# 1 Legislation review

## 1.1 Why is legislation review necessary?

Restrictions imposed on markets by government regulation, for example, through the creation of legislated monopolies or the imposition of particular pricing practices, can be a major impediment to competitive outcomes. Compliance with these regulations can also impose significant costs on business.

In recognition of this, the *Competition Principles Agreement* (CPA) states that legislation (including Acts, enactments, ordinances or regulations) should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

This is generally referred to as the 'public interest test' (see also Box 3 on page 13).

The CPA further states that all existing anti-competitive legislation (enacted prior to 1996) should be reviewed against these criteria and modified or repealed where there is no net community benefit to its retention.

The requirement to demonstrate net community benefit also applies to the introduction of new or amended legislation that restricts competition. To satisfy this commitment the Australian Government introduced its regulation impact assessment process (see Section 1.4.1).

Importantly, this process also provides that legislation that restricts competition may be retained or introduced where it is demonstrably in the public interest.

However, recognising the continually changing economic environment and social objectives, legislation subjected to the public interest test must be reviewed at least every ten years after its initial review or

introduction. This requirement also applies to anti-competitive legislation reliant on a section 51(1) exemption under the *Trade Practices Act 1974* (TPA) (see Chapter 6).

### Box 2: When is legislation anti-competitive?

While almost no regulatory activity is completely neutral in its implications for competition, legislation may be regarded as affecting competition where it directly or indirectly:

- governs the entry and exit of firms or individuals into or out of markets;
- controls price or production levels;
- restricts the quality, level or location of goods and services available;
- restricts advertising and promotional activities;
- restricts price or type of inputs used in the production process;
- confers significant costs on business; or
- provides advantages to some firms over others by for example, sheltering some activities from the pressures of competition.[1]

The objective of the CPA legislation reform program is to remove restrictions on competition that are demonstrated not to be in the interest of the community as a whole. However, following the Prime Minister's policy statement *More Time for Business* (1997), the Australian Government's legislation review requirement was expanded to include the assessment of legislation that imposes costs or confers benefits on business. The aim is to reduce compliance costs and the paperwork burden for business.

1 Hilmer, F., M. Rayner, and G. Taperell (The Independent Committee of Inquiry into a National Competition Policy), 1993, *National Competition Policy*, Australian Government Publishing Services, Canberra, p. 191.

An essential component of legislative reform is the validity of the review process. To ensure all relevant costs and benefits are recognised, the CPA sets out a range of issues that should be considered in examining any particular piece of legislation. These issues are set out in Box 3 below, and include social, regional and environmental factors.

In many cases, it may be difficult to quantify all the costs and/ or benefits of specific regulation to the community as a whole. The requirement to identify non-quantifiable effects of a particular course of action means that these can be explicitly considered in the decision making process, rather than excluded due to the lack of an agreed dollar value.

A clear identification of the costs, benefits and distributional impacts resulting from the removal of a regulation on wider public interest grounds will also assist government to introduce targeted adjustment mechanisms. Such assistance may be considered necessary to mitigate the impact of transitional costs of reform on particular sectors of the community.

### Box 3: Assessing the public interest

Without limiting the matters to be taken into account, in assessing the costs and benefits, the following matters should be considered:

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including Community Service Obligations (CSOs);
- government legislation and policies relating to matters such as occupational health and safety, industrial relations, access and equity;
- economic and regional development, including employment and investment growth;
- the interests of consumers generally or of a class of consumers;
- the competitiveness of Australian businesses; and
- the efficient allocation of resources.[2]

2 *Competition Principles Agreement*, 1995, sub-clause 1(3).

The Australian Government's compliance with its legislation review requirements is independently assessed by the National Competition Council (NCC), and is also reported in *Regulation and its Review 2002-03*[3].

A detailed examination of Australian Government progress in the review and reform of existing anti-competitive legislation is identified in the following section, Commonwealth Legislation Review Schedule. A summary of compliance with regulation impact assessment requirements for legislation introduced or amended after 1995 is in Section 1.4.

Where Australian Government legislation is complemented or matched by State or Territory regulation, a coordinated national review may be undertaken. Australian Government participation in national reviews is examined in Section 1.3.

3 This function is undertaken by the Office of Regulation Review, an independent office located within the Productivity Commission.

## 1.2 Commonwealth Legislation Review Schedule

The Commonwealth Legislation Review Schedule (CLRS) details the Australian Government's timetable for the review and, where appropriate, reform of all existing legislation that restricts competition or imposes costs or confers benefits on business by the year 2000.[4]

The original Schedule, prepared in June 1996, listed a total of 98 separate legislation reviews. However, changing circumstances have resulted in some reviews being added, rescheduled or deleted.[5]

Legislation may be deleted from the CLRS if it is not considered cost effective to review — where the competition effects are small relative to the cost of implementing new arrangements — or it is repealed as a consequence of changes to Government policy.

Any changes to the CLRS require the approval of the Prime Minister, the Treasurer and the responsible Portfolio Minister(s). Within the Treasury portfolio, since the November 2001 election, the Treasurer's CLRS role is normally performed by the Parliamentary Secretary to the Treasurer.

The CLRS as at 31 March 2003 is at Appendix A.

### Reporting requirements for legislation reviews

The following sections provide information on Commonwealth progress during 2002-03 in meeting its scheduled legislation review commitments.

4 CoAG at its meeting of 3 November 2000, decided that this deadline would be extended to 30 June 2002.

5 This includes the extension of the CLRS to incorporate reviews scheduled on the basis of direct or significant indirect impacts on business.

This information has been organised to reflect the degree of progress made to date. For each individual review, information is provided on the following[6]:

## Complexity of the review and details of the review panel

The priority and importance of the legislation being reviewed varies. Accordingly, the method of review for the legislation takes into account its significance and the extent of expected benefits from reform. More significant pieces of legislation are reviewed by an independent committee of inquiry or the Productivity Commission. Where such review costs are not considered warranted, reviews are generally undertaken by a committee of officials.

The ministerial portfolio with current responsibility for the legislation,[7] and the commencement date of the review, are also identified.

## Terms of reference

The scope and structure of each review are outlined in its terms of reference. Without limiting the terms of reference for each review, the CPA establishes that scheduled reviews should:

- clarify the objectives of the legislation;
- identify the nature of the restriction on competition;
- analyse the likely effect of the restriction on competition and on the economy in general;
- assess and balance the costs and benefits of the restriction; and
- consider alternative means of achieving the same result including non-legislative approaches.

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6 Information on progress has been provided by the responsible portfolio department or agency.

7 In some cases, ministerial responsibility for particular legislation may have changed during the reporting period. Similarly, department titles referred to in connection with various reviews may differ over time.

The Office of Regulation Review (ORR) is required to approve the terms of reference for any scheduled CLRS review. To assist this process, and to ensure a consistent approach and focus to reviews, the ORR has developed a template terms of reference to be tailored to suit each piece of legislation to be reviewed.[8]

There are no new review terms of reference since the previous Commonwealth National Competition Policy Annual Report.

## Extent of public consultation

Public consultation is a required part of all CLRS legislation reviews. This obligation was stipulated by the Australian Government in the release of the CLRS. The NCC has recommended that, to meet this obligation, all reviews should be conducted in an independent, open and transparent way, against clear terms of reference, and in a manner that allows interested parties to participate.

The review terms of reference set out the minimum public consultation to be undertaken. In the interest of transparent decision making and ensuring the broadest range of views on the matter under consideration are received, this generally involves advertising the review and seeking written submissions on a national basis. There may also be more targeted consultations with specific stakeholders.

## Review progress or recommendations and Government response

Further information is reported depending on the extent of progress of the review. Where the review has been completed, if possible, a summary of the main review recommendations is provided. The final report of each review is to be made publicly available, although for particularly sensitive reviews this may not occur immediately.

A summary of the Government's response to the review recommendations is included, where applicable.

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8 Productivity Commission (1999), *Regulation and its Review 1998-99*, AusInfo, Canberra, p. 49.

### 1.2.1 Reviews completed and reform outcomes announced

The following sections report on the Commonwealth's review and reform activity in the period 1 July 2002 to 31 March 2004. Details of reviews completed in previous reporting periods are available in previous annual reports (available at: www.treasury.gov.au).

#### *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Department of the Environment and Heritage)

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* preserves and protects from injury or desecration areas and objects that are of particular significance to Aboriginal and Torres Strait Islander peoples.

In October 1995, the previous Government commissioned a review of the Aboriginal and Torres Strait Islander Heritage Protection Act by the Hon Elizabeth Evatt AC.

The review was already under-way at the time of the publication of the CLRS in June 1996.

##### *Review progress*

The Evatt Report was received by the Government in August 1996. The report made recommendations concerning reforms to Australian Government, State and Territory indigenous heritage protection regimes. The major recommendations included:

- establishment of national standards for the protection of indigenous heritage;
- separation of decisions on the issue of significance from the question of site protection;
- providing adequate protection for culturally sensitive information disclosed in the course of administering heritage protection legislation;
- promoting negotiated outcomes through mediation; and

- establishment of an Indigenous Heritage Protection Agency/ Office.

*Government response*

The recommendations of the Evatt Report were taken into consideration when formulating the Aboriginal and Torres Strait Islander Heritage Protection Bill 1998. The Bill provides for accreditation by the Australian Government Minister of State and Territory regimes which meet certain standards for protection of indigenous heritage and reforms the process under which the Australian Government will assess applications in the absence of an accredited State or Territory regime or in 'national interest' cases.

The Bill was introduced into the House of Representatives in April 1998 and after the 1998 election was re-introduced into the House of Representatives in November 1998. The opposition made numerous amendments to the Bill in the Senate in November 1999, most of which were unacceptable to the Government. The Government consulted further with all major stakeholders over the next two years. The Bill lapsed when Parliament was prorogued prior to the 2001 election. The Government is consulting further with all major stakeholders with a view to pursuing its election commitment of reforming the Act.

## *Australia New Zealand Food Authority Act 1991*
## Food Standards Code
## (Department of Health and Ageing)

The review of the Food Standards Code commenced in May 2000. It was undertaken by a review committee comprising representatives from the Department of the Treasury, the Department of Agriculture, Fisheries and Forestry, the Department of Industry, Tourism and Resources, the Department of Health and Ageing and the Office of Small Business.

Food Standards Australia New Zealand (FSANZ) (previously the Australia New Zealand Food Authority — ANZFA) advised stakeholders of the NCP legislation review through a notice on its website posted on 26 May 2000, and an advertisement in national newspapers in accordance with the requirements of the terms of reference. In addition, FSANZ included the notice and call for submissions in a mail-out to over 200 stakeholders. The notice and

advertisement provided background on the review, and invited all interested persons to make submissions by 7 July, and comments on the likely effects on competition and business of the legislative restrictions imposed by the Code, including the potential regulatory impact on consumers, industry, government and the wider community.

Ten organisations made submissions. None of the submissions addressed the NCP review of the existing Code, rather, they largely revisited issues relating to the proposed draft joint code which had arisen in the earlier consultation on the standard by standard review of the existing Code.

*Review progress*

The review report was forwarded to the responsible Minister in February 2002. The review committee found that the Code did act to restrict competition and, while it achieved its objectives, particularly the protection of public health and safety, it also imposed costs on industry and government. The review committee recommended a more cost-effective means be adopted to achieve the Code's objectives through a new code based on minimum effective regulation principles. The report is available on the FSANZ website at: www.foodstandards.gov.au.

*Government response*

A new joint Australia-New Zealand Food Standards Code was implemented on 20 December 2000. It was introduced under transition arrangements that allowed the old food standards codes of Australia and New Zealand to remain in force for two years. These codes were subsequently repealed on 20 December 2002. Given this, the Government considers no further action is required. The Government's response is available on the FSANZ website at: www.foodstandards.gov.au.

## *Australian Postal Corporation Act 1989* (Department of Communications, Information Technology and the Arts)

The review of the *Australian Postal Corporation Act 1989* commenced in May 1997. It was conducted by the NCC.[9]

### *Government response*

In April 2000, the Government introduced the Postal Services Legislation Amendment Bill 2000 into Parliament. This legislation formed the Government's response to the NCC review. The Bill was unable to obtain passage through the Parliament and was withdrawn in March 2001.

The Government is continuing to examine measures aimed at improving the efficiency of the postal industry. For example, the Postal Services Legislation Amendment Bill 2003 introduces reforms in the postal sector, including:

- Providing the ACCC with the power to require Australia Post to keep and maintain records in a manner determined by the ACCC (as a means of ensuring transparency in Australia Post's accounts);
- Extending the ACCC's powers to arbitrate in relation to disputes about all terms and conditions of a bulk interconnection agreement and not just the discount rate as is currently the case;
- Providing the Australian Communications Authority (ACA) with the power to oversight Australia Post's service performance (this will include transferring the Auditor-General's responsibility under section 28D of the Act to audit Australia Post's performance against prescribed performance standards);
- Requiring the ACA to estimate the cost of providing the Community Service Obligations under section 27 of the Act;
- Measures to legitimise the current business practices of document exchange and aggregation service providers.

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9 See the *1997-98 Commonwealth National Competition Policy Annual Report* (p 63) for additional information on this review.

The Bill was passed in the House of Representatives in February 2004 and has been proposed for debate in the Senate.

The Government also announced on 1 October 2003 its intention to introduce legislation to establish a Postal Industry Ombudsman (PIO) who will have jurisdiction over Australia Post and any other postal operators who elect to 'opt into' the scheme. Legislation to establish the PIO is being finalised and introduction to Parliament will be sought as soon as possible.

## Customs Tariff Act 1995 – Automotive Industry Arrangements (Department of Industry, Tourism and Resources)

The *Customs Tariff Act 1995* imposes Customs duty on goods imported into Australia.

The automotive industry arrangements under the Act were initially reviewed as part of a 1997 Industry Commission inquiry entitled *The Automotive Industry*.

### *Review Progress*

The purpose of this review was, among other things:

> to encourage the development of a sustainable, prosperous and internationally competitive automotive manufacturing industry in Australia; to improve the overall economic performance of the Australian automotive industry; to provide good quality, competitively priced vehicles to the Australian consumer; and its commitment to abide by Australia's international obligations and commitments.

The Commission noted in its report that:

> history shows that the higher the level of assistance to the industry the poorer the industry's performance.

The Commission therefore recommended that tariffs on motor vehicles and components be reduced to five per cent by 2004 (the tariff was then at 22.5 per cent but was already scheduled to fall to 15 per cent by 2000). The Commissioners conducting the review, however, were not unanimous in their conclusions about the automotive industry.

The minority report contained in *The Automotive Industry* stated that:

> unilaterally cutting car tariffs to 5 per cent post-2000 could well see Australia lose two car producers. If this were to happen the fallout among component producers would be even more serious.

To deal with this situation the minority report recommended that:

> Tariffs on passenger motor vehicles, original equipment and replacement components be maintained at 15 per cent until 2005, with a review to be held in, say, 2003 to consider post-2005 assistance arrangements for the industry.

### *Government Response*

The Government received the report of the Industry Commission and followed a middle course between the views expressed by legislating to reduce the automotive tariff to ten per cent in 2005, and providing $2.8 billion through the Automotive Competitiveness and Investment Scheme to assist the automotive industry with its transition to lower tariffs.

In March 2002 the Treasurer asked the Productivity Commission to report on what assistance arrangements for the automotive industry should be in place beyond 2005. The Productivity Commission's inquiry - *Review of Automotive Assistance* - was released on 13 December 2002.

The Treasurer released the Government's response to the Productivity Commission's inquiry on 13 December 2002. The Government accepted most of the Productivity Commission's recommendations. Only one recommendation of the Productivity Commission was rejected outright, while another recommendation was deemed by the Federal Government to be outside its area of responsibility.

The Government also agreed that support from the Automotive Competitiveness and Investment Scheme had been important in transforming the Australian automotive industry and should be extended to assist with the industry adjust to lower tariffs. The Government therefore announced a $4.2 billion extension of the Automotive Competitiveness and Investment Scheme to 2015, and decided to reduce automotive tariffs to five per cent in 2010.

The *Customs Tariff Amendment (ACIS) Act, No. 97 2003* received Royal Assent on 14 October 2003. The *ACIS Administration Amendment Act, No. 96 2003*, which is a complementary piece of legislation has also passed through Parliament.

The *Customs Tariff Amendment (ACIS) Act 2003* reduces the automotive tariff to five per cent in 2010. The *ACIS Administration Amendment Act 2003* extends the Automotive Competitiveness and Investment Scheme (ACIS) from its initial finishing date of 2005 to 2015 in order to assist the automotive industry adjust to the lower tariff regime.

## Customs Tariff Act 1995 – Textiles, Clothing and Footwear Arrangements (Department of Industry, Tourism and Resources)

The *Customs Tariff Act 1995* imposes Customs duty on goods imported into Australia.

The arrangements relating to textiles, clothing and footwear in the Act were initially reviewed as part of the 1997 Industry Commission inquiry into textiles, clothing and footwear industries.

### *Review Progress*

The Industry Commission presented its final report on 7 September 1997. Its major recommendations and implementation strategy included:

- that this should be the last sectoral program to apply to these industries. The program for changes to assistance should be legislated and tariff reductions inscribed in Australia's APEC Individual Action Plan;
- a program of phased tariff reductions to 5 per cent by 1 July 2008 should be implemented without pause from 1 July 2001;
- policy by-laws should be terminated as of 1 July 2008;
- the Overseas Assembly Provisions Scheme should be extended and simplified; and
- a program of adjustment assistance should be implemented to accompany the tariff reduction program.

*Government Response*

The Government initially decided to continue with the current schedule for TCF tariff phase down until 1 July 2000, at which point tariff levels would be maintained until 1 January 2005. Following this date, tariffs would be reduced to a maximum of 17.5 per cent.

This position was based on a commitment to promoting job security within this industry, involving the adoption of a range of practical transition arrangements, by encouraging additional investment and promoting the development of an internationally competitive TCF sector in the lead up to the free trade environment beyond 2010.

TCF tariffs were to be further reviewed in 2005, with consideration to be given to APEC free trade commitments and progress on market access.

On 19 November 2002, an inquiry by the Productivity Commission into post-2005 assistance arrangements for the TCF industry was announced. The Commissioner to the inquiry was Dr David Roberston with Associate Commissioner Mr Philip Weickhardt.

A draft report was completed in April 2003 and released for public comment. A final report was delivered to the Government on 31 July 2003.

The main recommendations contained in the report included a five year pause in tariff reductions from 2005. Tariffs are to be reduced in 2010 and again in 2015, by which time TCF tariffs will be in line with the five per cent average tariff applying to manufacturing industries generally. The Productivity Commission also recommended that the proposed tariff reductions be supported by a further continuation of assistance for the sector.

The Government announced its response to the inquiry on 27 November 2003. Recommendations relating to tariff reductions were adopted. A $747 million package of assistance to assist the process of adjustment was included in the announcement. The core element of this package, a $600 million scheme to encourage investment and innovation, will require new legislation. A Regulation Impact Statement was produced as part of the Government response.

Amendments to the *Customs Tariff Act* reflecting both the tariff reductions and a new item for the proposed import credit scheme will be required. All legislation is expected to be introduced into Parliament in 2004. TCF By-laws, which form part of the *Customs Tariff Act*, remain unaffected.

## *Customs Act 1901* — sections 154 — 161L (Attorney-General's Department)

The legislation provides the basis for determining the customs value of goods imported into Australia. Customs value is used to determine the duty payable on imported goods, to compile import statistics and also contributes to the collection of sales tax where this is payable at the time of importation. Customs value also contributes to the calculation of GST on imported goods. The legislation enacts Australia's obligations under the World Trade Organisation Customs Valuation Agreement.

The taskforce conducting the review comprised officers from the then Department of Industry, Science and Resources, the Department of Foreign Affairs and Trade and the Australian Customs Service. Officers from the Australian Taxation Office, the Australian Bureau of Statistics and the Department of the Treasury acted as observers in the review process.

### *Review progress*

The review report, with six recommendations, was made public on 16 June 1999.

### *Government response*

In early 2001, implementation of the review's recommendations commenced with Customs seeking the necessary approvals for legislative amendments. These approvals have now been obtained. The Prime Minister and relevant Ministers have supported the amendment of the legislation.

Customs has commenced processes to amend the valuation provisions of the Customs Act (to give effect to the first four recommendations of the review).

Customs is considering the feasibility of a system of public valuation rulings (recommendation five). Customs already provides a valuation advice service. Each piece of advice is provided only to the applicant for that advice. Most advice would not have general applicability, given that it is tailored to particular circumstances, including the contractual arrangements, of the applicant.

Customs intends to provide information to the public once the new legislation is enacted (recommendation six).

## *Export Control Act 1982* (such as fish, grains, dairy, processed foods etc)
## (Department of Agriculture, Fisheries and Forestry)

The *Export Control Act 1982* provides a comprehensive legislative base for the export inspection and control responsibilities for certain goods. The Act provides for the application of export controls to goods specified in regulations; details inspection responsibilities and provides the authority for inspection staff to carry out these responsibilities; and sets penalties to apply in the case of fraud or deliberate malpractice.

### *Review progress*

The review (in relation to goods such as fish, grains, dairy, and processed foods) commenced in January 1999. The report was finalised on 23 December 1999, and released publicly in February 2000.

The review was undertaken by a review committee, chaired by Mr Peter Frawley, formerly Executive General Manager of CSR and Chairman of Livecorp; Mr Raoul Nieper, previously Head of the Queensland Department of Primary Industries, now an independent consultant; Mr Lyndsay Makin, an independent consultant, previously General Manager, Export for Nestlé, and Ms Barbara Wilson, Assistant Director, Technical Services and Operations in the Australian Quarantine and Inspection Service (AQIS).

*Government response*

The Government response was approved by the Minister on 22 April 2002. Progress has been made against all recommendations. AQIS has engaged all relevant export industry consultative groups in the implementation process. Progress has been particularly significant in relation to the meat export industry where a harmonised national standard has been developed and subordinate legislation is being restructured to reflect the three-tier model proposed by the Report. Implementation of the recommendations in the Report is being monitored by the Quarantine and Exports Advisory Council.

## *Export Control (Unprocessed Wood) Regulations under the Export Control Act 1982*
(Department of Agriculture, Fisheries and Forestry)

The objective of the Export Control (Unprocessed Wood) Regulations under the *Export Control Act 1982* is to control the export of unprocessed wood (including woodchips and logs). Subsequent amendments to the regulations have lifted export controls on plantation sourced wood in all States except Queensland and the Northern Territory, and to wood sourced from native forests in regions covered by Regional Forest Agreements (RFAs).

The review panel was composed of: Rob Rawson, General Manager, Forestry Industry, Agriculture, Fisheries and Forestry Australia (AFFA); Chris Sant, Office of Legislative Drafting; and Richard Sisson, Innovation and Operating Environment, AFFA. AFFA provided secretariat support.

*Review progress*

The review was completed in 2001. The review recommendations are:

**Recommendation 1**

The Government should remove export controls over sandalwood.

**Recommendation 2**

The Government should consider its position on export controls over plantation-sourced wood following the outcome of the review of the plantation codes of practice for Queensland and the Northern Territory.

If those reviews result in removing the need for an export licence for wood sourced from within those jurisdictions because National Plantation Principles are observed, then the regulations become redundant and should be removed.

**Recommendation 3**

The Government should reconsider its position on export controls over hardwood woodchips sourced from native forests and either:

- remove the requirement for an export licence for any hardwood woodchips or other unprocessed wood produced from wood harvested in a native forest — including those native forests outside RFA regions; or

- allow the export of hardwood woodchips from regions not covered by an RFA under licence where options for a future comprehensive, adequate and representative forest reserve system would not be compromised by the granting of such a licence.

*Government response*

The Australian Government is currently planning the removal of export controls on sandalwood and is consulting with Western Australia on this. Discussions are yet to take place with Queensland, the other State that exports sandalwood. Discussions with Queensland on a Code of Practice for plantation timber will be progressed later this year.

The Australian Government has agreed to remove export controls on plantation timber from the Northern Territory and is finalising administrative procedures for this to occur.

