only these selected provisions of the Act continue to apply to new transactions. The review argued that the impact of these restrictions on the cost of providing hire-purchase arrangements is likely to be minimal. The Western Australian Government

endorsed the review's recommendations and is progressing legislative amendments through the Parliament as part of the *Acts Amendment and Repeal (Competition Policy) Bill 2002*. The Bill was referred to the Legislative Council's Standing Committee on Uniform Legislation and General Purposes for inquiry and report. The Standing Committee's report was tabled in the Legislative Assembly on 10 June 2003. The report recommends that the Bill be passed without amendment when Parliament resumes on 13 August 2003. The Council assesses Western Australia as not having met its CPA clause 5 obligations in this area because it has not completed the reform process.

Table 8.3: Review and reform of legislation regulating consumer credit

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
National	NCP review of Consumer Credit Code	Licensing requirements, restrictions on the conduct of credit providers	Review report was completed in 2002 and considered by CoAG's Committee on Regulatory Reform to ensure NCP review requirements had been met. The report has been forwarded to the Ministerial Council on Consumer Affairs for response by participating jurisdictions. The Ministerial council endorsed the final report in 2002 and referred it to the Uniform Consumer Credit Code Management Committee for implementation.	The Uniform Consumer Credit Code Management Committee is facilitating the resolution of issues. Then Queensland will enact updated template legislation, leading to the automatic updating of relevant legislation in all other States and Territories except Tasmania, which enacted legislation that is consistent with the template legislation. Changes to the legislation are occurring on an iterative basis. The full range of changes to the Consumer Credit Code are unlikely be completed until 2004.	Review and reform incomplete
Victoria	<i>Credit (Administration) Act 1984</i>		Scoping study showed that the legislation does not restrict competition.		Meets CPA obligations (June 2001)
	<i>Hire Purchase (Amendment) Act 1997</i>	Retention of the court's ability to re-open hire-purchase agreements and order the return of goods repossessed from a farmer under certain circumstances	Victoria argued that there is a benefit in using the restrictions to address hire-purchase problems in the rural sector until a more comprehensive policy is developed.	Restrictive provisions were retained.	Meets CPA obligations (June 2002)

(continued)

Table 8.3 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Victoria (continued)	<i>Hire Purchase (Amendment) Act 2000</i>	Retention of the court's ability to reopen hire-purchase agreements and order the return of goods repossessed from a farmer under certain circumstances	Victoria argued that there is a continued benefit in the restrictions because further work is required to develop a comprehensive policy.	Restrictive provisions were retained.	Meets CPA obligations (June 2002)
Queensland	<i>Credit Act 1987</i>	Restrictions on business conduct	Review of this Act and related regulations was carried out at the same time as the national review of the Consumer Credit Code but under a separate process. Review recommended repeal of the Act. Due to the introduction of the Consumer Credit Code, the Act regulates only the few outstanding personal loans up to \$40 000 entered into before 1 November 1996.	Queensland is waiting for litigation in a small number of existing cases to be finalised before repealing the Act. The litigation still before the courts has stemmed from lenders who breached their obligations under the Act and had to apply to the Supreme Court for reinstatement of their legal right to charge interest under the loan contracts affected by the breaches.	Review and reform incomplete
	<i>Credit (Rural Finance) Act 1996</i>	Restrictions on the enforcement of mortgages over essential farm equipment	Review report was released on March 2002. Based on similar provisions examined as part of the national NCP review of the Consumer Credit Code review, it concluded that the provisions related to default notices were minor restrictions only, which were justified in the public interest.	No reform is necessary.	Meets CPA obligations (June 2003)

(continued)

