10 Australian Government

A1 Agricultural commodities[1]

Wheat Marketing Act 1989

Until 1998 the Wheat Marketing Act prohibited the export of wheat by anyone other than the Australian Wheat Board without the board's consent. In addition, the Act guaranteed the board's borrowings until July 1999 and provided for the accumulation of the Wheat Industry Fund to eventually replace the statutory guarantee.

In 1998 the Act was amended to facilitate the establishment of a grower owned and controlled company, AWB Limited, and its export pool subsidiary, AWB International Limited (AWBI), to assume responsibility for wheat marketing and financing from July 1999. The amendments also:

- established the Wheat Export Authority (WEA) to control the export of wheat and to report to the Australian Government minister for Agriculture before the end of 2004 on the performance and conduct of the AWBI
- conferred on the AWBI the power to export wheat without the WEA's consent
- exempted anything done by the AWBI in exporting wheat from part IV of the *Trade Practices Act 1974*.

The power of the WEA to control the export of wheat is constrained. The amended Act requires the WEA to consult the AWBI before consenting to the export of wheat; for proposed exports in bulk, the WEA cannot consent without the AWBI's approval.

In early 2000, the government commissioned a three-member committee to review the Act against CPA clauses 4 and 5 and other policy principles (see chapter 3). The committee received around 3000 submissions and conducted consultations throughout the country and overseas. It released a draft report for comment in mid-October 2000, and the Minister for Agriculture released the final report on 22 December 2000. In relation to the CPA clause 5, the committee argued that introducing more competition was more likely than

[1] The alpha-numeric descriptors for legislation review subject areas are listed in chapter 9, table 9.11.

continuing the export controls to deliver greater net benefits to growers and the wider community (Irving et al. 2000).

The Committee found that:

- any price premiums earned by virtue of the single desk are likely to be small (estimated at around US$1 per tonne in the period 1997–99)
- the single desk is inhibiting innovation in marketing
- the single desk is impeding cost savings in the grain supply chain.

Estimates of the economic impact of the single desk arrangements ranged from a loss of $233 million per year to a gain of $71 million.

The committee felt, however, that it would be premature to repeal the Act without a further relatively short evaluation period. The committee was concerned that the estimation of benefits and costs is complex, and that some uncertainty remained. It also considered 'that the new more commercial arrangements for wheat marketing might achieve more clearly demonstrable net benefits than was evident during this review' (Irving et al. 2000, p. 7). The committee recommended, therefore, that:

- the government retain the single desk until the 2004 review required by the Act
- the 2004 review incorporate NCP principles and be the final opportunity to show a net community benefit from the arrangements
- the government convene a joint industry–government forum to develop performance indicators for the 2004 review.

The committee also recommended that the WEA trial for three years a simplified system of consents for the export of wheat in bags and containers by other exporters (see box 10.1).

The government responded on 4 April 2001, stating that it would retain the single desk but would not conduct the 2004 review under NCP principles. The minister argued that the latter decision is necessary to avoid further uncertainty in the industry and for wheat growers. The government agreed to the development of rigorous and transparent performance indicators to ensure the 2004 review accurately measures the benefits to industry and the community.

In June 2002, the National Competition Council assessed that the government had not met its CPA 5 obligations arising from the Wheat Marketing Act, because the review did not show that retaining the wheat export single desk is in the public interest. Rather, the review found that allowing competition is more likely to be of net benefit to the community.

Consistent with the government's response, the 2004 Wheat Marketing Review did not consider whether the wheat export single desk should

continue and, as acknowledged in the terms of reference, was not intended to fulfil NCP requirements. In responding to this review, the minister confirmed the government's intention to maintain the framework of the current wheat marketing arrangements under the Act.

Box 10.1: Consents to export wheat in bags and containers

The 2000 NCP review of the Wheat Marketing Act also recommended that the Wheat Export Authority (WEA) trial (for the three years until the 2004 review) a simplified export control system whereby it licenses exporters annually. The review committee considered that the freight rate differential between bulk exports and exports in containers and bags provides a high degree of protection for bulk exports by the AWBI to all markets except Japan, and that opening up the export of wheat in containers and bags would allow highly desirable innovation in the discovery, development and expansion of markets for wheat exports.

In its response, the Australian Government agreed to improve the export consent system based on the licensing arrangements proposed in the review. The WEA announced the changes on 28 September 2001. The changes included clearer consent criteria, a quarterly application cycle, a 12-month consent for shipments to niche markets and a three-month consent for other shipments.

In its 2002 NCP assessment, the Council found that the export consent arrangements administered by the WEA were substantially more restrictive than recommended by the review, and noted that the Office of Regulation Review reported in November 2001 that the regulation impact statement prepared for the revised export consent guidelines was inadequate (PC 2001).

The 2004 (non-NCP) review, released in summary form on 15 October 2004, found that the current export consent system is not performing as effectively as it could and is unlikely to result in the best outcomes for the industry. It observed that returns to growers are unlikely to be maximised in this situation and that exporters other than AWBI need more confidence, certainty, timeliness and incentive to focus on market development. It recommended that the WEA adopt a longer term consent system for bagged and containerised exports, involving:

- 12-month consents with specified tonnage limits for exports to 'non-niche' markets
- 24-month consents with unlimited tonnage for exports to 'niche' markets
- clearer rules—for example, clearer definitions of 'niche' products, and more information on markets available to other exporters
- a streamlined application process, turning applications around within four days.

