14 National legislation review and reform matters

This chapter discusses legislation review and reform activity that is being conducted on an interjurisdictional basis or that presents issues for which all governments have a collective responsibility to achieve compliance with National Competition Policy (NCP) obligations. The Competition Principles Agreement (CPA) provides, where a review raises issues with a national dimension or effect on competition (or both), that the government responsible for the review must consider whether the review should be undertaken on a national (interjurisdictional) basis. If a government considers a national approach to be appropriate, then it must consult other interested governments before determining the terms of reference and the appropriate body to conduct the review.

Nine national reviews have been completed under the NCP program, with a further three in progress. In most cases, however, governments are still to complete the implementation of reforms recommended by the national reviews.

Progress with national reviews

Delays in completing national review and reform activity often arise as a result of protracted interjurisdictional consultation. Further, review and reform activity by each State and Territory must sometimes await the conclusion of the national review process, which can significantly delay relevant State/Territory reform. The National Competition Council acknowledges, however, the importance of thoroughly investigating relevant issues and adequately consulting affected governments. It accepts that there has been useful progress in the review of several significant regulation issues and that the national focus has improved the consistency of regulation among jurisdictions.

National reviews are not exempt from the Council of Australian Governments (CoAG) requirement that all jurisdictions complete all legislation reviews and implement appropriate reforms by 30 June 2002. The Council accepts that meeting this deadline may not be possible where national reviews are still in progress, but it would be concerned if the current national processes are not concluded within a reasonable period to enable the reform of State and Territory legislation. It considers that all governments have a collective responsibility to ensure the completion of national reviews and the

implementation of resulting policy recommendations. The following sections summarise the status of the review and reform activity for each of the national reviews.

Review of the *Agricultural Chemicals Act 1994* and related Acts

This review (see chapter 1, volume 2) covers the legislation that created the National Registration Scheme for Agricultural and Veterinary Chemicals and the legislation controlling the use of agricultural and veterinary chemicals in Victoria, Queensland, Western Australia and Tasmania. Separate to this review, New South Wales, South Australia and the Northern Territory conducted reviews of their own control-of-use legislation to be aggregated with the NCP review.

The Victorian Minister for Agriculture and Resources commissioned the review on behalf of Commonwealth, State and Territory Ministers for agriculture/primary industries following a decision by the Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ). The final review report was presented on 13 January 1999. On 3 March 1999, the Standing Committee on Agricultural Resource Management (SCARM) publicly released the report and established an interjurisdictional Signatories (to the National Registration Scheme for Agricultural and Veterinary Chemicals) Working Group to prepare an intergovernmental response to the report's recommendations.

SCARM/ARMCANZ endorsed the intergovernmental response to the review in 2000. The CoAG Committee on Regulatory Reform cleared the response, which accepted some recommendations and established interjurisdictional working groups and task groups to consider the other issues.

A task force, for example, examined review recommendations on the regulation of low risk chemicals, and the Commonwealth Government subsequently introduced the Agricultural and Veterinary Chemicals Legislation Amendment Bill 2002. This legislation was passed by the Commonwealth Parliament in March 2003 and received assent in April 2003.

Three working groups examined the review recommendations on manufacturing licensing, cost recovery by the National Registration Authority and a review of alternative assessment providers respectively. These working groups have finalised their reports. The Primary Industries Standing Committee, which serves the Primary Industries Ministerial Council, endorsed the reports of the latter two working groups in late 2002. The working group on manufacturing licensing sent its report to the standing committee in June 2003. Following the standing committee's endorsement of the three working groups' recommendations, Commonwealth, State and Territory governments will make any necessary changes to their legislation and regulations.

The intergovernmental response was to retain the National Registration Authority's capacity to assess the truthfulness and appropriateness of the efficacy claims by suppliers of chemicals.

Review of the Mutual Recognition Agreement and the *Mutual Recognition (Commonwealth) Act 1992*

This review was conducted in 1997-98 by a working group of the CoAG Committee on Regulatory Reform, comprising representatives from the Commonwealth, New South Wales, Queensland (chair) and Western Australia. The review report made 30 recommendations addressing the operation of the Act and recommended that jurisdictions endorse the Act's continued operation.

The review found that the scheme is generally working well to minimise the impediments to the freedom of trade in goods and services and to establish a national market in goods and services in Australia. The review data indicated that the Mutual Recognition Agreement has increased competition and consumer choice, and reduced business costs. The review recommended retaining all existing (potentially anticompetitive) exceptions to the Mutual Recognition Agreement.