Once export controls have been removed for plantation timber from the Northern Territory and Queensland, export controls on hardwood chips from non-RFA regions can then be considered for removal. It is noted that hardwood chips from native forest in non-RFA regions are prohibited from export.

## Fees charged under the Trade Practices Act (Department of the Treasury)

The overall objective of the TPA is to enhance the welfare of Australians by promoting competition and fair-trading and providing appropriate safeguards to consumers. The fees charged under the Act attempt to offset some of the costs of providing these services through user charges.

This review has been included within the twelve month Productivity Commission inquiry, Cost Recovery by Regulatory, Administrative and Information Agencies — including fees charged under the TPA, which commenced in August 2000.

### *Review progress*

The Productivity Commission's final report was released on 14 March 2002. The Commission's only finding relevant to the legislation review requirement is that current TPA charges (by the ACCC) appear to have little if any impact on competition and economic efficiency and hence are not inconsistent with the competition tests under the CPA.

### *Government response*

The Treasurer's press release of 14 March 2002 (joint with the Minister of Finance and Administration) noted that this completes this review commitment under the CPA.

## Fisheries Legislation (Department of Agriculture, Fisheries and Forestry)

The review encompasses a number of Commonwealth Acts that govern fisheries management in Australian waters:

- *Fisheries Management Act 1991*
- *Fisheries Administration Act 1991*
- *Fisheries Legislation (Consequential Provisions) Act 1991*
- *Statutory Fishing Rights Charge Act 1991*

- *Fisheries Agreements (Payments) Act 1991*
- *Fishing Levy Act 1991*
- *Foreign Fishing Licences Levy Act 1991*

The most significant of these Acts are the *Fisheries Management Act 1991* and the *Fisheries Administration Act 1991*, which set out the objectives of the Commonwealth's involvement in fisheries management and the methods by which these objectives may be pursued. These objectives include the pursuit of efficient and cost-effective practices, the need to preserve the long-term sustainability of the marine environment and accountability to the fishing industry and the broader Australian community. Apart from the management of Australia's fisheries, other issues regulated under the Acts, which are the subject of the review, include the imposition of levies and the issue of foreign fishing licences.

The review commenced in October 1998 and was conducted by a committee of officials.

### *Review progress*

The review was finalised in September 2002 and is available from the Department and on the AFFA website.

### *Government response*

The Government referred the report to the wider review of Commonwealth fisheries policy. The Federal Fisheries Minister, Senator Ian Macdonald, tabled a report of this policy review, *Looking to the Future* in Parliament on 25 June 2003. The report noted that:

- The Commonwealth Government, in consultation with relevant stakeholders, will prepare a policy paper to guide the fishing industry on how the management of Commonwealth fisheries pursues the objective of maximising economic efficiency while ensuring consistency with the principles of ecologically sustainable development.
- The Australian Fisheries Management Authority will continue to provide regulatory impact statements when developing statutory management plans.

- The Commonwealth Government will seek to amend the *Fisheries Management Act 1991* (the Act) to clarify the requirement that management plans explicitly include objectives consistent with those under the legislation, and include criteria and timeframes for performance review.

- The Australian Fisheries Management Authority will complete fisheries management plans for all major fisheries as soon as practicable, as required under the Act.

- The Australian Fisheries Management Authority will continue to implement the Government's cost recovery policy for Commonwealth-managed fisheries.

In 2003, the National Competition Council (NCC) assessed that the Australian Government has met its CPA clause 5 obligations in relation to the Act. All of the Act's significant restrictions on competition were found to be in the public interest. Three case studies confirmed that competition restrictions applied via statutory management plans are in the public interest; more generally, such regulation is subject to the public interest test via regulatory impact statements and regular reviews."

## *Hazardous Waste (Regulation of Exports & Imports) Act 1989*, Hazardous Waste (Regulation of Exports & Imports) Amendment Bill 1995 & also related regulations (Department of Environment and Heritage)

The *Hazardous Waste (Regulation of Exports and Imports) Act 1989* states that the objective of the Act is to regulate the export, import and transit of hazardous waste to ensure that it is managed in an environmentally sound manner so that human beings and the environment, both within and outside Australia, are protected from the harmful effects of the waste.

This review was originally scheduled for 1998-99, however it was deferred to 1999-2000. The terms of reference were approved by the ORR on 28 February 2000.

The review was undertaken by a taskforce which comprised seconded officials from Environment Australia, the Attorney-General's Department, the Department of Foreign Affairs and Trade, the Department of Industry, Science and Resources, the Department of

Health and Aged Care and the ORR. A consultant from the Allen Consulting Group assisted the panel.

*Review progress*

A draft report of the review was discussed with stakeholders at a meeting of the Hazardous Waste Act Policy Reference Group in November 2000. The taskforce of officials required that numerous changes be made and the final report was received on 23 February 2001.

A copy of the report can be located at:
www.ea.gov.au/ industry/ chemicals/ hwa/ papers/ review.html.

*Government response*

The Government response, agreeing to most of the review recommendations, was released on 12 June 2001 and can be located at: www.ea.gov.au/ industry/ chemicals/ hwa/ papers/ review-response.html.

Amendments to the Hazardous Waste (Regulation of Exports and Imports) Act 1989 commenced on 16 October 2001, implementing some of the recommendations.

Amendments have also been made to the 'Australian Guide to Exporting and Importing Hazardous Waste: Applying for a Permit: Second Edition' implementing some of the other recommendations.

A draft regulation impact statement on amendments to the Fees Regulations was discussed with stakeholders in September 2003 and the amendment process is currently being initiated.

Further recommendations will be implemented in amendments to the OECD Decision Regulations that are expected to be made in 2004.

## *Health Insurance Act 1973* Part IIA (Department of Health and Ageing)

This review was added to the CLRS for review in 1998-99 and commenced in January 2000. The review was overseen by a steering committee comprised of representatives from Departments of Health and Ageing and Treasury.

The Act establishes the Medicare benefits scheme and sets out the arrangements that apply to the provision of pathology services. The main provisions relating to pathology services are contained in Part IIA, however, other parts of the Act also relate to the provision of pathology services and these have been included in the review. In addition, the Act also provides for a range of regulations and other pieces of delegated legislation to be made which established the pathology operating framework. All these pieces of legislation come under the scope of this review.

### *Review progress*

The final report was approved for public release in February 2003 and is available on the Department of Health and Ageing's website: www.health.gov.au/ haf/ branch/ dtb/ reviewpath.htm.

### *Government response*

A Government response has been agreed and finalised, and is generally supportive of the recommendations. The Department of Health and Ageing is working to implement the recommendations as a priority.

## *Imported Food Control Act 1992* and Regulations (Department of Agriculture, Fisheries and Forestry)

The *Imported Food Control Act 1992* and its associated regulations comprise the legislation that enables AQIS to monitor and inspect imported foods. The legislation provides that the requirements with which imports must comply are those contained in the Food Standards Code, which was developed by FSANZ (previously ANZFA).

The Act specifies (among other things):

- the role of FSANZ in risk management;
- the Food Standards Code as the applicable national standard;
- the power of the Minister of the Department of Agriculture, Fisheries and Forestry to make orders which, for example, specify foods considered risk categorised foods;
- the making of regulations and their coverage;
- control procedures relating to imported food;
- the certification and quality assurance arrangements that may be accepted in lieu of inspection;
- the treatment of failing food; and
- enforcement provisions and decision review.

The review commenced in March 1998. It was conducted by an independent committee, chaired by Carolyn Tanner, Chair, University of Sydney and member of the Quarantine and Export Advisory Council; Tony Beaver, Secretary of the Food and Beverage Importers Association, Member of the Imported Food Advisory Council, the AQIS Industry Cargo Consultative Committee and the Industry Working Group on Quarantine; Andy Carroll, Manager, Animal Programs Section, AQIS; and Elizabeth Flynn, Program Manager for Monitoring and Surveillance, FSANZ.

*Review progress*

The report was finalised on 30 November 1998, and released to the public in February 1999.

*Government response*

The Government Response agreeing to all 23 recommendations from the NCP review of the Act was issued on 29 June 2000. The outstanding recommendations involve major changes to IT systems and legislative changes.

Significant progress has been made on implementation of the outstanding recommendations. Work on changing the IT systems is progressing well and further substantial changes are proposed. Amendments to the Act have been introduced into Parliament and are currently before the Senate. Amendments to regulations that will support the introduction of a targeted surveillance system for imported food in line with the NCP review recommendations are close to finalisation.

## Intellectual Property Protection Legislation (*Designs Act 1906*, *Patents Act 1990*, *Trade Marks Act 1995*, *Copyright Act 1968* and *Circuit Layouts Act 1989*) (Department of Industry, Tourism and Resources, Attorney-General's Department)

The objective of each of these Acts is to encourage investment in innovation and creative effort for the benefit of society. Without intellectual property rights, it will be possible for free-riders to easily copy work by others and deprive the creators of appropriate reward for their investment; thus there will be little incentive to invest in creative effort.

The review of the intellectual property protection legislation was undertaken by an independent committee — the Intellectual Property and Competition Review Committee — comprising Mr Henry Ergas (Chairman), Associate Professor Jill McKeough and Mr John Stonier. The committee commenced its review in June 1999.

*Review progress*

The review committee presented its Report on Parallel Importing under the *Copyright Act 1968* in June 2000 and its final report, Review of Intellectual Property Legislation under the Competition Principles Agreement dated September 2000. The report was released in December 2000.

*Government response*

The Government announced its response to the review on 28 August 2001. The Government fast-tracked implementation of the more significant patent initiatives. The *Patents Amendment Act 2001* amends the *Patents Act 1990* to strengthen its novelty and inventiveness requirements. The introduction of a grace period for patents was achieved through amendments to the Patents Regulations 1991. These amendments to both the Act and Regulations commenced on 1 April 2002.

Further legislative amendments to the Patents Act and Trade Marks Act are expected to be introduced during 2004.

The Advisory Council on Intellectual Property's (ACIP) review into possibly extending the jurisdiction of the Federal Magistrates Service to patent, trade marks and design matters was presented to Government in December 2003. ACIP expects to report to Government on Trade Mark Enforcement by mid 2004.

In relation to the Copyright Act, the Government accepted the recommendation to repeal copyright control over parallel importation except in relation to films. Amendments were introduced and passed, with amendments excluding changes relating to books. The relevant legislation, the *Copyright Amendment (Parallel Importation) Act 2003,* came into force in May 2003.

In its formal response the Government accepted the Committee's recommendations regarding the copyright term and the efficient operations of the Internet but has since had further occasion to review the issue of term of protection and the amendments made by the Copyright Amendment (Digital Agenda) Act in the context of

negotiations on a free trade agreement (FTA) with the USA and a specific review of the digital agenda amendments. In consequence of the conclusion of the FTA announced in February 2004 the Government has agreed that it will increase the term of protection by an additional 20 years. Further, it proposes to make changes to provisions concerned with technological protection and the arrangements for managing the liability for Internet service providers to make these areas more in line with US law. The review of the digital agenda amendments was not complete at the time of writing.

In regard to Crown ownership of commissioned works, the Government decided to consider best practice guidelines for the Commonwealth in commissioning works to eliminate unjustifiable advantage to the Government. The Government announced, on 20 November 2003, a broader review of Government ownership of copyright to be conducted by the Copyright Law Review Committee. The Government did not accept the recommendation to remove the cap on royalties for broadcasting sound recordings. The Government, in accepting in part the Committee's recommendations regarding collecting societies, identified existing as well as future actions to implement the committee recommendations.

## *Motor Vehicle Standards Act 1989*
## (Department of Transport and Regional Services)

The *Motor Vehicle Standards Act 1989* provides a mechanism for setting national safety, emissions and anti-theft standards for road vehicles supplied to the Australian market. The Act applies to all new and imported vehicles.

The review commenced in December 1997. It was undertaken by a taskforce of officials, headed by the Federal Office of Road Safety, with representatives from the then Department of Industry, Science and Resources, the Australian Customs Service, the National Road Transport Commission and Environment Australia.

An independent reference committee assisted the review process by ensuring the taskforce's work was independent, strategic and effective by reflecting as broadly as possible the views of stakeholders.

*Review progress*

The draft report of the review of the Motor Vehicle Standards Act and its associated recommendations were released by the Minister for Transport and Regional Services, the Hon John Anderson MP, on 12 May 1999 for consideration and comment before the report was finalised. This provided an opportunity for all interested parties to provide their views to the taskforce prior to the final report being considered by Government. The taskforce considered comments from more than 100 stakeholders.

The taskforce made a number of recommendations concerning the eligibility arrangements for vehicles entering the market through the Low Volume Scheme (LVS) as specialist and enthusiast vehicles. Included in the recommendations were that consideration be given to revising the current eligibility criteria to make them less subjective and that vehicles with diesel engines or turbo-charged engines would be considered as a different model for the purposes of the LVS.

*Government response*

On 8 May 2000, following the review, the Government announced new arrangements to administer the importation of used vehicles.

The *Motor Vehicle Standards Amendment Act 2001* commenced on 1 April 2002. The Registered Automotive Workshop Scheme also commenced on that date. Work is progressing on other matters arising from the Government's response to the review.

## *National Residue Survey Administration Act 1992* and related Acts (Department of Agriculture, Fisheries and Forestry)

The National Residue Survey (NRS) manages monitoring programs for chemical residue in many Australian agricultural food commodities. The purpose of the legislation is to put in place statutory arrangements under

which the National Residue Survey Trust Account operates under full cost recovery.

The review commenced in June 1998. It was conducted by a committee of officials. Members of the committee were: the chair, Dr Melanie O'Flynn, Director, Residue and Standards Branch, National Office of Food Safety, AFFA; Mr Paul Bellchambers, Manager, Industries Studies Section, Industry Analysis Branch, Department of Industry, Science and Tourism; Mr Richard Humphry, Senior Legal Counsel, Office of Legislative Drafting, Attorney-General's Department; and Dr R J Smith, Manager, Chemical Review, National Registration Authority.

The NRS Secretariat sent letters to peak industry bodies that have an NRS program and to other interested groups seeking submissions/ comment on the review. Notification of the review appeared in the national press.

*Review progress*

The review committee concluded that the legislation did not restrict competition and actually provided a substantial competitive benefit to Australian producers by facilitating local and international trade.

*Government response*

The Government accepted the review recommendations and it has been forwarded (out of session) to the Standing Committee on Agriculture and Resource Management (SCARM) and the Standing Committee on Fisheries and Aquaculture for information. The report has been made public.

## *National Road Transport Commission Act 1991* and related Acts (Department of Transport and Regional Services)

The purpose of the *National Road Transport Commission Act 1991* is to provide a statutory basis for the National Road Transport Commission (NRTC), which is also governed by Heads of Government Agreements scheduled to the Act. The primary role of the NRTC is to advise the Australian Transport Council (ATC) on reforms that will improve the safety, efficiency, and reduce the administrative cost, of road transport.

All regulatory proposals arising from these activities, which in some cases have been given effect in Australian Government Road Transport Legislation as the basis for State and Territory legislation, have always been subject to strict regulatory impact assessments. These assessments were modified slightly in 2001 to meet guidelines issued by CoAG. The NRTC works closely with the ORR to ensure competition policy requirements are met in its submissions to the ATC.

In November 1996 DOTARS and the ORR agreed that the terms of reference for the review of the National Road Transport Commission Act and related Acts (which was then underway) would adequately address the CPA requirements for legislation review.

The review was conducted in 1996 by a steering committee and an independent consultant. The steering committee consisted of John Bowdler, former Deputy Secretary of DOTARS; Ron Finemore of the Road Transport Forum; Colin Jordan of VicRoads; Barrie MacDonald of the Australian Bus and Coach Association; Lauchlan McIntosh of the Australian Automobile Association; and Bruce Wilson of Queensland Transport. Stuart Hicks, a Western Australian based consultant, conducted the review.

*Review progress*

A review report addressing the terms of reference was provided to the ATC in December 1996. The review was considered at a special meeting of the ATC in February 1997 and the communique of that meeting made public. Ministers' recommendations to CoAG were transmitted in April 1997 under a joint letter from the ATC Chair, The Hon John Cleary, MHA and John Hurlstone, Chair of the NRTC. The review's recommendations focused on improving the NRTC and the delivery of its outcomes. No changes were needed to address the requirements of the CPA.

CoAG was generally supportive but had some views on specific aspects of the recommendations of the ATC. These took some time to fully resolve. In fact, the ATC's specific issues about being host for 'Commonwealth template legislation' under residual powers were not resolved until August 1999. However, CoAG did agree to the public release of a Heads of Government Recommitment Statement about road

transport reform through the NRTC. It also agreed to the amending legislation for the Act with attendant Amending Heads of Government Agreements and to continue the related Acts. CoAG did not agree to the public release of the review working documents.

*Government response*

The Government response to the review report and views of CoAG was that the National Road Transport Commission Act be amended to give effect to the enhancements and that the related Acts were to continue. In this process, the ORR agreed a RIS was not required, as the amendments did not propose new or amended regulations. However, as stated above, all of the NRTC's regulatory proposals are subject to assessment of their impact.

Following a further review of the Act commencing in December 2001, Heads of Government agreed to the repeal of the Act and the establishment of a new body, the National Transport Commission, under the *National Transport Commission Act 2003*.

The National Transport Commission commenced on 15 January 2004 with a focus on cooperative national regulatory reform, with responsibilities for road, rail and inter-modal transport. The *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport* formalises the cooperative arrangements between the States, Territories and the Australian Government and defines the role and responsibilities of the new Commission, the Australian Transport Council and jurisdictions.

## *Ozone Protection Act 1989 & Ozone Protection (Amendment) Act 1995*
(Department of Environment and Heritage)

The *Ozone Protection Act 1989* and the *Ozone Protection (Amendment) Act 1995* (the Act) implement Australia's obligations under the *Montreal Protocol on Substances that Deplete the Ozone Layer*. The Act provides for a system of controls on the manufacture, import and export of substances that deplete ozone in the atmosphere. The key objective is the phasing

out of ozone depleting substances (ODS), primarily through encouraging Australian industry to replace and/ or reduce its use of ODS, in some cases ahead of the Montreal Protocol requirements, where this is deemed possible.

The ORR approved the terms of reference for a review of the Act in March 2000.

*Review progress*

The review taskforce consisted of representatives from Environment Australia, the Australian Greenhouse Office and the Attorney-General's Department. Price Waterhouse Coopers assisted the taskforce.

- A review of the legislation was completed in January 2001 and endorsed by the Minister for the Environment and Heritage in May 2001.

The report is available on Environment Australia's website at: www.ea.gov.au/ atmosphere/ ozone/ legislation/ legrev.html.

*Government response*

In a press release on the 2002-3 Budget, the Minister for the Environment and Heritage announced measures in response to the review. The release identified the following measures:

- updating the Ozone Protection Act to provide for a national uniform approach to end-use controls on ozone-depleting gases and incorporating synthetic greenhouse gases;

- extending of the legislation to require importers, exporters and manufacturers of synthetic greenhouse gases to hold a controlled substances licence under the Act;

- requiring importers of pre-charged air conditioning equipment containing HCFCs and HFCs to demonstrate that they have appropriate arrangements in place to manage refrigerants at the end of their serviceable life; and

- amending the Ozone Protection Reserve to include funding of synthetic greenhouse gas emission minimisation initiatives.

The Government introduced the Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Bill into Parliament in June 2003. Parliament passed the Bill in December 2003, amending the *Ozone Protection Act 1989* to the *Ozone Protection and Synthetic Greenhouse Management Act 1989*. The amendments:

- extend the import, export and manufacture licensing system for ozone depleting substances (ODS) to also cover synthetic greenhouse gases (SGG) where they are used as alternatives to ODS.

- provide for establishment of national end-use controls on the purchase, sale, handling and disposal of these gases.

- implement the Beijing Amendment to the Montreal Protocol, banning the import and manufacture of bromochloromethane, and banning trade in certain ozone depleting substances with non-Protocol countries.

- broaden the purpose of the Ozone Protection and SGG Account to include National Halon Bank revenue and expenditure, and expenditure on ODS phaseout programs and programs to minimise ODS and SGG emissions.

The Department of the Environment and Heritage and the Australian Greenhouse Office have commenced implementation of the amendments. The licensing system for synthetic greenhouse gases and equipment pre-charged with HCFCs or HFCs commences on 1 April 2004. Consultation has commenced with the fire protection and refrigeration and air-conditioning industries to establish end-use regulations and product stewardship arrangements. End-use regulations for these sectors are expected to be in place by mid-year 2004.

### *Petroleum (Submerged Lands) Act 1967*
### (Department of Industry, Tourism and Resources)

The review of this Act was included in the national Review of Petroleum (Submerged Lands) Acts (see page 75).

## *Prices Surveillance Act 1983*
## (Department of the Treasury)

The *Prices Surveillance Act 1983* (PSA) assigns three specific functions to the ACCC. These are: to consider price rises notified 'declared' organisations; to monitor selected prices; and to hold inquiries into matters relating to prices as directed by the Minister.

### *Review progress*

The Productivity Commission reported in 2001 on its review of the PSA. The Commission recommended, among other things, that the PSA be repealed and that limited new inquiry and monitoring functions be written into a new part of the TPA.

### *Government response*

The Government accepted the recommendation that the PSA be repealed and a new part inserted in to the TPA. The Treasurer's press release of 20 August 2002 and the Government's response to the Commission's report are available at www.treasurer.gov.au. An Act to give effect to the Government's response was passed on 17 December 2003 and commenced on 1 March 2004.

## Primary Industries Levies Act *and related Collection Acts*
## *(Department of Agriculture, Fisheries and Forestry)*

The Primary Industries Levies Act and related Collection Acts authorise the collection of statutory levies imposed on primary industries under separate legislation for specified purposes (for example, research and development, promotion, statutory marketing authorities, National Residue Survey, capital raising) and provides administrative arrangements for levy collection.

The review commenced in June 1998. It was conducted by a committee of officials, composed of David Ingham, Chair, Acting Assistant Secretary, Economic Policy Branch, AFFA; Phillip Fitch, Industry Development, AFFA and Roger Mackay, Office of Legislative Drafting, Attorney-General's Department.

In October 1998, submissions were sought from interested parties.

*Review progress*

The review was delayed while the *Primary Industries Levies and Charges (Consequential Amendments) Act 1999* and other Acts were amalgamated. The resultant amalgamated Acts — the *Primary Industries (Customs) Charges Act 1999* and the *Primary Industries (Excise) Levies Act 1999* — mirror the provisions contained in the earlier Acts apart from several minor changes.

To ensure full consultation, a second round of public consultation was initiated in September 1999 with letters sent to interested parties inviting further submissions to the review. Work on the review continued throughout 2000, with the Centre for International Economics being commissioned in September 2000 to conduct the public benefit test for the review. A draft report was delivered to the review committee in October 2000, sent for stakeholder comment in November and completed in December 2000.

The review found, in general, that the benefits to the community of the present structure of levies legislation outweigh the costs and should be retained. Only some minor changes to the legislation and the guidelines were recommended, including a proposal that the guidelines indicate a preference for voluntary arrangements unless the free-rider costs are assessed to exceed compliance, enforcement, administrative, and other costs.

*Government response*

The Minister approved the Government response on 20 December 2003. The Government considered that there was sufficient flexibility in these arrangements to accommodate the issues raised in the review report without the need to explicitly indicate a preference for voluntary levy arrangements in the legislation or the guidelines. Hence, amendments to existing legislation and guidelines were not necessary.

## *Proceeds of Crime Act 1987* & regulations (Attorney-General's Department)

The principal objects of the *Proceeds of Crime Act 1987* are:

(a) to deprive persons of the proceeds of, and benefits derived from, the commission of offences against the laws of the Commonwealth or the Territories;

(b) to provide for the forfeiture of property used in or in connection with the commission of such offences; and

(c) to enable law enforcement authorities effectively to trace such proceeds, benefits and property.