On 5 April 2005, the Minister for Agriculture, Fisheries and Forestry announced that the Government accepted in principle all the recommendations of the panel, and asked the WEA to bring forwards for his consideration a proposal for a revised consent system to operate from 1 October 2005.

The Productivity Commission, in its report (28 February 2005) on the review of the NCP, observed that evidence from the reform of other grain marketing arrangements, and the findings of the 2000 review:

> *… provide a compelling reason for immediately holding an independent, transparent review into the future of the wheat 'single desk'. It also notes that an early review, if it leads to liberalisation, would have spin-offs to other grain areas. For example, full*

> *deregulation in Western Australia has been made contingent on action at the Federal level.* (PC 2005a, p.267)

Accordingly, the commission recommended that the Australian Government initiate such a review (PC 2005a, p. 267).

No such review has been commissioned to date. Consequently, the Council must confirm its assessment of 2004, 2003 and 2002 that the Australian Government has not met its CPA clause 5 obligations arising from the Wheat Marketing Act because it has failed to show that restricting competition in the export of wheat is in the public interest.

A4 Forestry

Export Control Act 1982 (relating to wood)

The Australian Government controls the export of wood and woodchips via Regulations under the Export Control Act: the Export Control (Unprocessed Wood) Regulations, the Export Control (Hardwood Wood Chips) Regulations 1996 and the Export Control (Regional Forests Agreements) Regulations. At the time of the NCP review in 2001 the Regulations prohibited the export of:

- hardwood woodchips and other unprocessed wood from native forests unless:
  - from a region covered by a Regional Forest Agreement (RFA), or
  - the exporter holds an export licence granted by the minister
- unprocessed wood from plantations unless:
  - from a state or territory with a code of forest practice for plantation management that the minister accepts satisfactorily protects environmental and heritage values, or
  - the exporter holds a licence granted by the minister to export that wood.

RFAs are agreements between the Australian and respective state governments to protect environmental and other values by maintaining a comprehensive, adequate and representative national forest reserve system and to give forest industries a firm base for investment. There are 10 RFAs in four states: New South Wales, Victoria, Western Australia, and Tasmania.

An officials committee drawn principally from the Department of Agriculture, Fisheries and Forestry (Australia) completed an NCP review of the Regulations in July 2001. The review was unable to find any significant benefit from the Regulations in encouraging either domestic processing or sustainable management of forests. In particular, it noted that a plethora of

state legislation and the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* adequately protect environmental values. It recommended that the Australian Government:

- remove export controls on sandalwood
- remove export controls over plantation sourced wood once plantation codes of practice for Queensland and the Northern Territory meet National Plantation Principles (Standing Committee on Forests 1996)
- either remove export controls over native forest sourced wood or, if the government perceives some benefit from continuing export controls, allow such exports from non-RFA regions under licence.

The government has made substantial progress. It has removed export controls on sandalwood and on plantation sourced wood except that from Queensland. The removal of export controls on wood from Queensland plantations is awaiting Australian Government approval of a plantation code of practice for the state. The export of hardwood woodchips and other unprocessed wood from non-RFA native forest remains subject to licensing.

The Australian Government will have met its CPA clause 5 obligations arising from the controls on wood exports when it removes controls on the export of wood from Queensland plantations and on wood from non-RFA native forests.

A5 Agricultural and veterinary chemicals

Agricultural and Veterinary Chemicals (Administration) Act 1992
Agricultural and Veterinary Chemicals Code Act 1994

Legislation in all jurisdictions establishes the national registration scheme for agricultural and veterinary chemicals, which covers the evaluation, registration, handling and control of these chemicals up to the point of retail sale. The Australian Pesticides and Veterinary Medicines Authority (formerly the National Registration Authority) administers the scheme. The federal Acts establishing these arrangements are the Agricultural and Veterinary Chemicals (Administration) Act and the Agricultural and Veterinary Chemicals Code Act. Each state and territory adopts the Agricultural and Veterinary Chemicals Code into its own jurisdiction by referral.

The Australian Government Acts were subject to a national review (see chapter 19). The national processes established to implement the legislative reforms arising from the review have yet to complete their work. Until changes to these Acts are finalised, the reform of state and territory legislation that automatically adopts the code cannot be completed.

The Council retains its 2004 NCP assessment that the Australian Government has not met its CPA obligations in this area because it has not completed its reforms.

A7 Quarantine and food exports

Quarantine Act 1908

The Australian Government administers Australia's quarantine arrangements under the Quarantine Act. In the 2003 NCP assessment, the Council found that the government met its CPA obligations relating to the human quarantine provisions of the Act.

The animal and plant health provisions of the Act have not been subject to NCP review, but the Australian Quarantine Inspection Service proposes to commence a comprehensive examination of these provisions following the resolution of a World Trade Organisation challenge. Any amendments arising from this review will be subject to analysis via a regulation impact statement.

Because the Australian Government has not completed its review and reform of the animal and plant health provisions of the Quarantine Act, the Council assesses that it has not met its CPA obligations in this area.

Export Control Act 1982 (relating to food)

The Export Control Act provides for the inspection and control of food and forest exports. (Section A4 of this chapter discusses review and reform of restrictions on competition in the export of forest products.) The Act controls most food exports—fish, dairy produce, eggs, meat, fresh and dried fruits and vegetables. It restricts competition by requiring premises to be registered and to meet certain construction standards, and by imposing processing standards with attendant compliance costs and regulatory charges. These restrictions raise Australian food exporters' costs and may lead to forgone export sales, particularly where the requirements differ from those for domestic sales.