Jurisdictions generally supported the review's recommendations. Queensland had concerns about recommendations 17 (pornographic material), 23 (manner of sale of goods) and 27 (packaging and labelling requirements for transport, storage and handling). Victoria expressed concerns about recommendation 24 (packaging and labelling for drugs and poisons).

On 8 January 2003, the Parliamentary Secretary to the Commonwealth Treasurer requested that the Productivity Commission undertake a further review of the Mutual Recognition Agreement (and the Trans Tasman Mutual Recognition Arrangement). Under the terms of reference of the review, the Productivity Commission must report on the efficiency and effectiveness of the Mutual Recognition Agreement, whether any changes are required to improve its operation and whether its scope should be broadened. The Commonwealth requires the PC report by 8 October 2003, after which the report will be provided to Australian jurisdictions and New Zealand within approximately three months.

Review of the *Petroleum (Submerged Lands) Acts*

The Commonwealth, State and Northern Territory Acts regulate exploration for, and development of, undersea petroleum resources. This legislation forms part of a national scheme.

The Australia and New Zealand Minerals and Energy Council commissioned a national review (see chapter 8, volume 1) by a committee of Commonwealth, State and Northern Territory officials. This committee engaged an independent consultant which reported to the committee in April 2000. In response to its report, the committee reported to the Australia and New Zealand Minerals and Energy Council on 25 August 2000 that the legislation is essentially pro-competitive and that any restrictions on competition (for example, in relation to safety, the environment and resource management) are appropriate given the net benefits to the community. The Australia and New Zealand Minerals and Energy Council endorsed the report at that meeting. The final report was made public on 27 March 2001, following consideration by the CoAG Committee on Regulation Reform.

Two specific legislative amendments flowed from the review. One addressed potential compliance costs associated with retention leases and the other expedited the rate at which exploration acreage can be made available. These amendments were incorporated in the Commonwealth's *Petroleum (Submerged Lands) Legislation Amendment Act 2002*. A third recommendation was for the *Commonwealth Petroleum (Submerged Lands) Act 1967* to be rewritten. Commonwealth authorities have been preparing this rewrite for some months and may submit the amended legislation to Federal Parliament late in 2003. Amendments and rewrites of the counterpart State and Northern Territory legislation will follow. Some jurisdictions are unlikely to complete this process until 2004.

Review of legislation regulating drugs, poisons and controlled substances legislation

The State, Territory and Commonwealth governments commissioned a review (the Galbally Review — see chapter 3, volume 2) to examine legislation and regulation that control access to, and the supply of, drugs, poisons and controlled substances. The legislation seeks to prevent poisoning, medical misadventure and the diversion of substances to the illicit drug market. The review report was finalised and presented to the Australian Health Ministers Conference, which is required by the review's terms of reference to forward the report to CoAG with its comments. The final report was publicly released in January 2001.

The review concluded that there are sound reasons for Australia to have legislative controls that regulate drugs, poisons and controlled substances. It found that enhancing uniformity across jurisdictions and the interface between pieces of legislation could improve the efficiency and administration of the regulations.

The health Ministers referred the review report to the Australian Health Ministers' Advisory Council, which established a working party to develop a draft response to the review recommendations for CoAG's consideration.

The working party's draft response has been endorsed by the Australian Health Ministers' Advisory Council and referred to the Primary Industries Ministerial Council (which has an interest because implementation of the review's recommendations would affect the management of agricultural and veterinary chemicals). The Primary Industries Ministerial Council provided its comments in November 2002, allowing the working party's draft response to be revised. The Australian Health Ministers Conference expects to provide this response and the Galbally Report to CoAG in the second half of 2003.

Following this process, individual governments will need to respond to the report and, where appropriate, initiate legislative change. New South Wales has already implemented some of the recommendations by regulation, and does not have to make any NCP-related amendments. Western Australia has also introduced some of the Galbally Report recommendations. Tasmania is drafting a new Poisons Bill. Other jurisdictions are awaiting completion of the national decision-making process.

Review of food Acts

The objectives of the food Acts in each Australian State and Territory and New Zealand are to ensure compliance and enforce food standards in each jurisdiction. The Australia New Zealand Food Standards Council established a review (see chapter 1, volume 2) of this legislation in 1996. The Australia New Zealand Food Authority coordinated the review and included representatives of the jurisdictions on the review panel.