Additional objects of this Act include:

(a) providing for the enforcement in the Territories of forfeiture orders, pecuniary penalty orders and restraining orders made in respect of offences against the laws of the States;

(b) facilitating the enforcement in Australia, pursuant to the Mutual Assistance Act, of forfeiture orders, pecuniary penalty orders and restraining orders made in respect of foreign serious offences; and

(c) assisting foreign countries, pursuant to the Mutual Assistance Act, to trace the proceeds of, benefits derived from and property used in or in connection with the commission of foreign serious offences.

*Review progress*

The terms of reference were approved in February 1998. The review was brought forward from its scheduled timetable for review in 1998-99, and was conducted by the Australian Law Reform Commission in conjunction with a more detailed and far-reaching review of Commonwealth legislation relating to forfeiture of the proceeds of crime. The Prime Minister and the Treasurer agreed to the change in timing and modality of the competition principles review of the Proceeds of Crime Act 1987.

The Attorney General tabled the report of the Australian Law Reform Commission, *Confiscation that Counts*, on 16 June 1999. The Commission had been unable to complete the competition principles review and recommended that a working group be established to complete aspects of the Commission's review and examine certain matters. The competition principles review of the *Financial Transaction Reports*

*Act 1988* (FTR Act) was completed in August 2000. That review included a review of Division 4 of Part IV of the Proceeds of Crime Act 1987 as well as of Part III of the FTR Act, both parts dealing with various obligations on financial institutions such as banks and like organisations to retain various records and documents. Division 4 of Part IV of the Proceeds of Crime Act 1987, which imposes record retention obligations on financial institutions, is the only Part of the *Proceeds of Crime Act 1987* which affects the business sector.

*Government response*

The *Proceeds of Crime Act 2002* and the *Proceeds of Crime Act (Consequential Amendments and Transitional Provisions) Act 2002* came into effect on 1 January 2003. The *Proceeds of Crime Act 2002* greatly strengthens and improves Commonwealth laws for the confiscation of the proceeds of crime.

The *Proceeds of Crime Act 2002* includes improved provisions for conviction based confiscation and also provides for a new civil forfeiture regime (namely forfeiture which does not require conviction of a criminal offence as a condition precedent). It also includes provisions for literary proceeds orders to prevent criminals exploiting their notoriety for commercial purposes.

Amongst other things the *Proceeds of Crime Act (Consequential Amendments and Transitional Provisions) Act 2002* repeals Division 4 of Part IV of the *Proceeds of Crime Act 1987* and replaces the repealed provisions by a new Part VIA in the FTR Act.

The Act includes provision for an independent review of the operation of that Act to be undertaken after the third year of its commencement (that is, as soon as practicable after 1 January 2006).

*Quarantine Act 1908* (in relation to human quarantine)
(Department of Health and Ageing)

The review of the human quarantine provisions of the *Quarantine Act 1908* commenced in September 1997. It was conducted by a committee of officials comprising representatives of the Department of Defence, the Australian Customs Service, AQIS, the then Department of Immigration and Multicultural Affairs, the Chief Quarantine Officer and the then Department of Health and Family Services.

*Review progress*

The review determined that the human quarantine provisions of the Quarantine Act have minimal impact on competition and business. Where an impact was identified, the review was satisfied that the costs to the Government and industry were minor, and were outweighed and justified by the benefits to public health from the prevention of disease outbreaks.

However, the review found that the current human quarantine provisions, though adequate, would benefit from possible updating to ensure they provide the best legislative framework to undertake human quarantine activity in the year 2000 and beyond.

*Government response*

On 2 July 1998, the then Minister for Health and Family Services approved the report and endorsed the proposal for a second phase review of the human quarantine provisions. A discussion paper was developed drawing on four independent research papers, and an advertisement was placed in the national press on 11 April 2000 advising of its availability and calling for submissions from any interested party. The public consultation process closed on 15 May 2000. Responses from the targeted consultation process and the national advertising campaign numbered 30. On 20 December 2000, the then Minister for Health and Aged Care approved the Human Quarantine Legislation Review Final Report. This Report recommended minor and technical amendments to update the legislation, remove current inconsistencies and to better align existing provisions with current policy and practice regarding human quarantine control measures.

The Quarantine Amendment (Health) Act 2003 has been passed in response to these recommendations. The Act came into effect on 26 March 2004. The consequential amendments to the Act which includes the Quarantine Amendment Regulations 2004, Quarantine Amendment Proclamation 2004 and the Declaration also came into effect on 26 March 2004.

## *Radiocommunications Act 1992* and related Acts (Department of Communications, Information Technology and the Arts)

The review of the *Radiocommunications Act 1992* commenced in 1997. However, the NCP principles aspects of the review were not completed. Consequently, the NCP review of the Radiocommunications Act and related Acts has been subsumed into the review of market based reforms and activities undertaken by the Spectrum Marketing Authority (now the Australian Communications Authority) (see following entry).

## Review of market-based reforms and activities currently undertaken by the Spectrum Management Agency (now Australian Communications Authority) (Department of Communications, Information Technology and the Arts)

The review of market based reforms and activities undertaken by the Spectrum Management Agency (now the ACA) has been combined with the review of the Radiocommunications Act and related Acts.

The main objective of the Radiocommunications Act and related legislation is to maximise the public benefit by the efficient allocation and use of the radiofrequency spectrum. The legislation also provides for allocation of spectrum for public or community services and an equitable charging system while supporting the Government's communication policy objectives and Australia's international interests in the consistent and efficient use of the radiofrequency spectrum.

The review commenced on 16 July 2001 and was conducted by the Productivity Commission.

### *Review progress*

The Productivity Commission's final report was released on 5 December 2002.

### *Government response*

The former Minister for Communications, Information Technology and the Arts issued a Joint Media Release with the Treasurer on

5 December 2002 announcing the tabling in the Parliament of the reports of the Radiocommunications Review (June 2001) and the Productivity Commission's Radiocommunications Inquiry (July 2002) and the Government's responses to the reports.

The two reviews were established to assess the appropriateness, effectiveness and efficiency of the radiocommunications legislation including whether it is restricting competition between, or imposing costs or benefits on, business. The Government accepted 35 out of the 47 recommendations contained in the two reports. A total of nine of the 35 accepted by the Government require legislative action to amend the Act.

Work has commenced on implementing amending legislation.

Superannuation Acts including: *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987*,
*Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Act 1991*,
*Superannuation (Resolution of Complaints) Act 1993*,
*Superannuation (Industry) Supervision Act 1993*,
*Occupational Superannuation Standards Regulations Applications Act 1992*,
*Superannuation (Financial Assistance Funding) Levy Act 1993*.
(Department of the Treasury)

This legislation variously provides for the prudential regulation and supervision of the superannuation industry and the imposition of certain levies on superannuation funds and approved deposit funds.

The review commenced in February 2001 and was undertaken by the Productivity Commission.

*Review progress*

The final report was received by Government in December 2001.

*Government response*

An interim response was released by the Minister for Revenue and the Assistant Treasurer on 17 April 2002 (it is available at:

http:/ / assistant.treasurer.gov.au) and on 20 June 2003 the Government's final response was released by the Minister. The press release and final response are available at:
http:/ / assistant.treasurer.gov.au/ atr/ content/ pressreleases/ 2003 / 059.asp).

The Government introduced the Superannuation Safety Amendment Bill 2003 to implement recommendations that all superannuation fund trustees be licensed and required to submit a risk management plan to APRA. It is also agreed to implement most of the report's other recommendations (or take action that is largely consistent with those recommendations).

## 2D exemptions (local government activities) of the Trade Practices Act (Department of the Treasury)

Section 2D of the TPA exempts the licensing decisions and internal transactions of local government bodies from Part IV of the TPA. Part IV of the TPA regulates restrictive trade practices.

Following consultations with State Premiers and Territory Chief Ministers, the terms of reference were sent to the Productivity Commission on 2 October 2001.

### *Review progress*

The final report was released on 12 December 2002.

### *Government response*

The Government released its response in December 2003, accepting the recommendations. Work has commenced on drafting a Bill to give effect to these recommendations.

## Part IIIA (access regime) of the Trade Practices Act (including exemptions)
## (Department of the Treasury)

Part IIIA of the TPA provides a regime for third party access to services provided by significant infrastructure facilities. The overall objective of the TPA is to enhance the welfare of Australians by promoting competition and fair-trading and providing appropriate safeguards to consumers.

The review commenced in June 2000 and was undertaken by the Productivity Commission.

### *Review progress*

The final report was received by the Government on 3 October 2001.

### *Government response*

The Government released its interim response and tabled the report on 17 September 2002. The Government released its final response to the report on 17 February 2004.

## *Wheat Marketing Act 1989*
## (Department of Agriculture, Fisheries and Forestry)

The *Wheat Marketing Act 1989* (WMA) does not specify its objectives, but in accordance with NCP guidelines, the review report set out the inferred objectives as being 'for the Australian Government to use its control of wheat exports to ensure (i) direct grower access to marketing services and export markets, and (ii) that growers receive the highest net return from sales in export markets.'

The terms of reference for this review were approved in April 2000.

The review, with secretariat support provided by the Department of AFFA, was conducted by the following three person committee:

- Mr Malcolm Irving, Chair: Chairman of Caltex Australia and the Australian Industry Development Corporation. He is also a director

with Telstra, a member of the Supermarket to Asia Council and was Chair of the Australian Horticultural Corporation for nine years;

- Professor Bob Lindner: Executive Dean of the University of Western Australia's Faculty of Agriculture. He was also the faculty's inaugural Professor of Agricultural Economics. He is Chair of the Western Australian Herbicide Resistance Initiative Board and a member of the Export Grains Centre Advisory Council; and

- Mr Jeff Arney: South Australian grain grower, Chair of the South Australian Farmers Federation Grains Council and a past President of the Grains Council of Australia.

*Review progress*

The committee delivered its final report to the Minister for Agriculture, Fisheries and Forestry on 22 December 2000. It was made public on the same day.

*Government response*

The Government response to the review recommendations was announced on 4 April 2001.

The principal outcome was that the wheat single desk held by the AWBI is to remain, but with improvements made to the export consent system operated by the WEA. The WMA was not to be amended so as to avoid any potential for adverse structural changes to impact on AWB Ltd's then proposed listing on the Australian Stock Exchange.

A revised export consent system which allows for longer term consents, particularly to niche markets; incorporates criteria in the WEA's guidelines to assess exporters; provides for market allocation/ forward prospects statements; and eases the administrative burden by reducing the frequency of applications, was put in place from 1 October 2001.

The Government did not adopt the report's recommendations for the removal of AWBI's role in the consent process for export of wheat in containers and bags, or for durum wheat in bulk, as it would have meant amending the WMA and changing significantly the balance between the

operations of the WEA and AWBI. Consistent with assurances given by AWB Ltd, improved durum marketing arrangements were announced in July 2001.

The Government decided that the terms of the WEA 2004 review required under the WMA should not be altered to incorporate NCP principles, to avoid further uncertainty in the industry and for wheat growers. Rigorous performance indicators were announced on 4 September 2001 for on-going monitoring of AWBI as managers of the single desk, and for the 2004 review, and are available on the Wheat Export Authority website at www.wea.gov.au.

The review terms of reference required an examination of relevant matters in Clause 4 of the CPA (see page 117). The Government's response was that there would be no legislative or significant structural change to the current arrangements. The recommendation from the report for a joint industry forum was not adopted by the Government as such an initiative was seen to be mainly an issue for industry to bring forward, if it considers there is a need for new consultative arrangements.

Another review of the legislation governing the single desk arrangements is required to be conduced before 2010.

### 1.2.2 Reviews completed, recommendations under consideration

#### *Aboriginal Land Rights (Northern Territory) Act 1976* (Department of Immigration and Multicultural and Indigenous Affairs)

The *Aboriginal Land Rights (Northern Territory) Act 1976* provides for the granting of land to traditional Aboriginal owners in the Northern Territory. It further provides traditional Aboriginal owners with certain rights over granted land, including the right to give consent to mineral exploration (contained in Part IV).

The terms of reference for the review were approved on 26 October 1998. The Aboriginal and Torres Strait Islander Commission contracted Dr Ian Manning from the National Institute of Economics and Industries to undertake the review.

*Review progress*

The review report was publicly released in August 1999. It contains twelve recommendations addressing the processes in Part IV pertaining to mining and exploration permits.

*Government response*

The Australian Government is considering its response to three reviews: the national competition policy review; the review of the Land Rights Act by John Reeves QC; and the report of the inquiry into the Reeves review by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs. The Government released an options paper on possible reforms in April 2002, and in response, the Northern Territory Government and the Northern Territory Land Councils released a joint submission in September 2003 proposing reforms to the Act. Other stakeholders responded in 2002. The Australian Government is now considering the final form of a reform package to the Act.

## *Agricultural and Veterinary Chemicals Act 1994*
## (Department of Agriculture, Fisheries and Forestry)

The review of this Act was included in the national review of Agricultural and Veterinary Chemicals Legislation (see page 71).

## *Bankruptcy Act 1966* and Bankruptcy Rules — Trustee Registration Provisions
## (Attorney-General's Department)

The review of the provisions of the *Bankruptcy Act 1966*, the Bankruptcy Regulations and the *Bankruptcy (Registration Charges) Act 1997* relating to the registration of private sector bankruptcy trustees commenced in June 1998.

### *Review progress*

The review report was finalised on 9 December 1998. The review recommended that the Insolvency and Trustee Service Australia (ITSA) continue to register bankruptcy trustees; and that a hand-over of the trustee registration function to the private sector be considered if and when that sector has an appropriate and adequate infrastructure in place.

### *Government response*

There is no Government response to the review report. The Minister approved the recommendations in late January 1999, subject to the comments of the then Minister for Financial Services and Regulation. On 24 June 1999, the then Minister for Financial Services and Regulation advised that he had no comments on the matter.

ITSA is continuing to register bankruptcy trustees as there is no private sector infrastructure in place.

## *Bills of Exchange Act 1909*
## (Department of the Treasury)

The objectives of the *Bills of Exchange Act 1909* are to provide uniformity of law across Australia in relation to bills of exchange and promissory

notes, to provide legal certainty by confirming the nature of bills of exchange and promissory notes as negotiable instruments, and to promote efficiency in the market place which utilises bills of exchange and promissory notes as financial instruments.

The review of the Act commenced in April 1997. It was undertaken by a taskforce of officials, comprising representatives of the Department of the Treasury, the Reserve Bank of Australia and the Attorney-General's Department.

*Review progress*

A final report was released in August 2003.

*Government response*

Treasury expects to undertake further consultations with industry to inform the Australian Government's response to the review recommendations.

## *Broadcasting Services Act 1992, Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992, Radio Licence Fees Act 1964, Television Licence Fees Act 1964*
(Department of Communications, Information Technology and the Arts)

The *Broadcasting Services Act 1992* and the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992* govern a diverse range of radio and television services for entertainment, educational and informational purposes. The Acts seek to provide a regulatory environment that varies according to the degree of influence of certain services upon society and which facilitates the development of an efficient and competitive market that is responsive to audience needs and technological developments. The Acts also seek to protect certain social and cultural values, including promoting a sense of Australian identity, character and cultural diversity; encouraging plurality of opinion and fair and accurate coverage of matters of national and local significance; respecting community standards concerning programme

material; and protecting children from programme material that may be harmful to them.

The *Radio Licence Fees Act 1964* and the *Television Licence Fees Act 1964* seek to recover some of the value inherent in commercial broadcasting licences from commercial broadcasters and provide a return to the public for their use of scarce radio frequency spectrum. Fees are based on the advertising revenues of commercial broadcasters.

The review commenced in March 1999.

*Review progress*

The Productivity Commission presented its final report to the Government on 6 March 2000. The report was publicly released on 11 April 2000.

*Government response*

The Government will respond to the review's recommendations in due course.

The Government has continued to introduce reforms, in the broadcasting sector, that relate to the review recommendations. These include:

- structural diversity in Australian broadcasting. The Broadcasting Amendment Bill (No 2) 2002 was passed in November 2002. As well as providing a new licensing framework for community television, the Act makes related community broadcasting amendments that will *improve the general community broadcasting licensing regime*.

- ownership and control. The Government introduced the Broadcasting Services Amendment (Media Ownership) Bill 2002 to Parliament originally in March 2002. The Bill was re-introduced into the House of Representatives in November 2003 and passed by the House in December 2003. It was re-introduced to the Senate in December 2003. The Bill repeals specific restrictions on foreign ownership and control of Australian media in the Broadcasting Services Act. The Bill also empowers the Australian Broadcasting Authority (ABA) to issue an exemption certificate granting an exemption to the cross-media rules.

- Australian Content Regulation. The ABA, in December 2002, varied the Australian Content Standard (ACS) to raise the sub-quota for adult drama; provide new incentives for high-cost and independently produced programming; and provided new incentives for children's drama.

- The Online Content Co-Regulatory Scheme commenced in January 2001. The statutory review of the Scheme commenced in May 2002 and is expected to report in early 2004.

## *Commerce (Trade Descriptions) Act 1905* and Commerce (Imports) Regulations
## (Attorney-General's Department)

The legislation was originally introduced to protect public health by requiring disclosure of accurate information on ingredients and to protect the reputation of Australian exports from traders who falsely label goods.

### *Review progress*

The review of the *Commerce (Trade Descriptions) Act 1905* and the Commerce (Imports) Regulations commenced on 3 July 2001.

The committee of officials conducting the review comprises officers from the Department of Industry, Tourism and Resources, the Department of the Treasury, the ACCC and the Australian Customs Service.

The Committee's report was presented to the Minister for Justice and Customs on 1 November 2002.

### *Government response*

The Government response to the report is currently being co-ordinated.

## *Financial Transactions Reports Act 1988* and regulations
## (Attorney-General's Department)

The objective of the *Financial Transactions Reports Act 1988* is to facilitate the administration and enforcement of taxation laws, and laws of the Commonwealth and the Territories other than taxation laws, and to

make information collected for these purposes available to State authorities to facilitate the administration and enforcement of the laws of the States.

The Review was conducted by a taskforce of Commonwealth officials, comprising representatives of the Attorney-General's Department, the Australian Transaction Reports and Analysis Centre (AUSTRAC), the Australian Federal Police, the Australian Taxation Office and the Financial Institutions Division of the Department of the Treasury. A reference group of two non-government persons, Mr Tom Sherman and Mr Alan Cullen oversaw the review.

*Review progress*

The taskforce provided its report to the Minister for Justice and Customs on 6 September 2000.

The taskforce report recommends a number of amendments to the Act and the Regulations. Those recommendations, together with a number of other legislative amendment proposals, have been the subject of continuing consultations.

*Government response*

The Recommendations of the taskforce report will be considered as part of Australia's wider consideration of implementing the Financial Action Task Force on Anti-Money Laundering international anti-money laundering and counter-terrorist financing standards. On 8 December 2003 the Minister for Justice and Customs announced the Government's endorsement of those international standards. Implementing the standards in Australia will require a significant review of Australia's anti-money laundering system and include some new measures intended to counter terrorist financing. Commonwealth agencies will consult and work with industry to design a cost effective anti-money laundering system that will meet international standards and at the same time be responsive to the needs of Australian industry.

*Higher Education Funding Act 1988, Vocational Education & Training Funding Act 1992* and any other regulation with similar effect to the

## *Higher Education Funding Act 1988*
(Department of Education, Science and Training)

This review was subsumed into the Review of Higher Education Financing and Policy (West Review) announced in January 1996.

### *Review progress*

The review committee reported to the Minister for Employment, Education, Training and Youth Affairs in April 1998.

The West Review report recommendations did not explicitly address competition principles. However, the following issues of relevance were identified:

- the Government, working with State and Territory governments, should ensure that consistent criteria and processes exist for recognising university level qualifications offered by providers of higher education, such as 'bachelor degree', and for using the titles 'university' and 'higher education institution' (Recommendation 6);

- the Government, working with State and Territory governments, should ensure that accreditation arrangements enable private providers of higher education to become self-accrediting bodies with the same powers in this respect as universities which operate under their own Acts of Parliament (Recommendation 7);

- the capital assets of universities should be liable for the same taxes and charges that apply to private higher education providers, once ownership and control issues are rationalised; and

- as detailed in Stage 4*:* A Lifelong Entitlement to Post Secondary Education and Training, students should be allowed use of an 'entitlement to funding' to meet the costs of approved studies or services leading to a post secondary award at an approved private or public post secondary education provider in either the vocational education and training or higher education sectors.

### *Government response*

While the Government did not respond formally to the recommendations of the West Review it has recently introduced similar reforms encouraging greater diversity of provision and competition in the higher education sector. These are detailed below.

During 2002 the Government conducted a broad ranging review of its higher education policy and funding arrangements. The outcomes of the review, *Our Universities: Backing Australia's Future*, were announced as part of the 2003-04 Budget. Legislation was introduced into Parliament in September 2003 to give effect to the reforms and the *Higher Education Support Act 2003* received Royal Assent on 19 December 2003.

The reform outcomes will achieve a sustainable, quality higher education sector promoting equity of participation for all Australians, diversity in mission and greater competition and collaboration across the higher education sector.

Under the new arrangements, institutions will set their own student contributions for Commonwealth supported places within a range from $0 to a maximum set by the Australian Government which is no more than 25 per cent above current levels. Fees for nursing and teaching courses, which cover about 14 per cent of students, will be exempt from any increase. Every dollar of student contributions will go directly to institutions to improve quality and reduce class sizes.

As student contribution levels vary between courses and institutions, institutions will become competitive in terms of cost and course quality and will focus more on what is important to students. This will see students become much more central to the university experience than they might be now.

Under the reforms the Australian Government will allow institutions to increase the maximum number of domestic full fee paying students in any undergraduate course from the current 25 per cent to 35 per cent if students want to take up these additional places. The intention of this policy is to enable institutions to better respond to student demand in particular areas, and to provide additional educational opportunities and choices for students, which would otherwise not be available.

The reforms will give universities access to the funding they need to deliver world-class higher education, with a focus on quality learning outcomes. Laying the foundation for this will be an increase in public investment in the sector of around $2.6 billion over the next five years. Over the next ten years, the Australian Government will provide some $11 billion in new support for higher education. There will be more than 34,000 new Commonwealth supported student places and more funding for each Commonwealth supported student, linked to improvements in how universities are managed.

*Vocational education and training funding*

The Act sets the minimum amount of vocational education and training funding to be distributed by the Australian National Training Authority (ANTA) to the States and Territories for capital and recurrent purposes and for National Projects. The amount to be paid to ANTA for distribution is determined by the Minister in accordance with the *Australian National Training Authority Act 1992* (ANTA Act) and the ANTA Agreement which is provided for in the ANTA Act, up to the maximum amount set by the Act in one year.

Every three years the Australian Government negotiates a new ANTA Agreement with the States and Territories which determines the terms, conditions and the level of Australian Government funding for vocational education and training for the next triennium. Cabinet approves the framework for the Australian Government's negotiating position.

The ANTA Agreement for 2001 – 2003 ceased on 31 December 2003. Negotiations between the Australian Government and the States and Territories for a new Agreement concluded with agreement to a roll over arrangement for 2004.

In addition to these negotiations, ANTA has, in conjunction with the Australian Government and the States and Territories, reviewed major components funded under the Act. An example is the 2003 review of the accountability arrangements for Australian Government assistance for VET infrastructure, for which around $600 million was provided for the 2001 – 2003 triennium.

As Commonwealth–State funding legislation, the Act does not directly affect business or restrict competition. Neither does the Act have a significant indirect effect on business.

### *Land Acquisition Acts (Land Acquisition Act 1989* & regulations; *Land Acquisitions (Defence) Act 1968* and *Land Acquisition (Northern Territory Pastoral Leases) Act 1981)*
(Department of Finance and Administration)

The *Land Acquisition Act 1989* sets out the processes that the Commonwealth and its agencies must follow when acquiring or disposing of an interest in land. It also deals with related matters, such as entry on private land by Commonwealth officers and the regulation of mining on Commonwealth land. The Act includes provisions for compulsorily acquiring an interest in land and for the arrangements for consequential payment of compensation.