The Australian Government completed a two-year review of the Act, as it relates to food, in February 2000. The review found that the Act is fulfilling its purpose and delivering an overall economic benefit but recommended improving the administration of the Act, most importantly by the government:

- introducing a three-tier system of export standards:
  - Australian standards, which all manufacturers must meet
  - standards imposed by overseas governments, which only those manufacturers wishing to supply specific export markets must meet

  - market-specific requirements requested by industry.

- harmonising domestic and export standards, and making them consistent with relevant international standards
- periodically reviewing regulation against NCP principles and accelerating the review of subordinate regulation
- making monitoring and inspection arrangements fully contestable.

In April 2002, the government announced that it would implement all review recommendations. The Australian Quarantine Inspection Service, in consultation with industry, has been progressing the implementation of the recommendations such as the review of export control orders to reflect the three-tier system and to provide for contestable monitoring and inspection arrangements. The Export Control (Meat and Meat Products) Orders 2005 and the Export Control (Dairy, Eggs and Fish) Orders 2005 follow reviews of earlier orders. The export control Order relating to game, rabbit and poultry meat is soon to commence. In addition ministerial councils responsible for primary industries and food regulation have developed new Australian Standards, such as the Australian Standard for Hygienic Production and Transportation of Meat and Meat Products for Human Consumption—that harmonise domestic and export requirements of food manufacturers.

The Australian Government will have met its CPA clause 5 obligations arising from the control of food exports when it completes the reform of export control orders to reflect the three-tier system and to provide for contestable monitoring and inspection arrangements.

A9 Mining

Aboriginal Land Rights (Northern Territory) Act 1976

The *Aboriginal Land Rights (Northern Territory) Act 1976* and Regulations give traditional Aboriginal owners the right to consent to mineral exploration. In 1998 the Australian Government commissioned an independent review of this legislation. The review (released in August 1999) recommended retaining this right and removing other restrictions on consent negotiations. The government released an options paper on possible reforms in 2002; in response, the Northern Territory Government and the Northern Territory Land Council released a joint submission in September 2003 proposing reforms to the Act. The Australian Government is considering reforms to the Act in light of the government's broader reform to Indigenous affairs and expects to introduce amendments to the Act in 2005.

The Council assesses that the Australian Government has not met its CPA obligations in this area because it has not completed reform activity.

B6 Ports and sea freight

Navigation Act 1912

The Navigation Act regulates various maritime matters, including ship safety, coasting trade, the employment of seafarers, and shipboard aspects of the protection of the maritime environment. The Act restricts competition by:

- requiring all persons wishing to be a ship's master, crew or pilot to be properly qualified
- requiring all ships to meet minimum standards of construction, equipment, manning and maintenance
- prescribing employment related matters, including cabotage.

Part VI of the Navigation Act provides for the issue of coasting trade licences to ships of any flag, which allow licensed ships to engage in the coasting trade at any time, conditional on Australian rates of wages being paid to the crew while so doing. In addition, such vessels are precluded from being subsidised by foreign governments. In cases where licensed ships cannot meet all coastal shipping demand, the minister can issue single or continuous (lasting up to three months) voyage permits, which allow foreign vessels to operate without having to satisfy cabotage requirements.

This part of the Navigation Act was to have been reviewed under NCP in 1999-2000. In the event options to reform cabotage were examined in 1997 by the government's Shipping Reform Group and the government subsequently streamlined the processes for engaging in coastal trade, significantly reduced the charge for a permit to engage in coastal trade and broadened the criteria for issuing these permits, but did not remove the key cabotage restrictions.

The NCP review of the Act, except Part IV, was completed in June 2000. It recommended that Australia continue to base its regulations on internationally agreed standards, except where no international standard exists or where the Australian community expects standards to exceed international measures. It also found that some employment provisions are redundant or would more appropriately be addressed under company based employment arrangements under general industrial relations legislation, and that other employment provisions, while they should continue, should be based on performance standards (where possible) instead of prescriptive regulation. The government considered the recommendations in 2002 and 2003 but has not attempted to amend the employment related provisions of the Act.

In its 2005 review of NCP reforms, the Productivity Commission described the Australian Government's commitment to review cabotage as a 'key piece of unfinished NCP business under the legislation review programme'. The commission considers that cabotage 'reduces the competitiveness of

Australian firms that rely, or otherwise would rely, on coastal shipping' (PC 2005a, pp. 220-1). Taking into account submissions that argued that other legislative impediments contribute to diminished competitiveness by Australian ship operators, the Productivity Commission concluded that

> *… a wider review of coastal shipping would have important advantages over a narrower assessment of cabotage restrictions alone. And, while some of the impediments to better outcomes in the industry could be pursued through a self-contained reform program, coastal shipping is an integral component of the national freight transport system. Hence, to ensure that reform efforts in the industry are compatible with achieving competitive neutrality across transport modes, those reforms would be better pursued as part of the nationally coordinated and multi-modal approach in freight transport reform which the commission is proposing.* (PC 2005a, pp. 221-2).

The Council assesses that the Australian Government has not met its CPA obligations in this area because it has not completed (1) the review of the cabotage related provisions of the Act and (2) the reforms recommended by the 2000 review of other provisions of the Act.