Table 8.3 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Queensland (continued)	<i>Hire Purchase Act 1959</i>	Restrictions on business conduct	Review was completed in 2001. The protection afforded to farmers under the Hire Purchase Act will be continued via amendments to the <i>Credit (Rural Finance) Act 1996</i> . The proposed amendments have been subject to a separate review of their public benefit.	Legislative amendments made to limit the Act to existing contracts and to insert a sunset clause became effective in January 2003.	Meets CPA obligations (June 2003)
Western Australia	<i>Credit (Administration) Act 1984</i>	Licensing requirements, restrictions on the conduct of credit providers	Departmental review recommended the repeal of licensing requirements and related provisions, but the retention of disciplinary provisions on public interest grounds. In preparing the amendments, Parliamentary Counsel raised complex legal issues, particularly the emergence of payday lenders. Amendments to the <i>Consumer Credit (WA) Act 1996</i> (the Code) in 2001 resulted in payday lenders becoming regulated under the code, and thus adding a category of licensed credit providers under the Credit (Administration) Act. A public benefit argument for retaining the licensing requirement for payday lenders made it necessary to reassess the NCP review's recommendations for whether the amendments needed minor modifications.	The original NCP report was been re-examined to account for the relevant market changes. The amended report was endorsed by Cabinet on 4 August 2003. The report recommended that the Act be amended to replace the licensing requirement for credit providers with a system of registration coupled with negative licensing.	Review and reform incomplete
	<i>Hire Purchase Act 1959</i>	Restrictions relating to surplus from sale of repossessed goods, equitable relief and farm goods purchases	Departmental review recommended the removal of a number of restrictions but the retention (on public interest grounds) of three provisions aimed at protecting farmers and small businesses.	Amendments are being progressed through the Parliament as part of the Acts Amendment and Repeal (Competition Policy) Bill 2002.	Review and reform incomplete

(continued)

Table 8.3 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Tasmania	<i>Hire-Purchase Act 1959</i>	Requirements relating to the form and contents of hire-purchase contracts		Act was repealed.	Meets CPA obligations (June 2001)
	<i>Lending of Money Act 1915</i>	Requirement that money lenders be registered		Act was repealed.	Meets CPA obligations (June 2001)
ACT	<i>Consumer Credit (Administration) Act 1996</i>	Registration and conduct requirements	Departmental review was completed. Restrictions were found to be in the public interest.	Act was retained without reform.	Meets CPA obligations (June 2002)
	<i>Credit Act 1985</i>			Act was substantially repealed. Remaining provisions were assessed as not restricting competition.	Meets CPA obligations (June 2001)
Northern Territory	<i>Consumer Affairs and Fair Trading Act</i>	Negative licensing requirements, requirement for credit providers to abide by the Consumer Credit Code and to act properly, competently and fairly	Review was completed, recommending the retention of the requirement for credit providers to act properly, competently and fairly. The national review is considering the requirement to abide by the Consumer Credit Code.	The Government agreed to the review recommendations.	Meets CPA obligations (June 2001)

Trade measurement legislation

Each State and Territory has legislation that regulates weighing and measuring instruments used in trade, with provisions for prepackaged and non-prepackaged goods. Regulated instruments include shop scales, public weighbridges and petrol pumps. State and Territory governments (except Western Australia) formally agreed to a nationally uniform legislative scheme for trade measurement in 1990 to facilitate interstate trade and reduce compliance costs. Participating jurisdictions have since progressively enacted the uniform legislation. The legislation places the onus on owners to ensure instruments are of an approved type and maintained in an accurate condition.

Governments identified that the national scheme involves legislation that may have an impact on competition. As a result, a national NCP review of the scheme for uniform trade measurement legislation was undertaken, with Queensland as the lead agency. Some jurisdictions have indicated that they will review the Acts administering the national scheme, in addition to those applying it.

A scoping paper for the national NCP review concluded that restrictions on the method of sale appear to have little adverse effect on competition and provide benefits for consumers. The one exception concerned restrictions on the sale of non-prepacked meat. A draft report on such meat was circulated to jurisdictions during February 2002 and the review's working group has finalised the report. The working group consulted with meat sellers and associations, consumer associations, advocate groups and other stakeholders in early 2003, then reported to the Standing Committee of Officials on Consumer Affairs in mid-2003. The committee is expected to subsequently report to the Ministerial Council on Consumer Affairs on a proposed approach to the non-prepacked meat issue. Queensland advises that stakeholders were invited to make submissions by 21 March 2003. Results of the consultation have been collated, and the review committee has an amended draft report to consider. Queensland advised the Council that the Ministerial Council on Consumer Affairs is unlikely to receive the final report before August 2003. Following agreement on the proposed national approach to trade measurement, implementation of the agreed approach is expected to follow. This process is likely to be finalised in the second half of 2003 or early 2004.