The *Land Acquisitions (Defence) Act 1986* facilitated the acquisition of public park land in New South Wales for defence purposes and the *Land Acquisition (Northern Territory Pastoral Leases) Act 1981* was used to compulsorily acquire two pastoral leases (Mudginberri and Munmarlary) for subsequent inclusion in Kakadu National Park.

The review was conducted by the Department of Finance and Administration. It was advertised nationally and public comment sought from interested parties.

#### *Review progress*

The review identified some minor operational and administrative issues relating to NCP but concluded that the legislation complies with the competition policy principles.

#### *Government response*

There is no Government response to the report, however, the review found that the legislation does not significantly restrict competition.

## *Marine Insurance Act 1909*
(Attorney-General's Department)

The *Marine Insurance Act 1909* sets out the legal requirements surrounding contracts for and policies of marine insurance. It was designed to simplify and codify some aspects of the common law dealing with marine insurance.

This legislation was added to the CLRS for review in 1998-99 and the review commenced in October 1999.

The review was conducted by the Australian Law Reform Commission.

### *Review progress*

The report was submitted to the Attorney-General prior to 30 April 2001, and was tabled in Parliament on 22 May 2001.

### *Government response*

The report concluded that there are no significant competition policy implications, either in the existing Act or in relation to proposed reforms. Generally, the Marine Insurance Act does not constrain the practice of marine insurance by imposing requirements on insurers or insured parties and most of the provisions of the Act can be varied by contract. There are no legislative requirements placed on insurers of marine risk beyond those required of insurers of other types of general insurance. Therefore, no further action on competition matters is required in relation to the Act.

## *Part VI of the Navigation Act 1912*
(Department of Transport and Regional Services)

The *Navigation Act 1912* provides a legislative basis for many of the Commonwealth's responsibilities for maritime matters including ship safety, coasting trade, employment of seafarers and shipboard aspects of the protection of the maritime environment. It also regulates wreck and salvage operations, passengers, tonnage measurements of ships and a range of administrative measures relating to ships and seafarers.

The coastal trade provisions of Part VI of the Act were scheduled for review in 1998-99 and the Shipping Reform Group considered these provisions in its report and a comprehensive review of the other parts of the Act was substituted for Part VI review.

In December 1997, the Government decided to review the Navigation Act in two stages. The first stage considered repeal of matters that impede shipping reform or are inconsistent with the concept of company employment. This review stage was completed in 1998 and resulted in the Navigation Amendment (Employment of Seafarers) Bill 1998, which was introduced into Parliament on 25 June 1998 and passed by the House of Representatives on 31 March 1999. During the Senate debate on the Bill, a significant number of items in the Bill were rejected. The Minister decided that further action on the Bill should be taken in conjunction with action on the Stage 2 review.

The second stage review commenced in August 1999 and was completed in June 2000.

The Review was conducted by officials of the Department of Transport and Regional Services (DOTARS) and the Australian Maritime Safety Authority. The review team operated under the guidance of an independent Steering Group, which provided direction to the review team and acted as an external reference for the conduct of the review, ensuring that it was strategic and reflected as broadly as possible the views of stakeholders.

The steering group comprised the chairman, Mr Rae Taylor AO; Mr Lachlan Payne, Chief Executive Officer, Australian Shipping Federation; Mr Barry Vellnagel, Deputy Director, Minerals Council of Australia; Mr Clive Davidson, Chief Executive, Australian Maritime Safety Authority; and Ms Joanne Blackburn, Assistant Secretary, DOTARS.

*Review progress*

The final report was presented to the Minister for Transport and Regional Services on 15 June 2000. It was released for publication on 20 August 2000 and copies were distributed to persons and organisations making submissions. The report is also published on DOTARS website.

*Government response*

The Government is currently consulting with industry on proposed amendments to the Navigation Act, to implement some of the recommendations of the review. The Government is also continuing to consider shipping policy matters on a broader basis.

## *Shipping Registration Act 1981*
## (Department of Transport and Regional Services)

The *Shipping Registration Act 1981*, replacing the system created by the United Kingdom *Merchant Shipping Act 1894*, provides for an Australian national system for registering ships and mortgages on ships. In turn it creates a system under which ships, their owners and those with a financial stake in ships, can be identified.

*Review progress*

This review commenced in February 1997.

A taskforce of seconded officials from the then Department of Transport and Regional Development, the Australian Maritime Safety Authority (AMSA) and the Bureau of Transport and Communications Economics undertook the review. A steering committee, comprised of a senior executive from both the Department and AMSA, was established to oversee the review. An independent reference committee acted as an external referee of the conduct of the review.

The report on the Review of the Shipping Registration Act was released in 1997. The review concluded that Australia should continue to legislate in order to fix conditions for the grant of nationality to its ships in accordance with international conventions. A range of measures to facilitate this objective were recommended.

*Government response*

The Government is considering the recommendations of the Review as part of an on-going examination of this Act and the *Navigation Act 1912* as part of the consideration of shipping policy issues.

## *Torres Strait Fisheries Act 1984* and related Acts (Department of Agriculture, Fisheries and Forestry)

This legislation regulates all fishing within the Australian jurisdiction of the Torres Strait Protected Zone established by the Torres Strait Treaty between Australia and Papua New Guinea. It provides the powers for the Commonwealth to undertake fisheries management in the Torres Strait Protected Zone and the mechanism for the recovery of the Commonwealth's costs and the imposition and collection of a research and development levy.

The then Department of Primary Industries and Energy established a committee of officials in March 1998. The committee of officials were from: Australian Fisheries Management Authority, Environment Australia, The Thursday Island Coordinating Council, The Torres Strait Regional Authority, The Queensland Commercial Fishing Organisation, The Australian Seafood Industry Council, The Queensland Fisheries Management Authority, Torres Strait Fisheries, Thursday Island, and Queensland Department of Primary Industries.

### *Review progress*

The committee of officials reported its recommendations to the Commonwealth Minister for Resources and Energy in August 1999.

The report was presented to the IDC in March 2000. The Protected Zone Joint Authority (PZJA) noted the findings and recommendations of the review and referred these to the Torres Strait fisheries consultative and advisory committees for further consideration.

### *Government response*

The review report recommended little change to current arrangements, which the Government is continuing to consider. At this stage the Government is not expected to respond to the Review recommendations.

The NCC assessed in its 2003 assessment that the Australian Government has met its CPA clause 5 obligations in relation to the Torres Strait Fisheries Act, because all key restrictions have been found to be in the public interest.

## *Trade Practices Act 1974* — subsections 51(2) and 51(3) exemption provisions
## (Department of the Treasury)

Subsections 51(2) and 51(3) of the TPA provide exemptions for a variety of activities concerning intellectual property rights, employment regulations, export arrangements and approved standards for many of the competition laws contained within Part IV of the Act. This Part prohibits a number of anti-competitive trade practices including: anti-competitive arrangements and exclusionary provisions; secondary boycotts; misuse of market power; exclusive dealing; resale price maintenance and mergers that would have the effect or likely effect of substantially lessening competition in the substantial market.

The review commenced in June 1998. It was conducted by the NCC.

### *Review progress*

The review report was released on 21 June 1999.

### *Government response*

The Government is considering its response to the review of section 51(2) of the TPA.

On 28 August 2001, the Government announced changes to section 51(3) of the Act in its response to the report of the Intellectual Property and Competition Review Committee (the Ergas Committee) report of December 2000, which also examined section 51(3) (see page 31).

The Government will amend the TPA 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* (Cth) from the modified competitive conduct rules. Passage of the Bill is expected in 2004.

### 1.2.3 Reviews commenced but not completed

#### *Disability Discrimination Act 1992*
(Attorney-General's Department)

The objectives of the Disability Discrimination Act 1992 are:

- to assist in eliminating discrimination against people with disabilities in a range of areas of public life;
- to ensure, as far as practicable, that people with disabilities have the same rights to equality before the law as the rest of the community; and
- to promote recognition and acceptance within the community that people with disabilities have the same fundamental rights as the rest of the community.

This Act was added to the CLRS for review in 1998-99, however, it was deferred to 1999-2000.

The Office of Regulatory Review approved terms of reference for the review on the 9 December 2002.

*Review Progress*

The Parliamentary Secretary to the Treasurer announced the review and provided terms of reference to the Productivity Commission on 5 February 2003.

Following a public consultation process, the Productivity Commission released its draft report on 31 October 2003. The draft report has been followed by a further round of public consultations in January and February 2004. A final report is expected by 30 April 2004.

The draft report indicates that the legislation seems to meet the tests of the Competition Principles Agreement and has had a limited impact on competition. The report recommends a number of reforms to the Act to make it more effective in meeting its objective of eliminating discrimination.

The Government's final response is to be tabled in Parliament within six months of receipt of the final report. The Government will make the final decision on acceptance and implementation of the Commission's recommendations.

### *Defence Housing Authority Act 1987*
### (Department of Defence)

The terms of reference for this review were agreed to in June 1998. Since then, however, extensive competitive neutrality reforms have been applied progressively to the Defence Housing Authority (DHA), including a commercial rate of return, debt neutrality and a tax equivalent regime. In addition, a Services Agreement has been instituted to set DHA relations with Defence on a commercial footing, and this Agreement does not oblige Defence to exclusively use the services of the DHA. A comprehensive external review of the *Defence Housing Authority Act 1987* was commissioned by the DHA and reported in November 2000.

Consideration is being given to whether the Act contains any further restrictions on competition that would require review.

### *Pig Industry Act 1986* and related Acts
### (Department of Agriculture, Fisheries and Forestry)

This Act established the Australian Pork Corporation whose functions include improving the production, consumption, promotion and marketing of pigs and pork both in Australia and overseas.

*Review progress*

Work on the review commenced under the direction of the committee of officials with a nationally advertised call for submissions in the second half of 1998.

Work on the review was suspended following advice from industry on a restructure of industry bodies including the Australian Pork Corporation.

The *Pig Industry Act 1986* was repealed in 2001 under the *Pig Industry Act 2001*, which provided legislative authority for new pig industry arrangements. The new Act was developed giving consideration to NCP principles and thus the need for a further review is negated.

### *Quarantine Act 1908*
### (Department of Agriculture, Fisheries and Forestry)

The review of the Quarantine Act 1908 (Nairn Review) was underway prior to its listing on the CLRS. AQIS is proposing to commence a comprehensive re-examination of the Quarantine Act and any amendments arising from this review will be subject to the RIS process. This re-examination of the Act will also include a review of those elements of the Act that were unchanged following the Nairn Review for compliance with CPA legislation review principles.

The examination has been delayed pending the resolution of the challenges concerning Australia's quarantine regime in the World Trade Organisation and assessment of any administrative and legislative actions that might become necessary as a result.

### 1.2.4 Reviews not commenced

#### *Anti-dumping legislation, Customs Act 1901* Part XVB and *Customs Tariff (Anti-dumping) Act 1975*
(Attorney-General's Department)

A review of the *Customs Act 1901* Part XVB and the *Customs Tariff (Anti-dumping) Act 1975* was deferred to allow implementation of Government reforms improving Australia's anti-dumping and countervailing duty mechanisms. To date, the government has not finalised the timing or manner of a review of the legislation relevant to anti-dumping and countervailing matters.

Reference to the *Anti-dumping Authority Act 1988* has been deleted, as this Act was repealed in December 1998 following changes to the administration of the anti-dumping and countervailing investigations.

#### Commerce Prohibited Imports Regulations
(Attorney-General's Department)

The Government is considering whether the regulations contain restrictions on competition and should be reviewed. If not, it will be considered whether the regulations should be removed from the CLRS.

#### Dairy Industry Legislation
(Department of Agriculture, Fisheries and Forestry)

At the time the Competition Principles Agreement was established, the *Dairy Produce Act 1986* specified the objectives, functions and administrative requirements of the Australian Dairy Corporation (ADC) (including licensing of dairy exports to markets with access restrictions), and provided for the operation of the Australian Governments's Domestic Market Support scheme. Since this time, the Australian dairy industry has undergone significant reform and the Act has substantially evolved.

On 30 June 2000, farm gate prices for drinking milk were deregulated and the Australian Government Domestic Market Support scheme ceased to exist. On 1 July 2003, amendments to the Act facilitated the merger of the Dairy Research and Development Corporation and the

ADC into one Corporations Act company, Dairy Australia. The Act does not provide for the new privatised entity to undertake any single desk selling arrangements. Export control functions transferred from the ADC are now the responsibility of the Department. Regulations governing certain types of cheese products entering the regulated markets of the European Union and United States came into effect from 1 January 2004.

A review of the Act was scheduled to take place in 1998/ 99. However, on the basis of these substantial legislative changes occurring over time, the Prime Minister and the Parliamentary Secretary to the Treasurer agreed to defer the review of the Act until all industry reforms had been completed in mid 2003. It is anticipated that the review, should it be required, will take place in 2004.

### *Defence Act 1903* (Army and Airforce Canteen Services Regulations) (Department of Defence)

This review had not commenced by 31 March 2004. The regulations do not raise any competitive neutrality issues.

### *Defence Force (Home Loans Assistance) Act 1990* (Department of Defence)

The review had not commenced by 31 March 2004.

### Dried Vine Fruits Legislation (Department of Agriculture, Fisheries and Forestry)

Ministers have agreed to the deletion of the following legislation from the CLRS:

- *Dried Vine Fruits Equalization Act 1978;*
- *Dried Sultana Production Underwriting Act 1982 (upon the repeal of the Act); and*
- *Dried Vine Fruits Legislation Amendment Act 1991 (upon repeal of the above Act).*

The remaining regulations relevant to the CLRS were:

- Australian Dried Fruits Board Regulation under the *Australian Horticultural Corporation Act 1987* (AHC Act); and

- Dried Fruit Export Control Regulations 1991 under the AHC Act.

However, the Australian Horticultural Corporation (Dried Fruits Export Control) Regulations 1991 ceased to be in effect from 31 January 2003 and new Horticulture Marketing and Research and Development Services (Export Efficiency) Regulations 2002 took effect from 1 February 2003. They provide for the industry export control body Horticulture Australia Limited (HAL) to administer export efficiency powers beyond 31 January 2003 when the previous regulation expired.

These export efficiency regulations carry over the export control powers including the Corporate Permission and Export Licences that were in operation under the Australian Horticultural Corporation (Export Control Regulations) 1990 and the Australian Horticultural Corporation (Dried Fruits Export Control) Regulations 1991, respectively. These new export efficiency regulations have been subject to a RIS (which is publicly available) and involves the industry export control body following a process (as identified in the Deed of Agreement between the Commonwealth and HAL). The process requires a sector of the horticultural industry to develop a *prima facie* case for the use of export efficiency powers which is then reviewed by the Board of HAL.

HAL administers these arrangements, and includes annual performance reviews, a three-year net public benefit review, which will include a RIS, and a ten-year legislation review in accordance with the CPA.

### *Environmental Protection (Nuclear Codes) Act 1978*
(Department of Health and Ageing)

The *Australian Radiation Protection and Nuclear Safety (Consequential Amendments) Act 1998* repealed the *Environmental Protection (Nuclear Codes) Act 1978*.

Of the three Codes previously created under the repealed Act, one, the Code of Practice for the Safe Transport of Radioactive Substances 1990, has already been reissued as the Code of Practice for the Safe Transport of Radioactive Material 2001, whilst the remaining two, the Code of Practice on the Management of Radioactive Wastes from the Mining and

Milling of Radioactive Ores 1982 and the Code of Practice on Radiation Protection in the Mining and Milling of Radioactive Ores 1987, will be reissued shortly as one revised code, the Code of Practice and Safety guide for Radiation Protection and Radioactive Waste Management in Mining and Mineral Processing. A draft of this code has been prepared. The accompanying draft Regulatory Impact Statement (RIS) was forwarded to the ORR in March 2004, and there is further work to be undertaken before the RIS is cleared for public comment. At this stage, it is anticipated that the Code and Safety Guide will be published in the fourth quarter of 2004 or first quarter of 2005.

### *Insurance (Agents & Brokers) Act 1984*
(Department of the Treasury)

The *Insurance (Agents & Brokers) Act 1984* was repealed from March 2002 by the *Financial Services Reform (Consequential Provisions) Act 2001*. Those entities which were regulated under the Insurance (Agents & Brokers) Act had until March 2004 (a two-year transition period) to adopt the new regime. A RIS was prepared at the tabling stage for the Financial Services Reform Bill, which the ORR assessed as adequate.

### *Native Title Act 1993* & regulations
(Attorney-General's Department)

This review had not commenced by 31 March 2004. The Department is examining whether the review of the Act is required.

### *Petroleum Retail Marketing Sites Act 1980 & Petroleum Retail Marketing Franchise Act 1980*
(Department of Industry, Tourism and Resources)

The *Petroleum Retail Marketing Sites Act 1980* and the *Petroleum Marketing Franchise Act 1980* will be repealed as part of the implementation of the downstream petroleum reform package.

### *Treatment Principles (under section 90 of the Veterans' Entitlement Act 1986* (VEA)) & Repatriation Private Patient Principles (under section 90A of the VEA)
*(Department of Veterans' Affairs)*

This review had not commenced by 31 March 2004.

### 1.2.5 Legislation deleted from the CLRS

This section identifies legislation deleted from the CLRS during the period 1 April 2003 to 31 March 2004. Information on reviews deleted in previous reporting periods is available in earlier annual reports (available at: www.treasury.gov.au).

No legislation was deleted from the CLRS during this time period.

## 1.3 Legislation subject to national review

The CPA provides that where a review raises issues with a national dimension or effect on competition (or both), the party responsible for the review will consider whether the review should be undertaken on a national (inter-jurisdictional) basis. Where this is considered appropriate, other interested parties must be consulted prior to determining the terms of reference and the appropriate body to conduct the review. National reviews do not require the involvement of all jurisdictions.

The scheduled reviews of the following Australian Government legislation have been incorporated into national reviews.

### *Agricultural and Veterinary Chemicals Act 1994*
### (Department of Agriculture, Fisheries and Forestry)

The NCP review covers legislation that created the National Registration Scheme for Agricultural and Veterinary Chemicals and legislation controlling the use of agricultural and veterinary chemicals in Victoria, Queensland, Western Australia and Tasmania. Separate to that review, the jurisdictions of New South Wales, South Australia and the Northern Territory conducted reviews of their own control of use legislation to be aggregated with the NCP review.

The review was commissioned by the Victorian Minister for Agriculture and Resources on behalf of Australian Government, State and Territory Ministers for Agriculture/ Primary Industries following a decision by the Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ).

#### *Review progress*

The consultant's final report was presented on 13 January 1999.[10] The Steering Committee accepted that the report fulfilled the terms of reference.

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10 See the 1997-98 *Commonwealth National Competition Policy Annual Report* (pp 114-117) for terms of reference.

*Government response*

On 3 March 1999 the then Standing Committee on Agricultural Resource Management (SCARM) agreed to publicly release the Report and established a jurisdictional Signatories (to the National Registration Scheme for Agricultural and Veterinary Chemicals) Working Group (SWG) to prepare an inter-governmental response to the Report's recommendations. SCARM/ ARMCANZ endorsed the inter-governmental response to the review in January 2000. The COAG Committee on Regulatory Reform cleared the response.

Following on from consideration of the recommendations in the review and preparation of the inter-governmental response, a number of processes were commenced to more closely examine issues of concern. An interjurisdictional taskforce was established by SCARM to examine how best to regulate low risk chemicals in response to the review recommendations on that issue. Based on the deliberations of the taskforce, amendments to the Agvet Chemical Legislation were enacted in February 2003, with the Act coming into operation in October 2003.

Working groups were established to further examine and progress the review recommendations relating to manufacturer licensing, cost recovery and use of alternative assessment providers. Reports of these working groups have been finalised, with the outcomes/ recommendations of the investigations into cost recovery and use of alternative assessment providers being endorsed by Primary Industries Standing Committee (PISC, formerly known as SCARM) in late 2002.

The final report of the Manufacturers Licensing Working Group recommended the Australian Pesticides and Veterinary Medicines Authority (APVMA - previously known as the National Registration Authority for Agricultural and Veterinary Chemicals), develop and adopt other means to ensure the quality of active constituents and agricultural chemical products. In December 2003, the APVMA released for public comment, the Regulatory Impact Statement for *Quality Assurance of Active Constituents and Agricultural Chemical Products*. Implementation is currently scheduled for 1 March 2004.

A revised fee and levy structure for the APVMA has been developed, based on the cost recovery framework developed by the Cost Recovery Working Group and endorsed by PISC. A draft Cost Recovery Impact Statement on the proposed fee structure was released for public comment in December 2003. It is proposed to introduce the necessary amendment Bill in the 2004 autumn sittings of Parliament and for the new fee structure to commence on 1 July 2004.

In September 2002, PISC endorsed the final report of the Assessment Services Working Group. The Australian Government Departments of Agriculture, Fisheries and Forestry and Health and Ageing subsequently developed an operating framework for the provision of human health assessments and advice on human health risk management to the APVMA. The framework includes provision for contestability of some work subject to certain conditions. The framework was endorsed by Federal Cabinet in the context of its December 2003 response to the *Review of Administrative Arrangements for Commonwealth Public Health and Safety Regulation*.

In addition to these working groups, the Control of Use Taskforce was established by ARMCANZ to further examine the review recommendations covering matters relating to off-label chemical use, veterinary surgeons exemptions and control of use licensing. The Taskforce, comprising Federal, State and Territory representatives, has responded to the recommendations, most of which have been implemented. The remaining recommendations are being progressed through PISC's Product Safety and Integrity Committee. The final report of the Taskforce was endorsed by PISC (out of session) in March 2003.

The Government has considered the Report's recommendations in relation to compensation for third party access to chemical assessment data and agrees that there should be an enhanced data protection mechanism. A policy reform document has subsequently been developed by government and agreed with industry. Initial drafting instructions for legislation are being prepared for further consultations with industry.

The Intergovernmental Response rejected the Report's recommendation with respect to efficacy and decided to retain, as part of the registration process, an assessment of whether the efficacy claimed by a supplier is

appropriate. In its 2003 assessment report, the National Competition Council concluded that, "…the risks involved in using chemicals with inadequate efficacy may be considerable, and that the requirement for 'appropriateness' assessment does not appear to be a costly restriction, the Council considers that there is a net public interest case for retaining 'appropriateness' assessment."

## *Review of the Mutual Recognition Agreement and the Mutual Recognition (Commonwealth) Act 1992*
## (Department of the Prime Minister and Cabinet, Department of Education, Science and Training, Department of Industry, Tourism and Resources)

The Mutual Recognition Agreement (MRA) establishes a national scheme under which goods which are legally saleable in one jurisdiction can be sold throughout the country, and people who work in a registered occupation in one jurisdiction can freely enter an equivalent occupation in another jurisdiction.

Several jurisdictions were obliged to conduct NCP legislation reviews of their mutual recognition legislation. In addition, the MRA required that it (the MRA) be reviewed in its fifth year of operation; that is between 1 March 1997 and 1 March 1998.

As the MRA is a national scheme, all jurisdictions agreed to a national review by the CoAG Committee on Regulatory Reform, with representatives from Queensland (Chair), the Australian Government, New South Wales and Western Australia.

### *Review progress*

The review was conducted between October 1997 and June 1998.[11] The report, which covers both the NCP and MRA aspects of the review, is available on the Internet 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 and to establish a truly national market in goods and services in Australia. The review data indicated that

11 See the 1997-98 *Commonwealth National Competition Policy Annual Report* (pp 117-118) for terms of reference.

the MRA has increased competition and consumer choice, and reduced business costs. In relation to the NCP review, it was recommended that all existing (potentially anti-competitive) exceptions to the MRA be retained (see recommendations 14 to 25 of the review).

*Government response*

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

The recommendations of the review, and the concerns expressed by Queensland and Victoria are being taken up in the 2003 review of the MRA.

The 2003 review is to be conducted in two stages, with the Productivity Commission providing a commissioned research paper assessing the benefits of the agreements and scope for improvements. This is then to be considered by an officers group of the COAG Committee for Regulatory Reform (CRR), including New Zealand representatives, and a report provided to COAG and the New Zealand Government.