Shipping Registration Act 1981

The Shipping Registration Act provides for registering ships and mortgages on ships. The Australian Government's 1997 review found that Australia should continue to legislate conditions for granting nationality to its ships in accordance with international conventions. It made recommendations to improve the workings of this legislation and to reduce compliance costs, most significantly to:

- recognise non-mortgage securities
- give added protection to mortgagees
- abolish the list of 'approved' home ports
- make the register available on-line.

The government approved amendments in 1998 to implement the review recommendations, but these did not proceed. The Maritime Legislation Amendment Bill 2005, currently before the Senate, allows access to the register online and makes minor changes with respect to closing the registration of mortgages, but does not address the other key recommendations.

The Council assesses that the Australian Government has not met its CPA clause 5 obligations arising from the Shipping Registration Act.

C2 Drugs, poisons and controlled substances

Therapeutic Goods Act 1989

The terms of reference for the Galbally national review did not explicitly cover Australian Government legislation such as the Therapeutic Goods Act. The Council, therefore, acknowledges the Australian Government's view that the Galbally recommendations to modify federal legislation to improve legislative outcomes for state and territory governments represent best practice rather than a formal CPA obligation.

However, the Council considers that efficient outcomes are best served by all participating governments meeting the recommendations of the national review. Moreover, the terms of reference required the review to:

- have regard to '[n]ational uniformity of regulation and the administration of that regulation'
- address '[i]nterfaces with related legislation to maximise efficiency in the administration of legislation regulating this area.'

Given specific Galbally recommendations relating to Australian Government legislation, and the Therapeutic Goods Act in particular, the Council considered it appropriate to examine Australian Government progress in implementing Galbally reforms, as for other jurisdictions.

Following the review's outcome (see chapter 19), the Australian Health Ministers Council endorsed a proposed response to the review's recommendations. The Council of Australian Governments (COAG) considered the proposed response out of session and unanimously endorsed the final report of the Galbally review and the Australian Health Ministers' Advisory Council (AHMAC) Working Party response to the review recommendations.

In conjunction with implementing the Galbally review recommendations, the Australian Government has agreed to establish a joint agency (the Trans Tasman Therapeutic Products Agency) with New Zealand for the regulation of therapeutic goods. The establishment of the joint agency is separate to the Galbally review process. The governments initially expected the new arrangements to commence on 1 July 2005, but have deferred the agency's commencement for a year to provide more time for consultation with industry. Rather than reforming therapeutic goods legislation that is likely to be repealed in 2006, the government considers that it will implement legislative change as part of the new trans-Tasman legislation.

The COAG response to the Galbally report provides for each jurisdiction to implement required reforms over the 12 month period to July 2006. The Australian Government anticipates that it will be able to implement any

requisite reforms to the Therapeutic Goods Act (or its successor) within this same period.

The Council acknowledges that the Australian Government is considering the Galbally review recommendations in the context of new trans-Tasman legislation. However, because the Australian Government has not yet implemented the requisite reforms to its legislation, the Council must conclude that it has not met its CPA obligations on this matter.

C3 Restrictions on pathology services

Health Insurance Act 1973 (part IIA)

Part IIA of the Health Insurance Act specifies that Medicare benefits are payable for pathology services if:

- the pathology service is requested by a registered medical or dental practitioner, and a clinical need is identified for the service
- the specimen is collected at specific locations including an approved collection centre
- the services are provided by an approved pathology practitioner in an accredited pathology laboratory owned by an approved pathology authority.

A review of part IIA of the Act recommended that further reviews be undertaken to:

- review the current qualification requirements and the approval process for approved pathology practitioners
- examine the merits of extending requesting rights for pathology services to nurses and/or health workers in remote communities
- revise the accreditation requirements for pathology laboratories to place greater emphasis on quality assurance and public disclosure.

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

In the 2003 NCP assessment, the Council accepted the public interest case for deferring further reforms to the approved collection centre scheme because the current scheme is being phased in over four years to July 2005. It considered that if the Australian Government were to accept the review recommendations and announce a review in 2005 of the regulations affecting

the approved collection centre scheme (with appropriate terms of reference), then the government would comply with its CPA obligations.

In the context of the 2004 NCP assessment, the Australian Government advised that it has accepted the key review recommendations. For this assessment, the Australian Government has advised that the Department of Health and Ageing is working to implement the recommendations as a priority. In particular, the department has employed consultants Phillips Fox Lawyers to review the enforcement and offence provisions in the Health Insurance Act. In January 2005, the department released the issues and options paper prepared by Phillips Fox Lawyers, which foreshadows likely recommendations from the review. The proposed recommendations appear consistent with COAG requirements. The department expected to complete the review by mid 2005. It will put a package of proposed reforms to government for approval and implementation of the necessary legislative changes.

As reported by the Council in the 2004 NCP assessment, the *Pathology Quality and Outlays Memorandum of Understanding 2004/05-2008/09* between the Australian Government and the pathology industry specifies that the parties will review the approved collection centre arrangements to ensure these arrangements remain consistent with the objectives of competition policy. The review is to be completed in 2005-06, following the completion in July 2005 of the phasing in of the approved collection centre scheme. Apart from publishing the memorandum of understanding (a public document available on the Department of Health and Ageing website), the government has not announced the review or made available terms of reference. The Department of Health and Ageing advised, however, that it has developed terms of reference for the review and is putting out a tender to seek expressions of interest in undertaking the review.