Queensland advised that the Ministerial Council on Consumer Affairs has not considered and endorsed the final NCP reports by 30 June 2003. It also advised that it can commence the review of the definition of 'meat' once the Ministerial council finally endorses the NCP documents. This review process will also be subject to national protocols and approval processes.

Assessment

In its 2002 NCP assessment, the Council assessed that Queensland had met its CPA clause 5 obligation in this area because the outcome of the national review will have no impact on its *Trade Measurement (Administration) Act 1990*. The NCP review found the Act does not restrict competition and recommended retaining it with no amendments.

New South Wales, Victoria, Western Australia and South Australia advise that they are currently awaiting the national response before implementing reforms. The Council assesses these States as not having met their CPA clause 5 obligations because they have not completed their reform processes. Nevertheless, the Council accepts the benefits of implementing reforms based on the recommendations of a national review process, provided unreasonable delays do not result. If the States can implement reforms as soon as the Ministerial Council on Consumer Affairs endorses the national review, then the delay would not appear unreasonable.

Tasmania repealed its *Weights and Measures Act 1934* in 2000 and replaced it with the State-based uniform trade measurement legislation, the *Trade Measurement (Tasmania) Administration Act 1999*, which was assessed under its gatekeeping requirements. The restrictions in the 1999 legislation were assessed as being in the public benefit. The Council assesses Tasmania as having met its CPA clause 5 obligations in relation to this Act.

The Northern Territory and the ACT conducted internal reviews of their trade measurement (administration) Acts, finding that the Acts do not contain anticompetitive restrictions. The Northern Territory has undertaken to amend its Act as recommended by the national review. The Council assesses the Northern Territory and the ACT as having met their CPA clause 5 obligations in relation to this area.

Table 8.4 outlines the progress of jurisdictions' review and reform of their trade measurement legislation.

Table 8.4: Review and reform of legislation regulating trade measurement

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
National (except Western Australia)	Review of trade measurement legislation	Restrictions on the method of sale of certain goods	Review is under way. Review report has been prepared and is under consideration by the steering committee. Report is to be considered by relevant official bodies before being forwarded to the Ministerial Council on Consumer Affairs for consideration and response.		Review and reform incomplete
New South Wales	<i>Trade Measurement Administration Act 1989</i>	Restrictions on the method of sale of certain goods	Review and reform are contingent on the outcome of the national review.		Review and reform incomplete
Victoria	<i>Trade Measurement (Administration) Act 1995</i>	Restrictions on the method of sale of certain goods	Review and reform are contingent on the outcome of the national review.		Review and reform incomplete
Queensland	<i>Trade Measurement (Administration) Act 1990</i>	Restrictions on the method of sale of certain goods	Internal review was completed in 2002. The review found the Act did not restrict competition.	Act was retained.	Meets CPA obligations (June 2001)
Western Australia	<i>Weights and Measures Act 1915</i>	Restrictions on the method of sale of certain goods	The Government is drafting new legislation to replace the Act. The new legislation will apply the uniform national legislation.	The Government has allocated a priority for the Bill to be introduced in spring 2003.	Review and reform incomplete
South Australia	<i>Trade Measurement Administration Act 1993</i>	Restrictions on the method of sale of certain goods	Review and reform are contingent on the outcome of the national review.		Review and reform incomplete
Tasmania	<i>Weights and Measures Act 1934</i>	Restrictions on the method of sale of certain goods	Act was repealed in 2000 and replaced by the <i>Trade Measurement (Tasmania) Administration Act 1999</i> , which was assessed under the new legislation gatekeeping provisions.		Meets CPA obligations (June 2003)
ACT	<i>Trade Measurement (Administration) Act 1991</i>	Restrictions on the method of sale of certain goods	Internal review found that the Act does not contain anticompetitive restrictions.		Meets CPA obligations (June 2003)
Northern Territory	<i>Trade Measurement (Administration) Act</i>	Restrictions on the method of sale of certain goods	Internal review found that the Act does not contain anticompetitive restrictions.		Meets CPA obligations (June 2003)