The Productivity Commission study aims to assess whether the TTMRA and MRA are:

- Fostering and enhancing trade and workforce mobility between the Commonwealth, States and Territories and New Zealand;
- Enhancing the international competitiveness of both Australian and New Zealand business; and
- Enhancing the capacity of Australia and New Zealand to influence international standards relating to product descriptions and registration of occupations.

The Productivity Commission released its final paper on 17 October 2003 and an interim report on the Commission's findings was subsequently provided by the CoAG CRR to COAG and the New Zealand

Government. COAG has asked for a final report from CRR by the end of September 2004.

## Review of Petroleum (Submerged Lands) Acts (Department of Industry, Tourism and Resources)

The objective of the Petroleum (Submerged Lands) Acts is to provide a licensing and regulatory regime to enable exploration, development and production of petroleum resources within Australia's marine jurisdiction. In November 1999 the Australian and New Zealand Minerals and Energy Council (ANZMEC) commissioned a national review, against competition policy principles, of the Australian Government, State and Northern Territory legislation which governs exploration and development of Australia's offshore petroleum resources.

### *Review progress*

The review's terms of reference were approved by the ORR on 28 October 1999. A review committee of five members was drawn from the Australian Government Department of Industry, Tourism and Resources, the Victorian Department of Natural Resources and the Environment, the Northern Territory Department of Mines and Energy and the Australian Bureau of Agricultural and Resource Economics. At the ANZMEC Ministerial Council meeting held on 25 August 2000, the Council considered the review reports and resolved to adopt the review recommendations. These contained proposed responses to recommendations put forward in an April 2000 independent consultant's report by ACIL Consulting Pty Ltd.

The main conclusion of the Review Committee was that the legislation is essentially pro-competitive and, to the extent that there are restrictions on competition (for example, in relation to safety, the environment, resource management or other issues), these are appropriate given the net benefits to the community.

The final report was made public on 27 March 2001, following consideration by CoAG's Committee on Regulatory Reform.

### *Government response*

All Governments (Australian, State and the Northern Territory) responded to the review by accepting the recommendations of the final report at the ANZMEC Ministerial Council meeting of 25 August 2000.

Two specific legislative amendments flow from the review. One will address potential compliance costs associated with retention leases and the other will expedite the rate at which exploration acreage can be made available to subsequent explorers. The required amendments to the Australian Government's legislation were effected under the *Petroleum (Submerged Lands) Amendment Act 2002*. Amendment and rewrites of the counterpart State and Northern Territory legislation will follow.

### 1.3.1 Other national reviews with Commonwealth involvement

The Australian Government is also participating in various national reviews that do not involve Australian Government legislation currently scheduled for review or for which there is no applicable Australian Government legislation. These reviews are detailed below.

#### Drugs, poisons and controlled substances legislation

The State, Territory and Australian Governments commissioned a review to examine legislation and regulation which imposes controls over access to, and supply of drugs, poisons and controlled substances. An independent Chair, Ms Rhonda Galbally, undertook the review, with advice from a steering committee representing all jurisdictions.

The objectives of the legislation are to protect and promote public health by preventing poisoning, medicinal misadventure and diversion of these substances to the illicit drug market.

Submissions against the terms of reference were invited and these informed the development of the options paper, which was released for comment in February 2000. A draft report was released in September 2000 and provided a further opportunity for interested parties to comment.

*Review progress*

The review's report has been finalised and presented to the Australian Health Ministers Conference (AHMC) which is required by the review's terms of reference to forward the report to CoAG with their comments.[12]

The final report was publicly released in January 2001.

A working party of the Australian Health Ministers' Advisory Council (AHMAC) was established to assist the preparation of comments on the report for CoAG.

*Government response*

As a number of the Galbally Review recommendations potentially impact on the management of agricultural and veterinary chemicals, the Working Party's draft response was considered by the Primary Industries Ministerial Council (PIMC) for comment. The draft response was updated to take into account the PIMC comments.

The Government response to the Report of the Galbally review which examined legislation and regulation imposing controls over access to, and supply of drugs, poisons and controlled substances was forwarded to the Council of Australian Government through the Australian Health Ministers' Conference in late 2003.

However, since the release of the Report of the Galbally review, the Australian and New Zealand governments have agreed to establish a joint agency for the regulation of therapeutic products. Australia's Therapeutic Goods Administration (TGA) and the New Zealand Medicines and Medical Devices Safety Authority (Medsafe) will be replaced by a single agency accountable to both the New Zealand and Australian governments. It is anticipated that these new arrangements will commence on 1 July 2005.

A project team of Australian and New Zealand officials is continuing to develop the final details of the regulatory framework and the legislation to regulate therapeutic products in both countries. Rather than reviewing and reforming the Therapeutic Goods legislation, which is likely to be

12 See the 1997-98 *Commonwealth National Competition Policy Annual Report* (pp 120-127) for terms of reference.

repealed in 2005, the Government response therefore proposes that the Galbally review recommendations which require Commonwealth legislative change, be implemented as part of the new trans-Tasman legislation.

The TGA is continuing to work with relevant health officials in the Australian States and Territories and New Zealand to co-ordinate those changes required to State / Territory legislation to implement relevant Galbally recommendations and the development of the new trans-Tasman legislation.

## Food Acts

The legislation for review comprises the Food Acts in each State and Territory and New Zealand. The objectives of the Food Acts are to ensure compliance and enforce food standards in each jurisdiction.

The review was established in 1996 at the request of the Australia New Zealand Food Standards Council (the Ministerial Council). ANZFA coordinated the review, on behalf of the other jurisdictions and included representatives of the jurisdictions on the review panel.

### *Review progress*

The review report was released in May 1999 by ANZFA and recommended removal of some restrictive provisions of the Food Acts, for example opening up food inspections to third party auditors. The review concluded that certain other powers should be retained as exclusive to government in recognition of the appropriateness of government's enforcement role.

### *Government response*

On 3 November 2000, CoAG agreed to the food regulatory reform package, of which the Model Food Act is part. In addition, CoAG signed off on an Inter-Governmental Agreement on Food Regulation agreeing to implement the new food regulation system.

All jurisdictions agreed to use their best endeavours to introduce into their respective Parliaments legislation based on the Model Food Act by 3 November 2001.

## Pharmacy regulation

In 1999, the NCP Review of Pharmacy Regulation examined State and Territory legislation relating to pharmacy ownership and registration of pharmacists, together with Australian Government legislation relating to regulation of the location of premises for pharmacists approved to supply pharmaceutical benefits.

Legislative regulation of the ownership of pharmacies applies currently in all States. The nature of these restrictions varies from jurisdiction to jurisdiction. The State Pharmacy Acts generally prohibit ownership or any pecuniary interest of pharmacies by anybody other than a pharmacist.

All States and Territories require registration of pharmacists. Legislation covers requirements regarding initial registration of both Australian-trained pharmacists and overseas-trained pharmacists, renewal of registration, removal of registration, complaints against regulated pharmacists and disciplinary processes.

A ministerial determination made pursuant to section 99L of the Commonwealth *National Health Act 1953* imposes strict conditions on granting Pharmaceutical Benefits Scheme (PBS) dispensing approvals to a new pharmacy (the applicant must satisfy a set of 'definite community need' criteria set out in the determination) and approving the location of a PBS-approved pharmacy from one locality to another.

### *Review progress*

In February 2000, the review released its final report.[13]

In 2000, CoAG referred the final report to Senior Officials for consideration by a working group. The working group was asked to

13 See the 1998-99 *Commonwealth National Competition Policy Annual Report* (pp 158-162) for terms of reference.

consider the review report mindful of factors unique to the practice and regulation of pharmacy in Australia.

In August 2002 the Government released the CoAG Working Group's response to the final report which is available at www.pm.gov.au/ news/ media_releases/ 2002/ media_release1768.htm

The full response of the CoAG Working Group can be accessed at: www.health.gov.au/ haf/ pharmrev/ index/ htm.

## 1.4 New and amended regulation (enacted since April 1995)

The CPA requires all new and amended legislation that restricts competition to be accompanied by analysis illustrating that the benefits of the restriction to the community as a whole outweigh the costs and that the objectives of the legislation can only be achieved by restricting competition.

The Prime Minister's 1997 *More Time for Business*[14] policy statement, prepared in response to the recommendations of the Small Business Deregulation Taskforce, expanded this requirement to apply to all Australian Government regulation that imposes costs or confers benefits on business.

### 1.4.1 Regulation Impact Statements

In order to meet CPA obligations, promote effective and efficient regulation and make transparent the possible impact of proposed legislation, a Regulation Impact Statement (RIS) must be prepared for all proposed new and amended Australian Government regulation with the potential to restrict competition, or impose costs or confer benefits on business (Box 1). The RIS must clearly identify a problem and relevant policy objective and assess the costs and benefits of alternative means of fulfilling the objective.

A function of the Office of Regulation Review (ORR) — which is part of the Productivity Commission — is to advise on whether the Government's RIS process requirements have been met. This includes advising Government on whether the RIS provides an adequate level of analysis. The ORR is also responsible for providing guidance and training to Australian Government departments and agencies in preparing a RIS. RIS requirements are detailed in *A Guide to Regulation* (December 1998) which is available from the ORR (www.pc.gov.au).

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14 Commonwealth of Australia, *More Time for Business*, Statement by the Prime Minister, the Hon John Howard MP, 24 March 1997, Canberra.

## Box 4: What is the purpose of the RIS process?

The objective of the RIS process is to improve the quality of regulations, so that regulations provide the most efficient and effective means of achieving objectives. The RIS helps achieve this by ensuring that a comprehensive assessment of all policy options, and the associated costs and benefits, is undertaken. The information is then used to inform the decision-making processes. In this regard, it provides a comprehensive checklist that outlines public policy decision making best practice.

The RIS process is used to develop the appropriate and best policy solution, which does not impose unnecessary costs on business and the community.

Where a regulatory solution is intended, a formal RIS must accompany the proposed legislation on introduction to Parliament. This provides a public statement of the decision making process.

The Australian Government's overall performance against the RIS requirements, incorporating compliance for new or amended primary legislation, subordinate legislation, quasi-regulation and treaties, is assessed in detail in the Productivity Commission report *Regulation and its Review 2002-03*.

In 2002-03, 139 regulatory proposals introduced by the Australian Government required a RIS. In 120 cases a RIS was prepared, of which 113 were assessed by the ORR as being of an adequate standard. Accordingly, the RIS process compliance rate at the decision-making stage was 81 per cent. This rate was lower than that achieved in the previous three years.

Of the RISs prepared at the decision-making stage for regulatory proposals introduced via Bills, 67 per cent were adequate (compared with 84 per cent in 2001-02). At the tabling stage, 93 per cent were adequate (compared with 95 per cent in 2001-02).[15]

In the case of disallowable instruments (subordinate legislation and regulation), 89 per cent of the RISs prepared at the decision-making stage were adequate (compared with 87 per cent in 2001-02) and 97 per cent

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[15] Productivity Commission 2002, *Regulation and its Review 2001-02*, Annual Report Series, Productivity Commission, Canberra, pp. 5-17.

were adequate at the tabling stage (compared with 94 per cent in 2001-02).

### 1.4.2 Legislation enacted since 1 July 2002 that may restrict competition

Twenty two proposals introduced via Australian Government legislation introduced in the period 1 July 2002 to 30 June 2003 were identified by the ORR as having the potential to restrict competition (see Table 1). The potential impact on the community of these regulations varies from modest to significant. The impact is discussed in published RISs and will depend in part on how the various legislative provisions are implemented and administered by regulators.

**Table 1.1: Selected Australian Government legislation introduced into Parliament between 1 July 2002 and 30 June 2003 having the potential to restrict competition**

| |
|---|
| ACIF C564: Deployment of Radiocommunications Infrastructure |
| ACIF C580: Short Message Service (SMS) Issues |
| Amendments to the Defence and Strategic Goods List Pursuant to s112(2A) of the Customs Act 1901 |
| ASIC Guide on use of past performance in promotional material |
| Australian Meat and Live-stock Industry (Beef Export to the United States of America - Quota Year 2003) Order 2002 |
| Australian Meat and Livestock Industry (Live Cattle Exports to Republic of Korea) Order 2002 |
| Bass Strait Central Zone Scallop Fishery Management Plan |
| Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 4 of 2002) |
| Consumer Protection Notice No. 7 of 2002 |
| Customs (Prohibited Exports) Amendment Regulations 2003 (No. 1) 2003 No. 17 |
| Customs (Prohibited Imports) Amendment Regulations 2003 (No. 1) 2003 No. 18 |
| Grain, Plants and Plant Products Amendment Orders 2003 (No 1) |
| Health Insurance (Accredited Pathology Laboratories - Approval) Principles 2002 HS/11/2002 |
| Horticulture Marketing and Research and Development Services (Export Efficiency) Regulations 2002 |
| International Undertaking on Plant Genetic Resources |
| Monitoring and Reporting on Competition in the Telecommunications Industry Determination 2003 (No. 1). |
| Postal Services Legislation Amendment Bill 2003 |
| Proclamation of the Heard Island and McDonald Islands Marine Reserve |
| Radiocommunications (Transmitter Licence Tax) Amendment Determination 2002 (No. 1) |
| Radiocommunications Licence Conditions (Broadcasting Licence) Amendment Determination 2002 (No. 1) |

# 2 Competitive neutrality

## 2.1 Why implement competitive neutrality?

The *Competition Principles Agreement* (CPA) establishes a policy of competitive neutrality. This requires that government businesses operating in a market in which there are actual or potential competitors should not enjoy any net competitive advantages simply as a consequence of their public ownership.

The objective of this policy is to eliminate potential resource allocation distortions arising from the public ownership of significant business activities operating in a contestable environment, and to encourage fair and effective competition in the supply of goods and services.

The ability of government owned business activities to compete 'unfairly' can have significant economic efficiency and equity implications. This is because pricing decisions taken by government businesses may not fully reflect actual production costs or other business costs borne by their private sector competitors. This may result from a lack of market pressure and discipline, such as that applied through the requirement for private sector firms to earn a commercial rate of return and make dividend payments to shareholders, or special planning regulations. Such advantages may enable a government business to undercut private sector competitors, and provide an effective barrier to entry for potential competitors.

If consumers choose to purchase from the lower priced government provider, the production and investment decisions of that business and actual and potential competitors will be influenced. If the government business is not the least cost producer (once costs are measured on an equivalent basis), the allocation of resources towards production by this business would be inefficient.

As a result, removing those advantages enabling under-pricing should encourage more economically efficient outcomes, and ensure resources are allocated to their best uses.

It also means that where public funds continue to be used to provide significant business activities, increased competitive pressures and performance monitoring should result in more efficient operations. Consumers will benefit from more competitive pricing practices and improved quality of government services.

Furthermore, where public funds are removed from the provision of goods and services considered best left to the private sector, and those remaining activities are provided more efficiently, a greater proportion of total public funds can be directed towards the provision of social policy priorities such as health, education and welfare.

This improved government business competitiveness does not come at the expense of satisfying legitimate Community Service Obligations (CSOs). However, as discussed in section 2.1.3, competitive neutrality does encourage greater transparency and efficiency in their provision.

### 2.1.1 Which Government activities are subject to competitive neutrality?

The *Australian Government Competitive Neutrality Policy Statement* (June 1996) (CNPS) deems all Government Business Enterprises (GBEs) and their subsidiaries, Commonwealth Companies (formerly referred to as Commonwealth Share-Limited Companies) and business units to be significant business activities and, consequently, required to apply competitive neutrality.

- GBEs are either Commonwealth Authorities or Commonwealth Companies prescribed by the regulations under the *Commonwealth Authorities and Companies Act 1997* (CAC Act) (see section 2.2.1).

- Commonwealth Companies (previously referred to as Commonwealth Share-Limited Companies) are companies established under the *Corporations Act 2001* in which the Australian Government has a controlling interest (see section 2.2.1). However, it does not include a company in which the Australian Government has a controlling interest through one or more interposed Commonwealth Authorities or Commonwealth Companies. A Commonwealth

Company is governed by the CAC Act, and is referred to as a CAC Act body.

- Business units are identifiable parts of a *Financial Management and Accountability Act 1997* (FMA Act) Agency that have the primary objective of trading goods and services in the market, for the purpose of earning a commercial return (see section 2.2.2). The management and accounting structures of business units are separate from other parts of the overall organisation.

The following activities are also considered significant for the purposes of competitive neutrality:

- other commercial activities undertaken by non-GBE agencies prescribed by regulation under the FMA Act, Commonwealth Authorities or Departments, with a commercial turnover of a least $10 million per annum (see section 2.2.3);

- baseline costing for activities undertaken for market testing purposes (see section 2.2.4); and

- public sector bids (see section 2.2.4).

To be considered a business the following criteria must be met:

- there must be charging for goods and services;

- there must be an actual or potential competitor either in the private or public sector, that is, users are not restricted by law or policy from choosing alternative sources of supply; and

- managers of the activity must have a degree of independence in relation to the production or supply of the good or service and the price at which it is provided.

Other business activities (not listed above) are subject to the complaints mechanism and may be required to apply competitive neutrality if a complaint against them is upheld (see section 2.2.5). These business activities may choose to apply competitive neutrality on a notional basis, to preclude complaints.

Competitive neutrality is required to be implemented only where the costs of this course of action do not exceed the benefits.

### 2.1.2 What does the application of competitive neutrality require?

The *Australian Government Competitive Neutrality Guidelines for Managers (February 2004)* provides assistance with the practical application of the competitive neutrality principles, as identified in the CNPS, to a wide range of Australian Government business activities.

In general terms, competitive neutrality implementation involves:

- adoption of a corporatisation model for significant GBEs;
- payment of all relevant Commonwealth and State direct and indirect taxes or tax equivalents;
- payment of debt neutrality charges or commercial interest rates, directed towards offsetting competitive advantages provided by explicit or implicit government guarantees on commercial or public loans;
- attainment of a pre-tax commercial rate of return on assets (to ensure, among other things, payment of competitive neutrality components is not simply accommodated through a reduction in profit margin);
- compliance with those regulations to which private sector competitors are normally subject, for example, planning and approvals processes; and
- pricing of goods and services provided in contestable markets to take account of all direct costs attributable to the activity and the applicable competitive neutrality components.

The actual application of competitive neutrality varies significantly, depending on the nature of the business activity to which it is being applied and the specific operating conditions being assessed. Examples of this flexibility are detailed below.

Example 1

Government businesses may compete predominantly against private or other government organisations that are recipients of special arrangements in relation to the payment of taxes. In these circumstances, the Government business is only required to calculate its tax liability in a comparable manner to its competitors.

Example 2

Where commercial activities are undertaken within a non-GBE authority prescribed by regulation under the FMA Act, competitive neutrality policy requires as a first best solution the structural (legal) separation of those activities from the parent body. However, if this is not cost effective, strict accounting separation between contestable and non-contestable services is acceptable. Where neither of these options can be implemented in a satisfactory manner, competitive neutrality is to be applied across the board. This ensures that entities do not cross subsidise contestable services from their non-contestable or reserved business activities.

Box 5 clarifies some common misconceptions with regard to competitive neutrality.

## Box 5: Competitive neutrality — some misconceptions

- Competitive neutrality does not apply to non-business, non-profit activities of publicly owned entities. It also does not prevent activities being conducted as CSOs.

- Competitive neutrality does not have to be applied to Australian Government business activities where the costs of implementation would outweigh the expected benefits.

- Competitive neutrality is neutral with respect to the nature and form of ownership of business enterprises. It does not require privatisation of Australian Government business activities, only corporatisation. Where the Government decides to privatise a former public monopoly, the requirements of Clause 4 of the CPA must be met (see Chapter 3).

- Competitive neutrality does not require outsourcing of Australian Government activities — but when public bids are made under market testing arrangements, they must comply with competitive neutrality. As a result, in-house units should not have an unfair advantage over other bidders.

- Regulatory neutrality does not require the removal of legislation that applies only to the GBE or agency (and not to its private sector competitors) where the regulation is considered to be appropriate. However, anti-competitive legislation may be reviewed under the Commonwealth legislation review program (see Chapter 1).

### 2.1.3 Community Service Obligations

A CSO arises when the Government specifically requires a business to carry out an activity or process that:

- the organisation would not elect to do on a commercial basis, or that it would only do commercially at higher prices; and
- the Government does not, or would not, require other organisations in the public or private sectors to fund.

CSOs are often established to meet government social policy objectives. A well known example is the requirement that Australia Post provide a standard letter delivery service throughout Australia for a uniform postage rate (currently 50 cents).

Competitive neutrality does not prevent the provision of CSOs, but it does establish certain requirements in terms of their costing, funding and interaction with other competitive neutrality obligations. The intention is to encourage more effective and transparent provision of such services, with minimal impact on the efficient provision of other commercial services.

At the November 2000 Council of Australian Governments (CoAG) meeting it was decided that parties should be free to determine who should receive a CSO payment or subsidy when implementing competitive neutrality requirements under the CPA, and that such payments should be transparent, appropriately costed and funded directly by government. It was also decided that there was no requirement for a competitive process in delivering CSOs. Where an organisation wishes to have an activity recognised as a CSO, it must be directed explicitly to carry out that activity on a non-commercial basis in legislation, government decision or publicly available directions from shareholder Ministers (for example, identified in the annual report of the relevant Australian Government department or authority annual report).

CSOs should be funded from the purchasing portfolio's budget, with costs determined as part of a commercially negotiated agreement. CSO agreements should include similar requirements as applied to other

activities, that is, these activities should be able to pay taxes and earn a commercial rate of return (as if contracted out).

Where direct funding of CSOs entails unreasonably large transaction costs, portfolio Ministers may choose to purchase CSOs by notionally adding to the provider organisation's revenue result, for the purpose of calculating the achieved rate of return. CSOs should be costed as if directly funded. The notional adjustment should be transparently recorded in an auditable manner.

Under competitive neutrality arrangements, no adjustment should be made to the commercial rate of return target applied to the service provider to accommodate CSOs.

## 2.2 Australian Government entities and activities subject to competitive neutrality

Portfolio Ministers are responsible for ensuring that all significant business activities within their portfolio comply with established competitive neutrality requirements.

Competitive neutrality arrangements were required to be implemented by 1 July 1998. Detailed information concerning the application of competitive neutrality to specific organisations or activities is provided below.

### 2.2.1 Government Business Enterprises and Commonwealth Companies

GBEs and Commonwealth Companies are required to have their competitive neutrality arrangements approved by the Minister for Finance and Administration and the responsible portfolio Minister. Competitive neutrality requires that GBEs, *inter alia*:

- pay all Commonwealth direct and indirect taxes, and State indirect taxes or tax equivalents;
- for GBEs, earn a commercial rate of return on assets as determined by the Minister for Finance and Administration and the responsible portfolio Minister (the Treasurer may also be consulted);
- For Commonwealth Companies, financial targets are to be established and monitored by the responsible parties;
- where borrowing from private financial markets, have a debt neutrality charge set by their shareholder Minister(s) based on stand alone credit rating advice; and
- General Government Sector agencies that borrow funds are usually required to borrow from the Budget. Budget debt is sourced from the Department of Finance and Administration, and in general, will not require any debt neutrality adjustments. However, if the debt is provided to the portfolio department then a CN adjustment may be required.

### 2.2.2 Business Units

Competitive neutrality arrangements applied to business units are to be approved by the responsible portfolio Minister. Competitive neutrality requires business units to, *inter alia:*

- pay Fringe Benefits Tax (FBT) and the Goods and Services Tax (GST), as specific legislation makes the Commonwealth notionally subject to these, unless an exemption is available for reasons other than their public ownership;

- operate under a tax equivalent regime for remaining Commonwealth and State taxes by calculating their tax liability in a comparable manner to their competitors and make an equivalent payment to the Official Public Account (OPA);

- achieve financial targets for some activities;

- where borrowing from private financial markets, have any debt neutrality charge set by the relevant portfolio Minister based on stand alone credit rating advice; and

- General Government Sector agencies that borrow funds are usually required to borrow from the Budget. Budget debt is sourced from the Department of Finance and Administration, and in general, will not require any debt neutrality adjustments. However, if the debt is provided to the portfolio department then a CN adjustment may be required.