The Council notes that the government's acceptance of key review recommendations is consistent with its CPA requirements. It considers that the government should expedite implementation of NCP reforms (including the commencement of subsequent reviews where necessary). The Australian Government's progress on pathology reforms since the review's completion in December 2002 has been slow. The government has failed to meet the Council's compliance benchmark—that is, a formal announcement of a review of the approved collection centre scheme, with appropriate terms of reference.

The Council thus assesses that the Australian Government has not met its CPA obligations in this area.

C4 Regulation of private health insurance—product controls

National Health Act 1953 (part 6 and schedule 1)
Health Insurance Act 1973 (part 3)

The Australian 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. In 2000, the Council raised with the Australian Government its understanding that regulation 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. The Council considered that 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.

For the 2002 and 2003 NCP assessments, the Australian Government informed the Council that the Department of Health and Ageing was establishing trials to assess the suitability of including 'podiatric surgery' within the definition of 'professional attention' under the Health Insurance Act. Such inclusion would allow podiatrists to negotiate with health funds to attract rebates for in-hospital podiatric surgery. Approval to commence the trials was sought in 2003.

For the 2004 NCP assessment, the Australian Government advised that attempts to establish the podiatric trials had ceased. Instead, the Health Legislation Amendment (Podiatric Surgery and Other Matters) Act was enacted. The Act removes any legislative impediment to health funds paying benefits, from their hospital tables, for accommodation and nursing care associated with in-hospital podiatric surgery by Australian Government accredited podiatrists. (However, Medicare rebates for the accredited podiatric surgeon's or associated anaesthetist's fees are not available (Abbott 2004). Where the same foot surgery is performed by an orthopaedic surgeon, Medicare covers the surgery and anaesthetist's fees.)

The amendments represent only a partial response to product restriction controls because the legislation does not extend to all substitute allied health care providers.

In May 2005, the Australian Government advised the following:

- There is no impediment to allied health care providers negotiating with private health insurers for rebates for their services under ancillary health cover (see box 10.2).

Box 10.2: Health fund cover offerings

Under the present arrangements health funds may offer cover for:

- up to 100 per cent of charges levied by public and private hospitals
- up to 25 per cent of the Medicare benefits schedule fee for medical services provided in private or public hospitals—Medicare provides 75 per cent
- medical cover for fees for medical services provided in hospital above the Medicare benefits schedule fee if the fund has a practitioner agreement where the medical practitioner is covered by an agreement or gap cover scheme arrangement with the medical practitioner
- ancillary health services including dentistry, optical, physiotherapy and a range of other relevant health services—these services do not require a referral from a medical practitioner.

- Regulations prevent health funds from paying rebates for hospital accommodation and nursing care unless the services are provided by, or on behalf of, medical practitioners, obstetric nurses, dental practitioners and, from 13 January 2005, accredited podiatrists.
- The services provided by allied health care providers do not attract Medicare benefits. This had been the case since 1983. However, from 1 July 2004, Medicare rebates have been available for certain allied health services, including those provided by podiatrists.

The Australian Government further stated that, although conscious of the Council's concerns, it is responsible for ensuring that any changes affecting the delivery of health services by alternative providers do not have a detrimental impact on the broader health system, including Medicare. It stated that this responsibility is recognised by the public interest provisions in the Competition Principles Agreement.

Moreover, the government also stated that representations from alternative providers will be considered on an individual basis, in line with the government's responsibility to ensure that any changes do not have a detrimental impact on the broader health system.

In sum, the Australian Government has:

- introduced reforms in relation to podiatry services
- elaborated on the need to balance carefully competition objectives with broader social and budgetary objectives
- committed to assessing the merits of further easing the product restrictions on a case by case basis

Given these developments, the Council assesses that the Australian Government has met its CPA obligations in this area.

F1 Workers compensation insurance

Safety, Rehabilitation and Compensation Act 1988

Not assessed (see chapter 9).

I3 Internet gambling

Interactive Gambling Act 2001

The Interactive Gambling Act makes it illegal to provide certain interactive gambling services, such as online poker machines and casinos. Other gambling services, such as interactive wagering and sports betting, are exempted from the Act and regulated by the states and territories. The Act was not included in the Australian Government legislation review schedule, but is subject to CPA clause 5(5) requirements for new legislation. The Australian Government Office of Regulation Review 'failed' the regulation impact statement for the proposed legislation at both the consultation and decision making stages.

In the 2001 NCP assessment, the Council found that the government had not provided a net public benefit argument for the legislation. While the government stated that its objective is to minimise opportunities for problem gamblers to exacerbate their problems through ready access to online gambling, it did not address whether banning some forms of domestically sourced Internet gambling is the only way of achieving this objective.

The Australian Government reviewed the Act in line with the statutory requirement under the Act, to consider the social and commercial impact of interactive gambling services, and the effectiveness of the Act in dealing with these effects. This work was not an NCP review with a primary focus on assessing the legislation against the CPA. The final review report (issued in July 2004) found that the benefits of interactive gambling services to consumers, government, industry and the economy are likely, on balance, likely to outweigh the costs (particularly those costs associated with problem gambling). The review found that restricting access by relying on Internet filtering technologies would be costly and only partly effective. It also found that there would be small benefits from using the payments system to block illegal gambling transactions, but this finding did not account for implementation and administration costs, or for effects on the efficiency of payments systems. The review did not assess the costs and benefits of making it an offence to provide certain forms of interactive gambling services to customers physically located in Australia; rather, it examined issues related to whether the legislated framework was preventing the escalation of problem gambling resulting from new interactive gambling services.