The authority released the review report in May 1999. The review recommended removing some restrictive provisions of the food Acts (for example, opening up food inspections to third party auditors), but retaining certain exclusive powers where government enforcement is appropriate.

On 3 November 2000, CoAG agreed to the food regulatory reform package, of which the Model Food Act is a part. In addition, CoAG signed an Intergovernmental Agreement on Food Regulation, agreeing to implement the new food regulation system. All jurisdictions agreed to use their best endeavours to introduce legislation based on the Model Food Act to their respective Parliaments by November 2001. Victoria, Queensland, South Australia, Tasmania and the ACT modified their food legislation in 2001. New South Wales introduced its Food Bill in late 2002 and re-introduced it in 2003. The Northern Territory intends to introduce the legislation in 2003. Western Australia is preparing drafting instructions for its Food Bill.

Review of pharmacy regulation

The National Review of Pharmacy Regulation (the Wilkinson Review — see chapter 3, volume 2) 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 of individual jurisdictions). The review also recommended maintaining existing ownership restrictions and removing business licensing restrictions.

CoAG referred the Wilkinson Review to a senior officials' working party headed by Mr David Borthwick of the Commonwealth Department of Health and Aged Care, and with representatives from States and Territories. The Prime Minister released the working party's report on 2 August 2002. The report suggested that CoAG coordinate a response to the Wilkinson Review. Several States and Territories are considering legislative change in the second half of 2003, whereby they will account for CoAG's position on the Wilkinson recommendations.

Review of legislation regulating the architectural profession

In November 1999, the Productivity Commission commenced a nine-month review (see chapter 10, volume 2) of the legislation regulating the architectural profession. This inquiry served as a national review of participating States and Territories' legislation.

The Productivity Commission completed the review on 4 August 2000 and the Commonwealth Government released the final report on 16 November 2000. The recommended approach was to repeal State and Territory architects Acts after an appropriate (two-year) notification period to allow the profession to develop a national, nonstatutory certification and course accreditation system that meets requirements of Australian and overseas clients.

A national working group comprising representatives of all States and Territories was convened to recommend a consolidated response to the Productivity Commission's findings. The working group supported the Productivity Commission's broad objectives, but rejected the review's recommended approach as not being in the public interest. It recommended, instead, adopting the alternative approach — namely, adjusting existing legislation to remove elements deemed to be anticompetitive and not in the public interest. Each government has committed to the reform agenda developed by the working group. The Queensland Parliament passed amending legislation in 2002, while other States and Territories are introducing changes during 2003.

Review of radiation protection legislation

In December 1998, CoAG agreed to conduct a single joint national NCP review of radiation protection legislation. The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) coordinated the review. One of ARPANSA's aims is to promote national uniformity in radiation

protection and nuclear safety policy and practices. To this end it formed the National Uniformity Implementation Panel (Radiation Control) in August 1998 as a working group of its Radiation Health Committee. Comprising officers from the Commonwealth, State and Territory radiation protection agencies, the panel is the Steering Committee for the NCP review.

ARPANSA released an issues paper and a draft report for public comment during 2000 and 2001, and the final report on 8 May 2001. The review found the current legislative framework for radiation protection to be appropriate. ARPANSA considered that retaining a generally prescriptive regulatory approach is necessary to protect public health and safety and the environment from the harmful effects of radiation. The review report thus recommended retaining most of the existing restrictions on net public benefit grounds. The exception relates to advertising and promotional activities (in Western Australia only). The report included recommendations for further action to improve the efficiency of the legislation.

In August 2001, ARPANSA presented jurisdictions' responses to the report recommendations to the Australian Health Ministers' Advisory Council, which approved the final list of recommendations on 30 May 2002 and also an implementation plan for 12 projects to be undertaken by various jurisdictions. States and Territories expect to complete their legislative and regulatory changes in 2003 or 2004.

Review of trustee corporations legislation

The Standing Committee of Attorneys-General (SCAG) is conducting an NCP review of the regulation of trustee companies, with a view to replacing the current State regulation with a national scheme of complementary laws. SCAG released a consultation paper on a draft uniform Bill in May 2001. The consultation paper discusses the key features of the trustee corporations industry, the main provisions of the draft Bill and alternative options for future regulation of the industry. The draft Bill seeks to provide for regulation of the trustee corporations industry that is commensurate with the nature of the industry and the risks posed to consumers by defaults of trustee corporations.