### 2.2.3 Other commercial business activities (over $10 million per annum)

Competitive neutrality arrangements applying to significant commercial business activities provided by non-GBE agencies prescribed by regulation under the FMA Act, Commonwealth Authorities or Departments with a commercial turnover of at least $10 million per annum are to be approved by the relevant portfolio Minister. The competitive neutrality guidelines require significant business activities to, *inter alia*:

- operate under a tax equivalent regime by calculating their tax liability in a comparable manner to their competitors and make an equivalent payment to the OPA;

- for non-GBE Authorities, meet the required commercial rate of return on assets target set by the responsible portfolio Minister in consultation with the Minister for Finance and Administration (the Treasurer may also be consulted);

- other significant business activities subject to CN are also required to achieve financial targets;

- where borrowing from private financial markets, have any debt neutrality charge set by the relevant portfolio Minister based on stand alone credit rating advice; and

- General Government Sector agencies that borrow funds are usually required to borrow from the Budget. Budget debt is sourced from the Department of Finance and Administration, and in general, will not require any debt neutrality adjustments. However, if the debt is provided to the portfolio department then a CN adjustment may be required.

### 2.2.4 Market testing

Market testing (previously referred to as Competitive Tendering and Contracting) involves inviting tenders for the provision of relevant services and evaluating those tenders against predetermined selection criteria. Competitive neutrality arrangements should be applied to all public sector bids and baseline costing exercises for activities subject to market testing arrangements. In practice this means:

- when undertaking market testing to determine whether or not to competitively tender for the supply of a particular good or service, competitive neutrality requirements are to be incorporated when undertaking baseline costing exercises;

- competitively tendering for the supply of a good or service is to be regarded as a commercial activity. Any baseline costing exercise needs to reflect the full cost of providing the good or service:

  - this includes attribution for: any appropriate costs; payment of FBT and GST (on direct purchases); remaining Commonwealth and State taxes; debt neutrality charges; regulatory neutrality charges and a notional amount equivalent to any public liability insurance premiums a private sector contractor may be required to pay; and

  - incorporate a commercial pre-tax rate of return on assets. Where plant and facilities are to be made available to all bidders as Government furnished, baseline costing exercises do not need to include a rate of return on such capital.

Should a public sector bid be successful, the business activity would need to assess the application of CN in accordance with the *Australian Government Competitive Neutrality Guidelines for Managers*. Non-compliance could result in a complaint being made to the Australian Government Competitive Neutrality Complaints Office (AGCNCO) (see section 2.3).

### 2.2.5 Other Australian Government business activities

There are a number of smaller Australian Government business activities for which the application of competitive neutrality principles is being considered or undertaken. They may also be required to implement competitive neutrality as a result of a complaint to the AGCNCO (see Section 2.3).

These business activities have to earn a commercial rate of return (set by their parent agency), pay GST and FBT (unless exemptions are available for reasons other than government ownership) and make a notional adjustment to their cost base for remaining Commonwealth and State indirect taxes.

Other competitive neutrality costs may be incurred on an (auditable) notional basis, for example, debt neutrality charges.

## 2.3 Complaints alleging non compliance with competitive neutrality principles

The AGCNCO is an autonomous unit within the Productivity Commission. It was established under the *Productivity Commission Act 1998* to receive complaints, undertake complaint investigation and advise the Treasurer on the application of competitive neutrality to government business activities. Contact details are provided below:

Australian Government Competitive Neutrality Complaints Office
PO Box 80
BELCONNEN ACT 2616
Telephone: (02) 6240 3377
Facsimile: (02) 6253 0049
Website: www.pc.gov.au/ ccnco/

Any individual, organisation or government body may lodge a formal written complaint with the AGCNCO on the grounds that:

- an Australian Government business activity has not been exposed to competitive neutrality arrangements (including a commercial activity below the $10 million per annum turnover threshold);
- an Australian Government business activity is not complying with competitive neutrality arrangements that apply to it; or
- current competitive neutrality arrangements are not effective in removing an Australian Government business activity's net competitive advantage, which arises due to government ownership.

Where the AGCNCO considers that competitive neutrality arrangements are not being followed, it may directly advise government business entities as to the identified inadequacies and actions to improve compliance. If a suitable resolution to a complaint cannot be achieved in this manner, the AGCNCO may recommend appropriate remedial action or that the Treasurer undertake a formal public inquiry into the matter.

Any person contemplating a complaint should discuss their concerns with the government business involved and/ or the AGCNCO prior to initiating a formal complaint investigation process.

### 2.3.1 Complaints received in 2002-03

In the period 1 July 2002 to 31 March 2004, the AGCNCO has received two written complaints concerning the Industry Capability Network Limited (ICNL) and the Australian Valuation Office (AVO). Progress with implementing recommendations from earlier competitive neutrality investigations is also detailed.

#### Industry Capability Network Ltd (ICNL)

ICNL consists of a network of State and Australian government organisations that provides consultancy services to the Australian industry on foreign investment. The activity that was the subject of the complaint was State based; therefore the AGCNCO referred the complainant to the relevant State's competitive neutrality mechanisms. As a result, formal investigation was not conducted. However, the complainant indicated that the AGCNCO raising the issues with the ICNL had led to considerable progress on a number of matters. The AGCNCO continues to monitor the progress of the matter.

#### Australian Valuation Office (AVO)

The AVO is a business unit operated by the Australian Taxation Office. The AVO provides valuation services to government departments and the private sector. These include appraisals of property and other assets; special purpose valuations of property for capital or rental value; plant and equipment valuations; and corporate valuations for consolidation and taxation purposes. The AVO has been subject to CN since 1996.

On 4 November 2003, Herron Todd White Pty Ltd (Herron) lodged a complaint with the AGCNCO alleging that the pricing regime used by the AVO in tendering fails to reflect the full costs of service provision for the following reasons:

- It fails to adjust for a number of cost advantages as a result of its relationship with the ATO including access to resources at reduced rates; reduced commercial rents, accommodation search costs and fit-out costs; and diminished search and compliance costs for professional indemnity insurance; and

- The pricing regime used by the AVO is predatory, and fails to include a tax equivalent component.

The AGCNCO is currently investigating the complaint. The AGCNCO's investigation relates to whether the AVO has applied the CN requirements effectively.

### Earlier AGCNCO competitive neutrality investigations

#### ARRB Transport Research Limited

On 30 October 2000, Capricorn Capital Limited (on behalf of other parties) lodged a competitive neutrality complaint against ARRB Transport Research Limited (ARRB). ARRB is a public company, whose 10 members are the State and Territory road management authorities, the Australian Government Department of Transport and Regional Services and the Australian Local Government Association. ARRB's business is to conduct research into roads.

The complaint covered a number of areas including ARRB's tax-free status, low rate of return, privileged access to government assets and existence of government guarantees.

The AGCNCO found no evidence that competitive neutrality principles had been breached. However, the AGCNCO drew attention to the potential for non-commercial public interest research undertaken by ARRB to conflict with its capacity to operate successfully as a commercial entity. It suggests the member governments of ARRB might consider explicitly specifying this demand and how funding for these non-commercial activities should be negotiated.

ARRB member governments have addressed this issue and have requested ARRB to clearly identify the scope of public interest research that should be conducted by ARRB on a non-competitive basis, and to ensure appropriate separation of that function from any pursuit of competitive work.

#### Meteorological Services to Aviation

On 10 February 2000, Metra Information Limited — a subsidiary of the government owned Meteorological Services of New Zealand Limited — lodged a complaint with the AGCNCO alleging that the Civil Aviation Safety Authority's (CASA's) administration of aviation regulations confers a regulatory advantage on the Bureau of Meteorology

(the Bureau) by preventing Metra from competing in the market for meteorological services in the aviation industry.

At Metra's request, in April 2000, the complaint was put on hold pending the outcome of discussions between Metra and CASA. On 2 May 2001, Metra requested that the AGCNCO resume its consideration of its complaint.

The AGCNCO considers that a component of the Bureau's aviation meteorological services, specifically those which are in addition to the activities that are necessary to meet Australia's international obligations, constitute a 'business activity' for the purposes of competitive neutrality. Further, it does not consider that there is a case for restricting competition in the provision of these value-added services.

The AGCNCO understands that opening the Bureau's services to competition is under consideration by the Government. Accordingly, it recommends that the Government should complete its consideration of the option for introducing competition in the provision of meteorological services to aviation as soon as possible. If no other model is likely to deliver greater net benefits to the community than competitive provision of value added services, the AGCNCO suggests that this approach should be implemented forthwith.

In its consideration of the options, the Government has decided to address the issue of aviation weather service provision in its ongoing aviation reform program. At this stage, this is expected to be 2004/ 2005.

### Provision of Customs Services to Australia Post

In February 2000, the Conference of Asia Pacific Express Couriers (CAPEC) lodged a complaint against Australia Post. CAPEC claims that Australia Post enjoys a competitive advantage on competing for business because of the differences in the regulatory arrangements for postal and non postal items. Specifically, these differences are higher dollar thresholds for incoming and outgoing postal items before formal Customs screening requirements take effect; and exemption for postal items from recently introduced reporting and cost recovery charges for 'high volume, low value' consignments.

The AGCNCO found that some of the current Customs arrangements did breach competitive neutrality principles. The AGCNCO's report of June 2000 recommended that the value thresholds for formal screening by Customs of incoming and outgoing postal and non-postal items be aligned; the Government give further consideration to imposing cost recovery charges for informal Customs screening of incoming postal items and the concerns raised with respect to the high volume/ low value charging scheme be addressed as part of the Government's consideration of the cost recovery issue.

The *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001* provides a modern legal framework for Customs' management of import and export cargo. This legislation includes changes necessary to control lower value consignments within the export permit and licence system as well as providing for the introduction of an electronic clearance system to replace the current paper based system for lower value imported consignments. The legislation is being progressively commenced in line with the release of the new Integrated Cargo System which is currently under development.

For outgoing postal and non-postal items, the value thresholds were harmonised on 1 July 2002 when the first part of the Act commenced. The harmonisation of the value threshold for incoming postal and non-postal goods will occur when the legislation is introduced to support the import declarations phase of the Integrated Cargo System, in 2004/ 2005.

The appropriate charging regime for the full range of import entries is being addressed as part of the implementation of the International Trade Modernisation changes.

## 2.4 Australian Government actions to assist competitive neutrality implementation

### 2.4.1 Policy measures

It is general Government policy not to issue a Australian Government Guarantee on new borrowings. Where these are to be provided, there is a statutory requirement that loan guarantees not be issued without the authorisation of the Minister for Finance and Administration.

### 2.4.2 Publications

The *Australian Government Competitive Neutrality Guidelines for Managers* were released in February 2004, to assist in the application of competitive neutrality principles to the wide range of Australian Government significant business activities. Copies of the guidelines (which contain competitive neutrality information and advice) are available from the Department of Finance and Administration or the Finance website (www.finance.gov.au).

The AGCNCO released its research paper *Cost Allocation and Pricing* in October 1998. The paper examines these issues in the context of significant business activities operating within non-GBE Commonwealth authorities or departments meeting their competitive neutrality obligations. A second paper, *Rate of Return Issues*, was released in February 1999. This paper provides general advice on establishing a commercial rate of return on assets targets, particularly for small government business activities, and those factors the AGCNCO will take into account when rate of return issues arise in a complaint. A third paper, *Competitive Neutrality in Forestry* was released on 22 May 2001. The research paper investigates into the application of competitive neutrality principles to States and Territories' forestry operations and associated log pricing issues. These publications are available from the AGCNCO or their website (www.pc.gov.au/ ccnco/ ).

## Table 2.1: Agencies that applied competitive neutrality on a voluntary basis during 2002-03

| Name | Activity | Entity | Assessed subject to CN | Full cost recovery | Commercial rate of return | Tax or tax equivalent payments | Debt neutrality charge | Regulatory neutrality allowance | Delivers community service obligations |
|---|---|---|---|---|---|---|---|---|---|
| Australian Electoral Commission | Conduct of local government elections | Other | No | Yes | No | Federal tax applied, but not State tax | No | n/a | No |
| Australian Electoral Commission | Conduct of certified agreement/other ballots | Other | No | Yes | No | Federal tax applied, but not State tax | No | n/a | No |
| *Australian Radiation Protection and Nuclear Safety Agency | Personal radiation monitoring services | PA | No | Yes | No | No | No | No | No |
| *Australian Radiation Protection and Nuclear Safety Agency | Various testing and calibration services | PA | No | Yes | No | No | No | No | No |
| *Australian Radiation Protection and Nuclear Safety Agency | Surveys | PA | No | Yes | No | No | No | No | No |
| Bureau of Meteorology | Special Services Unit | BU | No | Yes | Yes | No | No | No | No |

n/a — Not Applicable
BU — Business Unit
PA — Prescribed Agency
Other – Other Australian Government Business Activities
* These entities are in transition, currently working towards CN.

## Table 2.2: Agencies that applied competitive neutrality during 2002-03

| Name | Activity | Entity | Assessed subject to CN | Full cost recovery | Commercial rate of return | Tax or tax equivalent payments | Debt neutrality charge | Regulatory neutrality allowance | Delivers community service obligations |
|---|---|---|---|---|---|---|---|---|---|
| Anindilyakwa Land Council | Administration | In- | Yes | Yes | No | No | No | n/a | No |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | house CTC Unit | | | | | | | |
| Australia Post | | GBE | Yes | n/a | Yes | Yes | No[1] | No | Yes |
| Australian Federal Police | Protective Security Services | Other | Yes | Yes | Yes | Yes | No | n/a | No |
| Australian Government Analytical Laboratories | Analytical Laboratory services with the goal of the provision of an internationally recognised chemical and biological measurement and infrastructure | BU | Yes | Yes | No | Yes | Yes | Yes | Yes |
| Australian Government Solicitor | Legal and related services | GBE | Yes | n/a | Yes | Yes | n/a | Yes | No |
| Australian Hearing Services | Government hearing programs | CA (non-GBE) | Yes | Yes | Yes | Yes | No | n/a | Yes |
| Australian Rail Track Corporation Ltd | | GBE | Yes | n/a | Yes | Yes | n/a | n/a | No |
| Australian Securities and Investments Commission | Printing/Imaging | CA (non-GBE) | Yes | Yes | Yes | Yes | No | No | No |
| Australian Submarine Corporation Pty Ltd | Submarine Maintenance | GBE | Yes | Yes | Yes | Yes | No | Yes | No |
| Australian Taxation Office | Valuation Services | BU | Yes | Yes | Yes | Yes | No | n/a | No |
| Australian Technology Group Limited | | GBE | Yes | n/a | Yes | n/a | n/a | n/a | No |

[1] While Australia Post undertakes borrowings, it does not receive a concessional borrowing rate due to Australian Government ownership.

**Table 2.2: Agencies that applied competitive neutrality during 2002-03 (continued)**

| Name | Activity | Entity | Assessed subject to CN | Full cost recovery | Commercial rate of return | Tax or tax equivalent payments | Debt neutrality charge | Regulatory neutrality allowance | Delivers community service obligations |
|---|---|---|---|---|---|---|---|---|---|
| Centrelink | Passport Call Centre | CA (non-GBE) | Yes | Yes | Yes | Yes | No | n/a | No |
| Centrelink | Carelink | CA (non-GBE) | Yes | Yes | Yes | Yes | No | n/a | No |
| Centrelink | Family Law Assistance Gateway | CA (non-GBE) | Yes | Yes | Yes | Yes | No | n/a | No |
| Centrelink | Centrepay | CA (non-GBE) | Yes | Yes | Yes | Yes | No | n/a | No |
| Centrelink | Australian Greenhouse Office | CA (non-GBE) | Yes | Yes | Yes | Yes | No | n/a | No |
| Comland Limited | | GBE | Yes | n/a | Yes | Yes | No[2] | No | No |
| Comsuper | Superannuation Administration Services | PA | Yes | Yes | Yes | Yes | No | n/a | No |
| CRS Australia | Commercial Vocational Rehabilitation Services | BU | Yes | Yes | No | Yes | No | Yes | No |
| CSIRO | Research, technical and consulting services | Other | Yes | Yes | Yes | Yes | No | n/a | No |
| Defence Housing Authority | | GBE | Yes | n/a | Yes | Yes | No[3] | n/a | No |

**Table 2.2: Agencies that applied competitive neutrality during 2002-03 (continued)**

[2] While Comland Limited undertakes borrowings, it does not receive a concessional borrowing rate due to Australian Government ownership.
[3] While Defence Housing Authority undertakes borrowings, it does not receive a concessional borrowing rate due to Australian Government ownership.

| Name | Activity | Entity | Assessed subject to CN | Full cost recovery | Commercial rate of return | Tax or tax equivalent payments | Debt neutrality charge | Regulatory neutrality allowance | Delivers community service obligations |
|---|---|---|---|---|---|---|---|---|---|
| Department of Agriculture, Fisheries and Forestry | Bureau of Rural Sciences | BU | Yes | Yes | No | No | No | No | No |
| Department of Finance and Administration | Corncover | BU | Yes | Yes | Yes | Yes | No | Yes | No |
| Department of Finance and Administration | Property Management | DS | Yes | Yes | Yes | No | No | No | No |
| Export Finance and Insurance Corporation | Credit Insurance | CA (non-GBE) | Yes | Yes | Yes | Yes | No | Yes | Yes |
| Health Services Australia | | GBE | Yes | n/a | Yes | Yes | n/a | n/a | No |
| Medibank Private Limited | | GBE | Yes | n/a | Yes | Yes | n/a | n/a | No |
| National Capital Authority | National Capital Exhibition Shop (Regatta Point ACT) | Other | Yes | Yes | No | Yes | No | n/a | Yes |
| Reserve Bank of Australia | Transactional Banking | BU | Yes | Yes | Yes | Yes | No | Yes | No |
| Reserve Bank of Australia | Registry | BU | Yes | Yes | Yes | Yes | No | n/a | No |
| Royal Australian Mint | Sales of Coins | Other | Yes | Yes | Yes | Yes | No | Yes | Yes |
| Special Broadcasting Service Corporation | On air advertising and sponsorship | Other | Yes | Yes | No | No | No | n/a | No |
| Telstra Corporation | | GBE | Yes | n/a | Yes | Yes | No[4] | n/a | Yes |

GBE — Government Business Enterprise
BU — Business Unit
DS — Department of State
CA — Commonwealth Authority
CC — Commonwealth Company
PA — Prescribed Agency

[4] While Telstra Corporation undertakes borrowings, it does not receive a concessional borrowing rate due to Australian Government ownership.

n/r — No response or insufficient information received
n/a — Not applicable
Note: Commonwealth Authorities, Departments of State and Prescribed Agencies are Other Commercial Business Activities (over $10m per annum)

# 3 Structural reform of public monopolies

## 3.1 Australian Government management of the structural reform process

The *Competition Principles Agreement* (CPA) does not prescribe an agenda for the reform of public monopolies, nor does it require privatisation.

Clause 4 of the CPA does, however, require that before the Australian Government introduces competition into a sector traditionally supplied by a public monopoly, it must remove from the public monopoly any responsibilities for industry regulation. The relocation of these functions is intended to prevent the former monopolist from establishing a regulatory advantage over its existing and potential competitors.

Furthermore, prior to introducing competition into a market traditionally supplied by and/or privatising a public monopoly, the Australian Government must undertake a review into:

- the appropriate commercial objectives for the public monopoly;
- the merits of separating any natural monopoly elements from potentially competitive elements of the public monopoly;
- the merits of separating potentially competitive elements of the public monopoly;
- the most effective means of separating regulatory functions from commercial functions of the public monopoly;
- the most effective means of implementing the competitive neutrality principles set out in the CPA;
- the merits of any Community Service Obligations (CSOs) undertaken by the public monopoly and the best means of funding and delivering any mandated CSOs;
- the price and service regulations to be applied to the industry; and

- the appropriate financial relationships between the owner of the public monopoly and the public monopoly, including rate of return targets, dividends and capital structure.

The review requirement acknowledges that the removal of regulatory restrictions on entry to a marketplace may not be sufficient to foster effective competition in sectors currently dominated by public monopolies. Effective competition requires competitive market structures.

The public monopoly must be restructured on a competitively neutral basis to remove any unfair competitive advantages resulting from government ownership. However, the new organisation must also be sufficiently flexible to be able to respond efficiently in a changing environment. This may require that the organisation be restructured.

Structural reform of public monopolies is often linked with the provision of access rights to essential infrastructure services previously under their sole control (see Chapter 4).

During the reporting period, the Australian Government considered Clause 4 matters in relation to telecommunications, aviation services and wheat marketing arrangements.

### 3.1.1 Telecommunications industry sector

The telecommunications sector has been open to full competition since 1 July 1997. It is regulated by legislation, predominantly the *Telecommunications Act 1997* and Parts XIB and XIC of the *Trade Practices Act 1974* (TPA).

The Australian Communications Authority, an independent statutory authority, is generally responsible for ensuring industry compliance with legislative requirements. The Australian Competition and Consumer Commission (ACCC) is responsible for administering the telecommunications competition regime in Parts XIB and XIC of the TPA.

Telstra Corporation Limited, the previous monopoly supplier of telecommunications services, has no regulatory functions.

The Australian Government's review obligations under Clause 4 were broadly satisfied through a series of related reviews prior to the partial privatisation of Telstra in 1997. The pre 1997 review of telecommunications regulatory arrangements ran over an extended period, involved extensive public consultation and taking of submissions. The review's issues paper canvassed regulatory arrangements relating to industry structure. In light of the review, the Government adopted the current approach to competition regulation.

In 1997, the ACCC established a telecommunications working group to review Telstra's accounting and cost allocation arrangements, to assist the development of an enhanced accounting separation model for Telstra businesses. In May 2001 the ACCC released the Telecommunications Industry Regulatory Accounting Framework. This framework has been enhanced further though the Government's decision to require Telstra to prepare regulatory accounts and reports for the ACCC which provide transparency of its wholesale and retail operations, particularly in relation to the core interconnection services provided over Telstra's network. This measure was implemented through the *Telecommunications Competition Act 2002*, which enables the Government to direct the ACCC to require Telstra to publish regulatory records. The ACCC published the first accounting separation reports in December 2003.

The Productivity Commission conducted a review of Parts XIB and XIC of the TPA. The final report was released on 21 December 2001. The Government's response to the report was released on 4 March 2003. The Government is largely supportive of the recommendations. The main recommendations of the Productivity Commission's report have been addressed in the *Telecommunications Competition Act 2002*.

#### 3.1.1.1 Competition in provision of USO services

The Government has had a longstanding view that the provision of services under the Universal Service Obligation (USO) by Telstra should be efficient and should promote the development of a competitive market.

On 1 December 2003, the Government commenced a review of the operation of Parts 2 and 5 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. In relation to Part 2 and in accordance with the Regional Telecommunications Inquiry's recommendation 2.2, the review is considering the efficacy of present costing and funding arrangements for the USO, including whether current arrangements are impeding the development of competition in regional, rural and remote Australia. The review is also considering whether the contestability regime introduced in 2000 has resulted in an improvement in technologies and services available to people in rural and remote Australia compared with what is on offer to people in metropolitan Australia.

The Department of Communications, Information Technology and the Arts is undertaking the review, which has involved public consultation with a wide range of industry participants, consumer groups and other interested stakeholders. The Department is to report to the Minister for Communications, Information Technology and the Arts by 7 April 2004.

### 3.1.2 Federal airports

In 1997-98 the Government granted long-term leases for all of the Federal airports previously operated by the Federal Airports Corporation to private sector companies, with the exception of the Sydney Basin airports and Essendon Airport in Melbourne. Sydney Airport Corporation Limited (SACL) and Essendon Airport Limited (EAL), both wholly Australian Government owned public monopolies, leased the Sydney Basin and Essendon airports sites from the Australian Government.

As part of the Federal airports privatisation process, regulatory functions were separated from commercial functions. The airport lessee companies and businesses on the airport sites are subject to all of the applicable State laws, taxes and charges, except in some specific areas. The areas in which Australian Government laws and regulations apply to the airports are:

- environmental management;
- land use planning and development controls;

- building and construction approvals; and
- price and quality of service monitoring.