Following the review, the Australian Government announced that it would not take any specific regulatory action in relation to betting exchanges. The government perceives the licensing and regulation of gambling services as a matter for the states and territories.

Given that the review did not address the principal restrictions on competition, the Council maintains its previous assessment that the Australian Government has not complied with its CPA clause 5(5) obligations. The Council accepts, however, that it may be difficult to meet the government's social policy objectives in other ways.

K Communications

Broadcasting Services Act 1992
Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992
Radio Licence Fees Act 1964
Television Licence Fee Act 1964

The Broadcasting Services Act and related Acts embody ad hoc regulation that the Australian Government has established over time. They impose a variety of restrictions on competition, some of the most important being as follow:

- The number of commercial free-to-air television broadcasters is restricted, in effect, to three in any geographic area until at least the end of 2006, and the scope for new radio stations is also restricted.
- The commercial free-to-air television broadcasters are prohibited from multichannelling[2], to the advantage of pay television operators, but these operators are not allowed to broadcast major sporting events that are on the 'antisiphoning' list unless free to air broadcasters have had a reasonable opportunity to acquire the free to air rights. These antisiphoning rules, in turn, deliver a substantial market advantage to the existing broadcasters.
- Television broadcasters are required to simulcast their analogue services in standard definition and for 1040 hours per year in high definition digital format. Standard definition has been considered satisfactory in other countries. Broadcasters are also required to simulcast both analogue and digital signals until the end of the simulcast period, which leaves little spectrum for new digital services. Because analogue television is much less efficient than digital television in its use of spectrum, the existing broadcasters account for most of the spectrum.

2 Multichannelling is the transmission of more than one stream of programming over a television channel.

- Through program restrictions, the legislation restricts the ability of datacasters[3] to compete with broadcasters.

In its 2000 review of broadcasting, the Productivity Commission described the regulatory arrangements as a legacy of inward looking, anticompetitive and restrictive 'quid pro quos'. It argued that the government should close analogue services as soon as possible, end the requirement for high definition digital broadcasting, relax the restrictions on datacasting and multichannelling, end the artificial distinction between datacasting and digital broadcasting, and relax the antisiphoning rules (PC 2000).

The commission also recommended that the government separate spectrum access rights from broadcasting licences and convert broadcasting licence fees to spectrum access fees. It further contended that the Australian Communications Authority (now the Australian Communications and Media Authority) should sell access to spectrum through a competitive bidding process, and that all broadcasting licence holders should pay fees based on their use of spectrum rather than on their revenue. These proposals would free up spectrum and make it possible for broadcasters to enter the industry. In this context, the commission recommended removing the restrictions that prevent new broadcasters from entering the market before the end of 2006.

The government has made only limited responses to the inquiry report. The Australian Government Department of Communications, Information Technology and the Arts (DCITA) conducted a datacasting review during 2002 and, in releasing the December 2002 review report, stated that it 'there should be no change at this time to the rules relating to the content which can be provided under a datacasting licence' (DCITA 2002, p. 7). The government has since authorised limited datacasting 'trials'.

In 2004, the government extended the antisiphoning scheme until 31 December 2010 while updating the list of events covered by the scheme (via the Broadcasting Services (Events) Notice (No. 1) 2004). The Broadcasting Services Amendment (Anti-Siphoning) Act 2005 received royal assent on 1 April 2005. The Act extended the automatic delisting period under the antisiphoning scheme from six to twelve weeks, providing greater flexibility for subscription television services and content rights holders.

In May 2004, the government announced that it would conduct several reviews required under the Broadcasting Services Act.

1. Examine whether free-to-air broadcasters should be allowed to provide additional programming (including multichannelling) and offer other types of service (including pay television channels), and also consider whether the requirement for simulcasting analogue and digital signals should be amended or repealed.

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[3] A datacasting service delivers content as text, data, speech, music or other sounds and visual images.

2. Examine matters relating to the potential end (31 December 2006) of the moratorium on the issue of new commercial free-to-air television broadcasting licences.

3. Examine the efficient allocation of spectrum for digital television.

4. Report on whether provisions of the Broadcasting Services Act relating to underserved geographic areas should be amended or repealed.

The government released four issues papers relating to these reviews in mid-2004 and sought submissions. (It is yet to release the outcome of the reviews.)

The Government also commenced a review of high definition digital television requirements in May 2005. A review of the duration of the digital simulcast period is to be conducted by early 2006.

The Productivity Commission's final inquiry report on its review of NCP reforms, released on 14 April 2005, recommends that high priority should be accorded to removing the restrictions on the number of free-to-air television licences, multichannelling and datacasting, unless the government's current reviews 'provide a compelling case to the contrary. 'The commission recommended that these measures should be implemented as package (PC 2005a, pp. 236–7).

The Council assesses that the Australian Government has not met its CPA obligations in this area because it is yet to address the major restrictions on competition.

Radiocommunications Act 1992 and related legislation

The Radiocommunications Act is the primary legislation governing the use of the radiofrequency spectrum that is required for broadcasting and telecommunications services and for community safety services. There are competing demands for radiofrequency spectrum (a limited resource), and the Australian Communications and Media Authority conducts auctions for those parts of the spectrum that are particularly valuable to users. The authority also ensures sufficient spectrum is available for noncommercial organisations that fulfil a public good role, such as the defence forces and community services.