Underpinning the NCP report and the draft Bill is the assumption that the Commonwealth Government, through the Australian Prudential Regulatory Authority, would undertake the prudential supervision of trustee companies. New South Wales' Attorney-General's department, which provides the secretariat to SCAG, informed the Council in May 2003, however, that the Commonwealth Government had recently advised that the authority will not provide this supervision. This Commonwealth decision means that the States and Territories will have to consider alternative supervisory arrangements, which may have major implications for the draft uniform Bill.

Review of travel agents legislation

The Ministerial Council on Consumer Affairs commissioned the Centre for International Economics, overseen by a working party, to review legislation regulating travel agents (see chapter 5, volume 2). The Ministerial council released the review report for public comment in August 2000. The report recommended removing entry qualifications for travel agents, maintaining compulsory insurance and dropping the requirement for agents to hold membership of the Travel Compensation Fund (the compulsory insurance scheme). It preferred a competitive insurance system, whereby private insurers compete with the Travel Compensation Fund.

The Western Australian Department of Consumer and Employment Protection coordinated the preparation of a review response to the working party in liaison with CoAG's Committee on Regulatory Reform. The working party reported to Ministers in August 2002. It recommended that Ministers not accept two key recommendations in the Centre for International Economics report: (1) a competitive insurance model and (2) the removal of mandatory training qualification requirements. The working party supported the option to retain the Travel Compensation Fund, but advised reviewing contribution arrangements to establish a risk-based premium structure and make prudential and reporting arrangements more equitable. The Ministerial council endorsed the working party's recommendations in November 2002, and the Standing Committee of Officials of Consumer Affairs will oversee their implementation.

Review of 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 came into effect in November 1996, replacing various State and Territory statutes governing credit, money lending and aspects of hire-purchase.

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 enacted alternative consistent legislation which, until recently, has required amendment by the Western Australian Parliament to remain consistent when the code is amended. On 30 June 2003, however, Western Australia adopted the template legislation system favoured by all other States and Territories except Tasmania. Tasmania enacted a modified template system.

State and Territory governments jointly undertook an NCP review (see chapter 8, volume 2) 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. 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 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. It recommends maintaining the current provisions of the code, reviewing its definitions to bring term sales of land, conditional sale agreements, tiny term contracts and solicitor lending within the scope of the code, and enhancing the code's disclosure requirements. The Ministerial Council on Consumer Affairs endorsed the final report in 2002 and referred it to the Uniform Consumer Credit Code Management Committee, which 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 template legislation. Automatic updating of relevant legislation will then occur in all other States and Territories except Tasmania, which will enact 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.

Chapter 6 of volume 1 (on national standard-setting obligations) notes that the Commonwealth's Office of Regulation Review reported 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.

Review of trade measurement legislation

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

Governments identified that the national scheme involves legislation that may have an impact on competition. As a result, a national NCP review of the scheme for uniform trade measurement legislation is being undertaken (see chapter 8, volume 2). Some jurisdictions intend to 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 concerns 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 standing committee is expected to subsequently report to the Ministerial Council on Consumer Affairs on a proposed approach to the non-prepacked meat issue. If the Ministerial council agrees to the suggested national approach to trade measurement, then 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.

Assessment

Most of the national reviews are now finalised. In the case of the Mutual Recognition Agreement, however, the Commonwealth has requested a further review by the Productivity Commission. In the case of the review of trustee corporation legislation, the Standing Committee of Attorneys-General is likely to revise the draft Bill following the Commonwealth's recent decision not to allow the Australian Prudential Regulatory Authority to supervise such corporations. The review of trade measurement legislation will not be completed until late 2003 or early 2004 because States and Territories are still working towards a common approach to non-prepacked meat.

In most cases where reviews have been completed, the jurisdictions have agreed on an implementation strategy but not all have completed the legislative changes arising from the reviews. In some cases, however, jurisdictions requested further work by working parties on the implications of the review recommendations and have not yet decided upon their reform strategy. This is the situation in the instances of the review of drugs, poisons and substances legislation and pharmacy regulation.

Where national reviews are not complete, or the reform strategy has not been decided, governments are yet to comply with CPA clause 5 obligations.