On 13 December 2000, the Government announced that Sydney Airport would be able to handle air passenger demand over the next ten years and that it would, therefore, be premature to build a second airport in the city. The Government decided instead to make Bankstown Airport available as an overflow airport for Sydney. The Government announced that SACL would continue to operate Kingsford Smith Airport only and that the airport would be sold in 2001. Bankstown, Camden and Hoxton airports were intended to be privatised in late 2002 and their management would be by a separate company competing with Sydney Airport.

Bankstown Airport Limited (BAL), Camden Airport Limited (CAL) and Hoxton Park Airport Limited (HPAL), previously subsidiaries of SACL, were separated from SACL on 29 June 2001 and are also be privatised. All of the shares in EAL were sold to a private sector company in September 2001.

The airport sale process for Sydney Airport began in early 2001 and binding bids were originally due by 17 September 2001. Following the terrorist attacks on the United States of America on 11 September 2001 and the subsequent level of disruption in the global financial markets and aviation sectors, the Government deferred the sale until 2002. On 25 June 2002, the Minister for Finance and Administration and the Deputy Prime Minister and Minister for Transport and Regional Services announced the sale of Sydney Airport. In accordance with the privatisation timetable, the Department of Finance and Administration undertook a Clause 4 review of SACL. The review was completed in June 2002.

At the time the Government began privatising Federal airports, it established a comprehensive economic regulatory framework to apply to airport lessees. The arrangements were intended to promote operation of the airports in an efficient and commercial manner, while at the same time protecting airport users from any potential abuse of market power by airport operators. These arrangements included prices monitoring and a Consumer Price Index (CPI-X) cap on aeronautical charges at

Adelaide, Brisbane, Canberra, Coolangatta, Darwin, Hobart, Launceston, Melbourne, Perth and Townsville airports. Prices monitoring of aeronautical related charges, transparency measures covering airport specific financial reporting, quality of service reporting and airport specific access arrangements were also part of the arrangements. When Sydney Airport was leased to the Government owned SACL, it was also subjected to prices notification and monitoring of aeronautical and aeronautical related charges, respectively. Before privatisation, SACL was a company subject to the Australian Government Business Enterprise accountability guidelines and was required to earn a fair and reasonable return on investment for its owners, the Australian Government. Unlike the privatised airports, the Government did not place a price cap on SACL's aeronautical charges due to significant recent re-development and continued government ownership. In setting out its sale objectives for Sydney Airport, the Government announced that the ACCC would ensure that prices for regional carriers at Sydney Airport would be maintained through the sale process and would not increase in any year in excess of increases in the CPI-X.

In early October 2001, the then Minister for Financial Services and Regulation signed new instruments in relation to the existing regime for price oversight at Federal airports. The revised regime retained price caps in Brisbane, Melbourne and Perth airports but allowed for a once only price increase up to specified amounts. This was to allow the airport lessees to better manage the major structural adjustments taking place in the domestic aviation market. Formal monitoring of the prices, costs and profits related to the supply of aeronautical related services was retained for Adelaide, Brisbane, Canberra, Darwin, Melbourne, Perth and Sydney airports. The Productivity Commission began a review of price regulation of airport services in December 2000 and presented its final report to Government on 25 January 2002. The purpose of this inquiry was to examine whether new regulatory arrangements were needed to ensure that the exercise of market power may be appropriately counteracted in relation to those airport services or products where airport operators are identified as having most potential to abuse market power. The Commission's recommendations include five years of price monitoring (but no price caps) at Sydney, Melbourne, Brisbane, Perth, Adelaide, Canberra, and Darwin airports. The Commission recommended that alterations to such a regime only be considered after

five years (at which time the regime would be independently reviewed). A second option of retaining a CPI-X price cap on a limited number of airports was also considered during the review. The Government released the report, and its response, on 13 May 2002.

The Government accepted the recommendation that Sydney, Melbourne, Brisbane, Perth, Adelaide, Canberra and Darwin airports be subject to price monitoring for five years, to take effect from 1 July 2002. Toward the end of the five-year period an independent review is to be carried out to ascertain the need for future airport price regulation.

#### 3.1.2.1 Access arrangements for significant infrastructure facilities

Section 192 of the *Airports Act 1996* created an airport specific access regime as part of the economic regulatory regime for the larger privatised Federal airports. These arrangements provided for the declaration of airport services under Part IIIA of the TPA twelve months after private sector companies began operating the airports, except to the extent to which each airport service is the subject of an access undertaking in operation under Part IIIA. Airport services are defined by the Airports Act as services provided by means of significant facilities at the airport necessary for the purposes of operating and/ or maintaining civil aviation services at the airport.

The Productivity Commission provided its report on the Price Regulation of Airport Services on 25 January 2002. The Commission recommended that there were insufficient grounds for an airport-specific access regime as the general access provisions available under Part IIIA of the TPA (and Part IV) provide sufficient safeguards for those seeking access to airport facilitites. The Government has accepted the Productivity Commission's recommendation and the access provisions of section 192 of the Airports Act have been repealed.

### 3.1.3 Former Australian Wheat Board

On 1 July 1999, the former statutory Australian Wheat Board was privatised as a grower owned and controlled company (AWB Ltd) under Corporations Law.

The former Wheat Board's export control powers were transferred to an independent statutory Wheat Export Authority (WEA) in order to separate the commercial wheat marketing operations (through AWB (International) Ltd (AWBI), a subsidiary of AWB Ltd), from the regulatory aspects associated with the export wheat single desk arrangements. AWBI has been given an automatic right to export wheat through the legislation. The WEA's functions include issuing export consents to persons other than AWBI and monitoring and reporting on AWBI's performance in relation to the export of wheat and the resultant benefits to growers.

The *Wheat Marketing Act 1989* (WMA), the legislation governing these arrangements, was reviewed in 2000 under NCP. The terms of reference for the review required an examination of relevant matters in Clause 4 of the CPA regarding structural reform of public monopolies. The Government's response to the review was that there would be no legislative or significant structural change to the then wheat single desk arrangements.

Following an inquiry and report by the Senate Rural and Regional Affairs and Transport Legislation Committee on the *Wheat Marketing Amendment Bill 2002*, the WMA was amended in July 2003. Amongst other matters, changes were made to the scheduled 2004 review process to ensure that the review is transparent and growers and other stakeholders can have confidence in the outcome.

The 2004 review will now be conducted by an independent panel (rather than by the WEA), but with assistance from the WEA. The review is to assess AWBI's performance as the commercial manager of the single desk and also the effectiveness of the WEA as its regulator. The review must assess whether benefits to growers have resulted from the performance of AWBI in relation to the export of wheat. The review is to provide a report to the Minister (by 1 August 2004) and a report for growers (by 1 September 2004), the latter to be tabled in Parliament.

The terms of reference for the 2004 Review do not address whether or not the single desk should continue and the review is not intended to fulfil NCP requirements (see page 45[will update when page number for Legislative Review chapter updated]

# 4 Access to essential infrastructure

## 4.1 The importance of access to infrastructure

Fair and reasonable access for third parties to essential infrastructure facilities such as electricity grids, gas pipelines, rail tracks, airports and communications networks is important for effective competition.

Many infrastructure facilities exhibit natural monopoly characteristics that inhibit competition in related industries. For example, restrictions on access to rail track may prevent competition between different companies seeking to provide rail freight services. Similarly, where a gas producer cannot make use of an existing gas distribution network to reach potential clients, it may be difficult to compete in or even enter the wholesale and retail gas supply markets.

It is generally not economically feasible to duplicate such infrastructure, and given the historic likelihood of vertically integrated owners, it can be difficult for actual and potential competitors in downstream and upstream industries to gain access to these often vital infrastructure services. Even if access is technically available, there may be an imbalance in bargaining power between the infrastructure owner and potential third party users, influencing the terms and cost of access and making entry potentially prohibitive for competitors.

The outputs of these industries are significant inputs to a wide range of economic activities. Where restricted, access arrangements result in higher prices or lower service quality, and whether through reduced competition and/ or limited supply, the impact is felt by businesses and consumers alike.

As a result, governments have given increasing attention to establishing a right of access to these facilities, under established terms and conditions, where privately negotiated access is not expected to be a viable option.

## 4.2 Part IIIA of the *Trade Practices Act 1974*

Clause 6 of the *Competition Principles Agreement* (CPA) requires the Australian Government to establish a legislative regime for third party access to services provided by means of significant infrastructure facilities where:

- the facility is of national significance having regard to the size of the facility, its importance to constitutional trade or commerce or its importance to the national economy;
- it would not be economically feasible to duplicate the facility; and
- access to the service is necessary in order to permit effective competition in a downstream or upstream market.

Further, this regime is not to cover a service provided by means of a facility located in a State or Territory that has established an access regime that both covers the facility and conforms with the principles set out in Clause 6, unless the National Competition Council (NCC) determines that regime to be ineffective in relation to the interjurisdictional impact or nature of the facility.

To give effect to this commitment, Part IIIA was inserted into the *Trade Practices Act 1974* (TPA). This part is referred to as the national access regime, and is intended to provide for minimum intervention by the Australian Government in determining actual terms and conditions of access.

The national access regime establishes three means by which parties may seek access to nationally significant infrastructure services. These are:

- declaration of a service provided by an infrastructure facility
  - A person can apply through the NCC to have a service provided by a significant infrastructure facility 'declared' by decision of the relevant Minister. Where a service is declared, access to the service may be negotiated on a commercial basis between the service provider and an access seeker.

- If agreement cannot be reached, the terms and conditions of access can be determined by the Australian Competition and Consumer Commission (ACCC) through a legally binding arbitration process. In making an access determination, the ACCC must take into account a range of factors, including the legitimate business interests of the service provider, the provider's investment in the facility and the public interest.

- A Minister's decision on an application for declaration and an ACCC determination on a post-declaration arbitration can be reviewed by the Australian Competition Tribunal (ACT) upon application within 21 days;

- through an undertaking to the ACCC

  - The operator of an infrastructure service can give a voluntary undertaking to the ACCC, setting out the terms and conditions on which access to that service will be provided. If an undertaking is accepted, this provides a legally binding means by which third parties can obtain access to the infrastructure service. A service that is subject to an undertaking cannot be declared as described above; and

- certification of a State or Territory access regime as an 'effective regime'

  - State or Territory governments may apply through the NCC to have an access regime certified as effective in relation to a particular service. The NCC then makes a recommendation to the relevant Australian Government Minister on whether or not to certify the regime as effective. On receiving a recommendation from the NCC, the Minister must decide whether the access regime is an effective regime by applying relevant principles under the CPA.

  - Where an effective State or Territory access regime is in place the relevant infrastructure service cannot be declared under Part IIIA.

  - A decision on an application for certification can be reviewed by the ACT upon application within 21 days of publication of the Minister's decision.

Specific access regimes have also been established for particular infrastructure facilities. Apart from the sector-specific telecommunications access regime, the access regimes for airport services provided at core regulated Australian Government airports and for natural gas transmission and distribution pipelines interact with the national access regime.

The Productivity Commission conducted a legislation review of Part IIIA of the TPA. The Government tabled the report on 17 September 2002 (see page 44). The Government released its final response to the report on 20 February 2004.

## 4.3 Australian Government activity under Part IIIA

This section identifies those actions under Part IIIA of the TPA involving infrastructure facilities under Australian Government jurisdiction or requiring a decision by a Australian Government Minister during 2002-03, and to the end of March 2004.

### 4.3.1 Application for declaration of airside services at Sydney Airport

In October 2001 the NCC received an application from Virgin Blue Airlines for declaration of airside services at Sydney Airport. On 29 January 2004, the Parliamentary Secretary to the Treasurer accepted a recommendation from the NCC and decided not to declare the services. Virgin Blue has applied to the ACT for a review of the decision.

### 4.3.2 Application for declaration of rail network services

On 1 May 2001 the NCC received an application from Freight Australia seeking declaration of rail network services. On 1 February 2002, the Parliamentary Secretary to the Treasurer accepted the NCC's recommendation and decided not to declare the services. Freight Australia applied to the ACT for a review of the decision, however, this application was withdrawn.

### 4.3.3 Wirrida to Tarcoola rail line declaration

The NCC received an application from AuIron Energy Pty Ltd for declaration of services provided by the Wirrida-Tarcoola rail track on 12 September 2001. On recommendation from the NCC, the Parliamentary Secretary to the Treasurer declared the service for five years effective from 27 September 2002.

On 24 September 2002, the access provider, Asia Pacific Transport Pty Limited, applied to the ACT for a review of the declaration. On 10 March 2003, the ACT set aside the declaration, on the grounds that no evidence was put before the Tribunal for it to be satisfied of each of the required statutory elements for declaration. AuIron had previously withdrawn from the proceedings.

# 5 Government Business Enterprises — prices oversight

## 5.1 The purpose of prices oversight

Prices oversight activities serve to identify and discourage unacceptable price increases occurring where firms have excessive market power, such as from a legislated natural monopoly, or where the necessary conditions for effective competition are not otherwise met.

The Australian Government has had its current prices oversight arrangements for public and private sector business activities under Australian Government jurisdiction in place since 1983. However, there has been no comprehensive prices oversight of other jurisdictions' government enterprises. National Competition Policy (NCP) aims to fill this void by encouraging the establishment of independent State and Territory prices oversight bodies.

Prices oversight of Government Business Enterprises (GBEs) is raised in Clause 2 of the *Competition Principles Agreement* (CPA). This requires that each State and Territory consider the establishment of an independent source of prices oversight where this does not exist already. All States and Territories have now established such a body.

An independent source of prices oversight should have the following characteristics:

- it should be independent from the GBE whose prices are being assessed;
- its prime objective should be one of efficient resource allocation but with regard to any explicitly identified and defined Community Service Obligations (CSOs) imposed on a business enterprise by the government or legislature of the jurisdiction that owns the enterprise;
- it should apply to all significant GBEs that are monopoly or near monopoly suppliers of goods or services (or both);
- it should permit submissions by interested parties; and

- its pricing recommendations, and the reasons for them, should be published.

## 5.2 Australian Government prices oversight

The Australian Government has a range of existing prices surveillance and monitoring arrangements. Their objective is to promote competitive pricing, and restrain price rises in those markets where competition is less than effective. They apply across both the private and public sector, subject to Constitutional limitations.

The Australian Competition and Consumer Commission (ACCC), an independent Australian Government authority, is responsible for prices oversight.

Following recommendations from the Productivity Commission review into the *Prices Surveillance Act 1983* (PSA) completed in August 2001, prices surveillance provisions were moved from the PSA into Part VIIA of the *Trade Practices Act 1974* following passage of Schedule 2 of the Trade Practices Legislation Amendment Bill 2003. The amendments preserve prices surveillance powers but enable bodies other than the ACCC to conduct a price inquiry.

Both the TPA, (and previously the PSA) enable the ACCC to undertake prices surveillance, price inquires or price monitoring of selected goods and services in the Australian economy. These powers can be applied to business activities of the Australian Government, State and Territory authorities, as well as trading, financial and foreign corporations and people or firms within the Australian Capital Territory and across State and Territory boundaries.

Once the responsible Australian Government Minister formally declares an organisation, good or service subject to prices surveillance, the price of a declared product is not permitted to increase above its endorsed price or its highest price in the previous 12 months without notification to the ACCC.

Prices surveillance for Australian Government entities was applied to aeronautical services for regional airlines at Sydney Airport, charges made by Airservices Australia for terminal navigation, en-route

navigation and rescue and firefighting services and services reserved to Australia Post.

Price inquiries involve studies of limited duration into pricing practices and related matters concerning the supply of particular goods and services, following direction from the responsible Australian Government Minister. During the period of the inquiry, the price under examination may not increase beyond its peak price in the previous 12 months without the approval of the ACCC. The findings of the inquiry are then reported to the Minister.

The responsible Australian Government Minister may also request ongoing monitoring of prices, costs and profits in any industry or business. For example, the ACCC was required to undertake prices monitoring of aeronautically related charges at Australia's seven major airports, and collect price, cost and profit data for container terminal operator companies in Australia's major ports. The findings are also reported to the Minister.

### 5.2.1 Matters referred to the ACCC

While recognising prices oversight of State and Territory GBEs is primarily the responsibility of the State or Territory that owns the enterprise, Clause 2 does provide that a State or Territory may generally or on a case by case basis, and with the approval of the Australian Government, subject its GBEs to a prices oversight mechanism administered by the ACCC.

However, in the absence of the consent of the relevant State or Territory, a GBE may only be subject to prices oversight by the ACCC if:

- it is not already subject to a source of independent prices oversight advice;
- a jurisdiction which considers it is adversely affected by the lack of prices oversight has consulted the State or Territory that owns the GBE, and the matter has not been resolved to its satisfaction;
- the affected jurisdiction has then brought the matter to the attention of the National Competition Council who has decided that the condition

in the first point exists and that the pricing of the GBE has a significant direct or indirect impact on constitutional trade or commerce;

- the NCC has then recommended that the responsible Australian Government Minister declare the GBE for prices surveillance by the ACCC; and

- the responsible Australian Government Minister has consulted the State or Territory that owns the enterprise.

No matters were referred to the ACCC under these arrangements during 2002-03.

# 6 Conduct Code Agreement

## 6.1 Competitive conduct rules

The *Conduct Code Agreement* (CCA) commits the States and Territories to passing application legislation extending the competitive conduct rules of Part IV of the *Trade Practices Act 1974* (TPA) to bodies within their Constitutional competence, and provides for its administration by the Australian Competition and Consumer Commission (ACCC).

It also defines a process for excepting (by legislation) conduct from Part IV of the TPA, modifying the competitive conduct rules and making appointments to the ACCC.

Part IV of the TPA prohibits a range of anti-competitive conduct, as well as providing for exceptions from the requirement to comply with all or part of the restrictive trade practices provisions. In particular, it prohibits:

- anti-competitive arrangements, primary boycotts and price agreements;
- secondary boycotts;
- misuse of market power by a business where the purpose is to damage or prevent a competitor from competing;
- third line forcing as well as exclusive dealing conduct that is anti-competitive;
- resale price maintenance; and
- anti-competitive acquisitions and mergers.

The ACCC has the power to authorise arrangements that technically breach these provisions, provided these arrangements satisfy the public benefit test under Part VII of the TPA. Authorisation, which must be sought in advance by a party, operates to immunise arrangements from court action (except for section 46 conduct relating to misuse of market

power). ACCC decisions in relation to authorisations are subject to review by the Australian Competition Tribunal.

Section 51(1) provides general exceptions from Part IV of the TPA for:

- things done or authorised or approved by Federal or Territorial legislation other than legislation relating to patents, trademarks, designs or copyrights; and
- things done in any State or Territory specified in and specifically authorised by State or Territory legislation, so long as the State or Territory is a party to the CCA and the *Competition Principles Agreement* (CPA).

The exemption provisions in sections 51(2) and 51(3) were subject to a legislation review under the CPA (see page 60).

## 6.2 Commonwealth exceptions under section 51(1) of the *Trade Practices Act 1974*

Any Commonwealth legislation reliant on a section 51(1) exception needs to be approved by the Treasurer.

The CCA requires that written notification be provided to the ACCC of all legislation enacted in reliance on section 51(1). This must occur within 30 days of the legislation being enacted.

Proposed legislation that embodies restrictions on competition must also satisfy the requirements of the CPA in relation to net community benefit and include a Regulation Impact Statement (RIS).

### 6.2.1 Existing legislation reliant on section 51(1)

The following legislation containing exception provisions has been previously identified:

- *Australian Postal Corporation Act 1989* (subsection 33A(6A));
- *Trade Practices Act 1974* (Part X, Division 5 and section 173);

- *Wheat Marketing Act 1989* (section 57(6)); and
- *Year 2000 Information Disclosure Act 1999* (section 17).

### 6.2.2 New legislation: exceptions made in 2002-03

There were no notifications of Commonwealth legislation made in reliance on section 51(1) in the period of 1 July 2002 to 31 March 2004.

# 7 CoAG related reforms (electricity, gas, water, road transport)

The major infrastructure areas of electricity, gas, water and road transport are subject to reform requirements set out in separate Inter-Governmental Agreements endorsed by the Council of Australian Governments (CoAG). Satisfactory progress in achieving these reforms is a condition for receipt of competition payments, as outlined in the *Agreement to Implement the National Competition Policy and Related Reforms*.

While these commitments are largely the responsibility of the States and Territories, the Australian Government does have some specific responsibilities (particularly in the area of gas reform). The Australian Government also seeks to assist the States and Territories in meeting their obligations.

The following sections outline reform progress in each of the targeted areas, with emphasis on the role of the Australian Government.

## 7.1 CoAG consideration of energy market reform

In June 2001, CoAG charged the Ministerial Council on Energy (MCE) to address a series of tasks aimed at establishing an open and competitive national energy market which contributes to economic and environmental performance, and delivers benefits to energy users including those in regional areas. The MCE comprises Energy Ministers from all States and Territories and is chaired by the Federal Minister for Industry, Tourism and Resources.

At the same time, CoAG agreed to an independent review (chaired by the Hon Warwick Parer) of energy market directions to identify the strategic issues for Australian energy markets and the policies required from Federal and State and Territory Governments. CoAG requested the MCE to oversee the Parer review. Parer reported on 20 December 2002, and the MCE responded comprehensively to the Parer review in its report to CoAG of 11 December 2003. The report recommends a package of reforms in six key areas:

Governance and institutions

Strengthen the quality, timeliness and national character of governance of the energy markets:

- The National Electricity Market (NEM) Ministers Forum will be subsumed by MCE on 1 July 2004.
- A national legislative framework will be developed on a collaborative basis by 1 July 2004, under a new inter-governmental agreement.

Economic regulation

Streamline and improve the quality of economic regulation across energy markets:

- A new Australian Energy Market Commission (AEMC, with responsibility for rule-making and market development) will be established, together with a new Australian Energy Regulator (AER, with responsibility for market regulation) on 1 July 2004.
- With the establishment of AEMC and AER, the National Electricity Code Administrator (NECA) will be abolished.
- Agreement in-principle to developing a national approach to energy access under the Trade Practices Act, covering electricity and gas transmission and distribution, to be considered by MCE in 2004.
- Agreement that AER will be responsible for the regulation of distribution and retailing (other than retail pricing) by 2006, following development of an agreed national framework. Any jurisdiction may, at their discretion, opt to transfer responsibility for retail pricing to AER once it has assumed distribution and retail responsibilities.

Electricity transmission

Improve the planning and development of electricity transmission networks:

- A new NEM transmission planning function to be developed, including an Annual National Transmission Statement (commencing

in 2004) and a last resort power to direct that a project be subjected to the regulatory test.

- A new regulatory test for transmission to include the full economic benefits of increased competition to be completed in July 2004.

- A new process to be developed for assessing wholesale market regional boundaries while maintaining jurisdictional boundaries for retail customer pricing – initial report in June 2004.

- Improvements to inter-regional financial trading arrangements to be evaluated in conjunction with future arrangements for regional boundaries.

- Market-based incentives for transmission performance to be developed by July 2004.

- Conclude the review of transmission pricing arrangements for implementation in 2004.

- Removal of existing biases in favour of unregulated transmission investment in mid 2004 – the code changes to recognise and protect the rights of existing investors in market transmission services.

User participation

Enhance the participation of energy users in the markets, including through demand side management and the further introduction of retail competition:

- In jurisdictions where full retail competition is operating, each jurisdiction to align their retail price caps with costs, and periodically review the need for price caps.

- MCE to examine options for a demand-side response pool in NEM, and consider the costs and benefits of introducing interval metering.

Gas market development

Further increase the penetration of natural gas:

- MCE to respond, in 2004, to the Productivity Commission Review of the National Gas Access Regime.

- MCE noted the direction of the CoAG review to preclude future state exemptions from joint marketing provisions. Proponents of future arrangements for the joint marketing of gas, which raise competition concerns, may seek authorisation by the ACCC on a case-by-case basis. The Ministerial Council on Mineral and Petroleum Resources (MCMPR) is considering this issue.