The Productivity Commission conducted an NCP review of the Radiocommunications Act and related Acts in 2001-02. (The government released the final review report on 5 December 2002.) The commission highlighted the need for the scarce spectrum resource to be used efficiently and in ways that do not restrict competition (PC 2002, pp. xxxi–xxxii). To this end, it made several recommendations to enhance the role of the market in spectrum management. The government accepted most of these recommendations, but rejected six, of which the most significant related to the repeal of elements of the Radiocommunications Act that allow the minister to impose limits on parts of the spectrum that a person may use. The

government rejected this recommendation on the basis that the Act's provisions are 'strongly pro-competitive' and work in harmony with s50 of the Trade Practices Act.

Of the 35 recommendations, nine require legislative action to amend the Act. Drafting the legislative changes started in early 2004, and the government expects Parliament will consider an amendment Bill during the sittings of late 2005 or earlier 2006.

The Council thus assesses that the Australian Government has not yet met its CPA obligations in this area because review and reform are incomplete.

Australian Postal Corporation Act 1989

The Australian Postal Corporation Act gives Australia Post a monopoly in:

- the collection and delivery within Australia of letters up to 250 grams and for a fee up to four times the rate of postage for a standard postal article carried by ordinary post
- the delivery of incoming international mail.

Australia Post is required to make the standard letter service available at a single uniform rate of postage for all Australians. It funds this community (sometimes known as universal) service obligation (CSO) internally at an annual cost of around $90 million.

In 1997 the Australian Government requested that the Council review the Act. The Council's report was completed in February 1998, recommending that:

- Australia Post continue to provide the Australia-wide letter service, with unprofitable parts of this CSO funded directly from the Budget
- household letters remain reserved to Australia Post, with a mandated uniform rate of postage
- open competition be introduced to the delivery of business letters
- all international mail services be open to competition
- the government regulate to ensure access on reasonable terms to Australia Post's CSO and post office box services (NCC 1998b).

In July 1998, the government announced that it would reduce the scope of Australia Post's monopoly. The Postal Services Legislation Amendment Bill 2000 was introduced to Parliament in April 2000. This would have allowed competition in the delivery of incoming international mail and in the collection and delivery of domestic letters above 50 grams and above the standard letter postage rate. It would have also established a postal services access regime under the Trade Practices Act.

The government withdrew the Bill in March 2001, however, in the face of opposition in the Senate. Then, on 14 November 2002, it announced a package of postal reforms that would partly address the recommendations of the 1998 NCP review. The subsequent *Postal Services Legislation Amendment Act 2004* was passed on 12 May 2004. The legislation provides for:

- expanded powers for the Australian Communications and Media Authority to cost Australia Post's CSOs and report on Australia Post's quality of service and compliance with service standards
- the introduction of accounting transparency for Australia Post (by giving the ACCC the power to determine record keeping rules for Australia Post) to assure competitors that Australia Post is not unfairly competing by cross-subsidising its competitive services with revenue from reserved services
- clarification of the legality of 'document exchanges' (businesses that provide mail collection and delivery services for businesses) and 'aggregators' (businesses that sort the mail of smaller companies so it qualifies for Australia Post's bulk mail discounts).

The reforms in the Postal Services Legislation Amendment Act will have some pro-competitive impact. The monitoring of Australia Post's CSOs and service quality, however, does not compare with the enhanced quality of service that would be likely if Australia Post were subject to competition in the delivery of standard mail and incoming international mail. Nevertheless, accounting separation will be helpful to competitive neutrality outcomes, and the legitimisation of document exchanges will remove the risk of legal challenge to these entities, although it will not represent an increase in competition to Australia Post.

In the 2004 NCP assessment, the Council concluded that the government had not met its CPA obligations in this area because the reforms fell short of addressing the recommendations of the NCP review (in particular, the recommendation to allow competition in the delivery of incoming international mail and the delivery of domestic business mail).

The government has since introduced the Postal Industry Ombudsman Bill 2004 to Parliament, on 17 November 2004. The Bill would establish a Postal Industry Ombudsman within the office of the Commonwealth Ombudsman, to deal with complaints from consumers and small business about the provision of postal services. The new ombudsman would have jurisdiction over Australia Post and any other postal operators who elect to 'opt into' the ombudsman scheme. The Bill was passed in the House of Representatives on 8 September 2005, and has been returned to the Senate.

Given that the key restrictions remain unreformed, the Council confirms its previous assessments that the Australian Government has not met its CPA obligations in this area.

L Barrier assistance

Customs Tariff Act 1995—textiles, clothing and footwear

The key current assistance arrangements for the textile, clothing and footwear (TCF) industries comprise:

- the Textiles, Clothing and Footwear Strategic Investment Program Scheme (TCF SIP), which provides grants for eligible investment in new and second-hand plant and equipment, research and development, product and process innovation, value-added and ancillary activities related to restructuring. (From 1 July 2005, this will be replaced by the Textiles, Clothing and Footwear Post-2005 Strategic Investment Program Scheme.)

- the setting of tariffs for TCF products at 2001 levels until 2005. From January 2005 the tariffs will be reduced and held at that level until 2010 at which time TCF tariffs above five 5 per cent will be reduced again and held until 2015 at which time they will reduce to five per cent.

In November 2002 the Australian Government asked the Productivity Commission to provide policy options for post-2005 assistance for the TCF industry. The commission provided its final report in July 2003. It noted that assistance reductions after 2005 would reinforce the competitive pressures on companies to improve their productivity, quality and delivery performance, to innovate and to look for new markets.

While the Productivity Commission proposed a series of tariff reform options, its preferred approach was to maintain TCF tariffs at 2005 rates until 2010, and then reduce them to 5 per cent and maintain that rate until 2015. The exception was for apparel and certain finished textiles, for which the tariff would reduce to 10 per cent in 2010 and then to 5 per cent in 2015. The commission considered that gradual tariff reduction would allow structural adjustment within the industry, with supported transitional assistance to buttress the tariff changes.

The government announced its response in November 2003. It accepted the recommendations relating to tariff reductions and included a $747 million package to assist the adjustment. The Council accepts that using the existing SIP arrangements to facilitate the transition to a lower tariff environment is consistent with promoting the long term public interest.

The *Customs Tariff Amendment (Textile, Clothing and Footwear post-2005 Arrangements) Act 2004,* which set tariffs in line with recommendations of the review came into effect on 14 December 2004. The Council assesses that the Australian Government has met its CPA obligations in this area.

Customs Act 1901 (part XVB) and *Customs Tariff (Anti-dumping) Act 1975*

Following a review in 1996 (the Willett review), the Australian Government amended the legislation on antidumping and countervailing measures in 1998. Key changes were the abolition of the Anti-Dumping Authority and streamlining of the antidumping and countervailing investigations to a single stage conducted by the Australian Customs Service. The Australian Government committed to examining the impact and effectiveness of the new system as part of its review of antidumping and countervailing regulation under the CPA—a review that was scheduled to commence in 1997-98.

The Australian Government has not finalised the timing of the review of the *Customs Act 1901,* part XVB, and the *Customs Tariff (Anti-dumping) Act 1975.* The Productivity Commission's recent report *Review of National Competition Policy reforms* recommended that the government initiate the scheduled review as soon as is practicable (PC 2005a, p. xlviii).

In its 2004 NCP assessment, the Council assessed the Australian Government had not met its CPA obligations in this area. Reflecting the subsequent lack of progress, the Council reconfirms that assessment.

Non-priority legislation

Table 10.1 provides details on non-priority legislation for which the Council considers that the Australian Government's review and reform activity does not comply with its CPA clause 5 obligations.

Table 10.1: Noncomplying review and reform of Australian Government non-priority legislation

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Aboriginal and Torres Strait Islander Heritage Protection Act 1984	Preserves areas and objects of particular significance to indigenous Australians under their indigenous traditions when these are not effectively protected under relevant state or territory laws.	Evatt review (1996) recommended national standards to protect Indigenous heritage and promote negotiated outcomes.	The amending legislation lapsed. The government is consulting with stakeholders with a view to replace the current Act.
Bills of Exchange Act 1909	Aims to provide uniformity of law across Australia in relation to bills of exchange and promissory notes.	The report of the review, by a taskforce of officials, was released in 2003.	Treasury has undertaken consultations with industry.
Commerce (Imports) Regulations and *Commerce (Trade Descriptions)Act 1905*	Regulates the description of goods on labels or other markings applied to imported and exported goods.	Review completed in 2002, recommending retention of the Commerce (Trade Descriptions) Act and repeal of the Commerce (Imports) Regulations.	The government is considering its response to the recommendations.
Financial Transactions Reports Act 1988	Seeks to facilitate the administration and enforcement of taxation (and certain other) laws.	Review recommended amendments that have been the subject of consultation.	Recommendations are part of Australia’s wider consideration of implementing international standards on anti-money laundering and counter-terrorist financing standards. The Government endorsed the international standards in December 2003, necessitating a review of Australia’s anti-money laundering system and new measures intended to address terrorism financing. New legislation is expected to be introduced to Parliament in mid-2006.
Mutual Recognition Act 1992		National review completed in July 1998. The review was conducted by a working group of the COAG Committee on Regulatory Reform (CRR). The report is available at www.pmc.gov.au. The review found that the scheme is generally working well to minimise the impediments to freedom of trade in goods and services.	COAG’s Committee for Regulatory Reform prepared a report for consideration by COAG (and the New Zealand Government). COAG’s decision will determine whether jurisdictions, including the ACT, will have to make legislative changes.

(continued)

Table 10.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Petroleum Retail Marketing Franchise Act 1980 *Petroleum Retail Marketing Sites Act 1980*		The review has not commenced.	Both Acts will be repealed as part of the implementation of the Downstream Petroleum Reform Package (Oilcode).
Trade Practices Act 1974 (s51(2) and s51(3) exemption provisions)	Provides for exemptions for a number of activities relating to intellectual property rights, employment regulations, export arrangements and approved standards from many of the competition laws contained within part IV of the Trade Practices Act.	Review completed in 1999. The provisions are the subject of a further review by the Intellectual Property and Competition Review Committee (the Ergas Committee), which forwarded its final report to the Australian Government in September 2000.	The Australian Government is considering its response to the review of s 51(2) of the TPA. On 28 August 2001, the Government announced changes to s 51(3) of the Act in its response to the Ergas report, which also examined s 51(3). The government intends to amend the Act by applying modified competitive conduct rules in part IV (restrictive trade practices) to intellectual property licensing transactions, and to exempt the *Plant Breeders' Rights Act 1994* (Cwlth) from the modified conduct rules.
Veterans' Entitlement Act 1986—Treatment Principles (s90) and Repatriation Private Patient Principles (s90A)		The Government is examining whether a review of the two sets of principles is required.	