- MCMPR is also considering the appropriate treatment of unproduced areas in existing production licenses that are due for renewal and the gas industry's principles for third-party access to upstream facilities, and will advise MCE of its conclusions.

Greenhouse emissions

MCE will work closely with the CoAG High Level Group on Greenhouse to address greenhouse gas emissions from the energy sector on a national basis.

With these policy decisions taken by MCE, the national energy market reform (EMR) program has moved to the implementation phase. Implementation will span three years, from 2004 to 2006, but is heavily front-loaded.

The MCE Standing Committee of Officials (SCO) agreed to engage Price Waterhouse Coopers as the EMR program management consultants, commencing 2 February 2004. The consultants are tasked with coordinating the various EMR implementation projects, troubleshooting and facilitating the resolution of issues as they arise.

Furthermore, MCE Ministers have asked that a fortnightly progress report be provided by the Commonwealth, on behalf of SCO.

## 7.2 Electricity

In July 1991, CoAG agreed to develop a competitive electricity market in southern and eastern Australia. The Commonwealth has taken a leading role to ensure the development and implementation of electricity reforms

on a national basis. To date, competition reform in the electricity sector has delivered structural reform of publicly owned utilities, competition among electricity generators, a competitive wholesale spot market for electricity (NEM), an efficient financial contracts market, third-party access to, and economic regulation of, network services, and customer choice for contestable large electricity consumers and all retail consumers in some jurisdictions.

The NEM commenced on 12 December 1998 and has operated effectively with only minor operational problems. Market participants have been generally pleased with the market arrangements.

Key developments in electricity market reform during 2002-03 and subsequently included the following:

Wholesale market development

The National Electricity Code Administrator (NECA), the National Electricity Market Management Company (NEMMCO), the NEM Ministers Forum and the Ministerial Council on Energy (MCE) have progressed a range of activities to promote more efficient market development. These range from regulatory structures and institutional mechanisms, to increased system interconnection and security and improved customer choice, as well as more specific issues relating to greater efficiency in prudential and settlements processes, bidding practices in the NEM, potential for regulatory consolidation and harmonisation, and policy oversight in the NEM. Governments continue to progress agreed MCE outcomes of 11 December 2003, including the establishment of the AER and AEMC by 1 July 2004.

Network development

Several new transmission proposals and projects were advanced during 2003 including:

- The Basslink Project (a 480 MW non-regulated line between Tasmania and Victoria);
- The SNOVIC upgrade (regulated, additional 400 MW between Snowy and Victoria) was completed in early 2003. A further upgrade of the

transfer capacity between NSW and Victoria at Wagga is planned for 2004;

- Murraylink (a 220 MW line between Victoria and South Australia owned and operated by TransEnergie) was converted from unregulated to regulated status and ceased operating as a market network service provider on 8 October 2003; and

- The planned SNI (a 240 MW regulated line between NSW and South Australia proposed by TransGrid). The proposal is subject to the appeal of the Victorian Supreme Court decision of 24 July 2003 in favour of TransEnergie. The appeal is expected to be heard in the second half of 2004.

Legal action over SNI suggests that market rules and procedures require review. This work is progressing as part of the raft of reforms agreed by the MCE on 11 December 2003.

Retail contestability

Full retail contestability (FRC) for electricity was introduced in the ACT in July 2003. The Queensland Government has delayed the introduction of FRC for electricity.

Financial market development

The Australian Government has been facilitating industry driven development of mechanisms to manage financial risk in the capital-at-risk electricity industry. The Australian Government continues to encourage the maturing and development of financial markets.

Several transparency and education initiatives for the NEM and related financial market were progressed over the period, including:

- The Sydney Futures Exchange (SFE) and Australian Stock Exchange (ASX) commenced trading electricity futures in the second half of 2002. Exchange traded futures provide a standardised and cost effective mechanism to trade and manage risk in the NEM and deliver price transparency to industry and end-users through price discovery.

- The launch of the Wholesale Electricity Price Index on 13 November 2003. The index provides a simple, easily reportable value which reflects daily changes to contract and spot market conditions and their effect on the stability of the underlying wholesale price for electricity in the NEM. The index is calculated daily for each region of the NEM.

- The launch of electricity options on 13 November 2003. The options are traded on the Sydney Futures Exchange and provide a further layer of sophistication to maturing physical and financial markets for electricity.

## 7.3 Gas

The Australian natural gas market has traditionally comprised State based market structures, in which monopolies operated at the production, distribution and retailing stages. The supply chain was highly integrated, with legislative and regulatory barriers restricting interstate trade. These characteristics, in the absence of links between the States' pipeline systems, served to perpetuate low levels of competitive behaviour in the market place.

In February 1994, CoAG agreed to facilitate developments aimed at stimulating competition, and promoting 'free and fair trade' in the natural gas sector. These commitments were integrated into the National Competition Policy (NCP) reforms.

Governments and industry are required to:

- remove policy and regulatory impediments to retail competition in the natural gas sector;

- remove a number of restrictions on interstate trade; and

- develop a nationally integrated competitive natural gas market by:

  – establishing a national regulatory framework for third party access to natural gas pipelines; and

  – facilitating the inter-connection of pipeline systems.

Governments and industry, through the Gas Reform Implementation Group and its predecessor, the Gas Reform Task Force, have focused primarily on developing and implementing national arrangements for third party access to natural gas pipelines.

In November 1997, the Australian Government, States and Territories agreed to enact legislation to apply a uniform national framework for third party access to all gas pipelines.

To realise the benefits of third party access in the natural gas retail market, a degree of separation between the monopoly pipeline transportation business and other potentially contestable businesses is required. The access regime includes 'ring fencing' provisions that require the monopoly transportation business to be separated from the retail business of the company, including separate accounts, staff and customer information.

Over the past 12 months governments and industry have focused primarily on developing and implementing national arrangements for third party access to natural gas pipelines.

### 7.2.1 Review of Gas Access Regime

On 29 November 2002, the Ministerial Council on Energy agreed to proceed with a review of the Gas Access Regime. The Regime consists of the Natural Gas Pipelines Access Agreement, Gas Pipelines Access Law and the National Third Party Access Code for Natural Gas Pipeline Systems.

The Productivity Commission launched the Review on 13 June 2003. An Issues paper was released on 25 July 2003, seeking submissions by 29 August 2003. A total of 76 submissions were received from industry, regulatory, government and other interested parties. The Productivity Commission released its Draft Report on 15 December 2003, and is due to present its Final Report to the Government in June 2004.

A first round of public hearings was conducted in September 2003. Participants have the opportunity to make further submissions and to comment on the Draft Report at a second round of hearings to be held in

late February and early March 2004. The Productivity Commission will then prepare its Final Report.

The primary aim of the Review is to examine the extent to which current gas access arrangements balance the interests of relevant parties, provide a relevant framework that enables efficient investment in new pipeline and network infrastructure and which can assist in facilitating a competitive market for natural gas.

The Productivity Commission has been asked to take into account in its deliberations of the government response to the Productivity Commission Review of the National Access Regime, the National Energy Policy Framework agreed by CoAG in June 2001, and the outcomes arising from the CoAG Independent Review of Energy Market Directions.

### 7.2.2 Code changes

The National Gas Pipelines Advisory Committee (NGPAC) monitors and reviews the operation of the Code and makes recommendations to Ministers on changes to the Code. The Australian Government, through the Department of Industry, Tourism and Resources is represented on NGPAC.

As required by the Code, NGPAC prepared an information memorandum and undertook public consultation for significant proposed Code changes. NGPAC considered the submission received before making recommendations to the Ministers. The Code changes approved by Ministers in 2002-03 are:

- enable a single Access Arrangement to regulate two or more separate gas pipelines (the Sixth Amending Agreement); and
- clarify the definition of capital expenditure in relation to New Facilities Investment and the provision of pipeline services (the Seventh Amending Agreement).

### 7.2.3 Retail reform

FRC has commenced in New South Wales, Victoria, South Australia and the Australian Capital Territory. Queensland has delayed the introduction of FRC for gas.

### 7.2.4 Access arrangements

Under the Code, pipeline operators are required to submit an 'Access Arrangement' to the relevant regulator for approval. An Access Arrangement specifies the maximum tariff that can be charged for transporting gas along a regulated pipeline. Such reference tariffs are determined by the regulator, based on the initial capital base of the pipeline infrastructure and other parameters, following a public consultation process.

All first round access arrangements for distribution networks have been completed. Access arrangements for the Moomba to Sydney Pipeline, the Amedeus Basin to Darwin Pipeline and the Dampier to Bunbury Natural Gas Pipeline have been approved. All first round access arrangements for transmission pipelines have now been approved by the relevant regulator.

## 7.4 Water

Water reform is a key national priority in the management of natural resources. In particular, jurisdictional delivery on water property right related reforms is of key importance in Australia and remains a priority for governments to resolve. Australia's water reform initiatives have been formulated against the background of considerable concern about the state of the nation's water resources and a recognition that an important part of the solution relies on significant policy and institutional change.

With states and territories having constitutional responsibility for water resource management, they are responsible for driving on-ground change. However, the Australian Government aims to facilitate the delivery of water reform through a variety of mechanisms.

### 7.4.1 Water reform framework

In 1994, CoAG agreed to a framework for improving the economic viability and ecological sustainability of Australia's water resources. The framework's main elements include a range of interlinked market based measures involving pricing water for full cost recovery, establishing secure property rights for water separate from land rights and providing for permanent trading in water entitlements. The framework also includes the specific provision of water for the environment and improved arrangements for public consultation and education.

In light of the importance of these reforms, CoAG decided in 1995 that implementation of the reforms would be included under the umbrella of National Competition Policy (NCP). Jurisdictional progress with implementation of these reforms is assessed by the National Competition Council (NCC) to determine eligibility for NCP payments.

### 7.4.2 Overview and progress

All States and Territories have made significant progress towards implementing the 1994 CoAG water reform framework. For example, jurisdictions have implemented a range of reforms to separate water access entitlements from land titles and to separate functions between water provision and water regulation, as well as allowing clear provisions for environmental water.

However, the 2003 NCP assessment identified a number of areas where further work was required. These areas include intrastate trading, urban water and wastewater pricing and institutional reform. These issues will be considered in the 2004 NCP assessment. The 2004 NCP assessment will also examine governments' progress with implementing reforms relating to rural water pricing, environmental water allocations and the conversion of existing water allocations for new water entitlements systems.

### 7.4.3 Co-ordination of water reform

In 2002, the Chief Executive Officers' Group on Water (CEOGW) was convened to provide strategic input to assist jurisdictions in the transition

to more sustainable water management, in particular in implementing the CoAG Water Reform Framework. In April 2003, the CEOWG reported that there were impediments that prevented markets from delivering their full potential. In particular, CEOGW reported that investment in new, more efficient, production systems is being hampered by uncertainty over the long-term access to water in some areas. In addition, CEOGW expressed concerns over the pace of securing adequate environmental flows to ensure ecosystem health in our river systems.

In August 2003, CoAG agreed that there is a pressing need to refresh its 1994 water reform agenda to increase the productivity and efficiency of water use, sustain rural and urban communities, and to ensure the health of river and groundwater systems. CoAG therefore agreed to the development of a National Water Initiative to:

- improve the security of water access entitlements, including by clear assignment of risks of reductions in future water availability and by returning overallocated systems to sustainable allocation levels;

- ensure ecosystem health by implementing regimes to protect environmental assets at a whole-of-basin, aquifer or catchment scale;

- ensure water is put to best use by encouraging the expansion of water markets and trading across and between districts and States (where water systems are physically shared), involving clear rules for trading, robust water accounting arrangements and pricing based on full cost recovery principles; and

- encourage water conservation in our cities, including better use of stormwater and recycled water.

A Senior Officials Group on Water (SOGW) has been established to develop an Intergovernmental Agreement (IGA) for the National Water Initiative. SOGW is tasked with consulting peak stakeholders and has created various Task Teams to provide the analysis and detail necessary to specify the commitments under the IGA. It is intended that CoAG will consider a draft IGA in mid-2004.

## 7.5 Road transport

The National Road Transport Commission (NRTC) was established in 1991 to oversee development and implementation of the road transport reform program under the direction of a Ministerial Council.

In April 1995, road transport reform was integrated into the NCP process, in recognition that full implementation would boost national welfare and reduce the cost of road transport services. This involved all governments committing to the effective observance of agreed road transport reforms.

The NRTC was initially to develop the reforms progressively through six separate modules:

- uniform heavy vehicle charges;
- uniform arrangements for transportation by road of dangerous goods;
- vehicle operation reforms covering national vehicle standards, roadworthiness, mass and loading laws, oversize and overmass vehicles and road rules;
- a national heavy vehicle registration scheme;
- a national driver licensing scheme; and
- a consistent and equitable approach to compliance and enforcement with road transport laws.

To also allow more timely implementation of reforms, the six initial reform modules were broken into eleven parts. Additionally, the Australian Transport Council (ATC) agreed two ten point 'fast track' packages of reform in 1994 and 1997 known as the First and Second Heavy Vehicle Reform Packages. These reforms, taken together, form the original NRTC reform agenda of 31 reforms.

One reform, Heavy Vehicle Charges, was assessed under the first tranche in 1997, while 19 reforms were assessed in 1999.

Throughout 1999-2000 a working group, the Standing Committee on Transport, developed a framework for assessment, including consulting industry. The ATC and CoAG agreed on the framework and it was provided to the NCC to serve as the basis for its June 2001 third tranche assessment of road transport reforms. Six reforms were included in this assessment framework. Only one of these reforms, a second-generation of Heavy Vehicle Charges, was relevant to the Australian Government, and it was implemented on 1 July 2001.

Of the 19 reforms in the second tranche assessment framework, the Australian Government was required to implement nine in relation to heavy vehicles registered in the Federal Interstate Registration Scheme (FIRS). Most of these were implemented previously. However, some aspects of one reform relating to heavy vehicle registration have been delayed pending the broader review of the FIRS. This is the only outstanding item on the Australian Government's agenda.

**Appendix A**

# Commonwealth Legislation Review Schedule (as at 30 March 2004) — by scheduled commencement date

**Table A1: Commonwealth Legislation Review Schedule**

| Name of legislation | Responsible department |
|---|---|
| Underway in 1996 | |
| *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* | Environment and Heritage |
| *Bounty (Books) Act 1986* | Industry, Tourism and Resources |
| *Bounty (Fuel Ethanol) Act 1994* | Industry, Tourism and Resources |
| *Bounty (Machine Tools & Robots) Act 1985* | Industry, Tourism and Resources |
| *Census & Statistics Act 1905* | Treasury |
| Commerce (Imports) Regulations, Customs Prohibited Imports Regulations and *Commerce (Trade Descriptions) Act 1905* | Attorney-General's |
| *Corporations Act 1989* | Treasury |
| *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991* | Education, Science and Training |
| Financial system — comprehensive review of the regulatory framework | Treasury |
| *Industrial Relations Act 1988* | Employment and Workplace Relations |
| *Patents Act 1990*, sections 198-202 (Patent Attorney registration) | Industry, Tourism and Resources |
| *Protection of Movable Cultural Heritage Act 1986* | Communications, Information Technology and the Arts |
| *Quarantine Act 1908* | Agriculture, Fisheries and Forestry |

**Table A1: Commonwealth legislation review schedule (continued)**

| Name of legislation | Responsible department |
|---|---|
| 1996-97 | |
| *Aboriginal Land Rights (Northern Territory) Act 1976* | Immigration and Multicultural and Indigenous Affairs |
| *Australian Maritime Safety Authority Act 1990* | Transport and Regional Services |
| *Australian Postal Corporation Act 1989* | Communications, Information Technology and the Arts |
| *Bills of Exchange Act 1909* | Treasury |
| *Customs Tariff Act 1995* — Automotive Industry Arrangements | Industry, Tourism and Resources |
| *Customs Tariff Act 1995* — Textiles Clothing and Footwear Arrangements | Industry, Tourism and Resources |
| Duty Drawback (Customs Regulations 129 to 136B) and TEXCO (Tariff Export Concession Scheme) — *Customs Tariff Act 1995*, Schedule 4, Item 21, Treatment Code 421 | Attorney-General's |
| Foreign Investment Policy, including associated regulation | Treasury |
| *Income Equalisation Deposits (Interest Adjustment) Act 1984* and *Loan (Income Equalisation Deposits ) Act 1976* | Agriculture, Fisheries and Forestry |
| *International Arbitration Act 1974* | Attorney-General's |
| *Migration Act 1958* — sub-classes 120 and 121 (business visas) | Immigration and Multicultural and Indigenous Affairs |
| *Migration Act 1958* — sub-classes 560, 562 and 563 (student visas) | Immigration and Multicultural and Indigenous Affairs |
| *Migration Act 1958*, Part 3 (Migration Agents and Immigration Assistance) and related regulations | Immigration and Multicultural and Indigenous Affairs |
| *Migration Agents Registration (Application) Levy Act 1992* and *Migration Agents Registration (Renewal) Levy Act 1992* | Immigration and Multicultural and Indigenous Affairs |
| *National Road Transport Commission Act 1991* and related Acts | Transport and Regional Services |
| *Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993* and regulations | Foreign Affairs and Trade |
| *Pooled Development Funds Act 1992* | Industry, Tourism and Resources |

**Table A1: Commonwealth legislation review schedule (continued)**

| Name of legislation | Responsible department |
|---|---|
| 1996-97 | |
| *Quarantine Act 1908, in relation to human quarantine* | Health and Ageing |
| *Radiocommunications Act 1992 and related Acts* | Communications, Information Technology and the Arts |
| *Rural Adjustment Act 1992* and States and Northern Territory Grants (Rural Adjustment) Acts | Agriculture, Fisheries and Forestry |
| *Shipping Registration Act 1981* | Transport and Regional Services |
| Trade Practices (Consumer Product Information Standards) (Care for clothing and other textile products labelling) Regulations | Treasury |
| *Tradesmen's Rights Regulation Act 1946* | Employment and Workplace Relations |
| 1997-98 | |
| *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* | Employment and Workplace Relations |
| *Agricultural and Veterinary Chemicals Act 1994* | Agriculture, Fisheries and Forestry |
| *Bankruptcy Act 1966* and Bankruptcy Rules — trustee registration provisions | Attorney-General's |
| *Customs Act 1901* Sections 154-161L | Attorney-General's |
| *Defence Housing Authority Act 1987* | Defence |
| *Environmental Protection (Nuclear Codes) Act 1978* | Health and Ageing |
| *Higher Education Funding Act 1988* plus include*: Vocational Education & Training Funding Act 1992* and any other regulation with similar effects to the *Higher Education Funding Act 1988* | Education, Science and Training |
| *Imported Food Control Act 1992* and regulations | Agriculture, Fisheries and Forestry |
| *International Air Services Commission Act 1992* and *International Air Service Agreements* | Transport and Regional Services |
| *Motor Vehicle Standards Act 1989* | Transport and Regional Services |
| *Mutual Recognition Act 1992* | Education, Science and Training and Prime Minister and Cabinet |
| *National Health Act 1953* (Part 6 & Schedule 1) and *Health Insurance Act 1973* (Part 3) | Health and Ageing |

**Table A1: Commonwealth legislation review schedule (continued)**

| Name of legislation | Responsible department |
|---|---|
| 1997-98 | |
| *National Residue Survey Administration Act 1992* and related Acts | Agriculture, Fisheries and Forestry |
| *Petroleum Retail Marketing Franchise Act 1980* | Industry, Tourism and Resources |
| *Petroleum Retail Marketing Sites Act 1980* | Industry, Tourism and Resources |
| *Pig Industry Act 1986* and related Acts | Agriculture, Fisheries and Forestry |
| Primary Industries Levies Acts and related Collection Acts | Agriculture, Fisheries and Forestry |
| *Torres Strait Fisheries Act 1984* and related Acts | Agriculture, Fisheries and Forestry |
| Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations | Treasury |
| *Trade Practices Act 1974* (s 51(2) and s 51(3) exemption provisions) | Treasury |
| 1998-99 | |
| Anti-dumping legislation, *Customs Act 1901* Pt XVB and *Customs Tariff (Anti-dumping) Act 1975* | Attorney-General's |
| *Australia New Zealand Food Authority Act 1991* Food Standards Code | Health and Ageing |
| *Broadcasting Services Act 1992, Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992, Radio Licence Fees Act 1964* and *Television Licence Fees Act 1964* | Communications, Information Technology and the Arts |
| *Defence Force (Home Loans Assistance) Act 1990* | Defence |
| *Export Control Act 1982* (fish, grains, dairy, processed foods etc) | Agriculture, Fisheries and Forestry |
| *Financial Transactions Reports Act 1988* and regulations | Attorney-General's |
| Fisheries Legislation | Agriculture, Fisheries and Forestry |
| *Health Insurance Act 1973* — Part IIA | Health and Ageing |
| Intellectual property protection legislation (*Designs Act 1906, Patents Act 1990, Trade Marks Act 1995, Copyright Act 1968* and possibly the *Circuit Layouts Act 1989*) | Attorney-General's and Industry, Tourism and Resources |

**Table A1: Commonwealth legislation review schedule (continued)**

| Name of legislation | Responsible department |
|---|---|
| 1998-99 | |
| Land Acquisition Acts: a) *Land Acquisition Act 1989* and regulations; b) *Land Acquisitions (Defence) Act 1968*; c) *Land Acquisition (Northern Territory Pastoral Leases) Act 1981* | Finance and Administration |
| *Marine Insurance Act 1909* | Attorney-General's |
| *Navigation Act 1912* | Transport and Regional Services |
| *Proceeds of Crime Act 1987* and regulations | Attorney-General's |
| Review of market-based reforms and activities currently undertaken by the Spectrum Management Agency (now Australian Communications Authority). | Communications, Information Technology and the Arts |
| *Trade Practices Act 1974* — Part X (shipping lines) | Transport and Regional Services |
| *Veterans' Entitlement Act 1986* — Treatment Principles (section 90) and Repatriation Private Patient Principles (section 90A) | Veterans' Affairs |
| 1999-00 | |
| Dairy Industry Legislation | Agriculture, Fisheries and Forestry |
| *Defence Act 1903* (Army and Airforce Canteen Services Regulations) | Defence |
| *Disability Discrimination Act 1992* | Attorney-General's |
| Dried Vine Fruits Legislation | Agriculture, Fisheries and Forestry |
| *Export Control Act 1982* — Export Control (Unprocessed Wood) Regulations | Agriculture, Fisheries and Forestry |
| *Export Finance & Insurance Corporation Act 1991* and *Export Finance & Insurance Corporation (Transitional Provisions and Consequential Amendments) Act 1991* | Foreign Affairs and Trade |
| *Hazardous Waste (Regulation of Exports and Imports) Act 1989, Hazardous Waste (Regulation of Exports and Imports) Amendment Bill 1995* and related regulations | Environment and Heritage |
| *Insurance (Agents & Brokers) Act 1984* | Treasury |
| *Native Title Act 1993* and regulations | Prime Minister and Cabinet |
| *Ozone Protection Act 1989* and *Ozone Protection (Amendment) Act 1995* | Environment and Heritage |
| *Petroleum (Submerged Lands) Act 1967* | Industry, Tourism and Resources |

**Table A1: Commonwealth legislation review schedule (continued)**

| Name of legislation | Responsible department |
|---|---|
| 1999-00 | |
| *Prices Surveillance Act 1983* | Treasury |
| Superannuation Acts including: *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987, Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Act 1991, Superannuation (Resolution of Complaints) Act 1993, Superannuation Industry (Supervision) Act 1993, Occupational Superannuation Standards Regulations Applications Act 1992, Superannuation (Financial Assistance Funding) Levy Act 1993* | Treasury |
| *Trade Practices Act 1994* (including exemptions) — Part IIIA (access regime) | Treasury |
| *Trade Practices Act 1974* — 2D exemptions (local government activities) | Treasury |
| *Trade Practices Act 1974* — fees charged | Treasury |
| *Wheat Marketing Act 1989* | Agriculture, Fisheries and Forestry |